

February 22, 2011
Cohen Hearings
Cross-examination of Dennis Brown et al
By Phil Eidsvik for the B.C. Fisheries Survival Coalition and Area E
Gillnet Fishermen

PANEL NO. 21
Cross-exam by Mr. Eidsvik (SGAHC)
February 22, 2011

MR. MARTLAND: Mr. Eidsvik is next.

MR. EIDSVIK: Good afternoon, Commissioner. My name is Philip Eidsvik and I'm with the Area E Gillnetters Association and the B.C. Fisheries Survival Coalition. And I'm probably going to run past time today, so I'll get started into some of the issues.

CROSS-EXAMINATION BY MR. EIDSVIK:

Q *And I want to clean up a couple of issues that were left from yesterday to start off with, and this issue of unattended gillnets that was raised by Mr. Hargreaves, who said he noticed fishermen on the coast leaving gillnets unattended, would you or any other gillnet fishermen anywhere fishing on Fraser sockeye leave their net out in the middle of the river or the middle of the Johnstone Straits and go tie up for the night?*

Mr. Ryan McEachern?

MR. McEACHERN: No. That's never happened in my experience.

Q *Is it fair to say that's patently ridiculous? What would happen if you left it in the middle of Johnstone Straits?*

MR. McEACHERN: Well, you'd never find it again for one thing. They don't stay in one place. The problem is like in Johnstone Straits, the current moves, you kind of -- anywhere from two or three knots one way and the other way, and across and there's a lot of traffic, so, no, you never get further than -- well, maybe from here to that wall from your Scotchman. That would be, you know, very unusual. Plus, as a condition of licence, I think you have to stay within that, so...

Q *Yes. Same thing on the fishing gillnet on the river?*

MR. McEACHERN: The river is even more dramatic, because -- well, all you here live locally. You could imagine you can't leave your river -- your net in the river. That's -- usually in the river you hardly ever even leave the end. It's usually tied to your boat at all times and if you let -- untie it from one end, you're just moving to the other end.

Q *And it turned out that he based a statement on one incident that he saw in Port Alberni. Is there anybody in Port Alberni that's allowed to tie to a log boom or a dock during the fishery?*

MR. McEACHERN: Well, the First Nation fishery in Port Alberni operates under -- I'm not sure what regulations they operate under, but they do anchor their nets and tie to the shore, but that's -- that's not the group of people that he was talking about, I don't think.

Q *That's what I understood. I want to go to Exhibit 441 for a moment, please, the final page on it. That was the audit into the selective fishing. And it's the very last page, 24 of 24. And if you look at the top part of the page, these are the lessons learned from -- that were -- showed up in this draft audit report and I think -- I'm going to read in the first recommendation, one of the lessons learned in the audit report said use:*

...the 5% TAC to initiate the development and implementation of gear and fishing method and standards for selective fishing in a proactive manner by collaborating with harvesters. Assess the necessity of the 5% TAC application on annual bases according to its goals and discontinue the practice when it outlives its purpose.

Mr. Ashton, perhaps you can help me when you saw the response the DFO had when your harvester group said no, don't do this, we don't think it's useful, you've done it for four years, we don't want to continue it.

Would you say at that point this recommendation was fairly accurate?

Discontinue the practice when it outlives its purpose?

MR. ASHTON: That was part of the reason that we didn't see the value in continuing it. It was also that year, I think, the Area B's projected TAC was about 600,000 fish, so there was not a lot of fish for 150-odd seine boats to share around and we felt that the amount of our share of that TAC was being devoted to a project that we didn't support was unreasonable.

Q *The last recommendation on that same page:*

Ensure that formal evaluations are conducted to assess the scientific validity of the experiments undertaken under the TAC sharing arrangement and build on that work to develop standards.

Did you feel that there was sufficient scientific work done on assessing whether those things were useful or not? Was that one of the reasons why you said let's not continue this, because we don't think the science is -- am I getting that right or have I got that wrong?

MR. ASHTON: No. Actually, the way we assessed it, they had gathered sufficient information and experimented with different shaped grids and different types of net and there was a requirement for that piece of equipment to be moved ahead to be utilized on a widespread basis, that it be subjected to a formal PSARC review - it's now called CSAP science review - because you need a buy-in from both groups. You need the fishermen to think it's worthwhile and it's got validity to it, but you also need the science community to verify that in their minds that they feel that it would meet the selective fishing requirements to actually be a useful tool.

