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**Comité permanent des pêches et des océans**

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🕒 (1100)

[*English*]

**The Chair (Mr. Tom Wappel (Scarborough Southwest, Lib.)):** I call the meeting to order. Pursuant to Standing Order 108, we are continuing our study on the Fraser River and in particular the Salmon Fishery but not necessarily and more particularly the government response to our unanimous report on the Fraser River Salmon Fishery.

Now we have four witnesses, two of them in person. Mr. David Bevan, Acting Assistant Deputy Minister, Fisheries Management and Max Stanfield, Acting Director General of Resource Management and Fisheries Management. By telephone, not by video, by telephone we have Mr. Don Radford, Acting Regional Director, Pacific Region and Paul Ryall--I hope that's correctly pronounced--Lead in the Salmon Team, Pacific Region. Welcome to everyone.

Just a couple of opening remarks by me. Those who we are hearing but not seeing, namely Mr. Radford and Mr. Ryall, I would ask that each time you answer a question, you identify yourself as to who is speaking so that the people keeping the records of this meeting will know which one of the two of you is responding to a question. Obviously that doesn't apply to the two gentlemen here because our technical people will be able to see who is answering.

Secondly, because we have a couple of people by telephone, obviously I'm going to ask members and our witnesses to try not to speak over each other because it will be more difficult for us to hear the answers and to take a proper transcript.

As well although a teleconference is cheaper, much cheaper than a videoconference, it is of course not the ideal setting and we do want to take the opportunity to have as many questions and answers as possible. So I would urge members to be very succinct in their questions and I would urge our witnesses to be very succinct in their answers.

I'll try to let the meeting go but if I find that somebody is going on a little too long either member or witness, I'll have to remind them that we're looking for succinctness.

Having said that ...

Mr. Radford and Mr. Ryall can you hear me and did you hear what I just said?

**Mr. Don Radford (Acting Regional Director , Pacific Region, Department of Fisheries and Oceans):** Yes, we heard fine and we heard what you said, thank you.

**The Chair:** Excellent, thank you very much.

So I guess we're then ready to proceed and what I'm going to ask for is if either or both of our witnesses here today in front of us have an opening statement. They can give it and then I'll go to Mr. Radford and Mr. Ryall if they have an opening statement and then I'll go to questions. I would ask that the opening statements be succinct.

Mr. Bevan.

🕒 (1105)

**Mr. David Bevan (Acting Assistant Deputy Minister, Fisheries Management, Department of Fisheries and Oceans):** Thank you, Mr. Chairman. I'll be making the opening statement on behalf of the Department of Fisheries and Oceans.

I just want to thank the committee for its work on the Fraser River Fishery and for its recommendations. Certainly there has been a tremendously challenging decade for the Fraser River Fisheries and perhaps more. There's been challenges with respect to ocean survival as a result of changes in the ocean regimes. There's been challenges resulting from market shifts caused by aquaculture products and the challenges that's caused in terms of prices.

More recently, there's been challenges with respect to conservation issues. That's going to be something we will all have to face in terms of species at risk and our response to that. In addition of course starting in the early 1990s, there were changes with respect to some of the allocation issues around first nations and those will of course continue with the treaty process.

As a result of all those challenges there have been a number of initiatives, changes in the way we've managed the fishery and reviews in terms of the sockeye review that was conducted by the department in consultation with all stakeholders. As well, we've also engaged with the province in a joint task force that will be making its report shortly. That is a report that will look at how fisheries will be managed in terms of post-treaty. What will they look like at the end of that process and taking into consideration all the stresses and strains that the fishery has faced in terms of the adjustments through license policy changes.

Yet with all of those changes and all of those adaptations, there's been a problem with the ability of that fishery to remain viable economically and it's facing continuous stresses, etc.

So I hope that we can help the committee in terms of providing you with the information. There will be obviously a lot more happening once we've received the joint task force's recommendations and report and we'll be looking at what that entails as well as what this committee is bringing to the minister in terms of how we proceed from here.

Thank you.

**The Chair:**

Thank you. That was succinct. Thanks. And that's on behalf of all four of you? Very good.

Then we'll get right into questioning. I just want to remind members, I know members have their own questions, but our staff did provide us with briefing notes and suggested questions, so I hope we'll be able to get to those because there are some good ones in there.

We'll go right to the vice-chair of the committee, on the opposition side, Mr. Cummins.

**Mr. John Cummins (Delta—South Richmond, CPC):** Thank you, Mr. Chairman.

Mr. Chairman, the issue of importance here and of significance today is the government's response to the Sixth Report of the Standing Committee on Fisheries and Oceans on the 2001 Fraser River Salmon Fishery.

The committee's report is one of two independent reviews which challenged, if you will, the government's racially-motivated policy on management of the Fraser River. The committee, of course, had its recommendations and most significantly called for a return to a single fishery and the British Columbia provincial court also heard testimony over six weeks and concurred with the finding of the committee and called on the government to shut down this commercial fishery.

It should be stated that at every opportunity, DFO had the ability to bring witnesses forward in the court--as many witnesses as they wished--and to bring in as many aboriginal witnesses as they wanted to bolster their claims.

I think it should be noted that there were no time restrictions in the court and they could have brought as many witnesses as they wished. The hearings were, in fact, public and if the government does have a problem with that process, the problem is all theirs.

What I want to do, Mr. Chairman, very quickly is address the issue of a couple of comments in here by the department in their response to us. In recommendation 1, in paragraph 3 of the government's response, they say they want to maintain a small boat commercial fishery in areas close to their communities.

Mr. Chairman, I'd like to pass these photos around, if you will. Mr. Chairman, the photos were actually presented in evidence in the CAP decision and if you'd take those to the witnesses first, please, I'd appreciate it.

Mr. Chairman, the first photo here--this one here--is a photo of boats owned by the Tsawwassen Indian Band in Ladner Harbour, on the first page.

On the second page are photos of three vessels which are owned by members of the Musqueam Indian Band.

This second collection of pictures, Mr. Chairman, with the bright blue on the front are pictures which were taken during the post-protest fishery that was before the CAP decision. These pictures are pictures of vessels belonging to the Musqueam Indian Band, plus there is a picture of a Fisheries patrol boat on there as well, but the rest of the vessels you see, chairman, are pictures of Musqueam vessels.

My first question, Mr. Chairman, would be how can the department justify this separate program for aboriginals on the notion that the aboriginal fishery is a small boat fishery?

🕒 (1110)

**The Chair:** Mr. Cummins, before we go to that I want to point out that that was three minutes and 45 seconds to get to your first question. I understand you had to have a preamble, but I'm watching carefully for the next questions.

For the purposes of the record I want to make sure that the record reflects what you're referring to. I have in front of me four pages of photographs . Is that correct?

**Mr. John Cummins:** That's correct.

**The Chair:** That's all you've handed out? And on the first page we had--

**Mr. John Cummins:** No, there's one section... The photos in this first, Mr. Chairmen, are photos which were taken in the Musqueam fishery--

**The Chair:** All right. This is what I'm trying to get at because no one is going to be able to understand this transcript unless we specify what we're talking about, so the first set of photographs are photographs which I would characterize with lots of blue sky. Would that be fair enough?

**Mr. John Cummins:** That's correct. Yes, fine.

**The Chair:** And there are four pages of them--

**The Chair:** Yes.

**Mr. John Cummins:** --and then there's a second group of photographs which are more white and more of fishing vessels. Am I correct?

**Mr. John Cummins:** That's correct.

**The Chair:** And there are two pages of that?

**Mr. John Cummins:** Yes.

**The Chair:** All right, so at least the record knows what we're referring to and we'll identify the first group of photographs as exhibit 1 and the second group of photographs as exhibit 2. So if we just refer to them as exhibit 1 and exhibit 2 if you're referring to them specifically and then you can refer to the page numbers of those exhibits.

Now who was your question addressed to?

**Mr. John Cummins:** Mr. Bevan will do.

**The Chair:** Thank you.

Mr. Bevan.

**Mr. David Bevan:** I presume then that the question that I'm to answer is what is the justification for the terms of the small boat fishery relevant to these vessels. Clearly and I can't get into the Cappe decision, that is under appeal, etc. so I'll respond to that particular question and then perhaps turn it over to Mr. Radford for elaboration.

There are a number of Musqueam and Tsawwassen fishers that have licences and are able to fish in the gill net fishery under the normal commercial openings. Those individuals also have access to pilot sales fisheries and so the vessels that I see here would appear to be those types of vessels.

In openings under pilot sales in the past and again, that is a practice in the past, it has been discontinued, we would observe that many of the vessels in use in those fisheries are not at all similar to these. They are small, open skiffs and there are large numbers of participants that don't have this kind of equipment. So I'm not quite sure how representative of the fleet these are in particular.

I'll turn it over to Don Radford to perhaps elaborate on that.

**The Chair:** Mr. Radford, do you have a comment?

Obviously, you can't see the photographs.

**Mr. David Bevan:** They appear to be normal commercial fishing vessels in terms of size and configuration, crawler and gill net capacity.

**The Chair:** So, Mr. Radford, recognizing that you don't have the photographs in front of you, do you have any comments on the question?

**Mr. Don Radford:** Excuse me, Mr. Chairman, it's Don Radford in Vancouver speaking.

I'm detecting that question was directed at me, but unfortunately I'm not receiving a translation.

🕒 (1115)

**The Chair:** I'm not going to take any time off your time.

Mr. Radford, just so we understand ourselves, you're not getting a transmission or you're getting it in French?

**Mr. Don Radford:** The question I'm hearing is entirely in French and I don't understand it well enough to be able to respond.

**The Chair:** Well, that's understandable.

Obviously, I guess this is what's called a technical difficulty. We'll try to solve it for you.

**Mr. Don Radford:** Thank you.

**Mr. John Cummins:** Mr. Chairman, if I could.

Under questioning, fisheries officer, Herb Redikopf, provided a court and Cappe, actually, with information. He said that on the night in question there were 240 gill

netters actively fishing the water at all times. Then he said “I believe it was 234 vessels to be precise”.

He's questioned by the judge who says that there was a range of vessels involved in the aboriginal community fishing licence fishery and they discussed about the size of the vessels. Mr. Redikopf suggests that most of the vessels have hydraulic drums. In other words, they're fairly large vessels as those pictured in the pictures, Mr. Chairman and then he says “and there's a couple of small vessels, your Honour”. So out of 234, he says “a couple of small vessels”.

Mr. Chairman, there are small vessels in the commercial fishery as well, for example, “Kate Mae II” is only 18.01 feet long. I, Mr. Chairman, for a number of years fished a vessel in this fishery that was only 22 ft. long. So I'd like to know why the department thinks it can base...or why this information and incorrect information is given in the response to the committee that somehow this is a small boat fishery?

