

128017-1 (Surrey)

33510-2-C (Delta)

Surrey Registry

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA
(BEFORE THE HONOURABLE JUDGE WINGHAM)

Surrey, B.C.
November 25, 2010

REGINA

v.

JOHN MARTIN CUMMINS et al

and

DALE WILLIAM ARMSTRONG et al

**PROCEEDINGS AT
SENTENCING SUBMISSIONS**

Federal Crown Counsel:

J. M. Le Dressay

Appearing on his own behalf:

P. Eidsvik

DENNIS BROWN

Stating at page 27 of the proceedings

THE COURT: All right, thank you.

MR. EIDSVIK: And I'd like to call Mr. Dennis Brown.

THE COURT: Do you wish to be affirmed or sworn?

THE WITNESS: Affirmed.

THE COURT: All right, thank you.

THE CLERK: Please raise your right hand.

DENNIS BROWN, a witness called for the Accused, affirmed.

THE CLERK: Please state your full name and spell your last name for the record.

A Dennis Murray Brown, B-r-o-w-n.

THE COURT: You can sit down, Mr. Brown. Thank you.

EXAMINATION IN CHIEF BY MR. EIDSVIK:

Q Mr. Brown, where were you born?

A Vancouver.

Q How old are you today?

A 59.

Q When did you enter the fishing industry?

A I kind of was born into it, a third-generation fishing family. The first time I went on a fishing boat, I was about three years old, I think --

Q So you were --

A -- with my father.

Q -- on a fishing boat before you entered even school then?

A Yeah.

Q Now, did you go to high school in a school in Vancouver?

A Yeah.

Q Did you graduate from high school?

A Yes.

Q Did you go to university?

A Yes.

Q What university did you go to?

A UBC.

Q And have you got a degree from there?

A I didn't get a -- a degree, but I completed four years. I was short the degree, but --

Q What did you --

A -- [indiscernible - overlapping speakers].

Q -- major in?

A English and Political Science.

Q And you started on your -- with your dad's boat when you were three years old. Did you have other jobs in the industry during --

A Oh, yes.

Q -- say up to you left --

A Many.

Q -- university?

A I --

Q Such as?

A Shore-working jobs and for a long time I was a tenderman, ran a fish collector at one point, which --

Q What is a fish collector --

A It's a --

Q -- for the court?

A -- a vessel that goes around and collects the salmon from the fishermen.

- Q** So as such, you had contact with a lot of fishermen over the years?
- A** Oh, yes.
- Q** Now, at some point you became involved in the fishing industry politics?
- A** Yes.
- Q** When was that, roughly?
- A** Well, I -- I became involved in the industry politics as a member of the United Fishermen and Allied Workers Union, and that's been most of my working life. I was an active member of the Union before going to work for the Union in 1980 as a staff representative, and then later on being elected as a titled officer of the Union in 1990.
- Q** During your staff -- your period as a staff representative, what work did you do there?
- A** I was what was called the Fraser Valley organizer, which dealt primarily with gillnetters and trollers, small boat fleet, although I travelled up and down the coast on the Union boat, talking to fishermen and organizing fishermen, persuading them to join the Union.
- Q** So you got to know the Fraser River and the events in the Fraser quite well?
- A** Very well.
- Q** Yes. Now, when you were elected as an officer of the Union, what were you first elected to?
- A** I was first the -- called the business agent, and then after that I -- I was elected to the position of secretary/treasurer of the Union.
- Q** And so that's 1980 you had your staff position. When were you elected?
- A** 1990.
- Q** 1990? And how long did you stay with -- in that position?
- A** I stayed with the UFAW until 1996.
- Q** And what happened in 1996?
- A** In 1996, I was appointed as a special advisor to the Premier's Office of British Columbia on the Pacific Salmon Treaty and Fisheries-related issues.
- Q** Were you ever on the Pacific Salmon Commission?

A Yes, I was appointed in 1994 by Minister Tobin to be a Commissioner for Canada, one of the four Commissioners for Canada.

THE COURT:

Sorry, the name of that commission again? Mr. Eidsvik, you asked him what --

MR. EIDSVIK: Yes. The --

THE COURT: -- the commission -- what's the name of the commission again?

MR. EIDSVIK: The name of the --

A Pacific Salmon Commission.

THE COURT: Thank you.

MR. EIDSVIK:

Q And what is the Pacific Salmon Commission?

A It's the bilateral commission which monitors all Fraser River -- or all salmon fisheries on the B.C. coast.

Q And specifically it has duties with respect to Fraser River Sockeye, or not?

A It does in -- in certain annexes, but it's a bilateral arrangement between Canada and the United States to manage and conserve Pacific salmon stocks, and it has its own annex pertaining to the Fraser River under the aegis of the Fraser River -- or Fraser Panel --

Q And after --

A -- I believe it's called.

Q And after the -- when you were a special advisor to the premier, you -- after that was over, what did you -- you had another appointment, or not?

A After the -- the election in 2001, I think, I was relieved of my position because the government that I was working -- or the party that was in power in time was defeated, and then I took a break and spent the next four years writing a -- a book about the West Coast Salmon Fishery.

Q And were you ever involved with coastal communities?

A Yes. Just before leaving the Provincial Government, I was assigned to a -- an agency called the "Rural Development Office," and I was the special advisor on -- on coastal communities and fisheries for the Rural Development Office.

Q So you have a pretty intimate knowledge of the fishing industry in your 30 years, and this is --

A Yes, I think so.

Q Is this the book you wrote?

A Yes, it is.

Q Was it a -- how did it do?

A Well, in terms of local publications, I think it did quite well. It was considered a best seller.

Q And currently you are still involved in the fishing industry?

A Well, at the moment, I'm a -- a -- a member of the Area E Harvest Committee, which is the Fraser River -- the group of fishing industry people who advise the Department on management of the Area E Fraser River fishery.

Q Okay. So you care about the fishing industry and you care about the people in it? If there's [indiscernible] here, that that would be it?

A Oh, absolutely, yeah.

Q Yes, okay. I've given you a booklet of documents that I'd like to go through, and if you can turn to Tab I, please? Is this the -- are you familiar with this report?

A Yes, I am.

Q Could you tell us what it describes?

A Well, it describes -- it's a summation of what took place under the Fraser Panel's direction in terms of sharing the catch between Canada, the United States and various user groups.

Q So if you turn to the second page in the tab, you'll see a list of harvests, and at the very bottom, you'll see a total run of -- and you can perhaps advise the court of that number?

A It -- I forgot my reading glasses, but it looks like "7,213,000" in the small print.

Q That's correct. Is that a reasonable-sized Fraser River run?

A That is a quite good-sized run.

Q All right. So would a protest fishery, but -- that you've heard testimony on today, be a conservation matter --

A Oh --

Q -- in terms of this run?

A -- no, because if you look at the -- the number above it -- you see there's a number that says "5,278,000 spawning escapement," that date was, I believe -- I could be wrong, I don't have all these numbers exactly in my head, but probably a record escapement on this particular cycle. There's a four-year cycle, Your Honour, of these fish, but if it's not a record, it would be very close to a record in terms of the -
- of the numbers of fish that got to the spawning grounds.

Q And if you turn to Tab 2, do you recognize this report?

A Yes.

Q And can you tell the -- again what it is?

A It's -- again, it's a report of the Fraser River Panel for the year 2002 and it's a summation of all the catches and --

Q That's sufficient. If you go to the second page in the tab --

A Yeah.

Q -- what's the total run that year? You're --

A Again, small print. It looks like "15,137,000."

Q And if you look at the escapement in that year?

A Your Honour, this is an astounding figure. It's 10,206,000, and I would suggest that this is probably in the range, I'm not sure, but, of four or five times the historical average on --

Q Okay.

A -- escapements for this particular four-year cycle, which was the famous Adams River run.

Q So there's not a conservation issue for a small protest fishery of 20 boats?

A No, it's just absolutely -- was over the top in terms of the amount of fish that the Department allowed to migrate up the river that year.

THE COURT: What are --

MR. EIDSVIK:

Q If you turn --

THE COURT:

Sorry. When it says "spawning escapement," and then "(includes 5400 jacks," what does that mean?

A Jacks are precocious males which travel up -- they're three-year-olds. Most of the Sockeye that spawn are four or five-year-olds --

THE COURT: Okay.

A -- but these are precocious males that go up, but they don't generally -- they don't -- they're not very important to escapement, they're just identified as a -- as an indicator.

THE COURT: Okay.

MR. EIDSVIK:

Q So they don't generally spawn, is that correct?

A Well, they try to, but -- and I'm not a biologist. I think they're a bit of a -- a nuisance, but I think they may have something to do with the general bio-diversity of --

THE COURT: Okay.

A -- the fish.

THE COURT: Thank you.

MR. EIDSVIK:

Q Now, on the final page in that tab, there's a graph on the top of the page. So you can see -- and maybe -- perhaps you can explain the rebuilding of the Fraser Sockeye run as you see it in this graph?

