

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.

Thursday, May 12, 2011

**Tenue à :**

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

le jeudi 12 mai 2011

## **APPEARANCES / COMPARUTIONS**

Patrick McGowan Jennifer Chan	Associate Commission Counsel Junior Commission Counsel
Mitchell Taylor, Q.C. Hugh MacAulay	Government of Canada ("CAN")
Boris Tyzuk, Q.C.	Province of British Columbia ("BCPROV")
No appearance	Pacific Salmon Commission ("PSC")
No appearance	B.C. Public Service Alliance of Canada Union of Environment Workers B.C. ("BCPSAC")
No appearance	Rio Tinto Alcan Inc. ("RTAI")
No appearance	B.C. Salmon Farmers Association ("BCSFA")
No appearance	Seafood Producers Association of B.C. ("SPABC")
No appearance	Aquaculture Coalition: Alexandra Morton; Raincoast Research Society; Pacific Coast Wild Salmon Society ("AQUA")
Judah Harrison	Conservation Coalition: Coastal Alliance for Aquaculture Reform Fraser Riverkeeper Society; Georgia Strait Alliance; Raincoast Conservation Foundation; Watershed Watch Salmon Society; Mr. Otto Langer; David Suzuki Foundation ("CONSERV")
Don Rosenbloom	Area D Salmon Gillnet Association; Area B Harvest Committee (Seine) ("GILLFSC")

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

Phil Eidsvik	Southern Area E Gillnetters Assn. B.C. Fisheries Survival Coalition ("SGAHC")
Christopher Harvey, Q.C.	West Coast Trollers Area G Association; United Fishermen and Allied Workers' Union ("TWCTUFA")
No appearance	B.C. Wildlife Federation; B.C. Federation of Drift Fishers ("WFFDF")
No appearance	Maa-nulth Treaty Society; Tsawwassen First Nation; Musqueam First Nation ("MTM")
Sarah Sharp	Western Central Coast Salish First Nations: Cowichan Tribes and Chemainus First Nation Hwlitsum First Nation and Penelakut Tribe Te'mexw Treaty Association ("WCCSFN")
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")
No appearance	Métis Nation British Columbia ("MNBC")

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

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

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PANEL NO. 35  
In chief by Mr. McGowan

Vancouver, B.C. /Vancouver  
(C.-B.)  
May 12, 2011/le 12 mai 2011

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

6 MR. MCGOWAN: Good morning, Mr. Commissioner. It's  
7 Patrick McGowan for the Commission. With me is  
8 Jennifer Chan. We have a panel before you this  
9 morning consisting of three individuals, all of  
10 whom are presently members of the Monitoring and  
11 Compliance Panel of the ISDF. Starting on my  
12 left, looking at the panel, we have Grand Chief  
13 Ken Malloway. Moving to the right, we have Colin  
14 Masson and finally Peter Sakich.

15 I'll just very briefly commence by running  
16 them through a brief outline of their background.

17 Grand Chief Malloway, you're a member of the  
18 Sto:lo Tribal Council?

19 GRAND CHIEF MALLOWAY: Yes.

20 MR. MCGOWAN: Okay. Perhaps we'll have the witnesses  
21 sworn, first, before I charge right in.

22 THE REGISTRAR: Good morning, gentlemen. Mr. Sakich, I  
23 might remind you you've been in before and you're  
24 still under oath. Oh, sorry, microphones, please.

25  
26 KEN MALLOWAY, Affirmed.

27  
28 COLIN MASSON, Affirmed.

29  
30 THE REGISTRAR: State your name, please?

31 GRAND CHIEF MALLOWAY: Ken Malloway.

32 THE REGISTRAR: Thank you.

33 MR. MASSON: Colin Masson.

34 THE REGISTRAR: Thank you. Council?

35  
36 EXAMINATION IN CHIEF BY MR. MCGOWAN:

37  
38 Q Grand Chief Malloway, you're a member of the  
39 Sto:lo Tribal Council?

40 GRAND CHIEF MALLOWAY: Yes.

41 Q And you're a hereditary chief of the Chilliwack  
42 Tribe?

43 GRAND CHIEF MALLOWAY: Yes.

44 Q You have a long history of involvement in fishing?

45 GRAND CHIEF MALLOWAY: Yes.

46 Q And you're a member of the ISDF Monitoring and  
47 Compliance Panel?

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PANEL NO. 35  
In chief by Mr. McGowan

1 GRAND CHIEF MALLOWAY: Yes.

2 Q And a fairly longstanding member of the Fraser  
3 Panel for eight years?

4 GRAND CHIEF MALLOWAY: Yes.

5 MR. MCGOWAN: If we could have Grand Chief Malloway's  
6 bio put on the screen, please. That's our list of  
7 documents 15.

8 Q This is a biography. You'll see it come up before  
9 you shortly that you've seen. It outlines just a  
10 small number of items that you've been involved  
11 in, is that fair?

12 GRAND CHIEF MALLOWAY: Pardon?

13 Q This is a biography setting out some of the  
14 highlights of your involvement in matters related  
15 to fishing?

16 GRAND CHIEF MALLOWAY: Yes, I was just admiring it,  
17 thank you.

18 MR. MCGOWAN: If that could be the next exhibit,  
19 please.

20 THE REGISTRAR: Exhibit 853.

21  
22 EXHIBIT 853: Biography of Grand Chief Ken  
23 Malloway  
24

25 MR. MCGOWAN:

26 Q Mr. Masson, you've been with the Department of  
27 Fisheries and Oceans since the '80s?

28 MR. MASSON: That's correct, yes.

29 Q You're presently the Element Lead for the Enhanced  
30 Accountability Element for PICFI?

31 MR. MASSON: Correct.

32 Q And you're, as well, a member of the ISDF  
33 Monitoring and Compliance Panel?

34 MR. MASSON: Yes, indeed.

35 Q Okay. And your c.v. is at our list of documents  
36 number 16. That's your c.v. on the screen?

37 MR. MASSON: Yes. Yes, it is.

38 MR. MCGOWAN: If that could be the next exhibit,  
39 please?

40 THE REGISTRAR: Exhibit 854.

41  
42 EXHIBIT 854: *Curriculum vitae* of Colin  
43 Masson  
44

45 MR. MCGOWAN:

46 Q Mr. Sakich, you've worked in the commercial  
47 fishing industry since the '60s?



1 MR. SAKICH: That's right.  
2 Q You're presently the co-chair of the Commercial  
3 Salmon Advisory Board?  
4 MR. SAKICH: That's correct, and I am here for the  
5 Monitoring Panel.  
6 Q Yes.  
7 MR. SAKICH: Yeah, it's not the view of the Salmon  
8 Advisory Board.  
9 Q No, I understand.  
10 MR. SAKICH: Okay.  
11 Q I was just outlining some of your credentials and  
12 some of the bodies you're involved with for the  
13 Commissioner so he understands the experience you  
14 bring.  
15 You're presently in fact the chair of the  
16 ISDF Monitoring and Compliance Panel, correct?  
17 MR. SAKICH: That's correct.  
18 Q And you're, as well, a member of the Fraser Panel?  
19 MR. SAKICH: Yes.  
20 MR. MCGOWAN: If we could have Exhibit 422, please, Mr.  
21 Lunn?  
22 Q You've been here previously as a witness; is that  
23 right?  
24 MR. SAKICH: Yes.  
25 Q And the last time you were here, your bio was  
26 entered as an exhibit and this is it that you're  
27 looking at here; is that right?  
28 MR. SAKICH: That's just missing the Fraser Panel. I  
29 believe that's all.  
30 Q Okay. Now, Mr. Sakich and Mr. Masson, you were  
31 both here yesterday and watched the evidence; is  
32 that correct?  
33 MR. MASSON: That is correct, yeah.  
34 Q Okay. I'm sure you both saw yesterday, and we've  
35 certainly heard throughout this process, that  
36 historically fisheries monitoring and catch  
37 reporting has been an area with a certain degree  
38 of mistrust. Is that a fair understanding?  
39 MR. SAKICH: Yes, it certainly is. It's one big issue  
40 and it seems to go through all processes and it  
41 has had the capability of stalling an awful lot of  
42 things that we need to do.  
43 Q I wonder if you could each just briefly address  
44 the Commissioner and perhaps help him understand  
45 why it is that this tension exists, from your  
46 perspective?  
47 MR. MASSON: I think it's primarily a lack of

1 understanding of what monitoring is conducted by  
2 each group, and it's often closely linked to other  
3 concerns that are prevalent in the dialogue such  
4 as, and most importantly, access to the resource  
5 and allocation issues.

6 Sometimes they can predominate the concern  
7 and then the lack of understanding of monitoring  
8 confounds the problem, and distrust evolves.

9 Q Okay. Grand Chief Malloway, do you have anything  
10 to add to that?

11 GRAND CHIEF MALLOWAY: Well, it has been a problem over  
12 the years, but with the amount of work that's  
13 going on with the Integrated Salmon Dialogue Forum  
14 and the Fraser Salmon Table (sic) and issues like  
15 that, it's becoming more and more understanding.  
16 We work with First Nations, commercial fishers,  
17 sports, DFO and the province working on those  
18 issues. They were starting to understand each  
19 other and get to know each other better.

20 Q Thank you. Mr. Sakich, do you have anything to  
21 add?

22 MR. SAKICH: Yes. As recently as a couple of weeks ago  
23 at the Integrated Harvest Management planning  
24 meetings, it generally always seems to find its  
25 way back to this mistrust of the catch monitoring.  
26 It's wherever you go. And it's not just reserved  
27 for any one sector or user group or anything.  
28 It's equally -- everybody gets their turn. So  
29 they're all in the barrel together.

30 Q All right. Mr. Masson, to address this history of  
31 mistrust and also to address matters related to  
32 the accuracy and reliability of catch reporting,  
33 the Department has, over the years, engaged in  
34 policy development and undertaken a number of  
35 initiatives to address these issues; is that  
36 right?

37 MR. MASSON: That's correct.

38 Q Okay. I'm going to address some questions to you,  
39 sir, about some of these initiatives and some of  
40 this policy development starting in 2002. In  
41 2002, the Pacific fishery monitoring and reporting  
42 framework was developed; is that right?

43 MR. MASSON: That's correct.

44 Q If we could bring up Exhibit 268, please? This is  
45 a document you've become familiar with through  
46 your work at the time and over the years?

47 MR. MASSON: That's correct. I wasn't involved in its

1 development. There was an internal team of 12 to  
2 20 individuals from all the various harvest -- for  
3 the various species groups and sectors that were  
4 involved in its development.

5 Q And this document, this framework, the intention  
6 of it was to facilitate a review by the Department  
7 in cooperation with stakeholders including First  
8 Nations, fisheries monitoring and catch reporting  
9 systems in the Pacific region; is that right?

10 MR. MASSON: That's correct.

11 Q And ultimately it set out a number of principles  
12 relating to fishery monitoring and catch  
13 reporting?

14 MR. MASSON: Quite right, yes.

15 Q I wonder if we could bring up, please, page 28 of  
16 the Policy and Practice Report. I'm just going to  
17 read to you sort of the first principle.

18  
19 Principle 1 - All fisheries must have fishery  
20 monitoring and reporting programs and they  
21 must be of sufficient accuracy and precision  
22 to address conservation needs, including the  
23 need for the appropriate and timely control  
24 of fishing.

25  
26 So that was -- that's where the Department got to  
27 in 2002; is that right? One of the places they  
28 got to in this report.

29 MR. MASSON: That's quite right. It recognizes that,  
30 fundamentally, the key thing is ensure information  
31 is available to ensure conservation can be  
32 achieved.

33 Q Does that remain true today?

34 MR. MASSON: Absolutely.

35 Q Okay. And this policy document was taken out for  
36 some consultation in 2002 and subsequently?

37 MR. MASSON: It was indeed, yeah.

38 Q Okay. What ultimately happened with the  
39 initiatives set out in this document with respect  
40 to moving forward with the 2002 framework?

41 MR. MASSON: It served several purposes. It certainly  
42 raised attention to the importance of monitoring  
43 across the board, and it looked at the issue of  
44 fishery monitoring, catch reporting, in a way that  
45 started to lay it out where the issues were  
46 understandable and the path forward was clearer.  
47 It certainly identified some internal work that

1 the Department of Fisheries needed to address, and  
2 things that needed to happen together with  
3 harvesters.

4 Q Ultimately, did this 2002 framework go anywhere?

5 MR. MASSON: The focus on the document itself perhaps  
6 was not as great in the subsequent years. It was  
7 used as an underlying piece and a foundation of  
8 much of the work that continued, particularly in  
9 the integrated groundfish fishery evolution, where  
10 catch information was critically important to  
11 moving forward there.

12 Q If we could go to the bottom of the next page of  
13 the Policy and Practice Report, please. Now,  
14 this, I'm taking you to paragraph 64, sir, which I  
15 think you've seen before. It says, "According to"  
16 -- and this is taken from a document which is  
17 cited there.

18  
19 According to one DFO employee, the 2002  
20 Framework soon "went off the radar screen"  
21 and "not much happened with it".

22  
23 You've seen the document that that came from. Do  
24 you disagree with that statement?

25 MR. MASSON: No. I think, fundamentally, the document  
26 had served some very useful purposes, but the  
27 focus was on other issues at the time and -- yeah,  
28 I'd fundamentally agree.

29 Q Did this document, and the matters set out in it,  
30 receive the attention that was needed going  
31 forward after 2002?

32 MR. MASSON: No. I don't believe it did.

33 Q In 2004, there was an effort to revitalize the  
34 2002 Framework?

35 MR. MASSON: That's correct.

36 Q Okay. And then in 2005, the Department announced  
37 its Pacific region fisheries monitoring and catch  
38 reporting initiatives?

39 MR. MASSON: That's correct.

40 Q 2006, the Department conducted an audit of the  
41 management control framework supporting  
42 statistical information on fisheries?

43 MR. MASSON: Yeah, that was a national audit across the  
44 country.

45 Q In January 2007, the Department launched the  
46 Salmon Fisheries Reform, Fisheries Monitoring and  
47 Catch Reporting Traceability, Lower Fraser Focus

1 project?

2 MR. MASSON: That's correct.

3 MR. MCGOWAN: And, Mr. Commissioner, just for your  
4 benefit, those programs or policies are all  
5 described in our Policy and Practice Report.

6 Q Ultimately, through that evolution, we ultimately  
7 get to PICFI in 2007; is that right, sir?

8 MR. MASSON: That's correct. And the initiative you  
9 spoke of just prior to that was a preliminary  
10 program that helped to set the stage for the PICFI  
11 initiative.

12 Q One of the key elements under PICFI is enhanced  
13 accountability?

14 MR. MASSON: That's correct.

15 Q And that's closely tied to catch monitoring?

16 MR. MASSON: Yes.

17 Q You're assigned as the Lead of that element?

18 MR. MASSON: That's correct.

19 Q And your position is funded through PICFI?

20 MR. MASSON: Yeah.

21 Q And you have four others under you funded through  
22 PICFI in that group?

23 MR. MASSON: That's correct.

24 Q I take it one of the first things you must have  
25 done when you were assigned as the Enhanced  
26 Accountability Lead is look at catch monitoring  
27 across the board and identify those issues or  
28 fisheries that needed particular attention or were  
29 causing you some concern; is that fair?

30 MR. MASSON: That's fair, but I would cast it a little  
31 differently. It was actually prior to PICFI I was  
32 involved in that initiative in 2005 where we were  
33 taking a more focused look at the fishery  
34 monitoring issues and developing a broad strategy.

35 At that time, we picked up on the information  
36 provided in the 2002 Framework, and particularly  
37 highlighted three fundamental issues that the  
38 Department needed to address internally. One of  
39 those was the development of some system of  
40 standards for fishery monitoring and catch  
41 reporting. Another was to improve our fisheries  
42 information management systems and an  
43 acknowledgement of some shortfalls in that regard.  
44 Thirdly, to address accountabilities and roles and  
45 responsibilities internally, again, recognizing  
46 some shortfalls in that regard.

47 At the same time, there was work with the

1 regional executive to confirm those as key issues  
2 we had to address, and also to confirm that the  
3 priority fisheries you were going to focus on were  
4 commercial salmon, FSC fisheries of all species  
5 and recreational fisheries.

6 Q Okay. So those were the three fisheries that you  
7 identified as needing the most concern at that  
8 time?

9 MR. MASSON: That's correct.

10 Q Mr. Malloway or Ms. Sakich, do you have anything  
11 to add? Do you agree with the identification of  
12 those three as, at that time, needing attention?

13 GRAND CHIEF MALLOWAY: No, I don't have anything to  
14 add.

15 Q Mr. Sakich?

16 MR. SAKICH: No, I'm fine, thank you.

17 Q Thank you. Was part of your task also considering  
18 the recommendations made by Mr. Williams in his  
19 report?

20 MR. MASSON: Yes. That was part of the information we  
21 reviewed and considered.

22 Q What has been the budget assigned to you through  
23 PICFI?

24 MR. MASSON: PICFI is a five-year program. The funding  
25 levels in Enhanced Accountability have varied by  
26 year. Given its sunset nature, it has declined in  
27 the last year slightly. So in Enhanced  
28 Accountability, we've been looking at budgets for  
29 catch monitoring at a high level of 1.7 million  
30 per year, and a low level - this being our last  
31 sunset year - of 1.2 million.

32 In addition to that, there's 400,000 that's  
33 directed towards the C&P or Conservation and  
34 Protection Element of Enhanced Accountability, and  
35 then a smaller budget assigned to the development  
36 of a traceability framework and pilot projects  
37 associated with that. That budget level is  
38 approximately 100,000 per year. Actually -- yeah,  
39 100,000 per year.

40 Q Okay. Thank you. And you're talking, when you  
41 say 100,000 a year, for the duration of PICFI?

42 MR. MASSON: That's correct.

43 Q Okay. Now, in 2008, the Monitoring and Compliance  
44 Working Group was struck; is that right?

45 MR. MASSON: That's correct.

46 Q And that's a multi-sectoral group designed to  
47 examine ways to improve monitoring and catch

1 reporting?

2 MR. MASSON: That's correct.

3 Q 2009, ultimately the Monitoring and Compliance  
4 Panel was developed; is that correct?

5 MR. MASSON: That's right.

6 Q And, as I understand from looking at the  
7 documents, that was designed to develop operating  
8 principles and guidelines for fish monitoring and  
9 catch reporting.

10 MR. MASSON: Correct. I'd just like to clarify at this  
11 point, though, that the Monitoring and Compliance  
12 Panel was not a construct of the Department of  
13 Fisheries and Oceans, and it was the product of  
14 the Integrated Salmon Dialogue Forum and arose  
15 from a recognition that fisheries catch  
16 information was a critical piece to get right, and  
17 that all of the participants in that forum  
18 recognized the importance of trying to do so.

19 So there was considerable preliminary  
20 discussion that eventually resulted in the  
21 development of our Monitoring Compliance Panel.

22 Q That leads nicely into my next question, sir. I  
23 wonder if you can address the Commissioner on the  
24 importance of policy development in this critical  
25 area being conducted by bodies involving not just  
26 the Department but also other user groups.

27 MR. MASSON: Well, I mean, technically policies are  
28 developed by government, and -- however, the  
29 interests and contributions of those that are  
30 affected by policies are critically important for  
31 the government in its development of policy.

32 So, in this particular case, the Monitoring  
33 Compliance Panel, whose purpose is not just the  
34 development of policy but a broader look at trying  
35 to make improvements in fishery monitoring, catch  
36 reporting, has an interesting and very valuable  
37 role in trying to look at policy options in moving  
38 forward.

39 Q Grand Chief Malloway, I wonder if you want to  
40 comment on the importance of First Nations being  
41 involved in the development operating principles  
42 and guidelines for fish monitoring.

43 GRAND CHIEF MALLOWAY: Well, since a number of court  
44 cases have pointed out the need for the Department  
45 of Fisheries and Oceans to consult with First  
46 Nations, it's become pretty clear that there was a  
47 need for us to be involved, not only with the DFO

1 but other sectors as well, to work on this. It's  
2 very important so I think it's a good process.  
3 There's a lot of good work being done there.

4 Q Thank you. Mr. Sakich, did you want to add  
5 anything to the importance of this being sort of a  
6 multi-sectoral development?

7 MR. SAKICH: Yes. Yes, I would. It is the diversity  
8 of having everybody together and, in fact, having  
9 the government in there as well. So at least when  
10 you're going to come forward with something like  
11 this, there's no use being at odds when you end up  
12 with a product. So having First Nations,  
13 commercial, government, recreational,  
14 environmental in the room doing these things, we  
15 all somewhat agree with the direction that we have  
16 taken and what our next steps will be will be  
17 another question.

18 Q Mr. Sakich, you're on the Panel as one commercial  
19 fisher. How is it you got appointed to that  
20 position?

21 MR. SAKICH: Well, you're not really appointed to them.  
22 They sort of struck the panels and myself,  
23 personally, I took the information back to the  
24 Commercial Salmon Advisory Board and anybody that  
25 wanted to go was welcome. A few people showed up  
26 and they came and they went, and now there's still  
27 occasionally a couple who show up, and that's  
28 about it. So it's not really an appointed thing.  
29 We just sort of evolutionized (sic) into it.

30 Early in the game, like the amount of people  
31 that were invited to attend those salmon dialogue  
32 forums and be part of one of these working groups  
33 if they wanted to, it wasn't restricted. The  
34 email lists were huge, about as broad a coverage  
35 as you're going to get, and a lot of the folks in  
36 the commercial industry would show up at these  
37 salmon dialogue forums, but did not really want to  
38 participate in the working group. But nobody was  
39 shut out.

40 Q Right. Do you feel that you fairly represent the  
41 commercial perspective in your role on this panel?

42 MR. SAKICH: Well, I think I represent the inevitable.  
43 I'm not going to say there's a perspective because  
44 some folks like to move forward with things and  
45 some don't. But it is inevitable you are going to  
46 end up in this spot. That's a given, or you're  
47 not going to fish. See, my whole -- work with the



1 group where you can get your way through there.  
2 Q Thank you. Grand Chief Malloway, I'm going to ask  
3 you the same question. How was it that you became  
4 a member of the panel. Were you appointed or...?  
5 GRAND CHIEF MALLOWAY: Well, I was asked to attend the  
6 Integrated Salmon Dialogue Forum and the first go-  
7 around, there were a number of people that were  
8 invited. Some folks showed up that weren't  
9 invited, but they weren't turned away.  
10 Eventually, I wanted to be on the Monitoring and  
11 Compliance Panel because I'm the chairman of the  
12 Fraser Valley Aboriginal Fishery Society, and all  
13 we do is talk fish. So that's why I wanted to be  
14 on it and I was accepted.  
15 Q Do you feel in your role on the Monitoring and  
16 Compliance Panel that you can speak on behalf of  
17 First Nations broadly on issues related to catch  
18 monitoring?  
19 GRAND CHIEF MALLOWAY: No. I only speak for those  
20 folks that I'm working with in the Fraser Valley.  
21 Q Okay. Mr. Masson, I understand the budget for the  
22 Monitoring and Compliance Panel is approximately  
23 85 or \$90,000 per year right now?  
24 MR. MASSON: In fact, the budget has been about  
25 160,000, but the funding has been split between  
26 the Department and Fraser River assembly (sic).  
27 And so the departmental share in the past year was  
28 about 187.  
29 Q So the Department's share was --  
30 MR. MASSON: Eighty-seven.  
31 Q -- 87.  
32 MR. MASSON: My mistake.  
33 Q That's fine. I just wanted to make sure --  
34 MR. MASSON: Slipped this one --  
35 Q -- it wasn't a slip there.  
36 MR. MASSON: Yeah, thank you.  
37 Q Ultimately the Monitoring and Compliance Panel  
38 developed a document called "Charting Our Course,  
39 Fishery Monitoring in the Pacific Region, a  
40 Strategy for Improved Confidence and Support," is  
41 that right?  
42 MR. MASSON: That's correct.  
43 MR. MCGOWAN: I wonder if we could bring up our  
44 document number 19, please, Mr. Lunn.  
45 Mr. Commissioner, just so you know, there was  
46 an earlier draft of this document entered as an  
47 exhibit, and that's Exhibit 428. We now have a

1           subsequent, more recent, draft, and I think  
2           perhaps the final draft, and I'm going to suggest  
3           that be entered as the next exhibit.  
4   THE REGISTRAR: Exhibit 855.

5  
6           EXHIBIT 855: Document titled Charting Our  
7           Course: Fishery Monitoring in the Pacific  
8           Region - A Strategy for Improved Confidence  
9           and Support (Final Report), April 2011

10  
11   MR. MCGOWAN:

12   Q   Mr. Masson, what was the purpose of this document?

13   MR. MASSON: The purpose of this document was to  
14           develop a framework by which, initially, in the  
15           panel itself, we could really look and examine  
16           monitoring programs in a consistent way so that we  
17           could start to compare and discuss fisheries with  
18           similar requirements, and to give us a frame to  
19           look at fisheries with vastly different  
20           requirements.

21           In addition to that, it was going to serve as  
22           a guide to move forward with suggestions and  
23           recommendations to the Department and to  
24           harvesters.

25   Q   I see reference in the document to what they  
26           describe "a crisis of confidence". Was the  
27           approach set out in the document designed to  
28           address that?

