

**February 22, 2011**

**Cohen Hearings**

**Witnesses: Dennis Brown, Ryan McEachern, Peter Sakich and  
Examination by Commission Counsel Brock Martland, Chris Aston**

**THE REGISTRAR:** Would you state your full name, please.

**MR. BROWN:** Dennis Murray Brown.

**THE REGISTRAR:** Thank you.

**MR. McEACHERN:** Ryan McEachern.

**MR. SAKICH:** Peter Anton Sakich.

**MR. ASHTON:** Christopher Jeremy Ashton.

**THE REGISTRAR:** Thank you. Counsel.

**MR. MARTLAND:** Thank you. Mr. Commissioner, for these witnesses today what I will be doing is trying to pose questions to one witness, but then the nature of my questions is such that I am seeking the input I expect of all panellists on my questions. So I will try to move through them sequentially in the manner that they are seated, or the order they're seated today.

I have asked the witnesses, and I'll ask them again now not to interrupt each other or debate directly, but rather to be responding to my questions or those of counsel. For other participants' counsel, I'll ask that they do their very best to be precise in asking questions of an individual, rather than the whole panel. I think that will be much more efficient.

We, to be blunt, have a very big challenge in concluding this evidence today, but our firm intention is to conclude the evidence today, even appreciating that that means it's necessarily faster than some might like. We do have the difficulty of some witnesses on this panel who are unavailable after today. This is the Commission's chance to receive their evidence.

Our time estimates to this point, and they don't even include everyone, total four-and-a-half hours, and we don't have four-and-a-half hours of time. So I'll be speaking with counsel and apologizing for being aggressive in pushing them around on their time estimates, but asking everyone cooperatively to do their very best to whittle down to the very few points that they feel they must address. Bearing in mind we do have a second panel in a week's time addressing, and I should signal to everyone, I expect to ask virtually the same questions in a week of that panel as I will today.

I have five topic areas I will be covering: allocation; SBM or share-based management, which includes ITQs or individual transferable quotas; third, selective fishing; and fourth, the DFO's consultative processes with the commercial sector; and last, a broad question or two asking panellists to step back and have a look at the future direction of the commercial fishery.

My plan, and I hope other counsel may see some wisdom to this, is not to be taking these panellists to specific documents. I'm concerned that may consume time and be cumbersome. I'll do my best to try to address matters with the background we have from the Policy and Practice Report, and the significant experience and knowledge these people have to approach this

#### **EXAMINATION IN CHIEF BY MR. MARTLAND:**

**Q** What I'd like to do is I'll ask all of the panellists in less than a minute to give an outline of their -- we have information about these people already, and what I am going to ask them to do is to give a one-minute description of their organization, or committee, or area, or any of those things, and their involvement in the commercial fishery. I'll begin with Mr. Brown, and then move down the line, please.

**MR. BROWN:** Mr. Commissioner, I am a member of a third generation fishing family. I've been involved in the industry all my life. In 1980 I went to work -- or previously to that, I worked and fished in the industry, but in 1980 I went to work for the United Fishermen and Allied Workers Union. From there I became a Special Advisor to the Premier of British Columbia on fisheries matters. I was a Salmon Commissioner for Canada in the 1990s. I have served on a plethora of advisory committees, all the way from the Minister's office, directly to advising Ministers, right down to the dock level with fishermen. And I've been doing this all my life, and I've waited all my life for the opportunity to speak to somebody like you about all of the things that I've learned during that time. So, thank you.

**Q** Mr. McEachern. Thank you, Mr. Brown, for meeting my one-minute target. You've set a high standard. Mr. McEachern.

**MR. BROWN:** I'm trying.

**MR. McEACHERN:** My name is Ryan McEachern. I'm a commercial gillnet fisherman, also a long family history, the fourth generation in my family to fish on the B.C. coast. I operate as the Treasurer of the Area D Gillnet Association and I'm also an elected representative at the Area D Harvest Committee and the Area E Harvest Committee, and I serve on the Commercial Salmon Advisory Board as an Area D representative. I also attend the Integrated Harvest Planning Committee, the IHPC, as a member of the Commercial Salmon Advisory Board.

**Q** Thank you. Mr. Sakich.

**MR. SAKICH:** Thank you. Peter Sakich. The family has been in the commercial fishing here since about 1918. Myself, I am a Fraser River Panel member; a Commercial Salmon Advisory Board Chair; B.C. Wild Harvest Salmon Producers Association President, that is the entity that is connected with the Commercial Salmon Advisory Board; Area H Harvest Committee; President of the Gulf Trollers Association. I've been a Director of the Mutual Marine Insurance Company for 18 years now, and President of the Degnen Bay Harbour Authority, Small Craft Harbours, Gabriola Pass; Monitoring and Compliance Panel Chair, and that's part of the Integrated Salmon Dialogue Forum; and I attend the IHPC meetings.

**Q** Thank you. Mr. Ashton.

**MR. ASHTON:** Good morning, Mr. Commissioner. Chris Ashton. I'm actually a first generation fisherman. I started fishing in 1968 and retired a couple of years ago. In my capacity as fishing, I was a crewman on seine boats and for the last 30 years of my career owned and operated my own boat.

In 1980 I started participating in advisory boards, serving on the South Coast Advisory, the Herring Industry Advisory Board. I was a member of the Fishing Vessel Owners Association and a director there. When the recent Integrated Advisory Process started up, I became Chair of the Area B Harvest Committee for several years until I stepped down from that process in 2006. And upon retiring from fishing, I got approached by the Area B Harvest Committee to work for them as their Executive Director, which I've been in that position since 2008. I serve on the Commercial Salmon Advisory Board, the Integrated Harvest Planning Committee, and as well as I'm a member of the Fraser River Panel of the Pacific Salmon Commission.