Q *So in other words you think both of these recommendations are valid recommendations?*

MR. ASHTON: I would say so, yes.

Q Now, this draft audit report was never turned into a complete audit report and we saw evidence yesterday where Mr. Hargreaves and Mr. Curry objected strongly to the content of the report.

Can I ask you, was your association ever asked to comment on the draft audit report?

MR. ASHTON: I can't recall it, no.

Q *Mr. Sakich, do you remember?*

MR. SAKICH: On this particular report?

Q Yes.

MR. SAKICH: No, I can't remember that.

Q *Mr. Ryan (sic)?*

MR. McEACHERN: No.

Q *Mr. Brown?*

MR. BROWN: No.

Q That concludes my analysis on that particular point.
One of the things I need to do is I'm trying to put some of the activities that we've been discussing here in the context of the reason why we're in the room, Mr. Commissioner, in the context of what's -- what led to the decline of the Fraser sockeye and the collapse of the fisheries that we all care about and depend on.

And Mr. Brown, if -- Mr. Hargreaves said yesterday without the money for selective fishing, there would be no fishery in the future if the government doesn't continue to fund that program; do you think that's a valid statement?

MR. BROWN: Can I ask you in what context? Was he referring to Fraser River sockeye or...? I didn't hear that testimony so...

Q *I'll --*

MR. BROWN: It would help if I knew what particular --

Q *I'm asking you as a general principle, in the absence of funding for the selective fishing program that was -- ran from about '98 to 2004, so if that program is not re-instituted and funded, are Fraser River sockeye doomed?*

MR. BROWN: Oh, okay. No. Quite frankly, that's --

MR. TIMBERG: Mr. Commissioner, just if I may correct for the record, I don't believe that was Dr. Hargreaves' evidence. I think he was saying that selective fishing was important. He wasn't referring to the selective fishing program. So that's my recollection of his evidence yesterday. He wasn't referring to the program. He was talking about selective fishing as a technique.

MR. BROWN: Well, in that regard, I would still say no.

MR. EIDSVIK:

Q *Thank you, Mr. Brown. In terms of --*

MR. BROWN: Could I -- sorry. Could I also add one thing? I hope I'm not repeating myself. In the specific context of Fraser River sockeye, I think it's almost irrelevant. We do not have a big requirement to be particularly selective with Fraser River fishery, with the Fraser River fishery. It's been managed for over a century well. We saw history where the fishery, based on the aggregate stock management units that Mr. Lapointe talked about quite successfully done.

That notwithstanding, we do have a few specific conservation problems, but as Dr. Walters pointed out, most of those can be dealt with without a whole bunch of esoteric selectivity initiatives, simply by designing the traditional fishery and timing it in such a way that you avoid the worst of the problems, the first one being the Early Stuart fishery which Dr. Walters testified -- both Dr. Walters and Woodey testified. You deal with that one very easily, because it comes in independently of all the other stocks. And there has not been a commercial fishery on Early Stuart fish for as long as -- I don't know, help me here Ryan, but decades. The only fishery that occurs on the Early Stuart is the First Nations fishery. But it is easily sort of separated.

And then you have the problem of the early migrating Late Run fish which, Mr. Commissioner, you were struggling, I remember, two weeks ago to get all that straightened out, but you heard from the world's leading authorities, Dr. Woodey and Dr. Walters, that it was all for naught anyway, because they all died. And it wasn't until I heard Dr. Woodey's testimony -- I thought I knew a fair bit about fish, but I did not know what he testified two weeks ago when he said that Fraser River sockeye are absolutely biologically unique and it must be the function of selective evolution in that they can only be in fresh water for six weeks.

He went on to describe Lake Washington, Skeena River stocks and a whole number of other stocks that can reside in fresh water longer, and he said, I think if I got it right, that these fish when they were in fresh water longer than six weeks or they go into fresh water for a longer period, they get this parasite which seems to be a natural phenomenon in the Lower Fraser River, so that --

Q Okay --

MR. BROWN: -- sorry, that means that you didn't need to be selective there. That leaves you with the Cultus, which can be parcelled off, because the Cultus actually is a very long timing period run and goes well into the Fall and most of the encounters of the very few encounters that you would have of Cultus sockeye in the Summer Run fishery, which is the mainstay of the fishery, would be so insignificant as Mr. Lapointe's very words and testimony to go back and look, he said it would be like looking for a needle in a haystack.

