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## Standing Committee on Fisheries and Oceans

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EVIDENCE

**Thursday, June 8, 2006**

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**Chair**

Mr. Gerald Keddy

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Thursday, June 8, 2006

• (0905)

[English]

**The Chair (Mr. Gerald Keddy (South Shore—St. Margaret's, CPC)):** I call this meeting to order. Pursuant to Standing Order 108 (2), we will today study the herring spawn-on-kelp fishery.

I'd like to welcome our witnesses. They are Randy Pilfold, vice-president, and Don McNeil, as a representative of the industry.

It's my understanding that Mr. Cummins has an intervention before we hear our witnesses.

**Mr. John Cummins (Delta—Richmond East, CPC):** Mr. Chairman, it's a matter of some concern regarding testimony last week by DFO officials.

My colleague Mr. Lunney addressed his first question to Mr. Wild. He said in his question that perhaps remarks had been made in the media concerning the motivation of groups that were concerned about gravel extraction, that they were "motivated by other issues than biology: by racial concerns". That was a comment by Mr. Lunney.

Mr. Wild replied as follows:

That was reported in the Chilliwack paper by a reporter whom we've actually talked to for several years in the area. I might preface my comment by.... I think Marvin also noted that occasionally reporters twist the stories a bit. In my opinion, that was the case here. In that report there were quotes from Dale Paterson, who actually happened to be on holidays for two weeks at the time.

There's a theme in there, though, that is not totally unrelated.

And it goes on from there.

I further questioned Mr. Wild on that issue. I asked him directly whether he referred in his comments to the newspaper reporter about—and I quoted these words—"local animosity". I suggested to Mr. Wild the following about the newspaper reporter's report:

He says that you suspect that "local animosity with the Cheam First Nation fueled the sport fishermen's outrage over the gravel removed".

Are you denying that?

Mr. Wild said, "I understand, and I responded to that question earlier."

When I asked him again, he replied, "That the local animosity between the two groups caused the problem on this site? No."

I said, "That it fueled local sport fishermen's outrage."

Mr. Wild said, "I don't believe I said that, Mr. Cummins."

I said, "That's fine", and that was the end of the exchange.

Mr. Chairman, I checked with the reporter involved in that story, because I think there was a serious allegation made here. There were comments and denials in committee, and—

**The Chair:** I'm just going to interrupt you for a second, Mr. Cummins. We do have two witnesses here. If this is going to take quite a while—

**Mr. John Cummins:** No, I'm going to be done here in one minute. I just think it's important that this issue be on the record.

Mr. Chairman, I asked the local reporter, and I got a comment from Mr. Bill Otway on this thing. Mr. Otway said:

Be aware that on a quick glance I'm aware that Wild lied or misled the committee on a key point. He claims the comments made in the paper were not his and the reporter erred.

Well when this happened I e-mailed Sprout immediately and he responded that he had taken it up with Wild and both agreed that these were not responsible comments and that they were not acceptable and he assured it would not happen again.

At no time did he indicate that this was a misquote by the newspaper.

The reporter, Robert Freeman, said:

Mr. Wild did make the comment about "local animosity" toward the Cheam. I have it in my notes and a good recollection of it in my memory because it surprised me so when he said it. No recreational fisherman made any comment (at least not a disparaging one) about the Cheam Band running the removal operation—just about their concern for the habitat and what DFO was doing. ... Nobody from the DFO has said anything to me about any alleged misinformation or misquotes in the story since it ran in March.

Mr. Chairman, I think this committee was misled by Mr. Wild and Mr. Sprout. I think it's a matter that requires addressing by the committee at some point.

**The Chair:** Thank you, Mr. Cummins. We'll take that up during further committee business, after 10 o'clock.

We'll come back to our witnesses.

You have 10 minutes, gentlemen. Thank you for appearing, and thank you for your patience.

**Mr. Don McNeil (Representative, Spawn on Kelp Operators Association):** Ladies and gentlemen, we would like to thank each of you for this opportunity to bring this matter to your attention and consideration.

We represent the Spawn on Kelp Operators Association, a non-profit organization formed in 1995 to represent 35 of the 46 licence-holders. The spawn-on-kelp fishery, once the most profitable on the coast, has suffered a total financial collapse because of Fisheries and Oceans Canada's interpretation of the Gladstone decision.

We are here today from British Columbia to make sure that you are aware of what happens when government enters into the established marketplace, and to ask you for your assistance in correcting the resulting financial devastation to our industry.

Prior to the Gladstone decision, there were 28 licences issued to various individuals on the B.C. coast. Their quotas were each 16,000 pounds per year, prices were rising, and demand for the product was high. Of these 28 licence-holders, 18 were first nation bands and individuals from various villages and towns spread through the entire length of the British Columbia coastline.

It was in 1996, when spawn-on-kelp was selling for \$35 to \$40 a pound, that the Supreme Court decided, in the Gladstone decision, that the Heiltsuk aboriginal band on the central coast of British Columbia had a right to harvest spawn-on-kelp for commercial purposes. The DFO wrongly determined that this decision provided the Heiltsuk almost unlimited access to the quota-regulated fishery. The resulting penalties and consequences of the Gladstone decision and DFO's interpretation are, and continue to be, the responsibility of the Canadian people as a whole. Presently the cost is being borne solely by the original 38 spawn-on-kelp licence-holders.

In 1978 five communal licences were issued to first nation bands, including one to Heiltsuk. In order to be eligible to participate, sac roe licences were required to be leased or retired by each communal licence-holder. These licences were created by lowering the 28 original quotas from 10 tonnes to 8 tonnes per licence. No increase in total coast-wide quota resulted.

In 1991 DFO issued 10 new J licences to first nation bands, but none to Heiltsuk or other first nations who held an existing J licence. Those who did receive a licence were required under the AFS agreement to retire six gillnet sac roe licences or one seine sac roe licence by 1999. And DFO contributed to the cost of doing so.

In 1993 DFO issued one J licence to Heiltsuk with sac roe requirements. Heiltsuk now held two out of a total of 39 J licences.

In 1997 DFO issued five J licences, and two additional J licences in 1998, to Heiltsuk.

