

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



Commission d'enquête sur le déclin des  
populations de saumon rouge du fleuve Fraser

## Public Hearings

## Audience publique

**Commissioner**

L'Honorable juge /  
The Honourable Justice  
Bruce Cohen

**Commissaire**

**Held at:**

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

Tuesday, November 2, 2010

**Tenue à :**

Salle 801  
Cour fédérale  
701, rue West Georgia  
Vancouver (C.-B.)

le mardi 2 novembre 2010



### Errata for the Transcript of Hearings on November 2, 2010

| Page | Line | Error   | Correction                                  |
|------|------|---|---|
| ii   |      | Brian J. Wallace  | Brian J. Wallace, Q.C.                      |
| ii   |      | Jon Major's title is incorrect  | Document Reviewer                           |
| ii   |      | did not attend  | remove Lisa Fong                            |
| iv   |      | James Walkus is not a participant<br>and R. Keith Oliver is not counsel | remove names from record                    |
| iv   |      | Musgagmagw Tsawataineuk Tribal<br>Counsel                               | Musgamagw Tsawataineuk Tribal<br>Council    |
| 65   | 14   | Strollers   | Trollers                                    |
| 68   | 46   | Saginaw   | Sakinaw                                     |
| 73   | 31   | strollers   | trollers                                    |
| 73   | 42   | Strollers   | Trollers                                    |
| 74   | 20   | Strollers   | Trollers                                    |
| 77   | 40   | North Pacific Anatroplus Fish<br>Commission                             | North Pacific Anadromous Fish<br>Commission |

## APPEARANCES / COMPARUTIONS

|  |  |
|--|--|
| Brian J. Wallace<br>Meg Gaily<br>Jon Major   | Senior Commission Counsel<br>Associate Commission Counsel<br>Associate Commission Counsel  |
| Mitchell Taylor, Q.C.<br>Jonah Spiegelman    | Government of Canada   |
| Boris Tyzuk, Q.C.<br>D. Clifton Prowse, Q.C. | Province of British Columbia<br><br>Pacific Salmon Commission  |
| Chris Buchanan                               | B.C. Public Service Alliance of Canada<br>Union of Environment Workers B.C.<br>("BCPSAC")  |
| Charlene Hiller                              | Rio Tinto Alcan Inc ("RTAI").  |
| Alan Blair<br>Shane Hopkins-Utter            | B.C. Salmon Farmers Association<br>("B.C.SFA")<br><br>Seafood Producers Association of B.C.<br>("SPAB.C.")   |
| Gregory McDade, Q.C.                         | Aquaculture Coalition: Alexandra<br>Morton; Raincoast Research Society;<br>Pacific Coast Wild Salmon Society<br>("AQUA")   |
| Tim Leadem, Q.C.                             | Conservation Coalition: Coastal Alliance<br>for Aquaculture Reform Fraser<br>Riverkeeper Society; Georgia Strait<br>Alliance; Raincoast Conservation<br>Foundation; Watershed Watch Salmon<br>Society; Mr. Otto Langer; David Suzuki<br>Foundation ("CONSERV") |
| Don Rosenbloom                               | Area D Salmon Gillnet Association; Area<br>B Harvest Committee (Seine) ("GILLFSC")   |

**APPEARANCES / COMPARUTIONS, cont'd.**

|                               |  |
|-------------------------------|--|
|                               | Southern Area E Gillnetters Assn.<br>B.C. Fisheries Survival Coalition ("SGAHC")   |
| Christopher Harvey, Q.C.      | West Coast Trollers Area G Association;<br>United Fishermen and Allied Workers'<br>Union ("TWCTUFA")   |
| Brad Caldwell                 | B.C. Wildlife Federation; B.C. Federation<br>of Drift Fishers ("WFFDF")<br><br>Maa-nulth Treaty Society; Tsawwassen<br>First Nation; Musqueam First Nation<br>("MTM")<br><br>Western Central Coast Salish First<br>Nations:<br>Cowichan Tribes and Chemainus First<br>Nation<br>Hwlitsum First Nation and Penelakut Tribe<br>Te'mexw Treaty Association ("WCCSFN")   |
| Brenda Gaertner<br>Leah Pence | First Nations Coalition: First Nations<br>Fisheries Council; Aboriginal Caucus of<br>the Fraser River; Aboriginal Fisheries<br>Secretariat; Fraser Valley Aboriginal<br>Fisheries Society; Northern Shuswap Tribal<br>Council; Chehalis Indian Band;<br>Secwepemc Fisheries Commission of the<br>Shuswap Nation Tribal Council; Upper<br>Fraser Fisheries Conservation Alliance;<br>Other Douglas Treaty First Nations who<br>applied together (the Snuneymuxw,<br>Tsartlip and Tsawout)<br><br>Adams Lake Indian Band<br>Carrier Sekani Tribal Council ("FNC")<br><br>Council of Haida Nation |

**APPEARANCES / COMPARUTIONS, cont'd.**

|                              |   |
|------------------------------|---|
|                              | Métis Nation British Columbia ("MNB.C.")  |
| Tim Dickson                  | Sto:lo Tribal Council<br>Cheam Indian Band ("STCCIB")<br><br>Laich-kwil-tach Treaty Society<br>James Walkus and Chief Harold Sewid<br>Aboriginal Aquaculture Association<br>("LJHAH") |
| Lisa Fong<br>Benjamin Ralson | Heiltsuk Tribal Council ("HTC")<br><br>Musgagmagw Tsawataineuk Tribal<br>Counsel ("MTTC")   |

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Vancouver, B.C. /Vancouver (C.-B.)  
November 2, 2010/le 2 novembre 2010

1  
2  
3  
4 THE REGISTRAR: The hearing is now resumed.

5 MR. WALLACE: Good morning, Commissioner Cohen. For  
6 the record, Brian Wallace, Commission Counsel, and  
7 with me is Meg Gaily, also Commission Counsel, and  
8 Jon Major, who is assisting us.

9 I have a couple of preliminary matters.

10 Tomorrow, as you will recall, we have a  
11 witness, Dr. Wendy Watson-Wright, who will be by  
12 videoconference from UNESCO in Paris. We, to  
13 accommodate her time zone, we will start tomorrow  
14 morning at 8:30. We are optimistic that this will  
15 all work electronically, but you never know. So  
16 we are going to go on that basis. And one thing  
17 that occurs to me is that we are finding people  
18 are wishing to put documents to witnesses that  
19 haven't been previously provided. That will be  
20 impossible with Dr. Watson-Wright. So if you have  
21 any document that you wish her to consider, please  
22 provide it to me today and if at all possible this  
23 morning.

24 The second point I'd like to raise is with  
25 respect to transcripts. They are being  
26 circulated, I think, before noon the day after the  
27 day they relate to. We will hold them before we  
28 send them for translation and later publishing on  
29 the website for 48 hours. And if you review them  
30 in that length of time and provide us with any  
31 errors you see, we will consider those so that the  
32 website and the French translations will have an  
33 errata sheet to go with it, to reflect errors.

34 Canada asked us to mark as an exhibit the  
35 Executive Summary to Previous Recommendations and  
36 Responses. That was circulated to all  
37 participants yesterday afternoon and, Mr.  
38 Commissioner, I would like to tender that as the  
39 next exhibit please.

40 THE REGISTRAR: That will be document number 34.

41  
42 EXHIBIT 34: Executive Summary to Previous  
43 Recommendations and Responses  
44

45 MR. WALLACE: And finally, I've had a number of people  
46 ask about who is entitled to sit at counsel table.  
47 And this is an inquiry, Mr. Commissioner, and I



2  
PANEL NO. 3  
Proceedings

1           hope that it's all right with you if we do this a  
2           little less formally than courts. There are a  
3           couple of different circumstances, assisting with  
4           documents for someone examining, someone having an  
5           articling student in the room monitoring the  
6           proceedings when they are not themselves on their  
7           feet, and that sort of thing. It seems to me that  
8           so long as it doesn't interfere either with the  
9           flow of questioning or with the physical space in  
10          the room, I certainly have no objection and I  
11          trust that that's all right with you, as well.

12        THE COMMISSIONER: Yes, it is.

13        MR. WALLACE: I have no other preliminary matters. I'm  
14          not sure if anyone -- no one has indicated to me  
15          they wish to say anything further.

16                Now the next person I have on my list is Mr.  
17          Buchanan for the Public Service Alliance and the  
18          union of Environmental Workers.

19        MR. BUCHANAN: Good morning, Mr. Commissioner. It is  
20          Chris Buchanan for the PSAC and UEW. I understand  
21          this panel or substantially the similar panel will  
22          be coming back near the end of the proceedings,  
23          and I think we -- our questions will be best  
24          understood and put in context after you have heard  
25          the evidence about finance, the financial and the  
26          harvest management, and so forth. So we have no  
27          questions of this panel at this time.

28        MR. WALLACE: Thank you, Mr. Buchanan.

29                The next person I have on my list -- this is  
30          going very well. We have now done away with 35  
31          minutes of anticipated examination. The next on  
32          my list is the B.C. Salmon Farmers Association,  
33          Mr. Blair.

34        MR. BLAIR: When Mr. Wallace is on a roll, it's a good  
35          thing. for the record, Alan Blair appearing for  
36          the B.C. Salmon Farmers Association. We listened  
37          with interest to the panel's remarks yesterday,  
38          both in direct and cross-examination, by our  
39          friends from the Department of Justice, and at  
40          this time I have no questions in cross-  
41          examination. I might say that depending on how  
42          other cross-examinations go, I might rise near the  
43          end and ask for leave for reply, which I  
44          understand is entirely in the Commissioner's  
45          discretion.

46        THE COMMISSIONER: Thank you, Mr. Blair.

47        MR. WALLACE: Thank you, Mr. Blair.

3  
PANEL NO. 3  
Claire Dansereau  
Cross-exam by Mr. McDade (AQUA)

1           The next -- now, if I leave somebody out,  
2           it's because I didn't note or receive any advice  
3           yesterday. So I am just going through the people  
4           who advised me yesterday that they would or may  
5           have cross-examination. And the participant on my  
6           list is the Aquaculture Coalition, Mr. McDade.  
7   MR. McDADE: Mr. Commissioner, it's Gregory McDade for  
8           the Aquaculture Coalition. I do have a few  
9           questions for the panel. I understand that this  
10          is a session dealing largely with the organization  
11          of DFO and I hope to keep the substantive  
12          questions to a later time. But let me first say  
13          that what I would like to get a little clarity on  
14          is the organizational structure relating to  
15          aquaculture operations.

16  
17   CROSS-EXAMINATION BY MR. McDADE:

18  
19   Q    And, in particular, let's start with the structure  
20          in Ottawa, so I suppose my questions are for the  
21          Deputy Minister. Who would be -- who would be the  
22          top official in -- top federal official in Ottawa  
23          who is most directly tasked with aquaculture  
24          matters?

25   MS. DANSEREAU: Thank you for the question. The  
26          functions are somewhat split. On the Policy side  
27          the most senior person, other than me, would be  
28          Kevin Stringer, the ADM Programs, and reporting  
29          directly to him is Trevor Swerdfager, someone who  
30          has been out in the Region quite regularly that's  
31          working on the Policy front. On the Operations  
32          front, in Implementation and Delivery, the Senior  
33          Assistant Deputy Minister for Ecosystems and  
34          Fishery Management would be the person  
35          responsible.

36   Q    So Mr. Stringer, who is the -- whose programs, he  
37          has a wide variety of responsibilities? It's not  
38          specifically aquaculture.

39   MS. DANSEREAU: Yes, he does.

40   Q    And so Mr. Swerdfager is -- is he exclusively  
41          aquaculture?

42   MS. DANSEREAU: Yes, he is.

43   Q    And his title is, sorry, there's a -- is he the  
44          Director General of Aquatic Management?

45   MS. DANSEREAU: Aquaculture -- Director General  
46          Aquaculture Management.

47   Q    Aquaculture Management, yes, thank you. And is he

4  
PANEL NO. 3  
Claire Dansereau  
Cross-exam by Mr. McDade (AQUA)

1           responsible for promotion of aquaculture or for  
2           protection of the wild fish from aquaculture?  
3   MS. DANSEREAU: He's responsible for management of the  
4           program and for making sure that we're well  
5           coordinated internally. He's currently  
6           responsible also for helping us develop the best  
7           -- the best instrument for managing, so the  
8           regulation as we're currently developing it for  
9           British Columbia falls under his -- basically in  
10          his work category. But the overall program, as I  
11          say, falls within the overall responsibility of  
12          Kevin Stringer, as well.  
13   Q        So you're aware, are you, that there is a  
14          significant public and scientific debate in  
15          British Columbia about the impacts of aquaculture  
16          on wild salmon.  
17   MS. DANSEREAU: I am.  
18   Q        Yes. And so for those persons who I represent in  
19          terms of who are looking for the federal  
20          government's response on the regulatory side to  
21          protect wild salmon, it's Mr. Swerdfager who is  
22          developing those regulations?  
23   MS. DANSEREAU: He is guiding the development, but he  
24          does it based on information that we all share  
25          from our scientists. Our scientists are very much  
26          involved in aquaculture management. He -- he  
27          doesn't work in isolation of anybody else inside  
28          of the Department. So as you know, we have an  
29          interest in making sure that we are as integrated  
30          as possible between the wild side and the  
31          aquaculture side, and that is how we will be  
32          moving forward on implementation.  
33   Q        Yes, of course.  
34   MS. DANSEREAU: But he doesn't do it alone.  
35   Q        No, of course, he consults widely. But he is the  
36          senior official in charge?  
37   MS. DANSEREAU: He's the senior official in charge of  
38          making sure that we arrive at -- he's the person  
39          that I would hold accountable to make sure that we  
40          are there on time on December 18th with all the  
41          pieces in place. He doesn't determine the pieces  
42          himself. The Minister has a role, I have a role,  
43          and scientists and others in the Department have a  
44          role.  
45   Q        But he's the -- he's the most senior official  
46          responsible full-time for aquaculture.  
47   MS. DANSEREAU: He's the most senior person in the

5  
PANEL NO. 3  
Claire Dansereau  
Cross-exam by Mr. McDade (AQUA)

1 Department who is -- who has no other functions  
2 other than aquaculture.  
3 Q Now, as I understand it, the official policy of  
4 your Department and the federal government is that  
5 you are looking to expand aquaculture operations  
6 in Canada?  
7 MS. DANSEREAU: The official position of the Government  
8 of Canada is that we are not opposed to  
9 aquaculture, and where it fits and where it's  
10 possible and where it's supported by science we  
11 are certainly interested in seeing it further  
12 developed.  
13 Q Well, wouldn't the -- wouldn't your most -- your  
14 highest priority in relation to aquaculture as I  
15 saw yesterday in your Performance Report, wasn't  
16 it economic growth?  
17 MS. DANSEREAU: As I also said yesterday, conservation  
18 of our wild stocks and conservation of the  
19 fisheries is the top priority in everything that  
20 we do.  
21 Q So that's why it's not mentioned -- that's why  
22 economic growth is mentioned ahead of  
23 conservation?  
24 MS. DANSEREAU: Conservation is mentioned in all of our  
25 documentation.  
26 Q all right. Well, I'll come back to that in a  
27 minute. Let's, if I might, I wonder if I could  
28 get up on the screen the position description for  
29 the Director General of Aquaculture Management,  
30 which I think was in Exhibit 33. Is that  
31 feasible?  
32 MR. LUNN: Would you tell me the title again, please.  
33 MR. McDADE: Director General Aquaculture Management.  
34 I think it's number 7 on the list.  
35 Q All right. So Deputy Minister, that's the  
36 position description for that position, is it?  
37 MS. DANSEREAU: Pardon me, yes, Commissioner, it is,  
38 although I'm not sure if this is the most recent.  
39 As I said, we've -- I haven't had a chance to look  
40 at all of these exhibits in detail overnight to  
41 see if these are the most recent, or if they have  
42 been changed since the org change.  
43 Q Okay. But this -- if there's a changed one,  
44 you'll provide it to us, will you?  
45 MS. DANSEREAU: Of course.  
46 Q Yes. Well, let's go on -- let's go on the  
47 assumption that the one that you've tendered is

- 1 the current one, and let's look at --  
2 MR. TAYLOR: May I just clarify something so that Mr.  
3 McDade is under no misapprehension. As I  
4 understand it, these work descriptions are work  
5 descriptions in the Department. There has been a  
6 recent reorganization. There will be new work  
7 descriptions as required. New work descriptions  
8 can come up to a year after the reorganization  
9 occurred, so as and when there are new work  
10 descriptions they will be provided, but it could  
11 be as late as next May for some cases. Just so  
12 Mr. McDade is under no illusion as to when or what  
13 will come when.  
14 MR. McDADE: I thank Mr. Taylor for correcting my  
15 illusions.  
16 Q Can we agree that this is the job description that  
17 was in place in 2009 when the -- which is the --  
18 the issue we're dealing with in this Commission?  
19 MS. DANSEREAU: We change these on a regular basis. So  
20 we can start from that assumption and from the  
21 description of the person to whom he is reporting,  
22 I can feel somewhat confident in saying that it  
23 also applies today.  
24 Q Okay. All right. Well, let's just -- this is the  
25 position that Mr. Swerdfager would look to, to  
26 know what his responsibilities were?  
27 MS. DANSEREAU: Yes.  
28 Q All right. Now, if we look at the first line, it  
29 says he is:  
30  
31 Accountable for promoting appropriate  
32 responses from the Government of Canada to  
33 create conditions for the development of an  
34 environmentally sustainable and  
35 internationally competitive Canadian  
36 aquaculture industry.  
37  
38 Yes?  
39 MS. DANSEREAU: Yes.  
40 Q And so his primary -- would you agree that his  
41 primary purpose is development of the industry?  
42 MS. DANSEREAU: No, I would not. I would say it is as  
43 it's stated here, that it's sustainable  
44 development, that the aquaculture programs that we  
45 have in place fit within the broad framework of  
46 the other work that we do.  
47 Q It says he:

7  
PANEL NO. 3  
Claire Dansereau  
Cross-exam by Mr. McDade (AQUA)

1                   Serves as [a] conduit between the department,  
2                   OGDs, the aquaculture sector and other  
3                   stakeholders.

4  
5                   So he's responsible for being a conduit to the  
6                   industry.

7 MS. DANSEREAU: To the industry, to stakeholders, to  
8                   First Nations, to communities. In the  
9                   consultations which he undertook in the  
10                  development of the regulation, he met extensively  
11                  right across the province with many, many groups,  
12                  covering all sectors of this interest.

13 Q                Okay. Well, if we just go down another sentence  
14                  or so past this reporting framework, we find the  
15                  language:

16  
17                               Fosters the streamlining and harmonizing of  
18                               legal and policy frameworks to facilitate the  
19                               growth of, and minimize impediments to, the  
20                               sustainable development of aquaculture.

21  
22 MS. DANSEREAU: Always in the context of the overall  
23                  mandate of the Department, which is sustainability  
24                  across the sectors.

25 Q                But the very person in the federal government  
26                  developing our regulations his primary obligation  
27                  seems to be to facilitate the growth of the  
28                  industry. Isn't that what it says here?

29 MS. DANSEREAU: Within the context of the Department.

30 Q                Yes. What does it mean by "minimize impediments  
31                  to, the...development of aquaculture"?

32 MS. DANSEREAU: It's to make sure that where  
33                  aquaculture development is appropriate, where it  
34                  is sustainable, where it fits with the rest of the  
35                  mandate of the Department, then it is able to go  
36                  forward.

37 Q                Would public concern about aquaculture be an  
38                  impediment to growth of the industry?

39 MS. DANSEREAU: No, it would be of interest to us to  
40                  make sure that we address the concerns.

41 Q                So what -- how would he go about minimizing  
42                  impediments to aquaculture?

43 MS. DANSEREAU: Usually by researching them and finding  
44                  out what they are, to see if there's something  
45                  that has to be changed, or either in a positive  
46                  sense or a negative sense.

47 Q                Would it be part of his job description to

1 minimize public concern over aquaculture?

2 MS. DANSEREAU: Depending on your definition, it's the  
3 job of the entire Department to make sure that  
4 where the public concern is something that we can  
5 actually manage, then we minimize it by taking  
6 care of it by making it go away because we've  
7 addressed the concern. As I said, he does not  
8 work alone.

9 Q Well, let's -- let's go to his direct reports, or  
10 sorry, let's -- under "Organizational Structure",  
11 we have the Deputy Executive Director, whose  
12 primary obligation is to develop the Aquaculture  
13 Framework Agreement; is that correct?

14 MS. DANSEREAU: I'm sorry, I don't go into the actual  
15 detail of all of their specific job descriptions,  
16 except in an overall sense.

17 Q Well, this one's only three lines. If I read it,  
18 it says:

19  
20 ...will allow him/her [to] focus primarily on  
21 the creation and implementation of the  
22 Aquaculture Framework Agreement.  
23

24 MS. DANSEREAU: The Deputy Director tends to have a  
25 series of functions, including making it --  
26 freeing up the Director, the Director General to  
27 do other things.

28 Q Yes. Can you tell us what the Aquaculture  
29 Framework Agreement is? Mr. Bevan.

30 MR. BEVAN: Yes. This is a term position as it says,  
31 and the Aquaculture Framework Agreement recognizes  
32 that there's a variety of jurisdictions that  
33 obviously the provinces and the federal government  
34 responsible for managing aquaculture activities.  
35 The current situation, including in B.C. until  
36 December 18th, is that most of the management is  
37 conducted by the provinces, however site selection  
38 is something that the federal government has a  
39 role to play in. But in the Province of British  
40 Columbia currently, for another few weeks, and in  
41 the rest of Canada, it is the province that looks  
42 after a number of the activities that are relevant  
43 to how much fish can be raised in the particular  
44 area, the controls of those issues, et cetera.

45 The federal government, it's not just DFO,  
46 there's other components or other government  
47 departments that have a role. And the Aquaculture

1 Framework Agreement is a process that's underway  
2 to try and clarify the roles between federal  
3 governments -- the federal government and the  
4 provincial government, and also within the federal  
5 government between health of animals and other  
6 organizations that have an impact on aquaculture.

7 Q All right. Thank you. Now, if I could move to  
8 the next heading, "The Director Strategic  
9 Priorities", that the Director seems to be  
10 responsible for:

11  
12 The development of an appropriate  
13 interdepartmental governance framework to  
14 enable other federal departments and agencies  
15 to extend existing programs and expertise to  
16 aquaculture...  
17

18 Right? Is that in support of the industry?

19 MS. DANSEREAU: The approach that we take is in support  
20 of the -- not the industry as in the sense of the  
21 companies, but the direction towards aquaculture,  
22 to make sure that it is suitable to the Canadian  
23 context, that it is suitable to the waters in  
24 which it is conducted, and that it is suitable in  
25 relation to the other programs that we manage.

26 Q Well, don't you refer to the companies as your  
27 clients?

28 MS. DANSEREAU: We refer to all companies as our  
29 clients, as we do all other stakeholders,  
30 including First Nations, environmental groups,  
31 communities. They are all our clients.

32 Q I see. If you could just go down about five lines  
33 to the line starting:

34  
35 Working with other federal agencies,  
36 governments, industry and stakeholders to  
37 improve confidence in the management and  
38 conduct of aquaculture in Canada...  
39

40 MS. DANSEREAU: Yes. And that's to make sure that we  
41 -- that the work that is done in aquaculture is  
42 work that is to the standards that Canadians  
43 expect it to be.

44 Q So that's to reduce concern among the public.

45 MS. DANSEREAU: It's to make sure that Canadians are  
46 safe, and the Canadian waters, and the fish in  
47 Canadian waters are safe.



1 Q Now, I see the distinction there, "federal  
2 agencies, government, industry and stakeholders".  
3 So the government distinguishes between industry  
4 and stakeholders there.

5 MS. DANSEREAU: The terms are sometimes used  
6 interchangeably.

7 Q And just can I ask you about the last phrase in  
8 that paragraph:

9  
10 ...the federal government's role in fostering  
11 a responsible aquaculture industry.  
12

13 What do you mean there by "fostering"?

14 MS. DANSEREAU: By working with all of the concerned  
15 parties to make sure that we are addressing the  
16 real concerns, and that we are also addressing the  
17 real concerns that come from science. So the  
18 federal government's job is to some extent to  
19 foster, well, sustainable development, and the  
20 same would be true of the role of aquaculture in  
21 sustainable development.

22 Q Can I go to the next position here, the Director,  
23 Programs and Regulatory Improvement. Now, is that  
24 -- that person works under -- or does that person  
25 have a role in terms of the development of the new  
26 regulations?

27 MS. DANSEREAU: Yes.

28 Q That would be their primary role?

29 MS. DANSEREAU: Yes.

30 Q And again we see there:

31  
32 The development of an enabling policy and  
33 regulatory framework to support a competitive  
34 sustainable industry.  
35

36 MS. DANSEREAU: Yes. And a sustainable industry is one  
37 that takes into consideration all the factors  
38 which we have already outlined.

39 Q Can we go over the page, please, to "Nature and  
40 Scope". So this part of the document now  
41 describes back to Mr. Swerdfager's role under  
42 "Nature and Scope" of his duties. And if I could  
43 go to the third paragraph in there, "Within this  
44 context":

45  
46 Within this context, the Director General  
47 Aquaculture Management Directorate, has the

11  
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1                   lead, on behalf of the federal government,  
2                   for the facilitation of aquaculture  
3                   development in Canada...

4  
5                   That's his job description.

6 MS. DANSEREAU: Yes.

7 Q                To facilitate aquaculture development.

8 MS. DANSEREAU: Within the context of all of our other  
9                   priorities, so within the context of sustainable  
10                  development, within the context of managing all of  
11                  our other fisheries, yes; not to the exclusion of  
12                  or to supersede those.

13 Q               Well, that -- can we go to the paragraph above. I  
14                 take it that's what "Within this context" refers  
15                 to.

16 MS. DANSEREAU: The context refers to the context of  
17                 the whole Department.

18 Q               Well, might you understand how if I were Mr.  
19                 Swerdfager reading this document, I'd see the  
20                 context you describe as being the context that's  
21                 referenced.

22 MS. DANSEREAU: Sorry, excuse me. The context of the  
23                 Department is as defined in all of our -- the  
24                 Report on Plans and Priorities, the Department  
25                 Performance Report, the -- my mandate, the mandate  
26                 of the Minister, the **Fisheries Act**, the **Oceans**  
27                 **Act**, that's the context of the Department, and  
28                 that's the context within which he works. So we  
29                 can't have one part of the Department working at  
30                 harm to another part.