**MR. MARTLAND:** Thank you. And indeed, Mr. Commissioner, I said I would not be going to documents and I realize there are documents I should put forward. I should say first that on our list of exhibits, number 64, 65, 66 and 67 are biographies from the witness summaries for these witnesses. First of all, 1 66 on our list is already Exhibit 422, that's Mr. Sakich's biography. We have similar bios for the other gentlemen on the panel. If I could ask that those, please, become exhibits. The first on the exhibit list, number 64 for Mr. McEachern.

**THE REGISTRAR:** I'll mark these, 64 will be 451.

**MR. MARTLAND:** The next one --

**THE REGISTRAR:** Sixty-five will be 452.

**MR. MARTLAND:** Thank you.

**THE REGISTRAR:** Sixty-seven will be 453.

**MR. MARTLAND:** Thank you very much.

**EXHIBIT 451:** Bio of Ryan McEachern

**EXHIBIT 452:** Bio of Chris Ashton

**EXHIBIT 453:** Bio of Dennis Brown

**THE COMMISSIONER:** Who are they for, Mr. Registrar, please?

**THE REGISTRAR:** I'm sorry; 451 is for Mr. McEachern; 452 is for Mr. Ashton; 453 is for Mr. Brown. And number 66, Mr. Sakich, is already marked as Exhibit 422.

**MR. MARTLAND:** Thank you, Mr. Giles.

**Q** The first topic I have is allocation, including both inter and intrasectoral allocation. On intersectoral allocation first, is the premise for the question, we're all familiar with the 1999 Salmon Allocation Policy. There's a formula that I think you should assume, you can take it as read, that we have some understanding about the formula in particular for sockeye, pink and chum, the formula that's set out on a 95/5 percent ratio as between commercial and recreational sectors for those particular species.

I won't be spending time on having you describe the policy or the history leading up to it, per se. You're welcome to go there if that's relevant. What I'd like to ask you at a general level is what works and what doesn't work with the Allocation Policy. I'll begin with Mr. Brown, please.

**MR. BROWN:** Yes, Mr. Commissioner, I've had a long history dealing with catch allocation as a member of the United Fishermen and Allied Workers Union, which is one of the unique organizations along with the Native Brotherhood that represented all gear types in the industry, and it had a moral duty within its internal political framework to try to resolve catch allocation conflicts between the groups, as Mr. Rosenbloom had earlier alluded to. And as a result, it was a strong advocate for many decades for the idea of a catch allocation formula that would be based on fairness, equity and practicability.

And in the 1980s, I was directly tasked with the job, through a committee within the United Fishermen and Allied Workers Union called the Standing Committee on Fisheries Regulations, of spending most of the winter each year working out within the different locals and gear types a proposal for catch allocation. And I won't, obviously because we don't have very much time here, go into all of the ways we did it, but we did it through variety of ways of quantifying catch history, cycle averaging and the like.

And then each year that union position would be presented to a body that was then known – this is the predecessor to the Commercial Salmon Advisory Board - it was called the Commercial Fishing Industry Council, which was independent of DFO, but contracted by DFO to make one primary deliverable each year, which was a catch allocation formula that could be used each year. And for several years CFIC did that, and a catch allocation formula was up and running and it worked almost perfectly. However - and I am conflating my points, Mr. Martland, here, I could go on, and I feel a little distressed about the fact that we don't have the time to go into this because it's important – in recent years, allocation of the resource in the salmon fishery has become almost dysfunctional.

It's not that there aren't lots of meetings that people like my colleagues have to go to, to discuss it; not that there isn't a plethora of meetings that they have to attend to deal with integrated fishing management, and the like, but the net result is there is no fair allocation right now. And I am going to finish off by saying, and I hope I will be given the opportunity at some point here to explain why, because of a whole number of political policies that have been introduced in this industry since the 1990s at least, the allocation of the commercial catch has been vastly disrupted. Some of those policies would include the Aboriginal Fishing Strategy. Some of them would be weak stock management. One would be area licensing, but again I am going to try to be brief here. But my attempt at a short answer is allocation is highly problematic in the industry at this time.

**Q** Thank you. Mr. McEachern.

**MR. McEACHERN:** I'm sorry, could you repeat the specific question?

**Q** Yes. The question I had was what works and what doesn't work with the Allocation Policy, and more broadly, I suppose, with the Allocation Policy and with allocation as it's currently handled.

**MR. McEACHERN:** Are we speaking about intersectoral allocation or between the commercial fleet itself?

**Q** The question as I've approached it was intersectoral. So my introduction referred to the 95/5 split between recreational and commercial, referring to the total commercial TAC for sockeye, pink and chum. That was my introduction, intersectorally if you could comment on what works and doesn't work with allocation as between sectors.

**MR. McEACHERN:** Mr. Commissioner, I don't have near the history that some of the participants do in the various field processes that we have as a background, but I am involved in the Allocation Implementation Committee as it stands right now, and we have had a few meetings of late around the 95/5 issue. And the truth of the matter on that Allocation Policy is it has yet to be tested. The strength of that policy will not be revealed until the sports fleet consistently approaches or exceeds their five percent. At

the moment, the policy works because the recreational catch is averaging around that five percent, so there has been no uncomfortable changes that needed to be made, if you follow the numbers that the Department has been using. So I would say as far as the 95/5 split, the future will tell whether or not that is the policy that will endure. As far between different commercial groups,

I've been involved in the current allocation process. I don't have any of the history that some of the participants have. But we sit down and hash out who gets what, based on a combination of the Kelleher formula, and the traditional fishing that occurs in certain areas. And I do feel the system is broken, mainly because it was set up around a coast-wide fishing strategy, and when we moved to area licensing, it prohibited the trades that would have happened to, like what was already referred to. The trading that would have happened between groups to make the allocation system work smoothly is no longer possible, because fish cannot be moved between certain areas. Whereas in the past there was only three major groups to do trading with: seine, gillnet and troll. Now there's eight different areas, and we never modernized the Allocation Policy when they did the area licensing.

So if you have an imbalance in the north, it often happens that gear types in the south have to face a hardship to satisfy the imbalance in the north, when in reality, the balance might be the other way in the south. And I could go more into that later if it's appropriate. But really the system is broken and it needs some work.