**The Chair:** Mr. Bevan.

**Mr. David Bevan:** I think it's important as well that Tsawwassen and Musqueam are fishing in one location and their fleet is one configuration, but also we have other first nations, Solo and those fishing on the Somass that are fishing with other kinds of equipment. So it perhaps is a generalization to say either they're large or small. That is perhaps something to consider.

But the fact is in the other areas of the Fraser River the desire of the first nations was to use smaller vessels in the conduct of their fishery above Mission.

**The Chair:** You would agree that there were larger vessels as well, clearly.

**Mr. David Bevan:** Clearly, yes. There are larger vessels as well in the fisheries of the first nations lower in the river.

**The Chair:** Thank you.

Mr. Cummins.

**Mr. John Cummins:** As I suggested, Mr. Chairman, the small fish vessels, many of which are retired from the commercial fishery, some which are double licensed, they also fish set nets. So this is nothing to do with vessel size, Mr. Chairman.

The comment in this document is the government's response in the second paragraph is that “this fishery improved economic benefits to first nations, who faced poor economic outlooks”.

Mr. Chairman, I want to just read some of what Judge Cappe found on that, and there was plenty of evidence made available on this issue. There was evidence that the department had the ability to provide evidence to the contrary.

Cappe said:

From the evidence that I was lead, I conclude that the Musqueam band is situated on a well situated urban reserve on the outskirts of Vancouver and controls relatively valuable property. This property and other business interests of the band produced a substantial income available to the band for the benefit of the band and its members. As a result, the real estate and personal possessions of the band members described by the witnesses and evidenced by photos are at least of a standard representative of the community at large.

He goes on:

The Tsawwassen Band has a reserve further from the metropolitan area, and therefore quite less valuable. The band leases properties and has business ventures, and there was similar evidence concerning quality of housing and possessions of band members.

Then he goes on to say:

Even if a financial disadvantage were an issue, there was no economic study or assessment done prior to or during the pilot sales fishery concerning the economic needs of the band and the financial rewards the fishery would produce.

He continues:

Since financial disadvantage is not a consideration with these bands, and if the department had no interest in the financial aspects of the pilot sales fishery, it is difficult to understand what other disadvantages the other pilot sales program was intended to remedy.

So in short, Mr. Chairman, there is no economic necessity. There are no studies that show that this would improve the economic outlook for the band of the time of this trial.

I'd like to ask the witnesses, where are the studies that justify your conclusion that somehow this is to provide economic benefit? I'm not talking about macro-studies here, nationwide. I'm talking about studies relevant to the bands under question.

🕒 (1120)

**The Chair:** Before you answer, Mr. Bevan, just to be fair, if I read the government's response correctly, they aren't identifying two bands. They're talking in general about the first nations. Does the judge talk in general about the first nations, or is he only talking about the two bands you mentioned?

**Mr. John Cummins:** We in fact are talking about these bands as well, the bands that are involved in pilot sales fishery. That's what I'm talking about.

**The Chair:** All of them.

**Mr. John Cummins:** That's right.

**The Chair:** But the judge is not.

**Mr. John Cummins:** Yes, he is.

**The Chair:** He is talking two specific bands in what you read, as I understood it.

**Mr. John Cummins:** I gave evidence about those two bands. The third is the Sto:lo. Their situation is similar, Mr. Chairman.

**The Chair:** So the question, Mr. Bevan, is simple: Do you have studies that back up the statement in the government response that, in general, first nations on the west coast faced poor economic outlooks?

**Mr. David Bevan:** First off, again, there's a number of references to the Cappe decision. I can't really comment on that. That has been appealed, and I think it's not my place to sort of re-try the decision. So I won't want to comment on that.

I think it's clear as well that the Government of Canada's policy relevant to first nations is to endeavour to improve their situation. There have been numerous studies on the general well-being of first nations' communities. The evidence from those studies is clear. In general, there are numerous problems on first nations' communities, and that goes from one coast to the other, perhaps on the third coast as well.

The government's policy on making commercial access and making food, social and ceremonial access available to first nations is absolutely clear, and it's based on those general policies. Relevant to the specifics of those bands, I can't answer the question. I don't know that there was any specific evaluation there, and I think it's pretty clear, however, on the broader issue in terms of studies done by DIAND and others, those have been abundantly clear over the years that there are difficulties.

**The Chair:** Excuse me, Mr. Cummins. Your time is over, but I will get back to you.

I will say this. The government's response made a statement of fact that first nations faced poor economic outlooks. We are well aware of policy. We understand what policy is, but the response stated that it improved economic benefits for first nations. Now, we're not talking about first nations in Ontario or the Atlantic. Clearly, we're referring to first nations in general on the west coast.

So the question was very specific, and I'd like a specific answer. Does the Department of Fisheries and Oceans have any studies of bands on the west coast that show, firstly, that they faced poor economic outlooks, and secondly, that their economic outlook improved because of the pilot sales fishery? That's a very specific question.

**Mr. David Bevan:**

Yes, and I haven't got a specific answer. I'll have to ask Mr. Radford if there is any specific answer that he can provide.

**The Chair:** Let's ask him. Mr. Radford, I hope you can hear me in the English language. Did you hear my question and can you answer it?

**Mr. Don Radford:** I did hear your question. I cannot answer it directly. I'm not aware of any specific studies that pertain exclusively to the economic situation regarding the first nations on the west coast.

**The Chair:** Okay, Mr. Bevan, I'd like you to inquire from your department and find out if there are, and if there are, would you provide them to our committee and if there are not, would you state that clearly for us in a letter.

**Mr. David Bevan:** Yes.

**The Chair:** We go now to the Liberal side. Anybody over there? Mr. Wood.

**Mr. Bob Wood (Nipissing, Lib.):** I wasn't around when all this was taking place, but there's a couple of recommendations that I would like to get some answers on. One is recommendation number seven, where it says, DFO consider more flexible approaches to the management of fisheries along the lines proposed by the area, association. Can you just tell us what the current state of that relationship is with the fleet?

**Mr. David Bevan:** Clearly, the way the fisheries have been run in the past are not going to be sustainable in the future, given the conservation concerns of the number of the stocks that are co-migrating with the stronger, more available stocks.

What we were looking at was arrangements there with pooling and other types of methods that have been done by in other areas that we would like to explore with the in that area to allow for openings when the strength of the stocks is not strong enough to sustain pressure from the entire fleet. Perhaps Mr. Radford can elaborate on that.

🕒 (1125)

**The Chair:** Mr. Radford.

**Mr. Paul Ryall (Lead, Salmon Team, Pacific Region, Department of Fisheries and Oceans):** This is Paul Ryall. I could address some of that as well. In discussions that we've had with the fleet, we've been looking at other ways to harvest, if there's identified small surpluses of salmon, and some of those things include changes to gill net size and duration of the fishery opening. In this way, if there's a small abundance we could harvest that with the fleet. We are exploring other options, but that's what was in place for 2002, for example.

**Mr. Bob Wood:** There was also another recommendation that asked for more stable access to the resources for the commercial and recreational fisheries. Was that ever carried out?

**Mr. David Bevan:** The study of the sockeye study in 2002 looked at some of those issues, but that is also a significant issue with respect to the joint task force being conducted by the province of British Columbia and Canada that will be reporting shortly.

The stabilization of access in the face of treaty negotiations and in the face of conservation concerns has been a significant challenge so there was an attempt made through some of the work done in the region to provide some framework for the access, in terms of first nations, recreational, and commercial fishers, but that has got to be revisited in light of further challenges, so there is further work being done on that, but again, I can turn to the region for further details.

**The Chair:** Any comments from the region?

**Mr. Don Radford:** Yes, it's Don Radford. I think that in the 2003 fishery, in which we had the findings of the standing committee, and the advice from the standing committee plus the advice from the 2003 post-season review, we were able to work relatively closely with the commercial industry through the Fraser River panel as well as with the recreational fishery to provide a much more stable and predictable pattern of fishery openings within the constraints of meeting our conservation requirements and I think that the reports, as I understand them from the industry were generally, satisfactory, with respect to the approach that we took in 2003.

**The Chair:** Thank you. Mr. Wood.

**Mr. Bob Wood:** There was also, correct me if I'm wrong, a federal-provincial joint task group was set up, wasn't it, to study fisheries. Has there been any response to that yet?

**Mr. David Bevan:** The report has yet to be released. It's done; it's in translation and it should be released shortly. That will then help frame a further debate and negotiation and consultation around the whole issue; what will the fisheries look like after treaties?

**Mr. Bob Wood:**

So what's going to happen to that report? Is it going to be made public? Are people going to have access to it, or is it going to be just shelved?

**Mr. David Bevan:** It will be made public. That's the intention, is to make it public, shortly.

**Mr. Bob Wood:** Thank you, Mr. Chair.

**The Chair:** Mr. Bevan, you'll make sure that we get a copy of it, then, please?

**Mr. David Bevan:** Yes, I will.

**The Chair:** Mr. Provenzano, time left, if you have some questions.

**Mr. Carmen Provenzano (Sault Ste. Marie, Lib.):** Well, I do. They relate to recommendation 6 and I just wanted some clarification. I don't know how much time I have, Mr. Chair.

**The Chair:** Six minutes.

**Mr. Carmen Provenzano:** Six minutes? I'm looking for some clarification on the distinction between a guardian and a fisheries officer. Recommendation 6, the committee had asked that "DFO fund and support activities of more fisheries officers". There were a number of statements made under that particular recommendation.

I, personally, could use some clarification based on the government's response on the distinction between a guardian and the functions of a guardian, and that of a fisheries officer.

**Mr. David Bevan:** Thank you. A fishery officer is a fully trained individual meeting all the qualifications, has gone through the normal training process, which is a significant, including spending time at the RCMP depot and passing through all the series of training modules there and the qualifications. So that person is a fishery officer under the law and meeting all the same qualifications as any other fishery officer, whether that individual is aboriginal or not. They're the same.

A guardian is a person with less authority. In recent years, they have been moving away from the enforcement or monitoring the control into other types of activities such as habitat, monitoring of catch landings and those kinds of things, but not related to enforcing the Fisheries Act. So that's the distinction.

I'll just make sure that I've got that right, if, Don, you have any further points to raise.

🕒 (1130)

**The Chair:** Mr. Radford.

**Mr. Don Radford:** It's Don Radford in Vancouver. No, I think that's an accurate portrayal, David. I don't have anything to add to that.

**Mr. Carmen Provenzano:** The aboriginal fisheries, are you able to advise the committee how many people would be involved in the enforcement and conservation aspects?