So I don't know, Mr. Eidsvik, what it is that we're trying to be so selective about around Fraser River fish, sockeye.

Q *I think you've opened up the issue that I was trying to get to on the selective fishing point. Our first major run of salmon to hit the Fraser River, of course, is Early chinook; is that correct?*

MR. BROWN: Yes.

Q *Any sockeye fisheries during the Early Chinook fishery?*

MR. BROWN: No.

Q *Then we have the Early Stuart run, the commercial sector that you're involved with doesn't normally fish the Early Stuart run. Early Summers, do we have -- are we trying to protect coho or steelhead or any time during the Early Summer run?*

MR. BROWN: Early Summers are generally not harvested at -- they're generally left. There's some cyclical fluctuations and details but generally speaking, most of the harvest is focused around the Summer run.

Q *I guess, Ryan, did you have something to add to that? Mr. McEachern?*

MR. McEACHERN: No. I'm just saying yeah, there's no by-catch concern on the Early Summer fishery if there is one.

Q *Is there a -- sorry, is there a by-catch of other salmon species during the Early Summer run?*

MR. McEACHERN: No.

Q *Is there a bycatch of other salmon species in August during the Summer and beginning of the Lates aside from Cultus that we've heard about already?*

MR. BROWN: Very little.

Q Why has the fleet, the gillnet fleet, and in the river closed at the Labour Day weekend for many years?

MR. BROWN: It is closed and with the agreement of the industry, I might add, through many years to protect Thompson River coho.

Q *Any other species besides coho?*

MR. BROWN: *Well, I would assume that that time is the beginning of the migration of the Cultus. The Cultus come in over a long period of time, but you'd probably start to see at that time of year the first of the Cultus.*

Q So if I could sum this up then, would it be fair to say that the selective fishing program has absolutely nothing to do with Fraser River sockeye with the exception of how do we harvest Cultus?

MR. BROWN: What I'm trying to say, and I'm not sure I'm doing it very well, Commissioner, is I'm not against selective fishing. I think it's probably notionally a good idea. But it will not be the thing that will save the day here. It is something that looks to me like has become a make work project for some individuals in the DFO and, of course, they have a vested interest in making it appear all more important. However, there is really no need in order to properly manage Fraser River sockeye, which is what we're dealing with here, to depart radically from the old traditional methods of harvest.

MS. SHABUS: Mr. Commissioner, I'm going to object and I'm going to raise an issue, I think, with commission counsel in this regard. I think we should encourage the witnesses and probably also the representative for the participant group to actually focus on giving evidence about issues that they have expertise on, like commercial

fishing rather than making submissions or paraphrasing evidence of scientists, et cetera.

It almost comes down to blanket statements and paraphrasing evidence that has been given by scientists in a specific context. I would really encourage, in order to be fair, also to other participant counsel who are focusing the evidence on the issue at hand, which is commercial fishing. And I have no problem with questions being asked about how selective fisheries practices are being employed when it comes to commercial fisheries, et cetera, or the problems we see thereby, but I think this is not the place for witnesses to actually make submissions or blanket statements in that regard.

And we've been listening to it for quite awhile now, Mr. Commissioner.

MR. EIDSVIK: Mr. Commissioner --

MR. MARTLAND: Mr. Commissioner, I'm interrupting, but I'm going to go ahead and do it anyways. The basis on which these witnesses were called was to provide perspectives from commercial fishers and I haven't raised -- haven't gotten to my feet to this point because I haven't heard questions that go beyond the bounds of that. We may be getting close to the point and Ms. Shabus has identified that concern. I hope Mr. Eidsvik will proceed with that in mind. But these are witnesses that are here to give their perspectives on -- and in this case those were a series of questions leading to a view on the relevance of the selective fishing policy.

If it's the case that a particular witness is not an expert or doesn't have the experience, that would presumably go to the weight of that evidence as opposed to whether or not it could be received in this context.

MS. SHABUS: For example, Mr. Commissioner, I don't think the witnesses would be in a position to provide expertise on Cultus stocks, et cetera. So I'm raising it and I'm flagging it. In my submission it's been going on for quite awhile in the testimony, that it wasn't testimony per se based on their experience but paraphrasing evidence of other people in the hearing and in all fairness, I think we should focus on the evidence from the perspective of commercial fishermen. I have no problem with that, but not policy statements or paraphrasing other statements.

