

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.

Wednesday, December 8, 2010

Tenue à :

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

le mercredi 8 décembre 2010



Errata for the Transcript of Hearings on December 8, 2010

Page	Line	Error	Correction
ii		Lara Tessaro's title is incorrect	Junior Commission Counsel
iv		James Walkus is not a participant	remove from record
iv		Musgagamgw Tsawataineuk Tribal Counsel	Musgamagw Tsawataineuk Tribal Council
3	32	citing	siting
7	14 and 22	citing	siting
22	8	monetary	monitoring

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Tim Timberg Geneva Grande-McNeill	Government of Canada
D. Clifton Prowse, Q.C.	Province of British Columbia
No appearance	Pacific Salmon Commission
No appearance	B.C. Public Service Alliance of Canada Union of Environment Workers B.C. ("BCPSAC")
No appearance	Rio Tinto Alcan Inc. ("RTAI")
Alan Blair Shane Hopkins-Utter	B.C. Salmon Farmers Association ("B.C.SFA")
No appearance	Seafood Producers Association of B.C. ("SPAB.C.")
No appearance	Aquaculture Coalition: Alexandra Morton; Raincoast Research Society; Pacific Coast Wild Salmon Society ("AQUA")
Tim Leadem, Q.C.	Conservation Coalition: Coastal Alliance for Aquaculture Reform Fraser Riverkeeper Society; Georgia Strait Alliance; Raincoast Conservation Foundation; Watershed Watch Salmon Society; Mr. Otto Langer; David Suzuki Foundation ("CONSERV")
Don Rosenbloom	Area D Salmon Gillnet Association; Area B Harvest Committee (Seine) ("GILLFSC")

APPEARANCES / COMPARUTIONS, cont'd.

No appearance	Southern Area E Gillnetters Assn. B.C. Fisheries Survival Coalition ("SGAHC")
Chris Watson	West Coast Trollers Area G Association; United Fishermen and Allied Workers' Union ("TWCTUFA")
No appearance	B.C. Wildlife Federation; B.C. Federation of Drift Fishers ("WFFDF")
No appearance	Maa-nulth Treaty Society; Tsawwassen First Nation; Musqueam First Nation ("MTM")
No appearance	Western Central Coast Salish First Nations: Cowichan Tribes and Chemainus First Nation Hwlitsum First Nation and Penelakut Tribe Te'mexw Treaty Association ("WCCSFN")
Brenda Gaertner Leah Pence	First Nations Coalition: First Nations Fisheries Council; Aboriginal Caucus of the Fraser River; Aboriginal Fisheries Secretariat; Fraser Valley Aboriginal Fisheries Society; Northern Shuswap Tribal Council; Chehalis Indian Band; Secwepemc Fisheries Commission of the Shuswap Nation Tribal Council; Upper Fraser Fisheries Conservation Alliance; Other Douglas Treaty First Nations who applied together (the Snuneymuxw, Tsartlip and Tsawout)
No appearance No appearance	Adams Lake Indian Band Carrier Sekani Tribal Council ("FNC")
No appearance	Council of Haida Nation

APPEARANCES / COMPARUTIONS, cont'd.

Joseph Gereluk	Métis Nation British Columbia ("MNB.C.")
No appearance	Sto:lo Tribal Council Cheam Indian Band ("STCCIB")
No appearance	Laich-kwil-tach Treaty Society James Walkus and Chief Harold Sewid Aboriginal Aquaculture Association ("LJHAH")
No appearance	Heiltsuk Tribal Council ("HTC")
No appearance	Musgagmagw Tsawataineuk Tribal Counsel ("MTTC")

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Vancouver, B.C. /Vancouver (C.-B.)
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1
2
3
4 THE REGISTRAR: Order. The hearing is now resumed.

5 MR. WALLACE: Good morning, Commission Cohen. Brian
6 Wallace, Commission counsel, and with me is Lara
7 Tessaro. If I might just make a couple of
8 comments about scheduling. I have canvassed the
9 participants and it appears we have about three-
10 and-a-half hours of cross-examination remaining
11 for this panel. At the moment, I expect to be
12 about 25 minutes or thereabouts in re-examination
13 and there may be re-examination from Canada that
14 we're not yet aware of. I am hopeful that we can
15 start the RDG panel this afternoon. They've been
16 advised that it will be after the afternoon break.

17 On that panel, I expect I will take about
18 three-and-a-half hours in examination. So in
19 order to complete that panel by -- in this year,
20 we will sit next Thursday, December 16th, from
21 10:00 till 4:30, subject to adjustments depending
22 on the exigencies of time but that's the operating
23 assumption. And we will reschedule the
24 stakeholders' panel for the new year and will get
25 back to participants on that timing.