**Mr. David Bevan:** I think that Mr. Radford's better situated to answer that.

**The Chair:** Mr. Radford.

**Mr. Carmen Provenzano:** In comparison to the fisheries as a whole, Mr. Radford.

**Mr. Don Radford:** We have 170-odd fishery officers in the Pacific region. They aren't specifically tasked to aboriginal fisheries, or commercial fisheries or recreational fisheries. They're broadly based, situated in communities around the region, and they enforce all elements of the Fisheries Act and associated regulations.

I can't answer the question in terms of at any specific time how many people are engaged in enforcing the aboriginal fishery vs. the recreational or commercial fishery, or looking at habitat violations. We assign work based on priorities and where the threats and risks to conservation are greatest, depending on the circumstances at any given point in time.

**Mr. Carmen Provenzano:** Well, I understand we're recruiting fisheries officers from the aboriginal communities. Can you advise the committee whether those recruiting efforts are successful, and if you have some numbers as to the numbers of persons who have been recruited and how they're being deployed?

**Mr. David Bevan:** Is that a specific question to the Pacific region or nationally?

**Mr. Carmen Provenzano:** To the specific region.

**Mr. David Bevan:** To the Pacific region. Do you have those numbers off the top of your head, Don?

**Mr. Don Radford:** Sorry, David. It's Don Radford in Vancouver again. I don't have the numbers, precise numbers off the top of my head. I know that we have recruited a number of aboriginal people who are now working as fishery officers. I can determine the exact number and where they're deployed at present time, and provide that information to the committee if that's desirable.

**The Chair:** Thank you, Mr. Radford, and it is desirable.

**Mr. Don Radford:** Very well.

**The Chair:** Mr. Provenzano.

**Mr. Carmen Provenzano:** I'm not sure that I caught it in what you said. In terms of the Pacific region, how many fisheries officers does DFO have in performing conservation and protection branch functions?

**Mr. Don Radford:**

It's Don Radford in Vancouver. I believe there are in the neighbourhood of 170. I don't have the precise number. It varies depending on attrition rates and staffing rates and things like that but it's in the neighbourhood of 170 and when I provide the information regarding the number of aboriginal fishery officers, I'll provide the precise number of other non-aboriginal fishery officers as well.

**Mr. Carmen Provenzano:** Okay, well, now that I look at my notes I see that figure there. You did provide it earlier. Thank you, Mr. Radford. Those are my questions, Mr. Chair.

**The Chair:** Thank you. Just before I go to the next questioner, the government response, Mr. Bevan, to recommendation number six has some interesting wording and I'd appreciate it if you could help me with it. In the second paragraph it says "DFO has a system in place to screen out any guardian candidate with a fishery violation."

Now, you can write that sentence as "DFO has a system in place to screen any guardian candidate with a fisheries violation", or as you said to "screen out". That would imply that if they have a fisheries violation, they are out.

Shortly after that, you say: "DFO does not designate any individual where the criminal history of the person, including violations of the Fisheries Act, is felt to compromise his or her ability to function effectively as a fisheries guardian."

That, to me, indicates that if DFO feels that the ability to compromise is not affected, then someone could be appointed a fisheries guardian, notwithstanding that they had fisheries violations. I therefore see a conflict between that sentence and the first sentence, and our recommendation was to say, nobody can be a guardian if they have a fisheries violation.

Can you help me as to what the precise current guidelines are with respect to that issue?

🕒 (1135)

**Mr. David Bevan:** Okay, due to the changing role of the guardians, I'm going to have to see if the region can help me on that one, in that some guardians are not engaged, as I mentioned, or most are no longer engaged in the enforcement. Many are engaged in habitat or whatever but I'll see if the region can provide a more complete answer to that specific question.

**The Chair:** Mr. Radford, do you have, I hope, our recommendations and the government response in front of you?

**Mr. Don Radford:** I do, yes.

**The Chair:** You saw what I'm referring to, Mr. Radford?

**Mr. Don Radford:** Yes, and I think that David's correct. Guardians are not engaged in direct enforcement activities. They're engaged in fishery monitoring activities, but notwithstanding that, we do have a screening process. If people show up as having serious violations of the Fisheries Act or a record of that kind of activity, then we don't consider them any further. If there are violations of the Fisheries Act that may have been considered to be minor, then we consider that imbalance with the other attributes of the individual.

The Fisheries Act is quite broad. Some of the violations have in the past been...analogies have been made to things like speeding tickets, and minor over-possession, or things like that, and so I think that there is a bit of a grey area but I appreciate the recommendation of the committee.

**The Chair:** Thank you, Mr. Radford. I understand there's a grey area, as there always is in these things, and the key is that we're not going to spend our time debating what is serious. What's important is that where there isn't grey, where it's black and white and there is some part of the situation that is black and white, that you in fact do screen out these people and not appoint them for any purpose as a guardian because clearly they're not abiding by the provisions of the Fisheries Act and I understand your answer.

We'll leave it at that and I don't want to monopolize the time. We now then go to Mr. Cummins again. Five minutes.

**Mr. John Cummins:** Just to conclude the previous discussion, Mr. Chairman, again, from CAP, talking about whether or not there were economic studies done of the benefit that the department would suggest accrued to the bands from this fishery, the judge said very clearly that that wasn't the case. They said, "That was the evidence in Michele James who was an economist, and senior policy advisor with the Department of Fisheries and Oceans, from 1982 until 1997. She was there during the time period when the pilot sales program was implemented. Ms. James was responsible for doing such studies." There were no studies, and Mr. Bevan is probably aware of that.

Mr. Chairman, what I would like to discuss now are some issues here related to the management of the fishery. The Auditor General, in 1999, Mr. Pierce, in 1992, there was another report about unmonitored fisheries in the Fraser River, John Fraser in 1994, have all commented that a separate commercial fishery is not functional. Fraser himself, in 1995, in his report, which came out in 1995, said that, "to allow commercial sales in other areas now would simply add to the opportunity to poach like current pilot sales have done." He's referring to the sales under study, the question that fisheries had in question. Jordan Point, is actually an aboriginal, Musquiem fisheries officer as well is talking about the improved management in the fisheries. He says, "I don't know how important this is to any of you, but if we went through the exercise of four months of negotiations and expect to pay out over \$400,000 in contribution dollars to facilitate the agreed terms and conditions of the agreement", he's talking about the fisheries agreement with the Musquiem, "I would expect that we would ensure that the bands are informed of the requirements and the expectations. From all indications, it would appear that the

bands are already in non-compliance with the agreements, and the ink isn't even dry, and the fishery hasn't even started."

In testimony, Herb Redicopp, the Fisheries officer said, and he's talking about an audit he did in 1999. He says, ``Today's audit confirms investigative data from previous weeks which indicates the discrepancy around 300%, overall."

Mr. Chairman, my question here is quite simple. Does a 300% reporting discrepancy represent improved management and catch monitoring of first nations fisheries?

🕒 (1140)

**The Chair:** Mr. Bevan.

**Mr. David Bevan:** I think, clearly, not. That would be an incident, or a situation where there is a problem. We have real problems in monitoring all commercial salmon fisheries, whether it's pilot sales, or not. We need to improve that process, and are working on that.

I can say from my own experience in terms of the Fraser River, in 1993 when I was there, we implemented mandatory landing sites, and monitoring, etc. Compliance can be good sometime, and it can be poor in others. I think our challenge is to make sure it is as good as can be in all fisheries for most of the time. That is what is being worked on in terms of the salmon monitoring process for both pilot sales and other commercial fisheries. As well, we have to work on the issue of recreational monitoring and how to get a handle on that.

**Mr. John Cummins:** I think we're talking about the pilot sales, here, Mr. Bevan.

**Mr. David Bevan:** We're talking about a specific timeframe, as well. That may be something that is not indicative of the overall, but, I'll turn to my regional colleagues to perhaps comment more broadly on monitoring of salmon catches.

**Mr. John Cummins:** Before you do that, just let me add this little bit, Mr. Bevan, because your response is not addressing the issue at all. There is a serious poaching problem. It has been recognized since the inception of this program that the fish aren't counted, that there are violations of the regulations. Every fisheries officer that I've ever met will tell me that. You had plenty of opportunity, the department did, and CAP, to demonstrate to the judge that the fishery was well managed. In fact, the judge concluded that the literature from the department ``expressed the hope that the pilot sales fishery would provide stability to the commercial fishery by improving aboriginal catch data, increasing cooperation and enforcement, and reducing protests, and confrontation. The weight of the evidence is that none of this has occurred and the program has been counterproductive in each of these areas.

Mr. Bevan, that is a conclusion of a judge of the provincial court of British Columbia. I think it's a conclusion of everyone who I have talked to who has observed the fishery, a

participant, and not, and others. The only people who seem to be in a state of denial here, are the department. That certainly was the conclusion that this committee arrived at after its consultations. The court says there is a problem. The committee says there is a problem. You're in a state of denial.

**The Chair:** You love commenting on the CAP decision, Mr. Bevan, would you care to comment on that statement?

**Mr. David Bevan:** There are no pilot sales at this point. I think that's an issue that we have to look at. I mean there's no pilot sales. We are looking however at alternatives in terms of commercial access for first nations. We have the Allocation Transfer Program to provide first nations with licences and commercial access. And we are in negotiations, consultations with first nations as to what kind of fishing opportunities could be put in place in lieu of pilot sales. We are not talking about bringing them back, we are talking about an alternative.

I think that is important for the committee to consider in view of the line of questioning right now seems to be focusing on pre-CAP decision issues and on pilot sales, which are no more.

🕒 (1145)

**The Chair:** Mr. Bevan, thank you. I think that's a reasonable point to remind us about, the pilot sales have in fact been stopped as you pointed out.

Anybody over here? If not, I have something I'd like to ask.

Thank you.

On this point of enforcement, Mr. Bevan, our recommendation 4. Actually this is going to be addressed to Mr. Radford. The last couple of lines of the government's response to recommendation 4 is "No fishery is without compliance issues.", and who can disagree with that. "Where problems are identified, DFO initiates actions to provide proper control and monitoring of the fisheries."

I have received a letter from the Sportfishing Defence Alliance and it reads as follows, and this was a letter sent to the current minister of fisheries. I'm only going to read you the first paragraph.

Dear Minister Regan:

Our members are reporting that the illegal drift gillnet fishery has once again started in the Fraser River, upstream of the Agassiz-Rosedale Bridge. In addition to the illegal drift gillnets there are numerous set gillnets operating seven days a week in defiance of the law. These operations are not being carried out

clandestinely but in plain view of the public highway and your enforcement staff. Our members have repeatedly reported these infractions to your department through the Observe, Record & Report Program with no response action from your department at all. In view of the government's response that where problems are identified DFO initiates actions to provide proper control and monitoring, what is DFO Western Region doing about the reported illegal drift gillnet fishery on the Agassiz-Rosedale Bridge area of the Fraser River?