29   MR. MASSON: Quite right. Again, as arose in the  
30           discussions at the Integrated Salmon Dialogue  
31           Forum, there was a great deal of concern about the  
32           lack of confidence in each other's numbers, and  
33           not just from harvesters, but from the general  
34           public as well. In the Department, we had been  
35           recognizing this issue and the challenges  
36           associated with that lack of confidence as well.

37   Q   One of the things that I see referenced in the  
38           document a number of times and seems to be a  
39           recurring theme is the need for a consistent  
40           approach to catch monitoring.

41           Mr. Sakich, I wonder if you can perhaps  
42           address what's meant by that phrase that we see in  
43           the document and how it can be accomplished?

44   MR. SAKICH: Well, I don't think you're consistent in  
45           the way you get to the outcomes, the desired  
46           outcome level of monitoring. I think that it is  
47           the level of monitoring that you want to be

1 consistent on. I think that's basically what that  
2 means. How you get there is another story.

3 Q Okay. Grand Chief Malloway, do you have anything  
4 to add to that?

5 GRAND CHIEF MALLOWAY: No.

6 Q Is what you're trying to say, Mr. Sakich, that the  
7 monitoring apparatus or structure may not be the  
8 same in every fishery. It's the outcome that  
9 you're trying to have consistent?

10 MR. SAKICH: It is the outcome that gives you the  
11 public confidence, the sector confidence, the  
12 users between each other. That would be the  
13 outcome. That would be the consistent part.

14 Q You agree with that, Mr. Masson?

15 MR. MASSON: I do. I think it also draws out the point  
16 and the recognition that not all fisheries are the  
17 same. They operate in different scales and in  
18 different regimes with different risks. But  
19 what's important is a consistent approach to  
20 examine the information requirements.

21 Q And that approach is set out in the Charting Our  
22 Course document?

23 MR. MASSON: Yes, it is.

24 Q Okay. Now subsequent, or at least at the same  
25 time, perhaps, the development of this document  
26 was taking place, the Department of Fisheries and  
27 Oceans developed the Strategic Framework for  
28 Fishery Monitoring and Catch Reporting in the  
29 Pacific fisheries; is that right?

30 MR. MASSON: I think the sequencing is important here.  
31 So, as you pointed out, I had been working on  
32 catch monitoring issues previously. Internally I  
33 had begun the process of looking at a broader  
34 framework to guide our approach. It became clear  
35 in our work on the Monitoring Compliance Panel  
36 that they, too, collectively -- we were looking  
37 for some kind of a framework to examine monitoring  
38 and a path forward.

39 So the Department agreed that we would work  
40 collaboratively on this document, and so  
41 internally, I had been presenting early versions  
42 of the document. Then the monitoring and  
43 compliance Charting Our Course document had become  
44 firmed up and we had a close-to-finished product.

45 At the same time, the Department recognized  
46 that we had to focus on some of our internal  
47 objectives specifically. So we needed to be able

1 to spell out some policy direction, and direction  
2 to staff, and a document by which we could consult  
3 broadly on the subject and then move forward.

4 So it's from that process that the Strategic  
5 Framework arose.

6 Q There are differences between the Strategic  
7 Framework and the Charting Our Course approach,  
8 correct?

9 MR. MASSON: There are, but it's only fair to say, and  
10 quite appropriate, that the Charting Our Course  
11 largely informed the Strategic Framework document.

12 Q I guess my question would be, then, sir, if you  
13 had the Monitoring and Compliance Panel who,  
14 together with representatives from the interested  
15 sectors, put their heads together, came up with a  
16 document that had consensus support at least  
17 within the Panel, why did the Department then go  
18 and create its own document through a separate  
19 process which it is taking out for consultation  
20 instead of using the Charting Our Course document  
21 that was developed collaboratively?

22 MR. MASSON: It's a fair point, because we did develop  
23 that document collaboratively. But it became  
24 clear in discussions with the senior managers that  
25 the Department had objectives of our own that we  
26 needed to spell out in our document. It's clearer  
27 for the Department to undertake a consultation  
28 process where we can specifically engage the  
29 harvest sectors for feedback.

30 Also, it's appropriate for the Department to  
31 be setting direction for its staff and to  
32 establish the appropriate policy foundations by  
33 which we can have discussions with our national  
34 counterparts on the same issues. So the regional  
35 executive had directed that really the Department  
36 needs its own framework that establishes its role  
37 in trying to develop and firm up policy.

38 Q Mr. Sakich, do you support the approach outlined  
39 in the Strategic Framework document?

40 MR. SAKICH: Yes, they're quite similar. I think the  
41 end result gets you to the same place.

42 Q Grand Chief Malloway?

43 GRAND CHIEF MALLOWAY: Yeah, I support it.

44 Q Okay. Mr. Masson, who's ultimately responsible  
45 for implementing the strategies set out in the  
46 Strategic Framework?

47 MR. MASSON: The "ultimate" part concerns me.

1           Ultimately, the Department has a responsibility  
2           for ensuring conservation of the resource and  
3           fisheries monitoring, catch reporting features  
4           into that in a clear way. But it's clear that one  
5           of the things I've learned about catch reporting  
6           especially is that the Department can't do it  
7           alone. So by collaborating with harvesters, we  
8           can gain support and understanding for the  
9           collection of fisheries information, and so my  
10          answer would be the Department has ultimate  
11          responsibility for managing the fisheries resource  
12          for the people of Canada, but really, we need to  
13          work on this collectively with our stakeholders,  
14          and First Nations especially.

15         Q     And speaking just very generally so the  
16                Commissioner has a sense, the Strategic Framework  
17                mandates that each fisher (sic) be assessed for  
18                the risk it presents, and then a level of  
19                monitoring is assigned at either the low moderate  
20                or enhanced level; is that correct?

21         MR. MASSON: That's correct, each fishery. I think you  
22                said "fisher".

23         Q     I meant to say "fishery" if I didn't. And have  
24                those levels of monitoring been assigned for all  
25                fisheries?

26         MR. MASSON: No. I mean, I think it's only fair to say  
27                that the Strategic Framework is, at this stage,  
28                still a proposed framework, so we will be  
29                finalizing that in due course.

30                Having said that, the Framework does outline  
31                a process that each resource manager in working  
32                with the harvest groups would review and confirm  
33                the level of fishery information that's required,  
34                low, moderate or enhanced, and then develop a path  
35                to get there if it's not indeed already achieving.

36         Q     Will it all be implemented by March of 2010 when  
37                PICFI sunsets?

38         MR. MASSON: That's a really broad question. When you  
39                say "will it all", I have to kind of just make  
40                some assumptions about what you're saying. I  
41                think --

42         Q     Well, perhaps let me ask the question in a clearer  
43                way then.

44         MR. MASSON: Okay.

45         Q     Will each of the Fraser sockeye fisheries have a  
46                requisite level of monitoring determined and the  
47                structure to support that level of monitoring in

1 place by March 2012?

2 MR. MASSON: No, I would say it's going to be a work in  
3 progress.

4 Q Do you have a strategy in place to ensure that  
5 there is somebody responsible or accountable to  
6 ensure that the work that has been started  
7 continues after PICFI sunsets?

8 MR. MASSON: Yes, one of the things I've been focusing  
9 on in my work through this PICFI program is to  
10 ensure that the initiative has legs, that we can  
11 ensure that we're going to move forward and that  
12 the lag in progress that we might have observed  
13 from 2002 does not happen again.

14 So I've been looking at this in various ways.  
15 We're working to ensure that the information  
16 management framework that we've been investing  
17 heavily in is largely operational by the end of  
18 PICFI. In the course of our work, we've  
19 identified two really important roles that were  
20 not previously funded in the Department. One  
21 deals with the ability to provide integrated  
22 fisheries information and to look after that  
23 information management framework I spoke of.

24 Another is a regional monitoring coordination  
25 role and so whilst these are currently funded  
26 through PICFI, we're in the process in the  
27 Department of trying to find the kind of resources  
28 to make that happen.

29 In addition, we've identified some specific  
30 ongoing core operational costs, things like  
31 licence costs for software and so forth that are  
32 going to be required to enable the ongoing  
33 implementation of these kinds of programs. So  
34 there's some core work that we're doing to plug  
35 gaps and identify additional gaps that need to be  
36 filled prior to the end of PICFI.

37 One other comment perhaps is that the work on  
38 the Strategic Framework and the processes that are  
39 proposed in terms of identifying monitoring  
40 programs, identifying gaps, looking at them in a  
41 consistent framework in terms of the levels of  
42 information that are required, there's policies  
43 associated with that, that we're in the process of  
44 implementing as well.

45 Q Thank you. I wonder if you can just clarify for  
46 me who is going to have accountability for  
47 ensuring that this 2010 Strategic Framework

1 doesn't go off the radar the way the 2002  
2 Framework did. Is there an individual who is  
3 accountable to ensure that doesn't happen within  
4 the Department?

5 MR. MASSON: Accountability would largely rest with the  
6 executive, and so I would have to say that  
7 ultimately that's with our departmental executive.

8 Q Thank you. Mr. Sakich and Mr. Masson, you were  
9 both here yesterday and you heard the evidence of  
10 Mr. Houtman, Parslow and Jentz. You heard them, I  
11 expect, express their views that monitoring in the  
12 First Nations fisheries they were speaking of and  
13 the commercial fisheries they were speaking of was  
14 either good or very good.

15 I believe we heard Mr. Houppman give a number  
16 somewhere around the 95 percent and I think Mr.  
17 Parslow may have said something like 90 percent  
18 accuracy is what they were looking at. First of  
19 all, do any of you disagree with those  
20 assessments?

21 MR. SAKICH: Well, just maybe not so much disagree as  
22 to need some things clarified to me and one would  
23 be when you look at the commercial sector and you  
24 gave it a fairly high rating. Now, to get to that  
25 rating, are you blending all of the ones that are  
26 getting it right with the ones that aren't getting  
27 it right? It's not the road I think we should be  
28 going down if we're all trying to get it right  
29 together.

30 Q Right.

31 MR. SAKICH: Don't water it down, if I'm correct in the  
32 way I was looking at it.

33 Q Thank you. Grand Chief Malloway, do you have  
34 anything to add?

35 GRAND CHIEF MALLOWAY: Well, the way that fisheries is  
36 monitored in British Columbia is quite different  
37 in different areas. I think that that comment  
38 would be very, very close to describing the  
39 monitoring that goes on in our area in the Fraser  
40 Valley.

41 Q Mm-hmm.

42 GRAND CHIEF MALLOWAY: But I couldn't say the same for  
43 other parts of the province.

44 Q I guess the question that may arise when we hear  
45 the evidence, if we've got 90 percent accurate and  
46 95 percent accuracy, Mr. Masson, is why are we  
47 spending millions of dollars every year and

1           putting so much effort into catch monitoring if  
2           we're reaching those accuracy levels? Should we  
3           be putting the money into habitat work perhaps? I  
4           wonder if you can speak to that?

5       MR. MASSON: Yeah. I think it's important to just  
6           clarify as well. My understanding from the  
7           discussion and the evidence from Mr. Houtman and  
8           Mr. Parslow was that they were speaking to very  
9           specific fisheries for which they had done  
10          calculations and calculated precision estimates  
11          and so forth.

12                 So they were not suggesting that across the  
13          board all of our fisheries are operating at that  
14          level. There is this issue of confidence, and  
15          earlier you asked about, you know, how prevalent  
16          is that. I can attest to going to meetings with  
17          First Nations where they were very concerned about  
18          the lack of monitoring in the recreational sector  
19          and in some aspects of the commercial sector.  
20          Certainly with the commercial sector where they  
21          really didn't want to engage in discussions of  
22          improved monitoring until other issues had been  
23          addressed in monitoring of other sectors, and so  
24          on and so forth.

25                 So whilst in some fisheries we are certainly  
26          on the mark, I would suggest there's lots of  
27          situations where we're not, and a need for  
28          improvement has been identified in every one of  
29          our harvest sectors, but not everywhere. There  
30          are lots of places where we are doing well.

31       Q       Thank you. With respect to the approach set out  
32                 in the Strategic Framework, I just had a question  
33                 about that for you, Mr. Masson, and it's this: It  
34                 mandates that a particular level of risk be  
35                 assigned for each fishery and that a level of  
36                 monitoring be determined. I'm wondering is it the  
37                 case that with varying run sizes, a particular  
38                 fishery may require different levels of monitoring  
39                 in different years depending on run size?

40       MR. MASSON: I mean, that's absolutely the case. I  
41                 think that it boils down to trying to be clear,  
42                 when we talk about monitoring programs, what is  
43                 our definition of fishery? What is the scope of a  
44                 particular fishery?

45                 For example, if we talk about the Area E  
46                 gillnet fishery in the lower Fraser, it has  
47                 different target fisheries. There's a sockeye



1 fishery, there's a chum fishery, and in some  
2 situations and perhaps in the past, there might  
3 have been other fisheries that were conducted, and  
4 certainly outside of the lower Fraser, the Area E  
5 guys might fish -- each of those fisheries has  
6 their own context. Each year there may be  
7 different conservation issues and risks to address  
8 and there may be other management objectives to  
9 address in different years and different  
10 situations.

11 So, yes, that's one of the real challenges in  
12 monitoring programs. The requirements can change  
13 over time, and at the same time, you want to have  
14 an understandable program, something that's as  
15 consistent as possible and not constantly be  
16 changing the requirements to add to the confusion.

17 So the objective is understandable programs  
18 that meet the requirements that can adjust for  
19 some of the variations but recognizing that there  
20 can be changes and can be different requirements.

21 Q Thank you. Has the Department conducted an  
22 assessment of what the implementation of the  
23 Strategic Framework is going to mean in terms of  
24 costs, either to the Department or to fishers?

25 MR. MASSON: Not in its entirety We've been doing some  
26 preliminary work in that regard.

27 Q Okay. In recent years, Mr. Masson, I understand  
28 that the Department has been moving some of the  
29 costs of monitoring from the Department onto  
30 fishers in the commercial fishery; is that  
31 correct?

32 MR. MASSON: That is correct.

33 Q For example, the ITQ fisheries in Area H Troll and  
34 Area B Seine, who pays for that enhanced  
35 monitoring level?

36 MR. MASSON: That's paid for by the harvesters.

37 Q Okay. Is there a plan on behalf of the Department  
38 to move additional costs associated with  
39 monitoring onto commercial fishers?

40 MR. MASSON: That is a stated intention where there's  
41 enhanced monitoring especially. The Department  
42 also recognizes that support is required, not just  
43 financial support, but capacity development is  
44 another kind of support that's required.

45 Yeah, so costs for monitoring to be  
46 transferred for enhanced programs to commercial  
47 sector. Also efforts to try to support the shift

1 in other ways as well.

2 Q Mr. Sakich, do you have a comment on that stated  
3 approach?

4 MR. SAKICH: Yes. Leading up to it first. The  
5 difference in this Charting Our Course and that  
6 Strategic Framework is that Charting Our Course  
7 needs to be a living document. It's got to keep  
8 going on into the future. Because when you get  
9 into the situations as Colin just explained with  
10 the cost effectiveness of all of these sort of  
11 programs and who's bearing it, how you can do  
12 things different. To be able to work with the  
13 different sectors so they'll accept -- what would  
14 be -- at some point, what might be an acceptable  
15 level to Fisheries and Oceans might not be  
16 acceptable amongst harvesters.

17 Q Mm-hmm.

18 MR. SAKICH: So you've got two different things to look  
19 at here as you move forward. Just to come out  
20 with a blanket thing and say, well, that's it,  
21 this is where it's going to be, without a home for  
22 this to work from, could be very problematic.  
23 Like I said, I don't see this particular Charting  
24 Our Course stopping here.

25 We talk about cost effective in here, various  
26 different ways that costs can be reduced and still  
27 have the same effects, but we have to have a place  
28 amongst each other to be able to discuss this,  
29 because we have a hard time to solve it, anybody  
30 on your own.

31 Q Is it your sense that commercial fishers are  
32 content with the proposition that they are going  
33 to bear the increased burden of enhanced  
34 monitoring?

35 MR. SAKICH: No. They're not content. It's very  
36 expensive in the ITQ fishery at the moment, and I  
37 would think in consulting with the groups that are  
38 doing this that there can be ways that this can be  
39 worked out, that can give the same results.  
40 Nothing is going to be free, but it doesn't have  
41 to be exorbitant either.

42 Q Okay.

43 MR. MASSON: It should be more industry-driven or user-  
44 driven. If they can get the outcomes that  
45 government is requiring, get the outcomes that  
46 each other are requiring, that's the correct way  
47 to do things and having a place to do it?

- 1 Q Grand Chief Malloway, in the economic opportunity  
2 fisheries, similar to the ITQ fisheries and the  
3 commercial fishery, every fish is counted; is that  
4 correct?
- 5 GRAND CHIEF MALLOWAY: Yes, that's true.
- 6 Q Okay. Mr. Masson, who's presently bearing the  
7 cost of catch of -- the structure associated with  
8 catch monitoring and the economic opportunity  
9 fisheries?
- 10 MR. MASSON: Those costs are covered through agreements  
11 with the Department and First Nation  
12 organizations.
- 13 Q Okay. The agreements with the Department, you're  
14 speaking AFS agreement?
- 15 MR. MASSON: AFS agreements, yes.
- 16 Q And that money comes from the Department?
- 17 MR. MASSON: That's correct.
- 18 Q Okay. Is there money from PICFI also used for  
19 that?
- 20 MR. MASSON: PICFI's been primarily focused on projects  
21 that are transformative, trying to find new ways  
22 of doing business. We have supported some  
23 monitoring, particularly where it provides a base  
24 to move forward.
- 25 Q Is there a plan on behalf of the Department,  
26 similar with the conventional commercial fishery,  
27 to transition some of the costs of monitoring onto  
28 a communal commercial fishery as conducted by  
29 First Nations?
- 30 MR. MASSON: There's no current plan, but there's been  
31 some discussion that perhaps when those fisheries  
32 are fully functioning -- and in that context I'm  
33 also talking about pilot commercial, First Nation  
34 fisheries in the Interior. When they're fully  
35 functioning? At some point in the future they may  
36 well be.
- 37 Q Has the Department done an analysis as to whether  
38 these economic opportunity fisheries are  
39 sufficiently commercially viable such that they  
40 could support the structure required to conduct  
41 the requisite level of catch monitoring?
- 42 MR. MASSON: No.
- 43 Q Sorry, I didn't hear.
- 44 MR. MASSON: I said, no, that's --
- 45 Q Yeah.
- 46 MR. MASSON: -- they haven't.
- 47 Q Thank you. You say you're going to wait until

1           they're fully functioning to consider this. Pilot  
2           sales have been going on since 1992. Are they now  
3           fully functioning in some areas at commercial  
4           fisheries?

5       MR. MASSON: Much like the other fisheries, they're  
6           quite variable.

7       Q     Mr. Sakich, you spoke of trying to find ways that  
8           were efficient or economically reasonable to deal  
9           with. Right now in the economic opportunity  
10          fisheries and in the ITQ fisheries, every fish is  
11          counted. Has any thought been given to a plan  
12          where every fish wouldn't be counted? Perhaps an  
13          audit approach which was fish are reported driven  
14          (sic) but with a random audit of a selection of  
15          the catch and perhaps some penalties for not  
16          accurately reporting.

17      MR. SAKICH: Yes, we did talk about that in general  
18          around our discussions leading up to this, that  
19          innovation would be one of the functions of this  
20          monitoring panel.

21            Yes, random auditing, it's used on the east  
22          coast in some places. What they have, it's very  
23          simple. They have a drop-off place for the  
24          logbooks. Just because it's convenient there with  
25          the shape of the harbour, or whatever the case is,  
26          the vessels come in with the fish on board. They  
27          have to drop their logbook off.

28            In our case, we have other options which is  
29          electronic and various things like that which we  
30          should get to at some point here. There's been a  
31          lot of work done there.

32            But anyways, it's very much the same here.  
33          They'd be electronically reported or however else  
34          you're going to do your logbook. It's not  
35          necessarily clear to anyone who is going to get  
36          audited. So you run quite a risk by not doing  
37          things correctly, and the cost is greatly reduced.

38      Q     Grand Chief Malloway, have you given any thought  
39            to whether that might also be an appropriate  
40            approach in the -- some of the aboriginal  
41            commercial fishers?

42      GRAND CHIEF MALLOWAY: Actually we have done some work  
43          in that area in the past. We have had levy  
44          fisheries in our agreements. Up to ten percent of  
45          our allocation went back into the organization to  
46          help pay for the fishery.

47            But there's -- we tried it a few times and

1           there's always some kind of a problem on trying to  
2           collect it, sometimes collecting it from the  
3           buyers, the money that is supposed to be turned  
4           over. But we have tried a couple of times.

5           Most recently, there was a type of levy in a  
6           fishery that we conducted on pink salmon two years  
7           ago. That was when Tsawwassen First Nation  
8           couldn't catch their allocation. They transferred  
9           it to Chilliwack area and they said, "We'll  
10          transfer the allocation," and they want 10 percent  
11          of the money that's raised.

12          So for every fish that we caught and sold,  
13          ten percent went to Tsawwassen. So it is  
14          possible.

15         Q     Right now in the economic opportunity fishery,  
16                every fish is counted, correct?

17         GRAND CHIEF MALLOWAY: Yes.

18         Q     And at least speaking on behalf of the First  
19                Nations your associated with, is there any  
20                resistance to that approach?

21         GRAND CHIEF MALLOWAY: No. First Nations welcome it.  
22                We've been under a microscope for years, even  
23                prior to 1992 when we signed our first AFS  
24                agreement to sell fish. We were under the  
25                microscope before then, but especially since then.

26                So we've never ever been opposed to counting  
27                every fish. We want to be able to justify our  
28                fishery and to say that every fish is being  
29                counted, that it is accurate 100 percent.

30         Q     Thank you. How important is it that the fish  
31                monitors are arm's length from the fishers?

32         GRAND CHIEF MALLOWAY: Arm's length?

33         Q     Arm's length, yes.

34         GRAND CHIEF MALLOWAY: I think that's very important.  
35                There was some discussion over the years about the  
36                monitoring program that we've had. Initially it  
37                was the Lower Fraser Fisheries Authority, and that  
38                was Musqueam, Tsawwassen and the Fraser Valley  
39                bands. And then, after that, it was -- after we  
40                split, it was Fraser Valley bands. They were part  
41                of the Sto:lo Nation, and so there was some  
42                concern that maybe there might be political  
43                interference or that it was too political.

44                Recently, over the last few years, we've  
45                established the Fraser Valley Aboriginal Fisheries  
46                Society, and that organization is non-political.  
47                We haven't had appointments of chiefs or anything

1           like that. It was just a board of directors that  
2           has been selected and the board of directors runs  
3           the organization, but we don't have any political  
4           ties.

5           Q     Thank you. And just, finally, I'm going to ask  
6           each of you if you have any recommendations for  
7           the Commissioner to consider as he goes forward  
8           with his work. Mr. Sakich?

9           MR. SAKICH: I'd like to make a recommendation that we  
10          do the most we can in the future to keep this  
11          independent body that will change from time to  
12          time, as we show as a membership of Charting Our  
13          Course to keep that intact and funded because we  
14          are going to have a lot of problems amongst  
15          ourselves if we're not going to have a place where  
16          we can all meet, the different users, and work out  
17          the small things rather than having the  
18          confrontational end of things.

19          Q     Thank you. Grand Chief Malloway, do you have  
20          anything to add?

21          GRAND CHIEF MALLOWAY: I agree with Peter. I think  
22          that there's a lot of good work that's being done  
23          by the Monitoring and Compliance Panel, and the  
24          membership at the panel is made up of all the  
25          sectors. I think it's the way to go.

26          Q     Thank you. And, Mr. Masson, do you also support  
27          that?

28          MR. MASSON: I certainly do. This collaborative  
29          experience, from the Department's perspective, has  
30          been very successful and very positive.

31          MR. MCGOWAN: Thank you. Mr. Commissioner, those are  
32          my questions. Gentlemen, please answer any of the  
33          questions my friends might have.

34          THE COMMISSIONER: Mr. McGowan, I just want to know what  
35          is the exhibit number for the Strategic document?

36          MR. MCGOWAN: Yes, Mr. Commissioner. The 2010  
37          Strategic Framework is Exhibit 429.

38                 Mr. Lunn, if we could just bring that up to  
39          confirm that. Yes, there it is on the screen in  
40          front of you, Mr. Commissioner. Just for your  
41          benefit, Mr. Commissioner, you'll also find that  
42          document discussed in the Policy and Practice  
43          Report.

44          THE COMMISSIONER: Right.

45          MR. MCGOWAN: I believe commencing at page 47. I may  
46          have that wrong. Pardon me, commencing at page  
47          52, I think.

1 MR. COMMISSIONER: And I just wanted this  
2 clarification, Mr. Masson.

3 Just with respect to PICFI and funding of  
4 catch monitoring within DFO, the budgetary process  
5 for that - in other words catch monitoring is here  
6 to stay - and it's, I think as Mr. Sakich would  
7 say, it's inevitable, PICFI may sunset - it may  
8 not sunset - but just give me a sense, if you can,  
9 of the budgeting process within DFO with regard to  
10 catch monitoring.

11 MR. MASSON: Certainly, Mr. Commissioner. Catch  
12 monitoring activities are conducted by both  
13 resource management staff and stock assessment  
14 staff. They're conducted as part of the regular  
15 operational work that the Department does. And so  
16 therefore they are largely funded through A-based  
17 programs, ongoing operational funding.