MR. EIDSVIK: Mr. Commissioner, I'm content that the evidence being put in by the commercial sector on selective fishing is useful and helpful to the commission to understand why the focus on selective fishing is not that important in the context of Fraser River sockeye and we can re bring that evidence through somebody else. But, I mean, these gentlemen here only had a limited amount of time and this is very important. It was arguments they put to the department in their meetings with the department. I think it's very relevant for the commission to hear their perspective on necessity or no necessity of selective fishing.

MR. MARTLAND: With a view to moving this forward, we have an awkward situation. I think the question was asked and answered and then an objection made, so Mr. Commissioner, I don't know that there's properly a question floating in the air that has to receive your ruling.

I wonder, by way of trying to simply move forward, if Mr. -- if I can suggest that Mr. Eidsvik might proceed with his next question and certainly if counsel have an issue arising, they can raise and formally object. We may then ask you to finally make a ruling. Thank you.

THE COMMISSIONER: I'm content to go with commission counsel's position, that is to say to allow these witnesses to answer and I'll certainly receive counsel's submissions later if they feel that the answers ought to be given little or no weight for a particular reason, I'll hear those submissions. But in the meantime, I'm content to let Mr. Eidsvik complete his examination of these witnesses and for them to answer his questions. As I say, counsel will have an opportunity to make submissions at a later stage as to what -- how I should -- now, if the evidence goes way far beyond what's reasonable - I don't think it has. I agree with commission counsel. I think Mr. Eidsvik's questions are appropriate and the answers may or may not fall into an area that raise concerns of counsel with respect to weight.

MS. SHABUS: Thank you.

THE COMMISSIONER: Thank you.

MR. EIDSVIK: Thank you, Mr. Commissioner.

Q Mr. Brown, I need to ask -- I was finished on my selective fishing but I think we just need to restate --

MR. BROWN: May I make one comment about that last little interchange? I hope I don't cause any trouble here, but I would like to make it clear that when I was talking about selective fishing the way you were leading the question, when I was involved in the four years of writing this book, I interviewed hundreds of experts in the salmon fishery, some of whom testified before this panel.

I didn't hear these things just last week, Mr. Commissioner. I even wrote years ago about some of these concerns that I had about these things and I'm finding a fair bit of satisfaction in finding out that the experts that have far more expertise than me, I agree, are actually confirming some of the concerns which, by the way, I don't make them up off the top of my head. They are the views of many, many commercial fishermen.

That was my cause and that is where I feel I have some expertise in the field.

Q Thank you, Mr. Brown, for bringing the perspective of the commercial sector here.

That's why you were invited to the panel and it's very helpful. My next question is regarding the consultation process.

Does the consultation process have anything to do with the collapse of Fraser River sockeye?

MR. BROWN: No.

Q Does the lack of ITQs have anything to -- would explain the collapse of Fraser River sockeye?

MR. BROWN: No. And I would try to answer that by saying the whole discussion about ITQs implies that the problem around the stock collapse of the Fraser River sockeye in 2009 specifically and in other years has something to do with commercial over-fishing.

I will state very clearly that the 2009 age class Fraser sockeye did not have any commercial fishing impacts on them in 2005 or if they had, it was a very, very miniscule harvest, and the generation before that, the four-year cycle before that there wasn't any fishery. So it wasn't commercial over-fishing that caused the collapse.

Therefore, I don't believe, although it's an interesting debate about how you control and how you evolve the fishery and all the stuff we went through this morning, I don't think that's the issue at hand. I think it's more germane to look at the kind of things that you heard from Dr. Woodey and Dr. Walters about why the stock collapsed, primarily density dependency issues –

Q *Thank you.*

MR. BROWN: -- delayed dependency -- so it's not over fishing. I want to emphasize that.

Q *If you were trying to decide whether over-fishing was -- by the public commercial fleet below Mission was a factor in the collapse of Fraser sockeye is there an easy way to tell that?*

MR. BROWN: Very easy.

Q *And how's that?*

MR. BROWN: You could just go to the Pacific Salmon Commission's website, look up who caught what, where and it's all there.

Q *Is there a tool they use called gross escapement?*

MR. BROWN: Yes.

Q *And what does that mean?*

MR. BROWN: That means the amount of fish that is past the commercial fleet where the boundary is at Mission, B.C., 40 miles up from tidewater, and that is the amount of fish that is estimated to pass that point at the hydro acoustic sounding program.