Mr. Radford.

**Mr. Don Radford:** This is Don Radford in Vancouver.

The fishing that's been identified in the letter from the Sportfishing Defence Alliance is related to a small group of Cheam First Nation participants. Action that we are taking is to work very closely with the majority of the Cheam Band, including the elected chief and council to develop an agreed-upon fishing plan for this year to provide us with a basis to have support from the band to address the illegal fishing that's happening in that area.

My understanding is the fishing that is happening is a very small group, a minority of band members and that it's our intent to establish a relationship with the Cheam Band that will facilitate enforcement of that kind of activity. I have to note that the relationship with the Cheam Band has vastly improved in recent months over previous years with the election of a new chief and council and that we are making significant progress in our work with the band. The level of illegal activity that is occurring is much reduced and we hope to reduce it even further to the point of being negligible.

**The Chair:** Well, good luck to you in that, Mr. Radford.

But another paragraph goes on to read:

This is the fifth year in a row that this illegal, continuous and high-impact illegal fishery has been allowed to go on unchecked by your department. Not only that, but it is the fifth year that such fisheries have gone on unchallenged during the migration period of stocks of high concern or endangered stocks.

Is that an accurate statement?

Mr. Radford.

**Mr. Don Radford:**

Yes, I'm just trying to digest the....

Could you please read the statement again?

🕒 (1150)

**The Chair:** Yes.

This is the fifth year in a row that this illegal, continuous and high-impact illegal fishery has been allowed to go on unchecked by your department.

I'll stop there.

Is it true that for five years illegal fishing has been going on in this area while you talk to the band?

**Mr. Don Radford:** I would dispute that. I think that we have not had a relationship that allowed us to talk to the band for the past five years. That relationship is very recent, perhaps within the last six to seven months.

It's true as far as I can determine except for that this year we are noting vast improvements over previous years.

**The Chair:** But DFO has continued to allow illegal fishing. Is that not correct?

**Mr. Don Radford:** There has been illegal fishing, and there have been enforcement actions and charges laid against Cheam band members for most of the period of time in question.

**The Chair:** Are you doing something about it now?

**Mr. Don Radford:** Yes. We are working with the Cheam band to try to develop a fishing plan to address this issue.

**The Chair:** While that's going on, is there still illegal drift gill net fisheries going on in the bridge area of the Fraser River? Is it still happening?

**Mr. Don Radford:** I believe that it is, yes.

**The Chair:** How about stopping it?

**Mr. Don Radford:** We are working to stop it. We are collecting information that will allow us to lay charges when the time is appropriate.

**The Chair:** Please do so. I would suggest that the time is now.

That's my questioning. Thank you.

Mr. Stoffer.

**Mr. Peter Stoffer (Sackville—Musquodoboit Valley—Eastern Shore, NDP):** And you want to know why fishermen get upset?

Mr. Chairman, thank you.

The question for Mr. Radford is, is that driftnet fishery that is going on, or was going on, illegal?

**Mr. Don Radford:** There are people who are fishing but are not fishing under the authority of a fishing plan or a licence. So yes, it is illegal.

**Mr. Peter Stoffer:** When the advisory group wrote that letter and said that for five years this...against the law.... I want to make sure, to be very clear, is that activity that the Cheam band did, that fishing, is that illegal? Is it against the law?

**The Chair:** Mr. Stoffer, he's already said yes. So don't push it. He's already agreed with you.

**Mr. Peter Stoffer:** Okay.

That's the point. If for five years, if that organization has told DFO that this illegal activity is happening...and the words we get from Mr. Radford are "we're working with them".

If I robbed a jewellery store, I can assure you the police wouldn't work with me to rob less. They would throw the book at me, and I would be confined. My activities of robbing a jewellery store would cease.

**The Chair:** You're an MP, so they might not throw the book at you.

**Mr. Peter Stoffer:** Maybe, yes. Maybe if I did something else.

The reality is that if it's illegal, you have to stop it. I put it to you that if those were non-aboriginal people doing that, I can assure you they would be ceased and disordered immediately.

I've seen non-aboriginal fishermen...heavy penalty.... They were illegally fishing because they saw it on the east coast, Mr. Speaker. We had four fishermen of the Southwest Fishermen's Rights Association who put out a hook and line, and they were arrested. These people were protesting. They said that the DFO's actions were wrong. Their boats were hauled in. They were hauled in. They were charged immediately.

Yet on the Fraser River, we have an aboriginal group who is participating in illegal activity, as per DFO, and the answer we get is "we're working with them". I just find that absolutely amazing.

My question, Mr. Chairman, is on the food, social, and ceremonial purpose, which is different from pilot sales, is that correct?

**Mr. David Bevan:** Yes.

**Mr. Peter Stoffer:** Thank you.

Who was managing and monitoring the food, ceremonial, and the social fishery? Who monitors that?

**Mr. David Bevan:** The Department of Fisheries and Oceans has the ultimate responsibility. In some cases, there is an arrangement made with the bands that there is monitoring, and they provide the information to us and we do an audit function. In other cases, it's more direct fishery officer involvement.

**Mr. Peter Stoffer:** Is there a guardian, or is it a fisheries officer that actually monitors what goes on?

**Mr. David Bevan:** There may be a role for a guardian in terms of providing us with dockside information, not with respect to enforcement, as I said earlier, but with information about what's coming in at the dockside.

Those are subject to agreements under the Aboriginal Fisheries Strategy, so they can vary depending on the circumstances. If you're talking specifically about the Fraser River, I'll turn it over to the regent to provide more clarity.

In general, they are subject to agreements, and there can be different arrangements within those agreements depending on the circumstances, etc.

🕒 (1155)

**Mr. Peter Stoffer:** Mr. Bevan--

**The Chair:** Sorry, Mr. Stoffer.

Did you want the region to answer the question?

**Mr. Peter Stoffer:** No, I've just got a sort of furtherance on that. In furtherance to that, the food, social and ceremonial fishery, is any band or any aboriginal group allowed to sell any of that fish?

**Mr. David Bevan:** No. Under the provision of the licences, they are not allowed to sell. It's not a commercial opportunity.

**Mr. Peter Stoffer:** Is there any evidence that you have seen over the years that some fish from that purpose has been sold?

**Mr. David Bevan:** Yes, there is evidence. There have been charges laid. There have been fines levied. Obviously there's evidence in that case that people were selling fish that were originally designated for food, social and ceremonial purposes.

**Mr. Peter Stoffer:** Mr. Bevan, my last point to you is the Native Brotherhood of British Columbia of which Chris Cook is the president, feels, at least when I spoke to him a while ago, and I know that the union, the UFAW, UCAW, are very concerned that what has happened along the Fraser river has pit aboriginal people against aboriginal people. You have coastal commercial fishermen who are aboriginal and then regarding quotas and who can fish and what you can fish with against inland fisheries on aboriginal people.

Has DFO at anytime tried to bring those two groups of people together to reach some sort of a compromise where people fish more or less under the same rules? Has that been attempted?

**Mr. David Bevan:** We have attempted that, as I think some will recall. Just after the aboriginal fishery strategy came into play, there were attempts to get watershed agreements in the Fraser River, bringing together commercial, recreational and aboriginal fisheries from both the lower Fraser River bands as well as the upper Fraser River bands. We have been unable to broker a watershed agreement in the Fraser River however. That's not to say it didn't occur in other locations. We had better success in the Skeena River.

**Mr. Peter Stoffer:** Just to clarify the beginning of my questioning, if DFO recognizes and notices that there is illegal fishing going on, should it not be DFO's responsibility to shut that fishery down immediately--not work with, shut it down--regardless of who commits that illegal act? Is it not the DFO's responsibility to do that?

**Mr. David Bevan:** On a simplistic view I'd say that would be right, but I think it's more important to look at the broader issue here.

If we don't maintain compliance by running a police state, we need the cooperation of the communities and of the fishers. If we don't have most of them on side then it becomes difficult. We are clearly unable to take on large groups of people. That's not what we do. We try to work with people to get compliance, in particular licensed fishermen.

Yes, we do take tough action against the individual poachers or individuals from.... You'll recall in your area that there have been strong actions taken against those individuals from first nations who have been trying to fish outside the provisions of the law. Communities are dealing with them. It's better. Getting them on side and getting more overall compliance is the better approach than conflict, confrontation and violence.

**Mr. Peter Stoffer:** But Mr.--

**The Chair:** Mr. Stoffer, that's seven minutes. I want to thank both of you for your snappers, quick questions and quick answers. I appreciate it.

**Mr. Peter Stoffer:** I just have one...and then that's it.

**The Chair:** One little one. I'm watching. Go ahead.

**Mr. Peter Stoffer:** Thank you.

Mr. Bevan, if it's the constitutional obligation of DFO to protect fish and fish habitat, if somebody is committing an illegal act, the department, in my view, has the obligation to stop that illegal activity from happening. By not doing it, I say you abrogate your responsibility for not protecting fish and fish habitat.

**Mr. David Bevan:** I'm going to agree with you that we have to stop it, but I think what I'm going to disagree with you on is the methodology of stopping it.

Do you stop it right away by a heavy-handed approach every time and do you alienate communities, do you alienate--and I'm not just talking first nations here--all groups of fishers, or do you try to have a situation where you get compliance by having the people understand the need for it and bringing compliance on themselves? I think it's not a matter of should you have compliance, should the rules be obeyed, it's a matter of how you achieve that and do so without the need for huge levels of resources and a very strong and sometimes violent confrontation with people who are Canadians. Is that the way we want to do it? Or do we want to find a better way to achieve compliance? That's what we're trying to do in terms of this situation.

🕒 (1200)

**The Chair:** Thank you, and we understand that.

However, sometimes when ordinary Canadians observe illegal activities not being stopped, it encourages those ordinary Canadians to join in those illegal activities to make a point, and that too should not be encouraged. It's just an editorial, not a question.

We're at Mr. Provenzano, if you have anything.

**Mr. Carmen Provenzano:** Certainly there are tremendous complexities in developing positions on in-river fisheries, and I wouldn't pretend to know all of what they might be, but I would say or I would guess that the Fraser River is a good example of the myriad of complexities that might arise, especially with respect to the negotiation, and implementation of treaties.

Do you have any idea, Mr. Bevan, how many treaties might be eventually made along the Fraser River system?