A Well, Your Honour, if you look at the left-hand side of the graph, you'll see some fairly high columns in three or four years, at least, in the period prior to about 1910, and those were the early -- initial periods of the -- of the salmon fishery, and then there's an abrupt drop that occurs just after that point, and that was the infamous Hell's Gate slide which occurred in the Fraser Canyon in 1913, which were absolutely devastating to Fraser Sockeye runs, and there was a major depression, not because of fishing activity, but because of the blockage. And then in about the 1930's, you start to see the column start to begin to rise again, and that was almost exclusively the result of efforts by what was then called the International Pacific Salmon Fisheries Commission, which was the bilateral group that managed the fisheries at that time, to begin enhancing the runs, and they did a number of different things to plant fish; eggs in -- in systems and build up the runs, including the Hell's Gate fish ways, and then by the 1980's and 1990's on the second side of the graph, you see the runs are returning to near historic levels.

Q So this is really quite a magnificent achievement in rebuilding the fishery that took decades?

A I certainly believe that to be the case.

Q Now, if I'm looking at the graph, something happened in 19 -- about 1992 when we started going downhill here. This graph doesn't go beyond 2003, but --

A Well --

Q -- or 2002, but --

A -- Your Honour, there's a judicial inquiry that is currently underway on Fraser River Sockeye at the moment, and this will be studying this, but in my opinion, what happened -- and again, I'm not a biologist, but -- I'm just a -- an observer after a lifetime, is that there was a major paradigm shift in the way that the Fraser fishery was managed in the 1990's. This included shifting allocations for the Aboriginal fishery. It includes a different vision of how to -- of -- it included a different perspective on the number of fish that were required to propagate the run, as well as major shifts or major changes, structural changes to the composition and the conduct of the commercial fishery. And it was argued by the Department of Fisheries at the time that this would be for the good of the resource. In my book and in my work, I would argue that it has actually been detrimental to the good of the resource.

Q I want to bring an example from the current day, one of the management changes we talk about. What are management adjustments?

A Management adjustments, as best I understand them, are ostensibly margins or buffers that DFO managers place on the estimated amount -- abundance of fish in the migration route at any given time, in order to offset adverse environmental conditions or to -- to compensate for factors that might be threatening the wellbeing of the run.

Q Would poaching be one of those factors?

A I think that that is probably the case, although the Department would never ever put it that way. I think that -- from my knowledge of Fisheries management and a whole number of Fisheries managers who have talked to me in private and in different contexts, that at least it's something that's -- that's on their mind and something they have to -- to consider.

Q So it -- I want to try and get an explanation so we can -- I can understand this properly. If there's a hundred fish going up the river and we would normally catch 50 of them, what we might do with a management adjustment is say okay, we're going to put ten extra up the river because we don't know what's going to happen to them, so you're only going to catch 40. Have I got that about right?

- A** It's very difficult, Your Honour, to deal with exact numbers, but I think the concept that you're outlining is probably plausible, in that they're going to want to put extra fish up, given the fact that there are pretty seriously intense fishing activities taking place, both legitimate ones and authorized ones and unauthorized ones, in the length of the river about 800 miles long, upriver of the commercial fishery.
- Q** If you go to Tab 3 in your binder, perhaps you can tell us a little bit about this particular report.
- A** As I recall, this is a report done by Dr. Peter Pearse, a UBC economist, following a catastrophic concern in 1992 about the state of the Fraser River Sockeye.
- Q** Now, in 1992, did the Fraser River gillnet fleet have a normal fishery, the public commercial -- what I would call the fishery that these people belonged to?
- A** It's been so long and I don't have the numbers in front of me, Your Honour, but my memory is that that year the -- Area E -- they weren't know as Area E then. The Fraser River gillnet fleet was awaiting opportunities to fish on a certain perceived run size, but that by the time they actually did fish, there had been this huge concern about no fish arriving on the spawning grounds, and I think they had one opening, but I'm not sure, and then it was very abruptly terminated and then there was no more fishing for the remainder of the year, and that would have been in early August, but my memory is vague.
- Q** The -- you've done some analysis on missing -- what we call, loosely, "missing fish." Can you tell us what you -- what a missing fish is, in the sense that it's commonly referred to in the industry?
- A** The best that I can understand, Your Honour, is what the Pacific Salmon Commission calls it, DBE, or difference between estimates. And that is they have a sounding program or a hydro-acoustic sounder at Mission, B.C., which is sort of where the salt water and the fresh water meet, and it's the upper limit of the commercial fishery, and they daily run across the river and they make an estimate, and it has been in place for a long, long time, and it -- and so far as I know, as a non-scientist, it's fairly highly regarded methodology, and then they compare that number, which is called the gross escapement, with the actual numbers that are counted on the spawning grounds, which they call the final escapement, and they go through a variety of methods of counting the fish, and then the difference between the estimate or what's commonly referred to in the media as "missing fish," is the difference between the two.
- Q** Okay. And what -- prior to 1992, what level of missing fish did you find, assuming you haven't got everything, but the rough scale of missing fish prior to 1992?
- A** I -- I think I mention it in my book -- I've written it down somewhere, but it's on a magnitude of approximately from 1946 to 1992, about a hundred and -- no, pardon me, about 250,000 missing fish, or difference between estimates. And after 1992,

from 1992 to I think the -- when I last did the numbers, I think it was 2005, the number was something in the neighbourhood of 10.6 million fishing. Or --

Q Ten --

A -- difference between --

Q 10.6 million missing in a fairly short comparative period. Now, the Pearse report -- I imagine that the missing fish were quite controversial in 1992. As an industry, were you involved in trying to seek some type of investigation?

A Oh, yes, very much so, and there was protests and there was alarm raised both in the media and in the various industry advisors at the time, and finally the Minister of the day was persuaded to shut the fishery down, which was an unprecedented action to that date, and soon after the fishery was shut down, the international -- or the Pacific Salmon Commission Executive Director, Ian Todd, reported that there was a major upsurge in the amount of recruits migrating up the river.

Q So your --

THE COURT: What's a recruit?

A A recruit -- sorry, it's -- it's a spawning --

THE COURT: Okay.

A -- a -- an adult spawner that has --

THE COURT: All right.

A Sorry.

MR. EIDSVIK:

Q So your industry then was asking please close the fishery because not enough fish are getting to the spawning grounds?

A Well, to -- whatever the date was, Mr. Eidsvik, I can't remember, but I -- I think it would have been around the beginning of August in 1992, almost no fish arrived on the spawning grounds, and the reason why it took until about August, Your Honour, for this to -- to register is that the first populations of spawners that were heading up to the upper watersheds of the Fraser River, the Early Stuart run, and the early summer runs, enter the river in June or late June, early July, and they were expected to arrive in mid-to-late July. And so at that point they didn't show, the alarm bells began to ring, and soon after there was pressure from all quarters to shut the fishery down -- all fishing down, including a fairly extensive Aboriginal fishery.

Q If you go to page 2 in this tab -- if you go down to about the tenth line where the last word of the line is "local" --

A Which column?

Q The first column, and about the tenth line down, where the last word on the line says "local"? Well, perhaps I'll read --

A I just need -- I'm not sure where you're referring to.

THE COURT: You --

MR. EIDSVIK: Oh, I'm on the first column --

THE COURT: There's a page number on the bottom.

MR. EIDSVIK: Page number is 16 --

A Is it page --

MR. EIDSVIK: -- Your Honour.

A Yeah, okay.

THE COURT: I was looking at 18.

MR. EIDSVIK:

Q It's the --

A Is it near the bottom? Or --

Q No, it's near the top, the column --

A Oh. Oh, sorry. Yeah.

Q And I'll just read out --

A Yeah.

Q -- for that point.

Meanwhile, senior officials were accelerating negotiations towards agreements with the Sto:lo/Musqueam/Tsawwassen before the Sockeye season began. This created further enforcement problems on the river. Local officials were directed not to try to negotiate fishing plans or issue licences and not to lay any charges while sensitive negotiations were going on. They were instructed instead to merely observe, record and report offences. Except for the most flagrant offences, enforcement became impossible and non-compliance was the order of the day.

Did you hear stories in 1992, anecdotal stories that were similar to what Mr. Pearse has written here?

A Yes.

Q If you turn to the -- page 18, the next page, and the final page in the tab --

A Yeah.

Q -- the middle column, under the heading "Surveillance and Enforcement broke down," perhaps you could read us the first bullet?

A Enforcement was weakened? Is that the one?

Q Yes, the first --

A

By recent court decisions that circumscribe the authority of the Department to regulate Indian fishermen, enforcement arrangements under the new agreement were also unclear.

Q And the next bullet?

A

Fisheries officers had been instructed not to lay charges while delicate negotiations about fishing agreements were ongoing.

Q And in the final column, the second sentence?

A "Upriver" -- you mean on the -- on the third --

Q Yes --

A -- column?

Q -- that's correct.

A

Upriver, beyond the agreement area, surveillance and enforcement effort was abandoned altogether.

And --

Q "Faced with"?

A -- it goes on:

Faced with cuts in staff and instructions not to lay charges, the Department's field staff threw up their hands.

Q

Major enforcement problems developed. Formerly rare, illegal practices such as drift gillnet fishing were observed. Up to 75 percent of the nets inspected were not properly marked.

Fair to say this was really controversial in British Columbia, and specifically in our fishing industry?

A Well, it certainly was controversial. I think it's noteworthy that somebody like Dr. Pearce affirms this, because I -- I take it that he's considered a neutral or dispassionate observer and -- and from my understanding, he was previously, or prior to this report, in his Royal Commission of 1983, an advocate not only of the First Nations fishery, but of allowing them to have set shares and I believe if -- even to commercialize that fishery. So it -- it certainly was a -- a major noteworthy thing to hear him say this.