26 Of the participants, I have the order and the
27 time estimates of cross-examination and I very
28 much appreciate people putting their thoughts into
29 how they can keep these brief and I think -- and I
30 -- as I say, I appreciate that. It'll help us get
31 through it. Mr. Blair, for the salmon farmers has
32 estimated 20 minutes; Mr. Leadem, 30 minutes; Mr.
33 Rosenbloom, 40 minutes; Mr. Butcher, I have at ten
34 minutes but I think that was just a calculation
35 from his original one; and for the Metis, Mr.
36 Gereluk, is 15 minutes; and Ms. Gaertner for the
37 First Nations Coalition estimates that she'll be
38 one-and-a-half hours.

39 So with that...

40 MR. ROSENBLOOM: Thank you. In response to Mr.
41 Wallace, yesterday I did indeed indicate to Mr.
42 Wallace -- I believe I said 40 to 45 minutes.
43 I've reviewed my notes. I don't see how I can
44 complete my cross-examination within that time. I
45 do remind the Commission that the in-chief portion
46 of this panel, cumulatively between Mr. Wallace
47 and Mr. Timberg, was about two-and-a-half days. I

1 will do my best to keep within time. And I might
2 add, as I cross-examine if any area of my cross-
3 examination is not helpful to the Commission, I'm
4 sure you, Mr. Commissioner, will inform me of that
5 and I am, obviously, prepared to move on. But I
6 don't believe I can complete within 40 or 45
7 minutes. Thank you.

8 MR. WALLACE: Mr. Commissioner, my -- my concern is
9 that if we -- this panel is not completed today,
10 then we -- I become concerned about completing the
11 RDG panel in two days. So I would ask
12 participants to please try and limit their cross-
13 examination as far as they possibly can. Mr.
14 Blair?

15 MR. BLAIR: Mr. Commissioner, for the record, Alan
16 Blair for the B.C. Salmon Farmers Association. A
17 couple of observations. Firstly, my associate,
18 Mr. Hopkins-Utter will be dealing with cross-
19 examination this morning. We've tried to take
20 steps to shorten all of our questions and I hope
21 we can finish it within 20 minutes but I do note
22 that we had one of the shortest of estimates in an
23 effort to be efficient and we do, as Mr.
24 Rosenbloom said, need to canvass some of these
25 issues with this panel. Our client's very, very
26 concerned by the slowness with which the
27 aquaculture issues are being dealt with here and
28 we keep being put off for another day. But
29 Project 5 and other projects are a matter of great
30 concern to us so we have this panel and we would
31 like to advance some of them and will try to do so
32 within our estimate. Thank you.

33 THE COMMISSIONER: Thank you, Mr. Blair.

34 MR. WALLACE: Mr. Hopkins-Utter, I think you're up.

35 MR. HOPKINS-UTTER: Good morning, Mr. Commissioner,
36 Panel. Shane Hopkins-Utter, H-o-p-k-i-n-s hyphen
37 U-t-t-e-r, for the B.C. Salmon Farmers
38 Association.
39

40 CROSS-EXAMINATION BY MR. HOPKINS-UTTER:

41
42 Q I'd like to direct some questions to the panel,
43 this morning, specifically with respect to the
44 Wild Salmon Policy and some of their witness
45 summaries and some of the evidence that they had
46 given in that, specifically the question of
47 whether the Wild Salmon Policy, not being

1 prescriptive -- panel members, perhaps you can
2 agree with me on that, that we've already heard
3 the Wild Salmon Policy is not prescriptive. Is
4 that true? It was never -- it was not intended to
5 be prescriptive in its final -- final form?

6 DR. IRVINE: That's true.

7 Q Thank you. And Dr. Irvine, I believe your witness
8 summary says that the draft operational
9 guidelines, they were never finalized and that
10 progress on the operational ecosystem, objectives
11 under Strategy -- under Strategy 3 has, in fact,
12 "stalled"? Was that also a fair summary?

13 DR. IRVINE: Well, the -- you're dealing with two
14 issues, two quite separate issues. So the
15 operational guidelines, as we discussed during the
16 development panel earlier last week, we shifted
17 direction in about 2003 and went away from that
18 approach. And your second comment related to
19 ecosystem objectives and we did -- I guess they
20 stalled from a perspective of putting them into a
21 scientific publication. But we have continued to
22 -- to think about them, I guess, or to work on
23 them, and, in particular, with Dr. Hyatt's work in
24 the Barclay Sound pilot and the Okanagan.

25 Q Thank you. I'd like to drill down then into some
26 of what you've just said.

27 MR. HOPKINS-UTTER: Mr. Lunn, if you would mind pulling
28 up Exhibit 8? Page 38, bottom of the third
29 paragraph. Now, the Wild Salmon Policy here at
30 the bottom of the third paragraph refers to
31 mitigation measures, improved cage structure,
32 proper farm citing to address risks. And at the
33 beginning of the fifth paragraph, if you would
34 please focus in a little bit, Mr. Lunn, it refers
35 expressly to federal legislation, including the
36 Canada -- Canadian **Environmental Assessment Act**
37 screening for potential environmental effects.