**Mr. David Bevan:** That's a really significant challenge. There are a large number of bands, as you're aware, on that system. How the end point of the discussions, negotiations will be reflected in terms of treaties, I can't predict. That's probably a question best posed to the treaty negotiators themselves, but clearly there are going to be divergent interests in terms of those bands at the mouth of the Fraser, mid-river, and upper-river. We have

not been able to bring them together, so I don't think we're going to see aggregates of communities subject to treaties covering the larger areas. So if there are going to be treaties in that river system, I would suspect there would have to be a fairly large number, but perhaps the region could provide some better information regarding the treaty process that's under way right now.

**Mr. Carmen Provenzano:** I suppose the same might be said for what fraction of salmon production might be allocated to the treaties. If you don't know how many--

**Mr. David Bevan:** That was a question that was provided to the joint task force for their consideration, and as I said their report will be coming out shortly. It can't be a definitive response. They don't have any magic ball that will allow them to see what the end result will be in terms of all the obligations that will be created through the treaty process, but they were charged with looking at fisheries after treaties, and to do that they would have had to have wrestled with that question. So we'll see what's in their report when it's made public.

**Mr. Carmen Provenzano:** I thought that joint task group had reported on post-treaty fisheries.

**Mr. David Bevan:** The report has yet to be made public. It had to be translated, and it will be made public as it can be.

**The Chair:** This is the same report that you were talking to Mr. Wood about earlier, correct?

**Mr. David Bevan:** That's correct.

**Mr. Carmen Provenzano:** And when can we expect that, were you saying?

**Mr. David Bevan:** I can only say as soon as possible, and that would be hopefully within a matter of weeks, not longer.

**The Chair:** Just to bootleg under Mr. Provenzano's time, two quick questions. Can you tell us what the current status of the cap appeal is in terms of where it stands, and the appeal process? Has the paperwork been filed, and are you waiting for a hearing date, or where is it?

**Mr. David Bevan:** It's likely to be heard this spring, but I don't have the date, unless the region does know the date. We'll have to get that to you following this session.

**The Chair:** Mr. Radford, do you know what's happening with the appeal?

**Mr. Don Radford:** Yes. The case has been appealed, and scheduled to be heard between May 31 and June 11.

**The Chair:** Of this year.

**Mr. Don Radford:** Of this year.

**The Chair:** That's good for the court of appeal, wherever you're appealing to. Usually the court takes a long time.

Secondly, pilot sales program, and Mr. Bevan, I fully appreciate that it's been stopped. What was the legislative authority for the pilot sales program?

🕒 (1205)

**Mr. David Bevan:** The Fisheries Act.

**The Chair:** What section?

**Mr. David Bevan:** Section 7 of the Fisheries Act provides the Minister of Fisheries with the absolute discretion to provide licences to whomever, and his absolute discretion to decide who gets the fish, where they fish, how long they fish, and with what kind of gear they fish.

**The Chair:** What a section. All right, thank you for the answer.

Mr. Cummins, are we going to go back to you, or are we going to give Mr. Hearn or Mr. Burton any chance?

Mr. Cummins, please.

**Mr. John Cummins:** Thank you.

I'll get back to the point on misinformation from Mr. Bevan in a second, but what I'd like to .... Well, this is the game these guys play. It's half answers, it's a lot of goodwill, nice-sounding stuff, but the reality is, when the rubber hits the road, these are the guys who have caused the demise of the Fraser River fishery. The Fraser River fishery was a healthy fishery until they started messing around in the late eighties, and not enforcing the law. That's the problem here.

The comments on this Cheam, I'm just going to go back to the Cheam issue which you raised so well, Mr. Chairman. There are some problems that flow from that. I think that the answers that were given by the department were simply self-serving, and they tend to try to dismiss the concerns, the legitimate concerns that are expressed with the notion that somehow they're doing something different, which they're not. They've been talking to these guys for a long time.

Go back to last June, Mr. Chairman, and there were a couple of Fisheries officers who attended onto the reserve to take some enforcement actions. They got into a whole lot of

difficulty, Mr. Chairman. At the time, the fishing was closed to the Cheam Band, and fishing restrictions had been put in place to protect migrating Chinook salmon. When these officers went on to the Cheam reserve to do the job, they were threatened with a club and later with a shovel. The band member also threatened to drive his grader machine into the DFO vehicle, pushing it into the Fraser River. Fisheries officers drew their side arms and used pepper spray to subdue the individual.

As an offshoot from that, the Fisheries officers kind of gave up on monitoring in that area. They entered into an agreement whereby they were going to let the band know when they were going to come by into their territory to investigate incidents and so on, but they backed off from monitoring the fishery, and they simply observed. They refused to take enforcement actions. That went on throughout the summer. In fact, the Fisheries officers who bravely went on the reserve to do their job were threatened, and these guys were sent home, Mr. Chairman. They were sent home, suspended from work for doing their job. So how, Mr. Bevan, can you tell us here with a straight face, without blushing in embarrassment, that somehow you're doing your job when you send two Fisheries officers home from work, three Fisheries officers, in fact, home from work last year who were simply attempting to enforce the law?

**Mr. David Bevan:** I'm going to let the region respond in more detail, but that's not the whole story, obviously. The agreement that was signed was altered later in the season to provide the Fisheries officers with the instructions to go back into the area and continue enforcement. Those Fisheries officers were reinstated quickly. They were never without pay, etc., and they were on administrative duties.

**Mr. John Cummins:** They were off until August.

**Mr. David Bevan:** They were on administrative leave until the--

**Mr. John Cummins:** For what?

**Mr. David Bevan:** There was a complaint against their actions and that complaint has to be investigated as well.

Having said that, they were put back on duty and it was made clear as well that there be the agreement which had to be altered in order to make enforcement a little bit more readily implemented.

I'll turn to the region on some of those responses.

**The Chair:** Yes, Mr. Radford, specifically on the issue that Mr. Cummins raised about the officers and what happened to them.

**Mr. Don Radford:** It's Don Radford in Vancouver.

I think David answered accurately. The officers were on administrative leave pending the outcome of an RCMP investigation, and they were reinstated. They were never without pay and they were never in any way, shape or form disciplined for the action that they took. They were simply on administrative leave while an investigation was underway.

🕒 (1210)

**The Chair:** Thank you.

Mr. Cummins.

**Mr. John Cummins:** Mr. Chairman, in a note that I have, a document that I received under Access to Information, Chilliwack stats, noted June 8:

As the result of confrontation, enforcement actions are suspended against Cheam.

In a note which was prepared for the minister for question period, it said,

The minister is advised that Fisheries officers still refusing to do enforcement as they say it's not safe, following what happened in May and the subsequent enforcement agreement that DFO made with Cheam.

It goes on to say that,

The internal investigation found the Fisheries officers behaved properly in the incident, and that still no action has been taken against the Cheam leader who threatened the officers with a shovel and a club and a road grader, or with those who fished illegally, and continue to fish illegally.

In fact, no action was taken against the guy who threatened the Fisheries officers, was there?

**Mr. David Bevan:** I'm not familiar with the outcome of that particular case.

**Mr. John Cummins:** It was in the news.

**The Chair:** Hold on. I'm sure Mr. Radford is.

Mr. Radford, what happened to that gentleman?

**Mr. Don Radford:** This is Don Radford in Vancouver again, and the gentleman in question was the subject also of an RCMP investigation. The conclusion of the RCMP investigation was turned over to the provincial crown counsel for it to take action on and subsequent to its review of the case, I believe it was determined that there was inadequate information and it was not in the public interest to proceed with charges, so that was the end of that. It was not a departmental investigation. It was an RCMP investigation and it was handled by the provincial crown.

**The Chair:** That is fascinating.

**Mr. John Cummins:** The fact is, Mr. Chairman, that this individual was preventing fisheries officers from doing their lawful duty. That's a clear--

**The Chair:** That may be, but if it is true that the RCMP investigated and did give its conclusions to the provincial crown and if it is true that the provincial crown chose not to prosecute, we can't yell at DFO for that, I think.

I'm taking that is Mr. Radford's evidence. Is that correct, sir?

**Mr. Don Radford:** It is, thank you.

**Mr. John Cummins:** Mr. Chairman, my understanding would be that it would be the federal government that would prosecute, that the fisheries officers should have been the ones laying the charge. They're the ones who went onto the reserve to enforce the law. That's why they were there, and if the department had been backing them up it would have encouraged them to lay the charges. It's not the job of the RCMP to come on afterwards and treat the fisheries officers and this individual who threatened them as equals. In fact, the fisheries officers were there with the full authority of the crown enforcing the law and the RCMP showed up and started to negotiate. That is demeaning in itself to the fisheries officers, and I think the department, in actual fact, brokered a deal with the band to get its fisheries vehicle back and public notice was given that these fisheries officers were actually sent home without pay and it only came out later that wasn't the case. That is the kind of bartering that was done with the band to ensure that the law was enforced.

**The Chair:** Mr. Cummins, with due respect, first of all—and I'm not a practising criminal lawyer—there is a difference between charges under the Fisheries Act and allegations of assault which would come under the Criminal Code and would be investigated by the RCMP. We all know that crown attorneys in all provinces every day make decisions not to prosecute people who have been caught red-handed for one reason or another. It happens daily.

I'm not disputing your point or your outrage or whatever it is, nor am I a defence lawyer for the DFO, but I do want to say that if the issue was pushing, shoving, stealing a vehicle, preventing the vehicle from driving, those could be Criminal Code offences which clearly would be investigated by the RCMP, not by the fisheries officers. If there were violations of the Fisheries Act, I would agree with you, those charges should have been laid by fisheries and the officers should have been backed up.

🕒 (1215)

**Mr. John Cummins:** That's right, and they weren't. That's my point.

**The Chair:** The actual physical confrontation between the individuals--

**Mr. John Cummins:** --is another issue.

**The Chair:** --would have been a Criminal Code matter.

**Mr. John Cummins:** That's right. My point is that these fisheries officers went on that land to do their job and they weren't backed up by the department. Mr. Chairman, there is a double standard in treatment here, and this my point. As an example, on a commercial fishery in the last couple of years an individual, who I know, who never had a fisheries violation could not get his net aboard because it was loaded with fish. He should have done the best he could to pull it aboard whatever way he could. He was unable to do so, and he was charged because the fishery closed. He was charged. He was trying to bring the net in in full view of everyone. They charged him. They took him to court.

That's the way it's treated. If there's a fishery and it closes at 8 o'clock and I haven't got my net out of the water at 8 o'clock precisely I'm charged. There is no discussion about those issues within the commercial fleet, but there is this double standard here and that's why there's a problem. It's because there's a double standard. People know; the native bands like the Cheam know that the laws are not going to be enforced. Other bands know that it's not being enforced against the Cheam. They're going to push as well, so you just create an escalating problem. That's the issue here.

**The Chair:**

Okay, I think you've identified it from your point of view.

Thank you.