Q So one of the -- if you asked what the industry wanted in 1992, to deal with this problem, can you remember the -- a couple of the key items that the industry would have said we need this to fix this problem?

A The industry basically said we need one set of rules for all fishing people, that conservation has to come before all other considerations, including whatever the law is pertaining to Aboriginal rights and Aboriginal priorities, and that where possible, the fishery should be conducted in a unified way so that there was a maximum amount of time for fish to migrate safely to the spawning grounds, and a maximum opportunity for the diminished DFO enforcement staff to adequately monitor and protect the resource.

Q Would enforcement have been a big issue amongst the people in the industry at the time?

A Oh, absolutely. It's always been an issue, but it's gotten much, much worse in recent years with a) cutbacks to the Department's budget, but b) the major paradigm shift in management that we've been talking about.

Q Would you -- did you go to Ottawa to seek remedies for the issues the industry was concerned about during that period?

A Yeah, I -- I was in Ottawa several times --

Q So --

A -- on this issue and -- and a number of others.

Q Did you go to the media?

A I was in the media quite often, yes.

Q Did you talk to MPs and MLAs?

A I talked to MPs and MLAs.

Q If you could go to Tab 4 --

THE COURT:

I'm just going to suggest at this point, Mr. Eidsvik, that we take the morning break, now that you're moving on to another document. So we are -- we will take the morning break and come back in 15 or 20 minutes. Thank you.

MR. EIDSVIK: Thank you, Your Honour.

(WITNESS STOOD DOWN)

(PROCEEDINGS ADJOURNED FOR MORNING RECESS)

(PROCEEDINGS RECONVENED)

DENNIS BROWN, a witness, recalled.

THE COURT: Mr. Brown, you're still under affirmation. Thank you. Under --

A Thank you.

THE COURT: Thank you.

MR. EIDSVIK:

Thank you, Your Honour. I know that you heard some of this material before, but I think it's quite useful because the fishermen who -- weren't in any of the -- anything else, so it's a nice time to summarize it up and they can see that they had a fair hearing in this court and --

THE COURT: Well, it's a sentencing hearing.

You're -- Mr. Le Dressay's not objecting to any of this information going in and what I -- what use I make of it in terms of making a decision I guess remains to be seen, but I will be asking, by the way, when you're finished, whether any of the individuals here -- and I appreciate that you're speaking on their behalf as their agent, and you have throughout, since counsel was no longer involved, whether they wish to say anything, so you may want to canvass that. I will ask anyone at the same time if they wish to say anything. I think it's important that I do that. They don't have to say anything, but if you wish to, I'll give you an opportunity to do that. All right?

MR. EIDSVIK: Thank you.

THE COURT: Thank you.

MR. EIDSVIK: Thank you, Your Honour.

THE COURT: So carry on with Mr. Brown then. Thank you.

EXAMINATION IN CHIEF BY MR. EIDSVIK, continuing:

Q Mr. Brown, we're in Tab 4 in the white book, and I note that this report is 1994, two years after Dr. Pearse's report?

A Yeah.

Q Why are we back with another inquiry?

A Well, there was another -- in 1994, there was another severe shortfall in the estimated number of Sockeye that had migrated past Mission and had arrived and actually been accounted for on the spawning grounds at the end of the season, and as this report here -- Minister Tobin at the time appointed John Fraser, who was a former Fisheries minister, to conduct a public inquiry into what had happened.

Q Through this time, we, as in -- I should be careful not to use "we." Our industry that you were involved with continually asked for a judicial inquiry, is that correct?

A Yes.

Q And why was that?

A Well, because we felt that the only way for this matter to be properly analyzed was for it to have the -- the authority of a court-like proceeding, and in particular, the opportunity for people to testify, and perhaps within the Department itself, in such a way that there was the protection of the court, I guess, so that there was no fear of reprisals perhaps for contradicting whatever the senior officials in the Department might have wanted them to say.

Q So on page 2 of this tab --

THE COURT: On page 58?

MR. EIDSVIK: On page 58. I'm sorry, Your Honour.

THE COURT: No, that's fine.

MR. EIDSVIK:

Q The very first paragraph under "enforcement," perhaps you can read that to the court?

A

In 1994, a culmination of long-term budget decline, organizational change, increasing enforcement demands and low morale led to an unfortunate breakdown in DFO enforcement capacity.

Q This sounds an awful lot like the Pearse report of two years ago?

A Yes, it does.

Q So same issues, same problems?

A Oh, yes. Obviously there would -- the same. It appears to me --

Q On the --

A -- to be the same issues.

Q On the next page, page 59, you'll see on the left-hand side there's two shaded boxes?

A Yeah.

Q If you go to the second box and then go to the right-hand side, start from the top of that paragraph. "Enforcement was not only" --

A

Enforcement was not only hampered by budgetary constraints and the lack of timely agreements with individual First Nations, but also by recent regulatory changes. DFO's ability to deal with the illegal sale of salmon was seriously compromised by the repeal of a prohibition on the possession of Native food fish by non-Natives.

Q If you turn that page, we're now at page 60. And if you go underneath the shaded box to the paragraph that begins "the level of enforcement"?

A

The level of enforcement and capacity was grossly inadequate in 1994. If an adequate enforcement capacity representing a significant deterrent to illegal fishing is not established in 1995 and beyond, there is likely to be serious erosion of the Fraser River salmon restoration programs. Further, the increasing market value of all types of fisheries has resulted in similar enforcement issues prevailing throughout British Columbia. Permitted to continue, the attitudinal ...

Q That's sufficient --

A Oh, sorry.

Q -- Mr. Brown.

A Yeah.

Q But basically we're seeing in this 1994 report by Fraser the same complaints that we raised in 1992, as an industry?

A I would -- I would say that's correct.

Q Did you ever feel like you were banging your head against the wall?

A I was certainly frustrated during these times in terms of being heard by the Government.

Q So let's go on to Tab 5, and you'll see, at the bottom of the page, there's a paragraph that begins, "During April and May"?

A Tab 5?

Q The first page --

A Oh, yeah --

Q -- and at Tab 5?

A -- the last sentence, you mean? Yeah.

Q Yes.

A Yes.

Q

During April and May of 1994, all available resources have been directed towards gear counts and catch information, and we are not able to address complaints of illegal fishing, illegal gear, sales of Chinook or the non-tidal recreational fishery.

If you turn the page, you'll see a page number, "136," in the top-right there?

A Mm-hm.

Q Recommendations:

Place responsibility on First Nations to collect required catch information, report to DFO on a weekly basis. This requirement is written in the communal licence but is not complied with, and DFO continues to issue licences even though catches are questionable and in some cases unknown.

Next -- on that same page, if you look at issue 2, the very last one in the little bullets there, he says:

Staying of charges in the Lower Fraser River for similar time periods from 1993.

So we're seeing, from the Fishery officer -- do you know the person who wrote this memo? It is from Wayne Furness to Don Orrell. Do you know either one of those?

A I know Mr. Orrell. I don't know Mr. Furness. Mr. Orrell was the -- sort of the senior enforcement officer at the time.

Q Now, if you go to the last page of that tab and just -- the second sentence begins with "note"?

A Yeah.

Q And perhaps you can read that for us?

A

Note during the past opening, May 28th to 29th, the ...

and then there's a blank and there's some handwriting. It looks like "S19(1)."

... family fishing in Sub-Area 9, using four nets. Caught 32 Chinook. This area is not usually good for catching Chinook. Does this meet Section 35 needs? How can existing catch estimate program capture this information?

Q And in the -- under issue 3, of course, we have the bullet:

Increased illegal harvest of early-run Chinooks through poaching during the closed time and illegal fishing with set nets and drift nets during the open time.

Down in the second-to-the-bottom bullet:

And this will result in more fishing days to reach the allocation due to unreported catches at landing sites.

I don't quite understand what that means.

A Well, as best I understand, it is under the official agreements that the Department had negotiated with Native bands, that there was a requirement to count the fish at designated landing sites, but there has been a quantum of fish that has been alleged to have been taken that -- that doesn't pass through those landing sites.

Q So if I can sum it up properly, so if you have a number of fish that you're allowed to catch, and you don't report your catch, you get to go out and catch another one --

A Considerably --

Q -- is that what he's --

A -- yes.

Q -- saying here?

A Theoretically, yes.

Q And then he says that illegal sales of Chinook will increase.

So Tab 6, the first page, and I just want to go on under "issues," number 1:

Illegal sales of Chinook. Catches of Chinook are being sold as in previous years to similar buyers. This activity, if left unchecked and unenforced, will increase each week and will result in an increased effort during the open fishery and increased illegal activity during the closed time.

So you've heard those kinds of complaints again and again, have you?

A Yes, I have.

Q Now we move to a 1999 memo. At Tab 7 is an e-mail, and I'm jumping down to the heading about two-thirds of the way down the page where it says "reported catch."

A Yes?

Q Perhaps you can read that paragraph to us?

A

Reported catch: The Aboriginal Fisheries officers conduct patrols, sometimes for short periods; i.e. four hours during the 48-hour fishery, to ascertain the number of fish caught by each fisher during the entire period of the fishery. The methodology employed by the AFOs is simply to ask a fisher whom they meet on the river how many fish they caught and to record this number, assuming the number provided to them by fishers within their native community are accurate and truthful.