31 Q               Well, that makes sense, I think. But the document  
32                 says -- you'll agree with me that the document  
33                 refers to the context of the paragraph above.

34 MS. DANSEREAU: His job is within the context of the  
35                 Department.

36 Q               All right. And the paragraph above, I won't read  
37                 it into the record, but the paragraph above refers  
38                 all to dollars and cents and jobs and economic  
39                 indicators, doesn't it?

40 MS. DANSEREAU: It does, and it's within the context of  
41                 the Department for sustainable development.

42 Q               Yes. But would you agree with me that at least in  
43                 terms of the way this job description is written,  
44                 this Director General is primarily responsible for  
45                 facilitating the growth of aquaculture in economic  
46                 terms.

47 MS. DANSEREAU: No. I'm sorry, it is in the context of

1 sustainable development.

2 Q So where in this context, in the "Nature and  
3 Scope", does it refer to risks of aquaculture? It  
4 doesn't, does it?

5 MS. DANSEREAU: It does within the context of the  
6 Department. It does because the information with  
7 which he works, the regulations which he helps  
8 develop, which he does not do on his own, are done  
9 in the context of science, and within, as I said,  
10 overall sustainable development.

11 Q So he's supposed to just know that. It doesn't  
12 have to be in his job description.

13 MS. DANSEREAU: It is in his job description.

14 Q Well, I'm looking for, in vain I think, for some  
15 reference to the risk to wild salmon from  
16 aquaculture. Is there anything in his job  
17 description that requires him to try and protect  
18 wild salmon?

19 MR. BEVAN: If you look at the top paragraph in that  
20 job description, right there, "Nature and Scope",  
21 you can see that the first lines are directly  
22 quoting from the "Sustainable Fisheries and  
23 Aquaculture Strategic Outcome", that's what is  
24 referring to. That's what he has to deliver the  
25 programs in the context of.

26 So that's the sustainable fisheries and  
27 aquaculture. We do the same thing for the  
28 fisheries.

29 This is a program supported by science, and  
30 his job is to manage the aquaculture activities  
31 that are the federal responsibility, and now in  
32 British Columbia his job is to put in place the  
33 regulatory framework for the new program that  
34 we'll be running on December 18th.

35 But it's all in the context of this, and it's  
36 also in the context of what's called his  
37 Performance Management Agreements, and those are  
38 bilateral arrangements between the executive and  
39 his supervisor, and in that it's all about  
40 reflecting the departmental priorities for  
41 sustainable activities.

42 And as noted yesterday, that's why we're  
43 looking at aquaculture the same way as we look at  
44 fisheries. If one wants to be a conservation  
45 organization, we can stop everything, all  
46 activities, and forego the benefits that Canadian  
47 enjoy from the use of the marine and aquatic

1 ecosystem. But that's not what the public wants.  
2 They want to have sustainable activities, and  
3 that's why these jobs are put in that context.  
4 And that's why the first thing in "Nature and  
5 Scope" there is the direct quote from "Sustainable  
6 Fisheries and Aquaculture Outcome" that puts the  
7 rest of the job into that context.

8 And we want to manage things intelligently.  
9 We don't want to have rules and regulations that  
10 don't achieve the outcome of sustainability, and  
11 that's why it's referring to the regulatory  
12 process needs to be streamlined, it needs to be  
13 effective, et cetera. But I don't think it's, as  
14 the Deputy has said, fair to say that this job is  
15 focused on growing the industry at all costs. He  
16 works as part of the team. In the time now he's  
17 reporting to ADM Programs, but he's part of a team  
18 that looks at the overall management of the marine  
19 ecosystem.

20 So the group that will be doing the  
21 operations is Ecosystems and Fisheries Management,  
22 Habitat is in there, Species at Risk is in there,  
23 Fisheries Management is in there, all of those  
24 activities are part of this process because they  
25 all have to work together to ensure that the  
26 regulations that they are applying achieve the  
27 outcome of sustainable fisheries and aquaculture.

28 So to search for snippets of this particular  
29 phrase looks like he's focused on promotion,  
30 that's not in the context that the job actually  
31 takes place. And I can assure you, I don't think  
32 that Mr. Swerdfager is spending time looking at  
33 these job descriptions. He's looking at what's  
34 in his agreements for his plans for the year, and  
35 what does he have to deliver on, and that is part  
36 of the process in boilerplate, in job -- or in the  
37 performance agreements, are the context of the  
38 Department.

39 Q Well, I don't want to debate the substance of this  
40 with you. I'm just looking at the job  
41 description. Now, you referred to it as a  
42 snippet, but the question of the risk to wild  
43 salmon, I think, deserve something in the job  
44 description, wouldn't you say?

45 MR. BEVAN: He's reporting to the ADM Programs. The  
46 ADM Programs is the ADM responsible for  
47 aquaculture, also for fisheries renewal; in

1 fisheries renewal is sustainable fisheries  
2 framework, et cetera. So he's reporting through  
3 to a broad array of programs. He's in that mix,  
4 and that group is looking after the risks, et  
5 cetera, and he's -- the regulations and the  
6 enforcement process that he's putting in place for  
7 British Columbia I think speaks for themselves in  
8 terms of addressing the capacity for the federal  
9 government to manage those risks.

10 Q Well, you've gone to some trouble to describe to  
11 Mr. Swerdfager in his job description the economic  
12 advantages of aquaculture. Is there a reason why  
13 the risks to wild salmon are not in there?

14 MR. BEVAN: I think, Mr. Commissioner, the risks to the  
15 wild salmon are expressed in terms of sustainable  
16 -- or the first phrase there:

17  
18 The Department of Fisheries and Oceans is  
19 engaged in the development and delivery of  
20 policies and programs in support of Canada's  
21 economic --

22  
23 Yes.

24  
25 -- ecological and scientific interests in  
26 [the] oceans and inland waters...

27  
28 And it's environmentally sound, so it's there that  
29 the context is put around the economic activity.  
30 We have economic activity on wild fish. We have  
31 recreational fisheries, aboriginal fisheries and  
32 commercial fisheries. They, too, pose a risk to  
33 wild stocks. All of them have to be managed in  
34 the context of sustainable use and looking at the  
35 whole ecosystem.

36 Q So the Department as a whole, of course, is  
37 focused on economic, ecological, and scientific  
38 interests, but different employees would have  
39 different responsibilities under that heading.

40 MR. BEVAN: Yes, that's correct. However, this  
41 Director General is -- the job is put in the  
42 context of the delivery on the sustainable  
43 program.

44 Q So let me just go a little further down in that  
45 paragraph if I might, and we'll move on. That's  
46 the third paragraph -- sorry, "Within this  
47 context", yes. And you'll see that halfway into

1 that paragraph after referring to his membership  
2 in the Departmental Management Committee, it  
3 appears to be this Director General's job:

4  
5 Through the use of a cooperative approach  
6 involving the aquaculture industry...

7  
8 What does that mean, "a cooperative approach  
9 involving the...industry"?

10 MR. BEVAN: Clearly, we are regulating industries,  
11 aquaculture, commercial fishing, recreational  
12 fishing also has an industrial or economic  
13 component to it in terms of lodges and tourism,  
14 and it's better when regulating people to try and  
15 work with them to find solutions to achieve the  
16 outcome of sustainable activities, but not  
17 necessarily to have to go directly to a  
18 confrontational or coercive approach to achieving  
19 the behaviours necessary to have sustainable  
20 activities. So it's better to work  
21 collaboratively to find the solutions to achieve  
22 the outcomes.

23 Q But wouldn't it be better to work collaboratively  
24 and cooperatively with the environmental groups  
25 and with the commercial fishing industry that's at  
26 risk here?

27 MR. BEVAN: That's what the Deputy has done with the  
28 reorganization at Ottawa, but it's also part of  
29 the way we're approaching the management of  
30 aquaculture. Keeping in mind that aquaculture was  
31 regulated predominantly by the province, or is  
32 regulated predominantly by the province, the new  
33 regulations provide the capacity to establish  
34 licence conditions to achieve the outcome and we  
35 would like to work with the industry to achieve  
36 what we want.

37 But clearly, I agree with you, it's better to  
38 have the entire group together. And the Deputy  
39 mentioned yesterday that what we're looking at is  
40 integrated aquaculture management plans, but  
41 eventually to have integrated plans for the  
42 fishery as well as aquaculture. And a clear  
43 example of that would be something like the  
44 shellfish aquaculture harvest. Geoducks is a good  
45 example. We need to have the plan cover  
46 everything, and that's where we're headed.

47 Q So the Director General here, the lead federal

1 official for aquaculture has a job to working with  
2 industry, provincial and territorial governments,  
3 and all federal departments and agencies, but not  
4 -- would it be -- is there some other person that  
5 has the responsibility of working with the public  
6 and with communities and with the people who are  
7 -- who are reliant on wild salmon?

8 MS. DANSEREAU: Throughout the rest of the document we  
9 reference stakeholders and other groups, and the  
10 Department as a whole works with all of the other  
11 stakeholders, as well. So it is the *modus*  
12 *operandi* of this Department to be consultative,  
13 and Trevor is, and the person in this position is  
14 consultative.

15 Q Yes. But doesn't he -- he's responsible for  
16 consulting with the public, but he's responsible,  
17 according to this document, for cooperating with  
18 the industry. Isn't that right?

19 MS. DANSEREAU: We are responsible for cooperating with  
20 everybody. So some groups in here may be more  
21 specified than others, but as a Department we are  
22 cooperative with everybody. But we are the  
23 regulators, so at the end of the day we will have  
24 our Conservation and Protection Officers will go  
25 in and enforce the regulation that has been  
26 developed. What we will do through consultation  
27 is make sure that that regulation is the most  
28 robust possible.

29 Q So let me just finish that sentence, though. What  
30 is he supposed to cooperate with industry about?  
31 It appears to be:

32  
33 ...he/she is accountable for the promotion of  
34 appropriate responses from the Government of  
35 Canada to create conditions for the  
36 development of an environmentally sustainable  
37 and internationally competitive Canadian  
38 aquaculture industry, and the elimination of  
39 unnecessary impediments.  
40

41 That's what he's cooperating with industry to do?  
42 MS. DANSEREAU: You'll note in there that it says  
43 "environmentally sustainable", which means that we  
44 need to work with in the same way as we do with  
45 the people in the wild fishery, we make sure that  
46 we are promoting environmental sustainability and  
47 environmental protection in our regulation.

1 Q Can I go to the next paragraph, please, the one  
2 starting "The Director General". Yes, thank you.  
3 Now, there it says:

4  
5 The Director General provides direction and  
6 leadership in the development of an  
7 aquaculture policy that addresses a wide  
8 variety of interests that provinces,  
9 territories and municipalities have in  
10 expanding and exploiting the socioeconomic  
11 capacity of farmed fisheries resources.  
12

13 So you'd agree with me that his job is to expand  
14 the industry.

15 MS. DANSEREAU: Where it is appropriate to do so, yes.

16 Q Where does it say that?

17 MS. DANSEREAU: It says so in the mandate of the  
18 Department in all that we do.

19 Q All right. But this person's job isn't limited by  
20 that.

21 MS. DANSEREAU: It's within the mandate of the  
22 Department.

23 Q If I might just go down two more paragraphs, "The  
24 Director General". The Director General seems to  
25 be the person who acts:

26  
27 ...as a conduit between the department and  
28 the broad cross-section of aquaculture  
29 stakeholders...  
30

31 Including the industry groups. And then it says,  
32 you'll see this language:

33  
34 He/she promotes industry interests to other  
35 departments and agencies...  
36

37 Is that correct, is that what he does?

38 MS. DANSEREAU: Where it is appropriate, within the  
39 mandate of the Department.

40 Q And then it says, you can see the last line, that  
41 he attempts to:

42  
43 ...resolve impediments to the development of  
44 aquaculture and aquaculture products.  
45

46 Again, can you say anything further about the  
47 impediments he's trying to resolve.



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1 MS. DANSEREAU: I think we've already covered that  
2 ground.

3 Q Okay. Can we go to the next paragraph, please.  
4 If we look at the last line there:  
5

6 The incumbent plays a strong leadership role  
7 in streamlining and harmonizing legal and  
8 policy frameworks on aquaculture to  
9 facilitate the growth of, and minimize  
10 impediments to, the sustainable development  
11 of aquaculture.  
12

13 So in enacting these new regulations, or in coming  
14 up with these new regulations, Mr. Swerdfager is  
15 governed by the policy of the Government of Canada  
16 to facilitate the growth of the industry.

17 MS. DANSEREAU: Where it is appropriate to do so. And  
18 Mr. Swerdfager doesn't enact anything. he  
19 develops recommendations, which are then approved  
20 by the Minister.

21 Q Two more paragraphs down, please.  
22

23 Another of the Director General's  
24 accountabilities is the creation of an  
25 enabling regulatory environment that up-holds  
26 associated legal responsibilities and  
27 supports environmentally sustainable  
28 practices while encouraging further  
29 investment in aquaculture development.  
30

31 MS. DANSEREAU: Where it is appropriate to do so, based  
32 on the science, as I've said all through this  
33 questioning.

34 Q Can I go down three paragraphs further. The  
35 Director General's -- sorry, one paragraph up.  
36 There we go.  
37

38 The Director General provides leadership in  
39 the expansion of the aquaculture industry.  
40

41 MS. DANSEREAU: We are not against aquaculture.

42 Q His job is to expand the industry, is it not?

43 MS. DANSEREAU: His job is to make sure that where  
44 there is expansion it is appropriate.

45 Q Now --

46 MS. DANSEREAU: Within the context of the overall  
47 Department.

1 Q If aquaculture in British Columbia turns out to be  
2 responsible, through the -- through disease or  
3 parasites or some mechanism for declines in wild  
4 salmon, then it wouldn't be appropriate at all,  
5 would it?

6 MS. DANSEREAU: I can't speculate on that. We will  
7 know when -- we are looking forward to the  
8 findings of this Commission, but so far the  
9 science does not support that, although I  
10 understand that it's under dispute and we will  
11 certainly address that at the time that there is  
12 proof that that's the case.

13 Q My question for you is I looked in vain through  
14 Mr. Swerdfager's job description for his job to  
15 determine those risks. Who in the federal  
16 government in your office has the primary job of  
17 determining those risks?

18 MS. DANSEREAU: Our scientists have a very big role to  
19 play in any advice related to the risks, as they  
20 do in all of our fisheries decisions. Every  
21 single total allowable catch decision that we make  
22 is based on a risk assessment from our scientists,  
23 and the same would be true in this case.

24 Q Well, science provides information, but surely in  
25 your office somebody has responsibility for  
26 implementing that information.

27 MS. DANSEREAU: Science provides advice. Science  
28 provides risk frames and we at the senior level  
29 will determine what risks are tolerable and make  
30 recommendations on that. It is an iterative  
31 process throughout the Department.

32 Q Can I go to Exhibit -- we'll leave that job  
33 description for now and let's go to Exhibit 25,  
34 which is I think the Business Plan for 2010-11.  
35 And if I could go to page 12 of that document,  
36 please, which deals with aquaculture. There,  
37 right there.

38 Now, this is for the Pacific Region, so I  
39 don't know if that's -- who is appropriate to ask?

40 MS. DANSEREAU: Either Paul Sprout or Sue Farlinger.

41 Q Now, as I read the top line of the "Pacific  
42 Aquaculture Management Regime" the "Description"  
43 is that:

44  
45 Aquaculture governance will position the  
46 industry for enhanced profitability, self-  
47 sufficiency, and international

1                   competitiveness.

2  
3           Is that the policy of the Pacific Region?

4 MS. FARLINGER: This reflects the policy of the  
5 Department. This in fact is consistent with the  
6 kind of approach we take in supporting, managing,  
7 and regulating all the industries that occur in  
8 the -- in the marine environment. So for example,  
9 if you were to try and understand this at the  
10 level of international competitiveness, you might  
11 look at marine -- you might look at eco-  
12 certification, for example. Eco-certification is  
13 something that aligns very closely with how we  
14 regulate both the fishing industry and in this  
15 instance the aquaculture industry.

16           So if -- if, for example, an industry is  
17 seeking eco-certification in order to market their  
18 products, this is the sort of conduit through  
19 which we would be supporting international  
20 competitiveness, enhanced profitability.

21           Self-sufficiency is really around having  
22 clear and understandable regulation for any  
23 industry, both the fishing industry and the  
24 aquaculture industry, in this instance, so that  
25 the industry can self-adapt to economic or market  
26 conditions, or in fact in the case of the  
27 commercial fishery, to changes in abundance of the  
28 stocks. So that self-adjustment is part of being  
29 profitable and self-sufficient.

30 Q    There is no equivalent goal, as I saw it, in the  
31 business plan to protect wild salmon from the  
32 risks of aquaculture, is there?

33 MS. DANSEREAU: If I may, there is a goal for the  
34 Department to protect wild salmon from all risks.

35 Q    No, I was looking -- I'm asking the question of  
36 the Pacific Region in terms of the Business Plan  
37 document itself.

38 MR. SPROUT: Could I respond to that by referring to a  
39 document that was tabled yesterday by the Cohen  
40 Commission Counsel, which is called the Regional  
41 Implementation Plan for 2006-2010. Would it be  
42 possible for me to draw your attention to that  
43 document, because I believe that document does  
44 address specifically and directly the questions  
45 you've raised about the importance of the wild  
46 salmon sustainability and how aquaculture has to  
47 be looked at in the context of those parameters.

21  
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1           So that document is called "Pacific Region  
2           Implementation Plan".

3       MR. McDADE: Well, as long as it doesn't count against  
4           my time in cross-examination, we can go to that.  
5           That document is what exhibit number?

6       MR. WALLACE: Exhibit 23.

7       MR. McDADE: 24, sorry?

8       MR. LUNN: There are two versions.

9       MR. WALLACE: No, there is a "Report on Progress",  
10           which is 24, which has the same initial wording.  
11           "Pacific Region Implementation Plan" is 23.

12       MR. McDADE:

13       Q     All right. So is there a section on aquaculture  
14           in there?

15       MR. SPROUT: Yes, there is, and I'd like to draw your  
16           attention to a few of the references, because I  
17           think -- I think what the Department officials are  
18           trying to do is to make an argument that you need  
19           to look at aquaculture within the broad mandate of  
20           the Department, that the job description is part  
21           of a bigger whole, and you can't take it out and  
22           isolate it. I think that's the argument the  
23           Department is making. And I'd like to show you  
24           how in this document we link the various elements  
25           to position aquaculture in this broader context,  
26           and I think it does answer some of the points you  
27           have raised today.

28       Q     Well, can we go to the section that deals with  
29           aquaculture.

30       MR. SPROUT: So for example, on page 1 in the  
31           introductory section it introduces the goals of  
32           the Pacific Region Plan over a five-year period.  
33           And again what we're doing is we are expanding on  
34           the national priorities in a Pacific Region  
35           context, as I explained yesterday.

36           I'd like to now go to page 17, and I'm going  
37           to read one aspect of that that deals with  
38           science, the role of science. So you can see the  
39           section 1.4, "Pacific Science Renewal" and at the  
40           bottom there's a bullet that starts with:

41  
42           Support the aquaculture site selection and  
43           screening process by providing scientific  
44           advice to help guide decision-making and risk  
45           assessment processes.

46  
47           I'd like now to go the next page under --

1 this is page 18, under section 1.5 "Pacific  
2 Aquaculture Framework". Now, this then lays out  
3 some of the broad ideas, reviews or actions the  
4 Department intends to follow up on over a five-  
5 year period. So, for example, we talk about  
6 completing a Canada/BC Letter of Understanding,  
7 further streamlining application review processes,  
8 and the identification of knowledge gaps and DFO's  
9 scientific role in addressing these gaps, and on  
10 it continues.

11 So the point I wanted to draw your attention  
12 to is this document tries to put into, I think, a  
13 wider context how aquaculture fits within the  
14 Department, and why it must comport with the  
15 broader mandate that the Department is required to  
16 implement, and how the job description of an  
17 individual must be factored into the broader  
18 elements of the Department.

19 Q So do you have in the Pacific Region somebody who  
20 is specifically responsible for protecting the  
21 public against the risks of aquaculture.

22 MR. SPROUT: The way the Region looks at it is as the  
23 Deputy previously explained, we have a wide array  
24 of people that have a number of responsibilities.  
25 So in answer to your question, we have enforcement  
26 officers who have a conservation and protection  
27 responsibility, so they are the regulatory  
28 authority of the Pacific Region. They are  
29 required to implement those provisions that were  
30 under federal control, and as we know on December  
31 the 18th of this year, that control will be  
32 extended broadly as we take on significant new  
33 jurisdictional responsibilities.

34 We have habitat biologists in the Pacific  
35 Region who have responsibility to look at the  
36 potential habitat implications of the site  
37 locations of aquaculture. So what do they do?  
38 Well, they're required to look at what deposit the  
39 aquaculture sites might leave in terms of the  
40 surface, the ground, and so forth, potential  
41 implications on contamination. So those  
42 individuals are there.

43 We have fishery managers that would be  
44 concerned about the location of the aquaculture  
45 sites relative to wild salmon migration. So those  
46 individuals participate, as well.

47 So we have a series of people who have

1 responsibility in specific areas, but all of them  
2 have to roll up ultimately to whatever the overall  
3 mandate of the Department is and it's expressed,  
4 in this particular case, in various strategies in  
5 our plans.

6 Q So today we're looking at the organizational  
7 structure, and what I'm trying to determine,  
8 because it appears that there is people who are  
9 specifically targeted to promote and cooperate  
10 with the industry, is there any person who has the  
11 job description that requires them to protect the  
12 public from the risks of aquaculture? It's a  
13 simple question.

14 MR. SPROUT: As the Deputy has explained on several  
15 instances, the entire Department has this  
16 responsibility. It's an overriding mandate. So  
17 it's across the Department.

18 Q So why do you have individuals who are tasked with  
19 promoting the industry?

20 MR. SPROUT: We have individuals that are responsible  
21 for recreational fishery management. We have  
22 individuals who are responsible for commercial  
23 fishery management. We have individuals that work  
24 with First Nations. We have -- we partition our  
25 responsibilities in order to be effective and  
26 efficient.

27 Q All right.

28 MR. SPROUT: As any institution does.

29 Q Well, before we leave this document, can we just  
30 go to Exhibit 24, which is the "Report on  
31 Progress" and can we go to page 15 of that  
32 document. Now, that's the page that deals  
33 directly with the aquaculture, is it not? Can we  
34 highlight the lead columns there. Thank you.

35 So this is -- it's fair to say that this is  
36 the opening lines or the description of the  
37 priority of the Department in 2008-2009:

38  
39 Providing Canadians with...

40  
41 Conditions needed to support a vibrant and  
42 innovative aquaculture industry...that is  
43 environmentally and socially responsible,  
44 economically viable and internationally  
45 competitive.

46  
47 Promote an industry.

1 MS. DANSEREAU: Promote an industry that is  
2 environmentally and socially responsible.  
3 Q All right. And in the first paragraph under "The  
4 benefits" you list economics, income stability,  
5 economic opportunities. In the bullet points you  
6 list economics.

7 And under "Specific Progress in 2008", next  
8 paragraph down, you talk about the actions that  
9 you've taken to improve:

10  
11 ...governance, supporting innovation in the  
12 sector, increased resources for regulatory  
13 research and addressing issues of market  
14 access and certification.  
15

16 There's not a word in this report about risk of  
17 harm. Why is that missing?

18 MS. DANSEREAU: The -- words "managing the regulatory  
19 front" or "market access" or "certification" all  
20 have to do with risk.

21 Q Let me come back to you, Deputy, on a point you  
22 made. I just have a couple of points left on this  
23 and then I can sit down. The point you made about  
24 science. Can we go back to Exhibit 33 and bring  
25 up the position title for Regional Director  
26 Science. I'm sorry, I don't know which number  
27 that is. Yes.

28 All right, that's the one I'm looking for.  
29 Can we go to page 2. The Regional Director of  
30 science -- stop there. The Regional Director of  
31 Science, it appears to me, is in charge of  
32 regulating science for a whole -- for the whole of  
33 the Department's priorities. But beneath  
34 reporting directly to that person is someone  
35 called a Division Head, Aquaculture, which is the  
36 paragraph I'd like highlighted. I'm correct in  
37 that, am I not?

38 According to this job description for  
39 science, the job description of that Division Head  
40 is to plan, develop and manage:

41  
42 ...scientific research programs in the  
43 aquaculture field, particularly salmonid  
44 aquaculture but also shellfish and other  
45 finfish aquaculture, in support of the  
46 aquaculture industry;...  
47

25

PANEL NO. 3

Susan Farlinger, Claire Dansereau, David Bevan  
Cross-exam by Mr. McDade (AQUA)

1 MS. FARLINGER: Sorry, this -- the responsibilities  
2 have changed in terms of the organization since  
3 this job description was written. There are  
4 individuals who work on fish health that  
5 contribute to aquaculture, both shellfish and  
6 finfish, that are not -- this section itself  
7 doesn't exist any more, and there are also  
8 individual scientists and other technical staff  
9 who work in the salmon program who are responsible  
10 for various elements of this. So this Division,  
11 as it is set out in the job description, doesn't  
12 exist at this point.

13 Q So up till 2009, however, your Science Division  
14 exclusively had the job of doing science in  
15 support of the industry. Isn't that a reasonable  
16 inference?

17 MS. DANSEREAU: The definition of "in support" I think  
18 could be -- could be elaborated on. "In support  
19 also means identifying areas where we should not  
20 go, and if this job description still were in  
21 effect, the next line is:

22  
23 ...research into wild stock interactions and  
24 potential hazards to wild stocks;...

25  
26 So the entire piece would have been considered.

27 Q So you say there's a new job description now in  
28 effect?

29 MS. FARLINGER: I'm not entirely sure of the state of  
30 the job description. I know that the organization  
31 inside Science differs from the one described here  
32 in this job description.

33 Q Just while I'm on this point, can we go over to  
34 page 3, the third paragraph, the large paragraph  
35 there. Yes, thank you.

36 Now, maybe we'll hear more about this at some  
37 later point, but this paragraph talks about:

38  
39 ...the department has embarked on a series of  
40 reforms which have shifted the emphasis from  
41 reactive enforcement to the concept of  
42 sharing the stewardship responsibility for  
43 the resource with all participants in the  
44 fisheries.

45  
46 Does that mean the industry?