**Q** *And I see now the artificial split between inter and intrasectoral allocation, it will be hard for you to maintain and these are broader topics. So perhaps I can recast the question for the last two panellists. I'll invite the first two to add anything if they feel they need to. Dealing both with inter and intrasectoral allocation, could you comment on what works and what doesn't work under the 1999 Salmon Allocation Policy. Mr. Sakich.*

**MR. SAKICH:** The 95/5 is very close. We went over that just a couple of months ago, and it was over the last five years. And that's how it was set up, and it balanced out within the five years pretty well there. So I think we're going to be doing that in the future here on a four year, like, a full cycle thing, rather than it will be looked at on the fifth, but it's not over enough. AS far as the inter-allocation goes, what we have cannot work. It's going back in history fine, but we're not going back there.

That's when you would have fish in all of these various places throughout the years, and you didn't have the area licensing in place, so the fleet shifted around and what have. And so overall they looked at the numbers, and they came out fairly close. And now you will have some areas that will have absolutely no fish one year and lots the next year, and nothing for a couple of years.

So really with where we're at now, that is why there is a proposal out there to get on with the new modernized allocation formula, and that has to be done sooner rather than later, because you cannot make what we've got work.

**Q** Thank you. Mr. Ashton.

**MR. ASHTON:** Mr. Commissioner, I don't know if I have a lot to add to what my colleagues have said. I think they've highlighted much of the problems we are looking at. On the intersectoral we're looking at a growing recreational fishery that has the possibility of exceeding their five percent allocation on mainly sockeye, but it includes chums and pink salmon. So that needs to be dealt with.

There's an Allocation Implementation Committee that was in place several years ago and it's been reactivated in the last year, and they'll be looking at that. And in addition to that committee, there is some finances that have been earmarked by the government to modernize the entire allocation process. On the intrasectoral, as Mr. Sakich just said, and we have a coast-wide allocation division of an economic pie that requires us to be able to move fish around, but we are geographically restricted by our individual licenses that if there is an imbalance, as it was explained, you can't access that fish. So we end up every year going through a process of trying to resolve differences in share of catches that aren't possible to achieve because of the structure of the area licensing in coast-wide allocation.

**Q** *What I'll be doing is moving through witnesses in terms of who is up first. So, Mr. McEachern, I'll begin with you for this question. It's one of the stated pros or benefits of the Allocation Policy is that certainly in terms of intersectoral allocation that there is a set 1 of ground rules that govern year after year, that year after year you don't start from scratch and have a debate about intersectoral allocation. I'm thinking in particular on the recreational/commercial question. Could you comment on that, please.*

**MR. McEACHERN:** Yeah, that is true.

**Q** *I'm sorry, and I'll need witnesses to make sure we have the mikes on, which the red light will tell you and point it towards you.*

**MR. McEACHERN:** Sorry. Can you hear me now?

**Q** Oh, yes, I didn't know you had one.

**MR. McEACHERN:** Yeah, I'm a movie star.

**Q** I know that from the Discovery Channel, actually. I've seen you fishing there.

**MR. McEACHERN:** It is true that having the policy set out over a lengthy period of time, we don't have to redo the recreational/commercial allocation every year like we do with the gillnet, seine and troll. Having said that, part of the reason that policy works is because it hasn't been tested, and as the recreational fleet moves, they've had several individual years where they are over their five percent when we looked at the numbers.

However, the rolling average has maintained very close to the five percent, and in my opinion they will exceed that on years where the Fraser sockeye is not much larger than average run.

So the true test of that policy will be, how does the Department react when the five percent is exceeded. And as of right now there is no indication as to what would happen, in my view.

**Q** Mr. Sakich, could you please comment on the stability or whether there is stability because of the Allocation Policy's what I'm calling ground rules.

**MR. SAKICH:** Just elaborate a little bit on that for me.

**Q** I mean that the Allocation Policy sets a formula for sockeye, pink and chum, as between recreational and commercial, so that at the beginning of the planning season, so to speak, one doesn't begin with a blank canvas at which there's a debate about what the formula should be for that year. There's sort of a set of ground rules that frames the planning for that year. That's my understanding of the process.

I should say, Mr. Commissioner, because we have this commercial panel ahead of Mr. Grout, in particular, we're sort of jumping ahead where we will have an explanation in greater detail on some of these topics. But I think we should do our best to go forward.

**MR. SAKICH:** On the 95/5, there is a fixed set of rules. We've been modelling through that. Are you asking about the other part of the recreational fishery?

**Q** I'm asking about the Allocation Policy, let me put to you this way: Does the Allocation Policy facilitate allocation as it's handled by the Department, because it takes certain things off the table. They're not under debate every single year.

**MR. SAKICH:** Well, you're talking about priority access to chinook and coho; is that what you're getting at?

**Q** You're welcome to address that, too. These are all part of the same piece, aren't they.

**MR. SAKICH:** Well, they are, but that is going to take some real historical work. You've got to go back into the Art May process, into the Sam Toy, and then present to today, the various different views on how that was handled and not handled, how it was agreed on and then changed. So I was not part of that process, so all I can tell you is that is dealt separately with the 95/5.

**Q** All right. Mr. Ashton.

**MR. ASHTON:** I think where the explanation needs to come on that is that on the priority access to chinook and coho, the recreational sector, if it continues to expand and grow, what it will do, having that priority, it will take away Chinook and coho, or mainly chinook from the troll fishery. That in dividing up our economic pie in the allocation process, the troll sector, their main fish that they target on is chinook. So if the recreational sector has that, maintains that priority access, then they can in effect remove chinook from access by the troll fleet. And under the current policy, what we will be required to do is the net fleet's main fish that they're only allowed to catch is sockeye, pinks and chum, under the current policy they would have to give up some of their sockeye or chums or whatever to the troll fleet, where they could be accessed under the current area licensing. So what would affect the troll fleet is a loss of chinook would eventually have a domino effect by removing sockeye out of the net fleet.