18 The world of fishery monitoring, catch  
19 reporting is broad, though, so it also includes  
20 the requirement to manage fisheries information.  
21 There are staff associated with that, with  
22 programming and so forth and -- you heard me  
23 reference some of our challenges with that and so  
24 forth.

25 In addition, the Conservation and Protection  
26 staff are focused on ensuring compliance with  
27 fisheries and they also contribute to raising  
28 awareness and successful catch monitoring,  
29 although not in collecting information,  
30 specifically targeted on catch estimation, but  
31 they have a supportive role.

32 The PICFI, being a sunset program, was  
33 focused primarily -- my Element was focused on  
34 trying to find ways to move forward. So we funded  
35 projects that were transformative in nature,  
36 looking at new tools, new methodologies, looking  
37 at programs to address accountabilities and sort  
38 out some of the internal work. Again, as I  
39 mentioned, our significant investment in improving  
40 our capacity to manage fisheries information.

41 So it is an ongoing operational cost. There  
42 are ongoing dollars assigned to that in the  
43 operational budgets.

44 And I think also you heard yesterday that  
45 some areas and some programs feel that they have  
46 insufficient levels of ongoing operational costs,  
47 and the Department is looking at how to address

1 that.

2 THE COMMISSIONER: Thank you.

3 MR. MCGOWAN: Thank you, Mr. Commissioner. Mr. Taylor  
4 will examine the panel next.

5 MR. TAYLOR: Mitchell Taylor for the participant,  
6 Government of Canada, and with me is Hugh  
7 MacAulay.

8 I'll begin -- firstly, I have been allotted  
9 45 minutes, Mr. Commissioner. Mr. McGowan has  
10 indicated there might be a five-minute flex in  
11 that, and I will endeavour to remember at quarter  
12 past the hour that we take a break, and perhaps  
13 Mr. McGowan or Mr. MacAulay will ensure that I  
14 remember that.

15

16 CROSS-EXAMINATION BY MR. TAYLOR:

17

18 Q Panel members, in particular Mr. Masson, just  
19 continuing with what the Commissioner was asking  
20 you a moment or so ago, I think, as I understood  
21 the Commissioner's question - and I want to see if  
22 you can expand on what you've already said - he  
23 was really asking what part of funding for  
24 monitoring and reporting, where it comes through  
25 or from PICFI and what will be done after that.

26 Put another way, will anything be left  
27 hanging after any sunseting by PICFI and, if so,  
28 what would be done about that. Mr. Masson?

29 MR. MASSON: Thanks. So with our focus on  
30 transformative projects, we've been very cognizant  
31 of trying to minimize ongoing operational  
32 commitments post PICFI.

33 Having said that, our largest single  
34 investment has been in PacFish, the information  
35 management framework. So we've invested  
36 considerable sum of money in that, and by the end  
37 of this fiscal year, it will be \$2.6 million.  
38 That information framework will be functioning as  
39 this fiscal year unfolds, but it won't be at its  
40 full capacity. So additional resources are  
41 required to complete the development of that  
42 information framework.

43 So we're preparing for that by very carefully  
44 developing additional implementation plans,  
45 breaking out all the components so that they can  
46 be funded individually as well as a complete  
47 package for that development.



1           In addition to that, I mentioned previously  
2           that we had identified some core roles that were  
3           not a part of the Department's operations before.  
4           One of those roles we call "The provision of  
5           integrated information". It's really the  
6           individual who is responsible for the ongoing  
7           management of that information framework.

8       MR. SAKICH: So that would be the regional coordinator  
9           we spoke of --

10       MR. MASSON: Regional --

11       MR. SAKICH: -- when Mr. McGowan was asking --

12       MR. MASSON: That's right. The regional data  
13           coordinator.

14           And so whilst that has been funded in the  
15           interim through PICFI, we are currently examining  
16           ways to fund it into the future. But, at this  
17           point, the answers are not evident.

18           Similarly, we identified another role that  
19           will enable us to continue the work established in  
20           the Strategic Framework or proposed in the  
21           Strategic Framework, and that is a regional  
22           monitoring coordinator role in order to look at  
23           best management practices, coordinated monitoring  
24           between different fisheries and so forth. Again,  
25           funded currently and at this point searching for  
26           long term solutions for that internally, but none  
27           evident at this point.

28           Again, just to dwell a little bit further on  
29           the information management, there are some ongoing  
30           operational costs that will have to be absorbed  
31           into the Department that we've identified  
32           internally.

33           In addition to that, partly through the  
34           process of examining our monitoring programs and  
35           the work that's being conducted through PICFI and  
36           in our initial consultations on the Strategic  
37           Framework, it's become clear that some areas are  
38           short in operational costs for the ongoing  
39           implementation of catch monitoring programs that  
40           currently exist. So we'll be continuing to  
41           examine that and trying to find a prioritization  
42           process that might work to cover that off.

43           Catch monitoring activities can vary greatly.  
44           I mean, you can have -- there is always more  
45           information that somebody wants. One aspect of  
46           the framework is it helps us to focus on where are  
47           the priority gaps. So it's through this process,

1 I think, that the clarification of priority gaps  
2 that we'll be able really zero in on what the  
3 shortfalls are in terms of operational costs for  
4 ongoing monitoring programs.

5 I think that pretty much sort of covers the  
6 deal. The other investments from PICFI have been  
7 primarily centred around developmental projects,  
8 tools and methodologies with an eye to not have  
9 ongoing implications in terms of funding.

10 Q All right. Thank you. Without getting into the  
11 detail, but from your long experience with the  
12 Department and knowing something about how budget  
13 works, would it be right that the ability and the  
14 source to find money to pay for the things that  
15 you've just described, which is some ongoing data  
16 monitoring software development, et cetera, and at  
17 least two positions, a regional monitoring  
18 coordinator and a regional data coordinator, in  
19 terms of the departmental budgetary process, would  
20 it be right that money would need to be found  
21 through reallocating money from other sources,  
22 seeking new money from the centre of government,  
23 or finding flexibility, if you like, in existing  
24 budgets, either regionally or nationally?

25 MR. MASSON: Yes, that does cover the range of options  
26 you have.

27 If I could add one more comment. That level  
28 of resources that I referenced is to enable the  
29 information management system to function at its  
30 minimum level and recognizing that the entire  
31 framework is not completely developed and that  
32 there would be additional resources to gain the  
33 full benefits of that in the due course of time.

34 So the 2, it's at 2.8 for some programming  
35 costs, and close to 3, you have to use altogether,  
36 it's at a minimum level, and a larger chunk of  
37 money required as a one-off to complete the  
38 development of that framework as well.

39 Q All right. Thank you. Mr. Malloway and Mr.  
40 Sakich, I don't expect you to be intimately  
41 familiar with all of the budgetary processes  
42 within DFO, but at the same time, given your long  
43 experience in fisheries and working with DFO, you  
44 probably have some knowledge.

45 In terms of the identified priorities that  
46 Mr. Masson just put forward, which seem to be some  
47 continued work on data management systems and

1 software, and at least two coordinator positions,  
2 one for data, one for monitoring that you've  
3 heard, do you agree that those are priorities and  
4 the key priorities that need to be put in place  
5 going forward or do you see anything else?  
6 I'll start with you, Mr. -- Mr. Malloway is  
7 giving the nod to Mr. Sakich, so you go first.  
8 MR. SAKICH: Yes, I do. In fact, we haven't heard much  
9 about it but there hasn't been enough credit  
10 actually given to the fact of the established  
11 electronic program which DFO has put together.  
12 Q Is that the logs you --  
13 MR. SAKICH: That's right, yes.  
14 Q We'll come back to that in a minute.  
15 MR. SAKICH: Yeah.  
16 Q But just focusing on what we're on right now.  
17 MR. SAKICH: It's somewhat --  
18 Q But bring in what you need --  
19 MR. SAKICH: It is somewhat the same, isn't it?  
20 Q Okay.  
21 MR. SAKICH: Money for those sort of priorities.  
22 Q Okay. We'll speak to that then as you see it.  
23 MR. SAKICH: I agree it should continue on and with  
24 some of that work that's already been done is a  
25 great starting point for the rest of us to use.  
26 Q All right.  
27 MR. SAKICH: It becomes a service.  
28 Q In terms of the electronic logs, we've heard some  
29 evidence on it and you heard some yesterday.  
30 There seems to be some differing views about it.  
31 Can you elaborate or expand on the electronic  
32 logs, you being one of the users of those, and how  
33 workable they are, what you think of them and the  
34 ability to get your fishing done and, at the same  
35 time, provide the information that's being  
36 required.  
37 MR. SAKICH: I don't use one. I use the old system  
38 mainly because I'm not going to be -- I probably  
39 won't be fishing again. But lots of people do use  
40 them and they like them a lot.  
41 Q Okay.  
42 MR. SAKICH: They found out -- the only reason I link  
43 that is it's just the sort of questions you were  
44 posing about the priorities and building programs  
45 and everything else. Well, that is part of  
46 program building, I think, in my mind.  
47 Q All right. And is the old system, that you refer

1 to, paper? Is that what you mean?

2 MR. SAKICH: Yes. Paper, a phone. But more and more  
3 people -- I'll give an example of how that is  
4 shaking out.

5 The people that supply the paper logbooks and  
6 the service, and what that service is, the data  
7 service, it is the 1-800 number, all of these sort  
8 of things. That pool is shrinking. The  
9 electronic is starting to take over a bunch of the  
10 business from there down to the point where if  
11 they can't be solely identified as the sole  
12 service provider for paper logbooks, they don't  
13 want to take it on because they don't want to put  
14 up the money to have them all printed, because  
15 people are constantly changing over to the  
16 electronic end of things.

17 Q All right. Mr. Malloway, in terms of what we were  
18 talking about before a few moments ago, the need  
19 to have good data management systems - and that  
20 takes some money of course - and the two  
21 positions, do you see those as priorities? And,  
22 as well, do you see any additional ones that are  
23 not presently contemplated but should be?

24 GRAND CHIEF MALLOWAY: Yeah, I agree that that should  
25 be a priority. I think that until we can believe  
26 each other's stories, we're going to need to be  
27 moving towards something like that. The way it is  
28 now, folks in the recreational or sports or First  
29 Nations fisheries or the general public may not  
30 believe what we say or what we say is going on. I  
31 think that the more work that we can do to go in  
32 that direction, the better.

33 Q In addition to the point about believing each  
34 other's stories, as you put it, do you agree that  
35 it's important to have good fish monitoring, catch  
36 reporting, so that quite apart from believing each  
37 other, there's a good dataset of what's being  
38 caught which assists with fisheries management  
39 year by year, the present year and planning for  
40 future years.

41 GRAND CHIEF MALLOWAY: Yeah, I believe that's  
42 important, and the more timely the better, 'cause  
43 the way it is now and has been is that we  
44 sometimes have to wait for some time to find out  
45 how much fish one sector has caught. Like one  
46 year, there was one-and-a-half million fish that  
47 were reported missing. Six months later we found

1 out from the Salmon Commission that all of those  
2 fish were caught by the commercial fishery, and  
3 once the fish slips were counted up, they found  
4 out there were no missing fish. It never got  
5 widely reported because found fish aren't  
6 newsworthy.

7 MR. TAYLOR: I see. Thank you. Mr. Commissioner, is  
8 this an appropriate time for the break?

9 THE COMMISSIONER: Yes. Thank you.

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

12  
13 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)  
14 (PROCEEDINGS RECONVENED)

15  
16 THE REGISTRAR: Order. The hearing is now resumed.

17 THE COMMISSIONER: Mr. Taylor?

18 MR. TAYLOR: Thank you.

19  
20 CROSS-EXAMINATION BY MR. TAYLOR, continuing:

21  
22 Q Mr. Sakich, did you have some more you want to add  
23 about data management?

24 MR. SAKICH: Yes, I just was a little confused when you  
25 asked me there. I kind of went off on the catch  
26 counting sort of thing. The data I imagine you're  
27 talking about is the importance of what you are  
28 catching.

29 Q Yes.

30 MR. SAKICH: And that's going to be a huge, huge thing  
31 coming with chinook recovery programs coming down  
32 the line, all sorts of different things like that.  
33 If you do not have, as part of the monitoring,  
34 equally or probably more important than -- well,  
35 they go together. The numbers and that dataset  
36 that tells you what you are removing out of the  
37 water, what's in the presence at that time.  
38 Sockeye is quite well covered off. I mean there's  
39 huge testing programs in place through that Salmon  
40 Commission and everybody's fishing between the  
41 bookends of these testing sites. But when you  
42 start going out on the rest of the coast and what  
43 other fish you're encountering in various  
44 different fisheries and recreational is a huge  
45 issue to them to have that part of the data. And  
46 that has to be funded very well, otherwise I don't  
47 think we're going to have a fishery.

1 Q All right. Thank you. Mr. Masson, I want to ask  
2 a few questions that come from some evidence  
3 yesterday. You were here and do you recall Ms.  
4 Sharp asking the panel yesterday about some First  
5 Nation fishing that is recorded in charts in  
6 what's called Project 7?  
7 MR. TAYLOR: And more specifically, if we could go, Mr.  
8 Lunn, to Exhibit 718 and page C-3, which has on it  
9 Table C-1?  
10 Q As we go there, do you recall that series of  
11 questions and answers, Mr. Masson?  
12 MR. MASSON: I'm going to have to familiarize myself  
13 with this table.  
14 Q Okay. Well, what I'm interested in is --  
15 MR. MASSON: Okay. Yeah, I do now.  
16 Q -- the entry that is third down. It's under  
17 "Johnstone Strait" and it says "First Nation  
18 Marine Society --  
19 MR. MASSON: Yes. Yes, thank you. Thank you for the  
20 reminder.  
21 Q -- Coordinated Fishery". Do you recall that  
22 evidence yesterday?  
23 MR. MASSON: I do recall that, yes.  
24 Q And Ms. Sharp was asking about a hundred percent  
25 validation.  
26 MR. MASSON: That's right.  
27 Q Are you familiar with the First Nation Marine  
28 Society and the fishery that's been referred to in  
29 that third entry?  
30 MR. MASSON: I am, yes.  
31 Q What kind of fishery is that that's being spoken  
32 of there?  
33 MR. MASSON: That fishery was a fishery that was  
34 conducted by First Nations by chartering seine  
35 boats. And it was worked out through a lot of  
36 discussion that they would not only be just with  
37 the objective of harvesting for food, social,  
38 ceremonial purposes but would also serve as a test  
39 fishery. So it was conducted in a very explicit  
40 and calculated manner in certain locations. And  
41 so there was a number of First Nations that had  
42 FSC allocations that were to be harvested by these  
43 boats, a large number. It might be ten to 15.  
44 And each with a specific allocation that was  
45 consolidated on these test boats. And so I think  
46 the line of questioning, if I recall, was about  
47 why do they have a hundred percent monitoring and

1 dockside monitoring and observer coverage and so  
2 forth?

3 And really I think one of the points was  
4 every fishery has to be looked on its own merit.  
5 This particular fishery had specific objectives  
6 not just ensuring that the fish was landed and  
7 distributed to all the individual First Nations,  
8 large numbers of fish in trucks going down  
9 Vancouver Island, needing specific documentation  
10 and careful accreditation but also the actual  
11 harvesting levels were a part of this test fishery  
12 needed to be very carefully documented. So that  
13 is the underlying rationale there that I think was  
14 missed in some of the discussion.

15 Q All right. And --

16 MR. MASSON: Oh, one last point, if I might.

17 Q Yeah.

18 MR. MASSON: Also, those fisheries tended to occur in  
19 times and places where there were also other  
20 concerns. Not only were there large numbers of  
21 sockeye present but there were potential bycatches  
22 of stocks of concern. And so in my current  
23 context of the framework, we would consider that  
24 an enhanced information requirement requiring  
25 levels of verification and checks and so forth.

26 Q All right. Thank you. And in particular, the  
27 certified observers, would they have been there,  
28 that is, on the boats because of the test fishing  
29 aspect of it?

30 MR. MASSON: Largely. And the observers were First  
31 Nation observers that had worked in those roles  
32 for a while.

33 MR. TAYLOR: All right. Thank you. And Mr.  
34 Commissioner, just for your information, this is  
35 also a point that Mr. Assu when he was giving  
36 evidence, Brian Assu, spoke of and he spoke of  
37 that on January 31st at page 86 and the few pages  
38 following that. Now, Exhibit 855 is what I'd like  
39 to turn to next and that's the document that was  
40 entered as an exhibit this morning. It's the  
41 April 11th final report of the monitoring and  
42 compliance panel.

43 Q Mr. Sakich, you're the chair, I gather, of that  
44 panel?

45 MR. SAKICH: For the time being. We've had a couple of  
46 different chairs. It's a revolving thing.

47 Q All right. And as I understand it from your

1 evidence earlier, membership on that is, I think  
2 you used the word evolutionary sort of affair.  
3 You're not appointed as such. You sort of step up  
4 to the plate, if I could put it that way.  
5 MR. SAKICH: To start with, when things were formed up  
6 and I think that the committee does have the  
7 latitude to expand that, if need be.  
8 Q And presently then, without going through names,  
9 how many roughly are on that panel and does it  
10 comprise all of commercial, recreational, First  
11 Nation, government and environmental groups?  
12 MR. SAKICH: Yes, the composite part. I'm just looking  
13 for the numbers here.  
14 Q Oh, it may be in the report and that's fine if it  
15 is.  
16 MR. SAKICH: It is.  
17 Q All right. Thank you. I think several of you  
18 mentioned earlier the importance of having a  
19 consistent approach to fish monitoring and there  
20 is a reference to consistency at page 12 of this  
21 document. And then that refers in turn to page  
22 10. And page 12 may come up. Yes. You'll see  
23 there under "Strategy 1", as previously noted in  
24 Table 1, consistent criteria have been identified  
25 for determining the level of information required  
26 to monitor. And then if you turn back to page 10,  
27 you'll see, you can look at the whole page  
28 perhaps, a lot of information put out there. Is  
29 that part of what's being referred to as having a  
30 consistent approach to monitoring across the  
31 fisheries, Mr. Masson?  
32 MR. MASSON: Yes, it is.  
33 Q All right. Is there anything that you think  
34 important to expand on to do with that or can we  
35 just leave it for the Commissioner as it is?  
36 MR. MASSON: No, I think that the table captures the  
37 concept well. You would note in the strategic  
38 framework, we further emphasized that we still  
39 need to recognize that each individual fishery may  
40 be different but we have this consistent criteria  
41 by which to look at the information requirements  
42 and the monitoring level that's required.  
43 Q All right. Mr. Malloway, did you want to add  
44 anything in this area of consistent approach in  
45 the specific table?  
46 GRAND CHIEF MALLOWAY: No.  
47 Q All right. Mr. Sakich?



1 MR. SAKICH: Yeah, I think that much the commonest way  
2 of thinking. I mean there's going to be changes  
3 to how we approach certain fisheries. And I was  
4 hoping this is one of the things that the  
5 monitoring panel would start getting right into.

6 Q All right. What do you see as the next steps?  
7 Where do things stand? This report is very  
8 recent, of course. But where do things stand and  
9 what next?

10 MR. SAKICH: Well, that's a good question. I think we  
11 have to get out and start to meet with more of the  
12 users around the commercial, just everybody,  
13 recreational, First Nations and meet with people  
14 about the vision of this whole charting our  
15 course. And of course, without spelling it out,  
16 what's inevitable in the end, let's try and get  
17 onboard and move towards that.

18 Q And so by that, do you mean the panel or  
19 representatives of the panel having information  
20 and dialogue sessions with the various  
21 stakeholders?

22 MR. MASSON: That's right. Meeting with them and...

23 Q All right. Mr. Malloway, what do you see as the  
24 next steps and what timing and how would you see  
25 approaching it? And specifically, do you agree  
26 with what Mr. Sakich is saying?

27 GRAND CHIEF MALLOWAY: Well, I agree with Peter. It's  
28 still evolving. There's still work going on. The  
29 panel has observed a couple of different  
30 fisheries, a couple of road trips to have a look  
31 at the fisheries like in Port Alberni and in  
32 Chilliwack. So folks on the panel are getting to  
33 now what goes on in the different fisheries and  
34 observe the actual fishing and monitoring that's  
35 going on. So there's still work to be done but  
36 folks are beginning to understand each other's  
37 fisheries more. But there needs to be more of  
38 that done.

39 Q What timeline do you see for this work, this  
40 consultation and/or has the timeline already been  
41 agreed upon? And then after that, do you envisage  
42 some form of further collaborative report or what?

43 GRAND CHIEF MALLOWAY: Well, I'm not too sure on a  
44 timeline when it's going to be wrapped up. But  
45 there's still work ongoing so I'm not too sure  
46 what the timeline would be.

47 Q Okay. As the chair, have you got a timeline in

1 mind, Mr. Sakich?

2 MR. SAKICH: No, I don't have a timeline in mind and I  
3 think as I said here a little earlier I think it  
4 needs to be a living thing. I think that we have  
5 some budget for the rest of this year and I think  
6 if we can produce some results, I think that would  
7 speak for itself. If we could produce nothing,  
8 well, then, that's the way world would be but I  
9 don't think that's what's going to happen.

10 Q All right. So if the budget drives the timeline,  
11 it's this year roughly?

12 MR. SAKICH: That's right.

13 Q Anything to add, Mr. Masson?

14 MR. MASSON: Yeah, I have a couple of comments. Trying  
15 to focus on the work of the panel. And the  
16 panel's been effective at working at two levels.  
17 We've very successfully as a group focused at the  
18 low level and done some of the work that Mr.  
19 Malloway was referencing, the interaction between  
20 First Nation fishermen and recreational fishermen  
21 in the lower Fraser River is a good example of  
22 what we call low level, low beam, collaborative  
23 process. At the same time, I would suggest that  
24 the work that we collaborated on, on this document  
25 for example, has a tool to frame discussions and  
26 move forward, is looking at the whole challenge  
27 and the whole situation from a broader perspective  
28 with broader application.

29 So as a panel, whilst we're constrained by  
30 our current timelines of this fiscal year and the  
31 current funding limitation to this year, there is  
32 talk and considerable discussion with members and  
33 other interested parties about trying to continue  
34 the work of the panel and both this low level, low  
35 beam projects and at the high level in other parts  
36 of the region. So other low beam projects where  
37 we really gain tremendous benefits through  
38 collaborative work of harvesters in one area  
39 where's there in the past areas of conflict and  
40 misunderstanding. There's been discussions about  
41 doing this in other parts of the region, west  
42 coast of Vancouver Island is an example. North  
43 coast is another example, central coast. And at  
44 the same time, high beam activities. And one of  
45 the projects we're currently working on as a panel  
46 is developing best management practices and tools  
47 and trying to communicate that to harvesters and

1           it's extremely useful as a departmental person  
2           working on this file to have this kind of  
3           collaboration at all those levels, both at a local  
4           area level and at a regional level as well.

5           Q     All right. Thank you.

6           MR. TAYLOR: If we could turn now, please, to Exhibit  
7           429, which is the strategic framework document  
8           that's been spoken of. This is a November 2010  
9           draft. This is a departmental document.

10          Q     Mr. Malloway and Mr. Sakich, are you familiar with  
11          this document? Have you seen it?

12          MR. SAKICH: Yes, I have.

13          Q     All right. And Mr. Malloway, have you?

14          GRAND CHIEF MALLOWAY: Yes, we have had a presentation  
15          and we're still looking at it. We're still  
16          consulting.

17          Q     Okay. If you turn to page 3 of that document,  
18          there's a box there in the lower right that has a  
19          working definition of fishery monitoring and catch  
20          reporting. I'll let you take a few seconds to  
21          look that over. My question of each of Mr.  
22          Malloway and Mr. Sakich is whether you agree that  
23          that's a useful working definition that accords  
24          with your understanding of what fish monitoring  
25          and what catch reporting is.

26          MR. SAKICH: I would say so. It covers off both  
27          things, the biological and the -- the actual  
28          numbers of fish.

29          Q     All right. Mr. Malloway?

30          GRAND CHIEF MALLOWAY: Yeah, I agree. I think it  
31          describes it quite well.

32          Q     All right. Thank you. If we turn now to pages 11  
33          and 12, there's a section there on challenges and  
34          opportunities. And you'll see that the challenges  
35          in terms of fish monitoring, catch reporting are,  
36          as I'll list in a second here, some of these we've  
37          heard before, they are building trust, linking  
38          accountability and access, funding constraints,  
39          capacity development, clarifying responsibilities,  
40          communicating the benefits and, as you can see  
41          from the heading, those are listed as both  
42          challenges and opportunities. Is that a good list  
43          and a pretty comprehensive list, as you see it,  
44          each of Mr. Malloway and Mr. Sakich? Or anything  
45          that you would add to that list?

46          MR. SAKICH: Well, I'd say it's good but I don't think  
47          we'll ever quit adding things.

1 Q All right. That's fair. Have you got anything to  
2 add at the moment?

3 MR. SAKICH: No, no, like I said, I believe that in  
4 looking at this monitoring thing that it is going  
5 to be a living thing. It is something that's  
6 never going to stop because the playing field is  
7 going to keep changing and processes are going to  
8 have to be in place to deal with it.

9 Q That's certainly sound comment. Mr. Malloway,  
10 what do you think of that list in terms of  
11 challenges and opportunities and anything to add?