Q And then he goes on to say:

No attempt is made to ensure the accuracy of the total catch during each fishery.

And the next paragraph:

The data generated from this methodology is questionable, but is nonetheless utilized by both DFO and First Nations planned fisheries during a period when conservation issues are prevalent. In the last planning meeting, of which I am a member, the First Nations vigorously complained there were Chinook left to catch in their allocation and they intended to go fishing next weekend regardless of DFO's concern to protect the Early Stuart Sockeye run. Important decisions were being based on the assumption that the catch data which was provided to all parties by the AFOs was accurate.

So if we turn to the next page -- and I should mention who this memo is written by. This memo is written by Herb Redekopp. Are you familiar with Mr. Redekopp?

A Yes, I am.

Q And what is he?

A He's one of the DFO enforcement officers, and I think he had a -- I'm not sure, but he had a -- a fairly senior role.

Q Is he a credible man --

A Oh, absolutely.

Q -- in your opinion?

A Yes.

Q Good reputation in the industry?

A Oh, yes. I think all of the DFO officers do.

Q So I switch to the second page of that tab --

A Yeah.

Q -- and I begin at the second paragraph. Perhaps you can read for me?

A

Two fishers hailed a total catch of 27 Chinook salmon to AFO staff. The official usqueam report sent to DFO confirms this hail. However, DFO Fishery officers visually counted 88 Chinook salmon which were harvested by these two fishers at ...

And then I think it says "(325 percent misreporting)."

Q And the next paragraph?

A

Two other fishers hailed a total of 56 Chinook salmon to the AFO staff collecting catch data. These figures were officially reported to DFO in the Musqueam catch report; however, DFO Fisheries officers visually counted 147 Chinook salmon harvested by these two fishers (a 262 percent misreporting).

Q And skip the next paragraph, go down to the next one.

A

Furthermore, today's audit confirms investigative data from previous weeks which indicates a discrepancy of around 300 percent overall.

Q And the conclusion was?

A

The catch data provided to DFO by the Musqueam Fisheries Department is poor at best and should not be used to make fisheries management decisions. The misreporting is not a matter of making an error. The evidence collected by the DFO Fisheries officers proves some Musqueam fishers are deliberately misreporting to the AOs.

Q Now, you obviously don't hear about every charge that's laid in the Ministry. Were you ever aware of any charges being laid for misreporting?

A Not to my knowledge.

Q Tab 8. This is -- perhaps -- have you seen this agreement before? Or one like it?

A I've seen ones like it, but I'm -- I can't be sure that I've seen this particular one.

Q Okay. All I'm trying to establish here --

A Yeah.

Q -- that there's --

A But it -- it looks like a fairly generic Fisheries agreement.

Q Perhaps you can read the title?

A It says, "Proposed Safety Agreement for the 2001 Salmon Fishing Season between Cheam First Nation and Fisheries and Oceans Canada --

Q Okay.

A -- DFO."

Q Can you move to Tab 9, the following tab? And what agreement is this?

A Safety Agreement, Cheam Nation and Fisheries and Oceans Canada, and dated June 17th, '03.

Q So this agreement would have -- if the fishery protest was -- that we're here before, today, the court, 2001 and 2002, this agreement was signed post the protest fisheries?

A Yeah, it would.

Q Let's move to page 2 in that tab. At the bottom, it's got a number saying "371"?

A Pardon me? Sorry, I didn't --

Q Page --

A Oh, yes, yes --

Q Page 2 in the tab?

A -- "371" at the bottom, yeah.

Q So "Conduct of Operations," at tab -- item number --

A Yes.

Q It says:

Any water-based enforcement operations will be carried out by one boat, with no more than three or four DFO Fishery officers onboard.

Have you ever heard of a -- somebody in the commercial fishery telling DFO how many officers they could have on a boat, or how many boats could patrol the commercial fleet?

A Absolutely not.

Q Have you ever heard of our industry, in discussions with DFO, discuss how many boats they're going to have or how they're going to enforce the Act against violators in our fishery?

A No, and I don't think DFO would ever discuss it with us. It wouldn't even be an issue.

Q Tab -- item 5.

All land-based enforcement operations will be carried out with no more than two Fishery officers per vehicle, to a maximum of two vehicles.

Have you ever heard of DFO doing this to a processing plant, asking a processing plant, like Ocean Fish, how many vehicles are acceptable on their premises by DFO?

A No.

Q Number 6:

All vehicles, vessels and aircraft will be operated in a safe manner. Aircraft, including helicopters, will not come below 200 feet.

In your experience, does DFO generally operate their vessels and vehicles and helicopters in an unsafe manner?

A No, of course not.

Q Were you surprised to see this requirement in a agreement that DFO signed?

A Yeah, personally, I -- I am. I -- yes.

Q And going down to Tab number 10 there, item -- section 10?

A Yeah.

Q

The seizure of nets, fishing gear, catch, et cetera not normally required for evidentiary purposes, and should not be considered a matter routine.

Does our industry ever tell DFO that they can't seize this net or seize that net?

A No, that would never be. I don't think DFO would countenance that.

Q Item 11:

DFO personnel, upon observing unattended nets, will approach the beach and attempt to determine the ownership of the net.

If DFO sees a -- a typical Fisheries officer sees a net unattended in our fishery, I'm referring to the Area E fishery or another fishery on the Coast, would they make efforts to see who was fishing the net, or would their primary duty be to get the net out of the water?

A Well, I'm pretty sure their primary concern would be to get it out of the water.

Q On the next page, 13, perhaps you can read that paragraph for us?

A

At Cheam fishing sites in the Canyon, the Cheam Band will notify the DFO designate of the dates and times and locations that will be fished. DFO personnel will not approach these sites unannounced. When approaching by helicopter, vessel by river, or vehicle from the highway, Fisheries officers will announce their presence prior to contact with Cheam fishers. Unattended/unidentified nets may be seized.

Q So I want to spend a minute on this. So first of all, we have "the Cheam Band will notify DFO the dates and locations" where they're going to fish.

A Yeah.

Q That's correct?

A Yeah.

Q Is that a typical thing, or do we obey what it -- DFO says? DFO --

A You mean in the --

Q In our --

A In the non-Native --

Q In our industry.

A In the industry?

Q Yes.

A Oh, I don't think we would be able to dictate any of those terms to the DFO.

Q In fact, the people --

A In fact, the -- it's just a typical policing mechanism, in that the DFO would count on not giving people advance warning of what their activities are in terms of enforcing a fishery. Other -- otherwise the illegal activity would cease.

Q Now -- so we have -- the first sentence says

DF -- Cheam will pick the time to fish, and then "DFO personnel will not approach these sites unannounced."

A Yeah.

Q So if you're poaching and DFO has a requirement to warn you that you're coming, how effective will DFO Fishery officers be in catching poachers?

A Well, obviously I would think it would be pretty ineffective.

Q So if you were poaching and DFO phoned up and said Dennis, I'm on my way, what would you do?

A Well, obviously I would -- I mean you would take your net out of the water, you --

Q In this --

A I would assume.

Q -- instance --

A I would assume that, yeah. I -- I'm pretty sure that this is not the right way to police any fishery.

Q And on 15, Section 15:

If for any reason it is necessary for DFO Fishery officers to cross Cheam Reserve land, they will seek advice in accommodating support from Head Councillor Sidney Douglas, or his designate, of their intentions. At his discretion, Head Councillor Sidney Douglas, or his designate, may accompany the Fishery officers.

Now, you were a senior representative in the industry, in the union. You had -- how many members did the union have at its site?

A Oh --

Q In the -- say in the early '90s.

A -- roughly 6,000 members.

Q Did any Fishery officer ever phone you and say Dennis, we have a lawbreaker fishing off the Steveston Jette and we'd like you to come and help us, we'd like you -- we're checking with you, is it okay if we go down and enforce the law?

A Oh, absolutely not, but the quid pro quo was the case. When we knew of fishermen who were illegally fishing and our members reported it, we would phone the DFO and tip them so that they would crack down on violators. We -- actually, we were - - we were doing the opposite to this.

Q You were proactive and seeing that the law --

A Yeah.

Q -- was enforced?

A Because it's in the interest of all fishermen that the rules be enforced. Otherwise, what is -- the -- the rules are meaningless, and the resource cannot be protected if there's violations. So by and large, I believe that commercial fishermen believe the law should always be enforced.

Q So at the bottom of this page, do you recognize the signature by the Cheam Nation?

A Yes.

Q Sidney Douglas?

A Yeah.

Q And what about the signature for the Department of Fisheries and Oceans official?

A Colin Masson, yeah.

Q You're aware --

A I recognize the name, yeah.

Q Do you know Colin Masson?

A Yes.

Q He's a DFO official?

A Yes.

Q Next page, at the top left-hand side, it says "Protected, Memorandum for the Minister." So obviously -- is it fair to say, based on that heading, that the Minister was informed about the safety agreement?

A It would seem to be fair to say that. I don't think a memo -- memorandum would go to the Minister's office and be ignored.

Q No. The second page, you can see they're done in paragraph bullets, the fourth paragraph:

These protocols were poorly communicated, misunderstood by the community and progressively ignored by many Cheam members.

