

**Commission of Inquiry into the Decline of
Sockeye Salmon in the Fraser River**

Public Hearings

Commissioner

THE HONOURABLE
JUSTICE BRUCE COHEN

Held at:

Room 801
Federal Courthouse
701 West Georgia Street
Vancouver, B.C.

Monday, December 13, 2010

David Butcher

**For Area E Gillnetters
B.C. Fisheries Survival Coalition**

MR. BUTCHER:

I'm David Butcher. I represent the Area E Gillnetters and the Pacific Fisheries Survival Coalition. Those are obviously people who are fishing in the same part of the lower Fraser River as your groups. I have heard bits and pieces of evidence from your oral evidence and from your written summaries with respect to the degree of involvement of each of your communities in the fishery.

CROSS-EXAMINATION BY MR. BUTCHER:

Q

And maybe I'll start with you, Chief Baird, because yours might be the simplest, because you now have the treaty. Can you tell us how many people you have in your community and how many of those are involved in the food, social and ceremonial fishery and how many are involved in the commercial fishery? And then I have the same question for each of the panel members, so that we've got that evidence from everybody. And I don't need precise numbers, but I'm interested in the scale.

CHIEF BAIRD:

I'd say that we are about 420 members, in Tsawwassen. We have about 80 to 100 licenses, which means 80 to 100 Tsawwassen people licensed every year. And probably about 40 to 45 boats we're up to, now. And of that, I would say 80 percent of those would -- maybe 75 to 80 percent - this is off the top of my head - would fish in the FSC, and upwards of 90 to 95 in sales fisheries.

Q

And do you also have members in the regular 40 commercial fishery as well?

CHIEF BAIRD:

I think we might have one.

Q

Mr. Becker, can you answer those questions for 43 your community?

MR. BECKER:

We have roughly 1,300 Band members. We licensed about 100 last year. There were about 40 to 50 boats out. We have upwards of a half a dozen commercial fisherman.

Q

Those who have licenses in the 1 regular commercial system?

MR. BECKER:

In the privileged fishery. Purchased license to -- privilege, to me.

Q

Mm-hmm. And of those fishing pursuant to your agreement with Canada, how is that divided between food, social and ceremonial and commercial?

MR. BECKER:

The commission is -- decides how much fish is distributed to the elders and the handicapped, ceremonial, and how much is fished for the community, before we go fishing for ourselves. And I think that -- the information on internal distribution is confidential.

Q

Internal contribution as between food, social and 15 ceremonial and commercial?

MR. BECKER:

That's what I'm saying. It's a decision that we make, as a band, and I don't think it's anyone's business on how we divide that food, social and ceremonial fish.

Q

As between food, social and ceremonial and sales, I is that what you mean? Or as between aspects, different aspects of food, social and ceremonial?

MR. BECKER:

Food and social and ceremonial, that's confidential how we divide that amongst the Band. For commercial, we'll use the term that the Department of Fisheries uses, "economic opportunity". We take a portion of that FSC and transfer it over to sales.

Q

And you're saying that's a matter that is confidential to the Band?

MR. BECKER:

No, the -- for public record, you could go to the Department of Fisheries and see what Musqueam transferred.

Q

Okay. So the only issue that you consider to be confidential is what you use as between food, social and ceremonial?

MR. BECKER:

Right.

Q Fair enough. Sorry.

GRAND CHIEF PENNIER:

As the president of the Sto:lo Tribal Council, I'm not privy to that information about how many fishermen we have in all of those communities, or who's a commercial fisherman or not, because they have their own group to discuss amongst themselves, you know, how it's -- who's going fishing and when.

Q

That raises a question that was really asked of Chief Quipp earlier by Canada's counsel, from something arising out of your I witness statement, which seems to suggest that there isn't coordination as between members of the Sto:lo groups as to how many fish each of your groups are going to catch within your allocations. Is that fair? Is that what you're telling us, the two of you?

CHIEF CHARLIE:

Go ahead.

GRAND CHIEF PENNIER:

No, I was just telling you that I'm not privy to information about who is receiving permits to fish and all that sort of thing from each of the communities. It's not --

Q

Are either you, Chief Quipp, or Chief Charlie, able to give the Commissioner some concept of scale, or number of members, number involved in FSC, number involved in commercial activities?

CHIEF CHARLIE:

Thanks, David. There's some questions specific numbers and details of things that I cannot answer because I just don't have the time in the day to keep a handle on all of those, and so we have technicians that would be able to give you definite numbers when its their opportunity to share that.