12 GRAND CHIEF MALLOWAY: I think it's a pretty good list.  
13 It covers everything off, I think. Everything  
14 seems to be there. But I guess the number one  
15 concern a lot of folks have is the funding  
16 constraints because having a hundred percent  
17 mandatory landing sites in an area such as ours is  
18 something that can work. But it might not be able  
19 to work in other places like on the coast where  
20 there's 30,000 kilometres of coastline.

21 MR. TAYLOR: All right. If we could turn now to Tab 2  
22 of Canada's documents.

23 Q And these are some questions of Mr. Masson  
24 primarily. Do you recognize that document, Mr.  
25 Masson?

26 MR. MASSON: Yes, I do.

27 Q Can you say what this is and put a date to it, who  
28 prepared it, why it was prepared and what's been  
29 done with it?

30 MR. MASSON: I prepared this document and it was, I  
31 believe, for the Visions conference, which was a  
32 First Nations gathering in the late fall of this  
33 past year.

34 MR. TAYLOR: All right. Could this be marked as the  
35 next exhibit, please?

36 THE REGISTRAR: Exhibit 856.

37  
38 EXHIBIT 856: Emerging Regional Strategies to  
39 Improve Fisheries Monitoring, Fall 2010  
40

41 MR. TAYLOR:

42 Q If you'd turn to page 2, you'll see a reference  
43 there to M&C Roadmap Strategy. I take that to be  
44 monitoring and compliance roadmap strategy?

45 MR. MASSON: Yeah, and so that's the process of  
46 collaboration that I spoke of where I was working  
47 with the monitoring and compliance panel to

1 develop that document.

2 Q All right. And there's a reference to the  
3 strategic framework. That's the document we just  
4 looked at a moment ago, is it?

5 MR. MASSON: That's correct, yeah.

6 Q If you look at page 3 and 4, you'll see reference  
7 to collaborative management and a collaborative  
8 approach. We've spoken of collaborative approach.  
9 What's meant by collaborative management?

10 MR. MASSON: Various definitions exist. In the  
11 Department, we're working on collaborative  
12 management where we would work together with  
13 harvesters to reach consensus on various aspects.  
14 It might be on management plans. It might be on  
15 harvest plans, monitoring. It is not a process  
16 where the Department is giving up on the  
17 Minister's responsibility to manage the resource  
18 or as an ultimate authority but one where we would  
19 work to reach consensus with our stakeholders and  
20 with First Nations.

21 Q And Mr. Malloway, with what Mr. Masson has just  
22 said and turning to the words "collaborative  
23 management", what do you have to say on this?

24 GRAND CHIEF MALLOWAY: Well, a number of folks in First  
25 Nations communities have discussed this and they  
26 talked about the term "co-management". And a lot  
27 of them are uncomfortable with the word "co-  
28 management". To them it feels like DFO's going to  
29 manage and we're going to cooperate. So we've  
30 been dealing with the term "collaborative  
31 management" as more of a partnership than the  
32 other view.

33 Q All right. And I take it from what you're saying  
34 you would be aiming to head towards something  
35 that's approaching an even-steven or even playing  
36 field? Is that what you're referring to?

37 GRAND CHIEF MALLOWAY: Yes.

38 Q And you'll see in this particular document on page  
39 3, if we could go there for a moment, in the  
40 second sub-bullet under that big bullet, you'll  
41 see "collaborative management". And that's what  
42 you're speaking of, is it?

43 GRAND CHIEF MALLOWAY: Yes.

44 Q Mr. Sakich, do you have anything to add with  
45 regard to collaborative management?

46 MR. SAKICH: Well, co-management, collaborative  
47 management, it's kind of interesting. I'm

1 involved with the Area H harvest committee and  
2 somebody's always saying to me, "Well, when are we  
3 going to be discussing this year's fishing plans  
4 with the management?" And I say, "Well, I guess  
5 we'll do something eventually." So it seems that  
6 since we nailed down the catch reporting part of  
7 it because it is a share base, it is an ITQ  
8 fishery so it has a fairly high standard of catch  
9 monitoring, it seems to have taken away all of the  
10 other issues that you would spend countless hours  
11 going around with managers talking about it. And  
12 now that I look back on it, probably most of the  
13 things that we got hung up on was catch  
14 monitoring. With that out of the way, our fishery  
15 could run with just a couple of visits a year  
16 probably, it seems, unless there's changes or  
17 other things that come up. So that part of it,  
18 the co-management part of it with the monitoring,  
19 that does work.

20 MR. TAYLOR: All right. I think this hasn't been yet  
21 marked as an exhibit. I'm in Tab 3.

22 THE REGISTRAR: That's Tab 3 you wish marked?

23 MR. MCGOWAN: Yeah. I believe it was just marked, Mr.  
24 Giles. I wonder if you could give the last  
25 exhibit number.

26 THE REGISTRAR: The last exhibit number was 856 for Tab  
27 2, which is on the screen.

28 MR. MCGOWAN: Yes.

29 MR. TAYLOR: Oh, I'm sorry, yes. Yes, you're quite  
30 right. I'm sorry. If we could go to Tab 3 now  
31 then?

32 Q Mr. Masson, do you recognize that document?

33 MR. MASSON: Yes, I do. It was prepared for the same  
34 meeting.

35 Q All right. And is that something you prepared?

36 MR. MASSON: Yes, indeed, yeah.

37 Q All right. And what is it?

38 MR. MASSON: It's an additional presentation that I was  
39 asked to provide that really tried to focus in on  
40 what are the reasons for catch monitoring and,  
41 particularly, in the context of this particular  
42 meeting and gathering. What I'm getting at is it  
43 was First Nation participants primarily and so  
44 focusing on what are the specific reasons for  
45 catch monitoring, the rationale for catch  
46 monitoring.

47 MR. TAYLOR: All right. May this be an exhibit then,

1           please?

2       THE REGISTRAR: It'll be marked as 857.

3

4                       EXHIBIT 857: Linking Fisheries Data to Data-  
5                       Management Objectives - Visions, Oct 2010

6

7       MR. TAYLOR:

8       Q     Now, Mr. Masson, you've read through the Policy  
9            and Practice Report, which is now marked as  
10           exhibit, Policy Practice Report Number 12. And  
11           you've made some comments and I want to have you  
12           go through those comments.

13       MR. TAYLOR: I wonder if the Policy and Practice Report  
14           Number 12 could come up.

15       Q     If you'd turn, please, to paragraph 82, do you  
16            have a comment here on this paragraph, Mr. Masson,  
17            in terms of the description of the range of PICFI  
18            that are set out there?

19       MR. MASSON: Yeah. And I think I had provided a  
20            comment previously just to suggest that the range  
21            of activities needed to be enhanced because a  
22            variety of things were being covered through  
23            PICFI.

24       Q     All right. And are there some other things that  
25            you would suggest adding into that list?

26       MR. MASSON: Yeah, I think I'd fleshed it out a little  
27            further and talked about additional data systems.  
28            The crest system would be an example. The  
29            progress toward determining accountabilities,  
30            primarily internal accountabilities and roles and  
31            responsibilities was critically important. The  
32            testing of various approaches, north coast salmon  
33            fisheries is an example. Supporting of additional  
34            recreational and enhanced recreational monitoring  
35            to try and fill some critical gaps in the B.C.  
36            Interior and trying to pilot rotational surveys in  
37            different places. So it's an example of just  
38            fleshing out the list.

39       MR. TAYLOR: All right. Now, if we could turn to  
40            paragraph 103 on page 46. And at the same time,  
41            if you can get both on the screen, paragraph 198  
42            at page 87. Those two paragraphs are similar  
43            perhaps even identical, they're certainly similar,  
44            that's one. And is it possible to get 198 on page  
45            87 up at the same time?

46       MR. LUNN: Yes, it is. One moment.

47

1 MR. TAYLOR:

2 Q And as we're going there, Mr. Masson, you'll see  
3 in the first sentence there that in November of  
4 2009 fisheries released its discussion paper on  
5 First Nation FSC catch monitoring. Paragraph 198,  
6 when it comes up, will have a similar statement.

7 MR. TAYLOR: That's fine, thank you.

8 Q Do you have a comment or correction you want to  
9 make to what's in those two paragraphs in that  
10 first line, Mr. Masson?

11 MR. MASSON: Yeah, I think it requires clarification.  
12 The Department had completed this discussion  
13 paper. And I might add that I was one of the  
14 authors. It was co-authored with an individual  
15 who had spent much of his career working for First  
16 Nation organizations directly. And so it was a  
17 co-authored paper. We completed this discussion  
18 paper. It was about First Nation FSC catch  
19 monitoring and reporting. It was intended as a  
20 starting point for discussion. So specifically,  
21 it wasn't released as some discussion papers  
22 broadly distributed to the world. Resource  
23 managers have used it in initiating discussions  
24 with First Nations about specific monitoring  
25 programs and used it as an additional back-up  
26 document and to prompt further discussion.

27 Q All right. And paragraph 201, which is on page  
28 88, there's a statement there in the second line  
29 about creating a data management advisor position.  
30 Is there clarification that you want to make about  
31 that?

32 MR. MASSON: Yeah. The data management advisor  
33 positions are intended to help build capacity in  
34 First Nation communities around managing data and  
35 catch monitoring programs in particular. So I  
36 think that with some minor clarification around  
37 that, it wasn't that DFO was hiring data  
38 management advisors. As it clarifies further on,  
39 these positions are incorporated into AAROM  
40 agreements, which are intended to focus on  
41 capacity development and co-management with First  
42 Nation organizations.

43 MR. TAYLOR: All right. Thank you. If we could turn  
44 now, please, to Exhibit 343.

45 Q If the panel has a binder there and you want to  
46 see the whole document, it's found at Tab 7 of  
47 Canada's list of documents. Let's just look at



1           the first page for a moment. Mr. Masson, do you  
2           recognize what that is?  
3   MR. MASSON: Yes, the MSC certification reference,  
4           yeah.  
5   Q    So marine stewardship certification?  
6   MR. MASSON: That's correct.  
7   Q    And that's something that was issued sometime in  
8           mid-2010 or thereabouts?  
9   MR. MASSON: Yes.  
10   Q    And this is an independent body that issues  
11           certification with respect to fisheries, does it?  
12   MR. MASSON: That's correct.  
13   MR. TAYLOR: And we've had some evidence on that  
14           before. If we turn to page 169. That shouldn't  
15           be page 169.  
16   MR. LUNN: Yes, the numbering is different. One  
17           moment.  
18   MR. TAYLOR: It's interesting that there's different  
19           numbering. That's it. Thank you.  
20   Q    I realize the coloured ink is a little hard to  
21           read but I'm looking just above halfway down the  
22           page you'll see a heading there, monitoring is  
23           comprehensive and it includes all relevant  
24           components. Mr. Masson, can you situate what's up  
25           on the screen now in the context of the report and  
26           explain what it's telling us?  
27   MR. MASSON: Only in a general way.  
28   Q    That's fine.  
29   MR. MASSON: Yeah. So part of the marine certification  
30           process includes a review of catch monitoring and  
31           various specific elements of catch monitoring.  
32           And so here is a summary of their findings in that  
33           regard and the conclusions are that the monitoring  
34           has been conducted and there's scores provided and  
35           it meets the criteria they've established.  
36   Q    All right. Now, a final question for each of the  
37           panel members and this is similar to a question  
38           that Mr. McGowan asked you but I'm going to phrase  
39           it slightly differently. And that is, what each  
40           of you considered to be the one or top very few  
41           things that in the context of fishery monitoring  
42           and catch reporting should be continued or  
43           improved upon or start doing as we go forward?  
44           And I'm thinking of suggestions that would be both  
45           concrete and realistic. That's what I'm putting  
46           out to you but of course you can answer as you see  
47           fit.

1                   Start with you, Mr. Sakich. Is there  
2                   anything beyond what you answered when Mr. McGowan  
3                   asked you or what you've already said in evidence  
4                   that you would want to convey to the Commissioner  
5                   as your top one or a few items?

6       MR. SAKICH: Well, I think as a starting point to go  
7                   beyond some of the fisheries that are under  
8                   different management systems where it's required  
9                   that you have this higher level of monitoring, I  
10                  think we need a clear evaluation of the rest of  
11                  them so we know where we're starting. Unless  
12                  somebody's going to bring down something overnight  
13                  that captures everybody and no data/no fishery  
14                  sort of a thing, well, that's fine, if you do it  
15                  that way then you'll shake down the tree pretty  
16                  fast. But if you're not doing it that way, you've  
17                  got to evaluate what is not doing it correctly and  
18                  that has to be dealt with. You've got to have a  
19                  starting point. You just can't start nowheres  
20                  (sic).

21       Q       All right. Mr. Malloway, what would you say?

22       GRAND CHIEF MALLOWAY: Well, I guess, folks in First  
23                  Nations areas that I've talked about, they would  
24                  like to see more even-handed treatment from DFO,  
25                  as far as enforcement goes and catch monitoring.  
26                  The compliance in the Fraser Valley fishery is  
27                  very high and has been very high for a while now.  
28                  But we, from time to time, hear that when we were  
29                  on a planning committee call trying to plan a chum  
30                  fishery, I asked DFO, I said, "How much fish did  
31                  Area 29 commercial fishermen get two days ago when  
32                  they went out?" And the answer from DFO was, "We  
33                  don't know." No, she said, "We don't have a solid  
34                  number because less than half of them called in  
35                  their numbers." That doesn't happen in our  
36                  fishery but it happened there. That was two years  
37                  ago. So we'd like to make sure that catch  
38                  monitoring is done on an even-handed basis and  
39                  that there be measures taken to make sure that  
40                  compliance is high in all sectors.

41       Q       All right. And do you agree that the processes  
42                  and dialogue and steps that have been taken that  
43                  we've been discussing and hearing evidence on in  
44                  the last hour or so go a long way towards that  
45                  end?

46       GRAND CHIEF MALLOWAY: Yes, I think so. I think we're  
47                  a lot further ahead now than we were just a couple

1 of years ago with the work that's been done with  
2 the ISTF.

3 Q All right. And Mr. Masson, you'll have the final  
4 word on this, at least in questioning from me.

5 MR. MASSON: Yeah, I'd like to start by adding  
6 something I hadn't mentioned before and then flesh  
7 out a couple of the other points I'd previously  
8 mentioned. And I'd like to start by recommending  
9 that support be provided for the monitoring  
10 compliance panel. I'll just leave it at that. I  
11 support it. I think that it's a really useful  
12 collaborative process for the Department and for  
13 harvesters and the resource. Then I'd like to  
14 just flesh out some of the other points I'd made  
15 previously. Firstly, I'd like to see the  
16 completion of the information management framework  
17 called Pacfish. I mentioned that we've got it  
18 barely functioning by the end of this fiscal year.  
19 Core aspects of it will be functioning but there  
20 is a significant pile of work to complete that.  
21 If we're to be able to provide the information  
22 that Ken just spoke of in terms of providing it to  
23 harvesters on all of our fisheries, if we're to be  
24 able to integrate this information, we need to  
25 complete our work on this framework.

26 And that also includes we need to be able to  
27 properly support the management of the information  
28 once we build the framework. The two-and-a-half  
29 or three FTEs I spoke of is at the bare minimum  
30 level of helping it function. It requires more  
31 support than that, 15 FTEs over the long-run, four  
32 to five years eventually is the level of support  
33 that requires.

34 In addition to that, I'd like to see  
35 continued collaboration with all of our harvest  
36 sectors in the completion of specific strategies  
37 to address gaps in catch monitoring. And so  
38 that's a collaborative process with the harvesters  
39 themselves and is not necessarily the business of  
40 the M&C Panel.

41 And then, lastly, I'd like to see the  
42 critical gaps in operational support that the  
43 Department has be addressed and departmental A-  
44 base has got some gaps where we need to make  
45 improvements, and some other key roles I mentioned  
46 previously, a regional monitoring coordinator and  
47 some support to continue to work with the M&C

1 Panel and with harvesters and with other interests  
2 around developing new and innovative and modern  
3 approaches to catch monitoring.

4 MR. TAYLOR: All right. Thank you. Those are my  
5 questions.

6 MS. GAERTNER: Good morning, Mr. Commissioner. It's  
7 Brenda Gaertner and with me, Leah Pence for the  
8 First Nations Coalition. Good morning, Panel. I  
9 have 45 minutes allotted for my time. I  
10 understand if I go 50 minutes, no one's going to  
11 get too concerned and I'll do my best to complete  
12 that within that time period.

13

14 CROSS-EXAMINATION BY MS. GAERTNER:

15

16 Q And gentlemen, the first round of questions that  
17 I'm going to have are primarily directed to Grand  
18 Chief Ken Malloway.

19 MS. GAERTNER: I'd like to flesh out in more detail for  
20 you, Mr. Commissioner, the Fraser Valley  
21 Aboriginal Fisheries Society, FVAFS, just so you  
22 get a clear picture of the hard work that's going  
23 on in the lower Fraser and a more detailed  
24 pictured, given some of the evidence that's been  
25 brought in the past and where we're going further.  
26 And then once I'm finished that line of questions,  
27 I'll turn to the entire panel and follow up on  
28 some of the questions that have been asked today  
29 and some other areas.

30 Q Grand Chief Malloway, you're the chair of FVAFS;  
31 is that correct?

32 GRAND CHIEF MALLOWAY: Yes.

33 Q And FVAFS came from a history of working with DFO  
34 on the monitoring of the FSC fisheries and what  
35 are now called the economic opportunities since  
36 the late 1989 into the early '90s; is that  
37 correct?

38 GRAND CHIEF MALLOWAY: Yes.

39 Q And it's now evolved into a distinct society. Why  
40 is it that it became independent of the Sto:lo  
41 governing bodies and what was the efforts there?

42 GRAND CHIEF MALLOWAY: In the beginning, it was run by  
43 the Sto:lo Nation and then it eventually was taken  
44 over by the Lower Fraser Aquatic Resources  
45 Management, LFARM, but that body went under. And  
46 so we decided in consultation with DFO to take  
47 over the body but to have it non-political. So

1           it's not run by the Sto:lo Nation or Sto:lo Tribal  
2           Council or any First Nation; it's run by a board  
3           of directors. And we picked a number of board of  
4           directors from across the valley and we have  
5           pretty good representation. We don't have more  
6           Sto:lo Nation or more Sto:lo Tribal Council than  
7           others. It's pretty even. There are a number of  
8           independents that aren't affiliated with any  
9           tribal council or organization. And so we've  
10          determined that we're going to be non-political.  
11          So we don't deal with political issues. We don't  
12          make political statements. All we do is count  
13          fish.

14         Q     And I'm going to turn, if I may, to Exhibit 8 on  
15                the First Nations Coalition's list. And Mr.  
16                Malloway, that's a PowerPoint presentation - we're  
17                going to have to re-orient it - that you're  
18                familiar with?

19         GRAND CHIEF MALLOWAY: Yes.

20         MS. GAERTNER: I wonder if I could have that marked as  
21                the next exhibit? Mr. Commissioner, that just  
22                gives you a good detailed outline of the FVAFS and  
23                I'm going to just walk Mr. Malloway through a  
24                number of the components of it.

25         Q     Is it accurate to say that FVAFS employs  
26                approximately 49 to 60 monitors a year in a  
27                season?

28         GRAND CHIEF MALLOWAY: Yes.

29         MS. GAERTNER: Let's have that marked as the next  
30                exhibit.

31         THE REGISTRAR: The document will be marked as 858.

32  
33                EXHIBIT 858: Fraser Valley Aboriginal  
34                Fishery Society (FVAFS) Catch Monitoring  
35                Program 2010  
36

37         MS. GAERTNER:

38         Q     And as part of that monitoring, you use what's  
39                called "landing sites"; is that correct?

40         GRAND CHIEF MALLOWAY: Yes.

41         Q     And those landing sites are located between Port  
42                Mann and the Sawmill Creek; is that correct?

43         GRAND CHIEF MALLOWAY: Yes.

44         Q     And there are approximately six landing sites from  
45                Port Mann to Mission; is that correct?

46         GRAND CHIEF MALLOWAY: Well, there are landing sites.  
47                It depends on if it's an FSC fishery or if it's a

1 sales fishery. So they might not be described as  
2 landing sites if it's an FSC fishery.

3 Q What's it described when it's an FSC fishery?

4 GRAND CHIEF MALLOWAY: Well, it's an access point where  
5 folks go to launch their boats and get access to  
6 the river. So we cover off all of the major  
7 access points on the river.

8 Q And is there roughly around 20 or 25 access points  
9 or landing sites that are used by FVAFS to monitor  
10 or access the fishermen coming off the river?

11 GRAND CHIEF MALLOWAY: Yes.

12 Q All right. And what happens at those landing  
13 sites? Perhaps just give an overview of what the  
14 monitors actually do at those landing sites and  
15 how the fishermen relate to them.

16 GRAND CHIEF MALLOWAY: When we have an FSC fishery, the  
17 monitors will arrive when the fishery opens. And  
18 when folks arrive at the river to go fishing,  
19 they'll be approached by the monitors and they'll  
20 ask them for their licence number. And then  
21 they'll ask them, "How many nets are you going to  
22 put out?" And then when they come back from  
23 checking their nets, they'll ask them how much  
24 fish they got and they'll count the fish and mark  
25 down the species. That's in the FSC fisheries.

26 If there's a sales fishery, the monitors will  
27 also arrive when the fishery opens. They'll ask  
28 for folks' designation number and they'll ask how  
29 many nets they're going to set out. And then when  
30 they come in, they count every single fish and  
31 then they mark down how many fish they caught.  
32 They'll mark down the soak time, how long they've  
33 been fishing since the last check. They'll get  
34 them to verify the numbers. They'll sign the  
35 sheet and they'll give them a copy of the landing  
36 slip so that the two fisheries are a little bit  
37 different in that an FSC fishery, the fish are  
38 counted and then we might talk to 50 or 60 percent  
39 of the fishers. But when we have a sales fishery  
40 there's a mandatory landing program and we talk to  
41 everybody and we count every fish.

42 Q And do they also take biological samples for DNA  
43 purposes?

44 GRAND CHIEF MALLOWAY: Yes, sometimes we take a whole  
45 bunch from the gills; sometimes we might take a  
46 clip from an adipose fin. We might take scale  
47 samples. But we usually try to get samples of the

1 fish so that we can get an idea of what's being  
2 caught.

3 Q And how soon is this information provided to the  
4 Department of Fisheries and Oceans?

5 GRAND CHIEF MALLOWAY: The information is provided at  
6 the end of the day. And the information is handed  
7 over to the DFO within 24 hours of the fishery.  
8 But there is continuous exchange of information  
9 throughout the fishery on how the fishery is  
10 going. We have our monitors out there monitoring  
11 the fishery and then DFO monitors our monitors.  
12 So they have somebody down either on staff or  
13 contract to monitor our fisheries and so it's  
14 continuous.

15 Q Are there also overflights that happen during the  
16 FSC fisheries and the economic opportunities  
17 fisheries?

18 GRAND CHIEF MALLOWAY: Yes, each day that we fish there  
19 is one overflight. There are two technicians that  
20 have been trained to count gear from the  
21 helicopter and the helicopter does an overflight  
22 once a day.

23 Q And some of the selective harvest methods have  
24 been used in the lower Fraser. For example, the  
25 beach seine. How is the monitoring system been  
26 helpful in that?

27 GRAND CHIEF MALLOWAY: Each beach seine crew has their  
28 own monitor and the monitor goes wherever they go.  
29 Wherever that crew goes to fish, then the monitor  
30 is right there and counts every single fish and  
31 there will be a tally with every set.

32 Q So is it possible in something like that selective  
33 harvest actually fish directly to a number and to  
34 stop even within time periods that have been  
35 provided for the fishery?

36 GRAND CHIEF MALLOWAY: When the fishery first gets  
37 underway, there's a nightly call and then we get  
38 the numbers in. When we're approaching the  
39 allocation number, like if we're fishing  
40 Wednesday, if we're getting close to the number  
41 Wednesday night, we'll have a call and then  
42 they'll look and they'll say, "You're this many  
43 fish away from your allocation. We're going to  
44 open a fishery from 8:00 a.m. to 10:00 a.m. and if  
45 you catch the number before 10:00 a.m., we're  
46 going to shut you down." So when we go out, the  
47 monitors phone in every single set to our managers

1           and there's a running tally until we hit the  
2           number and then it's shut down right now.  
3        Q     Yesterday in the evidence given by Mr. Parslow, he  
4           mentioned the potential benefits of doing some  
5           further improvement in the drift fisheries that  
6           are occurring in this area. Could you tell the  
7           Commissioner what's happening right now and where  
8           you might see some improvements?  
9        GRAND CHIEF MALLOWAY: In the drift fishery we have  
10           monitors at all the major access points. And in  
11           the FSC fishery there's monitors that go there  
12           when the opening happens and then they talk to  
13           folks when they go out to make the drift and then  
14           they talk to them when they come back and land.  
15           That's the way we conduct a fishery on the FSC  
16           fisheries.  
17        Q     What training do your catch monitors receive?  
18        GRAND CHIEF MALLOWAY: We have training and every year  
19           when we get ready to start up we have training  
20           workshops conducted by people from DFO.  
21        Q     And how does FVAFS ensure that the monitors are  
22           independent? And by that, I mean how do they  
23           ensure that they're not monitoring their own  
24           families or in their own areas or any of those  
25           other kinds of concerns that often been raised  
26           about independence.  
27        GRAND CHIEF MALLOWAY: Well, the Sto:lo people, we all  
28           know each other and so at the Yale Beach where I  
29           fish, my sister works up there and she monitors  
30           the fishery on the other end of the beach where  
31           the Jimmy family fishes. Then there might be  
32           somebody from their family or from another family  
33           managing or counting the fish where the Malloways  
34           and the Commodores fish.  
35        MS. GAERTNER: Sorry, Mr. Lunn, this wasn't in my list  
36           but it's now an exhibit, Exhibit 857, and I'd like  
37           to go to page 2 of that. Mr. Masson just gave  
38           evidence around that being a presentation to the  
39           Visions workshop in October of 2010. And sorry,  
40           it's Exhibit 857.  
41        MR. LUNN: Yes.  
42        MS. GAERTNER: I believe was just marked.  
43        MR. LUNN: Yes.  
44        MS. GAERTNER: And while you're looking for that, I'll  
45           ask Mr. Malloway the first question then.  
46        Q     We've heard some concerns about incentives for  
47           First Nations to under-report. Grand Chief Ken



1 Malloway, what was your response to that type of  
2 assertion that there's an incentive for First  
3 Nations to under-report their catch?