In allocating these seven new licences, Heiltsuk did not have to retire any more roe herring licences, nor did they have to retire three of the six gillnet licences as required under the Heiltsuk 1993 AFS agreement.

Some first nation bands spent \$150,000 to lease licences for the year, while others invested their earnings of up to \$800,000 to purchase sac roe licences for conversion to spawn-on-kelp licences. This to them was a good investment in their future, as spawn-on-kelp was a closed-quota fishery with a product that was in high demand. With these new additions, without sac roe licence requirements, the Heiltsuk quota rose to 144,000 pounds.

In February 2001 the Heiltsuk, DFO, and the Department of Indian and Northern Affairs Canada signed a letter of agreement for an interim measure for a one-year period. The interim measure increased the harvest from 144,000 pounds to 240,000 pounds for the 2001 season, which is equivalent to six more J licences.

In 2005 the Heiltsuk First Nation terrorized the sac roe fishing fleet with illegal acts of vandalism. No one was charged, even when

personal property was damaged and livelihoods were threatened. Instead of charging the terrorists, DFO decided to appease the Heiltsuk by giving them 92,000 pounds more spawn-on-kelp in 2006 in exchange for the promise that they would not create the havoc that occurred in 2005 and previous years.

• (0910)

This year, 2006, the Heiltsuk produced approximately 350,000 pounds, which is equivalent to 50% of the coast's production, and the prices plummeted to \$4 to \$5 per pound. As Heiltsuk's production increased, the price went down by the same ratio. This was the icing on the cake for the spawn-on-kelp industry. Prices still remain below cost of production for the original 28 licence-holders and the ten bands who invested their earnings.

We feel that part of the DFO's mandate in this area should be to provide economic benefits to all aboriginal bands, including the Heiltsuk. This has not been the case, and to most bands the opposite effect has occurred.

In February 2006 secret negotiations were held with the Heiltsuk, which resulted in 92,345 pounds added to an already flooded market.

In a letter to the Minister of Fisheries dated February 20, the minister was asked why SOKOA was not asked to participate in any negotiations with Heiltsuk. A reply sent on April 7 stated that the Spawn on Kelp Operators Association elected not to participate in this process. He suggested that we contact Ms. Harpreet Gill to provide us with information regarding an invitation to be part of any negotiations with the Heiltsuk regarding roe-on-kelp.

We have done just that, and have been stonewalled with 39 pages of misinformation that mean nothing, but it strengthens our belief that it was intentional for SOKOA not to be present during these negotiations that decimated our industry and livelihood.

The Heiltsuk do not pay either the \$10,000 licence fee or the \$5,000 monitoring fee that the other 38 licence-holders are required to pay. Thus they start off with a dollar-a-pound advantage in cost over the rest of the spawn-on-kelp industry.

The people of Canada are not getting any taxes or royalties from the massive use and exploitation of this once clearly Canadian resource. The increasing concentration of quota allocation and earnings to Heiltsuk has devastated licence-holders, crews, and communities from the various towns and villages along the entire length of the B.C. coastline.

Many socio-economic problems from this abrupt cessation of employment and income have risen steadily since 1975. These problems were never considered by DFO as they stumbled over themselves to appease the illegal demonstrators and the Supreme Court's Gladstone decision by issuing the spawn-on-kelp quota to Heiltsuk.

In all other fisheries, DFO and government departments determined that to transfer quota out of the fisheries to first nations, the quota was first purchased out of the commercial fishing mainstream and then transferred to native interests. This principle was not adhered to in this fishery. The result has been a flooded market and prices lower than costs of production. The Japanese buyers lowered the price dramatically, not only because of the increased production but also because of their perception of open-ended quotas being handed to Heiltsuk.

Incidentally, much of the black market or illegal product comes from this area, with little or no effective enforcement. In a recent technical working group meeting with DFO, a central coast enforcement officer admitted that he had been instructed not to enforce illegal harvesting on the central coast. As a result of this type of inaction, the illegal harvest has risen to about 200,000 pounds.

The Supreme Court of Canada's Marshall decision of September 17, 1999, affirmed the treaty right to fish, hunt, and gather in pursuit of a moderate livelihood stemming from treaties signed in 1760 and 1761. Following the court's decision, DFO initiated the Marshall response initiative. Because of Marshall, increased aboriginal participation has been accommodated, in part through the voluntary retirement of fishing licences from existing commercial licence-holders. In this way, disruption of other fisheries has been minimized.

When SOKOA put this rationalization plan forward to the herring industry advisory board and the new integrated herring harvest planning committee, this plan was accepted unanimously as the best solution.

• (0915)

The Spawn on Kelp Operators Association respectfully requests that the Standing Committee on Fisheries and Oceans consider funding a spawn-on-kelp licence rationalization plan proposal based on Marshall. We would ask you to direct the government to treat all fishermen equally, regardless of which coast they come from.

Thank you.

**The Chair:** Thank you very much.

We'll go to our first questioner.

Mr. Matthews.

**Mr. Bill Matthews (Random—Burin—St. George's, Lib.):** Thank you, Mr. Chairman.

Thank you for coming, witnesses.

I have a couple of questions, just for clarification. On page 3 of your presentation, fourth paragraph, you mentioned a letter to the Minister of Fisheries dated February 20, and then a reply on April 7. That's 2006, is it?

• (0920)

**Mr. Don McNeil:** Yes.

**Mr. Bill Matthews:** Perhaps you could explain this for me so that I understand. The spawn-on-kelp fishery is not something I'm overly familiar with, to be very honest with you. Could you just inform the committee on what it really is, spawn-on-kelp?

The other thing I'd like some clarification on is the sac roe licence. You talked about the impact of, I guess, not taking out a number of sac roe licences. Could you explain what that is for, please?

**Mr. Don McNeil:** To answer your first question, I'll give you a quick history of what spawn-on-kelp is. We start off by building an enclosure with four logs. We build an aquarium, as such, out of web. We go out to the kelp beds and we pick kelp, a certain type of kelp, and we hang it just like socks on a clothesline. We hang thousands of leaves. We then catch the herring and we tow them gently towards the pond. We have a technique to put them into the pond alive.

Because the fish are at a certain ripeness in their maturity—in other words, they're anxious to spawn—they spawn on the web and on the kelp that we have suspended in the pond. After it gets to a certain thickness, we harvest that kelp from the pond, salt it down, and transport it to town, to be sold to the Japanese.