**Q** *Mr. Brown.*

**MR. BROWN:** Yes. Mr. Commissioner, I would agree with my colleagues on the narrow topic of the recreational commercial split, but I think that's one of the least problematic of our problems. I'm not disagreeing with what they're saying. I would say that not only is there not any rules, Mr. Martland, for allocation in this salmon fishery, there's not even any rules on how to conserve the resource between sectors. There's a multitude of standards for different user groups. I would say that there is absolutely chaos in terms of the ground basis for how fish are allocated to the commercial sector between the other sectors right now. I am really challenged to be able to cover these kind of complicated subjects. If you would indulge me for a moment, I sat down several years ago and wrote a book. I don't bring this up out of vanity or ego. It took me four years to write it without a single penny given to me, out of my own pocket, in my own time, trying to address the wreckage that has been left behind in this salmon fishery, to the best of my ability. There are chapters that go on in great length about subjects like allocation and the politicization of those allocations, and the way in which the disequilibrium in this industry has come about.

I would argue that there is all kinds of nice-sounding formulas, processes, which are growing like mould all over the place, and in terms of how to talk about these things, but the end product, both from the point of view of conserving this resource and allocating it fairly between people, on the basis of not only aboriginal rights, but just the general notion of what the public right to fish is, and what reasonable expectations would be from people who invest their lives through their careers and through financial investment in this industry would be, it is an absolute catastrophe. It is not working. It is not happening.

And if I were given time, I would get into some of the political antecedents that have brought that about. They have been policies driven from Ottawa. They have been policies driven from forces extraneous to the fishery. And yet I will go back to the testimony you heard from Carl Walters last week, Dr. Walters, when he talked about the people that paid the price for this disequilibrium, for these failed allocations.

We're not deputy ministers, ministers, politicians, cabinet ministers, fisheries officers, all of the staff who get well paid at DFO and the academics and the plethora of people who talk about it. It was fish harvesters, people like these gentlemen up here. And they are constantly lectured about the need to make sacrifices for the good of the resource. And as Dr. Walters pointed out to you last week, some of the things that were done in the name of proper management, actually did serious harm to the resource.

So again, Mr. Martland, please, I'm having a difficult time keeping brief here because this is decades of politics that's gone on, but my answer to you is no, there isn't good ground rules for allocation and there's chaos out there, and it has expressed itself in what I titled my book, "The B.C. Salmon Wars".

**Q** *Thank you. I'll move into a further question, which I'll try to frame as a forward-looking question. And I'll begin with Mr. Sakich, and I'll ask this of all panellists. What should happen with allocation, either the Allocation Policy or allocation generally, and if you're able to put that in specific terms, either immediate or long-term things that how this should be handled.*

**MR. SAKICH:** Amongst the commercial fishers?

**Q** *You're free to answer that inter or intrasectorally.*

**MR. SAKICH:** I'll go with that one. Basically, you're going to have to have a mechanism to share this out amongst yourselves, like history are what dreams are made of; vision is what you've to do in the future. I don't see the industry getting any younger people in it or anything like that. Last year was a good example. Because you're locked in, in the areas, there was a surplus of fish in one area and it flowed 1 pretty freely between a couple of gear types under a new sort of a pilot fishery that had taken place for a couple of years. And that is where I see it having to go. I don't see going into share base or ITQs as an enemy. I see it as a restarting of this fishery in a different way.

I think you have to have a vision to be able to go out into the future. Whether the industry with weak stocks in various different places will ever be able to support any great labour force again, I think is near impossible. So you're going to have different mechanisms to deal with it. It's not going to be what it used to be.

**Q** Thank you. Mr. Ashton.

**MR. ASHTON:** Well, a number of years ago there was a process that's referred to as SCORE. The commercial groups met for a couple of years and tried to resolve allocation issues. And we've recently, I think I mentioned, been notified that there's going to be another funding for a modernization of the allocation process, and I imagine we're going to sit down in I hope not exactly the similar venue as SCORE was. It was

supposed to be a consensus-based decision-making process, and didn't really arrive at a consensus.

There was a majority/minority report basically saying some groups wanted to have share-based fisheries, and others wanted to have the status quo and nothing was resolved out of that. We were still stuck in exactly the same rut as far as allocation goes, and the division of fish. There needs to be a real sober second thought applied to this problem.

And there is solutions, but I think we're going to have to spend a considerable amount of time dealing with all the complexities of the issue.

**Q** *Mr. Brown, in your view, what should happen with allocation?*

**MR. BROWN:** The first thing you have to do is address what Dr. Walters addressed. You heard him in his testimonies last week tell you that between 1995 and 2009 no less than 25 million Fraser River sockeye, which is what we're talking about, could have been harvested without any damage to any weak stocks. That includes the celebrated Cultus and all the other topics that you heard, early-timing Late Run fish, Early Stuart, all of the so-called stocks of concern, 25 million sockeye could have been harvested. And I know that there are people, some of them up in this panel, will try to imply that I want to go back to some kind of folksy time in the past. No, that's not what I'm saying. I'm saying that right now, in the present moment, 25 million fish could have been harvested by all people, First Nations, commercial fishermen, recreational fishermen, and it wouldn't have done any harm.

That, Mr. Commissioner, is what our problem is. We have politicized the fisheries management to such a point under the rubric of conservation, which has been distorted and perverted from what it used to be in the textbook term of conservation, which is protecting the resource and wise use. It has gotten so politicized and so perverted, and if I was given the time, I could explain and I could name the names, and I could go through it point by point. But we are no longer harvesting what we could, and a very viable fishery could have taken place, notwithstanding what my colleagues are saying here. There's many nuances about how you could adjust. But there could have been a fishery without harm to the stocks. In fact, there wasn't.