4 GRAND CHIEF MALLOWAY: Well, that's something that's  
5 been around for quite a few years. I guess the  
6 first time that I came across it was in 1985 when  
7 I was reading a DFO report about the previous  
8 year's fishery and the fellow that wrote the  
9 report says, "Well, we ask the Indians how many  
10 fish they got and then we double it because they  
11 lie." And that struck me as being quite a  
12 statement. But Sam Douglas and I talked about it  
13 and what we had been talking about at the time was  
14 that eventually getting into treaty talks. And we  
15 felt it was very, very important to give a true  
16 account of the numbers of fish that we caught  
17 because eventually we're going to be in treaty  
18 talks and we want to have true numbers.

19 We don't want to under-report and say we  
20 caught 250,000 fish when we caught 500,000 or a  
21 number like that because it would come back and  
22 bite us when we're in treaty talks. So we felt it  
23 was very important to give a true number. And so  
24 we've been telling each other that and our  
25 employees that work for us that our monitors, we  
26 keep reinforcing it with them, that we have to  
27 give a true number and we have to be credible.

28 There's always somebody monitoring our  
29 monitors. There's folks that come in and watch  
30 our monitors and observe what's going on. So  
31 we've been adamant with our monitors that they  
32 have to report the true numbers and we've been  
33 also adamant with the fishers that they have to  
34 give a true account.

35 Q And Mr. Masson, if I just turn to you briefly as  
36 it relates to this list.

37 MS. GAERTNER: Oh, sorry, that's not quite the right  
38 page that I'm looking for. It's called "Tangible  
39 Benefits to First Nations". There it is. Thank  
40 you.

41 Q Mr. Masson, have I got that right? Is this the  
42 list of reasons why it's useful for First Nations  
43 from DFO's perspective to provide reliable  
44 numbers?

45 MR. MASSON: Yeah, and in fairness, it's not just from  
46 DFO's perspective. I spoke previously of the work  
47 with Dave Lightly and also in my previous work

1 with the Department. I'd worked with a number of  
2 First Nations on the south coast.

3 Q And what were you thinking of when you, in the  
4 first sub-bullet there, "improve sustainability  
5 for fisheries". I think we've got that. "FSC  
6 should be the first to benefit." What were you  
7 reflecting in that comment?

8 MR. MASSON: In many situations, the First Nations FSC  
9 fisheries are the last in the line. They're in a  
10 watershed where there are other fisheries that  
11 have been sequentially harvesting in front of them  
12 so to speak. And so if the world was perfect and  
13 all of our fisheries were as productive as we'd  
14 like them and they were sustainably managed and so  
15 forth, then FSC fisheries would enjoy those  
16 benefits as well. So insofar as catch monitoring  
17 is a key element to fisheries management, it  
18 should contribute to sustainable fisheries.

19 Q Grand Chief Ken Malloway, why is the work of  
20 FVAFS, from your perspective, important to DFO and  
21 then why is it important to First Nations?

22 GRAND CHIEF MALLOWAY: Well, it's important to have an  
23 accurate count of how many fish that are being  
24 caught. Each year we sign an agreement or attempt  
25 to sign an agreement. Sometimes we don't sign but  
26 most years we sign an agreement and it has an  
27 allocation to it. And so it's important that we  
28 have credible monitoring so that we can make sure  
29 that we fish to our allocation and also to make  
30 sure that we try and realize the allocation.

31 Q And approximately what proportion of the Fraser  
32 River sockeye is caught in your fishery, as it  
33 relates to other First Nations fisheries?

34 GRAND CHIEF MALLOWAY: About 44 percent. Usually about  
35 44 percent is caught in the lower Fraser.

36 MS. GAERTNER: I have two more rounds of questions to  
37 finish this section. Would you be willing to have  
38 me sit for a couple more quick questions or would  
39 you like me to take the break right now?

40 THE COMMISSIONER: No, we'll take the break.

41 MS. GAERTNER: All right. Thank you.

42 THE REGISTRAR: The hearing will now adjourn 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: Thank you, Mr. Commissioner.  
3

4 CROSS-EXAMINATION BY MS. GAERTNER, continuing:  
5

6 Q Just a couple more questions about FVAFS, and  
7 these are more forward-looking questions, as  
8 distinct from what we're doing right now. Grand  
9 Chief Malloway, what discussions have you had or  
10 what thoughts are there around a joint monitoring  
11 program, and could you explain what those words  
12 typically mean to you, and what your thinking  
13 around that is.

14 GRAND CHIEF MALLOWAY: Yes. We have had some  
15 discussions with folks about joint monitoring, and  
16 we have in the past, we did monitor the sport  
17 fishery one year. The sport fisheries wanted to  
18 go out and catch sockeye, but DFO said we don't  
19 have any monitoring program in place, we don't,  
20 you know, we can't do it. And so they came to us  
21 and they asked us if we would monitor it, and we  
22 said, yeah, we'll monitor it. So we monitored the  
23 sport fishery for that one year. It was pretty  
24 good. We were a little bit tentative about it  
25 because of the relationship being a bit rocky,  
26 but, you know, 99 percent of the "sporties" were  
27 quite cooperative and we had a really good season.  
28 And it was only a one-year deal, though, it never  
29 happened again and I'm not too sure why; we  
30 offered.

31 We've also offered to do some monitoring in  
32 Area 29, Area A, that there was serious  
33 discussions about that happening, but it hasn't  
34 happened yet.

35 Q And what about expansions. Commissioner Cohen has  
36 heard discussions around the need for improvement  
37 of monitoring or development of monitoring for  
38 things like environmental situations, or habitat,  
39 or any of the other broader obligations around the  
40 fisheries. Has there been any consideration  
41 around expanding the work of the FVAFS monitors to  
42 more broadly consider the other areas of  
43 monitoring that need to happen, in addition to how  
44 many fish people have caught.

45 GRAND CHIEF MALLOWAY: Well, in the past, the Lower  
46 Fraser Fisheries Authority, when it was in place,  
47 had 18 fishery officers, and that was something

1 that we were looking at. We were looking at the  
2 monitors and the fishery officers expanding into  
3 other areas, environmental areas, and wildlife  
4 areas. We were looking at them doing work like  
5 that. But the Aboriginal Fishery Officer Program  
6 was cancelled, and we haven't been able to get it  
7 back since.

8 Q And do you see that as something that would  
9 provide some assistance and overall benefits in  
10 the Lower Fraser, and do you see that as something  
11 that could provide some efficiencies in funding  
12 and otherwise?

13 GRAND CHIEF MALLOWAY: I think so. There's a very  
14 limited amount of fishery officers in the Valley,  
15 and it's quite a big territory for them to cover,  
16 and we do see things that they might not see. For  
17 instance, there's a dump near the river in  
18 Chilliwack and one of the band members near there  
19 phoned me and said that "There's some black stuff  
20 going into the water, could you come down and  
21 look." And I went down and took pictures, and I  
22 brought the pictures to DFO, and DFO said "We  
23 don't do anything with these, but we'll turn them  
24 over to Environment Canada." And Environment  
25 Canada was going to do an investigation, but I  
26 hadn't heard anything since.

27 Q And, Mr. Masson, would you like to comment on this  
28 about, from a DFO's perspective, going into the  
29 future and looking at reducing budgets that we've  
30 all heard about, and the need to -- the ever-  
31 increasing monitoring around habitat and otherwise  
32 that sustainable fisheries require. Has DFO begun  
33 to look at how these types of monitoring programs  
34 can expand into the future to create better  
35 synergies of work?

36 MR. MASSON: I'd like to provide an observation first,  
37 and that is that the skills that the FVAFS  
38 monitors have, particularly in data management and  
39 so forth, are transportable skills, and could be  
40 well applied to monitoring of the environment and  
41 other similar kinds of technical jobs.

42 The other observation, though, is that whilst  
43 I agree that it could be an area of future  
44 opportunity in terms of expanded monitoring  
45 direction, it's not necessarily the Department of  
46 Fisheries' mandate, or an area where we have staff  
47 employed. As Ken said, there's Department of

1 Environment, and local municipalities, regional  
2 districts, and so forth, have environmental  
3 monitors. Increasingly it's more at a local  
4 government level.

5 Notwithstanding that, I think that there is  
6 some opportunity there, and to answer your  
7 question specifically about have we examined that.  
8 In terms of capacity development, yes; in terms of  
9 trying to -- well, let me rephrase that. There  
10 has been efforts to try to employ some of the  
11 technical folks in hatcheries, and so on. But  
12 again, the opportunities have been limited and far  
13 between.

14 Q So this would require collaboration with other  
15 departments within Canada and with the province  
16 and otherwise, but that the skill sets are  
17 available and you see it possible.

18 MR. MASSON: I totally agree.

19 Q All right. Turning now more broadly to the entire  
20 panel, I just have a couple of questions. We've  
21 heard about the ISDF and the Fraser Salmon Table,  
22 Fraser River Salmon Table. Could perhaps, Mr.  
23 Masson, if you could start with this and if the  
24 others on the panel have something to add. Do you  
25 see these two types of processes as complementary?  
26 As I understand it, the ISDF is a much more  
27 provincial and general thing, and the Fraser  
28 Salmon Table is much more local on the river and  
29 in the Lower Mainland. How do you see them  
30 complementary, and do you see them as overlapping  
31 or duplicative?

32 MR. MASSON: No, I don't see them as duplicating, and I  
33 previously had mentioned the kind of high beam/low  
34 beam approach from the Monitoring Compliance  
35 Panel. And as you point out, the Salmon Table has  
36 a more localized focus and has some specific  
37 mandates, and I'm not really qualified to go into  
38 details around that. The Monitoring Compliance  
39 Panel and the Salmon Table did effectively  
40 collaborate, work together on a project in the  
41 lower river, and certainly not a duplication. I  
42 think it's just another example of where a  
43 collaborative process seems to be both appropriate  
44 and generate some clear benefits.

45 Q Do any of the other panel members have anything to  
46 add to that?

47 MR. SAKICH: Yeah, there is a lot of the same folks in

1 both places that are sort of, not a lot, but  
2 involved in the Salmon Table, as well. The  
3 Salmon Table is somewhat of a creature originally  
4 of the Commercial Salmon Advisory Board, sort of  
5 started there, went back and forth. And I sit on  
6 the Monitoring Panel, a member of that. Ken's a  
7 member of the Salmon Table, and it's a local  
8 process, but nevertheless I think it overlaps  
9 quite nicely with the other ones.

10 Q Grand Chief Malloway?

11 GRAND CHIEF MALLOWAY: Yes, I'm on the Salmon Table and  
12 the Monitoring and Compliance Panel, one of the  
13 many hats I wear. And the Fraser Salmon Table  
14 initially was put together to try to rebuild  
15 Cultus Lake sockeye stocks. But we started to  
16 work in other areas, as well, and work with other  
17 folks, as well. We've met with Secwepemc, the  
18 Shuswap people. We've met with folks up in the  
19 Chilcotin area, as well, to talk about possible  
20 work and partnerships in their area, as well. So  
21 it is kind of a watershed group.

22 Q Just picking up on that watershed, Mr. Masson, do  
23 you have any comments about the difference in  
24 capacity amongst, if you start in the -- I know  
25 you have familiarity on the West Vancouver Island,  
26 and into the Fraser River and up, there are a lot  
27 of capacity issues, a number of which you've  
28 mentioned. Would you agree with me that there are  
29 different levels of capacity amongst First Nations  
30 if you start, for example, at the Douglas Treaty  
31 Group and move into the Fraser and all the way up,  
32 and that that difference in capacity is something  
33 that will need to be considered -- if you agree  
34 that there is a difference in capacity, that that  
35 difference of capacity will need to be considered  
36 as we move forward on the information management  
37 issues that you referred to?

38 MR. MASSON: Absolutely, I agree.

39 Q And how do you think the Department is going to  
40 address those? As I understand it, most of the  
41 funding is now going through AFS programs, some is  
42 through AAROM, but those are pretty accounted-for  
43 dollars, as I understand it. Are we going to need  
44 to be looking for additional dollars for First  
45 Nations to be developing the capacity necessary  
46 for the information management systems that you're  
47 looking for?

1 MR. MASSON: Yes, I think that's the case. I also  
2 think that a great deal of mileage can be made by  
3 discussing the direction of the resources that are  
4 in place currently. A lot of the resources  
5 contribute to staff time, and so it's the  
6 direction of that, and providing catalysts is  
7 often a key to working cost-effectively. So it  
8 might be that capacity development can be achieved  
9 by working with the First Nations in every  
10 situation, and together finding ways to secure the  
11 right catalyst to move forward to get the capacity  
12 built and moving ahead. But I also acknowledge  
13 the point that at the end of the day, building  
14 capacity takes resources.

15 Q Takes resources and time, would you agree?

16 MR. MASSON: Time I would definitely agree.

17 Q And specific understandings of the local  
18 situations of those First Nations?

19 MR. MASSON: Yes.

20 Q Mr. Commissioner, I just want to call attention to  
21 Colin Masson's resume on this. Mr. Masson, you  
22 have spent a fair bit of time before you started  
23 doing the work on catch monitoring working  
24 directly with First Nations, both on the Vancouver  
25 Island and in the Lower Fraser; that's correct?

26 MR. MASSON: That's correct.

27 Q I just want to turn to document 19 on the  
28 First Nations Coalition's list. This is a  
29 document resulting from the Lower Fraser Salmon  
30 Fisheries, Fraser River Salmon Table 2010. Grand  
31 Chief Malloway and Mr. Masson, I understand you  
32 attended the workshop that's reported here; is  
33 that correct?

34 MR. MASSON: That is correct.

35 GRAND CHIEF MALLOWAY: Yes.

36 Q And I'd like to turn to page 12 -- oh, sorry. I  
37 have mixed up my exhibits. No, I have to go to  
38 Exhibit 850.

39 I'm wondering, have you reviewed this? Does  
40 this reflect the kinds of challenges and  
41 discussions that had at the Visions workshop on --  
42 oh, sorry, it wasn't Visions, the Fraser River  
43 Salmon Table in 2010?

44 MR. MASSON: Yes, I recall this document, and it  
45 reflected the workshop that followed the field  
46 trip.

47 MS. GAERTNER: I'm wondering if I could have this

1 marked as an exhibit.  
2 THE REGISTRAR: Exhibit 859.

3  
4 EXHIBIT 859: Exploring Ways to Improve Our  
5 Understandings around Monitoring and  
6 Compliance, November 17, 2010, Fraser River  
7 Salmon Table  
8

9 MS. GAERTNER:

10 Q And now I need to turn to Exhibit 850 - this is my  
11 mistake - which is another report from the Fraser  
12 Salmon Table, this was a 2009 report. And I want  
13 to go to page 12 of that exhibit. And this is --  
14 in which they list three fundamentals for moving  
15 the relationship, particularly around catch  
16 monitoring and accounting forward, and you'll see  
17 there are three particular bullets on that page  
18 under "Trust, Decision-Making, and Values". Would  
19 each, Mr. Masson, Mr. Sakich and Mr. Malloway, do  
20 you agree that these are the kinds of matters that  
21 we have to look at when looking at moving forward  
22 in the relationship around catch monitoring?  
23 We've had a lot of discussion so far about number  
24 1. Do you also agree with number 2 and 3?

25 MR. SAKICH: Yes, I do. I'm glad to see somebody's got  
26 "traceability" in here.

27 Q All right. Mr. Masson?

28 MR. MASSON: Yeah, I agree.

29 Q Mr. Malloway?

30 GRAND CHIEF MALLOWAY: Yes, I agree.

31 Q What is traceability? Perhaps I'll ask Mr. Masson  
32 that question.

33 MR. MASSON: Traceability is the ability to track  
34 product from the time of harvest through to the  
35 consumer.

36 Q And that's part of the work that you're doing and  
37 under some PICFI funding?

38 MR. MASSON: It is. We have a traceability objective  
39 there.

40 Q And have you been working with Chehalis with  
41 respect to some traceability issues?

42 MR. MASSON: That is correct.

43 Q And has that been --

44 MR. MASSON: And the Salmon Table, as well.

45 Q Thank you. And turning now to item number 2 on  
46 that list, improving decision-making at levels,  
47 I'm curious what is the vision or the plan when



1 looking at assessing each of the fisheries for the  
2 types of catch monitoring that needs to be done,  
3 given your structured framework, as to who will be  
4 involved in doing that assessment and who will be  
5 involved in making decisions as to the appropriate  
6 catch monitoring levels that will be required in  
7 the different fisheries. And I'll start again  
8 with you, Mr. Masson.

9 MR. MASSON: The question is that would be involved?

10 Q Who and how would you make the -- what's the  
11 vision for who and how implementing that framework  
12 will occur.

13 MR. MASSON: Clearly the discussion has to involve the  
14 harvesters. Harvesters know their fishery  
15 intimately and have a great deal to contribute in  
16 terms of information and support. The involvement  
17 of others with an interest, can often be a key  
18 factor, and certainly the Department in their  
19 interaction with harvesters play a role.

20 Q Chief Malloway?

21 GRAND CHIEF MALLOWAY: Yes, I agree. We, as far as the  
22 people with an interest, we always make sure that  
23 we include NGOs in our deliberations.

24 Q Mr. Sakich, do you have any comments as to who and  
25 how this is going to be done?

26 MR. SAKICH: Well, I think there's a lot of things went  
27 through the Integrated Salmon Dialogue Forum, and  
28 one was when they were doing the Guidebook and the  
29 chinook was just being an example. And basically  
30 I think it would apply to this, and that you  
31 basically had to follow that fish right from the  
32 ocean right through to the spawning beds to pretty  
33 well keep track of who was all going to be  
34 involved in talking about it.

35 Q So it sounds like you have a goal of trying to  
36 reach some type of consensus or understanding  
37 amongst the harvesters, Mr. Masson. What happens  
38 if you don't, and how long will it take to get  
39 there?

40 MR. MASSON: I'm not sure I can answer all the  
41 question. So in reaching a goal, with respect to  
42 fisheries monitoring programs, I'll try to  
43 contextualize the answer a little bit. So the  
44 intent is to involve the harvesters particularly  
45 and others with an interest at play in the  
46 discussions about what's required and the  
47 rationale for that, what kind of programs are

1 appropriate, what are the roles and  
2 responsibilities in implementing those programs,  
3 who's going to pay, and how else can it be  
4 supported to implement it successfully.

5 So at the end of the day, if there's not an  
6 agreement to proceed with a program because it's  
7 not affordable, then the Department has a  
8 responsibility, and as we outline in our  
9 framework, to go back and revisit how, what kind  
10 of risks are at play, given the fact that there  
11 may be insufficient information to satisfy or  
12 address that risk. And there's other alternatives  
13 can be considered: changes in how the fishery is  
14 conducted, changes in the management regime, other  
15 kinds of ways of addressing risk need to be  
16 considered.

17 Ultimately, however, the Department of  
18 Fisheries does have a mandate to authorize  
19 fisheries, and if it considers that the fishery is  
20 at a sufficient risk that it shouldn't take place,  
21 then the fishery might not be authorized. And  
22 alternatives could be examined.

23 Q All right. In the last ten minutes of my time,  
24 Mr. Masson, I'd like to take you to Tab 11 of the  
25 First Nations Coalition's documents, and in  
26 particular this is a document, I believe it's  
27 referred to in paragraphs 103 to 198 of the Policy  
28 and Practice Report, it's 11A, we'll start with  
29 that. And I understand Mr. Taylor took you to  
30 this earlier. This is the report that you were  
31 speaking of earlier, that you and David Lightly  
32 authored in November of 2009; is that correct?

33 MR. MASSON: Yes, that is correct.

34 MS. GAERTNER: Could I have this marked as the next  
35 exhibit.

36 THE REGISTRAR: Exhibit 860.

37  
38 EXHIBIT 860: First Nation FSC Catch  
39 Monitoring and Reporting - Preliminary  
40 Considerations, Standards and  
41 Recommendations, November 2009  
42

43 MS. GAERTNER:

44 Q And this was a document that was provided to the  
45 RDG with a briefing note; is that correct?

46 MR. MASSON: That's correct. Yes, that's correct.

47 MS. GAERTNER: And if I could have document 11.

1 THE REGISTRAR: Exhibit 861.  
2

3 EXHIBIT 861: Memo for the RDG re Release of  
4 Discussion Paper on First Nations FSC Catch  
5 Monitoring and Reporting (For Decision)  
6

7 MS. GAERTNER:

8 Q And that's the briefing note, Mr. Masson?

9 MR. MASSON: Yes.

10 Q And you were partly an author of that briefing  
11 note; is that correct?

12 MR. MASSON: Yeah, that would be correct.

13 Q And you'll agree with me that the two issues in  
14 that briefing note and that you spoke about  
15 specifically much longer in the report is  
16 incentives to monitor and report and the  
17 importance of collaboration?

18 MR. MASSON: That's correct.

19 Q And one of the key things you speak about in the  
20 report - and this is at page 7 if you need to see  
21 it; as an author you may not need to go directly  
22 to that - you talk about "Positive Incentives" as  
23 distinct from "Negative Incentives". What are you  
24 talking about there and can you give some  
25 specifics as to the types of positive incentives  
26 that you believe the Department of Fisheries and  
27 Oceans should be considering when looking at  
28 collaborative catch monitoring working  
29 relationships with First Nations.

30 MR. MASSON: Positive incentives around fishery  
31 monitoring focus on understanding and appreciating  
32 and supporting the benefits from effective catch  
33 monitoring. And in one of the earlier documents  
34 we were looking at this morning there was a slide  
35 that tried to list those in a summary fashion from  
36 a First Nations perspective. And it's all around  
37 trying to address some of the concerns that have  
38 become apparent to myself and Mr. Lightly, the co-  
39 author, as well, about some reluctance from First  
40 Nations to participate, given concern about what  
41 the numbers might be used for, and a lack of  
42 appreciation of the contribution of the  
43 information to fisheries management and the  
44 successful implementation of their own fisheries.  
45 So positive incentives in this context is largely  
46 around trying to ensure successful fishing  
47 opportunities and successful participation in the

1 management process.

2 Q So collaborative management could be considered,  
3 or steps towards collaborative management that are  
4 concrete and felt could easily be considered a  
5 positive incentive, from your perspective?

6 MR. MASSON: From my perspective that's very true.

7 Q And from your experience, would you agree that  
8 that would open the doors in many different ways  
9 with First Nations?

10 MR. MASSON: I would certainly agree.

11 Q And if I could turn your attention specifically to  
12 page 13 of that document, and I'd like to take you  
13 to the third paragraph under the title -- page 13,  
14 yes, of the report, third paragraph, and in this  
15 paragraph you're talking about respectful  
16 communication and recognizing the responsibilities  
17 of the various parties. If you just review that.  
18 I don't want to read the whole paragraph aloud, or  
19 take the time of that, but you'll see at the end  
20 of it you conclude by avoiding "the elephant in  
21 the room". And I'd like you to speak specifically  
22 about what you mean by the elephant in the room,  
23 and the challenges associated with that.

24 MR. MASSON: What's being referenced here is a  
25 challenge and discussion with First Nation  
26 organizations and departmental staff. In many  
27 situations, an underlying and fundamental concern  
28 that I've begun to appreciate from First Nations  
29 is their concern about rights and title and  
30 jurisdiction. And these are issues that the  
31 Department of Fisheries doesn't have the authority  
32 or the mandate to define, and so forth. So quite  
33 often the Department ends up not wanting to  
34 discuss them at all, not even wanting them on the  
35 agenda, and this makes it very difficult in  
36 discussions with First Nations to kind of get  
37 beyond that, and talk about the matter at hand,  
38 and talk about ways we can collaborate together.  
39 And so when we talk about the elephant in the  
40 room, it's this issue that we have no mandate to  
41 deal with, no mandate to resolve. It's a much  
42 broader issue than we can possibly address.

43 But what we were suggesting in this paper was  
44 at the very least we should allow it airtime,  
45 acknowledge that it exists, and then move on.

46 Q And Grand Chief Malloway, has it been your  
47 experience in your own direct relationship with

1 the Department of Fisheries and Oceans and in all  
2 your work with First Nations, that this is truly  
3 an elephant in the room?

4 GRAND CHIEF MALLOWAY: Yes.

5 Q And why is it that the Department, from your  
6 perspective, Mr. Masson, feels that they can't  
7 deal with rights and title issues?