47 MR. BEVAN: Yes. We've done a number of reviews of how



1 we conduct our compliance activities. In the past  
2 we focused on reactive enforcement and we didn't  
3 work enough on education, didn't work enough on  
4 dealing with significant fraud, which happily is  
5 not as prevalent on this coast as it is in some  
6 other areas. So we've refocused our enforcement,  
7 for example, to have three main pillars. Yes, we  
8 do work with -- with the people who harvest fish,  
9 the people who grow fish, to look at how to  
10 maintain compliance. But it's actually what we're  
11 doing is suggesting that if you're using a public  
12 space to grow fish, if you're using a public  
13 resource to fish, you have an obligation to the  
14 public to demonstrate that you're using that space  
15 or the stock in a responsible way, and you should  
16 play a role in the monitoring, control and  
17 surveillance.

18 The new regulations, for example, that are  
19 being put in place are going to set a series of  
20 licence conditions that aquaculturalists will have  
21 to comply with, But also put in place requirement  
22 to provide information to the Department to  
23 demonstrate that they have the adequate controls  
24 to deal with parasites and disease and to maintain  
25 the ecosystem that they are using. It's not  
26 theirs. It belongs to British Columbians, in case  
27 of the seabed, and it belongs to Canadians, in  
28 case of the waters, and they have an obligation to  
29 play a part in that process. So that's what that  
30 is attempting to get at.

31 Q So reactive enforcement would be the more  
32 traditional model of you investigate and you lay  
33 charges.

34 MR. BEVAN: It's the -- that kind of, yes, investigate,  
35 lay charges. It's also not -- it's expensive and  
36 not entirely effective if you require the officers  
37 to go out and find the problem, and then  
38 investigate, et cetera. What we want to do is  
39 have a system where fishers and aquaculturalists  
40 are obliged to provide information that could then  
41 be analyzed and look at: okay, so there's some  
42 anomaly here, we'd better look into this more, and  
43 it provides a more effective way to direct rare --  
44 and not rare, but very expensive assets.

45 Q So the Department is moving from that model to  
46 something that's more cooperative with industry?

47 MS. DANSEREAU: Sorry, if I may, that doesn't mean we

27

PANEL NO. 3

Claire Dansereau, David Bevan

Cross-exam by Mr. McDade (AQUA)

1 will not investigate and lay charges in the  
2 future.

3 Q But that's the trend, is it?

4 MR. BEVAN: No, the trend is actually that we are  
5 saying to the people who are using the fish or  
6 using the ocean space, you have a role to play in  
7 demonstrating your compliance. And therefore in  
8 fisheries, we want to know where you are on a  
9 real-time basis. We want to know what you're  
10 catching on a real-time basis. We want to know  
11 where you're landing, and you have an obligation  
12 to provide us with that information.

13 And under the new regulations we're going to  
14 be requiring aquaculturalists to provide us with  
15 information. They will play a role in  
16 demonstrating their compliance. In the event that  
17 there's a problem, it provides us with a more  
18 focused reactive enforcement opportunity so we can  
19 go in and find out why are the results not adding  
20 up. Why is the information not what it ought to  
21 be, and why is the information not consistent with  
22 the visit that we're conducting. So there will  
23 be reactive enforcement, but it will be augmented  
24 by this kind of approach.

25 Q So before I leave this document, can I just ask  
26 you about the next sentence:

27  
28 This change in the Department's operating  
29 philosophy will have a profound effect on the  
30 Department's clients and stakeholders...

31  
32 In that sentence what's the reference to  
33 "clients". Is that the industry?

34 MR. BEVAN: That would be -- actually, it should be all  
35 people and it will have a --

36 Q Yes, it should be.

37 MR. BEVAN: But the industry will be the ones who are  
38 affected, because they're the ones who will be  
39 subject to the different approach to obtaining  
40 compliance.

41 MR. MCDADE: Mr. Commissioner, I have one other set of  
42 questions that will take about three minutes. But  
43 I'd like to put -- put a website up on -- the DFO  
44 website up on the board. Is this an appropriate  
45 time for the break and I could set that up?

46 THE COMMISSIONER: Are we on time still, Mr. Wallace,  
47 with the other participants' counsel?

28

PANEL NO. 3

Claire Dansereau

Cross-exam by Mr. McDade (AQUA)

1 MR. WALLACE: We have a cushion, I think we're probably  
2 comfortably able. But how long will...

3 MR. McDADE: Three minutes. I just want to ask a few  
4 questions about the communications line, chain of  
5 command.

6 MR. WALLACE: Well, perhaps we could put that up now  
7 and take the -- it's a little early for the break.

8 MR. McDADE: Yes, sure. Okay. Can you get up the main  
9 DFO website? That's the home site. Can you just  
10 click on "Aquaculture" to the -- thank you.

11 So I don't know who the appropriate person  
12 for this question is, but which of you -- which  
13 official is in charge of maintaining the -- or the  
14 policy of maintaining the website?

15 MS. DANSEREAU: It's a combined function but it resides  
16 to a large extent with our Communications people.

17 Q So on that site, this is the lead site for the  
18 Department of Fisheries and Oceans in terms of  
19 aquaculture, and we have the listing "Aquaculture  
20 in the World Media". Could you just scroll down a  
21 bit. There seems to be four newspaper articles.  
22 Well, one is -- one is the Province of B.C.'s  
23 Report, so three. One deals with research at the  
24 bottom, one deals with PEI aquaculture, and then  
25 we have "This science is fishy" from the *National*  
26 *Post*. Can we just click on that. Have you seen  
27 this article, Deputy Minister?

28 MS. DANSEREAU: I don't recall seeing this article, but  
29 I may have. I see literally thousands of  
30 documents.

31 Q I suggest, has any -- has any of the panel seen  
32 this article? Has anyone seen it?

33 PANEL NO. 3: (No audible response)

34 MR. McDADE: I'm going to describe this article as  
35 being a highly biased anti-fish-farm activist,  
36 anti-science article. I'm going to tender it as  
37 an exhibit. But you don't have to agree with that  
38 description.

39 MR. TAYLOR: Mitchell Taylor. This may or may not  
40 shorten things up. I'll be objecting to it as an  
41 exhibit, so maybe we should deal with that sooner  
42 than later before we have a bunch of questions on  
43 it.

44 MR. McDADE: Well, let me ask some questions that don't  
45 relate specifically to the content of -- of that  
46 document, and then we can deal with that question.

47 Q What is the function of putting a media article on

1 the lead aquaculture part of your website? One  
2 article -- wouldn't this be something that DFO  
3 endorses?

4 MS. FARLINGER: No, the Communications function relates  
5 to providing context, both to people inside and  
6 outside the Department on current media. And  
7 these are changed from time to time when new  
8 articles come up. Not every article published on  
9 aquaculture is published on this site, but these  
10 articles are from time to time selected and put up  
11 on the site as just part of general information  
12 about aquaculture. And this appears to be one of  
13 those.

14 Q But you're aware, are you not, that there are  
15 hundreds of articles that are critical of fish  
16 farming that have been coming out over the last  
17 six months in newspapers.

18 MS. FARLINGER: The articles that are brought up on the  
19 -- on the website cover the gamut in terms of  
20 perspective. This -- this is an article -- I  
21 haven't read it, so I don't know which you say,  
22 has a certain prejudice to it. There are other  
23 articles that have been brought up and put on this  
24 website.

25 The purpose of the Communications aspect to  
26 this website is simply to provide information to  
27 people on information that is out there, and it  
28 certainly doesn't purport to cover all articles.  
29 But I think you will find over time that the  
30 articles have been posted on this website cover  
31 the range of views and understandings around this.

32 Q Are you able --

33 MS. FARLINGER: It's simply an information source.

34 Q So you're saying that on the DFO website they  
35 publish articles critical of fish farming?

36 MS. FARLINGER: They have been referenced in this media  
37 section on this website, yes.

38 Q Are you able to provide us a list of the articles  
39 that have been on that website in the last six  
40 months?

41 MS. FARLINGER: I think it's likely that I could.

42 Q All right. The -- if I suggest to you that part  
43 of the -- part of the objectives of your  
44 Communications people in DFO has been to reduce  
45 public concern about the science suggesting risks,  
46 can you tell me who is in charge of making that  
47 decision? Which individual at DFO would be in

30  
PANEL NO. 3  
Claire Dansereau  
Cross-exam by Mr. McDade (AQUA)

1 charge of the content of that particular site?

2 MS. DANSEREAU: First of all, I want to say that we  
3 need to be clear, we are not biased against  
4 aquaculture.

5 Q It certainly looks that way.

6 MS. DANSEREAU: And we don't shy away from that fact.  
7 What we are responsible for is making sure that  
8 the wild fishery is not affected by aquaculture.  
9 So whether or not there's an article of this  
10 nature on the site is maybe not a surprise. We're  
11 not biased against aquaculture. We are in favour  
12 of science to support decisions regarding  
13 aquaculture and to support decision regarding the  
14 interaction between -- between the wild fishery  
15 and aquaculture. So if you're looking for us to  
16 say that we are against aquaculture, we will not  
17 say that.

18 Q Well, you seem to be against aquaculture  
19 opponents.

20 MS. DANSEREAU: No, but we are pro-science.

21 Q So do you -- do you stand by this article?

22 MS. DANSEREAU: I did not write this article. I will  
23 not stand by this article.

24 MR. McDADE: All right.

25 MR. TAYLOR: Well, Mr. Commissioner, he managed to  
26 successfully establish no one knew the article,  
27 said he was going to not ask questions about the  
28 article, and now wants them to adopt the article.

29 THE COMMISSIONER: Mr. McDade...

30 MR. McDADE: I was done asking questions.

31 THE COMMISSIONER: Thank you.

32 MR. WALLACE: Mr. Commissioner, this perhaps would be a  
33 convenient time to break for the morning.

34 THE COMMISSIONER: Thank you.

35 THE REGISTRAR: The hearing will now recess for 15  
36 minutes.

37  
38 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)  
39 (PROCEEDINGS RECONVENED)

40  
41 THE REGISTRAR: The hearing is now resumed.

42 MR. WALLACE: Thank you. Mr. Commissioner, for the  
43 record, we are -- the estimates I have for time  
44 are three hours remaining. We have three hours  
45 remaining until four o'clock, but that does not  
46 allow for re-examination and so I would ask  
47 counsel to try and pare ten percent off their time

31  
PANEL NO. 3  
Claire Dansereau  
Cross-exam by Mr. Leadem (CONSERV)

1 if they possibly can to leave some time for --  
2 which I think the likely re-examination that will  
3 be sought.

4 THE COMMISSIONER: All right. I would -- I'd be  
5 grateful if counsel could do that.

6 MR. WALLACE: And this brings us to the Conservation  
7 Coalition. Mr. Leadem?

8 MR. LEADEM: Yes. Thank you, Mr. Commissioner. For  
9 the record, Leadem, initial T., appearing for the  
10 Conservation Coalition. Mr. Commissioner, I  
11 should introduce someone who is seated directly  
12 behind me, I believe taking advantage of your  
13 directions that someone can -- else other than  
14 lawyers can attend at counsel table, and I've  
15 invited Dr. Craig Orr from Watershed Watch to sit  
16 behind me.

17 THE COMMISSIONER: Thank you.

18

19 CROSS-EXAMINATION BY MR. LEADEM:

20

21 Q I'd like to begin by asking the panel a general  
22 question. Would you agree with me that  
23 conservation is the primary objective that guides  
24 the management of the resource?

25 MS. DANSEREAU: I would agree with you that  
26 conservation is the first priority for us and  
27 without conservation, we have no other activities,  
28 so it is a fundamental aspect of our work.

29 Q And those aren't my words. I believe they're  
30 actually your words in terms of conservation being  
31 the primary objective, guiding the management of  
32 the resource.

33 MR. LEADEM: Mr. Lunn, I was wondering if you could  
34 find Exhibit 34, which was just introduced today.  
35 This should be a document entitled  
36 "Recommendations Related to Fraser River Sockeye  
37 Salmon" and if I could ask you to highlight the  
38 second page, Theme 1, Conservation and  
39 Stewardship, Summary of Responses.

40 Q I take it that this document was prepared by DFO;  
41 is that right?

42 MS. DANSEREAU: Yes.

43 Q In that document, you highlight some of the  
44 policies that the Department of Fisheries and  
45 Oceans have employed over the years to deal with  
46 the concept of conservation and the one that I  
47 would like to actually focus on to begin with is

- 1           this 1986 Policy for the Management of Fish  
2           Habitat; are you familiar with that policy? I see  
3           that Mr. Macgillivray is.
- 4       MR. MACGILLIVRAY: Yes, I am familiar with the policy.  
5       Q     Is that policy also sometimes called "no net  
6           loss"?
- 7       MR. MACGILLIVRAY: The principle of no net loss is  
8           part of the -- part of that 1986 Habitat Policy,  
9           yes.
- 10       Q     It's just that sometimes I hear it -- the policy  
11           shortened to that expression "no net loss"; is  
12           that right or fair?
- 13       MR. MACGILLIVRAY: My understanding is that the term  
14           "no net loss" emerged from that policy.
- 15       Q     Right.
- 16       MR. MACGILLIVRAY: But there are more aspects to the  
17           policy than simply no net loss.
- 18       Q     In your opinion is no net loss working or not  
19           working?
- 20       MR. MACGILLIVRAY: Difficult to provide a comment on  
21           that.
- 22       Q     Well, I'll put it to you directly then, that it's  
23           not working and that's the problem with that no  
24           net policy.
- 25       MS. DANSEREAU: I would, if I may - excuse me for  
26           answering, but I would say that that work is -- we  
27           are continuing to monitor whether or not no net  
28           loss is working. It's a very broad designation,  
29           as you can imagine, and so in some cases it's  
30           working and in some cases it's not working so well  
31           and we are constantly in -- working towards  
32           improving our ability to both implement and  
33           monitor.
- 34       Q     Are you familiar, Deputy, with the 2009 Spring  
35           report of the Commissioner of the Environment and  
36           Sustainable Development?
- 37       MS. DANSEREAU: Yes, I am.
- 38       MR. LEADEM: And I was wondering if we could possibly  
39           bring up Chapter 1 on the screen of that report,  
40           Mr. Lunn. Perhaps about 18 pages in is actually  
41           where I'm going to take you. You should find a  
42           heading just before 1.70, so if you can scroll  
43           down some more, you should find 1.70, There we  
44           go.
- 45       Q     Under the heading "Habitat Loss or Gain Is Not  
46           Being Measured", 1.70 says:  
47

1                   The approach under the Habitat Policy is to  
2                   achieve no net loss of habitat on each  
3                   project and, together with habitat  
4                   restoration and development, achieve a gain  
5                   in habitat overall.  
6

7                   Would you agree with that statement?

8                   MS. DANSEREAU: I would agree that more work needs to  
9                   be done on this and we are, as a result of this  
10                  audit, but also as a result of our own science,  
11                  working hard to try and improve on statements such  
12                  as this.

13                 Q    Well, one of the recommendations that came from  
14                  this audit was the recommendations that Fisheries  
15                  and Oceans Canada should develop habitat  
16                  indicators, if we look down at 1.74 and that:

17  
18                        The Department should use these indicators to  
19                        assess whether it is making progress on the  
20                        Habitat Policy's long-term objective to  
21                        achieve an overall net gain in fish habitat.  
22

23                   And DFO agreed with that recommendation; did it  
24                   not?

25                  MS. DANSEREAU: Yes, we did. And we continue to agree  
26                  with it and we continue to work on it.

27                  Q    How are you working on it?

28                  MS. DANSEREAU: Through our science sector and our  
29                  habitat managers, working to make sure that we  
30                  have both a risk framework and an ability to  
31                  determine what real indicators would be. As you  
32                  can imagine, it's fairly complicated.

33                  Q    There's also the comment in that response to the  
34                  recommendation that DFO is committed to moving  
35                  toward an ecosystems approach and the increased  
36                  use of biological indicators. I believe we heard  
37                  some of that evidence from you yesterday.

38                  MS. DANSEREAU: Yes, very much so. It is truly at the  
39                  heart of how we organize ourselves, and if you'll  
40                  notice in the Report on Plans and Priorities, it  
41                  was -- that was introduced yesterday, there is  
42                  some reference to various indicators and it's --  
43                  it is a work in progress, we admit that, and it's  
44                  work started before the commissioner's work and it  
45                  certainly started long before my arrival in the  
46                  department and will be an ongoing piece of work.

47                  Q    The next heading right down from that says:



1  
2           The Habitat Policy is not fully implemented  
3           after 23 years  
4

5           This is the 1986 policy, correct?

6 MS. DANSEREAU: That is the policy to which it's  
7           referring, yes.

8 Q       All right. And do you agree with that heading,  
9           that the Habitat Policy was not fully implemented  
10          after 23 years of its existence?

11 MS. DANSEREAU: We supported a lot of the  
12          recommendations that the commissioner -- the  
13          commissioner reached, and to say whether or not  
14          something is fully implemented is a very big  
15          statement to make, so parts of the -- I can say  
16          that culturally, it is a policy that is held near  
17          and dear to the hearts of our people who were  
18          managing this file. How we would measure whether  
19          or not it is fully implemented in all cases, I  
20          think it would be very hard to measure.

21 Q       In paragraph 1.78 under the heading "Research",  
22          just go to the part with the "ecosystem science  
23          approach" where it's bold off. I find these  
24          words:

25  
26                   According to the Department, implementation  
27                   of an ecosystem science approach is in the  
28                   early stages, and assessment of habitat is  
29                   not yet possible. It notes that data does  
30                   not exist for many aquatic habitat features,  
31                   or available information may not be organized  
32                   in ways that allow staff to access it  
33                   efficiently and systematically.  
34

35           This is the information that DFO was providing to  
36           the Office of the Auditor General; is it not?  
37 MS. DANSEREAU: It's information that we were  
38           providing, but it's also information which we use  
39           and what this is, is a very honest statement on  
40           our part, that the issue is very complicated and  
41           the indicators are very difficult to know  
42           everything of. We don't pretend to know  
43           everything and I would strongly encourage you to -  
44           - well, it's not my business to do that, but  
45           certainly the scientists that will be coming  
46           forward are -- would be a better place to address  
47           where they think the uncertainties are.

1 Q All right. I wanted to take advantage of the  
2 deputy being there to ask her these questions.  
3 This was written in 2009, so if my math is  
4 correct, then if the ecosystem science approach is  
5 still in the early stages, we can say that we're  
6 still in those early stages, can we not?

7 MS. DANSEREAU: I would say that we'll be in early  
8 stages for a long time, but that doesn't mean  
9 we're not making progress. I think the science is  
10 evolving quite rapidly and as it evolves, we will  
11 incorporate it, but it will continue to evolve.

12 Q Under 1.80, the recommendations portion:

13  
14 Fisheries and Oceans Canada should determine  
15 what actions are required to fully implement  
16 the 1986 Habitat Policy and confirm whether  
17 it intends to implement all aspects of the  
18 Policy.

19  
20 And the response is contained that:

21  
22 The Department accepts the recommendation  
23 and, by March 2010, will determine what  
24 actions are required to fully implement the  
25 Habitat Policy.

26  
27 So what have you decided to do?

28 MS. DANSEREAU: We -- this is an ongoing piece of work.  
29 There were consultations held by the folks in  
30 Ottawa with the people in the regions that are  
31 implementing this and there is ongoing work on  
32 this. It will not be something that we can  
33 address immediately; however, it is a high  
34 priority for all of us.

35 Q Well, the date seems definite, March 2010.

36 MS. DANSEREAU: The fact that we accept the  
37 recommendation and that we will -- some actions  
38 have been determined. I've asked for a review of  
39 the policy. Some coordinated work has happened  
40 between Ottawa and the regions and we can provide  
41 you with some more specifics on the actions. I  
42 don't have them here with me.

43 Q All right. Who could I address these questions to  
44 from DFO should they come to testify before this  
45 commission?

46 MS. DANSEREAU: I think it would be appropriate to ask  
47 the question of some of the scientists. It would

1           also be appropriate to ask some of us when we come  
2           back, and I can certainly do my best to make more  
3           information available throughout the course of  
4           your hearings.

5           Q    Deputy, to understand my concern, you've got a  
6           policy, a no net loss policy, as it's been called,  
7           since 1986 that in 2009 the Auditor General says  
8           it's not working and DFO says we agree, we're  
9           going to do something about it and we're going to  
10          do something about it by March 2010, which is a  
11          definite date. What I seem to be hearing from you  
12          is that we're going to still study it.

13         MS. DANSEREAU: No, we're not studying it. We are  
14         looking at the areas where we are potentially  
15         insufficient and we will be rectifying those. To  
16         say that the -- what the Commissioner of  
17         Sustainable Development said was that it's not  
18         been fully implemented. They didn't say that it's  
19         not working. They said it's not being fully  
20         implemented. And so we need to truly determine  
21         what areas are not being fully implemented and  
22         determine how we can improve on that, and we are  
23         doing that work.

24         Q    And when can we expect to know some results from  
25         that process?

26         MS. DANSEREAU: Well, David Bevan actually can speak to  
27         some of the work that happened this summer, as he  
28         went across the country and started addressing  
29         some of this, but -- and as I said, it's going to  
30         be an ongoing piece of work.

31         MR. BEVAN: Now, we - "we" being myself and Kevin  
32         Stringer - met with habitat practitioners and  
33         managers across the country to discuss the policy  
34         and to discuss the implementation of the program.  
35         The difficulty we have is right now, the model for  
36         the delivery of the program is to receive  
37         proposals from proponents and then to review those  
38         to determine if there's going to be a hazard or a  
39         change to the habitat, a HAD, and whether or not  
40         then there has to be an approval process  
41         initiated. That is very labour-intensive. It  
42         doesn't look at the risks posed by these various  
43         projects and you end up trying to treat everything  
44         the same and it's not an effective way. So what  
45         we're looking at doing is bringing the proponents  
46         -- not the proponents, the practitioners of the  
47         program together over the course of the Fall to

1 look at a new set of procedures and protocols for  
2 how to manage the risks that human activities pose  
3 in the habitat of fish and then how to be much  
4 more proactive and to spend more time on things  
5 like monitoring and then dealing with problems  
6 there and less time on low-risk activities where  
7 we're looking at an armour stone or seawall or a  
8 wharf being put in where we think we can handle  
9 that through a different process.

10 So we're looking at revising the program and  
11 to ensure that the policies reflect a better way  
12 ahead. The real problem we have with no net loss  
13 is the development of metrics. How much habitat  
14 exists? How do you track it over time? And  
15 that's been a significant challenge. We still  
16 have that as a goal and we still have the policy  
17 in place but we do think that we need to look at  
18 the design of the program with a view to being  
19 more proactive, more focused on risk management  
20 and using better tools to get compliance with the  
21 policy and to make sure the policy reflects the  
22 actions.

23 That's what we're doing and we have that step  
24 done and we're looking at now bringing the people  
25 together over the course of the winter to try to  
26 be in position for the coming years to modify the  
27 approach and to get a better result for Canadians  
28 and for the preservation of fish habitat.

29 Q In your answer, Mr. Bevan, and I thank you for it,  
30 but in your answer I picked up on some of the  
31 jargon that I often hear with respect to the  
32 descriptions forwarded to the Environmental  
33 Process Modernization Plan or the EPMP; do I have  
34 that right?

35 MR. BEVAN: There are elements there of what we're  
36 looking at doing. We have a -- have to try to  
37 achieve results with the resources we have and  
38 being completely reactive in an approach, dealing  
39 with low and high risk in the same way, et cetera,  
40 is not a very good use of resources and doesn't  
41 get you the maximum effectiveness and efficiency  
42 out of those resources to protect fish habitat.  
43 So I think in the -- we have to deal with the  
44 realities of budgets and limits and we are going  
45 to look at the best way to achieve results within  
46 the reality of those limits and are looking at a  
47 much better-focused program than one that is

1 reactive and responsive and doesn't take control  
2 of its own agenda to achieve an outcome.  
3 Q Well, looking into your crystal ball, can you  
4 estimate how long of a process this will entail,  
5 with respect to your consultations?  
6 MR. BEVAN: The internal consultations are going to be  
7 done quickly. The external ones, after that,  
8 after we've got some models that we can discuss  
9 with stakeholders, that will take a little more  
10 time, but we don't have much time. The deputy has  
11 given Kevin Stringer a very short timeline and  
12 that means that the ADM of Ecosystems and  
13 Fisheries Management will also be obliged to seek  
14 better program delivery in the coming year or two.  
15 Q When you say consultation with stakeholders, you  
16 would include within that confines environmental  
17 groups, would you not?  
18 MR. BEVAN: Absolutely.  
19 Q Now, I hesitate to get involved in aquaculture,  
20 but I'm going to ask you a few questions about it.  
21 MR. WALLACE: Mr. Leadem, is this an exhibit yet?  
22 MR. LEADEM: I thank you, Mr. Wallace. We might as  
23 well mark it now, Mr. Commissioner.  
24 THE REGISTRAR: Marked as Exhibit number 35.  
25 THE COMMISSIONER: I'm sorry, Mr. Wallace. Could you  
26 just describe on the record what the exhibit is?  
27 MR. WALLACE: Thank you, Mr. Commissioner. The 2009  
28 Report of the Commissioner of the Environment and  
29 Sustainable Development.  
30  
31 EXHIBIT 35: 2009 Report of the Commissioner  
32 of the Environment and Sustainable  
33 Development  
34  
35 MR. LEADEM: If I have time, I will come back to it,  
36 just for one topic.  
37 Q I'm going to suggest to you that your job is not  
38 an easy one, and that you have a lot of challenges  
39 that you face and that some of the challenges are  
40 to deal with some what I think on the face of it  
41 appear to be conflicting mandates. On the one  
42 hand, for example, you enable aquaculture and on  
43 the other hand, you regulate aquaculture; is that  
44 a fair statement?  
45 MS. DANSEREAU: That is a fair statement.  
46 Q So the challenge is how do you do that? How do  
47 you do that? I mean, how do you manage something

1           where aquaculture may bear risks to wild stock and  
2           you acknowledge that, do you not, Deputy?

3       MS. DANSEREAU: I do, and I acknowledge that there is a  
4           potential and so the same is true, though, in much  
5           of our work. The same is true on the wild  
6           fisheries side. We regulate it, but we also  
7           support it and promote it, and we need to find the  
8           right balance between making sure that the  
9           industry in the wild fishery are able to -- is  
10          able to survive and to thrive, so we really --  
11          you're right, it's not an easy -- it's not an easy  
12          road to walk down and the minister, of course, and  
13          the government is in the same boat. It's tough  
14          for a minister to be in this position, as well.