38 Q So Dr. Irvine, can you just comment if those
39 operational ecosystem objectives for aquaculture
40 that you had mentioned in your summary were, in
41 fact, intended to apply to these types of
42 mitigation measures?

43 DR. IRVINE: Well, I'm not an expert in any way on the
44 CEAA legislation. The operational -- the
45 ecosystem objectives that we were working on for
46 the various sectors, which included cultivation,
47 which was both enhancement and aquaculture, were

- 1 really -- we started with upper level ecosystem
2 objectives, which is simply the -- the
3 conservation of ecosystem integrity, which is
4 really dealing with ecosystem structure and
5 function. And then we -- we drilled down from
6 there to make those upper level objectives
7 operational from -- from the perspective of the
8 various sectors. So they weren't intended to --
9 to link to specific legislation. We didn't get
10 that far, I guess.
- 11 Q Okay. Can I ask you then about the draft
12 operational guidelines that you mentioned in your
13 summary? This is your summary of evidence under
14 the development at page 2, fourth bullet down.
- 15 MR. HOPKINS-UTTER: if you please, Mr. Lunn?
- 16 Q This is Exhibit 103. Page 2, fourth bullet. It
17 reads:
18
19 You will see the draft operational guidelines
20 were intended to govern activities currently
21 addressed in the blue sidebars within the
22 WSP, namely, harvest, habitat enhancement and
23 aquaculture.
24
- 25 So my question, I suppose, is if the new
26 operational ecosystem objectives for aquaculture
27 have not actually been finalized, does these draft
28 operational guidelines then apply?
- 29 DR. IRVINE: No, the operational guidelines were never
30 finalized.
- 31 MR. HOPKINS-UTTER: Mr. Lunn, if you could please take
32 us to Exhibit 63, DFO'S Aquaculture Action Plan.
33 Mr. Commissioner, this is not listed in BCSFA list
34 of documents. I would like to use this as a
35 visual aid perhaps. It shows a list of seven
36 interim DFO aquaculture sight application
37 guidelines, six of which we did, in fact, list in
38 our documents to examine on the Wild Salmon
39 Policy. Mr. Lunn, at page 4? If you could just
40 focus in on that list a little bit?
- 41 MR. WALLACE: Mr. Commissioner, I don't believe the
42 witnesses will have seen this document so it might
43 take them a moment.
- 44 MR. HOPKINS-UTTER: Absolutely. As I say, this is more
45 of a visual aid.
- 46 Q Does anyone on the panel recognize the interim
47 guidelines or are familiar with them? Perhaps,

1 Ms. Stalberg, being in OHEB, you would have come
2 across some of these? For your reference, these
3 were all finalized in 2002, which was the same
4 year as the Aquaculture Policy Framework and just
5 a few years before the Wild Salmon Policy was
6 finalized.

7 MS. STALBERG: Good morning. I quickly scanned the
8 list and I'm not familiar with having reviewed
9 them.

10 Q All right. Thank you.

11 MR. HOPKINS-UTTER: Mr. Lunn, can you please pull up
12 BCSFA document number 12? This is Department of
13 Fisheries and Oceans Habitat Management Program -
14 Practitioners Guide to the Risk Management
15 Framework for DFO Habitat Management Staff,
16 Version 1.0, dated 2005.

17 Q Ms. Stalberg, I'll again direct this to you,
18 although any of the other panel members can answer
19 if they're familiar with this. Are you familiar
20 with this document?

21 MS. STALBERG: Yes, I am.

22 Q And can you describe it for us generally?

23 MS. STALBERG: Can you please scan through a few pages
24 of it for me, please? Actually, if we can stop at
25 the -- or the index, Mr. Lunn, that's probably
26 good. Thank you. Okay. So what would you like
27 me to describe?

28 Q Well, generally, what does this apply to? You
29 could start out -- start us with that. I'll
30 rephrase the question then.

31 MS. STALBERG: Yeah.

32 Q Is this part of the Environmental Process
33 Modernization Plan of the DFO?

34 MS. STALBERG: Yes.

35 Q Okay. And how is this document used?

36 MS. STALBERG: It's used by proponents so individuals
37 or corporations that have a development proposal
38 and DFO staff internally within OHEB, particularly
39 the habitat management staff or the habitat
40 protection and sustainable development staff. So
41 through a filter of a risk management framework,
42 projects are assessed as to their potential impact
43 and the sensitivity of the habitat or the species
44 of fish.