Where would we go now?

Mr. Provenzano, do you have anything?

**Mr. Carmen Provenzano:** Yes, I do.

**The Chair:** Please.

**Mr. Carmen Provenzano:** It's very intriguing, the jurisdictional aspects, and I suppose, with respect to in-river fisheries, the Fraser River included, that the complexities that we earlier referred to, are manifest there as well, or particularly so.

We have shared jurisdiction between the province and the federal government. I'm not asking you to take us all back to school, but is there some thumbnail sketch that you can give the committee so that we can understand the nature and scope of that shared jurisdiction in terms of enforcement, protection policies, etc.? What's the interplay? I know there's cooperation. Are there areas where there isn't cooperation? Are there areas where there's conflict? If you can?

**Mr. David Bevan:** Under the constitution the federal government is responsible for all the management of the habitat of fish and fisheries management. That has been delegated to a number of different jurisdiction. Ontario, Manitoba, Saskatchewan and Alberta are all delegated the authority to manage fisheries in their jurisdictions as is Quebec, which has jurisdiction over salmon and all the fresh water fisheries. It's not that way in Newfoundland, Nova Scotia, New Brunswick and P.E.I. We have not delegated. And in B.C. it's a mixed bag. We have jurisdiction over salmon management, right to the spawning grounds; the province has jurisdiction over other fresh water fisheries and steelhead. So that's how it was arranged to manage the fishery.

So the federal government has the responsibility for management of all aspects of the habitat and the salmon in the Fraser River Watershed.

With respect to the law, we have the obligation and responsibility to enforce the Fisheries Act. The fishery officers are peace officer with respect to the Fisheries Act. They are not peace officers with respect to the criminal code. That's why if there's an assault or whatever it's not something that is prosecuted under the Fisheries Act by fishery officers, it would be referred to the RCMP under the criminal code and tried in a provincial court.

**Mr. Carmen Provenzano:** Are the lines clear as to who moves over when you have an enforcement situation? Are the protocols well established?

**Mr. David Bevan:** Yes.

There's been a good relationship between fishery officers and the RCMP in British Columbia. There's a very clear understanding of who does what in terms of response to illegal activities and who would be responsible for investigation. And there's a number of times in the past where there have been joint patrols both in terms of doing fisheries work and, not necessarily in British Columbia, but there have been times when fishery officers have been asked by the RCMP to help out in some particular issues in certain parts in Atlantic Canada as a result of the Marshall decision, where fishery officers aided the RCMP in controlling crowds. But they have to do that only at the request of the RCMP and they cannot do that on their own initiative, it has to be under the supervision of the RCMP if they're going to take a role outside of enforcement of the Fisheries Act.

🕒 (1220)

**Mr. Carmen Provenzano:** An unrelated question. One of the recommendations of the committee in the report that's being discussed was that the department make an annual report to Parliament, respecting the Fraser River. The minister's answer was that, I forget the number, but it was over 100 different rivers that were under the administration of DFO and that to single out one specific river for an annual report wasn't feasible and just wasn't right, I guess. But the Fraser River, perhaps you would agree, has some unique complexities. Is there something in between an annual report and no report at all, that can

be done so that Parliament can be informed on the important issues that relate to that fishery?

**Mr. David Bevan:** I think we have an obligation, obviously, to be transparent in how we're managing all of them, and there's 175 or so fisheries in the country. This is an important one in terms of the public awareness and their interest. So we do have an obligation to make that public in a way that's available to all Canadians as well as Parliament. That was our intention of that particular response, to say that we will be doing the post season reviews and provide those to the public so that everybody can see what is being done in terms of the performance measurement around these fisheries.

**Mr. Carmen Provenzano:** Some of the difficulties, apparently anyway, seem to flow from the quality of information and the timing of that information. You know this committee has expressed an intense interest in what happens in those fisheries. Is there room for improvement there? Can we address that?

**Mr. David Bevan:** There's room not just in this fishery, there's room for improvement in many fisheries. We have a few, unfortunately too few; there are important fisheries where we have extremely good information, real time information coming in from the fleets, etc., and we have very good knowledge of what's going on. The larger the number of participants, the more divided into different fleets or communities the participants, and the more marginal their earnings relevant to their costs, the more difficult that becomes. We have that in not just the Fraser River, but other areas.

It is a real challenge to get good information, real time, or near real time, so that we can manage. We have had to make changes to a number of fisheries in British Columbia such as the herring where we have now got a better handle on that and we don't see the overruns of quota that existed in the past. In this particular fishery, again, it's not just what happens in the river above Mission, it's what happens in the entire fishery that targets Fraser River salmon and we need to make further improvements.

**Mr. Carmen Provenzano:** There's an obvious tone expressed of mistrust of some of the information that's coming out of the department. Can we address that?

Obviously you're interested in doing your job, but the information that's provided isn't necessarily trusted as being accurate. How do we get over that hurdle?

🕒 (1225)

**Mr. David Bevan:** Again, that's a specific challenge that comes at us in fisheries. A number of participants, that's the good examples of the Fraser River fisheries. We also have them where you have fleets from different provinces prosecuting the same stocks; where you have in-shore, mid-shore; these kinds of things. The only way you can get trust with respect to the information is to have the best quality information possible and to be able to demonstrate that it is accurate time and again.

That's not where we are at this point on the Fraser River. People are very attentive to even minor amounts. You can have a small quota overrun by two or three times and that will be viewed as the demonstration that everything is out of control. It's not necessarily the case, but those issues are so closely monitored by stakeholders, unless we can improve our performance so that we don't have any of those issues happening, we end up with a problem. That's the challenge that we are continuing to try and face. I think it's time that we look at this whole thing in a more comprehensive way and that's what the joint task force is hopefully going to help provide guidance on.

If I can add, it's not just the information, but the challenge we have is so many participants, so intense the fishing on the opening to happen, and so much concern. If you're on the beach and somebody else isn't it causes great concern and people monitor what's happening in those openings. That's the kind of thing that has led to this kind of mistrust. We have to reconsider how we go about business with the stakeholders and see if we can re-think how those fisheries are managed.

We're going to have to...they can't sustain themselves given the number of participants and the available harvest, etc. There's going to have to be a real look at how those fisheries are managed and that was the role of the joint task force. It's not just what happens after treaties, but it's with us now.

**The Chair:**

Needless to say we're in fact getting some sort of a report right now about the Fraser River and certainly the committee can very easily, on an annual basis if it so wishes, bring the officials back and get a further update, whether they want to give us an actual annual report or not.

But that's entirely up to the committee and any future committees but it's certainly possible. So theoretically, we can get a report whether we get a report or not, if you know what I mean.

We'll go to Mr. Cummins again and then Mr. Stoffer.

**Mr. John Cummins:** Thank you, Mr. Chairman.

I'm going to step away, in a sense, from the enforcement issues for a minute. Mr. Bevan talked about mistrust and I just have to comment that there is mistrust of the department in British Columbia and a large part of that is the double standard when it comes to enforcement. I think that's a key issue and it shouldn't be underestimated, Mr. Chairman.

I want to go to Recommendation 4 and,

The Committee recommends:

That DFO establish realistic Aboriginal food fisheries and that the Department follow through on the commitment of the previous Minister to the Standing Committee on Fisheries and Oceans to ensure that food fishery access is not being abused.

The government response is,

That DFO implemented the aboriginal fishing strategy to facilitate the management of fisheries in a manner that is consistent with the 1990 Supreme Court of Canada Sparrow decision. The development of an annual salmon harvest targets for first nations is complex and there is no prescriptive formula. DFO provides food, social and ceremonial access to aboriginal groups.

It goes on to say that they enter into negotiations to establish appropriate catch levels.

Mr. Chairman, let's just have a look at that and I've observed this nonsense over the years and basically the department uses this food fishery allocation now as an excuse for not enforcing the law.

This past year, the Tsawwassen Indian Band harvested 37,000 salmon--37,000 salmon. That works out to over 1,000 pounds for every man, woman and child on the reserve. That's under food fishing allocations.

So how can these fellows from the department sit here and tell us, or even suggest that they have the food fishery under control when those numbers are there. They're their numbers. They're out there and we're harvesting 1,000 pounds of fish for every man, woman and child on the reserve. I can't imagine anybody eating 1,000 pounds, over 1,000 pounds.

🕒 (1230)

**The Chair:** All right, why don't we take it one step at a time.

Mr. Bevan, is it true what Mr. Cummins said, that it's over 1,000 pounds of salmon per year per man, woman and child in the Tsawwassen Band? Is that true?

**Mr. David Bevan:** I'm going to have to ask the region to confirm that but we do have, shall we say generous amounts for food, social and ceremonial. It is not just for dinner every night. It is also ceremonial and social issues which do make it much more complex.

Also, how much is enough for food is a question we've been wrestling with in terms of that element but when we get advice, then, on how to handle this issue we have to also consider the social and ceremonial aspects of these allocations and that does make it very complex and, as suggested by the Supreme Court, it's something that we should be negotiating and we have been over the years.

But on the specific question, on the actual allocation per capita, I don't have that number but I believe it is quite generous, but I'll turn to the region.

**The Chair:** Mr. Radford, do you know the answer? Is that an accurate figure that Mr. Cummins threw out?

**Mr. Don Radford:** I believe that the catch number is accurate. I'm not familiar with the total population of Tsawwassen First Nation but I don't have any reason to dispute that number either.

**The Chair:** So then how was it arrived at?

**Mr. Don Radford:** Sorry, how was what arrived at?

**The Chair:** The amount that was allowed for food, social and ceremonial purposes. Isn't that your next question, Mr. Cummins?

How would that decision have been made by the department? Walk us through how the department comes up with what they consider to be a reasonable allocation for food, social and ceremonial purposes, using the Tsawwassen Band and the 1,00 pounds per person as an example of how you came up with that figure for that band. Can you do that?

**Mr. Don Radford:**

First of all, we don't consider the per capita number in negotiating food, social and ceremonial fisheries allocations with first nations.

**The Chair:** Why?

**Mr. Don Radford:** We use historical catch information and we negotiate based on what the needs the band identifies to us, together with the historical performance and the anticipated run size. So it's a negotiation process with those three key elements involved in it and it's not the department's place, in my understanding, to dictate what our values and our interpretation of what's acceptable for a specific number of fish for food, as we have to consider the societal and ceremonial elements of the fishery as well.

**The Chair:** Yes, I understand that as a bureaucratic answer, but a decision has to be made. You said you look at the historical references. Are you talking about long-time historical references which would, I would presume, show that that band over a historical period has taken 37,000 pounds...what was it?

**Mr. John Cummins:** Thirty-seven thousand fish. So I'm just concluding that they're sockeye. They could be spring salmon which are thirty pounders, so the number would even be higher.