15                 But it's -- the fact that we are a science-  
16          based department, the fact that we are transparent  
17          and collaborative, means that any decision that I  
18          make is -- and any recommendation that I make to  
19          the minister is based on the fullness of the -- to  
20          the best of our ability the fullness of the data  
21          that's available and the most up-to-date thinking  
22          that's available. So no, it's not easy, but it  
23          wouldn't necessarily be any easier if it was  
24          separate in other departments.

25       Q       I see. Maybe to assist me in asking questions of  
26                 future panels, you can tell me when you say that  
27                 you're provided with advice from scientists with  
28                 respect to this issue of aquaculture, who within  
29                 DFO science is providing that advice? Can you  
30                 give me some names?

31       MS. DANSEREAU: The way information comes to me is not  
32                 directly from individuals but we function, as you  
33                 know, through briefing notes and through -- and  
34                 those briefing notes make their way in a very  
35                 convoluted process through the system, sometimes  
36                 starting from the scientists and then the science  
37                 advice is incorporated into other advice, so it  
38                 moves its way up the system. The Pacific  
39                 Scientists obviously play a very key role in the  
40                 regulatory front on aquaculture and they work as  
41                 we saw earlier, they work closely with others that  
42                 are managing the wild fishery. And we also have  
43                 the conservation protection people and the  
44                 resource managers and they all have a role to play  
45                 in how the advice comes up.

46                         And then it comes to me through -- mostly  
47                 through the regional directors general and the

1 ADMs responsible for the sector and together we  
2 talk through much of this stuff. We don't simply  
3 -- nobody dictates in the department. We really  
4 work our way through the complexity of the issues  
5 and one of the reasons it was important yesterday  
6 to spend some time talking about the governance  
7 structure of the department, it's really to show  
8 that the matrix model is designed to allow us to  
9 make them -- really the richest kind of decisions.

10 Q I heard you yesterday talk about the ecosystems  
11 approach. Will the ecosystems approach inform  
12 some of that challenge that you face with regard  
13 to aquaculture --

14 MS. DANSEREAU: Absolutely.

15 Q -- with the risks? And I guess the question then  
16 becomes for me, and you have to forgive me because  
17 I'm not -- I don't always see things in ecosystems  
18 approaches, but would you agree with me that open  
19 net fish farms are not part of the ecosystem?  
20 They're introduced into the ecosystem.

21 MS. DANSEREAU: They are introduced into the ecosystem  
22 but many things are, and it's our job as  
23 regulators to make sure that they don't harm the  
24 ecosystem that they enter.

25 Q And maybe I'm being too naïve, but I would think  
26 that if you have something that could be taken out  
27 of the ecosystem, that it might be of benefit then  
28 to the ecosystem as a whole, particularly if  
29 there's some repercussions that are flowing from  
30 that introduced thing into the ecosystem.

31 MS. DANSEREAU: Our job is to make sure that the areas  
32 over which we have some responsibility are well-  
33 managed. I can't speak to whether or not they  
34 should be taken out of this ecosystem and put in  
35 another ecosystem where they may have other  
36 impacts. I can't speak to that, so I don't know  
37 the answer to that. I know that our job is to make  
38 sure that the ecosystems in which they are placed  
39 are not harmed by their presence.

40 Q And if they -- if the evidence that you get from  
41 your scientists suggest that they are being  
42 harmed...?

43 MS. DANSEREAU: Then we would put systems in place to  
44 -- we have -- one of the determinations, as you  
45 heard David talk about, something called the HAD,  
46 the Harmful Alteration and...? I had it when you  
47 said it.

1 MR. BEVAN: Alteration and Destruction.

2 MS. DANSEREAU: ... and destruction of habitat, if that  
3 is to be the case, an environmental impact  
4 assessment needs to be done and further work needs  
5 to happen. So then there are mitigation measures  
6 required and that's when the no net loss policy  
7 comes in and there are -- so there's a variety of  
8 steps that need to be taken.

9 Q Some of the other challenges that you face are  
10 some of the competing legislative mandates that  
11 you have. For example, I believe Mr. Bevan,  
12 yesterday you talked about the Cultus Lake sockeye  
13 and that was up for designation as a listed  
14 species within SARA, the **Species at Risk Act**, was  
15 it not?

16 MR. BEVAN: It was recommended by COSEWIC that it would  
17 be -- that it would be endangered under -- and  
18 they make a recommendation. Then it's a  
19 determination of the Government of Canada as to  
20 whether or not it would be listed. And the law is  
21 very explicit as to what factors can be considered  
22 in determining whether a species will be listed.  
23 In that case, the Minister of Fisheries conducted  
24 socioeconomic analysis, a scientific analysis as  
25 to whether or not these species could be rebuilt,  
26 et cetera, and the recommendation from the  
27 Minister of Fisheries to the Minister of the  
28 Environment was that it would not be listed and  
29 that a rebuilding plan would be established under  
30 the **Fisheries Act**.

31 Q Would you agree with me that generally speaking,  
32 the **Species at Risk Act** is much more stringent in  
33 terms of its ability to protect a species,  
34 particularly an endangered species, than the  
35 **Fisheries Act**?

36 MR. BEVAN: I'm not -- I'm not going to agree with you  
37 on that entirely. The reason is this. The  
38 **Species at Risk Act** is much more proscriptive.  
39 That I will absolutely agree with you on; whereas  
40 the **Fisheries Act** is an enabling piece of  
41 legislation that allows the government, through  
42 the Minister, to do a wide variety of things.  
43 **Species at Risk** is based on the premise that you  
44 stop the decline of a species and put in a  
45 rebuilding, but it doesn't talk about the  
46 interaction of that species, it doesn't look at an  
47 ecosystem in which that species is situated and



1 doesn't consider the broader issues. So there's  
2 some limitations on the **Species at Risk Act**. It is  
3 very proscriptive and obliges government to take  
4 specific types of action, but because of its  
5 narrow focus, it also doesn't look at the species  
6 in the context of a broader perspective and that  
7 can be done under the **Fisheries Act** because the  
8 **Fisheries Act** is not proscriptive but rather  
9 enabling and therefore there's a lot more  
10 flexibility to deal with that particular species  
11 in a wider context.

12 Q You're correct in suggesting that the SARA, the  
13 **Species at Risk Act**, is proscriptive, and I would  
14 put to you that if, for example, the Cultus Lake  
15 sockeye were designated as endangered, it would be  
16 very difficult to conduct a fishery in the Fraser  
17 River.

18 MR. BEVAN: That's correct.

19 Q And it's -- that's one of the reasons why it was  
20 not listed; is that not fair to say?

21 MR. BEVAN: One of the reasons it wasn't listed was the  
22 very extensive socioeconomic implications. If one  
23 were to take it to the extreme, one would have to  
24 look at all the development taking place in the  
25 Fraser River watershed above Cultus Lake and  
26 including in Cultus Lake, so there's huge  
27 socioeconomic implications and that -- the **Species**  
28 **at Risk Act** provides government with some  
29 flexibility on the list or not list, but after  
30 it's listed, there's a very significant suite of  
31 steps. Not all of them are like -- are going to  
32 actually have the kind of outcomes we're looking  
33 for in that they would stop fishing, they would  
34 stop development, they would do all of that, but  
35 would they look at the fish in the context of the  
36 broader ecosystem and that's a question in my  
37 mind, but certainly I agree with you, there would  
38 be some significant impacts on the economy of the  
39 Lower Mainland of British Columbia.

40 Q Are any of the panel members familiar with the  
41 harvest rates for the Cultus Lake sockeye from  
42 this past return in 2010? Were you aware, for  
43 example, that the target was set at 30 percent and  
44 roughly 50 percent of the Cultus Lake sockeye were  
45 taken?

46 MS. FARLINGER: I can say that in general I'm familiar  
47 with the harvest rate target that we set in the

1 Integrated Fishery Management Plan for Cultus Lake  
2 sockeye. The intention of setting that harvest  
3 rate was to, and the objective was to meet the  
4 rebuilding objectives for the Cultus Lake stock.  
5 There's still work going on to come to the final  
6 understanding of all the data that is required  
7 around the escapement of the stocks and the actual  
8 harvest rates and so that probably won't be  
9 available till a bit later in the Fall. Certainly  
10 in season there was some indication that the  
11 harvest rate on Cultus did go above 30 percent.  
12 It went above 30 percent only at the time that  
13 Fisheries and Oceans was confident that the  
14 rebuilding objectives and that is the escapement  
15 for Cultus Lake would at the very least meet the  
16 rebuilding goals.

17 MR. LEADEM: Is there someone that will be coming later  
18 on from DFO to speak to these issues that you can  
19 tell me will come here and will be able to answer  
20 some of the questions I have with respect to  
21 escapement rates?

22 MR. WALLACE: Yes.

23 MR. LEADEM: Do we have any names that I can learn?

24 MR. WALLACE: I don't at this point, no.

25 MR. LEADEM:

26 Q Does the panel have any names? Obviously this  
27 question I would like to put to another person  
28 from DFO. Do you have a name that I could put  
29 this question to, anyone on the panel?

30 MS. FARLINGER: I don't have the entire list of people  
31 who will be providing testimony at the commission  
32 here in front of me. I think it's exceedingly  
33 likely that those who have been asked to provide  
34 evidence will include those who've been -- who are  
35 directly responsible for the management of the  
36 fishery. I should say that if we do make changes  
37 to the Integrated Fishery Management Plan in  
38 season we do seek approval in the department to do  
39 that and do set out conditions for any changes to  
40 that plan.

41 Q Deputy Minister, I want to take the opportunity,  
42 since you're available, to ask you some questions.  
43 While you were the Associate Deputy Minister of  
44 Fisheries one of the issues that you were tasked  
45 with following was the controversial one of gravel  
46 removal from Fraser River, was it not?  
47

1 MS. DANSEREAU: Yes, it was.

2 Q And just so that we're clear on the area that's  
3 canvassed by that gravel removal, that's the area  
4 from Mission to Hope, is it, in the Fraser River?

5 MS. DANSEREAU: I think so. I -- I was more interested  
6 in developing a process that would ensure that our  
7 needs to protect fish habitat and the province's  
8 need for flood protection, we were bringing  
9 together the two sets of needs to make sure that  
10 we both achieved our objectives. But the work was  
11 done by the region and Paul Sprout can certainly  
12 speak more fully to that.

13 Q All right. Well, either one of you will, perhaps,  
14 be better poised to answer some of the questions I  
15 want to ask.

16 MR. LEADEM: If I could have the last exhibit put --  
17 placed up on the screen again.

18 Q One of the case studies from the Report from the  
19 Office of the Auditor General was a report or a  
20 case study that focused upon Fraser River Gravel  
21 Removal Plan Agreement; you're familiar with that,  
22 Deputy?

23 MS. DANSEREAU: Yes, I am. However, Paul Sprout, I  
24 must say, Paul would be the person who should  
25 answer these questions. He's much more familiar  
26 with it.

27 Q All right. Well, I'll direct my questions then to  
28 Mr. Sprout.

29 MR. LEADEM: If I could have the actual page, it should  
30 be right after paragraph 1.40. 1.40. It's either  
31 there or in the appendix.

32 MR. TAYLOR: Page 24.

33 MR. LEADEM: Thank you, Mr. Taylor. If you could just  
34 highlight the portion that says "Fraser River  
35 Gravel Removal Plan Agreement". Thank you.

36 Q In the first paragraph, there's a notation that:

37

38 The Department determined that gravel removal  
39 was harmful to fish habitat.

40

41 Is that accurate, Mr. Sprout?

42 MR. SPROUT: I would have to qualify that. So my  
43 understanding is that gravel removal under some  
44 circumstances, if not done properly, depending on  
45 the time of the period that it's done, depending  
46 on the amount that's removed, and depending on how  
47 it's actually done could be harmful. But if

1 certain conditions are met with respect to all the  
2 parameters I've just noted, then it is our view  
3 that there is no significant or long-lasting  
4 harmful effects.

5 Q One of the species that's -- one of the 28 species  
6 of fish that has high-quality habitat in that area  
7 is the Fraser River sockeye; is it not?

8 MR. SPROUT: Fraser River sockeye in this area?

9 Q Yes.

10 MR. SPROUT: What are you thinking about?

11 Q Well, I'm --

12 MR. SPROUT: Are you thinking of juveniles?

13 Q I'm thinking that the Fraser River sockeye in some  
14 portion of its life cycle would be using this  
15 gravel.

16 MR. SPROUT: Okay. Well, just to back up a little bit  
17 and talk about the lifecycle of sockeye, the bulk  
18 of Fraser River sockeye are spawning in the upper  
19 reaches of the Fraser River, the middle and upper  
20 reaches, with some exceptions. Most of the  
21 sockeye migrate out as one-plus individuals. In  
22 other words, they're a year and a bit old. They  
23 migrate quickly out of the river and don't reside  
24 in the river. They tend to migrate downstream  
25 quickly into the ocean and then head off to the  
26 North Pacific.

27 Now, there are some populations that will  
28 spend some period of time in the river for a  
29 longer period of time than the majority, so I'm  
30 not sure which you're referring to.

31 Q Well, can we agree that when this report says this  
32 area has high-quality habitat for at least 28  
33 species of fish that one of those species of fish  
34 would be sockeye?

35 MR. SPROUT: I think we'd have to talk some more about  
36 that to better understand it. I think when  
37 they're talking about the 28 species, they're  
38 referring to freshwater species, trout, whitefish,  
39 sturgeon. They're probably referring to pink fry  
40 because they're -- the area from Mission to Hope  
41 is a spawning ground, portions of it are, for pink  
42 salmon. There are also portions of that area that  
43 are spawning grounds for chum salmon. Sockeye in  
44 that area are typically spawning in lakeshore  
45 areas. They might be migrating through that area,  
46 but I'm not aware unless you have some information  
47 about the residency rates of young sockeye in this

1 area, so I think we'd have to talk some more about  
2 it.

3 Q All right. Well, let's go on and talk about flood  
4 control, because one of the positions that the  
5 province has taken in terms of its discussions  
6 with the Department of Fisheries and Oceans is  
7 that the gravel removal is necessary in order to  
8 deal with flood control. You understand that to  
9 be the case?

10 MR. SPROUT: Yes, that's what they have advised us.

11 Q All right. In this report - if we can just scroll  
12 down a little bit, Mr. Lunn, please - under the  
13 heading "Flood control", I find these words:

14  
15 Engineering and scientific studies at  
16 different sites, some commissioned by the  
17 Department, concluded there was no reduction  
18 in the flood profile after gravel removal.  
19

20 So the department there, I take it to be the  
21 Department of Fisheries and Oceans; is that right,  
22 Mr. Sprout?

23 MR. SPROUT: Yes.

24 Q  
25 These studies stated that changes in the  
26 flood profile were minimal in the removal  
27 area and were local to the removal site.  
28 Thus, gravel removal would not significantly  
29 affect the potential for flooding.  
30

31 Are you of that view?

32 MR. SPROUT: I have two observations on this point.  
33 The first is the Province of B.C. is a credible  
34 organization with trained staff with competencies  
35 and part of their role and responsibilities is to  
36 determine whether they believe gravel accumulation  
37 could have effect on human infrastructure and  
38 therefore to advise us accordingly. It's not the  
39 job of the Department of Fisheries and Oceans.  
40 That's not our role and responsibility. It's the  
41 province. And the province has competency in this  
42 area, so that's the first observation I have.

43 The second observation I have is the studies  
44 that you're referring to did suggest that if you  
45 remove these quantities of gravel, the overall  
46 height of the river throughout that section would  
47 only decrease by a few inches; however, the

1 province has reacted to that very observation.  
2 The province has said that may be the case, but  
3 there are accumulations of gravel at certain  
4 specific locations that would be substantially  
5 reduced if removed and the water levels in those  
6 specific locations would be reduced enormously.  
7 And further they've argued that those particular  
8 accretions of gravel if not removed would cause  
9 the water, the flow of the Fraser, to deflect into  
10 banks, to erode the banks and to flood fields.

11 But I come back to my first observation.  
12 This is the role of the province. Our job as a  
13 department is to say okay, if that is the problem,  
14 if you're concerned about infrastructure  
15 implications, then our job is to say that under  
16 what conditions could gravel be removed? How  
17 could we minimize the effects on stocks that we  
18 would be concerned about? And so that's our role.

19 Q So you would simply say well, if the province is  
20 coming to us with this plan and proposal and the  
21 province is credible in terms of its presentation,  
22 that our job then is to see how we can accommodate  
23 the province's request; is that a fair statement?

24 MR. SPROUT: Our job is to implement our policies.  
25 That's our job. The deputy has explained that.  
26 So our policies and our programs with the  
27 resources we have, so what are our policies in  
28 this case? Well, it's a habitat policy. We have  
29 environmental legislative responsibilities and so  
30 our test is to see how well we've implemented our  
31 policies and our legislation. And it is the  
32 province's role to determine what they believe is  
33 relevant relative to the flooding implications.  
34 Our role is to react in a way that assures us that  
35 we've been consistent with our policies, given the  
36 resources that we are able to direct at that  
37 particular activity.

38 Q And you're aware that there's some studies done by  
39 UBC that show that there's no flood benefits to be  
40 derived from the gravel extraction?

41 MR. SPROUT: You know, what I'm aware of is this is  
42 controversial. What I'm really struck by again  
43 and again in this field is there's -- it is  
44 controversial. There are people that feel  
45 passionately that gravel removal is absolutely  
46 essential. There are communities in the area that  
47 you've talked about between Mission and Hope -

1           Chilliwack is one - that are absolutely insistent  
2           on gravel removal because they're concerned about  
3           the flooding effects on their community.

4           There are other interests that are very  
5           worried about gravel removal because they see it  
6           as harmful to fish. So it is rife with  
7           controversy. That I am aware of.

8           But again, from the department's perspective,  
9           what we have to go into these issues with is,  
10          okay, what is our policy? What are we trying to  
11          do? What are the resources we have? And try to  
12          adhere to that as best we can, recognizing that  
13          there may be diverse views on this matter plus  
14          many others.

15         Q     But the driving policy -- we started off this  
16               discussion, the driving policy that should inform  
17               your decision-making is conservation; is it not?

18         MR. SPROUT: The primary policy, as you correctly  
19               pointed out and you've drawn from departmental  
20               literature, is conservation. But in this case  
21               here, if I could elaborate, we're guided by our  
22               habitat policy, the 1986 Habitat Policy, and we're  
23               guided by legislation, environmental legislation.  
24               And we're further guided by consultation  
25               arrangements and understandings. So all of those  
26               things we need to bring to bear in considering the  
27               question of gravel removal and how the department  
28               would react to it to satisfy ourself that on  
29               balance we think that the gravel removal is done  
30               in the least harmful fashion possible, recognizing  
31               that this is very challenging and it's remarkably  
32               challenging to try to reconcile the differences of  
33               views in this area on gravel removal.

34         Q     Well, I agree with you that it's quite  
35               challenging. It's just another one of the  
36               challenges that faces DFO; is it not?

37         MR. SPROUT: Well, I thought you made a really good  
38               observation earlier when you talked about us being  
39               an enabler and a regulator and I thought this is a  
40               really thoughtful summary of the department. It's  
41               the way I see us as well. And so you asked the  
42               question about how do we strike that balance? And  
43               earlier yesterday I argued this. I think one of  
44               the ways we strike the balance, notwithstanding  
45               our policies, is by talking with people and by  
46               bringing people together with diverse views. So  
47               whether that's in fisheries or in habitat, you

1 talk with people that might believe in the  
2 removal; we talk with people that wouldn't believe  
3 in the removal and through that conversation, it  
4 -- I think it helps the department achieve this  
5 challenge of being an enabler plus a regulator.  
6 It's not perfect, but I believe the process side  
7 of this is an important consideration in answering  
8 the question that you posed about how.

9 Q Well, also I will put to you that one aspect of  
10 maintaining or surmounting that challenge is to be  
11 transparent, is it not; is to be absolutely  
12 transparent in the amount of information that you  
13 give to members of the public; is that not  
14 correct?

15 MR. SPROUT: Yes. I think ideally you do want to be  
16 transparent and I would argue that there is a  
17 significant transparenence in the departmental  
18 system. And I think it's a model that if you look  
19 at the department over time you can see  
20 increasingly, particularly with the access to  
21 information technology and so forth that  
22 transparenence has actually become something that is  
23 being given more and more consideration. So I  
24 agree with it on an idealistic basis and I believe  
25 the department is aspiring towards that objective  
26 and we can point out instances where we have moved  
27 toward there, but I believe it's something that is  
28 a work ultimately in progress.

29 MR. LEADEM: I'm going to allow my ten percent and stop  
30 now, Mr. Commissioner, and I look forward,  
31 Gentlemen and Ladies, to your return when I may  
32 have more specific questions to ask you. Thank  
33 you.

34 MR. WALLACE: Thank you, Mr. Leadem. I have Mr.  
35 Rosenbloom next on my list for the Gillnet  
36 Association and Area B Harvest Committee.

37 MR. ROSENBLOOM: Yes. My name is Don Rosenbloom and I  
38 appear on behalf of Area D Gillnet and Area B  
39 Seiner. I'm mindful that this panel has been  
40 presented to us in respect to organizational  
41 structure. I appreciate that we're talking from  
42 30,000 feet of elevation and I want to maintain  
43 that elevation, but I'm not in the slightest  
44 slighted if commission counsel interrupts me and  
45 indicates that there will be more appropriate  
46 individuals to advance a few of these questions to  
47 you. But I want to make sure that these questions



1           are aired at this inquiry and therefore, I pose  
2           them now for your consideration.  
3

4           CROSS-EXAMINATION BY MR. ROSENBLOOM:  
5

6           Q     Ms. Dansereau, we learn about your background in  
7           terms of bringing your skills to your current  
8           position as deputy minister and we also learned  
9           that you moved into the fisheries field as ADM two  
10          years ago in 2008 and we learn a little bit about  
11          your previous background. We also -- I have been  
12          informed by my clients that a previous regional  
13          director general for the Pacific Region, a Donna  
14          Petrachenko, was put into that position directly  
15          from a position at Parks Canada; is that correct  
16          to the best of your understanding?

17         MS. DANSEREAU: Oh, that was long before my time. One  
18         correction. I didn't come in as ADM. I came in as  
19         associate deputy minister.

20         Q     Thank you very much.

21         MS. DANSEREAU: But I guess --

22         Q     About two years ago?

23         MS. DANSEREAU: Yes.

24         Q     Yes.

25         MS. DANSEREAU: Yes.

26         Q     And in any event, others in your panel will  
27         correct me if I have in any way misstated the fact  
28         that Ms. Petrachenko came directly to the director  
29         general position Pacific from Parks. My question  
30         to you is this: what, in your opinion, is the  
31         efficacy of bringing people into such senior  
32         management positions of either associate deputy  
33         minister or indeed director general of Pacific  
34         Region when, in fact, they have not been nurtured  
35         through the Fishery bureaucracy of DFO in assuming  
36         such high positions and being responsible for  
37         management?

38         MS. DANSEREAU: Well, thank you for the question. I  
39         believe that at the more senior level, a big part  
40         of our job is to be integrators of all information  
41         and integrators of all points of view in order to  
42         provide the best possible advice, and we become  
43         far more generalist than we ever are specialists  
44         in any one field, because for a person to be a  
45         specialist in any part of this department, in my  
46         job, they would have to be a specialist in too  
47         many fields to pick from.

1                   So the skill set that I bring comes from  
2                   significant amount of natural resource management  
3                   in British Columbia. I was quite involved in  
4                   forestry here and managing a large department, so  
5                   I was Deputy Minister of Transportation in British  
6                   Columbia. That's a large department, as well.  
7                   It's a skill set that is really, as I said, an  
8                   integrator, a bringing people together, an  
9                   analyzer of risk regardless of the field and I  
10                  personally agree with the approach obviously,  
11                  because I think it -- I can be a challenger to the  
12                  information that comes before me in a way that is  
13                  not -- I don't have any historical vested interest  
14                  in.

15                 Q     And you would apply the same analysis to the  
16                     appointment of Ms. Petrachenko?

17                 MS. DANSEREAU: I don't know. I can't speak to her --

18                 Q     All right.

19                 MS. DANSEREAU: -- appointment. I didn't know her.

20                 Q     So it's a bit of an unfair question, but you're  
21                     saying that you are supportive of the concept of  
22                     bringing individuals into senior management  
23                     positions within DFO who don't actually have a  
24                     background in Fisheries?

25                 MS. DANSEREAU: I do to some extent, although I -- and  
26                     I have filled some of the senior positions myself  
27                     in the department. The management team, I was  
28                     looking at the risk, the integrated risk profile  
29                     and the champions that were identified next to  
30                     them and many of those people have now moved on.  
31                     We're in a period in the federal government of  
32                     significant demographic change and so people are  
33                     moving around, but there's a skill set and there's  
34                     an approach in values and ethics that we -- that  
35                     is shared across the system, so as a general rule,  
36                     I think if a person's own ability through our  
37                     merit system, through the interview process and  
38                     through the testing that we do as people, every  
39                     promotion in the federal system is based on a  
40                     merit principle. The merits are determined by the  
41                     people who interview and who assess, if that  
42                     person is determined to hold the proper  
43                     qualifications, then the specific background is  
44                     not necessarily relevant.

45                 Q     So you don't feel that you are prejudiced by being  
46                     given the senior appointment starting in 2008  
47                     without a direct background in fisheries?

1 MS. DANSEREAU: No.

2 Q All right. The -- I'm sorry?

3 MS. DANSEREAU: That's my view of myself, so...

4 Q Yes. I appreciate that. I want to focus for a  
5 moment with lower management backgrounds,  
6 individuals, their backgrounds and their skills  
7 and my clients, keep in mind they're the  
8 commercial fishery, they have provided me with a  
9 comment and I just want to read it to me for your  
10 response. In a briefing memo to myself from my  
11 clients it reads, in part:

12  
13 Up until the mid-1990s DFO maintained a large  
14 fleet of patrol vessels of various sizes.

15  
16 Let's stop there for a moment. I assume you agree  
17 with that?

18 MS. DANSEREAU: I think that's true, although David  
19 Bevan is much better suited to speak to that  
20 history.

21 Q I welcome anyone on the panel speaking to this.

22 MR. BEVAN: In the mid -- we ran a fleet of patrol  
23 vessels operated by the Ships Branch. We also had  
24 a number of what we call program vessels. The  
25 program vessels were not particularly good at that  
26 time and when we were faced with budget decisions,  
27 as we were, we chose the option of reduction of  
28 the patrol vessels and to increase the number of  
29 program vessels. Those are the ribs and the work  
30 boats that are run by fishery officers, as we have  
31 a very, you know, significant fishery, for  
32 example, the gillnet fishery, the fisheries that  
33 are conducted close to shore. And those platforms  
34 are very good at getting fishery officers where  
35 they need to go.