Does the content of this, so far as -- is there any way that the DFO had have communicated the safety agreement differently to the fleet, to our industry, that they would have agreed that that's how a fishery should be managed? Was it a matter of communications or the content of the document?

A I'm not really sure I understand your question.

Q Well, there -- I'll move on.

A Okay.

Q Now I'm at the second-to-last page in that tab --

A Okay.

Q -- and you'll see there's a number of blanked-out paragraphs --

A Yes.

Q -- but there's -- the one sentence there says the agreement has become a public document?

- A** Yes.
- Q** Why would the -- why would an agreement like that be a concern if it was public?
- A** I have no idea. But it seems strange that it would be.
- Q** Now -- and the next bullet is blanked out, and in the next bullet after that, it refers to a court decision and a standing committee report. What standing committee are they talking about?
- A** This would be, I think, the Standing Committee in the House of Commons on fisheries.
- Q** So have you ever appeared before that Standing Committee?
- A** Yes, many times.
- Q** You've raised these types of issues with them about enforcement?
- A** Yes.
- Q** Poaching?
- A** Yes.
- Q** And what was the response?
- A** Well, generally speaking, the Standing Committee was quite interested and always took it into consideration and made recommendations, but they're a standing committee, so they only give advice, they don't have any power to direct the Minister, so far as I understand the parliamentary process.
- Q** Now, given your association with the Union, you could say that you were probably closer to the NDP members in the Standing Committee than the Conservatives?
- A** I guess so.
- Q** And --
- A** I -- I would say that's a fair comment, although I have lots of good relations with other members of other parties that were on the Standing Committee.
- Q** Did it matter who was in government during the period when the Standing Committee was on -- that the Standing Committee dealt with these issues and raised the concerns?
- A** Oh, no, I --
- Q** Was it --

A I think --

Q Did it cross --

A I -- I --

Q -- party lines --

A I think --

Q -- is what I'm asking you.

A I think it crossed party lines, generally speaking. I don't think there was a partisan aspect to this.

Q So in this note to the Minister at that paragraph, they say:

Some recreational and commercial harvesters are indicating that they feel the Department is not providing equitable treatment to all harvesters and that the Cheam is receiving special consideration due to past violence and intimidation of DFO officials.

Now I'm going to go to the last page and the speaking points. Now, what are "speaking points"?

A So far as I understand it, this would be prepared by a bureaucrat to a public official, either a minister or an assistant or a deputy, for media purposes, so they're sort of giving them advance prepared statements --

Q And so --

A -- about complicated issues.

Q So the first speaking point is:

This agreement is not intended to limit the authority of the Department or to give preferential treatment to any group.

Now, if you take out the words "not intended," now it's clear that that's probably an accurate statement, in the sense does the agreement give preferential treatment to a group?

A Well, if you're asking my personal view, I think there was a great discrepancy between what the public officials were saying at this time about this program and how it was being conducted, and the way it was actually being conducted, but politicians being the way they are, they don't want to be seen to be doing a bad job. They -- everything is always rosy and -- but then again, in a democratic society, I would think that we have a right to question whether they're -- what they're saying is correct --

Q So --

A -- and I would definitely question that statement.

Q -- Tab 10 in the other 2001 Fraser River Salmon Fishery Report of the Standing Committee on Fisheries and Oceans --

A Yeah.

Q -- is that the type of -- the Standing Committee you're referring to?

A Yes.

Q And you can see when -- on the next page, you recognize Andy Burton?

A Yes.

Q What party would he be from?

A Oh, boy --

Q John Cummins?

A John Cummins is the Conservative party.

Q Rodger Cuzner?

A My recollection was he was a Liberal, but I could be wrong.

Q Okay. So a broad representation on the committee?

A Yes.

Q The next page is simply a table of contents?

A Yes.

Q And you can see under "AFS issues" that the -- two of the issues were mixing the food and sales fisheries --

A Yes.

Q -- and the sale of food fish --

A Yes.

Q -- and the Cheam Safety protocol spoken about --

A Yes.

Q -- and the reallocation of resource? So these issues were being regularly brought to Parliament and to the committee by the fishing industry?

A Yes.

Q Anything change in --

A No, I think --

Q -- DFO's management of the fishery --

A No.

Q -- that you saw?

A No.

Q Now, the next page, Tab I I, this is a Provincial Court decision by the Honourable Judge Jardine --

THE COURT: Are you asking this witness to comment on the decision?

MR. EIDSVIK: No.

THE COURT: Oh, okay.

MR. EIDSVIK: Merely to read a --

THE COURT: Okay.

MR. EIDSVIK: -- section from it, Your Honour.

THE COURT: All right.

MR. EIDSVIK:

Q At paragraph --

THE COURT: Oh, I see. All right. Okay, go ahead.

MR. EIDSVIK:

Q At paragraph 51 -- perhaps you can read that.

A Paragraph 51? What page is --

Q It's page 20 --

A Okay, sorry.

Q -- so the third page in the tab.

A 51? Yes. You want me to read it?

Q Yes, please.

A Okay.

On the evidence of Mr. Quipp, Mr. Wood and Mr. Victor, nobody actually counts how many fish the Cheam catch. Mr. Quipp estimated his catch with Mr. Wood, his partner, to be conservatively 10,000 or more Sockeye, as well as more than 1,000 Chinook. If he is correct and there are 60 such fishers, the Cheam take a large number of fish. This would constitute an estimate in the hundreds of thousands. Mr. Quipp was candid when he said that the fish he caught, he first satisfied his need and then he sold approximately 90 percent of the remaining.

Q When is the last time that an Area E fisherman caught a thousand Chinook in one season?

A Oh, I don't think -- I -- it would be a -- I don't know if any Area E fisherman caught a thousand fish in one season, but it certainly would not have been prior to 1980 when the -- or '81, I believe, Your Honour, when the Fraser River gillnet fishery was closed ostensibly for conservation reasons to commercial fishermen.

Q So you -- so to be clear, that -- does that mean that there was no targeted commercial fishery on Chinook by anybody in this room since 1980 --

A Since 1981 --

Q -- or any other --

A -- but --

Q Since 1981?

A It's either '80 or '81. My memory is --

Q That's fine.

A But it's a long, long time.

Q Yet --

A Oh, with one exception. In one year, I think -- and again, Your Honour, I'm not sure of the date, but I think it would have been 2004, there was a tiny, small pilot fishery and I think a couple of thousand fish in that year, but during the remainder of the period, almost a quarter of a century or more, there has been no Chinook commercial fishery.

Q Why was the fishery closed to the -- to these people in the room, and the rest of the Area E fleet?

A Allegedly because of conservation reasons, which were time limited to the early 1980's, but had subsequently been overcome. Chinook stocks, at least most of the

Chinook stocks, are not deemed to be in -- in the same conservation status any longer.

Q Now, as an Area E director, have your -- has your association made attempts to have a Chinook fishery --

A Yes, on an --

Q -- in recent years?

A -- annual basis.

Q And what has DFO offered the entire Fraser River gillnet fleet for Chinook allocation?

A Nothing. It's -- it's continued its position that the stocks are -- don't warrant --

Q Did they ever --

A -- a fishery.

Q -- offer a scientific or test fishery or some type of fishery?

A Not to my knowledge.

Q Between prior to this year -- prior to this year, 2010, when was the last time that a -
- one of the people in this room or an Area E gillnet vessel caught 10,000 Sockeye in the same season?

A Oh, good heavens. I -- I -- I couldn't imagine that anybody in this room, even some of whom are very, very good fishermen, ever would have caught that many Sockeye in a season. It would be -- I'm just guessing here now, but it would be more customary to think in a good year of an average fisherman getting a couple thousand Sockeye and being pretty -- pretty happy with that, but 10,000 seems far out of practical range.

Q Now, obviously DFO is, you can tell by the judgment, prosecuting some Aboriginal fishermen. It's not --

A It would appear --

Q -- that they're not prosecuting at all?

A -- to me to be the case, yeah.

Q Now, Tab 12. What -- perhaps you could read the title of that document?

A It says "Chilliwack Stats Record of Observed Non-Licence Fishing Activity 2004."

Q Now -- so this is 2004 -- this is 12 years after the Peter Pearse report?

A Yeah, I guess.

Q And we're still seeing this type of activity. Now, in the document, you can see on the -- it's a date on the one column, obviously the column of persons that are making the observation, whether they're from a vehicle or a boat, and then there's the Band, and this would be the individual -- do you -- are you familiar with the name of the Peters Band?

A Yes, I am.

Q What -- exactly what is meant by "Band"?

A Well, it's a small sub-group within the larger Sto:lo community.

Q So these are -- so we have here the Peters, the [indiscernible] and the Cheam Bands?

A Yes.

Q And what would non-licenced fishing activity be?

A I would imagine that this is illegal fishing.

Q So this would be -- in other words, the fishermen in this room, when they went fishing in the protest fishery, they went without a licence, so it was a non-licenced fishing activity as well?

A I would say that's a fair comment, yes.

Q Now, the -- so we're seeing a column "nets." On February 15th, one set net, February 12th, two set nets, and then we see in the far right-hand column, "seized"?

A Yes.

Q So we see a couple of "seized," and an awful lot of "observed" and no action report, is that fair? At least in --

A Yes.