Q *So if the commercial fleet passed sufficient numbers of Early Stuart, Early Summer, Summer and Late Run sockeye past Mission, there's no public commercial fishing upriver from that point so in essence you could say they've done their job; is that a fair statement?*

MR. BROWN: Yes.

Q *Mr. Ashton or Mr. Sakich or Mr. McEachern, do you have anything to add to that? I think it's quite important.*

MR. SAKICH: Let's hear your question again?

Q *If the commercial fleet passed adequate numbers for escapement and for First Nations purposes upriver from Mission, got them as far as Mission, passed -- could you say that commercial fleet has done its job in the sense that they caught some fish or they didn't catch any but sufficient numbers of fish got to Mission?*

MR. SAKICH: Oh, I would say so, yes.

Q *Mr. Ashton, do you have anything to add?*

MR. ASHTON: (No audible response).

Q *Mr. McEachern?*

MR. McEACHERN: No. There's nothing more we can do. I mean, we restrain for fishing to put the fish past Mission and from that point it's out of our hands.

Q *So in other words, if you went back and looked on a year-by-year basis and said how many fish did we -- got past Mission on each cycle and if there was sufficient numbers past there, you have to look at some other reason for the collapse of Fraser River sockeye than the commercial fishing fleet, public commercial fishing fleet below Mission? Mr. Brown?*

MR. BROWN: Yes.

Q *I want to talk about Cultus Lake sockeye for a minute in the context of the selective fishery and what else could have been done.*

MR. MARTLAND: Mr. Commissioner, I simply note that we're at the four o'clock point and we're at perhaps a break in Mr. Eidsvik's line of questions. I take it we should break for the day.

This is a situation where we do need to reconvene with this panel. My optimism was a little high in that we might complete today. My suggestion would be the panellists have kindly agreed to return on Monday the 28th of February at 10:00 a.m. so this panel would be adjourned to continue again on the 28th of February at 10:00 a.m.

The hearings generally are adjourned till tomorrow morning at 10:00 a.m. for the evidence of Jeff Grout.

THE COMMISSIONER: Mr. Eidsvik, would that be a convenient point for you to break your cross examination?

MR. EIDSVIK: Of course, Mr. Commissioner.

THE COMMISSIONER: Thank you very much, sir. Members of the panel, firstly thank you for being here today and thank you for agreeing to come back on the 28th. I hope that it is convenient for all of you.

What I have asked witnesses in this inquiry - I think Mr. Brown may have heard me say this before - is that while you're sort of in limbo to complete your evidence, I would be grateful if you wouldn't discuss your evidence with anyone. If you have any questions about the inquiry or your testifying later on, I certainly encourage you to contact commission counsel. Just ask the question. Commission counsel may have to talk to Mr. Eidsvik about your question or may not, depending on the nature of your question, but generally speaking, I'd be grateful if you wouldn't discuss your evidence with anyone and we'll get you through the process on the 28th and then, of course, you're free to discuss your evidence thereafter. But in the meantime, I'd be grateful if you would acknowledge that and cooperate with me in that regard. So I hope that will not be a problem for you. And, I'm sorry, Mr. Rosenbloom?

MR. ROSENBLOOM: Yes, but appreciating there's another panel tomorrow and Thursday, I do want the opportunity to consult with my clients in respect to questions that I may be putting to these panels or witnesses between now and Monday. I will hopefully respect the protocol that you have just indicated and not speak to my client about evidence that they might give commencing again on Monday, if that's acceptable to everybody.

THE COMMISSIONER: It is acceptable to me, Mr. Rosenbloom. I have no difficulty with the proposition you've just put forward, that is to say that you will have the opportunity to discuss with your client evidence that you may wish to put to the witness when they return, but that you wouldn't discuss evidence that they've already given. And I think that's an entirely appropriate protocol for you to follow.

MR. ROSENBLOOM: Thank you.

THE COMMISSIONER: Thank you. Mr. Eidsvik, that would apply to you, as well, sir.

MR. EIDSVIK: Yes. Thank you, Commissioner, I understand that and thank you for clarifying it.

THE COMMISSIONER: So we're adjourned then until 10:00 a.m. tomorrow morning. Thank you.

THE REGISTRAR: Hearing is now adjourned until ten o'clock tomorrow morning.

(PROCEEDINGS ADJOURNED AT 4:02 P.M. TO WEDNESDAY, FEBRUARY 23, 2011 AT 10:00 A.M.)