And what happened is what Dr. Walters and Dr. Woodey told you last week, the stocks did the opposite to what the party line from DFO was saying. They didn't rebound and improve, they declined calamitously. And so when you ask me what we should be doing, the question, Mr. Martland, as briefly as I can put it is de-politicizing, getting rid of all these extraneous policies which have come in and undermined what was once a very well-managed fishery.

**Q** Mr. McEachern.

**MR. McEACHERN:** *I'm sorry, can you repeat the question?*

**Q** The question is what should happen with allocation, and if you have any specific immediate or long-term things that you think should be occurring, should be changed.

**MR. McEACHERN:** Yeah. I think, Mr. Commissioner, we should move towards a longer-termed defined allocation for each stakeholder. The current process of redefining the various shares for various gear types annually is -- is cumbersome, and it makes it difficult to plan from a business point of view, if one year you are going to achieve a 40 percent of a Fraser commercial allocation, and then the next year you would only receive 20 percent due to a difference in the fishing in the north. In my view, those percentages should be fixed for a longer period of time, and that would need to be done through the proper process, of course.

The other thing that I'd like to speak to is currently when we're dealing with allocations, it's always allocation of the target stock, and like we've heard from my colleagues, it's not so much the target stock that's been driving access to fish lately, whether that is the correct way to do it or not, I don't see that changing in the near future. We are tied into a number of policies that are driving us more and more towards addressing weaker stocks and bycatch issues.

And one of the key things I would like to see incorporated into the Allocation Policy that would guarantee the sustainability of the resource for my generation, is that with every allocation that is set out to every user, everybody that takes a target fish out of the water should also be allocated a certain percentage of weak stocks or bycatch. Whereas right now what happens is you have a target allocation of the fish that you're supposed to catch, and then the Department manages the weak stock impacts and the bycatch impacts.

And you often have a certain group that has made a number of changes to make their fishery more selective or avoid bycatch. But those impacts that were freed up by the responsible use of the resource just get eaten up by another group that might not be as responsible. So because allocation is all about access to fish, if you had a set allocation of your bycatch that you had to stick to, to achieve, and that means that the groups would need to be allocated their traditional level that they would need to prosecute their fishery. If you need "X" amount of Cultus Lake sockeye to catch a million Fraser fish, then that becomes your allocation, as well. And that means if you become more responsible, then you get better access. If you become less responsible, you lose access. But it doesn't impact the other stakeholders. In my view that's one of the changes that should be made.

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**Q** *Thank you. For the remaining panellists, I'm going to, because I think that was an answer that combined a discussion of experience with demonstration projects and the merits of ITQs. Mr. Brown, I'm going to try and merge those two into one question. Part 1 is to describe your experience with ITQ demonstrations; part 2 of the question is to comment on whether, and offer your views on whether the commercial salmon fishery should move to an SBM model, why or why not.*

**MR. BROWN:** Mr. Commissioner, through Mr. Martland, may I respectfully ask if we are finished with the subject of intra and intersectoral allocation?

*Q Well, I don't have further questions for you, but other counsel may.*

**MR. BROWN:** Well, without appearing to be obstreperous, I would just like to go on the record that I didn't even begin to get an opportunity to speak about that topic. So I will move on with respect to your current question.

*Q And I'll note your point. Thank you.*

**MR. BROWN:** But I am a little distressed that, and if you'll forgive me here, I have been one of the few people who has attended this hearing day after day, and I have listened in some cases for several days to witnesses from the Government of Canada go on, often incomprehensibly, about their fields of expertise, et cetera, and here we are, expected to deal with vastly complicated issues and we're railroading along. And again, Mr. Martland, I appreciate your time limit, but this is very, very difficult for me.

*Q And I'll simply ask you, Mr. Brown, to do your level best.*

**MR. BROWN:** I will do my level best.

*Q I appreciate those weaknesses, and I accept your point.*

**MR. BROWN:** But I have to appeal to you, Mr. Commissioner, that it is very unsatisfactory to move along at this pace.

Now, to go back to your question. I think the question is wrongly phrased when you introduce in the question the word "ITQ" right off the bat. I think what I could answer better is have I had experience with different ways of working within the fish harvesting community to structure the fishery in such a way that it can be more risk averse, and target on the target species that has been referred to, and produce a better outcome from the fishery. And I would say, yes, I have, and it has been in a variety of different ways.

I could go back, and like Mr. Ashton talk about my earlier history with the UFAWU, dealing with non-transferable quotas in the herring fishery as early as the 1980s, and a whole variety of history since then. But I'll confine my remarks specifically to where I'm currently working, with the Area E Harvest Committee, around a series of ways in which we could slow the fishery down, and make it more risk averse. This would include a number of different options.

It includes things that have been typical to the management toolbox for many years, which is gear restriction, time and area restriction, the way in which nets are hung, so that they can avoid certain species, and be more efficacious in terms of releasing bycatches. It has been the practice of the gillnetters that are here to invest considerable amounts of money in putting live tanks on their vessels so that species of concern can be resuscitated and released. You heard about that yesterday. There has been options that have been put forward by fish harvesters around shortersets, and so on.

In addition to that, there has been a proposal which I have been directly involved with, to work around a share-based quota system, specifically in Area E, but it could work anywhere, that is non-transferable. And most of the people that I've worked with have gone to great effort to develop that scheme without any financial resources. And the end product of the experience is to sit in a variety of different rooms with a large number of DFO people, all of whom are well paid, all of whom who have infrastructure, research capability and capacity behind them, and when we put forward the option of a non-transferable fleet quota, which we would say to them - we have said to them - no matter what the TAC is, you tell us what the TAC is. Because I'll point out, Mr. Martland, that you have to do that with an ITQ 1 fishery, as well.

Salmon are not like some other species. They need to be estimated at the time that the fish are available for harvest, and that can only be done with in-season testing. So when you define what is available to catch, you tell us what it is, and no TAC would be too small.