I do know that I think we have over 200 licensed, though, generally, that we hand out. I don't know how many boats. I think it was about 40 boats or so, fishermen. As far as the comment towards us not knowing or being coordinated on our end to know how many fishermen, we know. Our technicians would know those numbers.

And we also have a method of knowing what fish come in, because, again, we're the only user group that counts and lands all of our fish. So all of the fish get counted at each of the different communities through fish counters. And so I can't give you the answer right now, but if I knew you were going to ask that question, I could have -- If I had my Blackberry turned on, I could e-mail one of the technicians and ask him.

Q

I'm sure the evidence will come out eventually. When you use the word "we", are you referring to the Chehalis or are you referring to the Sto:lo?

CHIEF CHARLIE:

We, as far as numbers that I give you are for Chehalis fishermen, but any -- and how we count fish and how we have landing sites.

Q

And just so it's clear, I think there are about 7,000 Sto:lo members; is that correct?

CHIEF CHARLIE:

Just Chehalis, we're 11,000 on our own. So I think 7,000 would be a bit under.

GRAND CHIEF PENNIER:

Yeah, it's a bit under. There's about 6,000 with Sto:lo Tribal Council communities, and then there's -- well, there's 24 bands up in our area, so, you know, you're looking at a fairly large population.

Q

But all included within that 6,000 number, or are there others to be added to that 6,000 number?

GRAND CHIEF PENNIER:

That's just with Sto:lo Tribal Council with Cheam in there.

Q

I was a little perturbed to hear what I thought I heard today, was that some of you were saying that the Department of Fisheries and Oceans still -- there was still a dispute between your groups as to what constituted social and ceremonial use. Did I hear that correctly?

COUNCILLOR QUIPP:

Yes, you did. There is still a dispute. There's no definition for "social" and so they give out permits. They give out permits for communal licenses for -- they call it FSC, but there's also ceremonial permits that are given out, but they've never given out a social permit, and nobody's ever defined what "social" means when it comes to FSC, because that's what the acronym stands for, food, social and ceremonial.

Q

And listening to you, today, I would understand that your social and ceremonial issues would include matters relating to what I will call human lifecycle events: birth; marriage; death, those sorts of things; is that --

COUNCILLOR QUIPP:

As well as economic, yeah.

Q

And if I can --

COUNCILLOR QUIPP:

Spiritual.

Q

Spiritual, perhaps seasonal celebrations?

COUNCILLOR QUIPP:

Yes. Or any celebrations. You know, like I mentioned earlier, that DFO has taken it upon themselves to define what our ceremonies are, and that's only funerals over the last two or three years. But one of our elders from our community has actually listed about 50 ceremonies that we actually practice, different families practice, not everybody, but different families practice different ceremonies, and yet those aren't recognized by the Department of Fisheries, when we're talking about ceremonies.

Q

There must be a way for you, collectively, to quantify that social and I ceremonial need?

COUNCILLOR QUIPP:

You know, I feed a lot of people. I feed a lot of people. I have people come from all over B.C. coming to my backyard and I supply them with whatever fish I can, because I know they need it to bring it back to their families, to bring it back to people. Someone made a comment this morning about really, you know, craving a fish, you know, and one of my elders, years ago, mentioned the fact that she -- her mouth watered whenever she knew it was the season for the salmon, and she knew they were going right by her house. It took me years to realize what that statement meant, because now I have that same watering in my mouth when I know there's salmon and I have no access to it.

I want to go back to your question about, you know, how we -- how we share the salmon and whether we know we have enough for our people. And our indicator for as to whether we've filled an allocation that we need, or that the needs of our people are being filled, is if we don't hear anymore complaints about one of our members getting enough salmon for the year, and I don't think we've ever gone a year where we've had, you know, a member that -- at least one or two members that come and say, "Well, I didn't get my salmon this year," because our fishers, it's a common teaching in our community that everyone gets a fair share of the salmon. And so when our fishers go out, there's quite often a member from a family grouping that goes out and fishes and provides that salmon for their family, and if they don't, some other family is more than willing to step up to the plate to do that.

CHIEF CHARLIE:

I don't mind answering your question.

Q

Sure.