45 MR. HOPKINS-UTTER: All right. Mr. Lunn, at paper page
46 8 -- I'm not sure of the electronic page on this.
47 This is Figure 1, applying risk management

1 framework to decision-making under the habitat
2 protection provisions of the **Fisheries Act**. Yes,
3 that's it.

4 Q And that's a fair representation of flow charts in
5 the process of the decisions made under this
6 document?

7 MS. STALBERG: Yes, and the graphic, the risk
8 assessment matrix, I had mentioned how the WSP
9 links with EPMP. And if we blow up that risk
10 assessment matrix, yes, please -- well, that's not
11 very helpful. On the --

12 MR. HOPKINS-UTTER: For the record, let it show that
13 it's too pixelated (sic) to actually read.

14 MS. STALBERG: On -- risk is a function of -- on an X-
15 axis or the vertical axis on the left, the
16 potential impacts of the development. And on the
17 -- or sorry, that's the Y-axis and then on the Y-
18 axis is the sensitivity of the habitat so the Wild
19 Salmon Policy, through identifying those highly-
20 productive and sensitive habitats, can situate the
21 development-type of proposal if it affects those
22 habitats along that -- along that access.

23 Q Okay. I believe that that same graphic is, in
24 fact, reproduced at pages 18 and 19 of this
25 document but I think that's -- you've covered it
26 in sufficient detail.

27 MR. HOPKINS-UTTER: Mr. Lunn, could you take us to
28 BCSFA document 13, please?

29 MR. WALLACE: Perhaps that document should be marked as
30 an exhibit?

31 MR. HOPKINS-UTTER: Oh, thank you, Mr. Wallace. Mr.
32 Commissioner -- Mr. Registrar, could you please
33 mark that as an exhibit?

34 THE COMMISSIONER: Sorry, what are we marking? What
35 are we marking? What are we marking?

36 MR. HOPKINS-UTTER: Oh, the document that we were just
37 referring to. That was the Habitat Management
38 Program Practitioner's Guide to the Risk
39 Management Framework for DFO Habitat - Management
40 Staff Version 1.0 dated 2005.

41 THE COMMISSIONER: Thank you.

42 THE REGISTRAR: Exhibit Number 214.

43

44 EXHIBIT 214: Habitat Management Program
45 Practitioner's Guide to the Risk Management
46 Framework for DFO Habitat - Management Staff
47 Version 1.0 dated 2005

7

PANEL NO. 7

Cross-exam by Mr. Hopkins-Utter (BCSFA)

1 MR. HOPKINS-UTTER: Our document 13, Mr. Lunn. This is
2 the Department of Fisheries and Oceans Habitat
3 Management Program - Habitat Compliance Decision
4 Framework, Version 1.1.

5 Q Ms. Stalberg, are you familiar with this document?

6 MS. STALBERG: Again, can we go to the index, please?

7 Thank you.

8 MR. WALLACE: Mr. Commissioner, there is a whole topic
9 on habitat management and I'm not sure of the
10 connection to the Wild Salmon Policy in this line
11 of questions.

12 MR. HOPKINS-UTTER: Mr. Commissioner, I believe that
13 the Wild Salmon Policy, as we identified with the
14 previous panel, expressly refers to the citing of
15 aquaculture operations as one of the mitigation
16 measures. I believe that we have Ms. Stalberg and
17 a panel here who are expert in the implementation
18 of the Wild Salmon Policy and it's necessary to
19 canvass some of these -- pardon me -- necessary to
20 canvass some of these issues now to know exactly
21 how Wild Salmon Policy is going to be implemented
22 with respect to those types of citing decisions.
23 Thank you.

24 Q Ms. Stalberg, are you familiar with this document?

25 MS. STALBERG: So it's specific to compliance
26 monitoring and I may have, probably have read it
27 at some time but I -- without reading some more of
28 it, I cannot comment on it.

29 Q Okay. You're generally familiar with it, though?
30 This is part of the -- also part of the EPMP
31 program?

32 MS. STALBERG: Yeah, it has the same format and looks -
33 - well, compliance monitoring is part of the
34 Environmental Process Modernization Program. But
35 as to the specifics within the document, I'd have
36 to review them or re-review them.

37 MR. HOPKINS-UTTER: All right. May we mark this as an
38 exhibit, Mr. Registrar?

39 THE REGISTRAR: Exhibit Number 215.

40

41 EXHIBIT 215: Department of Fisheries and
42 Oceans Habitat Management Program - Habitat
43 Compliance Decision Framework, Version 1.1
44

45 MR. HOPKINS-UTTER: Mr. Lunn, Exhibit 181, please,
46 summary of Ms. Heather Stalberg, senior habitat
47 management biologist. First page, last bullet, if

1 you please?