Our job will be to find a way to democratically and responsibly control the effort within the fishing community, in this case it would be the Area E, through a variety of methods that could be vessel quotas, but more likely it would be the kind of thing that my colleague Mr. Ashton was talking about, it could be pooling arrangements. In other words, what we would say is there's 10,000 fish to catch on Wednesday. We don't want 370 Area E gillnetters out there. We think there could only be 30. How would you do it? And the Area E community has come up with a very, very viable and responsible and democratic way of defining what those would be, as well as proposing the notion of landing stations and various ways of monitoring. And this has been consistently rejected. And to date I have yet to hear a reason why. The best that I have heard, Mr. Martland and Mr. Commissioner, is it's not practical. But that is where I feel the story is belying something else. It's not about practicality, because there's no difference between operating that kind of a non-transferable quota fishery and a ITQ fishery, none.

I think that what's at stake here, or what is driving this problem or has brought us to this impasse, is the DFO is seeking ITQs for other than their stated objective, which is to conserve the resource. And if I'm given the opportunity, I will explain what those political options are. But, yes, I have been involved in trying to bring about the modernization of the fishery, and I and my colleagues have been rejected consistently.

**Q** Thank you. Mr. McEachern.

**MR. McEACHERN:** I'm sorry, there was two parts to that question, Brock, can you just repeat them.

**Q** *Yes. First the involvement or experience with demonstration ITQs or demonstration projects. Secondly, should the commercial salmon fishery be moving to an SBM approach, why or why not.*

**MR. McEACHERN:** Okay. so just to be clear, when I'm speaking to you, Mr. Commissioner, I'm speaking from my personal opinion. Although I do represent the Area D gillnet fleet at a number of functions, that's not my role here today.

On the ITQ issue, it's a very clear split in my fleet from those who would like to move towards that system and those who would not. So when I'm speaking in favour of share base, which I will in the second part of the question, that's my personal feelings.

The experience with ITQ fisheries, we got very close to having a demonstration project, a fully transferable individual quota in Area D gillnet on Fraser sockeye, and unfortunately on the year where we did all the planning, there was no commercial allocation available, so the project didn't go off.

And then the Department made a major change to its demonstration fishery proposals for the next year. And our proposal that was going to go ahead was going to be voluntary, where it only involved a certain portion of our fleet, those that were interested in participating in a demonstration fishery would have been allowed to, and to show any merits or any shortcomings that might arise from such a demonstration. But after that, I believe, I'm not sure how the internal workings of the Department exactly work. I think it might have been the Department of Justice, somehow the Department got the idea they wouldn't be able to prosecute a fishery that was only partly ITQ and partly an open fishery.

So after they made that decision, all demonstration projects around share-based management had to involve the entire fleet. And so as a Harvest Committee, we felt we could no longer pursue a sockeye ITQ in Johnstone Strait for the entire fleet, because even if we could, and it would be very questionable whether or not we would get enough support to go ahead with it. But even if we could, you would be imposing that will on the fishermen who didn't want to go that way.

So, yes, we got very close to a full transferable quota on Fraser sockeye in Johnstone Strait. We had the approval, we did the transfers, and it was ready to go, but there was no Fraser TAC on that year. And it just escaped my mind, it might have been -- it was one of the years we didn't fish, 2007 or 2008. And my personal feelings is that, yes, I think the commercial fleet should move towards more of an individual share-based management fishery.

Now, it's true that all of the things that you would like to achieve that the Department says are its goals are moving towards more of an ITQ system. They can be achieved

under the open traditional fishery, as well. However, there are some things that can be achieved with an ITQ that in my opinion will actually happen, and in the full fleet fishery they won't. And one of the things that I feel, it would really, when you move the responsibility from a fleet level down to an individual level for your catch monitoring, your landing, your bycatch, issues like that, you will see a greater compliance, because people will feel a stronger connection to that fish as being theirs.

I never got to run the demonstration projects in my fleet to actually show whether that's true or not, so to me, that is just an opinion and it should be noted as such. The other thing that we cannot address through fleet pooling and non-transferable quota, and demonstration fisheries, that are not transferable, is we cannot address the fact that on most years not enough fish are moving over the deck of my boat for it to be a viable fishery any more. So whatever, in my opinion, the biggest advantage for the fishermen in a share-based management is the ability to put more fish across your deck. But it's true that that's going to mean that some fishermen are no longer going to fish. So how we deal with the social ramifications of that, I think could be designed into the ITQ project, if all parties were willing to do that, but at the moment, we're not.

**Q** Mr. Sakich.

**MR. SAKICH:** Yeah, I can make it quick for you here. In Area H, what we have, you know, derives out of the ITQ pilot that we've been in for a few years, is we've had access, we've had economics, we've had fairness and we've had respect.

Now, you have to look at the situation that things are in now. Outside of some programs that are government funded, taxpayer funded, that are removing licenses out of the industry, there is still a lot of people, the average age in the industry is absolutely ancient compared to any other workplace in Canada. I think it's probably the highest, and some of these folks have no way out. Vessels aren't really up to where they should be, and lots of people have had an opportunity to be able to rent this fish out, and get something back out of it, rather than sitting with a destitute business at the wharf.

Now, I haven't seen anything else that has addressed that, and I just call it respect for the past as you're moving into the future. You've got to think of those things. You just can't think of yourself moving forward as I'm the only one. You're leaving a lot behind.

**Q** Thank you.

**MR. SAKICH:** And that's what we found in our small licence area, 80-some-odd licences in that area, that it has accomplished all of those things.

**MR. MARTLAND:** Thank you. Mr. Commissioner, I'm just noting that the time is 11:15 or so. We usually break at this time. We did start a little late this morning. My hope is that my questions will be another 15 or 20 minutes on other topics. I don't know if the court's preference is that we take the break now, or carry on.

**THE COMMISSIONER:** I think we should carry on. I think Mr. Brown had his hand up, did he not.

**MR. MARTLAND:** Thank you.

**MR. BROWN:** Yes, I did, Mr. Commissioner, and it's just to build on my colleague Ryan's comments. I would just like to make sure that it's clear that I am representing an association that has taken a position on this, and that's the Area E, and I used to represent another organization that took a position against it, that was the United Fishermen and Allied Workers Union.