8 MR. MASSON: It's because it's not our mandate to  
9 define them, or deal with those issues. So whilst  
10 we recognize that rights are confirmed in the  
11 **Constitution**, and so forth, it's not our business  
12 to define them.

13 Q I would like to turn next -- did I mark these as  
14 exhibits, both of them? Yes? Could I then turn  
15 to First Nations document number 12. And, Mr.  
16 Masson, you recognize this email exchange?

17 MR. MASSON: Yes, I do.

18 Q And this is an email exchange regarding the draft  
19 version of this report; is that correct?

20 MR. MASSON: That is correct.

21 MS. GAERTNER: Could I have this marked as the next  
22 exhibit.

23 THE REGISTRAR: Exhibit 862.

24

25 EXHIBIT 862: Email thread between C. Masson  
26 and K. McGivney re First Nation FSC Catch  
27 Monitoring and Reporting ending October 4,  
28 2009

29

30 MS. GAERTNER:

31 Q And what I mean by "this report", the report that  
32 we were just talking about that you and Mr.  
33 Lightly co-authored?

34 MR. MASSON: That's correct. And as you pointed out,  
35 we are referencing in this email exchange a draft  
36 version of it.

37 Q Now, Kaarina McGivney is in what position?

38 MR. MASSON: At that point I think she was the either  
39 Acting or the Regional Director for Treaty and  
40 Aboriginal Affairs.

41 Q And she's in that position now?

42 MR. MASSON: No, currently I believe she works in the  
43 Enhancement Branch, Habitat and Enhancement.

44 Q And specifically, as I understand this email, she  
45 had scanned the report quickly and asked that you  
46 pull out specific parts of the report,  
47 particularly those relating to constitutionally

1           protected communal rights of First Nations and  
2           commitments to collaborative relationship for  
3           First Nations? Have I read that email correctly?  
4   MR. MASSON: I think that's correct, if we were to look  
5           at the subsequent sections, yes.  
6   Q       And your response to Ms. Kaarina at the first of  
7           it, could you explain to the Commissioner what  
8           challenges you were facing at the time in which  
9           you got the comments, and how you felt about that,  
10          and how you tried to resolve it?  
11   MR. MASSON: Well, at the time I was concerned that  
12          perhaps the point that we were trying to make in  
13          this document about the importance of  
14          collaboration and a collaborative approach with  
15          interactions with First Nations was being missed.  
16          And so that was the intent of my feedback.  
17   Q       And from your experience within the Department of  
18          Fisheries and Oceans, why would those concepts  
19          within a catch monitoring report be frightening to  
20          the Department of Fisheries and Oceans, or at  
21          least be of some concern that they would be  
22          deleted?  
23   MR. MASSON: I can't necessarily speak to the full  
24          thoughts that Kaarina might have had at the time.  
25          There is another aspect, as well, that part of the  
26          feedback was trying to edit the document and make  
27          it more concise. And so part of the feedback was,  
28          you know, what we said in a page and a half,  
29          perhaps it could be more tightly worded, as well.  
30          And I think also there was concerns about the  
31          aspect of raising the discussion and trying to  
32          ensure that the Department wasn't taking on  
33          responsibility for discussions about rights and  
34          title.  
35   Q       Chief Malloway, from your perspective, what's  
36          needed for co-management as it relates to catch  
37          monitoring going forward, or collaborative  
38          management, I understand you prefer that term now.  
39   GRAND CHIEF MALLOWAY: Well, we need to be on the same  
40          page. One of the things when I was looking at one  
41          of the documents that we spoke about earlier,  
42          about the strategic framework, there's a lot of  
43          information in there and philosophy, but not  
44          enough detail. Like, there needs to be more  
45          detail. We need to know what we're agreeing to.  
46          Like, we want to know what the Department means  
47          when they're talking about the monitoring program.

1           Some of the documents that we've seen today talk  
2           about there's need for more, better monitoring in  
3           many sectors. None of the documents that I've  
4           seen today, or in the binder that I got, refer to  
5           the Fraser Valley monitoring, because it, I don't  
6           think you can get much better than that.

7           So we would like to know exactly what it is  
8           that DFO's going to do, if they're going to do  
9           something differently. I don't know if there's  
10          any way to improve the monitoring that's done in  
11          our area, or we'd like to know what they're going  
12          to do, you know, overall.

13        MS. GAERTNER: I believe I've used up my time, Mr.  
14          Commissioner, so I'll have to sit down and leave  
15          it for the others in the room. Thank you, panel  
16          members.

17        MR. TYZUK: Commissioner, Boris Tyzuk for the Province  
18          of British Columbia.

19  
20        CROSS-EXAMINATION BY MR. TYZUK:

21  
22        Q     I am going to -- we spent a lot of time dealing  
23              with more the detail of the Monitoring and  
24              Compliance Panel. Most of the focus of my  
25              questions are going to step back and look at the  
26              ISDF process, the Integrated Salmon Dialogue Forum  
27              as a whole. Now, I know, Mr. Sakich, you were  
28              involved right from the start in that process,  
29              were you not?

30        MR. SAKICH: Yes, that's right.

31        Q     And Grand Chief Malloway?

32        GRAND CHIEF MALLOWAY: Yes, that's right.

33        Q     And Mr. Masson?

34        MR. MASSON: Yes. Yes, indeed.

35        Q     Okay, thank you. I'd like to, Mr. Lunn, if we  
36              could go to the PPR to paragraph 88. Just to sort  
37              of get some context and background here, I just  
38              want to read some of the sentences here and ask  
39              for your views on it. Paragraph 88 starts like  
40              this:

41  
42              The Integrated Salmon Dialogue Forum is a  
43              "collaborative and inclusive opportunity for  
44              all interests to work [together] towards a  
45              fully integrated sustainable salmon fishery"  
46              where "participants have agreed to make best  
47              efforts to work through their respective

1 processes, agencies and organizations to give  
2 effect to any consensus reached in the forum,  
3 and to address any differences that emerge.  
4

5 Is that your understanding of what it was trying  
6 to do?

7 MR. SAKICH: That's right.

8 Q Mr. Masson?

9 MR. MASSON: Yes, I agree.

10 Q Grand Chief Malloway?

11 GRAND CHIEF MALLOWAY: Yes.

12 Q Thank you.  
13

14 According to the ISDF, its mandate is set by  
15 participants to the forum, and not by DFO or  
16 any other authority.  
17

18 Mr. Sakich?

19 MR. SAKICH: That's right. When you talk about  
20 reaching consensus, well, you had consensus to  
21 form a monitoring panel, you had consensus to -- I  
22 forget what the three original things are, because  
23 the names have changed. But when we first did all  
24 three, there was consensus in the forum to form  
25 those three. What they did after is another step.

26 Q Mr. Masson?

27 MR. MASSON: Yeah. No, I agree. I think that captures  
28 it well.

29 Q Grand Chief Malloway?

30 GRAND CHIEF MALLOWAY: Yes.

31 Q Thank you. And just to note, Commissioner, there  
32 was some evidence on this and the purpose of the  
33 ISDF on February 3rd, 2001 at pages 91 to 97, and  
34 Exhibit 392, which was an initial document called  
35 the "Framework for the Integrated Salmon Dialogue  
36 Forum" was entered.

37 Now, if we go to the next paragraph, and  
38 getting some more background on the ISDF:  
39

40 The ISDF hosts meetings, which are intended  
41 to be a "comfortable and safe space for often  
42 difficult conversations" to develop  
43 information, share goals and interests,  
44 understand differences and identify common  
45 ground that may be helpful to take back to  
46 discussions within sector based organizations  
47 and processes.



1  
2 Is that your experience of it?

3 MR. SAKICH: It is.

4 Q Mr. Sakich. Mr. Masson?

5 MR. MASSON: Yes, and I'd also add a comment that our  
6 Regional Director General at the time said, and  
7 that was he explained that there are some of these  
8 issues the Department of Fisheries cannot do  
9 alone. We can only do it by working with those  
10 that are affected.

11 Q Grand Chief Malloway.

12 GRAND CHIEF MALLOWAY: Yes. I think it -- but I think  
13 you should understand where this originally came  
14 from. In 2006 when I was on the Fraser Panel, and  
15 Mike Griswold, who was also on the Fraser Panel, a  
16 commercial fisherman, came to me and he said, "If  
17 the fishery goes ahead as planned, the  
18 exploitation rate on Cultus Lake sockeye at 10 to  
19 12 percent, it's going to virtually wipe out our  
20 fishery. Is there any way we could move the  
21 number, the exploitation rate up to over 20  
22 percent, and who would we talk to?" And I said,  
23 "Well, you should talk to the Sto:lo people and  
24 the Soowahlie people."

25 And so we had -- I said "Just invite us to a  
26 meeting," and so they did. We went to meet down  
27 at CSAB. Over this period of about two-and-a-half  
28 weeks we had about a dozen meetings. And we had,  
29 at first there was just a handful of us, and then  
30 other people started coming in, NGOs started  
31 coming in, First Nations from upriver started  
32 coming in, others started attending.

33 And we ended up with a memorandum of  
34 understanding. And basically it was an agreement  
35 that we would agree to the level of exploitation  
36 rate going up to about 25 percent from 10 to 12  
37 percent. In return, CSAB would catch 100,000  
38 sockeye and they would sell them and then the  
39 money would be put in trust and we would start a  
40 process to rebuild the Cultus Lake sockeye.

41 And we brought that memorandum of  
42 understanding to the Department of Fisheries and  
43 Oceans, and we said, "This is a document that  
44 we've worked out. We've come to an agreement and  
45 we would like this to be implemented." Some of  
46 the middle management folks were kind of upset  
47 with us for leaving DFO out of the process, but

1 Paul Sprout seemed to like it. And then it wasn't  
2 long before the Integrated Salmon Dialogue Forum  
3 started to come together. And he invited the  
4 people that were key players in that process to be  
5 members of the ISDF.

6 Q Thank you. Now, this paragraph goes on to say:

7  
8 In this way the forum --

9  
10 - that is, the ISDF -

11  
12 -- "incubates, not implements" ideas.

13  
14 And is the process here, this is a place for  
15 discussions to take place. Mr. Sakich.

16 MR. SAKICH: Yes, that's right. It's not -- it's not a  
17 policy forum, let's put it that way. I think that  
18 would sum it up. In fact, we've had lots of  
19 discussions around that. We're not exactly fussy  
20 about the "policy" word itself.

21 Q Mr. Masson.

22 MR. MASSON: Yeah. I think the statement is self-  
23 explanatory. It's useful for the -- it reflects  
24 the way that the ISDF has operated as well.

25 Q Grand Chief Malloway.

26 GRAND CHIEF MALLOWAY: Yes, I agree with the statement.

27 Q And the part that deals with "participation", and,  
28 Grand Chief Malloway, you brought it up a bit,  
29 participation in the forum is voluntary. It  
30 doesn't involve a formal system of representative  
31 membership. Now (a) is that the case, and (b) has  
32 that been an effective way for this sort of a  
33 process to work --

34 GRAND CHIEF MALLOWAY: Yes.

35 Q -- Grand Chief Malloway.

36 GRAND CHIEF MALLOWAY: Yes, I believe it is effective.  
37 Earlier I mentioned that when the meetings first  
38 started happening, it was by invitation only, but  
39 some other folks developed an interest in it and  
40 started to show up and started to attend the  
41 meetings. So, and they weren't turned away. They  
42 were included. And I think it helped the process  
43 by having more diversity.

44 Q Mr. Masson?

45 MR. MASSON: Yeah. I would kind of put this both ways.  
46 Voluntary participation is a key element in this  
47 process. At the same time it presents challenges,

1 because some of the interests want to be -- they  
2 want their participation there to be more  
3 structured. They want to have absolute clear  
4 representation. They want the process to be  
5 mandated, and then to understand how it's going to  
6 make decisions. So this is a different kind of  
7 forum, and so thus it operates differently. And  
8 it's challenging for some groups and individuals  
9 to appreciate the difference and the value of it.

10 Q Mr. Sakich.

11 MR. SAKICH: Kind of to give an example to that, it is  
12 to inform, it gets an awful lot of interesting  
13 people around there. And at the last Integrated  
14 Salmon Dialogue Forum meeting we had, it was one  
15 of the kind of the leaders in the Area B in the  
16 seine boat group said that, you know, it's really  
17 too bad that industry didn't pay more attention to  
18 this. They were not engaged in it, because I  
19 think it took a while and then they started to see  
20 the value in the process. There was always a few  
21 attending and they never remarked about it that  
22 way in the first part. But towards the end when  
23 they could see that maybe the door is going to  
24 close on it, immediately got a bit of concern of  
25 where else are you going to have these sort of  
26 discussions.

27 Q Thank you. As well as the M&C Panel and the  
28 document "Charting Our Course", which has been  
29 discussed today, the ISDF has also produced some  
30 other documents which we'd just like to put before  
31 the Commission. Mr. Lunn, if you could bring up  
32 B.C. document number 3. Mr. Sakich, is this a  
33 document that you're familiar with?

34 MR. SAKICH: I would say so, yeah, seen them all.

35 Q You've seen them all?

36 MR. SAKICH: Yeah. I didn't -- there's different  
37 groups and different projects in there so you're  
38 not as intimate with some as you are with others,  
39 depending where you're spending your time.

40 Q Now, just this one here, it's on page 3, it  
41 indicates what the purpose of it is, but there's  
42 one statement in the box here. Mr. Lunn, if we  
43 could go to page 3. In the second box, yes, if  
44 you want to highlight that.

45 In the second sentence of that box which  
46 says:  
47

1           The tools are intended as instruments to help  
2           build and support **relationships** - for it is  
3           relationships (among people and  
4           organizations, and across sectors and scales)  
5           that are the engine that drives better  
6           processes.

7  
8           Is that a comment that you would agree with, Mr.  
9           Sakich?

10       MR. SAKICH: Yes, I do, as it was said, and for once  
11       this not about managing fish, it's about managing  
12       people.

13       Q     Mr. Masson?

14       MR. MASSON: I totally agree.

15       Q     Grand Chief Malloway?

16       GRAND CHIEF MALLOWAY: Yeah, I agree.

17       MR. TYZUK: May I have this marked as the next exhibit,  
18       please.

19       THE REGISTRAR: Exhibit 863.

20  
21           EXHIBIT 863: A Practical Guide to  
22           Collaborative Fisheries Governance, March  
23           2011

24  
25       MR. TYZUK:

26       Q     And now if we could go to document 4 on B.C.'s  
27       list, please, Mr. Lunn. This is another document,  
28       Mr. Sakich, I believe you are familiar with this?

29       MR. SAKICH: Yes.

30       Q     And again here, I don't mean to go through it all,  
31       but there was one quote at the bottom of, if we go  
32       to page 3 and the top of page 4, that I'd like you  
33       to comment on. Right at the bottom it says:

34  
35           "[Now] we are going to work with each other  
36           (with our different rights, interests and  
37           mandates), make better decisions, and live  
38           together despite our differences", and "what  
39           work are we going to do where," --

40  
41       - turning over to the next page -

42  
43           -- "and at what scale and at what layer in  
44           the interests of the fish, and each other"  
45           were some of the questions that started us  
46           off with a focus on **governance**, but there was  
47           also a profound acknowledgment that before

1           you can make progress on improving decisions  
2           or policies, there has to be **trust in each**  
3           **other's numbers**. Momentum built to the point  
4           where a separate independent entity took  
5           form, now known as the Monitoring and  
6           Compliance Panel.

7  
8           Where is where you gentlemen ended up. Now, is  
9           that a fair summary of what took place and the key  
10          driver in a lot of this?

11 MR. SAKICH: That's right.

12 Q    Mr. Masson?

13 MR. MASSON: Yeah, that's correct, it...

14 Q    Grand Chief Malloway?

15 GRAND CHIEF MALLOWAY: Yes, that's right.

16 MR. TYZUK: Key is the trust in everybody's numbers.

17          May I have this marked as the next exhibit,  
18          please.

19 THE REGISTRAR: Exhibit 864.

20  
21           EXHIBIT 864: Evolving a New Framework for  
22           Decision Making in Salmon Fisheries - Drivers  
23           and Directions, Draft, April 2011

24  
25 MR. TAYLOR: I rise only to note, I think Mr. Tyzuk  
26          said at the beginning of his quote "Now"; the  
27          document is "How". And that very beginning  
28          actually sounds like then Chief Justice Lamer in  
29          **Delgamuukw**.

30 MR. TYZUK: Thank you, Mr. Taylor.

31 THE COMMISSIONER: We're not going there, Mr. Taylor.

32 MR. TAYLOR: Nor am I.

33 MR. TYZUK:

34 Q    Now, we've spent a fair amount of time talking  
35          about the M&C Panel and its report, but one  
36          question I have to you before a broader question  
37          on your experiences in the ISDF is, do you see any  
38          relationship between effective catch monitoring  
39          and sustainability? Mr. Sakich.

40 MR. SAKICH: Totally. You can't overharvest, or it's  
41          not sustainable. And if you don't know what  
42          you've removed out of the water, without counting  
43          you wouldn't know that.

44 Q    Mr. Masson.

45 MR. MASSON: Yes. Effective catch monitoring is a key  
46          component of effective fisheries management and  
47          resource management.

1 Q Grand Chief Malloway.

2 GRAND CHIEF MALLOWAY: Yes, I agree.

3 Q Thank you. And as all of you have been involved  
4 with the ISDF from the start, in your experience  
5 do you think overall it has been a positive  
6 process? Grand Chief Malloway.

7 GRAND CHIEF MALLOWAY: Yes, I think it's been a very  
8 good process. The more that we work together and  
9 the more that we get to know each other, the more  
10 easier it is for us to understand each other and  
11 where we're coming from. Because, you know, we've  
12 existed for the past few generations as natural  
13 born enemies, the commercial and the sport and the  
14 First Nations and DFO. But we work together quite  
15 a bit and have gotten to know each other, and it  
16 helps the process.

17 Q Thank you. Mr. Masson.

18 MR. MASSON: Yeah, I totally support the comments from  
19 Chief Malloway. And only would reiterate that I  
20 have observed at the ISDF relationships grow,  
21 understanding grow, and a greater ear for really  
22 listening what's going on and what the  
23 perspectives are.

24 Q Mr. Sakich.

25 MR. SAKICH: Yeah, I'd say the same sort of thing. In  
26 fact, it is one of my concerns that, you know, as  
27 we move forward in things like the Monitoring  
28 Panel and other sort of things, that without the  
29 broader forum, because maybe it's not the place  
30 for it now, but you have to have it. I believe it  
31 should continue, because without the broader  
32 forum, when you start drilling down on these other  
33 issues, you're going to need more of that broad  
34 support from the whole group that everybody talks  
35 about.

36 Q Well, that goes to my next question. Fine, we'll  
37 continue. It's my understanding that the funding  
38 for the ISDF is finished as of March of this year.  
39 Do you think that it's beneficial, or in fact  
40 necessary that there be this type of a process  
41 continue in the future? Grand Chief Malloway.

42 GRAND CHIEF MALLOWAY: Yes, I think that -- I think it  
43 should be the ISDF that should carry on. There's  
44 no sense reinventing the wheel. I think that  
45 there's a lot of good work that's been done there,  
46 and folks have gotten used to going there and  
47 working with one another. I think that it should

1 carry on.

2 Q Thank you. Mr. Masson.

3 MR. MASSON: Yes, I agree. And a point of  
4 clarification, I mean, funding expires at the end  
5 of this fiscal year. But I am a full supporter of  
6 the Monitoring and Compliance Panel. I think that  
7 it's only really begun to scratch the surface. I  
8 think that -- I have a vision that this group  
9 could do a great deal more than we've touched on  
10 today. I think it's a really useful for the  
11 Department and for the resource and for the  
12 participants.

13 Q Mr. Sakich.

14 MR. SAKICH: Yes, I think it should continue, and if  
15 you look back in history, we're getting closer now  
16 to the root of the issue than we ever have before.  
17 So there's got to be a reason for that, and it's  
18 been basically through that Integrated Salmon  
19 Dialogue Forum that we've gotten this close.

20 MR. TYZUK: Thank you. Those are my questions, Mr.  
21 Commissioner.

22 THE COMMISSIONER: Just a point of clarification, Mr.  
23 Tyzuk. Mr. Masson, when you were asked about the  
24 funding expiration date for the ISDF, do I take it  
25 you mean March 31, 2012?

26 MR. MASSON: Mr. Commissioner, that's correct.

27 THE COMMISSIONER: Thank you.

28 MR. ROSENBLOOM: Thank you very much. Gentlemen, my  
29 name is Don Rosenbloom. I appear on behalf of the  
30 Area D Gillnet, Area B Seiner. I'll be very  
31 brief.

32  
33 CROSS-EXAMINATION BY MR. ROSENBLOOM:

34  
35 Q I want to follow up to the latter questions of  
36 counsel for B.C. in respect to your expectation or  
37 your desire to see your continuing work -- your  
38 work continuing into the future. Throughout this  
39 inquiry, I have focused in part on the issue of  
40 fiscal capacity of DFO to fulfil its mandate. Let  
41 me commence my brief cross-examination by inviting  
42 you to agree, and I assume we've really heard it  
43 from all of you already, that catch monitoring is  
44 an integral aspect of DFO's mandate, an integral  
45 program that is required as part of DFO fulfilling  
46 its mandate. Do you agree with that, all of you?  
47 I would assume so, it's trite, but is there anyone

1 who would disagree with that?

2 Hearing nothing, I will assume that obviously  
3 that is a simple premise that is accepted by the  
4 three of you.

5 If that is the case, and respecting the fact  
6 that there is an ongoing budget that DFO grapples  
7 with yearly in respect to the catch monitoring  
8 aspect of its mandate, and I believe there is  
9 Exhibit 841 before these proceedings that speaks  
10 to the DFO budget, and accepting the fact that  
11 there has been funding provided to you for your  
12 particular initiative with the Monitoring and  
13 Compliance Panel through PICFI, and following up  
14 with the Commissioner's comment that the PICFI  
15 money, as I understand it is terminated as of the  
16 end of this fiscal year, March 31st, 2011 (sic),  
17 my question is this: Firstly, how do you  
18 anticipate that the funding of your initiative  
19 will be carried out April 1st and beyond of next  
20 year? And I would direct my question to Mr.  
21 Masson, and obviously invite the other two  
22 panellists at any point to make their  
23 contribution. But as Mr. Masson is the conduit to  
24 the Department, I think it fitting that he answer  
25 these questions.

26 MR. MASSON: So how do I anticipate the funding will be  
27 provided April 1st and beyond? And I think --

28 Q I'm sorry, did you say you don't or do?

29 MR. MASSON: I say I'm just repeating your question.

30 Q Yes.

31 MR. MASSON: I don't specifically have an answer of  
32 where we're going to go in the Department in terms  
33 of our options. Earlier on we heard that the  
34 fundamental options are seek new money,  
35 reprioritize, and so forth. So given that suite  
36 of options, we then start looking in the seek new  
37 money part of it. And an initiative like this  
38 with -- where it's based on a collaborative  
39 process, based on supporting an integral part of  
40 the Department's mandate, as you point out, I'd  
41 suggest that it's not always just the Department  
42 of Fisheries that might be a funding source. It  
43 is the kind of initiative that may get support  
44 from independent foundations. It may get some  
45 independent resourcing.

46 We're not talking about the kind of budget  
47 that's going to necessarily be out of reach. I



1 think you heard earlier that the M&C Panel has  
2 operated on approximately \$160,000 a year, half of  
3 which might come from the Department of Fisheries  
4 in the past. And so, you know, I'd suggest that  
5 perhaps there's an opportunity for various sources  
6 of funding to try to put something together that  
7 would enable this panel to continue to grow.

8 And I'd also offer that I think it's worthy  
9 of departmental consideration, in light of the  
10 fact of its close relationship to our mandate. We  
11 are interested in building support, in working  
12 together with the harvesters and in a management  
13 function like catch monitoring, where harvesters  
14 support and contribution is so important to the  
15 success of the initiative, I think that it is an  
16 area where a collaborative process could really  
17 work, and could be jointly funded in some way.

18 Q But one has to appreciate that to the best of your  
19 knowledge, as of April 1st, next year, the current  
20 funding for this program is cut off, correct?

21 MR. MASSON: All too clearly.

22 Q All too clearly. And you would also agree with  
23 me, if you are going to troll for other funding  
24 through foundations or whatever, that often takes  
25 some time?

26 MR. MASSON: Appreciate that.

27 Q And would also you would agree with me that  
28 foundations would look upon an initiative like  
29 this as being a responsibility of government?

30 MR. MASSON: That's a question I'm not so sure I could  
31 agree on, but we'll leave it there.

32 Q What we've had the benefit from here at this  
33 inquiry, and I appreciate you haven't, Mr. Masson,  
34 is a body of evidence that's developed throughout  
35 this inquiry, and this is my take on the evidence,  
36 of a real fiscal crisis within DFO in terms of  
37 funding a number of programs within their mandate,  
38 because of shortfall in Treasury Board allocation  
39 to the Department. You're generally familiar  
40 with --

41 MR. TAYLOR: That might be Mr. Rosenbloom's take on it,  
42 but that's not a fair summary of the evidence, in  
43 my submission.

44 MR. ROSENBLOOM: Well, I certainly did speak in a  
45 subjective way.

46 Q You're familiar with the fact that there are some  
47 huge challenges to DFO in terms of funding their

1 day-to-day mandate?