2 Q Ms. Stalberg, your summary says at Strategy 2 -
3 Implementation in General, I quote:

4
5 She will say that the WSB habitat working
6 group was not engaged in aquaculture issues.
7 She will say that DFO's work on developing
8 habitat status indicators and benchmarks
9 under Step 2.2 had not yet included near-
10 shore or marine indicators. She will say
11 that members of the WSP implementation team
12 later determined that marine indicators would
13 be developed through Strategy 3. She will
14 say that it will have to be seen as their
15 ability to track aquaculture.

16
17 My question to you then is, although the habitat
18 work group was not engaged in aquaculture issues,
19 can you say what kind of marine indicators could
20 be developed under Strategy 3 to track
21 aquaculture?

22 MS. STALBERG: I think that question is best asked of
23 Mr. Hyatt.

24 Q Dr. Hyatt?

25 DR. HYATT: As has been mentioned previously, there are
26 precious -- pressure and status indicators --
27 various classes of indicators that are used to
28 follow sectoral activities. And so with respect
29 to aquaculture, a pressure indicator, for example,
30 might be the -- the total production via
31 aquaculture in an area, the amount of -- you know,
32 the number of hectares or lineal kilometres of
33 foreshore lease. So those have not been formally
34 proposed, as indicators as yet, because the
35 process of developing indicators and objectives --
36 actually the other way around -- developing
37 objectives and indicators, Mr. Commissioner, will
38 be done through a dialogue with the various
39 sectoral groups, including the aquaculture group.
40 And that -- that dialogue has not been -- has not
41 been entered into in a way to drive out those
42 indicators yet.

43 Q Mr. -- pardon me -- Dr. Hyatt, the Wild Salmon
44 Policy identified a number of those pressures, did
45 it not?

46 DR. HYATT: Wild Salmon Policy does identify a number
47 of pressure indicators. You know, there are a

1 wide range of them that cover each of the -- each
2 of the sectoral activity areas. There are some
3 overarching ones like climate change that come
4 from diffuse activities at a global scale that
5 clearly have pervasive influences on -- on the
6 sustainability of wild salmon and individual
7 conservation units so, yes, there are a number of
8 pressure indicators identified. And following
9 pressure indicators, of course, there are also
10 status indicators.

11 Q I'm going from memory here, but will you agree
12 with me the Wild Salmon Policy generally canvasses
13 pressures on wild stock, such as population
14 growth, urbanization, use for food purposes.

15 DR. HYATT: Yes, all of those -- all of those would be
16 identified as -- as broad-pressure indicators.
17 Under Strategy 1, for example, exploitation has
18 been identified as an indicator. That is actually
19 more properly considered as a threat indicator
20 under Strategy 3. Cumulative exploitation or the
21 rate of exploitation on individual CU's relative
22 to their productivity will be an issue of some
23 concern.

24 MR. HOPKINS-UTTER: All right. Mr. Lunn, if you could
25 please pull up BCSFA document number 5? This is
26 Department of Fisheries and Oceans Aquaculture
27 Policy Framework, January 1st, 2002. At page 12
28 of this document, second paragraph.

29 Q Will you agree with me, Dr. Hyatt, that like the
30 Wild Salmon Policy, the Aquaculture Policy
31 Framework identifies here a number of pressures on
32 natural resources, which would include wild
33 salmon? It notes here the risks posed to
34 resources by population growth, expansion of the
35 world economy putting pressure on natural
36 resources, climate change, air pollution, threats
37 to water quality, availability of water, declining
38 biodiversity. Are these generally the same
39 pressures that threaten wild salmon stocks that
40 you've identified as being part of those pressures
41 and stressors?

42 DR. HYATT: Yes, many of those would appear on -- on
43 any sort of generic list of pressure indicators.

44 MR. HOPKINS-UTTER: Mr. Lunn, page 15, last two
45 paragraphs, please? Middle of the second
46 paragraph, it begins:

1 The Food and Aquaculture Organization of the
2 United Nations projects that by 2030,
3 aquaculture will dominate fish supplies with
4 more than half of the fish being consumed
5 originating from aquaculture operations.
6 Indeed, by 2025, annual demand for seafood
7 will outstrip the capacity of wild fisheries
8 by some 55 million tons, presenting
9 tremendous opportunities for the aquaculture
10 sector.

11
12 Next paragraph, it reads:

13
14 With global demand increasing and natural
15 stocks already largely or at or exceeding
16 their maximum capture potential, it is clear
17 that the aquaculture will play an important
18 role in satisfying future global demand and
19 in contributing to the security of the global
20 food production system.

21
22 At page 16, bullet list, mid-page, fourth bullet
23 down:

24
25 The Aquaculture Policy Framework also
26 acknowledges that aquaculture can reduce
27 pressure on wild fish stocks helping them to
28 sustain and enhance the wild fishery.