With respect to Mr. McEachern, who I admire greatly, I hear him making a case for a community buy-in and the idea of the harvesters owning the problems of management, and I think that's a very valid point. However, I don't think there's anything inherent about ITQs, as opposed to other forms of quotas or other forms of community-driven attempts to rationalize the fishery and make it more responsible, that's superior in this regard.

I'm mindful of the fact that the Nobel Peace winner or Nobel Prize winner for economics, Elinor Ostrom, in 2009 pointed out that those fisheries and farming communities which were able to collectively and as communities have buy-in and close attachments to common property resources, tend to be the best and well-managed, believe it or not.

This is a refutation of the old tragedy of the commons thesis, the idea that common property is nobody's property and will ultimately be exhausted. I believe a strong case can be made on the basis of what the fishing plans - and I'd love to submit them to you - from the Area E group suggest, is that the fish harvesters would do what Mr. McEachern is suggesting, under a non transferable quota, which is to have more buy-in.

But I would like to also conclude by saying that I have a great fear about a couple of points around the ITQ system. One is - and I'm no lawyer, you all are legal experts - I question the legality of taking a fishery that belongs to the public of Canada, the public right to fish, which flows from the *Magna Carta* and then saying that a person who occupies the position of Minister of Fisheries at a given time can then concoct a system by which they can bestow that fish or those fish as they could become the property of any chosen group. And I make no value judgments about who those could be. I question that. I would leave it to legal experts to think about that.

But I would certainly point out one thing is that at the very least, the Department of Fisheries is obliged, if it's going to go to any user group and adopt this option, to put it to a referendum as Mr. McEachern quite honestly, and I admire him for his transparency, said there's a split and there's a difference of opinion, and it should be that a referendum be conducted before you'd move down such an irrevocable road as an ITQ system. And those referendums were held, and in most of the area groups they did not succeed.

I understand that there's a very passionate and painful debate unresolved. I'm wondering why you would even want to get involved in that, but that notwithstanding, I think there's a huge amount of risk. Because once you move to an ITQ system, there's no going back. If you adopt the kind of options that the Area E and other harvesters are talking about, which buys into the notion of controlling the fishery but not making it transferable property, you still have the option if they don't work to move to ITQs someday. But I do not know why everybody is in such a hurry to do this.

I think I can make a good case to you that there are other political reasons that have nothing to do with the conservation of the resource, that inspires DFO to do that, because it makes it easier for them to achieve some of their political objectives by allocating the fish in different ways, and making it look like it was the result of a free market transfer. But that's for another time, I suppose. But I would make it very clear to you that we are entering into an era of profound change when we deal with the introduction of property rights into the fishery.

**Q** Thank you for that point. My next question is on selective fishing, and Mr. Brown, I have you first on the list as we go back to the start of the batting order. I'll try and frame this as one question, I hope not too elaborate.

**MR. BROWN:** Well, Mr. Martland, I'll be fair, because I just had a fair bit of a time. So if you want to move to one of the others, because I don't to appear like I'm dominating.

**Q** No, that's fine, I'll stick to my sequence, but thank you. So I'll have you answer this first, please. On selective fishing, if you could please describe your involvement with selective fishing, in particular the work in the 1998 to 2002, and what is more broadly and more importantly in terms of emphasis that you wish to give to this, what is the status of selective fishing. Should it be more of a priority. What specific things should happen.

**MR. BROWN:** The short answer, Mr. Commissioner, is that selective fishing is a good thing. And as I tried to point out earlier, there is abundant ways to be selective. My concern with the current paradigm in which we are living in, is that selective fishing initiatives tend to be highly politicized within the Department today. Not everybody gets to go and experiment with selective fishing.

Various user groups have been given types of selective options, which may or may not be technically useful. There's a whole bunch of different ways in which it's done. But my concern has been the way in which the process of people getting access or the opportunity to be selective, has been somewhat unfair and skewed. If I was given enough time, I could give examples. I'm not sure I have that time.

I believe that, however, that selective fishing in terms of Fraser River sockeye, which is the purpose of this inquiry, is a fairly marginal point. It gets blown out of proportion because it gets into the media and it's all part of this thesis that the commercial fishing industry is wantonly overfishing the resource, indifferent to conservation. It is not true.

I sat a few weeks ago or a few months ago and listened to a gentleman by the name of Terry Glavin declare that the salmon fishery in British Columbia, the Fraser salmon fishery, was a catastrophic 19th Century paradigm.

A couple of weeks later, I heard one of the counsel ask Mr. Mike Lapointe of the Pacific Salmon Commission if that characterization was fair, and he said unequivocally that it was not fair, and the case was made that the Fraser River sockeye fishery is one of the best managed fisheries in the world.

To conclude, I'll build on what Dr. Walters said. There are three specific conservation problems related to the Fraser River fishery. One is the Early Stuart, one is the Cultus Lake, and the other is the early-timing Late Run/early migrating Late Run thing, which Dr. Woodey spoke about last week. All three of those can be managed and avoided without a hell of a lot of change in terms of selectivity, just by some of the tools we have, mostly by just the timing of the fishery.

So while I am in favour of selective fishing, I think that in the context of Fraser fisheries, it's complicating things. It's not necessarily the answer.

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**Q** Mr. Brown, please.

**MR. BROWN:** Yes. Thank you, Mr. Commissioner, for allowing me to make an additional comment here. I would just like to go back to this notion of selectivity and how it pertains to weak stock management which has become quite a predominant sort of -- I hope this is not too tendentious of a word -- it's almost like a theology in DFO right now. I don't say that to be disrespectful for the idea of being selective or being risk averse, but I think it's gone far out of proportion to where it should be.

I'd like to use a couple of illustrated examples of that. The biggest selectivity weak stock management cause that you've heard over the last many years, and has been developed in the media and advanced by the NGOs and others, has been the Cultus Lake fish.