Q -- this document?

A It looks -- it would appear to be the case, yes.

Q So you look -- turn to the next page. Again, numerous "nets" and days?

A Yes.

Q "Observed," a few "seized"?

A Yes.

Q Next page, now we're into June. "Observed, reported, reported, reported, observed, observed, observed." So numerous instances of illegal fishing, unable to determine what happened, but we know that the Department laid at least one charge?

A Yes.

Q Now, Tab 13, perhaps you can explain what this document is?

A This is a news release titled, "Here We Go Again," or "The 2004 Fraser River Salmon Fishery," and it's a release by the clerk for the Standing Committee on Fisheries and Oceans.

Q Well, perhaps you could read the second paragraph in that news release.

A

This study from the Standing Committee on Fisheries and Oceans was prompted by last summer's disaster in the Fraser River. Barely half a million Sockeye reached the spawning grounds in 2004, compared to more than four times that number in 2000, the previous year on this cycle. This ecological disaster could result in economic losses to the commercial fishery, alone estimated at 78 million for 2008.

Q So that 78 million would be spread among -- when he says the commercial fishing industry, so it would probably be processors and fishermen alike?

A I'm assuming so. I -- I guess that's the landed value. I'm not sure what the figure is, but it looks like it's a landed value, which is the number of fish that would be caught, not -- not the retail -- the final retail value of it.

Q So the next paragraph, please, would you read that?

A

We believe that if DFO had implemented the recommendations of previous inquiries, including those of the Committee's 2003 report on the management of the 2001 fishery, the likelihood of the problems faced in 2004 would have been greatly lessened, if not avoided entirely, said Mr. Wappel. The set of recommendations contained in this unanimous report should be taken seriously by the DFO, added Mr. Wappel.

Q So here the Standing committee's displaying some frustration that they did a report in 2001?

A It would appear that they were frustrated, yes. They're critical, it seems.

Q So barely half a million Sockeye reached the spawning grounds in 2004. Where does that sit in the level of escapement over the years?

A As -- my recollection of the 2004, it was a catastrophe because it was -- and Your Honour, I'm not sure of the exact number, but there was quite a bit more fish identified at the Mission counting program that I talked about earlier, than were actually counted, and the actual escapement counted on the grounds was one of the lowest ever recorded.

Q Did the Area E commercial fishing fleets fish in 2008?

A No.

MR. LE DRESSAY: 2008? 4?

MR. EIDSVIK: Yes, we're talking about 2000 and --

Q So 2000 and --

A This is 2004 we're talking about, right?

Q Right. 2004.

A So you're talking about the -- the subsequent cycle?

Q Just -- right.

A No. To my knowledge, they did not.

Q So we put 500,000 on the grounds in 2004, and that wasn't sufficient enough to give us a big enough run to fish in 2008?

A Yes.

Q Is that a surprise to you?

A Well, no, because if the fish didn't make it up, how are they going to propagate? That's -- that was a very, very low escapement that year.

Q And on the -- if you turn the page, and it's the -- you'll see in the first paragraph -- if you could start with the first complete sentence, "Unreported"?

A Are you talking about the bullet?

Q No.

A Oh, I'm sorry.

Q I'm talking about the -- page 2 of 2.

A Are we in the next --

Q Next --

A -- tab? 14?

Q No, we're still on 13.

A My apologies.

THE COURT: I think where it is is -- it's the second line at the top of the page.

MR. EIDSVIK:

Q Second line on the --

A Oh, I see. I -- my apologies.

Unreported and unauthorized Sockeye harvest is believed to have greatly contributed to the 2004 disaster.

And then it says, "In addition, the committee recommends" -- do you want me to read all of those?

Q And -- no.

A No.

Q So we have a problem again where unauthorized and illegal fishing makes a huge impact on the fishery, these fishermen are tied to the beach four years later?

A I would say that's a fair comment.

Q Tab 14, please?

THE COURT: Just before you go on, Mr. Eidsvik, it is noon and we generally -- in this court we break at noon --

MR. EIDSVIK: Okay.

THE COURT: -- as opposed to 12:30. So we're going to take a lunch break, but before we do, I just want to canvass our timing. You -- how much -- I'm not rushing you, I just would like to know if you have a --

MR. EIDSVIK: 15 --

THE COURT: -- an idea of how much longer we'll --

MR. EIDSVIK: I have about --

THE COURT: You have the whole day, if you need it.

MR. EIDSVIK: -- 15 minutes, Your Honour, on --

THE COURT: Okay.

MR. EIDSVIK: -- review, and then my submissions on whether there should be a fine --

THE COURT: Okay.

MR. EIDSVIK: -- or a stay, probably --

THE COURT: All right.

MR. EIDSVIK: -- 15 minutes again.

THE COURT: Okay. I'm not rushing you.

MR. EIDSVIK: Yeah. Probably half an hour.

THE COURT:

All right. We'll come back at 1:30. Mr. Le Dressay, I don't know whether you'll have any reply, but we'll come back at 1:30.

MR. LE DRESSAY: A little cross and a little reply. Not a lot.

THE COURT: And if you could --

MR. EIDSVIK: And I will canvass the --

THE COURT: All right.

MR. EIDSVIK: -- fishermen here.

THE COURT: Thank you. I appreciate that, thank you.

A Can I leave my book here?

THE COURT: You can leave it there --

A Or should I take it?

THE COURT: -- sure. Everything will be locked up. Thank you.

(WITNESS STOOD DOWN)

(PROCEEDINGS ADJOURNED FOR NOON RECESS)

(PROCEEDINGS RECONVENED)

DENNIS BROWN, a witness, recalled.

THE COURT: Mr. Brown, we'll just remind you that you're still under affirmation.

A Yes.

THE COURT: Thank you. Mr. Eidsvik.

MR. EIDSVIK: We're getting near the end here, Your Honour. We're at Tab 14.

EXAMINATION IN CHIEF BY MR. EIDSVIK, continuing:

Q Mr. Brown, this report to the 2004 Salmon Fishery, Post-Season Review, are you familiar with that report and the activities around that report?

A Yes, I am.

Q Who was the chair of the committee that looked at those?

A The chair of the committee, I'm not sure. I see the clerk's name here, but -- I guess it was Tom -- Tom Wappel, yeah.

Q No, I'm talking about the --

A Oh, which --

Q At Tab 14.

A Oh, sorry. Pardon me. My apologies, Your Honour.

Q Properly called the Williams Review?

A Oh, the Williams Review of 2004, yeah. By a former judge, I believe.

Q Now, going to Tab -- page 37 --

A Of Tab 14?

Q -- of Tab 14. It's about five or six pages in.

A Okay.

Q We're not going to go through the whole of this --

A Yeah.

Q -- and it's just a -- one of the many examples in this document where the -- there's two paragraphs and then there's an inset paragraph, and then there's a paragraph that starts "after reminding."

A Yeah.

Q Can you read that?

A

After reminding the committee that an earlier DFO random survey of restaurants and fish retailers in the Okanagan area found that amongst 64 places surveyed, there had been 89 attempts to sell them illegal fish, Mr. Nelson said. Due to budget concerns --

Oh, sorry, do you want me to read that part?

Q Yes.

A

Due to budget concerns, I directed officers to not work illegal sales in both 2003 and 2004. The amount of fishing moving into Alberta is amazing.

Q And if we go to the -- page 40 in that same tab, and the second paragraph --

A Do you want me to read it?

Q Yes. It said --

A

The most important question we have to answer is what happened to the 1.3 million Sockeye which cannot be accounted for between the Mission Bridge and the spawning grounds. It is obvious from the evidence in a previous chapter that the extraordinarily high water temperatures, especially during the summer run, killed a large number of these fish during their migration, but it is equally clear that the illegal catch and sale of fish in the face of inadequate enforcement was a significant contributing factor.

Q And at the -- skip the next paragraph, and the last sentence in the following paragraph starts with "in summary."

A

In summary, this committee is of the clear opinion that inadequate enforcement of the rules against illegal catch and sale of Sockeye was a very significant factor with respect to the 1.3 million missing fish.

Q Now, we saw earlier that there was about 500,000 put on the spawning grounds in 2004?

A Yes.

Q If 1.3 million had have been on, that would be 1.8. Could there have -- based on typical escapements from year to year, could there have been a public commercial fishery in 2008?

A I think that's a reasonable thing to assume, although you never can tell. But in that range, it would have been close to a normal escapement range for that cycle.

Q Okay, that's that tab. The next tab, Tab 15, I'm just going to bring you through a document that shows the cost to the fleet of this type of activity. You'll note on the first page of Tab 13 --

A 13, did you say?

Q Tab -- sorry, 15. Tab 15.

A Yeah.

Q At the top of the page, perhaps you could read the title on the document?

A "Registered Indian Population by --

Q Yes.

A -- Sex and Type of Residence by Group Responsibility Centre in Region, 2002."

Q And on the third group down, in the west district, the Katzie Band?

A Yes.

Q Can you tell me where the Katzie Band is located?

A That's roughly in the Maple Ridge area, around -- I'm not sure of the exact boundaries, but --

Q Okay.

A -- around Maple Ridge to --

Q Around the Maple Ridge area?

A Yeah.

Q On the river?

A Yeah. On the river, yeah, very close to the river.

Q So their total population?