29
30 Q Dr. Hyatt, and all panel members, does this mean
31 that if the risk of aquaculture can be properly
32 managed to ensure its sustainability, it can, in
33 fact, help DFO meet its primary objective of
34 conservation of wild stocks by relieving those
35 pressures?

36 DR. HYATT: That's an interesting observation.
37 Certainly if the -- if the risks of aquaculture
38 and the environment -- potential environmental
39 impacts of aquaculture are properly assessed and
40 rigorously managed then it's certainly possible
41 that aquaculture production can reduce the
42 pressure on wild fish stocks in aggregate.
43 Whether that -- whether that resolves issues
44 related to the conservation of particular
45 conservation units of wild salmon isn't
46 immediately clear.

47 Q Thank you.

1 MR. HOPKINS-UTTER: Mr. Lunn, page 25, third paragraph
2 from the bottom. It reads here:
3

4 Although conservation of the wild fish stock
5 and DFO's legislative responsibilities for
6 navigational safety and environmental and
7 fish habitat protection will continue to be
8 primary considerations, DFO will, where
9 applicable, consider the social and economic
10 benefits associated with the aquaculture
11 development in the course of its decisions.
12

13 Q Is it fair to interpret this as expressly
14 acknowledging the primacy of conservation over
15 sustainable use in a manner that is consistent
16 with the Wild Salmon Policy?

17 DR. HYATT: Just give me a moment to read the language
18 again. I think that's consistent with the notion
19 that conservation and environmental protection
20 have primacy over development of sectoral
21 activities, such as aquaculture, yes.

22 MR. HOPKINS-UTTER: Mr. Lunn, I'll just take us briefly
23 to Exhibit 8, but I'll be coming back to this in a
24 moment. Exhibit 8, page 16, under Principle 3 -
25 Sustainable Use.

26 Q Would you agree that this is, in fact, the same
27 idea, although not specifically the same wording
28 that appears in the Wild Salmon Policy at
29 Principle 3, which reads:
30

31 Socioeconomic, biological considerations will
32 inform decisions on salmon, their habitats
33 and their ecosystems consistent with the
34 priorities assigned to Principles 1 and 2.
35 Conservation decisions cannot be based solely
36 on biological information. The maintenance
37 of biodiversity and healthy ecosystems must
38 be considered in the context of human needs
39 for use now and in the future. Decisions
40 will not be taken without regard to their
41 cost or social consequences.
42

43 So would you agree with me then that in both the
44 Wild Salmon Policy and the Aquaculture Policy
45 Framework, DFO's highest priority is expressly
46 acknowledged to be conservation but that social
47 and economic issues and concerns will also inform

1 those decisions?

2 DR. HYATT: That's a fair statement. They're --
3 they're analogous statements and point out that --
4 that conservation is our first concern, primary
5 concern, under a number of Acts, Species at Risk,
6 and the **Fisheries Act**. And that socioeconomic
7 considerations, which clearly are related to
8 sustainable use and benefits for society in
9 general do -- do -- are acknowledged to play a
10 significant role in -- in future decisions.

11 MS. STALBERG: And -- excuse me. Oh, go ahead.

12 MR. WALLACE: Sorry. Mr. Commissioner, perhaps the
13 previous document, the DFO Aquaculture Policy
14 Framework should be marked as an exhibit?

15 MR. HOPKINS-UTTER: I was going to mark it as an
16 exhibit. We can do that now. I was going to be
17 returning to it. Mr. Registrar?

18 THE REGISTRAR: Exhibit Number 216.

19
20 EXHIBIT 216: Department of Fisheries and
21 Oceans Aquaculture Policy Framework, January
22 1, 2002
23

24 MS. STALBERG: And excuse me, the date on the
25 Aquaculture Framework, that's 2002; is that
26 correct?

27 Q Yes. It's -- my understanding it's January 1st,
28 2002.

29 MS. STALBERG: Okay. So why I ask about the date is,
30 permitting for aquaculture sites is being
31 transferred from the province to DFO, that
32 responsibility. So I'm not sure how topical these
33 operational guidelines are. They may be in review
34 right now, as DFO delivers more of the program.
35 So Andrew Thomson is the lead for aquaculture and
36 he would be able to advise on that.

37 Q All right. It's my understanding that there are a
38 number of interim guidelines on that list that was
39 in Exhibit 63 that you hadn't identified but
40 perhaps we'll just leave that off for the moment.
41 Would it be Andrew Thomson that we would then
42 consult regarding those interim guidelines, as
43 well as the future development?

44 MS. STALBERG: Yes.

45 Q Thank you.

46 MR. HOPKINS-UTTER: Mr. Commissioner, we heard
47 testimony from a number of DFO witnesses before

1 the -- before this Commission, including David
2 Bevan, the associate deputy minister, and Claire
3 Dansereau, deputy minister, on the 2nd of
4 November, who said -- I'm just summarizing their
5 comments here because it actually encompasses
6 several pages of transcript. It was under cross-
7 examination by Mr. McDade for the Aquaculture
8 Coalition. That DFO is required to be internally
9 consistent such that a reference to the DFO's
10 obligations under legislation, regulations or
11 policies, such as in a job description in that
12 case essentially incorporates those other
13 obligations into the citing document.