Basically, the interior is a leaf of kelp, or seaweed, and the eggs are adhering to both sides of the kelp.

**Mr. Bill Matthews:** Okay. And the sac roe?

**Mr. Don McNeil:** Basically, there's a total allowable catch in British Columbia. The spawn-on-kelp industry is classified as a user of the product. So we're allocated 100 tonnes of herring to use in this operation. The sac roe fishery is a fishery where they actually catch the herring, pump them aboard the boats—in other words, kill them—and send them to town for processing for the sac roe, the little piece that is sold to the Japanese.

The point is that if you issue a roe-on-kelp licence to Heiltsuk, for instance, and make them retire six gillnet licences, or a seine licence, then basically the resource has not been.... You've just moved from one fishery to another.

**Mr. Bill Matthews:** So really, I guess, it's just to check the mortality rate on the fish, is it?

**Mr. Don McNeil:** In the spawn-on-kelp business, ideally, if it's done properly, the fish are released and they come back next year. You've actually extracted the eggs and sold them without killing the fish at all.

**Mr. Bill Matthews:** As I determine from your presentation, there are a couple of problems. One is that there's been an oversupply, it seems, to the market, which has driven your price down from \$35 or \$40 to \$4 or \$5 a pound. That seems to be the essence; we've just made the fishery non-viable, basically.

Another problem is that in certain instances they didn't order a direct reduction in the sac roe licences when they increased the....

Is that what it is?

**Mr. Don McNeil:** No. What happens is that if you have 38 licences at 16,000 pounds each, that is a certain, definite quota that's out there for the Japanese to purchase. But now what's happened is that the government has issued 342,000 pounds of quota to one Indian band on the central coast.

So without getting into the benefits or the detriments to the sac roe industry, it has basically flooded the roe-on-kelp industry and increased the coast-wide allocation, because they haven't taken it out of the other industry. But that's a separate problem from the one we're dealing with today.

**Mr. Bill Matthews:** Okay, thank you.

That's it for me, Mr. Chairman.

**The Chair:** Next questioner is Monsieur Roy, for seven minutes.

[Translation]

**Mr. Jean-Yves Roy (Haute-Gaspésie—La Mitis—Matane—Matapédia, BQ):** Thank you, Mr. Chairman.

Mr. McNeil, I thank you for being here. I would like to ask you a few questions for clarification, in the same vein as those asked by Mr. Matthews.

If I understood correctly, the total production is approximately 600,000 pounds. Is that correct?

• (0925)

[English]

**Mr. Don McNeil:** The coast-wide production for 2006 would be about 500,000 pounds.

[Translation]

**Mr. Jean-Yves Roy:** You said that this year, in 2006, the aboriginal band landed approximately 350,000 pounds. If I understood correctly you also talked about a black market during your presentation. That means that reality does not correspond to what you have described, because you also made reference to the black market. This fishery is obviously not monitored by the department. We therefore cannot assert that the production is truly in accordance with what you state in your document.

[English]

**Mr. Randy Pilfold (Vice-President, Spawn on Kelp Operators Association):** If you look at the management plan for the spawn-on-kelp industry, their quota is 240,000 pounds, from DFO, and they got to produce 325,000 pounds. That's what the problem is.

[Translation]

**Mr. Jean-Yves Roy:** You say that they landed approximately 350,000 pounds. Was that registered or verified, or is it something that you presume?

[English]

**Mr. Randy Pilfold:** It's been registered. It's right in their document, in the MOU they had for this year, for 2006. They were given 325,000 pounds and they produced 350,000 pounds. They had an increase of 92,000 pounds.

[Translation]

**Mr. Jean-Yves Roy:** When you refer to the black market, what are you talking about?

[English]

**Mr. Randy Pilfold:** The black market is in addition to all of this.

[Translation]

**Mr. Jean-Yves Roy:** What would you estimate the number of pounds fished on the black market to be?

[English]

**Mr. Randy Pilfold:** I don't think DFO really knows. I don't even think we really know. But what we're talking about here is that Heiltsuk has gone from 144,000 pounds to 240,000 pounds to 325,000 pounds in three years.

[Translation]

**Mr. Jean-Yves Roy:** And the black market landings have to be added to that.

[English]

**Mr. Randy Pilfold:** Right.

[Translation]

**Mr. Jean-Yves Roy:** I thank you.

[English]

**The Chair:** Merci, Monsieur Roy.

Ms. Crowder, five minutes, please.

**Ms. Jean Crowder (Nanaimo—Cowichan, NDP):** Thank you, Mr. Chair.

I just want to back up a bit to make sure I understand the context here. What the Gladstone decision did, to my understanding, was refer it back to the lower courts, and the lower courts didn't deal with it. They put a stay on it. DFO decided to deal with this in a political way, in essence.

So really, this decision was made at the time by the government and DFO on how they were going to manage the spawn-on-kelp industry. Is that correct?

**Mr. Randy Pilfold:** Somewhat.

**Ms. Jean Crowder:** Somewhat; I mean, they were guided by the Gladstone decision, but really the Supreme Court at that time did not instruct the government to allocate fisheries in any kind of manner. So it was essentially a political and a department decision.

**Mr. Randy Pilfold:** In 1996 it was, but then in 1999, when—

**Ms. Jean Crowder:** I'm coming to 1999.

In 1999 the minister of the day, David Anderson, was asked by Mr. Cummins about how this fishery was being managed. Anderson came back at that time and said that basically there was no limit; it wasn't impacting public access to the spawn-on-kelp.

So in 1999 the government of the day determined that there was really no impact; it was being managed in a fairly reasonable manner. But you're saying that from 1999 there was a change.

What happened? What created the change? I understand that the Heiltsuk were granted additional licences, but what changed that resulted in that change?

• (0930)

**Mr. Randy Pilfold:** I can explain that in two parts. In 1999 what happened was that the Marshall decision came out, and on the east coast they decided that they were going to buy back the licences. In British Columbia, Anderson said he couldn't afford to buy the licences back, so he issued licences and kept issuing them.

The DFO website, which you can access right now, tells you they shouldn't do it. And they're printing that.