A According to this, 563, is it? No.

Q Katzie?

A Oh, Katzie?

THE COURT: I think it says "458."

A 458 --

MR. EIDSVIK:

Q 458?

A -- pardon me.

Q 458?

A Yeah.

Q And you can see on the next column over, that's the on-Reserve population?

A Yeah, and the on-Reserve is 285.

Q And the off-Reserve?

A 173.

Q And can -- what is the significance of those two, on-Reserve and off-Reserve? Do you understand that?

A I understand it only to this extent, is that not all the members of the Katzie Band live on the Reserve.

Q Thank you. And the next page, it's the same group and we're looking here for a group called the Kwantlen, what was -- used to be called the Fort Langley Band?

A Kwantlen?

Q Yes. What's the --

A Yeah.

Q Their population is one --

A 173, 73 on Reserve, 100 off Reserve.

Q Okay. So Tab 16?

A Yeah.

Q The title is the "Lower Fraser First Nations Salmon Fisheries Report" for the week ending November 24th, 2002. So you'd say by November 24th, salmon fishing in the Fraser is pretty well done?

A Yes.

Q So this would be a summation of the year? If you look at the next page --

A Yes.

Q -- you can see the effort, and on the following page, we have Sockeye catches -- or sorry, First Nations Chinook Catches, Table 2?

A Yes.

Q And if you look down, you'll see the Katzie and the Kwantlen?

THE COURT: You're looking at Table 2?

MR. EIDSVIK: Table 2, Your Honour.

THE COURT: Okay.

MR. EIDSVIK: It's the --

THE COURT: I have it, thank you.

MR. EIDSVIK: -- third page in the tab.

A Katzie and Kwantlen, yes.

Q And you see there's Chinook catch -- recorded Chinook catch for the year, 17 by set, 1678 by drift, 70 by -- and the Kwantlen, 70 and 965. On the next page, you'll see the Sockeye catches, or the catches that they reported to DFO for the year. Again, Katzie, 75,000 Sockeye by drift, 1,075 by set. And the Kwantlen, 586 by set and --

THE COURT: 566.

MR. EIDSVIK: Yes, sorry. Yeah, it is, Your Honour.

Q And 38,684 --

A Yeah.

Q -- by drift? And then of course we have similar on the Steelhead. The next page is Steelhead catch, and then the final page, the Coho catch.

If we can move to Tab 17, have you looked at this table and reviewed it?

A Yes.

Q So what we've done here, and I'm going -- first bring you the pounds per fish. Typical Chinook is about -- roughly 16 pounds in the Fraser?

A That's a pretty good average, yeah.

Q Sockeye about five and a half?

A Yes.

Q Steelhead about ten?

A Yeah.

Q Coho and Chum about eight?

A Yeah.

Q So what we've done is taken the number of fish from the previous table, added it in here, calculated the total pounds, divided by the Band population, and we end up with the Katzie, based on everybody in the Band for that year, 2002, having a reported catch of 1,056 pounds per person? If you only look at the population that's actually living on the reserve, 1697 pounds per person?

A Yes.

Q And --

A Yeah.

Q And the Kwantlen, the same calculations again. The pounds per person, 1441?

A Yeah.

Q And the Kwantlen, if you look at on-Reserve, what's their total pounds per person for food fish?

A 3,415 pounds.

Q How many days in a year, roughly?

A 365.

Q Roughly how many pounds per day of fish is this?

- A** It'd be an awful lot of -- an awful lot of fish.
- Q** An awful lot of food fish. How much -- are you a fish-eater, Mr. Brown?
- A** Yes, I am. I -- I don't eat meat. My wife and I eat seafood, so quite a bit.
- Q** So what would your salmon food catch be for the year?
- A** Well, every year I personally buy, from the test fishermen at Albion, two spring salmon and then I usually buy, on an average, ten to 12 Sockeye from a fisherman somewhere in the system, and I can them. And those two spring salmon and ten or 12 Sockeye last me for a whole year, my wife and I, and we're eating it two or three times a week, so it's certainly -- I don't know if that's a good standard, but my food consumption, and I consider myself quite a heavy seafood eater, is nowhere in the range of -- of these numbers, that's for sure.
- Q** So what would you pay for a Chinook salmon from the test fishery?
- A** Probably -- I -- I would think that the two that I bought this year cost me roughly \$130.
- Q** So those --
- A** And the Sockeye that I bought, the price is a little lower this year. It cost me around -- about \$100. I can't remember exactly, but --
- Q** Thank you. So the next page we turn to, and we're trying to put a value on the excess harvest. So if you look at the Katzie population --
- A** Yes.
- Q** -- and you say, based on their total population, and we've gone a half pound per day, a half pound of fish per day, that would equal 83,585 pounds for the entire pound. That's what it would take to feed the Band a half pound of food fish every day, so 365 days a year, eat a half pound of salmon.
- A** That's the first column --
- Q** That's the first column --
- A** -- correct?
- Q** -- but the actual -- their actual catch is the number from the previous page. They caught -- sorry, they reported a catch to DFO of 483,000 pounds. So that leaves us an excess harvest of about 400,000 pounds or about 72,764 Sockeye, and at \$15 each, that's \$1,000,091, and you can see the calculations carried down also for the Kwantlen. So we've got roughly \$1.7 million in excess value for the two Bands, based on their total population, and an excess value of 1.8 million, based on the

Bands for their on-Reserve population. Those numbers look -- you've reviewed these numbers?

A I've reviewed them, and they -- they -- certainly as they're stated, they look plausible to me, yeah.

Q Now, there's about 400 gillnetters in Area E, roughly?

A Roughly, yes.

Q Roughly. So if we took the 1.6 million excess salmon harvested, dollars worth, by the Katzie, and divided by 400, we end up with \$4,213, and depending on the -- if you just look at on-Reserve, \$4,553. So if the Area E gillnet fleet had have been allowed to catch that surplus, each gillnetter would have earned another \$4,000 in 2002, keeping in mind, am I correct, that of course the allocation would go to the same fleet and the trollers and outside gillnetters, so it's not all for Area E. My point in this, this is two Bands, is that the illegal sale of food fish and DFO's refusal to enforce that fishery cost fishermen a lot of money.

A Yes. I can say, without being certain about all the computations and all the numbers, that there was a profound loss to the licenced commercial fishermen when this kind of operation or this kind of management paradigm was in place.

Q Now --

A There is no question in my mind that significant losses have occurred in terms of what would have been the kinds of earnings fishermen would have derived in these kinds of runs in an earlier era when the Aboriginal fishery was much less complicated than it is today.

Q Now, when the Pacific Salmon Treaty was negotiated, there was a ceiling put on for Aboriginal food fish in the Fraser River --

A Well, they didn't --

Q -- Sockeye?

A They used -- didn't use the term "ceiling." What they called it at the time, the negotiators of the Treaty, Your Honour, they called it the "Aboriginal exemption," so that there was 400,000 Sockeye to the Fraser River which -- taken off the top before any of the bilateral sharing arrangements would kick in, or would be calculated.

Q And in an average year now, when there's fish, do you know what the Aboriginal, quote "food fish" allocation --

A Off the top of my head --

Q -- or harvest would be?

A -- in recent years, certainly since the -- the post-1985 signing of the Salmon Treaty, the number would be anywhere from 800,000 to 1.2, 1.3 million fish caught by the Aboriginal sector, and prior to the signing of the treaty and the Aboriginal exemption of 400,000 being enshrined, the catch, on average, from 1946 up 'til 19 -- the 1980's, that I've seen, would have put the number at -- below 200,000, probably somewhere closer to 150,000 a year, so there was a -- there was a dramatic increase after 1985, and then post the changes in the Aboriginal policy, it's exponentially grown.

Q What has been the effect on the salmon fishery on Fraser River Sockeye on gillnetters, as a result of missing fish and the illegal fishing that's gone on --

A Well --

Q -- in terms of the human impact on the people and the fishermen that you've represented and known over the years?

A Well, it's hard to say. All I can observe is that there was a lot of dislocation, certainly economically. There were several years in the last decade, for example, where there was no fishery at all. That notwithstanding, even though it was alleged that there were conservation problems, there was no year that I can recall, with the possible exception of one, where the Aboriginal fishery was -- was in any way diminished, and in terms of the impact socially on people, it's my impression that a lot of people's lives really declined in the fishery. It's very hard, Your Honour, to specify it, but I -- I think there was a lot of stress people endured, in a large part because commercial fishermen appeared, by the public and the media, to be vilified and blamed for the problems in the fisheries, and I don't necessarily agree that that was the case. But --

Q So you --

A -- as best as I'm trying to answer you, Mr. Eidsvik, is -- I think there was a lot of hardship.

Q People had lost boats?

A There are people who have lost boats.

Q People have lost livelihood, certainly?

A Certainly people's livelihoods were profoundly diminished compared to -- compared to what they once were and compared, relatively speaking, to the amounts of fish that are still returning to the river. In large part, that's a function of the fact that the Department of Fisheries and Oceans has, in many years in the recent years, quadrupled, or in many -- many times over increased the escapement. And that hasn't always been clear to me that that's for biological reasons. In part, I think

that's to compensate for the fact that, as you've referred to, that there was a lot of fish going missing.

Q People have lost homes?

A Yes.

Q Divorces?

A Yes.