CHIEF CHARLIE:

You're rattling a whole bunch of questions off and I'm having a hard time keeping up and writing them all down. I want to thank you for your question, and also thank you for being concerned and being perturbed, and I hope that your clientele group is as perturbed that there is no definition right now, except the definition of FSC. And so thank you for being upset about it, and I hope you help us advocate to make sure that it is defined properly with our inclusion I and because -- and that's the way it needs to be. We can't have it dictated to us what a ceremony is, and that's exactly what's trying to happen. They're trying to put a definition on FSC fishing for us, and we kind of said, "No, no, we'll determine what FSC is, according to our

social laws, according to our snowoyelh, according to what our spiritual needs are." I don't know what faith you are, or what belief that you have, but I'm not going to tell you how to pray and how to carry on with your spiritual practices and beliefs, and that's exactly what happens when they try to define ceremonial need for us. And it's up to us to determine what an FSC is, and I think we can. I can do it for Chehalis, but it's going to be up to other nations to do that, themselves. But it needs to be all of it, FSC. So I hope you help us advocate for that.

Q

No, I was surprised that 28 years after that phrase was defined or used by the Supreme Court of Canada that there still wasn't a common ground as to what it meant.

CHIEF CHARLIE:

Thank you for your concern.

Q

But Mr. Becker, you were wanting to answer something for a moment there?

MR. BECKER:

Yeah, I just didn't accept your -- whether you were trying to describe ceremonial or social, what you -- what you were trying to say to us.

Q

Well, one of the things I was trying to get was your -- you're the witnesses here, your idea as to what the difference was and what the definitions were.

MR. BECKER:

Well, if you look at -- and I'm sure you've looked at many of the agreements and many of the licenses over time, what it states, and that's FSC, and what it should actually state is just "FC", because there is no definition of "social". We're on record as trying to sit with the Department of Fisheries and Oceans to get that definition, and that's two years in the making. I agree that it's time that there is definition to "social". And I think it's going to take more than one First Nation to define that, though in the Supreme Court of Canada ruling it only pertained to Musqueam. So we're endeavouring to resolve that question. But if only Musqueam has a definition of "social" and DFO does not agree with it, then we're just wasting our time.

Q

And at the moment, both for the Sto:lo and the Musqueam, you have what are called -- I think they're called Comprehensive Fishing Agreements that you sign each year, and they just contain one number of fish, of sockeye, that each of you can catch for that purpose? Have I described that correctly for the Sto:lo and the Musqueam, at least?

MR. BECKER:

Yeah.

GRAND CHIEF PENNIER:

Yeah, there's agreements that are signed, yeah, that defines the amounts of fish, yeah.

Q

Now, the reason that I'm interested in this issue is that several of you, in your witness statements, have said that you are opposed to the prohibition on the sale of food, social and ceremonial fish. And perhaps if those -- Councillor Quipp -- sorry, Grand Chief Pennier, you say, simply, that the prohibition on the sale of food, social and ceremonial fish should be eliminated. Mr. Becker, you say -- or the statement says this:

Mr. Becker advises that Musqueam have always felt that it had a right to access food fish.

Nobody disputes that.

Musqueam do not propose to break the law and sell FSC, but they do want to have a definition of "social" or "societal" in FSC, which they believe is something that they should define.

Sorry. Perhaps I can just have -- oh, sorry, Mr. Becker, you went on to say -- you say:

He thinks it is not right that First Nations are told that if they go FSC fishing, then they cannot sell the fish to satisfy other needs. They should have that right; the fish belongs to them.

What I'm trying to get, collectively, I from you is your evidence about why it is that you assert that ability to sell the fish that is being provided or allocated to you specifically for that purpose, i.e. the food, social and ceremonial purpose? Does anybody want to answer that question?

MS. GAERTNER:

Sorry, Mr. Commissioner, I'd like this question posed -- if he's raising it from a witness statement, to the witness who has raised it in their witness statement, please.

MR. BUTCHER:

Q

Well, I'll ask it, first, of Mr. Becker, and then of Chief Pennier, because I think those are the witnesses who have raised it directly.

MR. BECKER:

Could you ask it again, please?

Q

Well, I'll ask it this way: It seems to me that I7 you're asserting that your group should have a right to sell the fish that have been allocated to you for food, social and ceremonial purposes. Is that, in fact, your position?

MR. BECKER:

No. That's my personal view, but not the Band's position.

Q

Why is it your personal view?

MR. BECKER:

I just believe that in economic times, where they are, that individuals should have that opportunity.

Q

What is the Band's position?

MR. BECKER:

No salmon.

Q

Chief Baird, may I ask the same position from you?

CHIEF BAIRD:

My personal view is that if fish have been legally caught, First Nations should be able to decide whether they eat or sell it, like any other user group does.

Q

Chief Pennier?