**Ms. Jean Crowder:** So it was the failure to look at buyback a number of years ago that created this problem now, a number of years down the road.

**Mr. Randy Pilfold:** Yes, and it's continuing.

**Ms. Jean Crowder:** My other question is with regard to the integrated harvest planning committee, which is brand new. What impact are they having on how this is managed?

**Mr. Don McNeil:** Because it's brand new, they don't have any impact—yet. On the integrated harvest planning committee, the one that you just referred to, there are five representatives from the spawn-on-kelp industry and ten from the sac roe industry. We would not have allowed an increase of production to this extent in a regulated fishery.

The fact that we weren't invited or informed of the negotiations that were going on in January and February of 2006 has led us to where we are here today, to say to you that we've gone too far and that the industry is suffering greatly.

**Ms. Jean Crowder:** Is it possible that this integrated harvest planning committee could have an impact on managing the fishery better?

**Mr. Don McNeil:** We hope so, but it's almost too late to back up. The damage has been done, and whether they can reverse it....

Generally when you give away a quota to anybody, it's very hard to...and this organization won't be able to drag it back.

**Ms. Jean Crowder:** There are two other points that you raised in your presentation, and I think they are troubling because they seem to be consistent in terms of what we're hearing about the department. We had them in the other day, and we were talking about information, and clearly on another matter they're making decisions on information that doesn't always lead to the results they intended.

This is not exactly the same as what you are talking about, but with reference to DFO cancelling the Nuuchahnulth spawn-on-kelp fishery, when they were asked for information they were not able to provide any stock assessment data or scientific projections. It sounds like what's before us now is another case of DFO not having adequate information to assess the impact of giving these additional licences—or they wilfully are disregarding the information.

**Mr. Randy Pilfold:** DFO has been using roe-on-kelp as a currency since the Gladstone decision. We are the currency to settle land claims. If you look at it, David Anderson made a speech in the House of Commons that he would not buy back roe-on-kelp licences

because they were too expensive. Then he went out and issued more and more and more. And we can't take it any more.

**Ms. Jean Crowder:** Do you think DFO has enough information to assess the impact?

**Mr. Randy Pilfold:** They never did want to study the impact. The mandate of DFO should be to study the viability of every fishery in British Columbia that they seem to be giving quotas away on. We seem to be settling land claims with fish quotas in British Columbia.

When you come to the east coast, to Atlantic Canada, they have interim measures where they give the permits, licences, give them a quota, and then they start buying it back from the industry. In British Columbia we don't do that. What they do is buy the odd licence back, find out it's too much money, and then turn around and decide they're just going to issue licences. And nobody stops it.

If you look at spawn-on-kelp—you can see how small our membership is—we get railroaded by industry. The interim agreement for this year was signed by the roe herring industry. We're not even on the board that signed it, and DFO pushed it through; they've given the 92,000 pounds. Then they write a letter, which I have right here, to industry saying, oh, we've just made a deal with Heiltsuk, and we're going to have peace in the central coast roe herring fishery; we're giving them 92,000 pounds of roe-on-kelp.

You cannot trade apples for oranges, which is what they've been doing. They keep saying they're going to retire licences and they don't. If you look at the Heiltsuk deals, they were supposed to retire licences and then they turned around and reversed it. The only licences they've retired for Heiltsuk are three gillnet licences, when they were supposed to retire six. The rest of it is just being made up.

When I say “apples and oranges”, what I'm getting at is that you can keep putting roe-on-kelp up for sale and you have roe herring for sale. They're two different markets. One does not balance the other. They're totally different. That's what our problem is.

If you retire licences, it does not help people who are in the roe-on-kelp industry. The only thing that's going to help us is to retire roe-on-kelp and bring the licences back to the original 28 in the quota. Then we have a hope in the market to go ahead. But if we just keep saying, “We're going to retire roe herring,” it helps the roe herring industry; it does not help the roe-on-kelp industry whatsoever.

• (0935)

**The Chair:** Thank you.

Mr. Cummins, ten minutes.

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

I'd like to follow up on my colleague's comment on the Supreme Court. In the decision, it says as follows:

In the result, the appeal is allowed and a new trial directed on the issue of guilt or innocence and, with regards to the constitutionality of s. 20(3), on the issue of the justifiability of the government's allocation of herring.

At that point, at that Gladstone trial, the Heiltsuk Band had one licence. Is that correct?

**Mr. Don McNeil:** I think two, John.

**Mr. John Cummins:** So two licences. The court didn't say whether that was enough or not enough. They just said to go back to trial and determine whether or not that's sufficient to acknowledge your aboriginal right or not.

Is that the way it was?

**Mr. Randy Pilfold:** In the original, from the research I've done, which we can't use here for the simple reason that we'd be here all day, the quota was 16,000 pounds. Heiltsuk were issued one licence for 16,000 pounds. They had a retirement of six gillnet licences, of which they retired three for another licence for 16,000 pounds.

My understanding of the reason they went to court is that they were asking for five licences that, in my assumption, were based on 16,000 pounds per licence. That's what they were asking for when they started going to court. Hypothetically, then, they were short four.

**Mr. Don McNeil:** To answer your question further, John, the courts in the Gladstone decision did not determine what was a fair, equitable transfer, or what was a fair commercial harvest, for Heiltsuk. DFO took it upon themselves to determine what that amount was.

**Mr. John Cummins:** When the issue started, I think there was one licence, and then there was an additional licence given to them, or they bought it along the way.

I guess the point is that the court did not say whether the two licences held by the band were sufficient to recognize the section 35 right. The court also made another very important declaration in that it recognized that others had rights to the fishery as well. There had to be some balance struck. It suggested that the matter go back to court to decide what that balance should be, and DFO took it upon themselves not to go back.

**Mr. Don McNeil:** Exactly.

**Mr. John Cummins:** Way back in 1999, I asked order paper questions on whether there were economic studies done to determine what the impact would be. At that time there really wasn't very much done. They said that an economic market assessment regarding spawn-on-kelp was conducted in 1997, but they hadn't conducted a formal review.

Has the department ever filed a formal review with your association to determine what the impact of its actions would be?