Q Heavy social costs --

A Yes.

Q -- of this --

A My -- my impression, yes.

Q In one way you could say -- are you surprised that this has all been so peaceful, given what's happened to the industry?

A That's a difficult thing for me to answer.

I'll -- I'll say that certainly there's been a tremendous amount of stress, and I think it's fortunate that we haven't had more negative consequences, put it that way.

Q What happened --

A It could easily have happened.

Q What happened in Burnt Church in --

A Oh --

Q -- when a similar --

A -- I -- my limited understanding is things got much more violent on the East Coast, and I don't want to comment on why that would be. A different culture, but I would at least take some consolation in the fact that here on the West Coast, while there's been a great deal of acrimony, nobody's been killed so far, and generally speaking, civil disobedience has been pretty constrained.

Q In the early days when this program was starting, there was a number of ways that people said to deal with it. Do you remember what those days were -- what those different types of actions we could take to deal with this program with these problems we had in the fishery?

A Well, we were told that we could deal with it politically.

Q And how did that work out?

A Well, in my direct experience, when I was with the United Fishermen and Allied Workers Union and involved in the industry, it -- it entailed countless meetings with the Department, with politicians, with cabinet ministers, with standing committees, with different people, but of all the political work I ever did in my life, I -- this was probably the most frustrating in terms of seeing any kind of change in terms of seeing any kind of change as a result of engaging in the political process.

What we seemed to always hear was sympathy or acknowledgement that there was a problem, but it was almost like -- this is just my personal opinion, Your Honour, that this was an issue that was sort of special and -- and hands off, and that the Government was dealing with it in a -- in an ultra-sensitive fashion, and to date,

I don't believe that the Government did very much to compensate for the effects. They claim that they did, but -- there was very small buyback early on, but in terms of the amount of fish on average that was reallocated each year, the compensation was not there.

Q Did you hear threats of violence among our fleet, that people said we should go burn some boats or burn an office or take it into our hands and settle it that way?

A No, I never heard that. I -- you -- you might -- you might hear the odd intemperate person, but it wasn't characteristic of the fleet.

In fact, I would argue that it was the opposite, that people said we must protest, but any time -- and I never organized a protest and I was never involved in a protest, but any time that I heard about it and watched the events, there was strong counselling to not break the law, to not con -- particularly not engage in any kind of violent action towards Aboriginal people, and that the fight was with the Government, solely.

MR. EIDSVIK: I think those are my questions for Mr. Brown, Your Honour.

THE COURT: Thank you. Do you have any questions, Mr. Le Dressay?

MR. LE DRESSAY: Just a few, Your Honour.

THE COURT: Just before you begin, I have a question I'd like to ask the witness.

You referred to the judicial --

A Yes.

THE COURT: -- inquiry that's underway. Are you involved in that?

A Yes, I am. I'm -- I'm working as a researcher. I'm not paid by the Commission, but I've been working -- studying the subject.

THE COURT: All right, thank you.

A Thank you.

THE COURT: Mr. Le Dressay?

CROSS-EXAMINATION BY MR. LE DRESSAY:

Q Mr. Brown, you strike me as a man who has an understanding of the complexity of the management of the Fraser River salmon fishery?

A I try. I certainly don't purport to have a universal knowledge.

Q For instance, you told us that you served seven years on the Pacific Salmon Commission?

A Yes.

Q And you understand that that was a body that was created bilaterally, by Canada and the United States, to address really one particular facet of the complexities of the return of the salmon to the Fraser River, is that correct?

A Well, its function is to conserve the fish.

Q Right.

A -- and then secondly to divide the catch between the two countries.

Q Right. And as I understand it, the -- salmon returning to the Fraser River have two routes to get to the mouth; they can come down Johnstone Strait?

A Yes.

Q Or they can come up Juan de Fuca --

A Yes.

Q -- through U.S. waters?

A Yes.

Q And that's where the complexity arises?

A Yes, most definitely.

Q Exactly. And that's the whole point of the Pacific Salmon Commission, is to deal with that particular facet of that complexity, the fact that Canadian salmon pass through U.S. waters on their way back to their spawning grounds and are subject to catch by U.S. fishermen, correct?

A Yes.

Q All right. And ultimately that complexity was resolved by striking this bilateral commission to try and deal with that issue by agreement between the --

A Between the two countries --

Q -- two countries?

A -- yes.

Q All right.

A But I --

Q And ultimately --

A I would hasten to add that all of the domestic allocation within Canada, which would also include the First Nations catch, has nothing to do with the Salmon Treaty. The Pacific Salmon Commission does not in any way engage itself in that. These are all done by DFO or by Canada, outside --

Q Right.

A -- of the parameters of the Treaty.

Q No, but my point is is that the Pacific Salmon Commission is essentially a political solution to what was otherwise a very thorny issue of who gets this fish passing through U.S. waters?

A Yes, I would agree with that.

Q All right. And similarly, when the fish enter the mouth of the Fraser River, a whole new set of complexities are brought to bear on the matter, and that is the allocation of the resource between the spawning ground escapement --

A Yes.

Q -- dealing with the constitutional priority of Aboriginal fishers, correct?

A Yes.

Q Dealing with the number of commercial fishers that should have access to that salmon, both in the waters outside of the Fraser River and the waters inside the Fraser River, correct?

- A** Yes, there's a domestic allocation process, yes.
- Q** Between competing commercial groups as well?
- A** Yes.
- Q** And even -- I don't know if you're aware of it, but even with Aboriginal groups, there is competition between them, allocations as between them --
- A** Most definitely.
- Q** -- because of course the Aboriginal groups closer to the mouth have much more enhanced access to this salmon returning to the Fraser River than do the Aboriginal groups say on the other side of the Mission counter, correct?
- A** There is a problem there, yes. And part of the problem comes from the fact that there is not a clear method of allocating or even defining what those allocations should be.
- Q** Right.
- A** And in some cases, many of the Bands that are involved don't even reach agreement with the Department.
- Q** Okay. But in large measure, it is, you'll agree with me, an issue that ultimately must be resolved politically?
- A** Oh, most definitely --
- Q** All right.
- A** -- yes.
- Q** And that is why, for instance, for these many years, it sounds to me like over 20 years, you have been pursuing different ways of bringing this matter to the attention of the powers that be, the people who actually manage the fishery?
- A** With great passion, yes.
- Q** That's why you go to Ottawa and you appear before the Standing Committee --
- A** Yes.
- Q** -- to make your point known --
- A** Yeah.

Q -- because these are the people who ultimately advise Parliament and who can ultimately influence the Minister of Fisheries and Oceans to maybe change the way the river is managed, correct?

A Yes.

Q And this is also why you go to the media, is to -- because you know the media has influence on the Government as well, correct?

A Yes.

Q That's why you speak to MLAs and MPs?

A Yes.

Q That's why you wrote a book?

A Yes.

Q It's why you've appeared before the -- or have you appeared before the Williams Review?

A No, I did not appear --

Q You --

A -- before the Williams Review.

Q Okay. But while you're working with -- that is why you're working with the Cohen Inquiry today?

A I'm working on the Cohen Inquiry, hopefully to get some of the facts of the Fraser River Sockeye fishery out as best I can.

Q I'm going to suggest to you, Mr. Brown, that the reason you do all these things is because these are the legal avenues that are open to you to get your point across to the politicians that ultimately must resolve these issues, correct?

A I would agree with that.

MR. LE DRESSAY: Those are my questions.

THE COURT:

Thank you. Anything arising out of that that you'd like to ask a question about?

MR. EIDSVIK: Just one question --

THE COURT: All right.

MR. EIDSVIK: -- Your Honour.

RE-EXAMINATION BY MR. EIDSVIK:

Q After 20 years of working with politicians, do you think you really changed anything on this file, to protect the people in this room?

A Your Honour, it's my opinion that the people who are in government have a real problem dealing with the Aboriginal question, and there's a great deal of sensitivity around it, and much of which I sympathize, in terms of the role -- the place Native people have in our society and the history.

But it's my opinion that there's a kind of fog around the whole thing, a kind of political correctness that obscures what might have been, as you're saying, other kinds of routine policy decisions.

Like if it was a debate between gillnetters versus trollers, or seiners versus gillnetters, or other types of conflicts in the industry, they would be -- they would be settled in a fairly above-board, transparent and routine often-controversial way by -- by the Department.

This problem, as best I can articulate to you, is one in which input goes out, but change does not seem to be logical and it's not often well-explained, and it -- and it's -- even in terms of things like them describing what Aboriginal rights are, or what they think they are, and I'm referring to the DFO here now, and it's quite different in both theory and in practice to what might be read in in some of the legal decisions and whatnot.

It -- it appears to me that some government officials interpret the law to go far greater in its extent than I, as a non-legal person, currently read it.

And that has been part of our frustration, is that a lot of what we are engaged with doesn't get properly addressed.

And I hope that's not to con -- confusing of an answer, but it's -- it's been the most frustrating thing I've dealt with in all of my career in the fishing industry.

MR. EIDSVIK: Thank you, Mr. Brown.

THE COURT: Thank you. Thank you, sir.

(WITNESS EXCUSED)

THE COURT: Mr. Eidsvik?

MR. EIDSVIK:

You'll be relieved to know we're not calling any more witnesses, Your Honour --

THE COURT: Thank you.