2 MR. MASSON: I am. I am aware of that.

3 Q Yes. And appreciating that, and appreciating are  
4 you familiar with the fact that there is in the  
5 current fiscal year, I believe, a five percent  
6 reduction overall to the Department's funding from  
7 Treasury Board? Are you familiar with that?

8 MR. MASSON: Yeah, I'm not familiar with the details.

9 Q Fair enough. How do you believe that you might be  
10 able to convince DFO that indeed your program  
11 should survive and should attract funding that  
12 hasn't currently been from DFO to ensure that your  
13 program does continue?

14 MR. MASSON: Well, again, I wouldn't characterize it as  
15 "my" program. I am a member from the government  
16 on the panel.

17 Q I'm sorry. Yes.

18 MR. MASSON: Fair enough.

19 Q Thank you.

20 MR. MASSON: But again I think the point that I'm  
21 trying to make is that what I've learned about  
22 catch monitoring is that harvesters themselves  
23 have a particular interest, or a particular role  
24 to play in not providing information alone, but  
25 also in supporting new -- supporting improvements  
26 and in working together to try to gain the  
27 confidence amongst each other. And this doesn't  
28 happen unless you have the space and process to  
29 effectively build relationships, work effectively  
30 with the experience of each of the participants in  
31 communicating back to their own constituents, and  
32 in gaining their collective insights. And so it's  
33 difficult to do that in our existing established  
34 processes, not impossible. But this kind of a  
35 process is one that I think because of the way  
36 it's structured, I viewed it in my role in the  
37 Department on this particular file, I call it pure  
38 gold to have Pete or Ken go to meetings, and start  
39 addressing other harvesters about the importance  
40 of this function, and how we need to address this  
41 in a more collective fashion. This is something  
42 that I can't do alone, but can address our  
43 interest, our collective interest must more  
44 effectively with everyone else on board.

45 Q Yes. But, Mr. Masson, you are speaking to the  
46 converted, at least some of us, when you sell us  
47 the importance of your program. Don't get me

1 wrong. The question that I'm asking is how do you  
2 believe that you might be successful with the  
3 Department, with DFO, and in turn DFO with  
4 Treasury Board, in securing the necessary money  
5 for this program to continue, when in fact it  
6 hasn't been on their budgetary balance sheet over  
7 the last few years because of the funds that came  
8 from PICFI.

9 MR. MASSON: It's a fair question, and I think that  
10 again, for the Department to offer up funds, there  
11 has to be a recognition of the priority that it  
12 would enjoy. And it's around that I think that  
13 the Department may well want to consider the value  
14 of it.

15 Q And you'd agree with me that if the Department  
16 chooses to fund this program from their existing  
17 funding allocation, that it might be at the  
18 expense of other programs within DFO?

19 MR. MASSON: That would be the case, if it was from  
20 existing funding.

21 Q Do you have any recommendation to make to this  
22 Commissioner that you believe will assist you and  
23 the initiative that has been -- that you've  
24 testified about today, and the three panellists  
25 have testified about today, to ensure that the  
26 Government of Canada recognizes the importance of  
27 this program and that the Government of Canada  
28 will be amenable to favourably entertain the  
29 Treasury Board application DFO might make on  
30 behalf of this program.

31 MR. MASSON: my recommendation would be to look at the  
32 potential benefits over the long haul, and to  
33 consider the strength to government by having a  
34 broad consensus around a role like this.

35 Q Thank you. Just before I sit down, do either of  
36 the other panel members wish to say anything? Mr.  
37 Sakich.

38 MR. SAKICH: Yeah, I've got to give it a little bit of  
39 a different view here. When you're asking for  
40 something, you've got to have something to offer.  
41 And I do believe that at some point that the  
42 Monitoring and Compliance Panel is not going to be  
43 the feel good place that it is now, because at  
44 some point industry is going to have to take some  
45 responsibility on how - I speak for the taxpayers'  
46 side here now - on how you're going to pay for  
47 some of this stuff down the road. I mean, it has

1 to be involved in it. And there's a couple of  
2 different reasons for that.

3 I think sometimes that the processes that are  
4 actually paid for and driven outside the things do  
5 work better for themselves. And we have to take,  
6 we've had a lot of discussion, a lot of different  
7 things, you know. When you're levying fines and  
8 doing things like that, they shouldn't go off into  
9 space someplace. They should go back into the  
10 programs that are operating around those things.  
11 There's got to be many different ways of  
12 supporting this. And all of a sudden, always  
13 saying that it's going to be the responsibility of  
14 the government to do it. Well, I guess it is, but  
15 in some ways I guess it isn't, either. But I'm  
16 saying in the interim that it's going to need some  
17 time and some room to find its place. But it  
18 should have something in its wish list that has  
19 some sort of a sunset on things that it intends to  
20 be able to do some self-financing itself, as well,  
21 and not just totally dependent.

22 Q Thank you. Grand Chief, do you have anything to  
23 add before I step down?

24 GRAND CHIEF MALLOWAY: No.

25 MR. ROSENBLOOM: Thank you very much. I have no  
26 further questions.

27 MR. MCGOWAN: Mr. Commissioner, I'm going to suggest a  
28 short break now.

29 THE COMMISSIONER: Can you just tell me what the time  
30 estimates are now, Mr. McGowan, please.

31 MR. MCGOWAN: Yes, Mr. Commissioner, I think if we take  
32 a short break now that we should be fine to  
33 finish. Mr. Harrison has less than ten minutes of  
34 questions, Ms. Schabus, I believe, has  
35 approximately 15 minutes, Ms. Sharp has ten  
36 minutes, and Mr. Eidsvik had several minutes, but  
37 he had to leave. He may not make it back by the  
38 end of the day and if he does not, he's content to  
39 not ask those questions.

40 THE COMMISSIONER: Well, we'll take a short break and  
41 then adjourn at 4:00.

42 MR. MCGOWAN: Thank you.

43 THE COMMISSIONER: Thank you very much.

44 THE REGISTRAR: The hearing will now recess for ten  
45 minutes.

46  
47 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)

(PROCEEDINGS RECONVENED)

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

4 MR. HARRISON: Good afternoon, Mr. Commissioner. Good  
5 afternoon, panel. My name is Judah Harrison and  
6 I'm representing the Conservation Coalition, which  
7 is six non-governmental organizations and one  
8 individual, and with me in the audience today is  
9 Dr. Craig Orr, who is among my clients. As we  
10 said before the break, I have approximately ten  
11 minutes, generally will be pretty brief.  
12

13 CROSS-EXAMINATION BY MR. HARRISON:  
14

15 Q I'll just, I'd like to start with asking the panel  
16 generally whether each of you is familiar with the  
17 Wild Salmon Policy, that's the general question,  
18 and specifically Strategy 1 of the Wild Salmon  
19 Policy speaks of the need to monitor conservation  
20 units. I'd like to -- is each of you familiar  
21 with the Wild Salmon Policy and that particular  
22 strategy?

23 MR. SAKICH: I wouldn't say totally familiar with it,  
24 but have an idea what you're talking about.

25 Q Okay.

26 MR. MASSON: Yes, I'm familiar.

27 Q Thank you. Grand Chief Malloway?

28 GRAND CHIEF MALLOWAY: Yes, I'm familiar with it.

29 Q And from what we've heard throughout this  
30 Commission, more at the beginning of the  
31 Commission, the Wild Salmon Policy is the primary  
32 document that's supposed to guide decision-making  
33 in the Department of Fisheries and Oceans. And  
34 yet when I review the majority of the materials, I  
35 did not see mention of the word "Wild Salmon  
36 Policy", almost whatsoever. And I'd just like if  
37 each of you can comment on the absence of the Wild  
38 Salmon Policy in monitoring and catch monitoring  
39 data. If you have any comment that you can give  
40 on that.

41 MR. SAKICH: Well, what stage of implementation is the  
42 Wild Salmon Policy at, at the moment?

43 Q I think that's three weeks on in the beginning, so  
44 I'm remiss to answer that question.

45 MR. SAKICH: Because I think that might have something  
46 to do with it. I don't think the mind is totally  
47 made up yet on it, all of it.

1 Q Okay. that's a fair comment.

2 MR. MASSON: My point is that you might not see the  
3 words "Wild Salmon Policy" and I'm going to  
4 reference the Strategic Framework. It's a  
5 shortcoming, if that's indeed the case. My mind's  
6 racing to try and catch up to you to be absolutely  
7 certain that that's the case. Regardless, the  
8 Strategic Framework I view as an approach to help  
9 us better implement The Wild Salmon Policy. It's  
10 clearly a consideration in our thinking in trying  
11 to move forward in this way. And in, if I can go  
12 for a minute, then assessment of conservation  
13 units and stock is considered in terms of both  
14 enhanced monitoring requirements, and so forth,  
15 and it's an active consideration in monitoring  
16 programs, methodologies, and so forth.

17 Similarly, in the, I think it's fourth  
18 strategy of the Wild Salmon Policy where it talks  
19 about trying to look at collective and  
20 comprehensive approaches, incorporating habitat  
21 and ecosystems and the reference to ecosystem  
22 considerations in the monitoring documents that  
23 you've seen, are highlighted by the Wild Salmon  
24 Policy and its emphasis.

25 Q So before you go, Grand Chief, excuse me, my next  
26 question was going to be for you, how much, really  
27 the Wild Salmon Policy impacts or affects your  
28 decision-making, your management decisions, as  
29 well as your setting of policies. And from what  
30 you just said, I would say is it fair to say that  
31 it's key to your policy making today, and key to  
32 the implementation of your management decisions?

33 MR. MASSON: That's entirely fair.

34 Q Okay. And Grand Chief Malloway, do you have any  
35 comments with respect to the extent to which the  
36 Wild Salmon Policy guides and impacts your views  
37 on catch monitoring?

38 GRAND CHIEF MALLOWAY: Yes. I was actually in a room  
39 when that phrase was first coined. The B.C.  
40 Aboriginal Fisheries Commission Chair at the time,  
41 Fred Fortier, told DFO "You need a wild salmon  
42 policy". And they took it to heart and we worked  
43 with DFO on crafting the Wild Salmon Policy. We  
44 went on the road and we consulted First Nations  
45 all over British Columbia on the Wild Salmon  
46 Policy.

47 When the first draft came out, we went on the

1 road, did a consultation tour, talked to First  
2 Nations all over B.C., and then we came back with  
3 DFO and we sat down and we could see that there  
4 was a number of concerns that First Nations had.  
5 And we did another draft. And we went on the road  
6 again and did another road trip, and then we  
7 finally came up with the Wild Salmon Policy.

8 The only concern that I really had with it,  
9 with the first draft, and with the second draft is  
10 with a kind of a -- kind of what I term a  
11 "notwithstanding clause". If something has to be  
12 done to try and save a species, is going to be too  
13 hard socioeconomically on some sector, it might  
14 not be done. Same with the **SARA**. White sturgeon  
15 weren't listed on the Lower Fraser because it was  
16 going to impact sturgeon guides.

17 So that's my number one concern with the Wild  
18 Salmon Policy is that that clause is in there in a  
19 couple of different places: socioeconomic factors  
20 has to be taken into account. So if it's going to  
21 cost jobs, that it might not happen.

22 Q Okay, thank you. And this is a question just for  
23 Mr. Masson. Have you had any direction from  
24 senior management with respect to incorporating  
25 the Wild Salmon Policy into your monitoring  
26 policies and your management decisions?

27 MR. MASSON: Certainly in reviewing earlier drafts, the  
28 importance of the Wild Salmon Policy was  
29 emphasized.

30 Q Okay, thank you. Mr. Sakich, this morning -- I  
31 want to pick up on something you were talking  
32 about this morning. And there was some discussion  
33 around yesterday's evidence and the percentage  
34 that catch monitoring, the accuracy of catch  
35 monitoring, and there was some question between 90  
36 and 95 percent, and then Mr. Sakich stressed that  
37 we need to differentiate between what we catch and  
38 how many we catch. Is that a fair -- is that fair  
39 for what you said?

40 MR. SAKICH: I don't think -- well, I might have used  
41 it around there. But we need to know what we are  
42 catching as well as how much we're catching.

43 Q Okay. So I took that to mean we have to  
44 understand, well, which species or which  
45 subspecies we are catching, and as well, how many  
46 of each of those we are catching; is that --

47 MR. SAKICH: That's right. I think they're both part

1 of monitoring.

2 Q Thank you. And right now would you say, I mean,  
3 the 90 and 95 percentage that we are throwing  
4 around, that was about how many we catch, the  
5 extent to how accurate we are with how many we  
6 catch; is that fair to say?

7 MR. SAKICH: Well, I can't remember it explicitly. The  
8 point I was trying to make is if you take some of  
9 the fisheries that are validated and the ones that  
10 have got it right that way, so to speak, for all  
11 those numbers, I don't like to see those get  
12 thrown in the hopper with the rest. I like to see  
13 the report cards so we know what we're chasing.

14 Q Okay. Well, I was actually going somewhere  
15 different, so --

16 MR. SAKICH: Well, give it a try.

17 Q Yeah. But that's okay. Where I was trying to get  
18 to, and where I'm trying to get to is the Wild  
19 Salmon Policy speaks about differentiating and  
20 monitoring and regulating and managing with  
21 respect to conservation units, which is a sub-  
22 derivation of the Fraser sockeye fishery. When we  
23 do monitoring and counting right now, do we do any  
24 monitoring or counting with respect to  
25 conservation units, or is it all at the Fraser  
26 sockeye fishery level?

27 MR. SAKICH: No, I think it's there's a lot of  
28 scientific work goes into sockeye, like nothing  
29 else. And I think they've been working towards  
30 pretty well breaking out units. I don't think  
31 it's sloppy at all. I think it's pretty tight.  
32 And I don't think that everybody has made up their  
33 mind yet on just what groups fit in all these  
34 units, either.

35 Q So when commercial fishermen dictate how many  
36 they've caught, when they give their numbers, do  
37 they differentiate between different conservation  
38 units whatsoever?

39 MR. SAKICH: I don't say the commercial fisherman is  
40 differentiating, I don't know who's  
41 differentiating between conservation units, but  
42 the test fishing that takes place in and amongst  
43 all of the commercial fishing when it comes to  
44 sockeye is pretty rigorous. There is lots of  
45 sampling that is all done on different platforms.  
46 It's not done on the actual commercial fishing  
47 boat. It's done in a very regimented, attended by



1 the right people doing the job on board for  
2 sampling and everything.

3 Q Okay. I'm getting really near the end, so I'll  
4 just wrap this up quickly. Along the same lines,  
5 could you give us a sense of how accurate we are  
6 in counting the bycatch that we actually catch in  
7 the Fraser sockeye fishery?

8 MR. SAKICH: Well, you'd be real accurate, because it's  
9 all going to show up at the validating station.

10 Q Is that a statement of fact, or a wish?

11 MR. SAKICH: The ones that are doing it right are on  
12 the share-base or the quota, call it whatever you  
13 want, those fish are validated. So whatever's in  
14 the hold of that boat is going to pop up there  
15 right in front of somebody to look at. And if  
16 you're dealing with that volume of fish, and it's  
17 in there, it'll show because they are counted.  
18 Somebody is visually at the end of the day seeing  
19 those fish.

20 Q Okay. Then I'm going to have to bring up one --

21 MR. SAKICH: Third party.

22 Q Thank you. Exhibit 855, which was discussed this  
23 morning. These are your own words. Page 3 of  
24 Exhibit 855, if you can bring that up, Mr. Lunn.  
25 This will be my final question. I apologize.  
26 This is signed by you at the bottom of this, Mr.  
27 Sakich, and at one point it says clearly there is  
28 a need to improve the accuracy of monitoring data.

29 And then later on in this document you  
30 compare this, the monitoring that occurs with the  
31 Fraser sockeye fishery with -- you compare it with  
32 the Integrated Groundfish Fishery, which carefully  
33 monitors and tracks incidental catch of non-target  
34 species.

35 MR. MCGOWAN: I wonder if my friend can point the  
36 witness to the place in the document.

37 MR. HARRISON: Sorry, Mr. Sakich.

38 THE COMMISSIONER: Is this page 3, Mr. Lunn?

39 MR. HARRISON: Sorry, the last -- excuse me, on page 3,  
40 the last sentence of the third paragraph:

41  
42 The panel recognizes clearly that we have to  
43 improve the way we count catch and enforce  
44 compliance to improve...fisheries...and our  
45 collective confidence.

46  
47 And then if we can turn to quickly to page 7, and

1 I'm talking about 7 of the actual document. Well,  
2 I don't see it right there, so it must have been  
3 the earlier page, but given the time constraints,  
4 I'll have to leave it there. I apologize for  
5 taking time. Thank you.

6 MS. SCHABUS: Mr. Commissioner, Nicole Schabus. I am  
7 co-counsel for Sto:lo Nation Tribal Council and  
8 the Cheam Indian Band.  
9

10 CROSS-EXAMINATION BY MS. SCHABUS:  
11

12 Q My first questions will be directed to Grand Chief  
13 Malloway. Grand Chief Malloway, you've also done  
14 work at the international level, and through the  
15 Pacific Salmon Commission, so you're aware of the  
16 role that U.S. tribes play when it comes to  
17 fisheries management?

18 GRAND CHIEF MALLOWAY: Yes. I've been on the Fraser  
19 Panel for eight years. But before that I was a  
20 chair, co-chair of the B.C. Aboriginal Fisheries  
21 Commission, and worked very closely with Chief  
22 Billy Frank. He's the chair of the Northwest  
23 Indian Fisheries Commission. So I have a pretty  
24 good idea of how they work.

25 Q Okay, perfect. Then I'm going to ask you to speak  
26 a little bit to that in a minute. So you're aware  
27 of the work of both the Northwest Indian Fisheries  
28 Commission as a service organization to the  
29 tribes, and also the role that the U.S. tribes  
30 play as decision-makers regarding fisheries  
31 management, right?

32 GRAND CHIEF MALLOWAY: Yes. The difference between the  
33 First Nations here and the tribes in Washington is  
34 that at the Pacific Salmon Commission at the table  
35 the U.S. tribes have veto power. If they don't  
36 agree with management actions, they don't happen.  
37 Here the Supreme Court has said that the ultimate  
38 authority is the Minister. So we, Peter and  
39 myself, others on the Fraser Panel, are advisors  
40 to the Fraser Panel Chair.

41 Q Okay. So basically what you are describing is  
42 that in the U.S. the tribes actually have full  
43 decision-making power when it comes to fisheries  
44 management, including monitor and compliance and  
45 habitat management, right?

46 GRAND CHIEF MALLOWAY: Yes.

47 Q And so they also play an important role when it

1 comes through the Northwest Indian Fisheries  
2 Commission as the service organization, when it  
3 comes to habitat management, fisheries management,  
4 monitoring, et cetera, right?

5 GRAND CHIEF MALLOWAY: Yes.

6 Q And that is a model that you would say that, that  
7 the tribes here and indigenous peoples here are  
8 aspiring to full decision-making when it comes to  
9 fisheries management and monitoring?

10 GRAND CHIEF MALLOWAY: Yes. Like I mentioned earlier,  
11 when we talked about co-management, we prefer the  
12 term "collaborative management" as partners.

13 Q Okay. But the point that I want to clarify it  
14 with you, because I think there was different  
15 interpretations, so to say a little bit on the  
16 panel, regarding collaborative management. We're  
17 not just talking about a collaborative approach at  
18 the technical level where DFO has the final  
19 decision-making power. What you are talking about  
20 is actually full decision-making power of  
21 indigenous peoples when it comes to fisheries  
22 management and monitoring.

23 GRAND CHIEF MALLOWAY: We're told that the work that we  
24 do, we're told that can't fetter the Minister's  
25 authority. That's what we're told over and over  
26 again. But what we're wanting to do is to be full  
27 partners in the management of the fisheries and  
28 the protection of the habitat.

29 Q Okay. so that's exactly what I was trying to  
30 point to. The aspiration is one to be full  
31 partners and decision-makers, correct?

32 GRAND CHIEF MALLOWAY: Yes.

33 Q Now, the Fraser Valley Aboriginal Fisheries  
34 Society, in that relation when you compare it also  
35 to the U.S. model is like a service organization,  
36 but the decision-making authority remains with the  
37 respective tribes and nations, right?

38 GRAND CHIEF MALLOWAY: Yes.

39 Q Now, so it's important that direction and decision  
40 making actually comes from indigenous peoples  
41 collectively and that they are involved in these  
42 processes, right?

43 GRAND CHIEF MALLOWAY: Yes.

44 Q Now, we've heard a lot about all the different  
45 dialogues and policy approaches that have been  
46 developed. But, for example, taking the example  
47 of the Charting Our Course final report, and the

1 Integrated Salmon Dialogue Forum, this information  
2 still has to be more fully communicated to  
3 indigenous peoples and their involvement still has  
4 to be secured on the ground.

5 GRAND CHIEF MALLOWAY: Yes.

6 Q Now, without dating you, but you've been around  
7 for a long time when it comes fisheries  
8 management, so you've seen changes over quite a  
9 period of time.

10 GRAND CHIEF MALLOWAY: Yes.

11 Q So but you remember a time when there was just one  
12 fisheries officer in the area from Mission to  
13 Sawmill Creek?

14 GRAND CHIEF MALLOWAY: Yes, there was one fishery  
15 officer that we knew, and he had quite a big area.

16 Q Mr. Teskey was the last one?

17 GRAND CHIEF MALLOWAY: Dave Teskey was the one that we  
18 worked with.

19 Q And he would -- he knew the fishermen and he would  
20 come to the different fishing sites, correct?

21 GRAND CHIEF MALLOWAY: Yes.

22 Q And generally you would agree that having a good  
23 relationship and a personal relationship between  
24 the fishers and the fisheries officer was an  
25 advantage, right?

26 GRAND CHIEF MALLOWAY: One night when we were, my  
27 grandfather and I were fishing, he lost his trunk  
28 key. I think he locked it in the trunk, and we  
29 were supposed to cut the nose and fin off the  
30 fish, and the knife was in the trunk. And so we  
31 just put the fish in the sack and put them in the  
32 back seat and we were going to do it when we got  
33 home. But Dave Teskey was at the entrance to the  
34 bay when we were pulling out. And he stopped us  
35 to ask us how many we got, and he looked at them  
36 and said, why are they in the back seat? And we  
37 said, well, we locked the -- we locked the key in  
38 the trunk and the knife's in the trunk. And he  
39 said, oh, so they're not marked. And we said the  
40 knife's in the trunk and there's nobody else down  
41 here, eh. So he pulled them all out, and he  
42 marked them himself with his own knife and put  
43 them back in the sack and then sent us on our way.  
44 We had a pretty good relationship with him.

45 Q Now, you saw some changes, I think starting in the  
46 1980s with stepped-up enforcement, and a huge  
47 increase in the number of enforcement officers,

1           for example, in that area with a more adversarial  
2           attitude.  
3       GRAND CHIEF MALLOWAY: As we got more and more fishery  
4           officers and more and more enforcement, the new  
5           people that came in didn't know anybody, they  
6           didn't know us. And there was a lot of public  
7           sentiment going on about what was going on, mainly  
8           from our acquaintances in the sports and  
9           commercial fishery. So there was an effort to try  
10          and stop the so-called black market sale of Indian  
11          food fish and all those kinds of thing. So things  
12          built up quite a bit, and the relationship went  
13          downhill.  
14       Q       Yeah. So it's kind of fair to describe it that it  
15           moved towards a more heavy-handed approach towards  
16           enforcement, more on a, for example, more like on  
17           a policing basis, rather than a dialogue or joint  
18           approach to conservation and protection.  
19       GRAND CHIEF MALLOWAY: Yes.  
20       Q       Now, so what you saw over that period of time was  
21           also cause for increased funding for enforcement,  
22           and enforcement became a separate line of  
23           reporting directly to the RDG, right?  
24       GRAND CHIEF MALLOWAY: Yes.  
25       Q       And there was no direct relationship with the  
26           fishers, the relationship becoming more and more  
27           adversarial over that time?  
28       GRAND CHIEF MALLOWAY: Yes.  
29       Q       Now, and that, in effect, you see that as having  
30           created some problems for aboriginal fisheries on  
31           the river and monitoring?  
32       GRAND CHIEF MALLOWAY: Yes.  
33       Q       And I think you can also speak to an institutional  
34           attitude within the Department of Fisheries and  
35           Oceans that did not encourage indigenous  
36           participation and engagement in monitoring and  
37           enforcement and compliance?  
38       GRAND CHIEF MALLOWAY: Well, the adversarial  
39           relationship made it pretty tough for us to talk  
40           to one another. There was a lot of hard feelings,  
41           and so the relationship was very bad.  
42       Q       And also institutionally there was resentment to  
43           actually involving indigenous peoples or  
44           aboriginal persons, actually, in enforcement and  
45           monitoring capacities at that time, right, that  
46           you were aware of?  
47       GRAND CHIEF MALLOWAY: The day the *Sparrow* decision

1 came down, one of the fishery officers came to me  
2 and he said, "Once they decide to get rid of us,  
3 I'm hoping to get a job with you guys, because,"  
4 he said, "I think we might be -- we might get  
5 fired." There was a lot of concern by fishery  
6 officers that they might be displaced by our  
7 fishery officers. And so the relationship didn't  
8 get any better.

9 Q Okay. And you'd also agree that there is a level  
10 of prejudice within the Department of Fisheries  
11 and Oceans that has to be addressed to actually --  
12 when we are talking about trust building, what  
13 we've been talking about today.