• (0940)

**Mr. Randy Pilfold:** If you go to the department's website and you look up spawn-on-kelp, you'll see there's a spawn-on-kelp marketing study. Numerous studies have been on this website for a number of years. I'll refer to 2006; they issued roe-on-kelp quota even though it says right on their website that they shouldn't be doing that.

**Mr. Don McNeil:** That being said, John, in October 2001 there was a report provided by Seabridge Strategies and Blewett &

Associates, commissioned by DFO. That report specifically says that any expansion of the production should be brought about very cautiously because of the fragile market in Japan.

**Mr. John Cummins:** They had these two licences back in 1997, I guess it was, and then seven new licences were issued in, what, 1998?

**Mr. Don McNeil:** In 1997 and 1998. But it wasn't as though they were issued licenses, John.

When I explained to this gentleman how roe-on-kelp was produced, I described to him one method, called the "closed pond" method. But there is a second method. When the herring spawn naturally, you take the logs, with no web in them, and put them into the same proximity where the herring are spawning. They'll assume that this is a natural spawning bed for them and they'll spawn naturally. In other words, you don't have to capture them. You take the capturing part out of it and you do everything naturally.

DFO has decided that if you use a closed pond, you need 100 tonnes of herring to accomplish your goal, whereas if you use an open pond, you need only 35 tonnes to accomplish your goal. That being said, the original roe-on-kelp licences of 144,000 pounds were all transferred from closed ponds to open ponds. That in effect gave them 240,000 pounds of roe-on-kelp, which helped flood the market.

Basically, it was just an internal bookkeeping thing rather than a market-driven decision. It's a mind perception thing of the DFO's—that this is a use of herring that works better for the process than it does for the market.

**The Chair:** Excuse me, John. Could I get clarification on that point from our witness? I won't take it from your time.

You're saying that in a closed pond system, the individual with that licence has a herring quota?

**Mr. Don McNeil:** An allocation, and a roe-on-kelp quota, yes.

**The Chair:** So an allocation. How many tonnes of herring are required?

**Mr. Don McNeil:** Basically, 100 tonnes.

**The Chair:** And that herring, obviously, is not killed, so it goes back into the ocean—

**Mr. Don McNeil:** A percentage probably dies because of scaling and handling and whatever, but yes, ideally they all go back.

**The Chair:** For the open ponds, how much herring quota is allowed for that?

**Mr. Don McNeil:** It's 35 tonnes.

**The Chair:** Can you explain how 35 tonnes of herring can be allowed for open ocean and 100 tonnes required for an enclosure? It doesn't make any sense.

**Mr. Don McNeil:** If you put 100 tonnes in a pond, in the manner I described before, they spawn not just on the leaves you've strung; they spawn all over the web and everything else.

• (0945)

**The Chair:** Okay, I understand.

**Mr. Don McNeil:** That being said, the recovery of that 100 tonnes is only marketable on the kelp that you harvest. In an open pond, there is no web for them to spawn on. The spawn that doesn't go on your kelp will be distributed among the rocks and the other seaweed that happen to be in the area. So there is no "waste", shall I say, of eggs that are deposited on the web.

**The Chair:** Thank you for that clarification.

Very quickly, does this come out of the herring quota from the seine fleet, or...?

**Mr. Don McNeil:** No, coast-wide, total allowable catch, or TAC, is allocated to spawn-on-kelp operators.

**The Chair:** Okay. Thank you.

Mr. Cummins, sorry for that interruption.

**Mr. John Cummins:** Okay.

I guess the point I'm trying to get to, Don, is that in the beginning, the Heiltsuk had two bands. There was no direction given from the Supreme Court on whether that was sufficient to recognize their section 35 right. Then they were given these seven new licences, or they obtained or acquired seven new licences, in 1997 and 1998. The impact of that, as I understand it, was to drive the price, which had reached \$39.40 a pound in 1995, down to \$11 in 1998.

Is that roughly correct?

**Mr. Don McNeil:** Yes.

**Mr. John Cummins:** All right.

The Heiltsuk still weren't content, then, with the nine licences they had, and they began a civil action in July of 2000 for more licences. In 2001 the government settled this, and they allowed an additional harvest of 96,000 pounds, the equivalent of six further licences.

Is that correct?

**Mr. Don McNeil:** Yes.

**Mr. John Cummins:** Okay.

So the effect of this addition, even when they had already killed the price, and they allowed for new licences.... The impact of that, plus, as I understand it, some new product coming on the market from Alaska, combined drove the price down to \$5 a pound in 2004. Some product was sold for as low as \$4 a pound.

**Mr. Don McNeil:** And some haven't been sold, John.

**Mr. John Cummins:** And some haven't been sold.

This past year, the fishery was conducted in, what, March?

**Mr. Don McNeil:** March and April, yes.

**Mr. John Cummins:** I understand that only 14 to 16 of your licence-holders—

**Mr. Don McNeil:** Only 15.

**Mr. John Cummins:** So 15 out of now 38 licence-holders fished. How many of those 15 who fished were part of the original licence-holder group?

**Mr. Don McNeil:** All of them.

**Mr. John Cummins:** So 15 out of the original 28 licence-holders fished.

**Mr. Don McNeil:** No, no, some would be bands, but out of the original 28—I'm just guessing, John—it would be about eight or nine. But then there were some bands issued later, and they fished this year, particularly in the Prince Rupert area.

**Mr. Randy Pilfold:** Can I interject something?

**Mr. John Cummins:** You sure can.

**Mr. Randy Pilfold:** I would like to interject that in February of this year a memorandum of understanding was done, between DFO and Heiltsuk, adding 92,000 pounds, which took in the 332,000 pounds. At the same time that DFO did that, they sent us an election for zero-quota option for 2006 spawn-on-kelp, recognizing that there's a problem in marketing roe-on-kelp this year. We got this zero-quota application before they issued more quota, recognizing that there was already a problem.

**Mr. John Cummins:** So before the season started, you got a notice—

**Mr. Randy Pilfold:** With our licence application.

**Mr. John Cummins:** —for a zero quota, which meant then that...?

**Mr. Randy Pilfold:** We got an election form for a zero-quota option.

**Mr. John Cummins:** In other words, you would opt out of fishing this year.

**Mr. Randy Pilfold:** Right, without paying a fee.

**Mr. John Cummins:** Without paying a fee, the \$10,000 fee.

**Mr. Randy Pilfold:** Right.

**Mr. John Cummins:** After you got that, and opted out, they went and created even more quota for certain bands on the coast, for the Heiltsuk. Is that right?