36 We also took a decision in the face of budget  
37 restraint to do that so that we could avoid having  
38 an undue impact on the fishery officer cadre, so  
39 that's what we did at the time in the face of the  
40 need to respond to budget reductions, to tackle  
41 the deficit.

42 Q Okay. Hear me out, as my clients in a memo  
43 briefing document carry on. They say:

44  
45 Many of these patrol vessels were out on the  
46 water year-round monitoring both fisheries  
47 and fish stocks.

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You generally agree with that?

MR. BEVAN: I think they were out there for longer than the program vessels can be, but I would also point out that the fisheries and the fish are not always there in the year-round process. So that means that the capacity of the program vessels is such that we can cover off the time when the fish and the fishermen are there and the reduced fleet is able to cover off the rest of it.

MR. ROSENBLROOM: All right. I see Mr. Wallace has comment.

MR. WALLACE: Mr. Commissioner, if this line of questioning is going towards enforcement, I can ensure -- assure Mr. Rosenbloom that that will be covered, but I may be wrong in the direction.

MR. ROSENBLROOM:

Q It is not actually going towards enforcement so much as it's going to the issue of whether the more junior management positions with DFO are individuals that have had experience on the grounds and know the fishery, and so allow me just a few more lines of this so you appreciate my -- in fact, I will read a number of sentences and then ask for your comment.

They say:

Many of these patrol vessels were out of (sic) the water year-round monitoring both fisheries and fish stocks. These vessels were also the training platforms for almost all fishery personnel, whether a young biologist or aspiring fisheries officers. In those days there wasn't a division between management and enforcement. People saw the fish, the various commercial fisheries, walked the streams and enumerated the returning salmon populations. DFO is now at the point where all of those personnel that acquired the empirical knowledge of the fisheries either have retired or will be in the next few years. Because the entire patrol fleet was decommissioned several vessels were retained to serve double duty as part of the Coast Guard and enforcement, is out of the water in a small fleet of Zodiacs. The new guard of DFO managers have little

1 real knowledge or experience with either the  
2 fish or the user groups that they are charged  
3 with managing.

4  
5 In fact, the DFO now hires through the  
6 standard government job competition postings.  
7 If a person has the right points, they can be  
8 hired to take over the management of a  
9 resource that they have no knowledge of.  
10 Case in point...

11  
12 And then they speak to this regional director,  
13 Donna Petrachenko.

14 Now, there's a lot there, but I ask for your  
15 comment, any of you. Am I being briefed in an  
16 accurate way in the sense that would you agree  
17 that there has been a dramatic change in the  
18 opportunities for those that are now holding  
19 management positions within DFO to be out on the  
20 grounds, learn about the fishery and conduct  
21 themselves with empirical background?

22 MS. DANSEREAU: I would say, and Sue Farlinger will  
23 answer more fully on the succession planning that  
24 happens in the region here, but in terms of the  
25 federal government as a whole, we still have many,  
26 many young people coming into the department that  
27 come from university backgrounds in fisheries, in  
28 resource management, that make their way up  
29 through the system and will eventually be the  
30 people sitting in these chairs in future, so we  
31 are -- I'm not sure -- I can't speak to whether or  
32 not you've been briefed correctly.

33 I know the point system is not something that  
34 we use in terms of hiring at this point. We -- we  
35 have a merit-based approach and that merit-based  
36 approach determines at all levels whether or not  
37 the person had the competencies to do the job, to  
38 meet the job description requirements, so it's  
39 still based on the job description. The person is  
40 interviewed, is tested, various tests at various  
41 levels, and so they must have an understanding and  
42 a knowledge of the work that they're doing and the  
43 more junior they are, the more narrow their  
44 expertise is expected to be.

45 I can say that pretty much everybody in our  
46 department is expected to have some experience or  
47 to gain some experience at working with our client

1 groups and as we defined them earlier, our client  
2 groups include everybody from communities to  
3 commercial fishers to recreational fishers to  
4 aquaculturists to environmental groups, so the  
5 knowledge base is broad. I would say that those  
6 who think that people in the past had more  
7 knowledge, I'm not sure I would agree with that  
8 point.

9 Q Well, let me direct it to Mr. Bevan --

10 MS. DANSEREAU: Okay.

11 Q -- because he has been so deeply involved in the  
12 department for so many years. Would you agree  
13 with me that the new generation or new cadre of  
14 management team at DFO have not -- will -- are not  
15 bringing to the job the empirical experience that  
16 you recall in the past where your officers and  
17 your fishery civil servants were out on the  
18 grounds?

19 MR. BEVAN: I think I'll let Paul speak perhaps to the  
20 B.C. Pacific Region or Sue to the specific issues  
21 around British Columbia. Clearly, we're in a  
22 demographic challenge. It's noted as one of the  
23 risks that the department faces and we're taking  
24 steps to deal with it.

25 One of the choices we made when we took those  
26 vessels out was to make sure we could maintain in  
27 the face of budget constraints, hiring of fishery  
28 officers, for example. So we continued to hire  
29 fishery officers. We had a few years where we  
30 didn't, but most of the time during those  
31 restraint years, we were still hiring people to  
32 keep the cadre of officers renewed. And as they  
33 gain experience, they gain the knowledge from  
34 their fellow officers. And it's a three-year  
35 process now for a new recruit in the fishery  
36 officer cadre to go through the cadet phase and  
37 then to go into the field where they're going  
38 through formal on-field training.

39 For our resource managers, I can't speak  
40 again to the specifics here, but generally we are  
41 again making sure we do whatever we can to have  
42 that intergenerational corporate knowledge passed  
43 on. It has been situations in some regions where  
44 they've had the opportunity to job-shadow and  
45 bring a person on before the other person leaves,  
46 so we are putting in place formal processes to  
47 make that happen, but the reality is your clients

1 had a lot of experience working with people who  
2 had a lot of experience and they're now faced with  
3 the situation that those individuals are going to  
4 move on and we have a challenge of replacing them.

5 I don't think the only way to learn how to do  
6 the job is to spend time on a vessel. On one  
7 hand, it is a fact that you should and we do this  
8 with our resource managers. We allow them to go  
9 on cruises. We encourage them to go on cruises to  
10 get a feel for the science work that's done, and  
11 if there's an opportunity for them to spend time  
12 in fleets where there are short trips, we'd also  
13 encourage that, want that kind of experience. But  
14 it's not the -- it's not the only thing we do for  
15 them.

16 Q Mr. Sprout, briefly...?

17 MR. SPROUT: I partially agree with your clients' views  
18 on this and I'd like to give myself -- I'd like to  
19 show my -- use myself as an example. But I also  
20 want to explore very briefly why things have  
21 changed based on my own personal experience.

22 When I started in the department back in the  
23 mid-1970s, as a biologist, I did work on the  
24 patrol vessels and on charter vessels and I did  
25 work in the -- I did work with the commercial  
26 fishing industry. That was the principal industry  
27 at that point. That was the principal client.

28 Now my view is, is that over time, it's more  
29 and more challenging for our staff to be able to  
30 have the access I had for the reasons you've  
31 indicated. But at the same time, is it completely  
32 gone? And my answer is no, it's not. Because we  
33 still conduct charters in British Columbia where  
34 we engage commercial fishermen and individuals can  
35 go out and work on commercial charters and we  
36 still have patrol vessels in British Columbia  
37 where individuals from the department can go on  
38 the patrol vessels. It's not like the degree that  
39 it was when I started, but it's still present.

40 Now, the other point I wanted to make is  
41 this. When I started, back over 30 years ago, we  
42 had really just one client. It was the commercial  
43 fishing industry. We -- the recreational fishery  
44 was in Georgia Strait. There was virtually no  
45 recreational fishery in Northern B.C., not much to  
46 speak of in the West Coast of Vancouver Island.  
47 Obviously, First Nations were there, but we did

1 not have strong relationships.

2 Environmental movement in B.C., frankly, was  
3 very modest, if even present at all in my  
4 recollection. So when you skip forward to today,  
5 that's all changed. So a young DFO member coming  
6 into the department today has to have a  
7 relationship not just with the commercial  
8 industry, but with First Nations,  
9 environmentalists, recreational fishing interests.  
10 So I think you have to look at this more broadly.  
11 So in summary, yes, I partially agree with the  
12 Area D Gillnet/B Seine. Things have changed over  
13 time. Staff probably don't have the access that I  
14 had when I first started out over 30 years ago,  
15 but also, the context has changed remarkably and  
16 the kind of people that you really want today are  
17 people that are familiar with all of the  
18 constituents, all of the clients. It's not just  
19 one group any more. And people that are able to  
20 bring them together, the integration element, so I  
21 would provide that perspective from my point of  
22 view.

23 Q And it's partly a budgetary issue, isn't it?

24 MR. SPROUT: It's not just a budgetary issue. It's too  
25 simple to say it's a budgetary issue. The reality  
26 is, is DFO has to change over time. The context  
27 changes over time. We -- constituencies emerge,  
28 issues occur that didn't occur in the past and you  
29 have to be capable of adjusting. I think the  
30 department has made those adjustments, but I  
31 represent part of the old group that's now retired  
32 where I came up through the ranks that you  
33 described that your clients referred to. But  
34 today's person, I think, has to be informed and  
35 get experience from other sources than just what  
36 might have been done traditionally.

37 MR. ROSENBLOOM: I have further questions obviously.  
38 This might be the correct time for a break, lunch.

39 THE COMMISSIONER: Yes. Thank you. Mr. Wallace, if  
40 you could renew your discussions with counsel  
41 before they leave, just to make sure. We've got  
42 two hours remaining and I want to get everybody  
43 in.

44 MR. WALLACE: Thank you, I will do that.

45 THE COMMISSIONER: Thank you.

46 THE REGISTRAR: Hearing is now adjourned until 2:00  
47 p.m.



1 (PROCEEDINGS ADJOURNED FOR NOON RECESS)  
2 (PROCEEDINGS RECONVENED)  
3

4 THE REGISTRAR: Order. The hearing is now resumed.  
5 MR. WALLACE: Good afternoon, Mr. Commissioner. We  
6 have another five minutes from Mr. Rosenbloom.  
7 MR. ROSENBLOOM: Thank you very, very much. My learned  
8 friend has forgotten the fact that Mr. Blair  
9 kindly gave me his five minutes just at the lunch  
10 hour and so I actually have ten. Look, I think  
11 the relevant thing here, Mr. Commissioner, is  
12 obviously time is of the essence in this inquiry,  
13 I respect that, but if there are questions being  
14 asked that are of assistance to the Commission at  
15 the end of the day in terms of the report, I hope  
16 that the Commission will appreciate the fact that  
17 we may be going over time, where we'll all learn a  
18 lesson in terms of being counsel and informing  
19 Commission counsel the night before that we're  
20 going to inflate our time by two or three times so  
21 we don't have this kind of pressure, but I will be  
22 brief.  
23

24 CROSS-EXAMINATION BY MR. ROSENBLOOM:  
25

26 Q I want to turn to the matter of aquaculture for a  
27 moment, and I may be the only one in this room not  
28 understanding this issue, but we have the **Morton**  
29 decision of last year, 2009, and we learn that the  
30 DFO will be applying the jurisdictional advice  
31 that the Supreme Court has given in respect to  
32 that issue and yet, we learn that out in the  
33 Maritimes, in the east coast, you were not  
34 applying that principle. Can you, very briefly,  
35 inform me how the decision of the B.C. Supreme  
36 Court, which has not been appealed, which deals  
37 with jurisdiction, would have application in  
38 British Columbia, but not in the rest of Canada?

39 MS. DANSEREAU: I can certainly do my best in answering  
40 the question. The British Columbia decision had a  
41 lot to do with definition of a fishery, but also  
42 the instrument that we use to define our  
43 relationship between the Province and the Federal  
44 Government. We use different instruments in  
45 different provinces and we have different  
46 negotiated approaches to how we manage the issues.  
47 So each province is somewhat different and we have

1           accepted that, in British Columbia, we had to  
2           develop a new way of dealing with our shared  
3           jurisdiction because it is, in fact, still shared.

4       Q       But I gather from your response that you are of  
5           the opinion that issues raised and deliberated  
6           upon by the B.C. Supreme Court do not apply to the  
7           east coast?

8       MS. DANSEREAU: Well, the regulation that we are  
9           developing at the moment applies to British  
10          Columbia.

11       Q       That doesn't quite answer my question, does it?  
12           My question is are you taking the position, as a  
13           department of the government, that the B.C.  
14           Supreme Court decision, in terms of jurisdiction,  
15           does not apply to the east coast?

16       MS. DANSEREAU: Yes.

17       MR. TAYLOR: Mr. Rosenbloom is pretty close to law  
18           here, and I don't think it's appropriate to be  
19           calling on these witnesses to answer.

20       MS. DANSEREAU: I am definitely not a lawyer.

21       MR. ROSENBLOOM:

22       Q       Thank you. My colleague --

23       MR. TAYLOR: But at the same time, she's right.

24       MR. ROSENBLOOM: In which case, if she knows the law  
25           that well, I'll carry on with this line of  
26           questioning. My colleague, Mr. McDade, raised the  
27           business of the website and the article from the  
28           *National Post* that was and is currently on your  
29           website. My colleague here to my left has  
30           indicated that he has objections to the  
31           admissibility. Mr. Commissioner, I don't want to  
32           take up valuable time in arguing this out now, but  
33           I do take the position that that article should go  
34           into the record. I take the position that I'm  
35           requesting of the Panel that there be production,  
36           especially from Ms. Farlinger, that there be a  
37           recording of the articles that have been on the  
38           website over, let's say, approximately, the last  
39           six months. So I'm formally making that request  
40           and if there are issues by counsel for the  
41           Department and myself about admissibility, I think  
42           it should be argued at another time. We don't  
43           have to take up the valuable time of this panel to  
44           argue that matter out, but I am making that  
45           request.

46       THE COMMISSIONER: Mr. Rosenbloom, may I then suggest  
47           to Commission counsel, and to yourself, and to Mr.

1 Taylor, that the article you're referencing, I  
2 believe is the one that was linked on the DFO  
3 website --

4 MR. ROSENBLUM: That is correct.

5 THE COMMISSIONER: -- and that's a DFO website that was  
6 brought up on this day, and I would suggest that  
7 the article be marked purely for identification  
8 purposes so when it comes time, if it becomes  
9 necessary to have any submissions, it is, in fact,  
10 the article that this panel and yourselves  
11 actually viewed today.

12 MR. ROSENBLUM: I appreciate that and, yes, the  
13 article is entitled, "This Science is Fishy," and  
14 if I may be permitted not only to file the article  
15 in the manner you have suggested, but also, I have  
16 the page from the website so there's reference in  
17 the website to the link of this article so there's  
18 no misunderstanding. It's a four-page -- five,  
19 six, seven-page document. I'll show it to counsel  
20 before I suggest that it be marked.

21 MR. TAYLOR: Well, I certainly have no objection to it  
22 being marked as an exhibit for identification, and  
23 then we can argue about it later.

24 THE COMMISSIONER: Right. Well, that's fine. If  
25 counsel, Commission counsel, Mr. Rosenbloom and  
26 Mr. Taylor are in agreement, it would be filed  
27 strictly for identification purposes.

28 MR. WALLACE: Thank you, Mr. Commissioner. Then for  
29 identification --

30 THE REGISTRAR: L.

31 MR. WALLACE: -- L. This is an extract from the  
32 Fisheries and Oceans Canada website of some seven  
33 pages, or so, containing an article from the  
34 *National Post* of June 18, 2010, entitled, "This  
35 Science is Fishy."

36 MR. ROSENBLUM: And may I have an understanding that  
37 Ms. Farlinger will produce the articles that have  
38 been on the website for the last, approximate, six  
39 months?

40 MR. TAYLOR: Mr. Commissioner, we have an arrangement  
41 with Commission counsel that only Commission  
42 counsel ask us for material. It works pretty  
43 well. Mr. Rosenbloom can ask Commission counsel  
44 and he can make a request to me if he wishes. I  
45 don't think we need to take up time here.

46 MR. WALLACE: Again, if we can take this under  
47 advisement and discuss it with counsel, and if

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PANEL NO. 3  
Claire Dansereau  
Cross-exam by Mr. Rosenbloom {cont'd}

1           there's a -- something on which you need to make a  
2           ruling, we'll come back to you.  
3 MR. ROSENBLOOM: Thank you. I would now ask that this  
4           document be marked as an exhibit for  
5           identification.

6 THE COMMISSIONER: That's L, yes.

7  
8           EXHIBIT L FOR IDENTIFICATION: 7-page extract  
9           from the Fisheries and Oceans Canada website,  
10          containing an article from the *National Post*,  
11          June 18, 2010, entitled, "This Science is  
12          Fishy."  
13

14 MR. ROSENBLOOM: Thank you.

15 THE COMMISSIONER: Thank you, Mr. Rosenbloom.

16 MR. ROSENBLOOM:

17 Q       My last area of examination relates to the funding  
18       of your department. And again, if I venture below  
19       the 30,000-foot range, and Commission counsel  
20       wants to inform me of a better party to ask these,  
21       direct these questions to, I'll obviously take his  
22       suggestions.

23           I read, Ms. Dansereau, from your précis of  
24       your evidence that you were to give here this  
25       week, that the Department is facing a five-percent  
26       budget reduction, and I assume that is for the  
27       fiscal year 2011 to '12; is that correct?

28 MS. DANSEREAU: Pardon me. The Federal Government is  
29       in a process called strategic review, and this  
30       would be not just for one year, it's a permanent  
31       reduction in the allocations, but it's an ongoing  
32       process that we have been asked by the Treasury  
33       Board, and by the Minister of Finance, and the  
34       structure to analyze all of our programs to --  
35       with the view of reducing our expenditures by five  
36       percent. So it's not in the old ways of putting a  
37       five-percent cut across, it's simply for us to  
38       present to Treasury Board where five-percent cuts  
39       could come from programs that may no longer be  
40       necessary.

41 Q       Now, but did I understand you to say it's a  
42       permanent thing in the sense that you're being  
43       asked to do that year after year, or did I  
44       misunderstand?

45 MS. DANSEREAU: No. No, no. Forgive me. No, it's  
46       five percent once and we get to implement it over  
47       a three-year period.

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PANEL NO. 3

Claire Dansereau

Cross-exam by Mr. Rosenbloom {cont'd}

1 Q I see. Now, this past fiscal year we're currently  
2 dealing with, 2009 -- excuse me, 2010 to 2011, was  
3 there also a budget cut for your department during  
4 that time?

5 MS. DANSEREAU: No, but there was an operational freeze  
6 and --

7 Q An operational --

8 MS. DANSEREAU: Freeze, which meant that in the budget,  
9 it was decided that we would not receive increased  
10 appropriations, but the salary increases that had  
11 been negotiated with the unions would come into  
12 play anyway, and so we have to absorb those  
13 increases without receiving new money.

14 Q Okay. Now, in addition to absorbing those  
15 increases, would I be correct in suggesting to you  
16 that you're having to absorb some unanticipated  
17 costs, and I speak firstly of the **Morton** decision  
18 and the fact that you're now inheriting a portion  
19 of jurisdiction that wasn't your jurisdiction up  
20 till recently; you agree with me there?

21 MS. DANSEREAU: I agree with you that we will have  
22 additional costs as a result, but we did receive  
23 money to cover off those costs.

24 Q I see. And money to your satisfaction in terms  
25 of --

26 MS. DANSEREAU: Yes.

27 Q -- being able to do it?

28 MS. DANSEREAU: Yes.

29 Q And so this was an added advancement to you  
30 through Treasury Board?

31 MS. DANSEREAU: Yes.

32 Q And in addition to that, you've had to bear a  
33 great expense in respect to this very inquiry,  
34 haven't you?

35 MS. DANSEREAU: Yes.

36 Q And was that also accommodated for --

37 MS. DANSEREAU: Yes.

38 Q -- in your budget?

39 MS. DANSEREAU: Yes.

40 Q And when you speak of being -- facing down a five-  
41 percent reduction for next year, is there going to  
42 be some special accommodation to cover both the --  
43 this judicial inquiry, this Royal Commission, and  
44 the aquaculture jurisdiction?

45 MS. DANSEREAU: The aquaculture funding that we  
46 received is permanent so it's what we call in  
47 addition to our base.

1 Q Yes.

2 MS. DANSEREAU: And will remain year over year. The  
3 strategic review process, however, is one where we  
4 look at all of our programming and we will make  
5 recommendations hopefully around programs that  
6 could be either accommodated under some other  
7 mechanism, or that we no longer need to do and we  
8 will provide that information to the Treasury  
9 Board ministers who will make a decision on that,  
10 and the decisions will be then communicated via  
11 the budget next year.

12 Q Well, the fact that there's going to be a five-  
13 percent cut is, obviously, consequential to all  
14 stakeholders in respect to this industry, isn't  
15 it?

16 MS. DANSEREAU: I would say -- well, to -- it could be.  
17 It depends on -- we hope we've done a  
18 significantly good enough job to make sure that we  
19 -- that there is not that much pain felt.

20 Q Well, this is an awfully general question to you,  
21 Ms. Dansereau, but would you agree with me, or let  
22 me ask you this, are all science programs,  
23 departments, projects, stock assessment, stream  
24 enumerations, et cetera, adequately funded up till  
25 now, in your opinion, during the time of your  
26 tenure?

27 MS. DANSEREAU: I would say yes, but it -- you know,  
28 I'm sure if we spoke to others at a greater --  
29 more directly connected to each of the activities,  
30 they would probably prefer to have more money.

31 Q And you'd probably agree with me that within your  
32 department, there would be controversy and there'd  
33 be those that didn't agree with you on that  
34 question?

35 MS. DANSEREAU: Always.

36 Q Always.

37 MS. DANSEREAU: In any department.

38 Q Yes. I also read that in the B.C. Budget Plan,  
39 and this is a document that we had yesterday, just  
40 give me a moment, please, I read in your business  
41 plan, 2010/2011, I'm not good at exhibit numbers,  
42 but Mr. Registrar will give me the exhibit number  
43 for Business Plan 2010/2011.

44 THE REGISTRAR: 25.

45 MR. ROSENBLUM: 25? Thank you.

46 Q I read, under -- at page 3 of 28, it's the  
47 Intergovernmental Relations section, down at the

1 bottom of the page, you say, in part -- you, the  
2 Department, says, in part:

3  
4 Additionally, the B.C. budget situation is  
5 resulting in withdrawal of funding for  
6 provincial source management programs,  
7 services and initiatives which places higher  
8 expectations and pressures on Duo's funding.  
9

10 My question to you is this. Can you just brief  
11 us, even in a cursory way, what are you facing  
12 there in terms of British Columbia budget and how  
13 is it affecting DFO and your department's  
14 financing?

15 MS. DANSEREAU: I can't speak to the B.C. budget at  
16 all, but I can say that there is an increase in  
17 activity that could have an impact on fish habitat  
18 monitoring and fish habitat analysis and so we  
19 will -- as B.C.'s economy progresses and then  
20 grows, we will have an added workload. That is  
21 essentially what I -- what -- this is what I think  
22 Sue is best placed to speak to that specific item.

23 Q Yes, I wonder if you could explain that paragraph,  
24 Ms. Farlinger.

25 MS. FARLINGER: Well, once again, I'll say that Mr.  
26 Sprout was RDG when this business plan was put  
27 together, but I certainly participated in that.  
28 There has been an increase in the number of people  
29 on the ground on some provincial programs, and  
30 these are folks that we work together with in  
31 terms of some of our work on fish habitat. There  
32 is a reference there to new projects, in terms of  
33 our having to do reviews and, therefore, respond  
34 to issues on fish habitat with new projects.

35 Q Is the B.C. budget situation putting added  
36 pressure on your budgetary situation?

37 MS. DANSEREAU: Sorry, I would -- I'm sorry, I just  
38 don't think it's the B.C. budget pressure, it's  
39 more the growth in the economy and in the resource  
40 side of things that would be putting pressure on  
41 our activities.

42 MR. ROSENBLOOM: Might I ask, Commission counsel, will  
43 there be other opportunities to explore this  
44 critical question of the funding of the  
45 Department, and whether it's adequate and whether  
46 it's providing the services?

47 MR. WALLACE: Indeed, Mr. Rosenbloom. Thank you. At

65  
PANEL NO. 3  
Paul Macgillivray  
Cross-exam by Mr. Harvey (WCTAGA/UFAWU)

1 the -- the last two panels scheduled for the  
2 hearing are a return of senior officials, I  
3 anticipate, including the Deputy Minister, and  
4 immediately before that, a panel on budgeting.  
5 That's a factor that it seems to be appropriate to  
6 deal with those things after we'd heard the  
7 individual issues and, also, we don't yet have all  
8 the information we require.

9 MR. ROSENBLOOM: Thank you. I have no further  
10 questions. Thank you.

11 MR. WALLACE: Thank you. Thank you, Mr. Rosenbloom.  
12 Mr. Harvey?

13 MR. HARVEY: So it's Chris Harvey for the Area G  
14 Strollers and the UFAWU. I have a few questions  
15 to put to the panel on the -- under the general  
16 subject head of organization structure, and my  
17 questions pertain to the analysis of economic  
18 impacts of fishery management decisions.

19  
20 CROSS-EXAMINATION BY MR. HARVEY:

21  
22 Q First, Mr. Macgillivray, I see from your c.v. that  
23 from 1994 to 1997, you were the Chief Economic and  
24 Commercial Analyst in the Pacific Region; is that  
25 correct?

26 MR. MACGILLIVRAY: Yes, that's correct.

27 Q Yes. Can you just give a description of what that  
28 position involved?

29 MR. MACGILLIVRAY: Yes. Various aspects to the  
30 position, but maybe I'd start with on fish  
31 harvesting issues like -- I'll use an example of  
32 how the commercial salmon fishery is managed, and  
33 during that period, 1994 to '97, there was quite a  
34 bit of work done looking at, in particular, the  
35 commercial fishery and changes to the licensing  
36 and allocation arrangements for commercial salmon.  
37 In 1995, there was a big, what was called a  
38 Pacific Policy Roundtable that explored various  
39 potential changes to the commercial salmon  
40 fishery. The outcome is what was known as the  
41 Mifflin Plan which introduced area licensing,  
42 single-gear licensing, there was a licence  
43 retirement program, those types of things.