14 Q Would the panel members generally agree that there
15 is, in fact, a principle of incorporation by
16 reference in DFO? By citing one document, you're,
17 in fact, incorporating those -- those principles?

18 MS. STALBERG: There was a very long intro to the
19 question. I'm sorry. You'll need -- if you could
20 be more specific on what the question is.

21 MR. TIMBERG: Mr. Commissioner, I just note that the --
22 my friend's asking this panel to speak on behalf
23 of DFO with respect to policies of a large
24 question. I think this panel can speak as to
25 their own personal knowledge about what they know
26 but they can't speak on behalf of DFO with respect
27 to this large question.

28 MR. HOPKINS-UTTER: I'm in your hands, Mr.
29 Commissioner.

30 THE COMMISSIONER: Well, I understood that they were
31 speaking from the perspective of their role within
32 DFO. Obviously, they are not necessarily
33 instructed to speak on behalf of the DFO on all
34 policy within that -- the purview of that
35 organization. But I understood they were speaking
36 to the extent that their role entitled them to
37 speak or enabled them to speak, they could do so.
38 So I think it's really a question not so much of
39 not wanting to answer your question but not really
40 understanding what your question is.

41 MR. HOPKINS-UTTER: Thank you, Mr. Commissioner. To
42 rephrase the question then, we heard from Mr.
43 Hyatt that Wild Salmon Policy and Aquaculture
44 Policy Framework do, in fact, seem to have the
45 similar -- similar statements, I believe. Perhaps
46 -- perhaps I'll just move on. I'll leave that --
47 leave that alone. Okay. Can you just take us to

1 page 7 of the Aquaculture Policy Framework, Mr.
2 Lunn?

3 MR. LUNN: Do you have a reference for that?

4 MR. HOPKINS-UTTER: Yes, this is bullet list, mid-page.

5 MR. LUNN: Maybe I misunderstood what you're asking
6 for.

7 MR. HOPKINS-UTTER: Oh, sorry, Exhibit 216.

8 MR. LUNN: Okay, we're there.

9 MR. HOPKINS-UTTER: Page 7. Bullet point list. Just
10 below the list -- there are five bullets here
11 listing the objectives of the police framework.
12 Below the list, it says:

13

14 DFO's vision for aquaculture development is
15 to benefit Canadians through the culture of
16 aquatic organisms while upholding the
17 ecological and socioeconomic values
18 associated with Canada's oceans and inland
19 waters.

20

21 Q My question for the panel is, does "ecological"
22 and "socioeconomic" sound like sustainable
23 development?

24 DR. HYATT: Well, I think ecological and socioeconomic
25 values are something that society defines in an
26 ongoing process. Whether that is equated to
27 sustainable development depends on your definition
28 of sustainable development.

29 Q Well, fortunately, there's a footnote here that
30 helps us.

31 MR. HOPKINS-UTTER: It says at the very bottom, Mr.
32 Lunn. The footnote reads -- defines aquaculture
33 development specifically as:

34

35 All references to aquaculture development in
36 this policy framework refer to development
37 that is socially, economically and
38 environmentally sustainable.

39

40 Now, going back to the question of incorporation
41 by reference, the words "aquaculture development"
42 also appear in the Wild Salmon Policy at page 38.
43 Mr. Lunn, if you could just take it there, please?
44 Second paragraph down. I'm having a bit of
45 trouble reading that there. The last sentence --
46 second-to-last sentence of the second paragraph
47 reads:

1 The first principle of the APF, being the
2 Aquaculture Policy Framework, directs the
3 department to support aquaculture development
4 in a manner consistent with its commitments
5 to ecosystem-based and integrated management,
6 as set out in departmental legislation,
7 regulations and policies.

8
9 It then says:

10
11 This principle reflects the department's
12 mandate for the conservation of marine
13 resources.

14
15 So this is the Wild Salmon Policy referring
16 expressly to Principle 1 in the Aquaculture Policy
17 Framework using the word "aquaculture
18 development", which is the exact same phrase that
19 appears in the Aquaculture Policy Framework.

20 Q Would you agree then that aquaculture development
21 in the Wild Salmon Policy likely refers to
22 sustainable development, as defined in that
23 footnote that I just took you to?