**Mr. Randy Pilfold:** For the first two weeks of every March in the last number of years, DFO has added quota. You can set your watch by it.

**Mr. Don McNeil:** The problem with that, John, is that if some fishermen elect to go fishing—and they know what their chances are, because they know what quota is out there—they have to elect to go fishing by January 15, when their licence fees are due and payable. On January 15 they take a chance and say, "This is the quota that's going to be produced, and I'm going to take a chance and go fishing," hoping the price will rise. Then what happens is that on February 28, DFO issues 92,000 pounds again to Heiltsuk.

This means that the numbers I used to determine what the market was were skewed. DFO didn't give me the information that this was happening when I made my decision.

It's a double-edged sword here.

• (0950)

**Mr. John Cummins:** Essentially, you're required to make a decision before you have the information.

**Mr. Don McNeil:** Exactly. And if DFO were going to trade away spawn-on-kelp to the Heiltsuk for peace in the valley, then at least we should have been at the table to agree or disagree, or maybe negotiate on our own behalf, or at least be informed so that we know to go fishing or not to go fishing for that year. But the letter is dated February 28, and all our dues and decisions were paid by then—the ones who chose to go fishing.

**Mr. John Cummins:** I want to very quickly deal with the issue of your licence fee. You pay a \$10,000 licence fee and a \$5,000 monitoring fee. Do the Heiltsuk pay any fees?

**Mr. Don McNeil:** No, and that's part of the problem. If the product is worth \$28 a pound, \$1 a pound here or there doesn't really.... It's a minor portion. But if the product is selling for \$4 a pound and you already have a fee of \$1 a pound going to the government and to monitoring, and Heiltsuk enters into the market without that fee, then your ability to compete has been reduced by that amount.

So no, Heiltsuk do not pay the Government of Canada a \$10,000 fee per 16,000 pounds, as we do, nor do they pay for their own monitoring. We are charged with monitoring our own fishery. In other words, we have people out there to watch how we treat the fish. When we harvest, every tote is stickered. We are monitored, and we pay for our own monitoring. In the plants, where it's processed, there are people there to make sure that the product is done legally and properly.

**The Chair:** Thank you, John. You're already over three minutes, and other members have questions.

Mr. Matthews.

**Mr. Bill Matthews:** I have just a quick question, Mr. Chairman.

Again, gentlemen, on page 3, in the first paragraph, you talk about 2005 and about illegal acts of vandalism. You go on to say that no one was charged, that personal property was damaged, and so on.

I mean, is that a fact?

**Mr. Don McNeil:** Yes. The Heiltsuk were not happy with their 240,000 pounds of quota, so they went out and, while the sac roe fishing fleet was operating in a legal and proper manner, they threw what we call "sea lion bombs", which are small sticks of dynamite, into nets; they ran over nets with their speedboats and other boats; they threatened people with physical violence. Basically, it was a very horrible scene.

**Mr. Bill Matthews:** What you're telling me is that for doing that, they were rewarded.

**Mr. Don McNeil:** Yes, sir.

I have here the MOU that the DFO, high up, and the Heiltsuk signed. It basically says that there will be no disruption of the roe herring fleet if you give us 92,000 pounds of roe-on-kelp.

**Mr. Bill Matthews:** I find this astounding. I come from the east coast, as I'm sure you know, and there are always various tensions within different fisheries, for different reasons. We have protests and demonstrations, many times organized by the fishermen's union, the FFAW. Occasionally somebody will get a bit out of hand, and there might be damage to a building or something. But my point is that

when that happens, regardless of the circumstances, there are always charges laid. If found guilty, then those who did this pay.

I'm just flabbergasted, to be very honest with you, that this kind of thing can happen, that no charges be laid and someone be actually rewarded. My sense of it would be that in cases like this, there shouldn't be a reward; if anything, it should be the opposite.

It's just an observation, but I have to say to you, Mr. Chairman, in front of our witnesses and other committee members, that the fishery on the east coast is complex and one bloody tangle. I don't know if we'll ever sort it out. But I have to say that from the stories we've heard from the west coast, the situation is even worse. I didn't think it could get any worse than it is on the east coast, but I'm convinced now that it is.

I have problems understanding some of those situations and how they could get to the point they're at. To have a government department, or departments, not lay charges, and in essence reward someone....

• (0955)

**Mr. Don McNeil:** Sir, with due respect, I think the DFO isn't the only government agency that rewards illegal demonstrations. If we refer to Caledonia, for instance...and it goes on and on, sir. But that's not for this committee—

**Mr. Bill Matthews:** Regardless of where it is or what the circumstance, I still have a problem understanding that. I guess my point is that I have difficulty accepting that as one citizen of this country. That's all I'll say.

**Mr. Randy Pilfold:** In the 2006 MOU, number seven says:

The parties are desirous of conducting an orderly and peaceful herring spawn-on-kelp and roe fishery that respects the parties' responsibilities and interests.

Then they turn around and start giving stuff away. That's right in their deal.

**Mr. Bill Matthews:** Thank you, Mr. Chair.

**The Chair:** With the committee's discretion, I would ask for a copy of that 2006 MOU. If you could supply it, please, we'd appreciate that.

We are out of time, but I think there are some questioners who would like a last question—Monsieur Roy, Ms. Crowder, and I think Mr. Kamp.

If the committee approves, we'll finish the last round.

[Translation]

**Mr. Jean-Yves Roy:** Thank you, Mr. Chairman. My question will be brief.

At the very end of your document, you ask the Department of Fisheries and Oceans if they will consider funding a draft proposal to reduce the number of permits. However, given the collapse of the industry, you stated earlier that the department did not want to buy back your permits in the past because they were too expensive. How much are they worth now? If the department were to decide to buy back your permit today, it would be much less expensive because prices have collapsed and the industry is on the verge of failing. As a result, how much is your permit worth?

[English]

**Mr. Randy Pilfold:** I think what you would have to do is an evaluation of just where we're going and what is happening. That's what I think.