44 Q Yes.

45 MR. MACGILLIVRAY: As part of that process, the group  
46 that I headed at the time worked with the large  
47 number of participants, mainly drawn from the



1 commercial fishery, to identify possible changes  
2 in the management and licensing of the commercial  
3 fishery. And again, as part of that exercise, our  
4 group prepared a variety of papers. So we looked  
5 at what would be the impact of a licence  
6 retirement program, what would be the likely  
7 impact of single-gear licensing and area  
8 licensing, and so on.

9 Part of that analysis was economic analysis  
10 to get a better appreciation of the potential  
11 financial implications on the fishing fleet,  
12 itself, as a result of changes. So I'd use that  
13 as one example.

14 Q All right. Well, that's sufficient on that, but  
15 on that subject, did you look at the impacts with  
16 respect to reduced employment, did you look at the  
17 impacts on coastal communities in remote areas of  
18 B.C.?

19 MR. MACGILLIVRAY: Partly looked at the impact on  
20 individuals and communities through that process  
21 and subsequently, after the Mifflin Plan was  
22 introduced, there were a number of reports,  
23 studies that focussed almost exclusively on  
24 impacts on communities and individuals, and that  
25 was used as the basis for government programs that  
26 were designed to help with that transition from a  
27 large salmon fleet distributed throughout the  
28 province, to a smaller salmon fleet employing  
29 fewer people.

30 Q Was that done in your Economic and Commercial  
31 Analysis Unit?

32 MR. MACGILLIVRAY: No, the latter -- I'll back up.  
33 Part of what we looked at in the Pacific Policy  
34 Roundtable, and generally, when we're looking at  
35 changes in the way that a fishery, commercial  
36 fishery, for example, might operate, we looked at  
37 several factors. One would be what would be the  
38 expected change, expected impact of the change  
39 from a biological management perspective? So from  
40 a -- if you look at the conservation objectives  
41 for the fishery, how would a change like area  
42 licensing, for example, influence the ability to  
43 achieve conservation objectives? The second would  
44 be what's the impact on the economic or financial  
45 performance of a commercial fishery? The third  
46 thing is looking at the distributional impacts.  
47 So are there changes in the way that the revenue

1 from the fishery would be distributed as a result  
2 of a change in the way fisheries management is  
3 managed, or the question that you raised, the  
4 number of people employed. So that gets picked up  
5 in terms of the distributional impacts.

6 In the later work -- and there are other  
7 factors, as well. I won't go into those. But in  
8 the later work that was focused on individual and  
9 community impacts associated with changes that  
10 were introduced in the Pacific salmon fishery,  
11 those studies were -- there were two major  
12 studies, actually three. Two were carried out by  
13 the B.C. Job Protections Commissioner, and one was  
14 carried out by a panel led by three individuals,  
15 one representing the Province of B.C., one for the  
16 Federal Government, and an independent chair.

17 Q I see. Does -- so that is not something that is  
18 routinely done within the Department of Fisheries  
19 and Oceans, itself, is that -- am I correct in  
20 that?

21 MR. MACGILLIVRAY: Conducting community impact  
22 assessments?

23 Q The impacts on the communities up and down the  
24 coast of fishery management decisions.

25 MR. MACGILLIVRAY: From my experience, that's not  
26 something that I had done a lot over the years,  
27 other than in the context that I described in  
28 terms of looking at the distributional impacts  
29 associated with a proposed change.

30 Q Yes. Does the position, Chief Economic and  
31 Commercial Analysis still exist within the DFO  
32 organizational structure?

33 MR. MACGILLIVRAY: I believe so. I believe the  
34 position still exists. There's an economics group  
35 within the policy sector. What I don't know is if  
36 the title of the job has changed, but there is  
37 a --

38 Q Who -- sorry.

39 MR. MACGILLIVRAY: There is a position that would have  
40 been similar to the one that I held.

41 Q Yes. Because I understand from previous testimony  
42 and information I've received that the Economics  
43 Unit within DFO has been much reduced from what it  
44 was 20 and 30 years ago; would you agree with  
45 that?

46 MR. MACGILLIVRAY: I would think that's probably true.  
47 I didn't describe other parts of this work, but

1 the economics group that existed at the time that  
2 I headed that group, and previously, also, I  
3 talked about the harvesting side of the job, on  
4 the production side, the salmon enhancement side,  
5 there was a fairly large group of economists that  
6 were put in place back in the late 1970s when the  
7 Salmon Enhancement Program was set up, and the  
8 focus of that group was to largely conduct benefit  
9 cost analysis and determine the most effective  
10 investments for salmon enhancement. And then over  
11 the years, that work would carry on to look at  
12 should there be changes in where the salmon  
13 hatchery investments take place. And again, over  
14 the years, that function has diminished as the  
15 program stabilized. There are currently, I  
16 believe it's 19 hatcheries. The amount of work  
17 that had been done previously on benefit cost  
18 analysis is no longer required and so that part of  
19 the economics group, that focus for an economics  
20 group is no longer there. And I believe the  
21 numbers are significantly lower.

22 Q Yes. All right. I don't want to get into too  
23 much detail, but I'd like to ask Mr. Bevan about  
24 something that he said in the course of his  
25 testimony, and that was that an economic analysis  
26 was done when the question arose whether Cultus  
27 stocks should be listed under **SARA**, the **Species at**  
28 **Risk Act**; is that correct?

29 MR. BEVAN: That's correct.

30 Q Yes. And can you help me identify that economic  
31 analysis and let me know where I can find it?

32 MR. BEVAN: I can't recall the -- it was done,  
33 obviously, at the time of the decision to not list  
34 the Cultus Lake. I can't recall the actual form.  
35 It was done by our policy people who also have the  
36 responsibility within that --

37 Q Yes.

38 MR. BEVAN: -- group to do the economic analysis. But  
39 I can't identify a specific document off the top  
40 of my head.

41 Q All right. And you don't know whether that's been  
42 disclosed in these proceedings, or not?

43 MR. BEVAN: No, I don't.

44 Q All right. Well, that -- I'll follow that up with  
45 Mr. Taylor or Mr. Wallace. If the Cultus and  
46 Saginaw stocks had been listed under the **Species**  
47 **at Risk Act**, do you agree with me that there would

1           be a requirement every five years to conduct an  
2           analysis of the socio-economic impacts and to --  
3           and, I think, to -- I'm not sure what has to be  
4           done with the study, but it does -- it would have  
5           to be done every five years?

6       MR. BEVAN: There's provision for review of the status  
7           of the stocks after five years.

8       Q       Yes.

9       MR. BEVAN: And the government would have to then  
10           conclude what they would do with the updated work  
11           from COSEWIC. So COSEWIC would evaluate the  
12           status of the stock after five years --

13       Q       Yes.

14       MR. BEVAN: -- as they've done, for example, on the  
15           Atlantic Coast with several species, and at that  
16           point, the government would have to determine what  
17           work and information would be needed to support a  
18           decision to be taken relevant to any significant  
19           change in status. If the status doesn't change,  
20           then the government would have to evaluate whether  
21           or not further work would be needed to inform --

22       Q       Yes.

23       MR. BEVAN: -- the ministers as to what the next step  
24           should be. So it doesn't automatically mean that  
25           there would be an updated valuation of the  
26           economic impacts.

27       Q       Well, let me be a bit more specific. I'm  
28           referring to s. 55 of the **Species at Risk Act**,  
29           which reads:

30  
31                   The competent minister must monitor the  
32                   implementation of an action plan and the  
33                   progress towards meeting its objectives and  
34                   assess and report on its implementation and  
35                   its ecological and socio-economic impacts  
36                   five years after the plan comes into effect.

37  
38       MR. BEVAN: That's for a plan that's under the **Species**  
39           **at Risk Act**.

40       Q       Yes.

41       MR. BEVAN: And in the case of Cultus Lake, the  
42           decision was made to use the **Fisheries Act** as the  
43           vehicle by which we would authorize the rebuilding  
44           plans.

45       Q       Yes. And does that mean that the Minister is  
46           relieved of the duty that he would otherwise have  
47           to report on socio-economic impacts every five

1           years?

2       MR. BEVAN: Yes, that's the case because those  
3           provisions are not included in the **Fisheries Act**.

4       Q     Yes. Now, I think it was Ms. Dansereau who said,  
5           "We, at the senior level, determine what risks are  
6           tolerable." Do you make that determination  
7           without the benefit of a socio-economic impact  
8           report?

9       MS. DANSEREAU: The first risks that we assess are  
10           always the biological or ecological risks, and we  
11           do those separate from a socio-economic analysis.

12      Q     Have you done a socio-economic analysis of the  
13           impacts of the -- what's been referred to as the  
14           weak stock management methodology?

15      MR. BEVAN: We have an obligation to maintain  
16           biodiversity and we have seen that there's an  
17           obvious, and significant, and severe, in some  
18           cases, socio-economic impact of not looking after  
19           the resources that we're responsible for managing  
20           in a sustainable way. So we did not necessarily,  
21           I don't believe, and I'll have to turn it over to  
22           the regional people, but we didn't do a socio-  
23           economic analysis when looking at the fundamental  
24           issue of should we take action to conserve stocks  
25           and to conserve the biodiversity of those -- of  
26           the populations that support economic activities  
27           as we have considerable and unpleasant experience  
28           in situations where we didn't look after the  
29           stocks first and socio-economic impacts were much,  
30           much more severe than had we taken care of the  
31           fish first, and the -- that would have allowed us,  
32           then, to have fish to take care of fisheries.

33      Q     All right. Well, I'll come back to this question  
34           when you next appear, and in the meantime, I will  
35           work with other counsel to determine whether there  
36           are any analyses in the productions with respect  
37           to ecological and socio-economic impacts. So I'll  
38           leave that for now.

39           We've heard of the shift from -- shift to  
40           eco-based or ecosystem-based management, the shift  
41           away from simply counting fish, as I think it was  
42           described. This has been accompanied, has it not,  
43           with a number of different models which are  
44           applied in the decision-making process; is that  
45           correct?

46      MR. BEVAN: There's a number of -- it depends on the  
47           strategies used for the management of the

1 particular fisheries and the group of fisheries.  
2 On this coast, of course, there's an interesting  
3 model with the integrated ground fish process, and  
4 that looks at a number of species and tracks the  
5 catch and bi-catch, et cetera. In other cases, in  
6 quota-managed fisheries, we would look at the  
7 productivity of the ecosystem to inform what kind  
8 of decisions should be taken and also look at the  
9 status of the stock relevant to abundance.

10 Q Yes.

11 MR. BEVAN: Age, class, makeup and things of that  
12 nature. So there's no one model that would be  
13 applicable across the whole suite of fisheries and  
14 ecosystems. Rather, there's a number of models  
15 that would be applied, depending on their  
16 appropriateness for the circumstances.

17 Q Would you -- let me just tell you the information  
18 that I'm receiving from my clients and see whether  
19 you wish to comment on it, and this follows up on  
20 Mr. Rosen bloom's questions about the loss over  
21 the years of the empirical knowledge. I'm told  
22 that there's been a -- with the loss of empirical  
23 knowledge and the challenges you have that you've  
24 described already with respect to recruitment of  
25 personnel, there's more and more reliance on  
26 models such as, for example, a model indicating  
27 that in the seine fishery, off the mouth of the  
28 Fraser, there will be a three-percent limit on the  
29 uptake of North Thompson Coho. That's just to use  
30 one example. But this is the sort of thing that  
31 goes into a model now, rather than being based on  
32 empirical experience.

33 MS. FARLINGER: Perhaps I can start to get to that  
34 question, but I do think there are a couple of  
35 sections coming up in the evidence with, first of  
36 all, the experts from the Pacific Salmon  
37 Commission, and also the stock assessment experts  
38 that can speak to how models are used either to  
39 arrive at parameters or, in fact, to model in-  
40 season run size for -- in this instance, for  
41 Fraser sockeye.

42 There are different kinds of models used for  
43 different purposes, and those are based on both  
44 historical and recent information. But once  
45 again, I think the best experts in terms of what  
46 kind of models are used for what question would be  
47 best addressed to the stock assessment.

1 Q All right. Thank you. I'll move on. The final  
2 area I'd like to question you on is this, and this  
3 is with respect to the organizational structure.  
4 Is there any organizational mechanism for  
5 determining whether or not this new eco-based  
6 system is working? And this is in the context of  
7 apart from 2010, we've had a steady decline in the  
8 sockeye run since 1992, or thereabouts. So what  
9 I'm asking is what kind of analysis, if any, goes  
10 into assessing the ecosystem-based model, as  
11 opposed to the former model that existed prior to  
12 the 1990s?

13 MR. SPROUT: My response is going to be long because  
14 you raise a number of points. There isn't --  
15 there never has been one model. And I'd like to,  
16 again, explain from my perspective, as a  
17 management biologist, and later as a manager, how  
18 we manage some of the fisheries, and I'd like to  
19 deal with your clients on the west coast of  
20 Vancouver Island.

21 Prior to the early '80s, we opened the troll  
22 fishery on April the 1st, and then we closed it  
23 sometime in the fall of that year. We never  
24 counted the fish that were caught at all during  
25 the season, period. At the end of the season, we  
26 collected sales slips. So this is where the  
27 fisherman land their fish, the processors buy  
28 their fish, and that transaction creates something  
29 called a sales slip.

30 Q Yes.

31 MR. SPROUT: So over the course of the year, the  
32 fishery was largely not managed. It was allowed  
33 -- it was opened and then closed and then at the  
34 end of the year, the fish were tallied.

35 Now, I want to go forward to today. Today,  
36 we use DNA analysis, we use all sorts of stock  
37 assessment identification techniques to actually  
38 try to determine the presence of stocks of concern  
39 mixed with many other populations to determine  
40 when that fishery can take place, how many fish it  
41 can catch, and when it should close. Now, that's  
42 happening today. Now, that approach, today, is  
43 much more sophisticated than the approach in the  
44 1980s.

45 Now, the question you're -- you might be  
46 asking is, "Well, okay, is the sophistication  
47 you're applying, is that the reason why we're not

1 catching as many fish? Is that the reason the  
2 population is declining?" Well, the Department  
3 believes that one of the reasons, the fundamental  
4 reasons that populations have been declining is  
5 because of poor ocean productivity. We can track  
6 the decline in marine productivity starting from  
7 the late 1980s through to today. The evidence is  
8 compelling that the fish that are going out into  
9 the ocean are not surviving at the rates that they  
10 used to survive at prior to the 1990s, certainly  
11 in the period when I was a management biologist.

12 So the sophistication of the techniques today  
13 are not the explanation for the current challenges  
14 with our salmon. We think it's much more likely,  
15 the explanation, are the issues around marine  
16 productivity and possibly some habitat issues, but  
17 those would be localized.

18 So I'm trying to answer your question.  
19 You're giving the impression that you -- that  
20 there's a model that existed at a certain point,  
21 and then a new one was adopted and that there are  
22 two models to compare, but, in fact, there's not  
23 two models to compare. There is a gradual  
24 sophistication over a period of decades increasing  
25 attention to populations because of sophisticated  
26 assessment techniques, much more attention to  
27 catch and monitoring and documentation over a  
28 period of time.

29 Q Well, Mr. Sprout, you say that, but if there had  
30 been a run prior to the 1980s, a run size like we  
31 had this year, the strollers on the west coast  
32 would have been fishing those fish. There would  
33 have been -- under that management model,  
34 decisions would be capable of being made which  
35 would have allowed them to fish, whereas this  
36 year, I'm told, and you're no doubt aware, that  
37 the models dictated a result which meant that they  
38 were not fishing, did not have any access at all.  
39 None of the west coast fishermen or communities  
40 had any access to the sockeye runs this year.

41 MR. SPROUT: Okay. The models were not the reason why  
42 the Area G Strollers weren't able to fish. What's  
43 happened is that the Department, today, is very  
44 sensitive to the weak populations that are mixed  
45 with the productive populations. So we talked  
46 about Cultus sockeye. In fact, one of the -- we  
47 have been questioned on what the exploitation rate



1 was in 2010 with a view that it was higher than it  
2 should have been. In the 1980s, and before, we  
3 would have managed only to the most productive  
4 sockeye populations so we would have applied an  
5 exploitation rate of 70 percent. We would have  
6 harvested seven out of every 10 fish that came  
7 back, in the 1980s, or before.

8 Today, what we are trying to do is to  
9 increase our genetic diversity, is to protect it.  
10 So that means you have this dilemma. You have  
11 populations that are mixed in outside fisheries,  
12 like the west coast of Vancouver Island, that are  
13 mixed with populations that are not productive,  
14 like Cultus. And so the challenge is what is a  
15 reasonable exploitation that still permits some  
16 harvest, but still allows for the protection of  
17 those stocks that are depressed. The policy that  
18 we're following today was developed over the  
19 course of the '90s and into the period of 2000,  
20 and so the explanation for why Area G Strollers  
21 did not fish in 2010 is not the models. You must  
22 go to the policy. You must go to what drives the  
23 Department and that are the policy objectives that  
24 it's trying to achieve. Those objectives have  
25 changed over time to reflect our orientation on  
26 genetic diversity.

27 MR. WALLACE: Thank you. Mr. Commissioner, if we're  
28 going to spend more time on this, this is very  
29 much part of harvest management, which we will be  
30 hearing about in a few weeks. Are you done, Mr.  
31 Harvey? Thank you.

32 MR. HARVEY: No, I'm just taking a break for two weeks.

33 MR. WALLACE: Mr. Caldwell for the B.C. Wildlife  
34 Federation and B.C. Federation of Drift Fishers.

35 MR. CALDWELL: Mr. Commissioner, I did estimate 20  
36 minutes for my cross-examination, however, Mr.  
37 Rosenbloom did take some of the wind out of my  
38 sails, so to speak, so I don't anticipate needing  
39 as much time. I do have one question which I  
40 would like to ask Mr. Bevan, which arose from a  
41 question that he was asked by Mr. McDade, and I'm  
42 not sure of what the protocol is, if I might be  
43 allowed to ask that question at this point in  
44 time? Okay.

45

46

47

1 CROSS-EXAMINATION BY MR. CALDWELL:  
2

3 Q Now, Mr. Bevan, during your cross-examination by  
4 Mr. McDade regarding the sustainability of  
5 aquaculture, you said, and I'll quote you as best  
6 I can, that, "If one wants to be a conservation  
7 organization, one can stop everything, all  
8 harvest, but that is not what the people of Canada  
9 want." Now, the question that I would have for  
10 you is would you agree that the same view applies  
11 with respect to weak stock management of Fraser  
12 River sockeye? And what I mean by that is if the  
13 Department of Fisheries wants -- Fisheries and  
14 Oceans, wants to be a conservation organization,  
15 it could stop all fishing of all Fraser stocks,  
16 but would you agree that the people of Canada do  
17 not want to stop all fishing of all stocks on the  
18 Fraser River to protect the weak stocks?

19 MR. BEVAN: As noted by the Deputy, it's the ministers,  
20 and the government, and parliamentarians that  
21 provide us with broad policy guidance. We are  
22 charged on behalf of Canadians to manage the ocean  
23 spaces, aquatic ecosystems and the fisheries  
24 resources to sustain an economic activity, but  
25 also, as I said, it has to be sustainable. So I  
26 don't think that people want us to shut down all  
27 activities in order to create a oceans park that  
28 nobody gets to use and that we, therefore,  
29 preserve it. And I think what we are looking at  
30 is the balanced approach between maintenance of  
31 biodiversity and maintenance of the ecosystem so  
32 that today's generation and future generations  
33 will have an opportunity to have an economic  
34 activity and to sustain themselves in other ways,  
35 it's not just money, on those resources.

36 We don't believe we can actually do that with  
37 the old models. The old models, we have seen not  
38 just in the Pacific, we have seen that when we  
39 fish too hard and simplify populations, that they  
40 become very susceptible to ecological shock and  
41 then they're gone and no longer able to sustain  
42 communities, et cetera. So we have learned, and  
43 we are supported in this process by ministers and  
44 that, to us, is where we receive the mandate from  
45 the public through a process that's supported  
46 through Parliament. We, of course, as Mr. Sprout,  
47 has gone -- has explained, we have dialogued with

1 people with a wide variety of views and we try to  
2 come to a balanced approach that looks at that.

3 So we haven't gone out and done a poll as to  
4 whether or not weak stock management is your  
5 preference. We know that there are certain people  
6 who want to go back to the old way of doing  
7 business. We don't think that in the current  
8 environmental conditions that would be sustainable  
9 for any length of time and that it would be a  
10 problem for future opportunities, anyway. So it's  
11 not a model that we would recommend and it's not  
12 where we are at this time. So no polls were done,  
13 but I think in terms of the collective views that  
14 we have received from stakeholders in our broad  
15 consultations, that we have landed on the right  
16 balance.

17 MR. CALDWELL: Thank you. Those are my questions.

18 MR. WALLACE: Thank you, Mr. Caldwell. Next on my list  
19 is the First Nations Coalition, Ms. Gaertner.

20 MS. GAERTNER: Thank you, Mr. Commissioner. It's  
21 Brenda Gaertner for the First Nations Coalition.  
22 I want to begin by thanking the panel for your  
23 willingness to be here for the last two days. And  
24 just to inform you a little bit about the approach  
25 of the clients that I represent in this  
26 Commission, I'm representing a large spectrum of  
27 First Nations organizations, including a couple of  
28 the First Nations organizations like the First  
29 Nations Fisheries Council, and the Fraser River  
30 Aboriginal Fisheries Secretariat, which are two  
31 more aggregate organizations.

32 And I also want to let you know, in terms of  
33 the line of questioning that I'm asking today,  
34 that one of the primary focuses of the clients I'm  
35 representing in this inquiry, which I've let Mr.  
36 Commissioner know on a number of occasions, is the  
37 importance of his recommendations coming out of  
38 this inquiry and the goal of achieving those in  
39 some kind of collaborative manner. I appreciate  
40 that the more time I spend in this courtroom, the  
41 more difficult the sense of collaboration can be  
42 achieved, but I can venture to say that many of  
43 you that have been working in the fishery, and I  
44 heard from Mr. Sprout's comments earlier that one  
45 of the biggest challenges associated with  
46 management is collaboratively working together.

47 So in my line of questions, I'd like to focus

1 on the decision-making structures that you've  
2 talked about and, in particular, some of the  
3 challenges associated with your decision-making  
4 structures and some of the First Nations'  
5 decision-making structures that I'm more familiar  
6 with, and that will be largely the focus of my  
7 questions going forward.  
8

9 CROSS-EXAMINATION BY MS. GAERTNER:

10  
11 Q Mr. Bevan, I'm going to start with you because you  
12 began, or you've sort of grounded some of the new  
13 work of the Department of Fisheries and Oceans in  
14 the ecosystem approach. And you'll appreciate  
15 that from a First Nations' perspective, an  
16 ecosystem approach is very welcomed. And I want  
17 to begin by seeing whether you'll agree with me on  
18 a couple of things. First of all, you can't  
19 really do ecosystem approach from the 70,000-foot  
20 level, that ecosystem approaches are really best  
21 found locally and grounded in the environment?

22 MR. BEVAN: They have to be grounded in the  
23 environment, obviously. And again, this goes back  
24 to what kind of challenge you're facing. Some  
25 populations are local, some they don't -- they're  
26 not subject to a wide variety of pressures across  
27 the ocean and through many jurisdictions. So if  
28 you have a local population, it's more amenable to  
29 local knowledge and local management. When you're  
30 dealing with something like sockeye where we have  
31 the possibility of interception fisheries, and  
32 when you have the whole range of exposure to  
33 potential mortalities, it becomes a lot more  
34 difficult to have a local focus on it. Local  
35 focus is good for the management of the fishery in  
36 that area and helps understand the ecosystem's  
37 impact on the migrating fish, for example, and way  
38 back to the spawning grounds, but in the case of  
39 salmon, it does require international cooperation  
40 right from the North Pacific Anadromous Fish  
41 Commission that ensures drift netting does not  
42 take place on the high seas, through to  
43 collaborative science, through to Pacific Salmon  
44 Treaty where the countries that can, that's Canada  
45 and the U.S., the countries that can cause fishing  
46 mortality are cooperating, and through to working  
47 with all the First Nations with an interest those

1 stocks. So it's -- in salmon, it's more difficult  
2 to get -- have the whole picture localized because  
3 of the huge range in scale and where the fish can  
4 be subject to mortality and the fact that we need,  
5 that's all the countries in the north Pacific, to  
6 work on not fishing on the high seas and stopping  
7 others from doing so illegally, through to  
8 collaborative science and collaboration with our  
9 partners in the United States and all of the  
10 fishing interests, and all of the First Nations.

11 Q So you might agree with me that one of the  
12 challenges associated with ecosystem management  
13 for the Fraser River sockeye is not so much, as  
14 you said yesterday, managing the fish, we don't  
15 really manage the fish, we watch the wild stocks  
16 and we assist in the habitat, but more challenging  
17 is managing the people that are relating to those  
18 fish?

19 MR. BEVAN: That is -- well, not managing the people.  
20 It would be nice if we could work collaboratively  
21 with the -- and partner with them. And that's  
22 been a big change that we've seen in the -- excuse  
23 me -- in the Pacific Salmon Treaty context was the  
24 treaty was signed in the '80s, but we didn't come  
25 to agreement with the Americans for some time on  
26 the details and the regional people can talk more  
27 -- with more authority and more detail on that,  
28 but that led to competition for the fish, and then  
29 any time there's a fish war or competition, it's  
30 not the people who are the first casualty, it's  
31 the fish. So that recognition pulled us together,  
32 and we can use the **Fisheries Act** to manage people  
33 if it's -- but that's really our last resort. We  
34 would prefer to have a collaborative approach and  
35 everybody to put the salmon first and to work  
36 collaboratively on how to achieve that, and then  
37 how to use it in a sustainable way.

38 Q All right. So there's just two more questions I  
39 have in this vein of you, Mr. Bevan, and the first  
40 is there was quite a long discussion at one point  
41 in time, at the national roundtable, on the  
42 environment and economy in 1988, and I'm not going  
43 to turn you to any document, but one of the things  
44 that I learned from that discussion, and I'm  
45 wondering if you'll agree with me on, is that in  
46 order to really implement successfully an  
47 ecosystem approach to a complex resource

1 management, you need to develop capacity within  
2 the people, the communities, all the various  
3 governments, and the various organizations in  
4 order for them to identify and resolve the  
5 challenges and the problems, themselves, within  
6 the ecosystem?