There's a report that I study very carefully put out by an independent biologist by the name of Bill Gazey, well respected biologist, and it was peculiar to one particular year. It was when we were dealing with some of the stuff you heard last week about the by-catch limits around the Late timing sockeye and the sacrifice of large numbers of Summer run sockeye to protect these allegedly endangered stocks.

At that year, the return to the Cultus was something in the neighbourhood of 300 fish. It was one of the very low cycle years for the Cultus. All of the selectivity and all of the -- no, I shouldn't use the word "selectivity". All of the weak stock management drivers in the fishery that year had the net effect of causing a major sacrifice in the harvest of the

Summer run that year, and I won't repeat all of what Walters and Woodey said to you about that, but there was no sense of proportionality out in the public discourse about what we were doing.

On one hand, we were sacrificing millions of fish of which my colleagues all depended on for their livelihoods, and what did we save that year?

Mr. Gazey estimated that the best that we were going to save was somewhere in the range of 10 to 20 additional Cultus fish, something that is noble, and we might have even done it anyway. But what I'm trying to strike at here is the losses relative to the gains were very far out of proportion.

This is what Dr. Walters was talking about the other day, and I think very, very wisely, is there needs to be some sort of socioeconomic analysis done about if we're going to head down a path such as the theological approach to weak stock management that the Department has adopted, allegedly the *Wild Salmon Policy* is supposed to mitigate and balance.

We at least need to tell you, Mr. Commissioner, and the public at large, what it is we're doing and, more importantly, what is the impact on people who are affected by it. That's one point. But, more importantly, what is the impact on the resource as a whole?

If to save 20 Cultus fish that may or may not have spawned successfully, we put five million extra fish on the Horsefly run and depressed it, and brought it down in a calamitous way, this brings you to the rhetorical question of Dr. Walters. What is precautionary? Is that precautionary, that we saved 20 fish and destroyed a run of millions?

I'll say in the context of another topic which is some of the selective problems or some of the weak stock problems that we have, particularly in the Cultus, have never been the result of fishing in the first place, but could be solved by other measures, including cleaning up the habitat and other factors. So I'm begging that somehow through this process, we get that sense of proportionality of what we've been doing. Thank you.

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**Q** *Mr. Brown, I see you shaking your head "no", and I'm leery of --*

**MR. BROWN:** I know. We don't want to get in a crossfire. I respect what Mr. McEachern is saying, but it has to be very clearly stated that the Area E Harvest Committee does not support ITQs, and I must say - and I do this with great deference - that a lot of what Mr. Ryan is - or what Ryan is talking about was something that was directly involving his own father and his own family members in a personal enterprise option.

It is not necessarily -- I'm not saying it was a bad idea, but it is not necessarily representative of the Area E group as a whole. It's just important to make that point.

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**Q** Thank you. Mr. Brown?

**MR. BROWN:** Thank you. I'll try to be brief. I want to go back to a couple of points that Ryan made, and I wanted to say I couldn't have put it better than Ryan did, his analysis of the advisory process up until the time he made the point about non-fishermen reps. I, for one, am a non-fisherman rep at the moment, and I want to make it very clear to Ryan and everybody else, I don't get paid. I get paid nothing. I do it because there are a number of people in the industry have asked me for -- based on my history and my skill set - if I would help them and I do it. I'm not the slightest bit ashamed about being a non-fishing licence-holder active fisherman when I go there because I'm guided, when I go there, both when I was a union representative - and I am no longer - and now, in an erstwhile form as an Area E representative, I'm guided by policy that was developed by fishermen through their own various meetings, some of which Ryan has attended.

I just want to make it clear, Mr. Commissioner, that we shouldn't get hung up on this issue of non-fishermen versus fishermen and that there's something inherently superior about either group. They can both be good and they can both be bad. I would make the observation after more than 30 years in the advisory process, that some of the most sterling examples of representative democracy that I've ever witnessed in my life.

And I'm thinking about my former boss and very dear friend, the late Jack Nichol and others, would go to meetings and were absolutely impressive in their intellectual grasp of subjects, were widely regarded by the Department and they weren't fishermen. They were people that learned from fishermen how to articulate their views.

The *quid pro quo* of that is some of the most questionable people I've ever seen in the advisory process were, nominally, working fishermen who attend meetings, hang around and get chummy with certain people in the Fisheries Department, tend to have a self-interest, and design some of their proposals and options, write correspondence attacking other people in the advisory process, calling them down. There's a lot of things that can be said -- and I don't say that's all of them.

I'm just making the point that there's no inherent fetish about whether you're a fisherman or not, and I agree with Ryan very strongly that the best way to solve it is to make sure that all the people are properly resourced.

Now, if I may, could I move on to another point, and that is this whole issue of what is the advisory -- what is probably the biggest problem with the advisory process, and Mr. Ashton has touched on it. But just a week ago, I was sending down a number of fisheries modelling exercises that the DFO was working on in the fishery to Dr. Carl

Walters in Florida. His comment was, "Even I can't understand half of these things. How the hell can working fishermen do it without the resources and without the expertise?"

What we're seeing in this age, particularly as Mr. Staley pointed out last week, since the advent of computers, is an absolute exponential growth in computer modelling and abstract activity that becomes at times absolutely overwhelming.

And it's certainly -- I totally agree with what Ryan is saying -- a challenge for people who do not get paid and don't have the resources to go through that.

The other point that I don't like about the current advisory process is, as you heard from Dr. Woodey and others in the old IPFSC era, which is different -- we can't necessarily go back. Things were more simple, but we no longer have one place where all decisions are made around Fraser sockeye. There's a multiple of forums. Decisions are often made in places like the Fraser Panel, and they're obviated or undermined or changed in other places. I think there is some serious structural flaws there. If I had more time, I would go into that case by case, but I think there are some serious problems.

I will conclude by saying the current advisory process tends to favour a top-down approach by DFO rather than a grass-roots-up approach from fishermen.

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