I don't know what the value is. It's probably not as much as everybody thinks. But in the same sense, the department is part of the reason why they have no value. What the market has to do is rebalance. The market would rebalance if they hadn't issued so much quota and used roe-on-kelp as a currency for land claims. If in 1996, when they came out with the Heiltsuk decision, they'd done a buyback program, we wouldn't be here talking about it.

[Translation]

**Mr. Jean-Yves Roy:** Basically, you are recommending that we not reduce the quotas at this time. If there was a licence rationalization plan, it would of course have to be negotiated on a basis other than the current industry. Would it have to be negotiated on an annual average over the last decade or something like that?

[English]

**Mr. Don McNeil:** To answer your question, the government did enter the marketplace in 1996. They went out and bought two licences from individuals and transferred them to Indian bands. The value at that time was approximately \$1.8 million. Since then, they've decided not to buy any more, and just issue quota.

Yes, the price of the licence has gone down, and perhaps, at some point, it might be worth zero, but we're suggesting that the damage has occurred. We're hoping that the government will see that they created the damage, so they should be able to establish a value from previous to when the damage occurred.

• (1000)

**The Chair:** Ms. Crowder.

**Ms. Jean Crowder:** I have a question, but before that I have a comment.

In terms of violence in various parts of Canada, if we could urge all levels of government—federal, provincial, and otherwise—to come to the table and bargain in good faith around treaties, comprehensive land claims, and specific land claims, I think we might see some of that sorted out.

With regard to enforcement, you made a comment about DFO, that a central-coast enforcement officer admitted he'd been instructed not to enforce illegal harvesting on the central coast. Again, enforcement is a theme that we come up with consistently at DFO, about the lack of enforcement.

I wonder if you could comment on that. Are there enough enforcement officers, or is it more that they've been instructed not to enforce?

**Mr. Randy Pilfold:** You have to have a balance between the enforcement and science, and we don't have that in the Pacific. The problem we're having is that we don't know how much the stocks are. I'll give you an example. The north-coast salmon has a wide-open fishery, and the south-coast salmon has been closed, basically, for ten years on sockeye. We have no test boat program on salmon that goes out and assesses the numbers to balance with the quotas.

Roe herring is done to open the fishery, and the timeframe is only done a little bit before you do roe herring and a little bit after. We used to be a charter boat in the original roe herring, back in the seventies, when it first got going. We used to start way before the roe herring got going. We went through the whole roe herring cycle, and we went until they fell off the map, until there was almost nothing. Then we knew exactly where some of the points of impact were.

We don't do that any more. Almost as soon as the roe herring is over, it's over. Enforcement does do a good job; the problem is that they have no science to go there. You can't go and tell them we have a problem here. If an enforcement issue comes up, they can't really prove their own charge.

**Ms. Jean Crowder:** I think that's been a concern. Again, any number of critiques have come out about the state of the department's science. I'm from the west coast, so I'm quite familiar with the challenges out there.

I appreciate your presentation today. Thank you for bringing it to the attention of the committee.

**The Chair:** Thank you, Ms. Crowder.

Mr. Kamp.

**Mr. Randy Kamp (Pitt Meadows—Maple Ridge—Mission, CPC):** Thank you, Mr. Chair.

Thank you for coming. You've made a compelling case, and we appreciate your taking the time to be here.

You're here, I suppose, for a number of reasons, but part of it, I'm sure, is that you're interested in making a living. It's difficult to do so now, with the current price. I just want to be clear, in my mind, about the basic economics here.

My understanding is that the landing in tonnes of spawn-on-kelp hasn't changed much in the last several years. You can correct me if I'm wrong, but was it not 400 tonnes of spawn-on-kelp...in, say, 1996...? I don't see, according to the figures I've seen, that that's changed in recent years. It would seem that the supply coming out of the industry hasn't changed very much from the Canadian side.

Now, basic economics says that the price has collapsed, but that's due to supply and demand. Has the supply changed? Has it increased from Alaska or Russia, say, to push down the price, or do you know if the demand has changed internationally? Are the Japanese not so fond of spawn-on-kelp any more, as they used to be in, say, 1996?

**Mr. Don McNeil:** To answer your question as quickly as I can, in 1994, for instance, about 100 tonnes came from San Francisco Bay and approximately 400 tonnes came from British Columbia. A total of 500 tonnes entered the Japanese market—give or take not counting illegal product.

San Francisco Bay produces nothing now. British Columbia—including Heiltsuk, who take 50% of the product—is now back to approximately 400 tonnes, and Alaska produces 400 tonnes.

The Japanese currently eat about 1,100 tonnes. What has driven the price down, we believe, is the same thing as when you issue a milk quota to somebody. It is not only the increased milk production that drives the quota down but also the perception that more milk quota might be handed out next week. That's what makes it go down even further than just the increased milk quota would suggest.

The point is that the Japanese perception of the government's intent to issue more quota to Heiltsuk drives the... They just can't perceive that they have this product, valued at \$30 or \$40 a pound, that can be produced in an unlimited amount by a central coast band. That drives the price right to the ground, because they can't market it properly if they don't know the amount.

• (1005)

**Mr. Randy Kamp:** But in actual fact, the Canadian production has not doubled or tripled, based on the Heiltsuk—

**Mr. Don McNeil:** Yes, it has, sir. Not this year, because we had the election not to fish, but that being said, we elected not to fish because we have to get the horse in front of the cart. The increased production drives the price down. Fishermen elect not to fish, so the quota stays at approximately 400 tonnes, but 50% of the people aren't fishing or aren't participating. Had everybody participated, the production from British Columbia, including Heiltsuk, would probably be 650 tonnes to 700 tonnes.

**Mr. Randy Kamp:** I can understand why that would then drive the price down, but if it stayed at 400, you're saying that then the explanation has to be this perceived economic model.

**Mr. Don McNeil:** The perception may do more damage to the price than the actual production.

**Mr. Randy Kamp:** I understand the point. I'll need to think about that one.

Thank you.

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

Mr. MacAulay, a quick question, please.

**Hon. Lawrence MacAulay (Cardigan, Lib.):** Thank you, Mr. Chairman.

After listening to Mr. Kamp, I gather that the quota didn't go up. The quota was there, if I understand it correctly, gentlemen, but you're not taking the quota. The perception, like many things, turns out to be reality when you're dealing with the markets in Japan.