7 MR. BEVAN: I think capacity to do that is important.  
8 We are still working on our own capacity, so to  
9 speak, as we made the switch from one type of  
10 management to another, and that's meant that we  
11 have to use the transition of people, et cetera,  
12 to help us make that. We do recognize capacity,  
13 obviously, with a number of our programs, the AFS  
14 program, AAROM, and other programs, that those are  
15 programs that are help -- move us in that  
16 direction. So I recognize that and we have put --  
17 directed some of our programming to that effect,  
18 to achieve that.

19 Q All right. And so then I want to ask, as you  
20 begin to implement more directly the policies  
21 around ecosystem management that have now been  
22 developed at the headquarter level and at the  
23 regional level. What work has DFO begun to do to  
24 geographically link the ecosystem approach in the  
25 Fraser River, for the Fraser River sockeye, and  
26 your earlier comment clearly identified, there's  
27 not just one ecosystem in the Fraser River  
28 sockeye, there are many ecosystems within the  
29 Fraser River sockeye. What work are you doing to  
30 link that ecosystem approach with the development  
31 of collaborative management approaches within the  
32 various ecosystems? And if you haven't identified  
33 particular policies, what steps are you taking  
34 towards doing that work?

35 MR. BEVAN: I think we -- looking at it from the  
36 national level, and you're looking at it from the  
37 region so I'll ask if Sue Farlinger can respond to  
38 it.

39 Q I'd be happy to have Sue's answer.

40 MS. FARLINGER: Thanks for that question. Not  
41 surprisingly, it's a fairly complex answer. Part  
42 of the work that we've been doing is in capacity  
43 building and that is in trying to advance the  
44 collaborative relationships that have been built  
45 in some measure over the last 15 to 20 years. And  
46 those are occurring in a couple of ways.

47 Part of our programming has been dedicated to

1 working very closely with all of the First Nations  
2 who have accessed Fraser sockeye through a process  
3 I think you're familiar with called the forum.  
4 This is really to better inform DFO and to build  
5 capacity in the aboriginal communities and in DFO  
6 to understand what the knowledge in those  
7 communities is, and what the challenges are  
8 between the communities. With so many First  
9 Nations needing access to those stocks for their  
10 food, social and ceremonial fisheries, the  
11 challenges there are huge. So that's partly on  
12 the people side. Another piece on the people side  
13 is some work we've been doing that Mr. Sprout  
14 initiated about three years ago in the integrated  
15 salmon dialogues. And these are aimed at the same  
16 thing, which is to try and create that capacity in  
17 the various fishing sectors to work together, to  
18 work collaboratively.

19 So I'll just stop there. There are other  
20 efforts being supported in that vein. In terms of  
21 bringing ecosystem considerations into management,  
22 some of the work we've done between resource  
23 management and science are to integrate the salmon  
24 stock assessment information into the State of the  
25 Oceans Report, which we do annually, and to take  
26 the information back the other way into the --  
27 some of the science that's done on individual  
28 stocks and both the assessments and any forecasts.

29 We've also -- and I think we're going to go  
30 into this later in terms of looking at  
31 implementing the wild salmon policy, but I'll just  
32 speak to it generally, the definition of  
33 conservation units, the development of indicators  
34 for those units, such as limit reference points,  
35 the habitat kind of indicators that are set out as  
36 a commitment in strategy 2 in the wild salmon  
37 policy, the piloting of multi-sector groups on key  
38 watersheds, including some of the work in the  
39 Fraser, on the Somas River, and in the Skeen  
40 River. So this just gives you a general overview  
41 of the kinds of different strategies we're trying  
42 to use at the people level, at the science level,  
43 and then at the management level to begin to bring  
44 an ecosystem bent into all of those activities and  
45 ultimately, into the management of the salmon.

46 We have done some work with First Nations on  
47 the integration of traditional knowledge. I would

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1 say that there is much work to be done on that  
2 front.

3 MS. GAERTNER: Thank you. That's very helpful. I have  
4 a few questions --

5 MR. WALLACE: Sorry, Ms. Gaertner. Mr. Commissioner,  
6 it's a little after 3:00. We're about halfway  
7 through the afternoon. I'm not sure if this is a  
8 good time to break?

9 MS. GAERTNER: That's fine.

10 THE COMMISSIONER: That's convenient to you, Ms.  
11 Gaertner?

12 MS. GAERTNER: It's a convenient time to break, yes.

13 MR. WALLACE: Thank you.

14 THE REGISTRAR: The hearing will now recess for 10  
15 minutes.

16

17 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)

18 (PROCEEDINGS RECONVENED)

19

20 THE REGISTRAR: The hearing is now resumed.

21 MS. GAERTNER: Thank you, Mr. Commissioner. I'm going  
22 to turn now to a few questions that I have for the  
23 Deputy, if I may. And these are very general  
24 questions to start with and then I'll turn to your  
25 regional staff to bring it home into the  
26 watershed, if I may.

27

28 CROSS-EXAMINATION BY MS. GAERTNER, continuing:

29

30 Q And I just want to start by observing that what  
31 I've heard over the last two days is one of the  
32 challenges in governance in the Fisheries and, in  
33 particular, the Fraser River sockeye is needing to  
34 have a resilience and an ability to cope with  
35 increasing complexity?

36 MS. DANSEREAU: Yes.

37 Q And I would say increasing controversy?

38 MS. DANSEREAU: Yes.

39 Q And in a modern context, my observations around  
40 good governance, as I made -- began was a  
41 collaborative approach. And I'm just going to  
42 give you a few other principles of good governance  
43 and I'm wondering if you would agree with them or  
44 not. The first one, and I've heard a number of  
45 times, is the transparency. Would you agree with  
46 that?

47 MS. DANSEREAU: Yes.



1 Q And by that, we mean that it's clearest to those  
2 that have an interest, including the public, on  
3 the considerations being made and the outcomes  
4 that are -- that are derived?  
5 MS. DANSEREAU: To the best of our ability, yes.  
6 Q And inclusive. That's the collaborative approach.  
7 You want to include those that have an interest in  
8 the outcome?  
9 MS. DANSEREAU: Yes.  
10 Q And accountable. You want to be clear on the  
11 decisions that you've made and -- and be able to  
12 challenge those decisions and evolve them over  
13 time?  
14 MS. DANSEREAU: Absolutely.  
15 Q And another one that I've heard quite often is you  
16 want to make informed decisions and --  
17 MS. DANSEREAU: It's at the base of how we work.  
18 Q It's always more comfortable to have more  
19 information.  
20 MS. DANSEREAU: Much more.  
21 Q And you'll agree with me that some of the most  
22 difficult questions are the ones that we don't  
23 have enough information about?  
24 MS. DANSEREAU: Yes.  
25 Q And finally, we spoke briefly about capacity. And  
26 we need to have good governance. We need to have  
27 a budget. And we need to have an ability, both at  
28 a human resource and a financial resource to  
29 implement those; is that correct?  
30 MS. DANSEREAU: Yes. Although recognizing that money  
31 doesn't solve all problems, an organization can  
32 help.  
33 Q And then I just have another few basic questions  
34 around co-management and models for co-management.  
35 And again, just on the basic level. There are  
36 different models out there, one of which would be  
37 multiple decision-makers with authority to make  
38 decisions that are working together. That's one  
39 model of co-management.  
40 MS. DANSEREAU: It certainly is, yes. But we have --  
41 if I may, just on the issue of co-management, we  
42 have to remember that we have -- the minister has  
43 absolute discretion on making these decisions.  
44 Q Well, my next question for you is going to be  
45 that's the one that's most uncomfortable for the  
46 Department of Fisheries and Oceans, that model,  
47 right, because -- because of the discretion and

1 the ultimate decision-making authority that the  
2 minister has?

3 MS. DANSEREAU: Well, yes and no. I think if the -- if  
4 the information provided to the minister and the  
5 -- the substructure of the decision is sound, then  
6 the decision that the minister makes will be sound  
7 as well. And the minister is the only person  
8 truly that can speak on behalf of all Canadians.  
9 And so the decision has to stop somewhere and why  
10 not with an elected official?

11 Q That actually helps me go to the next model and  
12 the one that I have begun to see more and more.  
13 And that's these models that you have advisory  
14 committees that are charged with trying to make  
15 consensus recommendations.

16 MS. DANSEREAU: Which we use extensively throughout the  
17 department.

18 Q And then the third model that is a little bit more  
19 difficult is just a model in which there's just an  
20 information exchange amongst different people.

21 MS. DANSEREAU: Yes, and I think we use a variety of  
22 all the tools that you've just described because  
23 it depends on what the decision is that is  
24 required.

25 Q And is it fair to say that one of the older  
26 models, perhaps an imprint model that's a bit  
27 difficult to get rid of and for sure in the First  
28 Nation context, one of the problems is an old  
29 model, which was to go out -- the Department of  
30 Fisheries and Oceans would go out, get  
31 information, take it back and it get lost in your  
32 department somewhere and decisions would be made?  
33 And that's a model that you're changing from?

34 MS. DANSEREAU: Yes, it's not one that I have seen in  
35 practice.

36 Q And now I'm going to take those lofty ideas and  
37 bring them home a little bit to the Fraser  
38 Watershed. And I'd like to direct my questions to  
39 either Paul, Ms. Sprout or Sue Farlinger. I'm not  
40 sure which ones. But if you guys can decide  
41 amongst you which ones you would prefer -- which  
42 ones you would ask. I think it's fair to say from  
43 the First Nations vantage point that it's not  
44 these principles of good governance that are the  
45 challenge; it's applying those principles in a  
46 very complex setting, particularly a complex  
47 setting like the Fraser River Watershed

1           geographically and with the multiple numbers of  
2           First Nations that are involved. Is that a fair  
3           observation?

4   MS. FARLINGER: Certainly a complex situation, yeah.

5   Q   All right. And that one of the second components  
6           of that complexity is that -- is the difference in  
7           approach in decision-making structures between the  
8           department and First Nations and I'll just  
9           elaborate a little bit more before I ask a  
10          question. And that is, that, as we've heard  
11          yesterday and today, the department's line of  
12          hierarchy and decision-making is really what we  
13          would call a top-down line of authority. We've  
14          got ministers that are charged with very concrete  
15          and deputy ministers and associate deputy  
16          ministers that do a lot of the strategic work,  
17          getting -- getting input from below. And then  
18          we've got the regional director. We've got  
19          program directors. We've got area directors. And  
20          we've got field officers. And mandates come from  
21          top and go to the bottom; is that a fair overall  
22          summary of who the department is structured?

23   MS. DANSEREAU: The final mandate does work that way  
24          but it's developed. As I said earlier -- as I  
25          said yesterday, very much from the ground up as  
26          well and so it's an iterative process.

27   Q   Okay. Is it your experience then, I'm going to  
28          suggest, that the First Nation organizations along  
29          the Fraser River sockeye migration route actually  
30          work on a -- on almost an opposite approach. Is  
31          it their authority and the strength of their  
32          authority lies in the communities and at the  
33          tribal level and that it only -- only later will  
34          -- the further away you go from that, the less  
35          authority necessarily people are going to have so  
36          at the watershed level or at the provincial and --  
37          and national level? Is that an observation that  
38          you would agree with me on?

39   MS. FARLINGER: I think it would probably be fair to  
40          say that generally that may be the case. In our  
41          interaction with First Nations, we've put a lot of  
42          time and effort, as have the First Nations, in  
43          trying to figure out what it is that DFO works  
44          with First Nations at the community level, at the  
45          aggregate tribal level potentially, or at the  
46          First Nations organization level. And -- and that  
47          that is a significant challenge for us in terms of

1 understanding how the First Nations governance  
2 works and -- and how it is we can best interact at  
3 the right level for the right kind of question.

4 MS. DANSEREAU: If I may -- excuse me, if I may add  
5 something to this. The -- the authority that I  
6 have and the authority that we have at each level  
7 is, in part, driven by the mandate that we have by  
8 virtue of our title but also we would not be able  
9 to exercise that authority with any real outcomes  
10 if we didn't have a moral authority that went with  
11 it where we had the respect of the people all the  
12 way through the system below us. So it's not  
13 simply top down. It really -- I am guided by what  
14 I -- making sure that I have the respect of the  
15 people that work for me.

16 Q Again, you're one step ahead of me, Deputy,  
17 because I was just going to link it together that  
18 no matter which process you use, the authority  
19 always has to come back to those that you're  
20 governing; is that correct?

21 MS. DANSEREAU: Yeah.

22 Q All right. Now, Mr. Sprout, I'm going to ask you  
23 the next -- the following next questions because  
24 they're a bit historic in nature and I just want  
25 to set a setting. And I'm going to turn now to  
26 what I have generally called over the years the  
27 Fraser Watershed process or a Fraser Watershed  
28 process and I think those of you that are close to  
29 the river will get a sense of what I might mean  
30 there. And perhaps for Mr. Commissioner, what I  
31 am talking about there is DFO First Nations  
32 process that would be collaborative, integrated  
33 and assist in making good decisions or  
34 recommendations on key issues. And again, Mr.  
35 Commissioner, you've heard me mention and I know  
36 you're familiar now with the terms "Tier 1" and  
37 "Tier 2". And those are all -- both terms that,  
38 Mr. Sprout, you're familiar with and comfortable  
39 with, I'm sure. All right. I want to begin.  
40 It's my observation that it was -- there's only  
41 been one Fraser Watershed agreement that's  
42 actually been in place between the Department of  
43 Fisheries and Oceans and the First Nations. And  
44 that was an agreement that was signed in 1993, as  
45 part of the AFS strategy. Do you recall that  
46 agreement?

47 MR. SPROUT: With the entire watershed? Because we

1 have --

2 Q Oh, no. I'll agree with you that we didn't have  
3 the entire watershed signing that agreement; is  
4 that correct? But it was an agreement in which  
5 multiple tribes along the Fraser River signed in  
6 about 1993, as part of the AFS strategy?

7 MR. SPROUT: I'd have to refresh my memory. I -- I do  
8 know that that would be the early days of the  
9 aboriginal fishery strategy, probably the first  
10 year, and wouldn't obviously reflect the  
11 arrangements we have today. And we would have far  
12 fewer organizations in that arrangement. So I  
13 think there would be a small number but I'm just  
14 not sure it's just -- it's just the one  
15 organization so I'd --

16 Q All right.

17 MR. SPROUT: -- have to refresh my memory.

18 Q All right. Well, I'm just going to refresh your  
19 memory a little bit from my memory and then we'll  
20 see where we go with that, which is that in 1993,  
21 there was an AFS watershed agreement signed by  
22 those First Nations that also signed an AFS  
23 agreement at that time. And it was that agreement  
24 in which the Fraser River Aboriginal Fishery  
25 Secretariat was first formed. Is that something  
26 that rings true to you, Ms. Farlinger?

27 MS. FARLINGER: Yes, I recall that.

28 Q And that that agreement has now expired and it did  
29 expire in 1999; is that correct?

30 MS. FARLINGER: I know it's expired. I don't know what  
31 the date was.

32 Q And is it fair to say that in -- that there hasn't  
33 been another agreement similar to that but rather  
34 there have been a number of processes that have  
35 attempted to try to move towards the Fraser River  
36 Watershed decision-making process, like FROG,  
37 Forum, the roadmap process, efforts around the  
38 Inter-Tribal Treaty process; is that correct?

39 MS. FARLINGER: Yes.

40 Q And I want to see whether or not you would agree  
41 with me that some of the challenges associated  
42 with those processes are challenges that are  
43 facing both DFO and First Nations organizations.

44 MS. FARLINGER: Yes.

45 Q And I'm going to list a couple of the challenges  
46 and see whether or not you would agree with them.  
47 First of all, that there apparently is a challenge

1 to obtaining clear and transparent and mandated  
2 political processes to support a watershed  
3 process. Would you agree with that?

4 MS. FARLINGER: Yes.

5 Q And you would also agree that there is a  
6 complexity associated with the multiple First  
7 Nations and the scope and complexity of issues  
8 that they face, together with DFO, and that there  
9 is no clear umbrella organization that they all  
10 work under?

11 MS. FARLINGER: Well, I would say that we -- we have  
12 had some attempts that have been more or less  
13 taking us in that direction and I would point to  
14 the First Nations Fisheries Council and before it  
15 to the B.C. Aboriginal Fisheries Commission,  
16 which, in -- in their own way, are high-level  
17 organizations, which, as you say, don't represent  
18 First Nations, which -- but which are certainly  
19 attempt to get at that larger issue. But at the  
20 scale simply of the Fraser River, the attempts  
21 that you described in your previous question are  
22 really where that is now.

23 Q And I guess I would just want to make sure that  
24 we're using the same language and understanding  
25 each other well enough. There is, as you  
26 mentioned, the First Nation Fisheries Council, who  
27 is a client of mine in this inquiry. That's a  
28 provincial organization. But they're not mandated  
29 to speak on behalf of tribes on the rights and  
30 title issues that they are concerned with; is that  
31 correct?

32 MS. FARLINGER: They have advised us of that and that's  
33 clear between us, yeah.

34 Q And so that one of the challenges that I'm trying  
35 to get at here and primarily to see if we can go  
36 -- see where we can go with it, is that at the  
37 present time, there isn't a mandated Fraser River  
38 tribal process working with DFO. Would you agree  
39 with me on that?

40 MS. FARLINGER: I would. Not one single process.

41 Q All right. And that the efforts that we have made  
42 towards that are what, as best described, as the  
43 Tier 1 process. Do you agree with that? Well,  
44 we'd have to go to Tier 2.

45 MS. FARLINGER: Tier 2, yes. I think --

46 Q Yes.

47 MS. FARLINGER: -- I would say that I know there's been

1 work at Tier 1 that supports the Tier 2 work that  
2 we've done, yeah.

3 Q And it's your experience that without -- that  
4 First Nations are clearly advising DFO that in  
5 order to get to an effective Tier 2 process, we  
6 need a good Tier 1 process?

7 MS. FARLINGER: Yes.

8 Q And in fact, to get to Tier 3, which is truly the  
9 collaborative process that DFO aspires to, they  
10 are also saying that we need a Tier 1 and then a  
11 Tier 2. It's -- it is somewhat linear although  
12 they are interactive.

13 MS. FARLINGER: That's certainly been the model that  
14 First Nations have consistently put forward and  
15 the view that they have put forward to us.

16 Q All right. My next line of questions on this same  
17 topic is my last line of questions. And this is  
18 in the area of something more positive than just  
19 imagination but I am trying to see whether or not  
20 when we go forward with the decision-making  
21 structures, whether you could imagine or foresee a  
22 watershed process that assisted in making good  
23 governance decisions. And I just want to list a  
24 couple of tasks that I think a useful Tier 2  
25 process could provide and see whether you would  
26 agree with that. First of all, a Tier 2 process  
27 or a Fraser Watershed process could assist DFO and  
28 First Nations in engaging at both an operational  
29 and a strategic level. Would you agree with that?

30 MS. FARLINGER: Yes.

31 Q Would you also agree that it would assist them in  
32 meeting their respective responsibilities both to  
33 future generations and your respective legal  
34 obligations?

35 MS. FARLINGER: I -- I think we're going probably well  
36 down the lane in this speculation but we would  
37 certainly have objectives of -- of doing that.

38 Q And would you also agree that an effective Tier 2  
39 process would provide the foundation for engaging  
40 and further discussions with non-governmental  
41 organizations in the commercial and recreational  
42 sectors, i.e., the Tier 3 approach?

43 MS. FARLINGER: Well, in general, anything that builds  
44 relationships would certainly support the further  
45 more collaborative relationship that you're  
46 describing. But we wouldn't in any way get in the  
47 way of or refuse to support First Nations to other

1 users or stakeholders' relationships in any way.  
2 And in fact, as part of the work we've been doing  
3 through the Pacific Integrated Commercial  
4 Fisheries initiative, we have been supporting  
5 processes that, in fact, are like that. So while  
6 -- in general, while it seems reasonable, the  
7 premise you put forward that a Tier 2 process  
8 would support a Tier 3 one, we wouldn't in any way  
9 stand in the way of -- of processes that would be  
10 First Nation to other stakeholders without DFO  
11 being involved.

12 Q Yes, my questions I'm absolutely sure, as you  
13 know, that there are processes where First Nations  
14 are directly talking to the other -- to sectors  
15 and that that's a useful conversation as it  
16 develops. My questions were more to try to assist  
17 in -- in the relationship between First Nations  
18 and DFO and the processes that could be useful in  
19 that area. And so I was just trying to give Mr.  
20 Commissioner, who has a broad range of issues that  
21 he has coming before him, a sense of the  
22 government decision-making so the decision-making  
23 structures that could be useful going forward and  
24 what that process could provide. And so I'm just  
25 going to finish. I've got a couple of other  
26 things that I think that process might be able to  
27 do and I just want to see whether you'll agree  
28 with me on this. It may also be a mechanism for  
29 better compiling and integrating aboriginal  
30 knowledge with scientific knowledge. Would you  
31 agree with that?

32 MS. FARLINGER: It certainly could assist in that.

33 Q And also could provide a forum for better  
34 decision-making regarding escapement and other key  
35 fisheries management matters, both in a pre, in-  
36 season and post-season setting. Would you agree  
37 with that?

38 MS. FARLINGER: If I understand your last point, it  
39 really is that it could assist in gathering the  
40 kind of information that would support those  
41 activities. Is that what you mean by that?

42 Q Yes, and helping actually make good  
43 recommendations or decisions associated with that.

44 MS. FARLINGER: Yes, yes.

45 Q Essentially, what I'm -- I guess I could summarize  
46 it by saying it's a good way of trying to see if  
47 you can develop collaborative mechanisms for



1 cooperation and consensus; is that correct?

2 MS. FARLINGER: Could certainly support those, yeah.

3 Q All right. Just a couple more questions on this  
4 line, one of which is some of the criteria that  
5 could be used for success in this area because I  
6 think you'll agree it's been a difficult task.  
7 And one of them, I would agree -- I wonder if  
8 you'll agree with this, that there needs to be  
9 political will both on the part of the Department  
10 of Fisheries and Oceans and First Nations for  
11 wanting to put such a process in place. In  
12 particular, it's my observation that, if you'll  
13 bear with me on the metaphor, we need a dedicated  
14 group of foot soldiers that are going to be --  
15 work over more than a one-year process to put  
16 something like this together.

17 MS. FARLINGER: I think I would say that evidence of  
18 the -- the work we've done together over really  
19 since the early '90s is -- is pretty clear that we  
20 all want some kind of a process that -- that would  
21 help us communicate better, gather information  
22 together in a better way and arrive at  
23 recommendations that would be understood and  
24 supported through the aboriginal community and --  
25 and through the DFO management system. So I think  
26 I've answered your question.

27 Q And would you also agree that one of the  
28 challenges associated with achieving that is the  
29 challenges associated with getting commitments for  
30 multi-year funding?

31 MS. FARLINGER: I think that if we are talking  
32 specifically about existing programs, we have gone  
33 through periods where there have been challenges  
34 in looking at multi-year funding and that does  
35 have an impact on our relationship together in  
36 terms of the capacity building on both sides. And  
37 where we have been able to move to multi-year  
38 funding, and actually I would point out that there  
39 -- there is a new set of terms and conditions out  
40 there. We are discussing with focus groups with  
41 First Nations and others to try and move to a  
42 program model that will allow us to support multi-  
43 year funding. And the reason we support that is  
44 because we think continuing the programs over  
45 multi years is more effective.

46 Q Mr. Sprout, I'm wondering -- you haven't had much  
47 to say on this topic and you've lived with this

1           issue for a long time. I wonder if you care to  
2           comment?

3       MR. SPROUT: Well, I have two observations. The first  
4       is, is I think moving to a multi-year funding  
5       arrangement has a lot of merit and so I'd like --  
6       I'd like to advance that or I'd like to support  
7       that. But I'd also like to -- to put this into a  
8       bit of context because perhaps everybody's  
9       following on Tier 1, Tier 2 and Tier 3 but I just  
10      want to explain. Like Tier 1 is First Nations  
11      working with First Nations, working out  
12      arrangements or understandings sometimes on  
13      sharing fish, on agreements related to fisheries  
14      management. Tier 2 is First Nations and  
15      government, in this case, principally the federal  
16      government doing the same thing. And Tier 3 is  
17      bringing in all the other participants.

18           So this is the model that many First Nations  
19      would -- would like to practice. So first of all,  
20      working out the First Nations relationships.  
21      Secondly, working out the First Nations  
22      relationships bilaterally with government. And  
23      thirdly, working out the relationships with other  
24      parties. To a certain extent, I think the  
25      department has certainly supported significant --  
26      with significant financial resources since the  
27      launch of the aboriginal fisheries strategy to  
28      support First Nations capacity building, to  
29      involve them in stock assessment, in science, in  
30      various aspects of management, stock enumeration  
31      and so forth. All of that trying to, I think,  
32      encourage the movement to, I think, this third  
33      level.

34           And I'd like to talk about the third level  
35      for a moment because when you look at the issues  
36      that are facing the Fraser River sockeye, what the  
37      Commission, I'm sure, must be struck by already is  
38      how complex those issues are and the fact that  
39      scientific uncertainty is likely to remain. So  
40      what you're forced to deal with it then is how do  
41      you make decisions under those circumstances? And  
42      I think the model that the department has been  
43      trying to encourage recently is the model of  
44      bringing people together collaboratively to talk  
45      about that scientific uncertainty, to try to come  
46      to decisions that make the most amount of sense.

47           And I think that model must have First

1 Nations and non-natives in the same room at the  
2 same time because I think to manage the Fraser  
3 River sockeye, you need to manage it as a group  
4 with all the parties that have an interest  
5 present.

6 And so I offer this additional qualification  
7 to the Tier 1, Tier 2, Tier 3. Clearly, I  
8 personally agree with the notion of collaboration  
9 and cooperation. I understand the desirability --  
10 the desire of First Nations to move systematically  
11 through the levels that you've described. I think  
12 there is merit in multi-year funding along the  
13 lines that you've noted. But I'm also cognizant  
14 of the fact that to really aspire and move forward  
15 we must bring the participants, native and non-  
16 native, into the same room with government at the  
17 same time dealing with these very difficult  
18 societal questions and making the best choice  
19 under scientific uncertainty.

20 Q Mr. Sprout, I don't take any issue with what  
21 you've said from a good governance perspective.  
22 It's more the questions of the challenge of  
23 implementing that. And I think you've already  
24 acknowledged and then I'll just get -- make sure  
25 that I'm right on this, that from a First Nations  
26 perspective, they have very much wanted to make  
27 sure and ensure that their capacity puts them in a  
28 room at a level playing field with the others in  
29 the room. Is that a fair comment?