GRAND CHIEF PENNIER:

Well, I made this statement that the sale should be -- or the provisions, whatever, should be outlawed. You know, it's been in the *Fisheries Act* since 1888 that we're only supposed to catch food fish, and that law has been broken for, what, over 100 years? And it still hasn't changed, you know. You know, our people, as I mentioned earlier, people in Scowlitz are -- had depended on an industry that's pretty well dead, now, so they really need to get some money to provide for their families, and fishing is one of those ways that they can get money to provide for them, whether it's food -- different food on the table and clothes I on their kids.

Q

Do the other two of you have any comment on that issue? On the -- yes, sorry, go ahead.

CHIEF CHARLIE:

Again, David, thank you for helping us to, I think, clarify a few things. Again, going back to kind of the traditional laws of our peoples, what we call snowoyelh, everyone is born with a different gift. Today, we're kind of forced to conform to what people think we should be and how we should be.

What I'm getting at is at one time you were born -- the way my uncle said it. My Uncle Buster said, "You're born with a gift. Everybody's born with a gift. That gift becomes your job. That

gift becomes your place in your community" And so if you were the hunter and you went out hunting and you provided meat for those in your village and your community, and maybe you weren't the fisherman. So when it was the fisherman's turn to go out and catch fish, he brought you fish. Maybe he was gifted at working with his hands and working the cedar, working with wood. In exchange, they would share with each other their different gifts for survival.

Same with spiritual people. A spiritual person might not have the time, energy, or whatever, to go out and to hunt or to fish or to work with their hands. And so if I go and look for help from a *schwilan* (phonetic), a way of thanking that person for carrying their gift in a good way, I'll bring them something that I do. So I'm a fisherman. I'm going to bring them canned fish, I'm going to bring them smoked fish. I'm going to bring them whatever I have as a way of thanking them for the gift that I've been blessed with, thanking them for their gift in looking after me.

And so, yeah, those traditional laws, our social laws, need to be our social laws.

COUNCILLOR QUIPP:

I just want to comment on the sales of fish, I guess, in regards to ours, and I really believe that social should cover that. I was asked that question, earlier, whether I felt we should be able to sell our fish out of the FSC allocation and I said, "Definitely," because it's -- depending on whether there's an abundance of salmon in the river, or whether there's only enough for sustenance. You know, I the *Van der Peet* case actually ruled against us in the sale of fish, but that's a case that should be reviewed, as oral evidence was not accepted in that case. And to date I've had several members, several people that have been charged with selling fish, but DFO always drops those charges before they get to the courts, and so when they end up in court they're charged with possession of fish, but they drop the sales charges. So it's definitely a concern, even on the part of DFO, to follow through the charging one of our people with selling fish.

You know, in B.C. we still hold the concept that we haven't sold, ceded or surrendered this province, yet. I've seen no bill of sale that the government owns the salmon. To date, we still own it, we still should have the jurisdiction over that fish.

Q

So I take it, from your answers collectively, that there's a broad support among the panel for those who continue to sell food, social and ceremonial caught fish; is that a fair summary?

MR. BECKER:

I disagree.

CHIEF BAIRD:

Saying whether it should be allowed for sale versus what people are doing now are kind of two different topics, in my view. In the Tsawwassen context, we took a smaller food, social and ceremonial allocation under the treaty to have a larger sale component within our harvest agreement for that trade-off. So I disagree with how you categorized it.

Q

Does anybody agree?

CHIEF CHARLIE:

I don't agree with your characterization.

Q

Chief Baird, you may not be able to answer this question yet, but do you think your fisheries issues are going to be much simpler for your people now you have a treaty? Is it just too soon to tell that?

CHIEF BAIRD:

I think it's soon, but I think there are signs that we have better ways of dealing with the Department of Fisheries and Oceans on some of our matters. We'll have internal issues to sort out as our population grows and our number of fish don't continue to grow, so I see those internal issues becoming more complicated over time.

But we have multi-year agreements I that have sorted out our allocation. Our funding has inflators. It's the first time AFS funding is getting a boost, so to speak, through our fiscal finance agreement under the treaty. So there are some things that are improvements, I would say, to the status quo, and my only hope is that the status quo for everyone else improves no matter what way they decide to go.

Q

I heard, I think it was Chief Charlie, say that you banished people for illegal fishing. Have any of the other groups done that or taken steps against people who have been fishing illegally? And I see, Mr. Becker, you're shaking your head in the negative for the Musqueam?