What I would like to know is, what needs to be done? Before I heard Mr. Kamp ask the question, I thought that you would want a reduction in the quota, you would want some buyout of licences, or you would need something taken out of the system. In the end—Mr. Kamp is absolutely correct—you want to make a living. You can't make a living today when you go from \$40 to \$4 a tonne.

If it is 400 tonnes, how much could you ship? Could you ship 800 tonnes? Is that what the Japanese feel could come? Or what's really destroying the market?

Again, I think there has to be a control on how much can be taken. Obviously, if the price is at \$4 or \$5 and you're not taking as much as you could—if I understand it correctly—then you are very close to destruction, or very close to the end. You need something to happen.

**Mr. Randy Pilfold:** The total market for North America is 1,000 tonnes.

**Hon. Lawrence MacAulay:** But North America—we don't have control.

**Mr. Randy Pilfold:** No, but what I'm getting at is that we produce about 600 of it, and there's a market for that. What happens is that with Heiltsuk's increases every year, we're into around 800. That is the problem.

When you read this agreement, you'll see that this is not a one-year agreement. When you read some of the other ones, they're not one-year agreements. It just keeps going on and on—

**Hon. Lawrence MacAulay:** And that has to stop.

**Mr. Randy Pilfold:** Yes, but it's not stopping. That's why we're here.

**Hon. Lawrence MacAulay:** That's why you're here. We hope—

**Mr. Randy Pilfold:** The point of all this is that we can't afford to go out there because of the cost of production. They don't pay a licence fee. We have a licence fee. I mean, it just goes on and on. It's not an even playing field.

We know what the market is. We know what the market can take. The problem is that when you give somebody 40% of the market, who are you going to deal with? You're going to go to the guy with the 40% of the market, and then you leave everybody else out. That's what's happening. They're doing that, and that's our problem.

What's happened there is that if we keep increasing it and they get 50% of the market, you don't go and deal with us. For instance, if you go by chronological order in terms of where I am, I'm in the Prince Rupert area; it's after Heiltsuk. Just as a quick lesson, herring spawn from south to north, and salmon spawn from north to south. If I'm in the salmon business, I'd do better in Prince Rupert, hypothetically, on the Skeena sockeye than on the Fraser, but the Fraser's not open.

When you deal with herring—

• (1010)

**Hon. Lawrence MacAulay:** They're ahead of you.

**Mr. Randy Pilfold:** —the spawning and roe-on-kelp starts basically in San Francisco and just keeps moving all the way up until you're up to Bristol Bay, Alaska.

What happens is that when you hit the central coast of British Columbia, with 40% to 50% of the total production of roe-on-kelp, as soon as you hit there, it stops. And DFO just keeps adding and adding and adding.

I mean, what are you going to do?

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

Mr. Cummins, a short last question; we're 15 minutes over.

**Mr. John Cummins:** I have just a couple of questions on this pricing.

Number one, the Canadian product, as I understand it, was a desirable product on the market, more desirable than the stuff in San Francisco and Alaska, actually. It was a high-quality product, highly sought after in the market. But now you have....

You still don't have a number on the black market stock that's being peddled, so you really don't know how much of an influence that has on driving down the price. As well, you have this product in cold storage. That's got to have an impact on driving price down also.

As I see it, a whole lot of variables out there are driving the price down right now. Is that really not the case?

**Mr. Don McNeil:** Yes, John. There's oversupply. Basically, if you have one group supplying 50% of the worldwide market or thereabouts, or 40% of B.C., and the illegal product....

Some of the numbers we get on illegal product come from the Canadian embassy in Tokyo. They suggest that the product exported into Japan from Canada legally is this amount, but the actual amount is that amount. If you reverse the numbers, you find out, for instance, that somehow there's a product entering Japan from Canada that didn't go through the proper systems.

How to reverse it? If the government thinks it can pull back the production of Heiltsuk, then I would suggest our industry has a chance to recover. But as long as they keep issuing quota and not pulling any back, then they'd better get it from industry, the same as the milk quota thing. If they're going to give somebody a milk quota,

then they had better get it from the existing producers, to give them a chance to retire, or to hold the production and price at a certain level. To issue it indiscriminately is just disastrous to the industry.

**Mr. John Cummins:** That black market stuff drags the market price down. They don't sell at the market price. They sell below market price to get in there and effectively drag the actual market price down with them.

**Mr. Don McNeil:** If I were a buyer and I had an option to buy legal stuff versus illegal stuff, of course the illegal stuff would be cheaper, for obvious reasons.

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

I have one final question. Has there been any attempt to sit down with all of the stakeholders in this industry and really talk about some serious rationalization of the market, what the product is worth, and how that product at a maximum price benefits all the stakeholders?

It would seem to me that your original 28 licence-holders had a very sought-after product at a very good price. Everyone had an opportunity to make some money. I'd question whether the increase in quota and the drop in price.... Well, obviously no one's better off. As a matter of fact, even the Heiltsuk, with 50% of the quota, if that's correct, are probably making less than they made when they had only two licences and 32,000 pounds of quota.

• (1015)

**Mr. Randy Pilfold:** If you look at the MOU—which I will be giving to you—you'll see that we didn't give it away. If you look at the Heiltsuk, we didn't give it away; DFO did.

**The Chair:** I wasn't suggesting, Mr. Pilfold, that you gave it away.

**Mr. Randy Pilfold:** No, I know, but what I'm getting back to you is that we have sat down with Heiltsuk, for many years, talking about what is beneficial to everybody. But if they can go to DFO and say “We want more,” they get it.

**The Chair:** Okay.

Anyway, I appreciate that answer. It's certainly an interesting situation, and a difficult situation, that you're in. We appreciate your forthright answers.

Again, thank you very much for coming. We had a very interesting discussion here today.

We're just going to adjourn—

**Mr. John Cummins:** You can't adjourn, we have a motion on the floor from last meeting.

**The Chair:** We're not finished. I'm just going to allow the witnesses to leave.

We're going to “suspend”—I guess that's the proper terminology, Mr. Cummins—for a few minutes and then return in camera.

[*Proceedings continue in camera*]





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