14 GRAND CHIEF MALLOWAY: Yeah, I think there's -- things  
15 are changing. I mean, some of the people that we  
16 might have called "cowboys" are gone now, they're  
17 retired. And some of the cowboys that trained the  
18 cowboys have retired as well. Many of the folks  
19 that we work with now, we know them by name.  
20 We've known them for years, and we've got a better  
21 relationship with them than we did in the past.

22 Just a short time ago, my son and I were up  
23 in Yale, and when we were checking my net -- it's  
24 very dangerous up there, the currents are really  
25 bad, whirlpools everywhere. My steering broke on  
26 my boat, and we tied it up and started down the  
27 river to try and find a way to get somebody to  
28 give us a ride down to our car across the river.

29 And my wife got a phone call from DFO and  
30 they said "Where's Ken?" And she said, "He's up  
31 in Yale fishing." And he said, "No, he's not on  
32 his boat. His boat's tied up. He's not there."  
33 And she said, "Well, I don't know where he is. He  
34 should have been on his boat." And they said, "It  
35 doesn't look like anything untoward has happened,  
36 but his boat's tied up and we don't know why. We  
37 can't find him. We know he's diabetic. We know  
38 it's after suppertime. He must be getting  
39 hungry." And she said, "Well, we'll get my  
40 brother-in-law and we'll go up and look for him."

41 But by the time we walked on four miles down  
42 the railroad tracks and finally found a way across  
43 the river, there was half a dozen DFO, a couple of  
44 RCMP, and a DFO boat being put in the water,  
45 search and rescue was coming up the river on a jet  
46 boat and a helicopter was just leaving Hope to  
47 look for me. That happened because those guys

1           knew me, and they knew that I was diabetic and  
2           that I was probably looking for something to eat,  
3           you know, it was getting kind of late.  
4        Q     So you --  
5        GRAND CHIEF MALLOWAY: But that wouldn't have happened  
6           20 years ago.  
7        Q     And you probably agree that that's an example of  
8           actually how important it is to build those  
9           personal relationships --  
10       GRAND CHIEF MALLOWAY: Yes.  
11       Q     -- between and especially also that there is yet  
12           work to be done between enforcement officers and  
13           aboriginal fishers.  
14       GRAND CHIEF MALLOWAY: Mm-hmm.  
15       Q     Now, Mr. Masson, in your slide presentation to the  
16           Visions meeting, you spoke about the FSC fishery  
17           and that it should be given priority. I take it  
18           that's on the basis that we're dealing with a  
19           rights-based fishery that's constitutionally  
20           protected?  
21       MR. MASSON: That would be the case, yes.  
22       Q     Now, one point that I want to clarify with you,  
23           because you did speak generally about stakeholders  
24           at some stage when you were speaking this morning,  
25           but it's important to recognize that there is a  
26           difference between stakeholders and aboriginal  
27           peoples when it comes to the fishery because  
28           they're rights holders?  
29       MR. MASSON: Yeah, I appreciate that distinction, and  
30           have been known to slip.  
31       Q     No, I just wanted to clarify that, that you agree  
32           that we are actually dealing with rights holders,  
33           which triggers --  
34       MR. MCGOWAN: I'm not sure it's appropriate to ask this  
35           witness for a legal opinion.  
36       MS. SCHABUS: That's fine. I just wanted to clarify  
37           that you're fully aware of the distinction, you  
38           meant to insert that in your testimony.  
39       Q     Now, you were also the Area Director for the Lower  
40           Fraser in 2003, right?  
41       MR. MASSON: I believe that's the right year, yes.  
42       Q     Okay. And at that time you were aware and you  
43           learned a lot about the extensive and stringent  
44           monitoring of aboriginal fisheries in the Lower  
45           Fraser River?  
46       MR. MASSON: That's correct.  
47       Q     And you also heard about the concerns over the

1           increase in the sports fishery at that time, with  
2           no cap on the number of licences that are issued?  
3       MR. MASSON: That's correct.  
4       Q       And with regard to the increased number of  
5           fishermen and the concerns over ongoing openings  
6           and that the numbers of fish caught in the sports  
7           fishery could actually not be pinned down?  
8       MR. MASSON: There were a number of concerns voiced by  
9           various harvest sectors, yes, and First Nations,  
10          as well.  
11       Q       And one of the conclusions that you drew from that  
12           experience in working there, is that it is  
13           important to actually find ways of having similar  
14           reporting requirements across fisheries, so that  
15           you can have representative conclusions that can  
16           be drawn and applied for fisheries management.  
17       MR. MASSON: Yes. I think as Pete put it earlier, the  
18           output of the monitoring program should be  
19           consistent where the risks in the fishery are the  
20           same.  
21       Q       Agreed. So if you are dealing with the same  
22           fishery and the same stock concerns in the Lower  
23           Fraser at the same time, then there should be  
24           similar outcomes when it comes to monitoring, and  
25           similarly stringent requirements.  
26       MR. MASSON: Yeah. And you have to look at each  
27           fishery in its own case. Some have larger  
28           participants, some have other objectives to  
29           address as well.  
30       Q       Okay. You also at your time as the Area Director  
31           did work and realize the importance of  
32           relationship building with aboriginal people?  
33       MR. MASSON: Very clearly.  
34       Q       And one of the things that you did, you were  
35           actually the signatory to the Safety Agreement  
36           with Cheam in 2003.  
37       MR. MASSON: That is true.  
38       Q       And the principles that were the basis for that  
39           Safety Agreement was safety for both the Cheam  
40           Nation and DFO officers, trust building between  
41           Cheam and DFO, and respect for one another?  
42       MR. MASSON: That's correct.  
43       Q       And you put your name on that, on that agreement  
44           and signed off on it as the Area Director, right?  
45       MR. MASSON: That's correct.  
46       Q       And you believed in the principles enshrined in  
47           it?



1 MR. MASSON: That's correct. I haven't read that  
2 agreement since then, or not in recent times,  
3 but...  
4 Q Sure. But obviously you read it before you signed  
5 it. But it's also fair to say that not everyone  
6 within DFO agreed with signing the agreement?  
7 MR. MASSON: I would say there was some concerns about  
8 the broader application of the agreement.  
9 Q And actually, within a month of you signing this  
10 agreement towards trust building and relationship  
11 building, you were pressured to rescind it, right?  
12 MR. MASSON: We're reaching back in time here. I think  
13 the concern with the agreement was that the  
14 broader context for fisheries management and the  
15 role of the Department were not included in the  
16 agreement.  
17 Q Okay.  
18 MR. MASSON: So it was the context for the agreement  
19 that was the concern.  
20 Q Okay. And then as a result you actually left or  
21 were removed from the area.  
22 MR. MASSON: It wasn't as a result of that whatsoever.  
23 I was there in an acting basis.  
24 Q Okay.  
25 MR. MASSON: And so shortly after that I did go back to  
26 working in Nanaimo.  
27 Q Okay. Now, but you agree that it is important  
28 that work be done when it comes to relationship  
29 building between Department of Fisheries and  
30 Oceans and First Nations. You believed that at  
31 that time, you believe that now?  
32 MR. MASSON: Yes. And it would be a Department's  
33 belief, as well.  
34 Q And but also one realization that you had, and  
35 working there at that time was that there was a  
36 very important need for working on an increased  
37 relationship between enforcement officers and  
38 aboriginal fishers.  
39 MR. MASSON: Absolutely.  
40 Q And humanizing and actually creating that  
41 understanding and trust.  
42 MR. MASSON: Absolutely true.  
43 MS. SCHABUS: Those are my questions.  
44 THE COMMISSIONER: Thank you.  
45 MS. SHARP: I am Sarah Sharp. I am here with the  
46 Western Central Coast Salish First Nations.  
47

1 CROSS-EXAMINATION BY MS. SHARP:  
2

3 Q I just have a few questions for you today, and I  
4 want to just start with the cost of catch  
5 monitoring and, sorry, fisheries monitoring and  
6 catch reporting. I wanted to go -- and perhaps,  
7 Mr. Sakich, you can best speak to these, having  
8 had quite a bit of experience in the commercial  
9 fishery yourself. The cost associated with these  
10 kinds of reporting requirements, can you speak to  
11 what those mean for the harvesters?

12 MR. SAKICH: Well, firstly you would have the logbook  
13 and the associated numbers and all the rest the  
14 logbook gives you, you know, it goes to a  
15 databank, sort of thing. That's about \$250 or  
16 \$275, I think, something like that.

17 Where the real cost comes in is the  
18 validating. That's \$125 an hour. And travelling  
19 time is part of that, too, so really you're  
20 dealing with a handful of fisheries that are on  
21 that, and because everybody's not there, the  
22 system's not geared for it. So these people don't  
23 have the employees. Like, in one case last year  
24 it cost more, it cost \$300-and-something in  
25 travelling time for somebody to validate a couple  
26 of hundred fish. So it's pretty tough keeping the  
27 whole group together, when you have this sort of  
28 stuff taking place.

29 So that is why I say the Monitoring and  
30 Compliance Panel has to get out and get to work on  
31 this stuff, because, I mean, I don't doubt you're  
32 going to get full-fledged monitoring for  
33 everybody, but it's just how the attitude's going  
34 to be getting there. And if the costs stay up  
35 there, it's not going to stay good.

36 Q Okay. And in this Policy and Practice Report that  
37 we have here, at paragraph 139 and 140, it talks  
38 about the cost of fishery monitoring and catch  
39 reporting, and in this case for these, even the  
40 Area B and Area H share-based fisheries, the costs  
41 of catch validation was estimated to be  
42 approximately 14 percent of the landed value, or  
43 12 percent of landed value. Are these relatively  
44 large fisheries, these...

45 MR. SAKICH: Yes, it could be quite a bit. I'll give  
46 you an example just to show you. You know, when  
47 you see a boat selling some fish at the wharf, you

1 see in False Creek or one of the cases, small  
2 amount, that's \$250. I don't care if it's \$150 or  
3 \$250, that's the cost of doing that fish, you can  
4 do that.

5 Q Okay. So would you agree with me that it could be  
6 cost-prohibitive for somebody to have a small  
7 fishery of that scale?

8 MR. SAKICH: Especially if you want a small type  
9 fishery, where you're selling to the public and  
10 doing these sort of things. And so that's where  
11 the innovation comes in. And that innovation has  
12 got to be worked on so we could accommodate  
13 everybody, so they're forward thinking in this  
14 monitoring.

15 Q Great, thank you. Now, Grand Chief Malloway, in  
16 your experience, you guys get funding through the  
17 AFS program, is that correct, for your monitoring  
18 obligations?

19 GRAND CHIEF MALLOWAY: Yes.

20 Q Okay. And that helps with these kinds of costs,  
21 doesn't it, because you have other programs in  
22 place, you have monitors, fisheries guardians who  
23 may be employed by your community.

24 GRAND CHIEF MALLOWAY: Well, the FVAFS budget that we  
25 get, that goes just to pay the staff, FVAFS and  
26 the monitors, for monitoring the fisheries that  
27 happen.

28 Q Like you have a very good program there, so it  
29 sounds like it's working.

30 GRAND CHIEF MALLOWAY: Yeah, all we do is count fish.

31 Q Yes. So I guess what I'm trying to establish here  
32 is that the AFS funding is very important for  
33 these kinds of catch monitoring programs for First  
34 Nations who want to fish, and I represent First  
35 Nations clients, so that's what I am just trying  
36 to set out here. In terms of these expenses, if  
37 the shift for these catch monitoring programs is  
38 going to be increasingly borne by the harvesters,  
39 one would then think that these AFS programs are  
40 going to become more and more important to the  
41 First Nations. Wouldn't you agree with that, Mr.  
42 Masson?

43 MR. MASSON: Yes, I would agree with that.

44 Q Okay. Now, so that's one incentive for First  
45 Nations to be part of the AFS programs and for  
46 PICFI to be continued for those programs.

47 MR. MASSON: And PICFI's not the source of funding for

1 the AFS programs, of course.

2 Q Okay.

3 MR. MASSON: Right? But --

4 Q So the ISDF program.

5 MR. MASSON: Yeah, and so -- yeah. AFS funding is  
6 critically important for First Nations and for  
7 catch monitoring.

8 Q Okay. I also wanted to go to in your paper that  
9 you wrote, Mr. Masson, with Mr. David Lightly, I  
10 believe it's Exhibit 860 now. There is at page 20  
11 of that document, I'm not sure, Mr. Lunn, if I've  
12 given you enough notice for this. But in here you  
13 talk about the existing tools. Sorry it's the  
14 page before.

15 MR. MASSON: Page 19.

16 Q Page 19, yes. Are we able to get in closely  
17 enough. I cannot see. Oh, thank you. So it says  
18 here:

19

20 The constitutionally protected priority of  
21 FSC fisheries is a powerful tool that First  
22 Nations and DFO can use to ensure access to  
23 FSC harvest is maintained. If First Nations  
24 can demonstrate, through credible catch  
25 monitoring/reporting systems, a lack of  
26 opportunity for FSC harvest, they will be in  
27 a strong position to obtain better access.

28

29 My reading of this is that nations have to  
30 establish that they have an FSC need.

31 MR. MASSON: Yeah. No, that's not what's intended  
32 there. It's intended to show that quite often  
33 there's discussion about FSC access. And it's  
34 particularly true in some of the non-fin fish, the  
35 examples of crab reform or rockfish. In shell  
36 fisheries particularly, quite often it's that the  
37 fishery is very geographically oriented, and  
38 there's often conflict over access to that  
39 geography, over that territory. And so the debate  
40 then becomes, well, is there trouble accessing the  
41 fish? How do you know that there's insufficient  
42 resource available to harvest? And the argument  
43 that's put forth here is if you have good solid  
44 catch monitoring information, defensible  
45 information, then that argument is dispensed with.  
46 Then you can show that very good effort is being  
47 exerted in trying to harvest and the resource is

1 not there. Perhaps there are other fisheries  
2 impacting it. Perhaps the Department has to work  
3 with First Nations on looking at what the impacts,  
4 what the causes might be and try to resolve it.  
5 Q So would you want me to correct my understanding  
6 of this, is that First Nations need to prove that  
7 they need, that what they are trying to fish is  
8 FSC fish, and that's why we have to monitor them  
9 to make sure they're catching FSC fish?  
10 MR. MASSON: No, I'm sorry, that's not what the intent  
11 was.  
12 Q Okay.  
13 MR. MASSON: And I wouldn't cast it that way. The  
14 intent is in trying to resolve conflicts around  
15 FSC access, it's far easier to have a really  
16 useful discussion to try to sort out what the  
17 causes for the conflict are when you have solid  
18 catch information.  
19 Q Okay. Perhaps we can come at this another way.  
20 Because I'll just bring you back to the table that  
21 Mr. Taylor brought you to earlier, because I think  
22 this might be another factor why we need to be so  
23 closely monitoring the FSC fish.  
24 MR. MASSON: Okay.  
25 Q Can we go, please, to Table D -- or sorry, C-1,  
26 page C-3, of the Project number 7 Exhibit 718, and  
27 I won't be long. Mr. Taylor brought you to this  
28 table earlier today to look at the First Nations  
29 Marine Society Coordinated Fishery. You mentioned  
30 that there was a pilot program in place.  
31 MR. MASSON: Yes.  
32 Q And that was why there was the 100 percent catch  
33 validation for the seine fishery.  
34 MR. MASSON: Yeah, the fact that it was used  
35 concurrently as a test fishery.  
36 Q Okay. How about the other one where we see  
37 onboard guardians, the Juan de Fuca Strait and the  
38 West Coast, or the Strait of Georgia. I should  
39 look at my own table. The Strait of Georgia South  
40 Island First Nations require guardians on board  
41 and so do the seine vessels for the Juan de Fuca  
42 Strait. Do you know if they had pilot programs in  
43 place?  
44 MR. MASSON: No, they likely didn't, and whilst I'm not  
45 familiar with the specific fishery, but of it in a  
46 general sense I am. And the concern was we're  
47 looking at a seine vessel chartered by First

1 Nations to conduct their FSC fishery. Typically  
2 they would be operating for harvesting sockeye,  
3 seine vessels have significant capacity to  
4 harvest, often at times when there's stocks of  
5 concern at play, and also concerns about trying to  
6 ensure a separation of FSC fish from commercial  
7 fish. And so for that reason it was deemed useful  
8 and appropriate to have First Nation guardians on  
9 board.

10 Q Are those relatively expensive, those guardians?  
11 MR. MASSON: No, largely they were paid through their  
12 AFS agreements, and would have been doing a  
13 function at that time anyway. So it's priority  
14 use of their time.

15 Q Okay. Through the FS agreements.  
16 MR. MASSON: Yes.

17 Q Okay.  
18 MR. MASSON: AFS agreements, I'm sorry.

19 Q Sorry?  
20 MR. MASSON: AFS agreements.

21 Q Okay. And I just wanted to go then to Table D-1,  
22 which is just a few pages further, for a  
23 comparison of another seine fishery in Area 11-16  
24 in a non-Panel area. We're talking about 130  
25 seine vessels here, harvesting capacity of over  
26 100-fold.

27 MR. MASSON: Yeah. Yeah, fair point.

28 Q And there's no onboard observers for this one.  
29 MR. MASSON: There may have been some, I can't say, but  
30 certainly not on every vessel. And so, and again  
31 I'm not familiar which year they're -- the  
32 reference is 2000 to 2009, multiple years. So  
33 that's quite right, that's an inconsistent use of  
34 observers and monitors. And the difference there  
35 is they're not looking at the issue of separating  
36 FSC fish from commercial fish. And again I'm not  
37 certain whether there would be any kind of  
38 confirmation of their landings, at --

39 Q Okay.  
40 MR. MASSON: -- where they unload.

41 Q And we have heard earlier today and previous that  
42 the concern about the FSC/EO, like economic  
43 opportunity or commercial fish, that's an  
44 important line to --

45 MR. MASSON: Sure.

46 Q -- maintain. Is that one of the reasons  
47 traceability is so important?

1 MR. MASSON: Traceability is important from a  
2 commercial industry perspective, primarily. Their  
3 ability to access markets is becoming increasingly  
4 dependent on their ability to demonstrate it's  
5 harvested in a legal authorized fishery. In  
6 addition to that, it provides useful confirmation  
7 from an enforcement perspective that the fish are  
8 from an authorized fishery.  
9 Q Okay. I just have a couple of questions here, and  
10 it goes to --  
11 THE COMMISSIONER: Ms. Sharp, I'm sorry.  
12 MS. SHARP: -- something again Mr. Taylor --  
13 THE COMMISSIONER: Ms. Sharp, we're going to have to  
14 adjourn at 4:00. So I don't know if there's  
15 anybody else who needs a minute or so.  
16 MR. MCGOWAN: Yes, Mr. Commissioner, Ms. Gaertner does  
17 have a question on re-exam, I understand. I don't  
18 know whether Mr. Taylor does, and I had one or two  
19 that I was planning to put in re-examination.  
20 MR. TAYLOR: I do not.  
21 THE COMMISSIONER: I'm sorry, we can't sit after 4:00.  
22 MR. MCGOWAN: Yes.  
23 THE COMMISSIONER: So I don't know how you want to  
24 divide up the time.  
25 MS. SHARP:  
26 Q Okay. I just have two. I mean, we don't even  
27 have to go to the document. This morning Mr.  
28 Taylor took you to Principle 1 in your 2002 DFO  
29 Pacific Regional Fishery Monitoring and Reporting  
30 Framework.  
31 MR. MASSON: Okay.  
32 Q Okay. There we looked at basically the -- sorry,  
33 Principle 1 talks about they must be sufficiently  
34 accurate and precise to address conservation  
35 needs. In Principle 2 there's a mention of First  
36 Nation treaties being a factor to consider.  
37 MR. MASSON: Yes.  
38 Q And in the year 2000, the DFO Catch Monitoring  
39 Discussion Paper you also have as Principle 7 a  
40 recognition of aboriginal treaties.  
41 MR. MASSON: Yes. Some treaties specify specific  
42 monitoring requirements.  
43 Q Okay. There's another aspect of treaties that I  
44 would suggest relate to an impact in terms of  
45 catch monitoring and how you might be tracing the  
46 catch or monitoring the catch, the concern about  
47 the FSC/economic opportunity fishery. I'm just

1           wondering, do you have any familiarity with  
2           Douglas Treaties?

3       MR. MASSON: Yes, I have some familiarity.

4       Q     Do you have any programs that recognize them  
5           specifically?

6       MR. MASSON: No.

7       MS. SHARP: Thank you.

8       MS. GAERTNER: One very brief question in redirect.

9           It's Brenda Gaertner for the First Nations  
10          Coalition.

11

12       CROSS-EXAMINATION BY MS. GAERTNER, continuing:

13

14       Q     And this arises from questions Mr. Tyzuk from the  
15           Province put to the panel as it relates to the  
16           ISDF and Mr. Masson's response around some people  
17           being challenged with participating in the ISDF,  
18           in particular the lack of structure and some  
19           people wanting more structure, and more terms of  
20           reference or more clear terms of reference, as I  
21           understood your evidence, Mr. Masson. The  
22           Commission has heard comments from First Nations  
23           and will hear more about the Tier 1, Tier 2 and  
24           Tier 3 decision-making processes. Can you confirm  
25           that the ISDF is not a Tier 3 decision-making  
26           process. It's at best an advisory process, and  
27           there is a distinction there.

28       MR. MASSON: Yes, I can confirm that.

29       Q     That it is not a decision-making, it's not  
30           considered a Tier 3.

31       MR. MASSON: Correct.

32       MR. MCGOWAN: Thank you, Mr. Commissioner. I see  
33           there's just about three minutes left on the clock  
34           on the screen and I should be able to finish  
35           easily in that time.

36

37       RE-EXAMINATION BY MR. MCGOWAN:

38

39       Q     Mr. Malloway, we've heard a lot of discussion  
40           related to costs today, and Ms. Sharp asked you a  
41           question a moment ago about the funding for FVAFS  
42           and that comes through AFS. Mr. Taylor asked you  
43           earlier about recommendations you wanted to leave  
44           the Commissioner with, and one of them was a more  
45           even-handed treatment by DFO in enforcement and  
46           catch monitoring. Now, we heard from Mr. Sakich  
47           and Mr. Masson that some significant costs



1 associated with catch monitoring, especially in  
2 the quota fisheries are borne by the commercial  
3 fishers themselves. Would a more even-handed  
4 approach, especially in times of declining  
5 funding, would a more even-handed approach to  
6 catch monitoring dictate that some of the catch  
7 monitoring costs in the aboriginal commercial  
8 fisheries ought to be borne by the fishers?

9 GRAND CHIEF MALLOWAY: Well, as I mentioned earlier, we  
10 had tried that before with varying degrees of  
11 success, but it is something that we have looked  
12 at before.

13 Q And finally, Mr. Masson, there were some questions  
14 to you by the Commissioner and Mr. Taylor about  
15 PICFI and the expiry of PICFI and what that would  
16 mean. And the answer you gave was that the money  
17 from PICFI was largely used for transformative  
18 measures, as opposed to operational costs. I'm  
19 wondering if you can assist the Commissioner by  
20 indicating by indicating to him in the B.C.  
21 Interior how much of the operational costs  
22 associated with catch monitoring are paid by PICFI  
23 funds.

24 MR. MASSON: There has been in the year 3 and 4 of  
25 PICFI \$200,000 provided to B.C. Interior to  
26 support FSC catch monitoring. In year 4 there was  
27 \$40,000 to support a new recreational fishery that  
28 needed to be monitored. And in the current year  
29 we're looking at a reduced amount to the B.C.  
30 Interior, somewhere in the neighbourhood, and  
31 we're yet to finalize, \$50,000 for FSC monitoring  
32 and \$40,000 for rec monitoring.

33 MR. MCGOWAN: Thank you. Those are my questions, Mr.  
34 Commissioner. I believe we're adjourning until  
35 10:00 a.m. on Tuesday.

36 THE COMMISSIONER: Yes, thank you, Mr. McGowan. Thanks  
37 again to Mr. McGowan and Ms. Chan for leading this  
38 evidence, as well as the others who have led some  
39 of the evidence from these witnesses. I  
40 particularly want to thank this panel for spending  
41 time with the Commission, for your willingness to  
42 answer questions today, those that were directed  
43 at each of you, or to the panel generally. I'm  
44 most grateful for your attendance and I appreciate  
45 it a great deal. Thank you.

46 We're adjourned, then, until Tuesday morning  
47 at 10:00 a.m. Thank you.

1 THE REGISTRAR: The hearing is now adjourned until  
2 Tuesday at ten o'clock.  
3

4 (PROCEEDINGS ADJOURNED TO MAY 17, 2011 AT  
5 10:00 A.M.)  
6  
7

8 I HEREBY CERTIFY the foregoing to be a  
9 true and accurate transcript of the  
10 evidence recorded on a sound recording  
11 apparatus, transcribed to the best of my  
12 skill and ability, and in accordance  
13 with applicable standards.  
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18 Diane Rochfort  
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21 true and accurate transcript of the  
22 evidence recorded on a sound recording  
23 apparatus, transcribed to the best of my  
24 skill and ability, and in accordance  
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30 Karen Acaster  
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33 true and accurate transcript of the  
34 evidence recorded on a sound recording  
35 apparatus, transcribed to the best of my  
36 skill and ability, and in accordance  
37 with applicable standards.  
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42 Pat Neumann  
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