COUNCILLOR QUIPP:

I guess I'd like to also have addition -- a definition of illegal fishing. Like I just mentioned, we still have jurisdiction. We still have not ceded, surrendered or sold our Province of B.C., yet.

Q

Well --

COUNCILLOR QUIPP:

And the reason I am responding to this is because we have about 15 or 20 of our Band members that have been in court for the last 10 years and are still on those same old cases that are happening and there's still no answer as to whether it's illegal or not. So I'd like to know what the definition of "illegal fishing" is.

Q

Well, Chief Charlie, it was you, I think, who used that phrase --

CHIEF CHARLIE:

Mm-hmm.

Q

-- and perhaps you can help us by telling us when it was that you, as a community, imposed those sanctions?

CHIEF CHARLIE:

Banishment from our community was, again, the rationale behind that was our own social law in our own community. Again, reminding you that we live on terminal spawning grounds in the Harrison River, and there is spawning sloughs that are there, and some of the activities that were going on were within the spawning channels. And our people say that you do not fish where they reproduce, just like you don't hunt when it's mating season, and you don't shoot does. And so it was under those conditions that it was going against our social laws within our community as to where and how they were harvesting fish at the time. And so I appreciate you asking to clarify that, because that's exactly the way it was.

Again, we're hoping that we're showing stewardship and we're showing that we're willing to manage in a certain way the resource that comes back to us, and we're hoping that other groups will do the same thing, that co-management means conservation, it means stewardship, and it means enhancement. And so that's what we were looking after, was the conservation and the stewardship of the fish.

Q

I have some questions about the LFFA. Maybe, Mr. Becker, you can answer this question. Can you tell us why that organization collapsed, from your perspective?

MR. BECKER:

No, I can't.

Q

What happened to it?

MR. BECKER:

Actually, I can only give you what happened at Musqueam, because we were part of it, and Musqueam made a decision to withdraw from that organization and become an independent First Nations and negotiate on its own. So I don't know what happened after that and why it did collapse.

Q

Why was that? Was that a dispute over allocation?

MR. BECKER:

No, it wasn't.

Q

What was it?

MR. BECKER:

The decision of our political people at the time were to become independent.

Q

And anybody else?

GRAND CHIEF PENNIER:

Well, all I know is that there was a reduction in budgets for the LFFA, then there was a loss of those guardians and a loss of those biologists and other staff, and all that remained was the monitors.

Q

And Mr. Becker, you made mention, earlier, of a hope, perhaps, of some means to bring all of the user groups together. I heard that with interest. How would you suggest that might happen?

MR. BECKER:

I think we have to leave our egos at home. I look around the room out there and I seen one of the gentlemen -- one of your clients that -- that was part of the -- one of the groups that we used to try and negotiate with. We have the recreational fishers that we had in the same room with the commercial people. We had First Nations from the Fraser Watershed. We had First Nations from the approach, from the marine I groups. And we thought we could make headway on it. It could not get past the recreational fishers and the commercial fishers.

Q

Does anybody else have a comment on that question?

CHIEF BAIRD:

I think that sort of body has to have legal and political legitimacy with the parties that would be involved in it, whether it be the federal Department of Fisheries and Oceans and First Nations, and to that regard I think it would need legislation and formalized agreement about what it would look like and what it would accomplish and what the roles and responsibilities of everyone involved in it would be.

Q

Anybody else?

GRAND CHIEF PENNIER:

Well, there has to be change in the way that the department is going to recognize the right to fish. Presently, it doesn't recognize it.

Q

Chief Charlie or Chief Quipp? I see you writing furiously, Chief Quipp. I don't know if that's -- if you're making notes for the answer or something completely different.

COUNCILLOR QUIPP:

I'll give you an answer, I guess, my opinion, and I'm answering to the question about the LFFA. I know that was a really big step for us to have the, you know, our own Aboriginal guardians, but I think it became too much of political arena, having the guardians, some of the staff. I think there was a lack of funding. That organization was developed with the pilot sales agreement in 1992, and when the pilot sales agreement kind of dwindled, so did the LFFA.

CHIEF CHARLIE:

I was just generally agreeing with Chief Kim Baird. I think that it needs to be a clear structure and a clear system that's set up with proper mandates.

Q

And I get the sense that you've collectively lost confidence with DFO; is that fair, that that's not the body to carry this out?

COUNCILLOR QUIPP:

I don't think I've ever gained confidence in DFO.

MR. BUTCHER:

Thank you. Those are my questions.

MR. MCGOWAN:

Mr. Lowes, do you have a question?