**The Chair:** Well, 37,000 fish...are you saying that the Department of Fisheries and Oceans has the historical evidence that the Tsawwassen band has taken 37,000 fish yearly over a historic period?

**Mr. Don Radford:** For the period of the aboriginal fisheries program in which we've been negotiating these agreements, yes.

**The Chair:** Yes, but history and historical period doesn't refer to three, four, five years.

**Mr. Don Radford:** Well, the aboriginal fisheries program has been around for over ten years.

🕒 (1235)

**The Chair:** Okay, but the aboriginals have been around for 10,000 years. What's their historical fish take, salmon take per year?

**Mr. Don Radford:** I don't have that information at my fingertips. I'm sorry.

**The Chair:** All right, but presumably that is one of the pieces of information that you would look at when allocating the reasonable allocation of salmon for food, social and ceremonial purposes, not what a band wants for the last decade, but what a band has used for the last hundred years or two hundred years. That's what historical evidence indicates to me. Wouldn't you agree?

**Mr. Don Radford:** As I indicated, that's part of...I don't think our historical records go back a hundred years or certainly not two hundred years but that's part of a complex formula that we use in the negotiation process to arrive at an agreed-upon number.

**The Chair:** All right. Mr. Cummins.

**Mr. John Cummins:** The issue here, I guess, is that if you say that you don't take into consideration per capita data, you're talking historical catch info, which is not really historical, it's just the information, the catch over the last ten years, some of which is commercial, and anticipated run size, I guess if the run size goes up, folks eat more, but the issue here really is that this fish that's caught for food, social and ceremonial purposes is not to be sold, but it's being caught in quantities that make it obvious that it is being sold.

So is the department then not complicit in or at least aiding and abetting illegal activities?

**The Chair:** Mr. Bevan.

**Mr. David Bevan:** Clearly, we've laid charges against people for selling fish when they're not supposed to. I think that it was difficult for us, as noted by Mr. Radford, to dictate what is needed for ceremonial and social purposes. As you're aware, there are festivals, etc., around these and ceremonies around the arrival of salmon and we were unable to under the interpretation that we have of the Sparrow decision and other court case law, to dictate what was needed. We had to negotiate what was needed and the result has been evidenced since the start of the AFS program.

**The Chair:** Mr. Bevan, in an earlier answer to me, you said, and eloquently so, that the minister can do anything he wants under section 7. You quoted the section.

**Mr. David Bevan:** That was relevant to the pile of sales. It's a commercial fishery. This is a response to a Supreme Court decision. Yes, he can allocate what he wants to but in this case it's supposed to be for food, social and ceremonial that has a specific priority under the law after conservation.

So the minister has that authority under the Fisheries Act but is obviously guided by other law as well, and case law.

**The Chair:** Thank you. I understand that.

Now, what happens to a salmon in social and ceremonial purposes, other than being eaten?

**Mr. David Bevan:** It's going to be eaten, but not necessarily by the band members.

**The Chair:** So what is there, a big hootenanny and the entire village is called in?

**Mr. David Bevan:** I think that would be a rather disrespectful way to put it, but there would be and other kinds of ceremonies possibly.

**The Chair:** For who? For Vancouver? Or for the band, itself, or other bands?

**Mr. David Bevan:** Whenever the bands wish to celebrate the arrival, or whatever the occasion is, of the salmon, whoever they wish to invite. It's not our case to say that only certain people can be invited by a band to celebrate or for ceremonial purposes.

**The Chair:** But it is your case. And there's no disrespect meant here. I don't know the terminology, you do. But it is your job to determine whether or not the alleged social and ceremonial purposes to which the salmon is to be put have an historical basis beyond a decade.

**Mr. David Bevan:** I think it's our responsibility to make sure they're not sold. That's our obligation and we have to put in place the measures and the monitoring to discourage that practice. That's what we have to do. And the negotiations, we hear from them what

their needs are and we are obliged to negotiate with them to satisfy their needs in as reasonable a limit as we can possibly come up with.

But we don't do a per-capita consumption type of limit because that means it's food and not social and ceremonial use. And how we define "social and ceremonial", in terms of another culture, is something we've done through the negotiation process.

🕒 (1240)

**The Chair:** I understand that. But surely you could agree that you could do a per-capita count to determine a reasonable food portion, and then you would negotiate, along with that per-capita amount, the social and ceremonial on top of that.

**Mr. David Bevan:** That is a method, obviously, we haven't followed because it was for food, social and ceremonial. It's all the same, in terms of priority access and we just looked at it as one allocation. So it does lead to the kinds of arithmetic that can be done. It's 1,000 pounds per man, woman and child, but that's not taking into consideration any other ceremonies.

**The Chair:** Yes, we understand that.

So there are ways of looking at this beyond the ways that the department is currently looking at them.

**Mr. David Bevan:** Yes. Having said that, it does create a continuous issue, in terms of making sure we have the enforcement on the sale issue. This is not something that's specific to the Fraser River. It's an issue that we encounter in all of these allocations.

**The Chair:** Thank you. I appreciate the answer and I'm sorry.

Mr. Stoffer.

**Mr. John Cummins:** Just quickly on that, Mr. Chairman, and I think it's relevant, if Mr. Stoffer wouldn't mind.

What Mr. Bevan seems to be suggesting is that there is no sort of internal limitation to what's needed for food. That's entirely contrary to what the Supreme Court has found. In Gladstone, the court noted, and Sparrow, this fish for food, social and ceremonial purposes, that there was an internal limitation. It suggested that in a commercial fishery there is no limitation, that the desire for fish is unquenchable in a commercial situation, but with fish for food, social and ceremonial purposes, the Supreme Court of Canada, itself, has acknowledged that an internal limitation exists.

What you're telling us, Mr. Bevan, is that in the eyes of the department that there is no internal limitation.

**Mr. David Bevan:** I don't think it's quite fair to characterize it that way. There's an historical ceremonial attachment of the first nations people to salmon. Presumably, that doesn't have an open end to it. It doesn't involve putting the product on an open global market that has an appetite that can consume any amount of resources. It has a link to a ceremonial past and present that the first nations have relevant to the salmon and that would create, one presumes, a limit, but not one restricted, necessarily, to the size of the population of the band, but one that is limited by the ceremonial needs of the band.

**The Chair:** Thank you, Mr. Cummins.

Thank you, Mr. Bevan.

I've been very sort of lenient. We've gotten off my strictness and I apologize for that, so I'll be very lenient with you, too, Mr. Stoffer.

Go ahead.

**Mr. Peter Stoffer:** Sir, when a Mr. Cap and another person were charged with unlawfully fishing for salmon approximately August 20, 1998, who would have brought forward those charges?

**Mr. David Bevan:** Fishery officers.

**Mr. Peter Stoffer:** Fishery officers. So it would have been on behalf of DFO that this person would have been charged.

**Mr. David Bevan:** Yes. It would be Fishery officers acting as an agent of the department, enforcing the Fisheries Act.

**Mr. Peter Stoffer:** Very good. So this person, this officer in his decision assumed there was an unlawful act, charged the person, and the person went to court.

**Mr. David Bevan:** Not quite that. What the Fishery officer does is observe the violation, gathers the evidence, the evidence is then provided to the Department of Justice in terms of deciding whether or not to proceed with charged.

**Mr. Peter Stoffer:** Okay. So then it goes to court. The judge makes a decision, and the federal government appeals. Which branch of the federal government would have appealed?

**Mr. David Bevan:** That would be a decision made by the Department of Justice, or by the Minister of Justice.

**Mr. Peter Stoffer:** So in essence, the federal government charges, and then the federal government appeals.

**Mr. David Bevan:** That's correct. By the way, the defendant can do the same thing in terms if charged, or if somebody is making a civil suit, there are appeals.

**Mr. Peter Stoffer:** Okay. I'm not a lawyer by any means. I look at this in sort of an objective manner, as a lay person looking at this, the federal government though its agency takes an individual to court because of unlawful fishing, or alleged unlawful fishing. The person is found guilty, and then the same government ends up appealing that decision.

🕒 (1245)

**The Chair:** If a person was found innocent. If the person was found guilty, then there would be nothing for the federal government to appeal, because that's the result they wanted. If the person is found not guilty, because the judge found that the pilot sales project was unconstitutional, then the federal government would appeal saying that the judge's reason for acquitting the person was incorrect in law. Was that about it, Mr. Bevan?

**Mr. Peter Stoffer:** Was Mr. Capp, I guess in this case did the judge find him guilty?

**The Chair:** No. He was acquitted because, I believe, and Mr. Cummins let me know, and Mr. Bevan let me know if I'm wrong, because the pilot sales project was unconstitutional in the opinion of the provincial court judge. So the issue, the legal issue on appeal is whether or not the judge was correct in finding that the pilot sales project was unconstitutional. Am I more or less correct? Jump in there if I'm wrong.

**Mr. David Bevan:** I'm really not sure of the exact reason for the appeal, because it could have been that they would have appealed based on the fact that Mr. Capp was accused of illegally fishing, and that may be the issue, but I'm not sure whether it's a pilot sales question, or whether it's the illegal fishing.

**The Chair:** But in any event, if Mr. Capp had been convicted there would be no purpose in the crown appealing what it wanted, which was a conviction.

**Mr. Peter Stoffer:** In 2002 there was a protest fishery done by commercial fishermen, and aboriginal fishermen near the Adams River, and the government at the time shut them down. They said it was illegal, and they were all charged. The case went to court, and the judge threw the case out from my understanding because of a double standard of enforcement, and correct me if I'm wrong, has the government appealed that judge's decision, and is that still pending before the courts?

**Mr. David Bevan:** I'm going to have to see if the region knows anything about that specific situation.

**The Chair:** Mr. Radford, do you know anything about that?

**Mr. Don Radford:** I'm not familiar with any fishing near the Adams River, or any protest fishery near the Adams River. The Adams River is in the interior of British Columbia.

**The Chair:**

**Mr. Peter Stoffer:** This was in August of 2002.

**The Chair:** August of 2002. Does that ring a bell? Johnson Strait?verify sp

**Mr. Don Radford:** In Johnson Strait, yes indeed there was a protest fishery there. That's quite removed from the Adams River, unfortunately.

**The Chair:** Mr. Stoffer may have been wrong on the geography, but--

**Mr. Don Radford:** No, I'm sorry, I understand the situation. Now what was the question again, please?

**The Chair:** Mr. Stoffer.

**Mr. Peter Stoffer:** The government, or the department charged them, they've gone to court, and the judge threw the case out of court, and acquitted all of them, and I assume on the basis of some sort of a double standard on enforcement policy. I'm just assuming that. But my question is has the government appealed that decision, and if they have, is that decision still pending before the courts?