30 MR. SPROUT: It is. And -- and they -- and it's clear  
31 -- and I think you were correct earlier, that if  
32 they don't have the capacity, they're not in a  
33 position to actually get into the room and to have  
34 those frank discussions. So capacity, I think, is  
35 a -- is required. As Sue Farlinger indicated,  
36 there has been significant resources through the  
37 department to try to address that capacity issue  
38 and that is an important component of making the  
39 integrated approach with native and non-natives'  
40 work. So on this point of it being a challenge,  
41 yes, I concur.

42 Q Thank you. I'm going to turn now to another area  
43 and -- which is the priority around food, social  
44 and ceremonial fisheries, which again I would say  
45 is one of the challenges associated with managing  
46 this fishery. And Mr. Sprout, maybe I'll just ask  
47 you this question, which is, again, an imprint

1 question. Another challenge that I would say is  
2 facing DFO is that there is a history of distrust  
3 or mistrust that has gone on between federal  
4 government and First Nations and that's part of  
5 just the history that we're dealing with and  
6 moving forward. And that one of the difficulties  
7 they face when working with the Department of  
8 Fisheries and Oceans is historically they have  
9 experienced trade-offs as being ones in which  
10 their fisheries were not provided the priority.  
11 And based on your earlier comments about the troll  
12 fisheries then otherwise you would say that that's  
13 a reasonable experience for First Nations; is that  
14 correct?

15 MR. SPROUT: I wouldn't characterize it as black-and-  
16 white as that but I would agree that if you go  
17 back certainly in the time period that I was  
18 describing in responding to that question, the  
19 Department of Fisheries and Oceans at that time  
20 was putting the emphasis on productive populations  
21 of sockeye and was not paying nearly to the  
22 attention of the more depressed populations that  
23 typically are smaller and would have been of  
24 interest to First Nations, particularly in the  
25 upper reaches of the -- of the Fraser River. So  
26 these are the populations that are mixed together  
27 with productive stocks and those populations,  
28 particularly in the upper Fraser, are harvested  
29 only really by First Nations for food, social and  
30 ceremonial purposes. And in the -- in past times,  
31 those populations would have not gotten the  
32 attention that they're getting today.

33 Q All right.

34 MR. SPROUT: So it's not quite black-and-white as  
35 you've described it. I've nuanced it.

36 Q Things rarely are.

37 MR. SPROUT: But it is relevant.

38 Q Thank you. Because I think it's often useful to  
39 focus sometimes on where we have made successes  
40 rather than where we are always having troubles, I  
41 was wondering if you would agree with me, Ms.  
42 Farlinger, that in the work that's going on  
43 between the DFO and First Nations around the Early  
44 Stuart sockeye that we're beginning to see some  
45 successes. Would you agree with that?

46 MS. FARLINGER: I would.

47 Q And one of that is that the Early Stuart sockeye

1 is one of the very important food, social and  
2 ceremonial fish for most -- for the Fraser River  
3 people and especially the people on the -- what I  
4 call the "upper headquarters".

5 MS. FARLINGER: Certainly, for -- it is an important  
6 food fish and -- and, of course, as you point out,  
7 most important for those for whom it is the only  
8 source of fish.

9 Q And would you agree with me generally, and I'm not  
10 going to say this specifically, but I'm going to  
11 go generally, that one of the successes can be  
12 identified in the work that was done in Sayoth  
13 (phonetic) this year in May of 2010. There was a  
14 two-day session, a Tier 1 and Tier 2 session. And  
15 the first day, the First Nations worked together  
16 and agreed and proposed to DFO, a maximum 25  
17 percent exploitation rate and a four-week closure.  
18 And in fact, DFO accepted that on day two and has  
19 implemented that more or less successfully this  
20 year.

21 MS. FARLINGER: I think that's certainly an example of  
22 where the -- both the conservation objectives and  
23 the objectives of meeting the FSC priority were  
24 something we were able to agree on and implement.

25 Q And you would agree with me that if we could begin  
26 to build those kinds of bridges on all the more  
27 complex outruns that that would make your life, as  
28 RDG and others within the department, a lot  
29 easier?

30 MS. FARLINGER: Certainly the more common understanding  
31 we have of -- and clarification of objectives on  
32 both the First Nations side and DFO's side and  
33 really the identification of the common ground we  
34 have, it's very helpful in terms of managing the  
35 fishery and certainly meeting our obligations to  
36 conservation and our legal obligations.

37 Q And just to do a little bit of a contrast, and  
38 again I don't want you to take this as criticism.  
39 I think the work of fisheries management is an  
40 extremely complex job. But I'm going to contrast  
41 that -- that success with the Fraser River early  
42 time spring Chinook. And again, this is a this-  
43 year example so I'll direct the question to Sue  
44 Farlinger. You'll agree with me that that was a  
45 little bit more difficult to implement this year.  
46 And primarily the difficulty arises because of the  
47 marine and -- the difference of opinion between

1 First Nations around what needs to happen with the  
2 stock and the pressures that are occurring in  
3 order to allow the marine and the recreational  
4 fisheries access to that Fraser River early time  
5 spring Chinook.

6 MS. FARLINGER: I think the -- the issues around that  
7 particular problem that you describe certainly  
8 involved the -- the First Nations fisheries and  
9 the priority for those Chinook at the -- up the  
10 river. They -- and also, the fact that other  
11 people intercept those -- those fish along the  
12 way. There is a -- I think the larger problem may  
13 very well be the underlying problem of declining  
14 productivity in the south coast Chinook stocks.  
15 And we've certainly started working with First  
16 Nations and others on -- on a strategy to address  
17 that early days, I'll say. But thirdly, I would  
18 say that a forum for the kind of discussion that  
19 you've just been talking about and a common  
20 understanding of the information and the problems  
21 really has been lacking.

22 There were a few attempts made at it and  
23 certainly one of the chiefs was very effective in  
24 going to the recreational community and clearly  
25 describing the issues as -- as he saw them this  
26 year, which is -- one hopes in the future to  
27 advance that place where those discussions can be  
28 had and everybody can have the same information  
29 and perspective. So it is a challenge but I think  
30 it is a challenge because of the declining  
31 productivity because we have not yet developed  
32 that forum and because there are different people  
33 who are using that stock -- those stocks, rather.  
34 Pardon me.

35 Q Briefly, on the consultative obligations that the  
36 Department of Fisheries and Oceans carry, again,  
37 I'm going to try to keep you away from the legal  
38 issues and keep you on the challenges of  
39 consultation. And as we know, good governance  
40 includes consultation across a wide range of  
41 matters. But I think it's fair -- would you agree  
42 with me, for those that are implementing processes  
43 in the province, that there are significant  
44 differences of view that arise between First  
45 Nations and the Department of Fisheries and Oceans  
46 regarding the scope, the timing and the approach  
47 to consultation?

1 MS. FARLINGER: Yes.

2 Q Would you also agree with me that a well-resourced  
3 Tier 1, 2 and 3 process would assist in that?

4 MS. FARLINGER: I certainly think it's one of the  
5 things that could help.

6 Q I know this may seem -- I don't know if I'm  
7 belabouring issues. I've made submissions on  
8 this, Mr. Commissioner. I just feel like it's  
9 important for you to hear from those that are  
10 implementing these matters rather those legal  
11 counsel that are making submissions on this. And  
12 so I have repeated that from the submissions but I  
13 did feel like it was important for you to hear it  
14 from the -- those that are in charge with  
15 implementing some of these.

16 MS. FARLINGER: Excuse me if I -- if I may on that last  
17 question?

18 Q Yes.

19 MS. FARLINGER: I -- it is true that we keep coming  
20 back to the question of financial resources and I  
21 will always also come back and say on their own  
22 they are not -- that's not the solution. So it's  
23 impossible to say if we had more money we would  
24 have better decisions. I'm not sure that that's  
25 -- they don't -- I'm not sure that they naturally  
26 go together.

27 Q No, and I'll just say that I don't always mean  
28 more money when I say better resourcing into the  
29 processes. More people dedicated to the  
30 processes, more time dedicated to the processes.  
31 It's not always just more money. Often people in  
32 time equate to money but those are the -- that's  
33 the commitment that's necessary. Would you agree  
34 with that, deputy?

35 MS. FARLINGER: Sometimes it comes down to better  
36 organization, better understanding of each other,  
37 better how we -- really it's about organization as  
38 much as it is about resources, I would say. So  
39 not always more but certainly better.

40 MR. WALLACE: Mr. Commissioner, I just noticed we have  
41 ten minutes remaining till four o'clock. I have  
42 -- there is one more participant who wishes to  
43 examine this panel and I know of one question for  
44 re-examination. So I'm not sure whether Ms.  
45 Gaertner can wrap up quickly.

46 Q I'll do my best. Deputy, I have a couple more  
47 questions for you now, a broader perspective. And

1 one of the things that Mr. Commissioner has heard  
2 from us about already is the challenges of  
3 reconciliation and the broader issues around  
4 aboriginal title and rights. And I just wanted to  
5 get a sense from your decision-making structure  
6 how you and Ottawa get informed about these larger  
7 issues of title and rights and the effects of  
8 those. I didn't see that in the structure. At  
9 one point in time there was an Aboriginal Affairs  
10 Department within the Department of Fisheries and  
11 Oceans. I know that no longer exists. And so  
12 it's not clear to me how, in headquarters, you're  
13 informed of those matters. Could you let us know  
14 about that?

15 MS. DANSEREAU: Yes, the ADM programs that you saw in  
16 the org chart has within his responsibilities  
17 working on matters of aboriginal programming and  
18 policies. So we -- and also, obviously, as you  
19 know, much of the discussions that we have take  
20 place in the context of court cases and so --  
21 because those are ongoing. But also, in relation  
22 to all of our decision-making really, we have to  
23 ask the question at the start of any decision  
24 whether or not there are some aboriginal  
25 considerations that need to be taken into account  
26 in our decision-making. So it's potentially today  
27 more permeated across the department than it might  
28 have been at one point where we were segregated and  
29 we are much less segregated now in how we do our  
30 work.

31 Q And one of the other areas that's not clear to me  
32 from your decision-making structures or to my  
33 client's is there are mandates that are obtained  
34 for treaty negotiations and interim measures and  
35 opportunities outside of that. And who makes the  
36 decision, or how is it made within the department?  
37 What things are offered outside or inside a treaty  
38 process?

39 MS. DANSEREAU: Oh, that's done very much in  
40 consultation with the broader government. And so  
41 if a treaty negotiation is going down a certain  
42 way then we need to seek a mandate from cabinet  
43 and within that we'll have the discussion as to  
44 what should be in or out.

45 Q Perhaps this a question more locally again. I'm  
46 not sure but we've heard from the Tsawwassen First  
47 Nation on the opportunities that have been



1           obtained through their treaty process and the  
2           comments that were made by their legal counsel  
3           that they -- from a management perspective some of  
4           those processes could easily be available inside  
5           and outside of a treaty but that's been difficult  
6           to achieve. Who would have made the decisions or  
7           how would the decisions have been made more  
8           locally in the province as to what opportunities  
9           are available inside and outside of treaty for  
10          management decisions?

11        MS. FARLINGER: As the deputy mentioned, when we're  
12          looking at a mandate for a treaty, we go through a  
13          process to cabinet. I think the processes that we  
14          work on operationally are -- are really very much,  
15          as you've described them. We develop them as much  
16          as we can given the capacity and weight on the --  
17          on the ground and the need to fundamentally focus  
18          on managing the fishery, as opposed to settling or  
19          dealing directly with the rights issue.

20        Q        Just one final question, Mr. Commissioner. We've  
21          heard a number of comments and questions around  
22          the challenges perhaps to implementing a shift  
23          from a predominantly mixed stock fishery to a more  
24          selective and terminal fishery. We're going to  
25          hear lots more about that. I just want to make a  
26          proposal and a suggestion and see how you would  
27          respond to that. It seems to me that a  
28          collaboratively-developed plan as to how to do  
29          that shift that would be developed at a Tier 2 and  
30          Tier 3 might be useful for implementing such a  
31          daunting task. Would any one of you like to  
32          comment on that and provide any perspective with  
33          respect to that?

34        MS. DANSEREAU: I think you will get into this in more  
35          detail later and I may be -- I may be wrong in  
36          what I'm about to say and others of the panel can  
37          correct me. But my understanding is that the five  
38          years that went into developing the wild salmon  
39          policy was, in fact, not necessarily a formal Tier  
40          3 process but certainly was heavily consulted.  
41          And so the outcome would be the same.

42        Q        I think I need to get more specific and, Mr.  
43          Sprout, maybe you could help me with this. The  
44          wild salmon policy gives us policies and broad  
45          spectrums. I'm thinking more of something much  
46          more practical and -- and perhaps a five-year -- a  
47          five-year plan or something like that to implement

PANEL NO. 3

Paul Sprout

Cross-exam by Ms. Gaertner (FNC)

David Bevan

Cross-exam by Mr. Dickson (STCCIB)

1 a shift from the mixed stock -- the predominantly  
2 mixed stock into the more selective terminal  
3 fisheries. Do you have a comment on that?

4 MR. SPROUT: I do. I believe that you do have to bring  
5 First Nations and non-natives together with the  
6 department to look at operationalizing (sic) some  
7 of the policies we have, like WSP being one. Even  
8 with the policy, it raises important strategic  
9 questions that have yet to be answered. What  
10 should the exploitation be on some of these  
11 populations? How much should you -- what should  
12 be the -- how do you deal with productive  
13 populations mixed with less productive  
14 populations? I think these are very, very  
15 difficult questions and I believe that they're  
16 best addressed, at least initially, through bodies  
17 of First Nations and non-natives in government  
18 trying to find a collaborative plan, an agreed  
19 plan, a consensual plan, if possible. Failing  
20 that, then maybe a decision process to deal with  
21 whatever -- whatever gaps have been narrowed. So  
22 fundamentally, if that's what you're suggesting, I  
23 believe it has merit.

24 MS. GAERTNER: Thank you. Those are my questions.

25 MR. WALLACE: Thank you, Ms. Gaertner. The last  
26 participant, who has indicated a desire to  
27 question is for the Sto:lo and Cheam, Mr. Dickson.

28 MR. DICKSON: Yes, for the record, Tim Dickson for the  
29 Sto:lo Tribal Council and Cheam Indian Band.

30 THE COMMISSIONER: Mr. Dickson, how long will you be?

31 MR. DICKSON: I have ten minutes. I'll aim to be five.

32 THE COMMISSIONER: All right. Thank you.  
33

34 CROSS-EXAMINATION BY MR. DICKSON:  
35

36 Q Mr. Bevan, this morning Mr. McDade, who's counsel  
37 for the Agriculture Coalition, was asking about  
38 certain of those position descriptions. And one  
39 that he asked about was of regional director of  
40 science. And there was a portion of that position  
41 description that speaks about the department's  
42 shift in philosophy from reactive enforcement to  
43 the concept of sharing the stewardship  
44 responsibility for the resource with all  
45 participants in the fisheries. Do you remember  
46 that?

47 MR. BEVAN: Yes, I do.

1 Q And Mr. Lunn, perhaps you could bring up Exhibit  
2 33. It's Tab 10, I believe, and it's the position  
3 description for the Director General of  
4 Conservation and Protection. That's the one. And  
5 I'd like to go to page 3, please. In the first  
6 full paragraph there. Yes, conservation and  
7 protection. In this -- this paragraph contains  
8 that same language. It says:

9  
10 In response to the increasing emphasis, which  
11 the government is placing on creating and  
12 maintaining partnerships with stakeholders in  
13 the administration of regulations, the  
14 department has embarked upon a series of  
15 legislative reforms that will shift the  
16 emphasis from reactive enforcement to the  
17 concept of sharing the stewardship  
18 responsibility for the resource with all  
19 participants in the fisheries.

20  
21 It says:

22  
23 This will have a profound effect on the  
24 department's clients and stakeholders.

25  
26 And as I heard your testimony this morning,  
27 sharing the stewardship responsibility is about  
28 having more self-reporting to the department; is  
29 that correct?

30 MR. BEVAN: This -- the shift is a balancing, balanced  
31 question. What you have right now, as we've had  
32 in the past, a lot of reactive enforcement and  
33 less emphasis on education, less emphasis on  
34 seeking the means by which the people who use the  
35 marine space or the fisheries can participate in  
36 the monitoring, controlling and surveillance to  
37 ensure compliance with the needed rules to attain  
38 the compliance and conservation. We did have an  
39 intention in previous draft fisheries acts that  
40 did not -- or died on the order paper to have fish  
41 management orders and other legal mechanisms to  
42 allow us to enter into those kinds of  
43 arrangements. But even in the absence of that  
44 legislative tool, we believe it's the  
45 responsibility of resource users to demonstrate to  
46 Canadians that the -- that the use of the resource  
47 that they are undertaking is, in fact, sustainable

1           and that they are -- can provide us with the  
2           information needed to help them in that regard.  
3       Q     What's being described in that paragraph is  
4           generally a shift toward more self-regulation, not  
5           complete. There will be a mix but it's in the  
6           direction of more self-regulation.

7       MR. BEVAN: I think self-regulation might -- to me,  
8           regulation is much more than -- than participating  
9           in the monitoring, control and surveillance  
10          activities. It would be looking at the rules, et  
11          cetera, and so that's -- that's a bit more than  
12          what is anticipated by that particular part of the  
13          job description. But the -- the three pillars of  
14          the compliance program conducted by conservation  
15          and protection are built around major  
16          investigations, fraud, et cetera, that -- or  
17          collusion between various parts of the -- the flow  
18          of the fish into the marketplace, education. And  
19          education would include working with the people  
20          involved in the fishery to develop the right suite  
21          of tools and -- and measures to demonstrate  
22          compliance to Canadians and then reactive  
23          enforcement. Reactive enforcement will be there.  
24          We would hope, through collaboration with license-  
25          holders and people who have a right to fish or a  
26          privilege to fish that we'd be able to avoid the  
27          need to spend a great deal of reactive enforcement  
28          maintaining compliance there and that we would be  
29          able to deal with poachers and people who are  
30          intending to break the law. That's naïve in some  
31          cases because we have a long way to go and it's --  
32          but it's going to require a cultural change.  
33          People who use the fish resource should be  
34          inclined to conserve it.

35       Q     Sorry, Mr. Bevan, that was a long answer but tell  
36           me this. This is describing a shift in department  
37           philosophy away from such an emphasis on reactive  
38           enforcement?

39       MR. BEVAN: It's describing a re-balance, less reactive  
40           enforcement for people who have a license or who  
41           have a right to fish and more focus on the  
42           education and partnership. So it's not a shift  
43           away from; it's re-balancing.

44       Q     This morning, I think you mentioned two rationales  
45           for such a re-balancing and one being that  
46           reactive enforcement is expensive and the other  
47           that it's -- isn't always very effective. Is that

1 so?

2 MR. BEVAN: That's correct. Obviously, for people who  
3 are looking to break the law on the -- at the  
4 outset, poachers or whatever, we have to have  
5 reactive enforcement. But if you're dealing with  
6 commercial or recreational or First Nations  
7 fisheries, there should be a mutual understanding  
8 that we're all in that together and we need to  
9 have a suite of measures that can demonstrate to  
10 each other that you're in compliance. So landing  
11 requirements and reporting and -- and so on and so  
12 forth are a part of the process where you can  
13 provide yourselves the confidence that it's under  
14 control and you can demonstrate to the other  
15 people who are in the fishery and you can  
16 demonstrate to the markets and the Canadian public  
17 as well.

18 Q And so when this document describes this shift or  
19 this re-balance, as you say, and speaks of  
20 increasing sharing of the stewardship  
21 responsibility for the resource with all  
22 participants in the fisheries, all participants  
23 includes First Nations?

24 MR. BEVAN: It includes First Nations, yes.

25 Q So when this Commission comes to examine DFO's  
26 aboriginal fishery scheme, it should be expected  
27 to see this shift as well happening with respect  
28 to the aboriginal fishery. Is that so?

29 MR. BEVAN: It's part -- it's always been part of the  
30 concept around the AFS program that we were  
31 providing funds to First Nations to participate in  
32 the -- the management and to an extent to  
33 participate in, demonstrating compliance so that  
34 we can say to all the participants. And it goes  
35 for the other side, too. It's fine for people to  
36 call upon First Nations to prove they're in  
37 compliance but they also have to be taking actions  
38 to demonstrate to the public and demonstrate to us  
39 and demonstrate to you or your clients that  
40 they're in compliance as well. So it's -- it's  
41 worked in some areas where -- a good example being  
42 the Integrated Groundfish Fishery in the west  
43 coast here where the monitoring helps provide all  
44 the fleet components with a high level of  
45 assurance that they're all playing by the rules.  
46 And in that case, then you have a more  
47 collaborative approach. It's when peoples'

1           suspicions are allowed to have room to play that  
2           it's a problem and this shift or the balance is to  
3           try to get the -- all of the players to be able to  
4           demonstrate their commitment to compliance and to  
5           conservation.

6           MR. DICKSON: Thank you. Those are my questions.

7           THE COMMISSIONER: Thank you, Mr. Dickson.

8           MR. WALLACE: Thank you, Mr. Dickson. Mr.

9           Commissioner, I'm aware only that Mr. Taylor has  
10          one question in re-examination (sic).

11          MR. TAYLOR: Mitchell Taylor, Mr. Commissioner. And as  
12          I go into my question I'm reminded of something by  
13          a point of questioning that Ms. Gaertner put  
14          forward and that has to do with consultation. And  
15          I just take this opportunity to say that the  
16          Supreme Court of Canada last Thursday, the 28th,  
17          decided the **Rio Tinto and Carrier Sekani** case,  
18          which elaborates upon the **Haida and Taku**  
19          principles that you've heard about. And you'll  
20          hear about **Rio Tinto** when we come to final  
21          submissions. But it's there from last Thursday  
22          that you may want to have a look at. There's  
23          another case yet to come from the Supreme Court of  
24          Canada called **Little Salmon/Carmacks**, which will  
25          also deal with aboriginal consultation under the  
26          **Haida and Taku** principle. It's been outstanding  
27          for about a year now so it could be any time.

28

29          CROSS-EXAMINATION BY MR. TAYLOR:

30

31          Q        My question of the panel, and I think I'll start  
32          with Mr. Bevan. Others may have something they  
33          want to say to this. And it comes from some  
34          questions that Mr. Harvey was asking you. Mr.  
35          Harvey, as I understood him, was suggesting that  
36          the modelling that is used now prevented or  
37          hindered his client from fishing and Mr. Bevan  
38          said that that is not correct at all. In this,  
39          and going beyond your answer to a related point, I  
40          think, Mr. Bevan, does selective fishing come into  
41          play? And how does that play into it, if it does?

42          MR. BEVAN: I think some of the people from the region  
43          perhaps are better suited, particularly with  
44          respect to salmon. But clearly, across this  
45          country, if you're targeting the species and can  
46          do so selectively, your opportunities are not  
47          constrained by the bycatch or incidental mortality

1           you're causing elsewhere in the ecosystem. But I  
2           know there was specific work done with regard to  
3           selective fishing in salmon.

4           Q     All right. And maybe one of the regional people,  
5           either Ms. Farlinger or Mr. Sprout, Mr.  
6           Macgillivray want to speak to that in the context  
7           of Mr. Harvey and his clients -- or the question  
8           by Mr. Harvey and his clients. And perhaps in  
9           that you might explain, because I'm not sure it's  
10          clear, what gear type Mr. Harvey's clients are.

11          MR. SPROUT: Well, Mr. Harvey's clients are trollers on  
12          the west coast of Vancouver Island. And I think  
13          the explanation the department was providing as a  
14          matter of clarification was -- is in response to  
15          the question, well, what would affect the capacity  
16          of that group to be able to harvest? And there  
17          was a reference to the fact that the model has  
18          changed over time and the model itself is stopping  
19          the harvest. And I think the department said, no,  
20          that's not the case. What's -- what's affecting  
21          the harvest are policy objectives. The status of  
22          the populations and the ability, particularly of  
23          the troll group to discriminate between those  
24          populations that are at risk. So for example,  
25          these sockeye all are indistinguishable when they  
26          migrate at the same time in the same area. You --  
27          there's not a Cultus sockeye that's physically  
28          distinguishable from a Shuswap sockeye and on it  
29          goes. They're -- they're very similarly shaped  
30          and -- and sized within reason.

31                 So the -- it's very difficult to separate  
32          those populations of sockeye. And if you're  
33          trying to protect a particular component of that  
34          larger group, it means that you may not be able to  
35          have access to more productive populations until  
36          those fish get into the river or into geography  
37          where they start to separate and you can start to  
38          distinguish them better. So that's part of the  
39          rationale that is driving that. There are other  
40          factors regrettably. This is even more complex  
41          than what I've just described. There are  
42          allocation issues where we divide the harvest that  
43          is available amongst the seiners and the  
44          gillnetters and the trollers and the First  
45          Nations, which is another constraint that affects  
46          the ability of the more seaward fisheries to  
47          harvest. So all of those are relevant in the

1 answer to Mr. Harvey.

2 MR. TAYLOR: Thank you.

3 MR. WALLACE: Thank you, Mr. Commissioner. I believe  
4 that concludes this panel and I would thank them  
5 for their attendance. You may speak about this.

6 THE COMMISSIONER: I want to add my appreciation to the  
7 members of the panel for making yourselves  
8 available yesterday and again today. It's been a  
9 long day for all of you. And my thanks to  
10 counsel, who have been so cooperative in ensuring  
11 that, for the most part, you were able to stay  
12 within your time limits. I'm very grateful to all  
13 of you for that. Thank you. I believe we're  
14 underway at 8:30 tomorrow morning?

15 MR. WALLACE: Thank you for reminding us. That's  
16 correct. 8:30 tomorrow morning.

17 THE COMMISSIONER: We will see Paris but we won't enjoy  
18 Paris.

19 MR. WALLACE: I would ask counsel to be a few minutes  
20 early just so that -- maybe 20 after or 25 after  
21 in their seats so we can do this as efficiently as  
22 possible. Thank you.

23 THE COMMISSIONER: Thank you all very much.

24 THE REGISTRAR: The hearing is now adjourned until 8:30  
25 tomorrow morning.

26

27 (PROCEEDINGS ADJOURNED AT TO NOVEMBER 3,  
28 2010, AT 8:30 A.M.)

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33 I HEREBY CERTIFY the foregoing to be a true  
34 and accurate transcript of the evidence  
35 recorded on a sound recording apparatus,  
36 transcribed to the best of my skill and  
37 ability, and in accordance with applicable  
38 standards.

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Registered Court Transcriber

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