**Mr. Don Radford:** I don't know the answer to that question. I'd have to refer that to my colleagues at the Department of Justice.

**The Chair:** Maybe you could find that answer out for us in due course, and send us an answer.

**Mr. Don Radford:** Absolutely.

**The Chair:** Okay. Mr. Cummins, I'm so sorry, but I've noticed that we only have eleven minutes, and all of a sudden Mr. Hearn's and Mr. Burton's hands went up, and I promised Mr. Stoffer some latitude, so I'm going to have to let the department get back to us, and carry on with Mr. Stoffer. Then we'll go to these two, and that'll be the end of it.

**Mr. John Cummins:** Okay.

**Mr. Peter Stoffer:** Mr. Chairman and to the gentlemen who are here, I guess the problem I'm having is the rules of enforcement. When somebody commits an illegal fishing activity I suspect that they would be charged if indeed it is correct that indeed their actions are illegal, that they would be charged and under the proper rules. Every case has its merits. It goes to court and the judge does whatever.

Because on the east coast we had four or five fishermen, hook and line guys, the Southwest Nova Fishermen's Rights Association, represented by Don Grady. These are four or five guys who went out with a hook and line to fish and it was a protest fishery. They came back and Mr. Chairman, the law of the land was heavy. It went hard after these guys and these guys don't have anything, just the shirts on their backs and that's basically it. The government went hard after them, "in their words", to prove a point.

Yet on what we just heard today, there are some aboriginal people who were illegally fishing. It's noted that the activity was illegal and we get the word that they want to work with them.

I guess my point is, Mr. Bevan and the Chairman said it as well--I don't really have a question--but if you're going to enforce the law, the law must, in my opinion, be enforced equally among everyone. If you're upset or worried that a particular band may rise up in protest and get very angry and make threats against you, that would be no different than, say, a bunch of non-aboriginal fishermen doing the same thing.

If the government is going to enforce fisheries regulations on one group of people, my point, quite simply, is that you enforce those same regulations or rules on everybody regardless of their activity. If it's illegal, it's illegal. It doesn't matter who does that illegal act and that's just my point.

🕒 (1250)

**The Chair:** You've made your point. We don't have to have Mr. Bevan agree or disagree and if he wants to make a comment, please. If not, we can move on.

**Mr. David Bevan:** No, I think my previous comments reflect my response to that.

**The Chair:** Yes and I think it is the unanimous belief of the committee, for your information, that the laws of Canada should apply equally to all and should be enforced equally to all.

Mr. Hearn.

**Mr. Loyola Hearn (St. John's West, CPC):** Thank you, Mr. Chair.

I'll be very brief. I think the last statement sort of sums it all up, we're all supposed to be equal under the eyes of the law, but we also understand that certain groups in the country have treaties and so on that predate many of our laws. Maybe it was time the whole thing was looked at, because we're getting into more and more trouble on these issues.

I just wanted to come back to guardians and we talked about fisheries officers and guardians and I'm well aware of the difference in definition. However, I presume the

fisheries officers are direct employees of the department, whatever. But your guardians, are these employed directly by the department or do you contract out for the services?

**Mr. David Bevan:** I think the use of the term “guardian” is not always consistent across the country. As you're aware, in Newfoundland there are contracted-out guardians who do enforcement actions on the inland rivers.

The aboriginal guardians that we're talking about are employees of bands as a result of agreements between the federal government and the community. They don't do the same kind of work that is done by the guardians supplied by contractors to the work--

**Mr. Loyola Hearn:** Similar to the fisheries officers.

**Mr. David Bevan:** That's correct. So it's a totally different circumstance.

**Mr. Loyola Hearn:** You don't have a contracting-out program as such. You're fishery officers are direct employees of the department?

**Mr. David Bevan:** That's correct.

**Mr. Loyola Hearn:** All right.

With the funding that you've gotten for protection, have you also seen a reduction or is it remaining fairly constant? Because we have, certainly, on the east coast seen a reduction in funding for protection, whether it be fisheries officers or guardians.

**Mr. David Bevan:** For guardians, we've had reasonably constant funding if I can put it that way. It's somewhat complex, because we have more people now in the central part of the country than we had before. The total number of fisheries officers in the country is higher than it once was in the vicinity of almost 700. But it goes up and down, depending on attrition rates and recruitment, etc.

So we're looking at the overall best way to get compliance in Canada. We need to have fishery officers to deal with flat out illegal activity. It's unfortunate, Mr. Stoffer's not here, but we are trying to work with fleets, with communities, etc. to find a better way to get compliance without having the need to have regular reactive enforcement.

So how do we work with these organizations, groups of people, to get them more lined up to have the processes that they can make sure their members are in compliance? We'd like to have fishery officers, their roles, reviewed in terms of possible changes to the way we manage the fishery; their obligations under the habitat provisions and a whole series of other means by which we can get better compliance within the limited resources we have.

The guardians, in terms of aboriginal guardians, it's not at all similar to that which you're familiar with.

**Mr. Loyola Hearn:** Mr. Chair, I have just a brief comment and one last question.

Back home, again, there is a major effort to try to get general community buy-in. People were seeing the resource destroyed through poaching in particular, but there's some difference when we talk of about the Trepassey River, the Gander River and the Fraser River. It's not apples and apples, but certainly community buy-in support and people keeping their eyes open and pressing for charges certainly, I think, is important.

The question I want to ask is when we had Adams and Mr. Da Pont last week and Ms. Watson-Wright, I asked a question that's not directly connected to this, but certainly is indirectly because of the effect on overall fishers and that was about the older worker retirement plan. They said you weren't here so they couldn't answer the question. Is there any talk or thought within the department of developing a plan for older workers, many of whom were bypassed in the original buyout because of the specific rules. We had people who worked only a few years who were old enough to receive benefits, as you know, other who worked a lifetime and missed it by weeks and got nothing. There are many more in the field right now with declining resources, people who are probably between 55 and 65 who would like some way out of the workforce to open it up for some young people so we'd have a continuous supply of labour down the road. These people are really in limbo. Is there any discussion taking place to assist them?

🕒 (1255)

**The Chair:** That's totally and completely unrelated to what we're talking about.

**Mr. Loyola Hearn:** Some of them will be involved and because it was deferred to Mr. Bevan last week and he's here, I'd just like to--

**The Chair:** I'll ask Mr. Bevan if he can answer quickly.

**Mr. David Bevan:** With respect to the licence holders—I can't talk about what might be going on with respect to employees of plants—clearly, fishermen, as a group, are getting older and we have a big issue with inter-generational transfer of licences as licences are not property in any way so how do we get collateral for them etc. That's an issue that has been subject to discussion in terms of the AFPR and now the policy framework in the Atlantic and it is something that is probably going to be dealt with in terms of the Pacific through the joint task force report. There will be some suggestions perhaps on how that might happen, but there won't be, I don't think, federal government buyouts, at least I have no indication at this point of any programs in the wings.

**The Chair:** Thank you so much, Mr. Bevan.

We have two quick questions from Mr. Cummins.

We are rapidly running out of time, Mr. Cummins.

**Mr. John Cummins:** Mr. Chairman, in the government's response it suggests the integration of the pilot sales into the commercial fishery isn't acceptable to first nations because they view it as a traditional fishery and claim it as an aboriginal right. The Supreme Court of Canada in Vanderpeet and NTC Smokehouse in particular rejected the notion of an aboriginal right to a commercial fishery in the salmon area and the very areas we under discussed, so it would seem to me that the department, in this issue, is all about creating an aboriginal right, not recognizing one.

The second point I want to make is that CAPP struck down racial preferences in the commercial fishery and the government claims it's in compliance with CAPP because it's shut down pilot sales, yet it's working to re-establish pilot sales under different names—issuing licences for scientific and experimental purposes, ESSR and so on. I suggest, Mr. Bevan, that you're bringing the department into disrepute. I do not think it appropriate for the department to be seen to trying to circumvent the rule of law while the decision is under appeal.

I have those two comments, Mr. Bevan.

**The Chair:** Mr. Bevan, I will give you the last word.

**Mr. David Bevan:** I think it's important to recognize that the Supreme Court has made more than one decision, not just the NTC Smokehouse, etc., but also Gladstone and others where it is recognizing commercial rights in other fisheries, so there has been--

**Mr. John Cummins:** I'm talking about the pilot sales and those referred to these fisheries. There is no right.

**Mr. David Bevan:** In terms of the Supreme Court of Canada, it made it clear it was going to be a case by case evaluation of the--

**Mr. John Cummins:** --and you're in violation of issue on this--

**The Chair:** Mr. Cummins, you made your points. They're clear. Let Mr. Bevan answer and then we can adjourn.

**Mr. David Bevan:** There's a case by case evaluation of it and I think one set of decisions should not be extrapolated to every one where there have not been tests.

**Mr. John Cummins:** You're the guy doing that.

**Mr. David Bevan:** The other issue is it's pretty clear what the policy of the federal government is relevant to first nations and relevant to trying to improve their economic situation. That is clear.

We also retired licences, as you recall, from 1992 in terms of the original pilot sales. We don't want to lose that investment. That was several millions of dollars in licence retirements.

**Mr. John Cummins:** Representing about 1% of the fishery.

**Mr. David Bevan:** And the pilot sales are also fairly small--

**The Chair:** John, don't interrupt him.

**Mr. David Bevan:** --throughout their inception. So those are issues that are at play in this policy decision. I don't think you can limit the federal government's reaction just to the most narrow interpretation of a case or several cases, but you have to look at it in terms of a broader policy that the federal government has made pretty that it wants to have a relationship that's different with the aboriginal communities, and first nations, and this is a manifestation of it.

We are looking at a way to have a fishery for first nations, that is of a commercial nature. We are looking at that in terms of there are going to be treaties, there are going to be fish involved in those treaties, and we are going to have to look at how to make that transformation in a way that's fair to all the players.

🕒 (1300)

**The Chair:** Thank you, Mr. Bevan.

I want to thank Mr. Bevan, and Mr. Stanfield, and Mr. Radford, and Mr. Ryall for answering our questions, and for being here today. Obviously this is not the end of the issue. Mr. Bevan, of course we realize that the matter is very complex, and I think you're absolutely right. We realize what the federal government policy is. On many issues we'll have to agree to disagree, but at least you have some idea where we're coming from, and the committee is not going away, and so we wish you well in the continued negotiations, and in the continued equal, and unbiased enforcement of the Fisheries Act.

And I want to make it crystal clear to anybody who's listening that at no time in the choice of any words that I use at any of these hearings do I intend any disrespect to anybody at any time.

Thank you very much.

I adjourn the meeting.