24 MS. STALBERG: What I'm not clear on, and again, Andrew
25 Thomson could probably answer this, is through the
26 Canadian **Environmental Assessment Act** reviews and
27 navigable water permit application reviews,
28 certainly through CEAA and the **Fisheries Act**
29 reviews of development proposals, the
30 socioeconomic impacts doesn't play a role in the
31 risk management framework. It may come into play
32 if there is, say, a panel review or ministerial
33 decision on a development proposal that interests
34 other than solely impacts on fish and fish habitat
35 need to be considered. So I'm not sure about the
36 -- how the Aquaculture Policy Framework that
37 speaks to socioeconomic interests, how that is
38 then reflected in a project review through CEAA.

39 Q Thank you. My question was more -- oh, I beg your
40 pardon.

41 DR. IRVINE: No, I'd just like to point out that within
42 the Wild Salmon Policy, we have a -- we define
43 "sustainable development" so that the -- the
44 policy would be referring to that definition
45 rather than the one in the Aquaculture Policy
46 Framework, which preceded the Wild Salmon Policy.
47 Now, I haven't sort of focused on the definitions

1 to understand if they're any different but
2 sustained development in the Wild Salmon Policy
3 is:

4
5 Development that meets the needs of the
6 present without compromising the ability of
7 future generations to meet their own needs.
8

9 And that's taken from the Brundtland Commission.
10 But really, I think what you're getting into is --
11 is Strategy 4. So Strategies 1, 2 and 3, which is
12 what we are experts on, really deal with the
13 science issues, you know, the -- the fish, the
14 habitat and the ecosystems. The Wild Salmon
15 Policy certainly recognizes the importance of
16 social and economic considerations in the
17 decision-making process and that is what Strategy
18 4 is all about.

19 Q Going back to the concept that David Bevan and
20 Claire Dansereau put into evidence before this
21 Commission, they said that if there was, in fact,
22 a reference, in that case it was a job description
23 referring to the DFO's larger mandate, the answer
24 that they gave was that, referring to the DFO's
25 larger mandate, in fact, incorporated all the
26 DFO's mandate. You didn't have to spell out every
27 policy, every -- every framework in that job
28 policy. That was sufficient to, in fact, refer to
29 those other documents. It put that job
30 description into the larger context.

31 My question to you is just on the phrase
32 "aquaculture development" being expressly defined
33 in the Aquaculture Policy Framework, being
34 mentioned in the Wild Salmon Policy. Is it
35 reasonable to assume that because the Aquaculture
36 Policy Framework was completed in 2002 was, in
37 fact, referred to expressly in this exact
38 paragraph of the Wild Salmon Policy using the same
39 language, "aquaculture development" where the
40 Aquaculture Policy Framework, in fact, defines
41 "aquaculture development" to mean sustainable
42 development, is it reasonable to believe that
43 aquaculture development in the Wild Salmon Policy,
44 in fact, is meant to be sustainable? If the Wild
45 Salmon Policy defines "sustainable development" in
46 its own way according to the Brundtland Report,
47 that would certainly be something that could

1 potentially reflect on the aquaculture policy.
2 I'm just asking about the aquaculture development.
3 Do you believe that that is consistent with the
4 Aquaculture Policy Framework and the Wild Salmon
5 Policy?

6 DR. IRVINE: I think you're mixing things up a little
7 bit. You know, the Wild Salmon Policy is not
8 about aquaculture. The Wild Salmon Policy is
9 about wild salmon. And aquaculture is considered
10 the same as other human activities in terms of --
11 of their impact on wild salmon. Sustainable
12 development, sustainability is an important
13 objective, as articulated in the Wild Salmon
14 Policy. But really, aquaculture is just one of
15 many potential impacts on -- on wild salmon. So
16 that really, the Wild Salmon Policy doesn't --
17 doesn't articulate anything really about the
18 development of aquaculture.

19 Q So aquaculture is just like any other human
20 activity except for the fact that Dr. Hyatt has
21 actually agreed with me that aquaculture can, in
22 fact, help alleviate some of the stresses on wild
23 stocks through overfishing.

24 DR. IRVINE: Yeah, as can enhancement, as can nutrient
25 enrichment. There's many different ways that one
26 can ameliorate impacts on wild salmon.

27 MR. HOPKINS-UTTER: All right. I have just a few more
28 questions, Mr. Commissioner.

29 MR. WALLACE: I do note the time. It's well over the
30 20 minutes.

31 MR. HOPKINS-UTTER: I do note the time as well. I
32 apologize and I will wrap up very shortly.

33 Q Ms. Stalberg?

34 MR. HOPKINS-UTTER: Mr. Lunn, please take us to Exhibit
35 181. This is page 2, the very first bullet. Page
36 2, first bullet at the very top. It reads:

37
38 She will say the question of how the WSP
39 would relate to aquaculture came up in WSP
40 consultations and that her response was
41 consistent with the aquaculture sidebar on
42 page 36 of the WSP.

43
44 Q Ms. Stalberg, is that still your view?

45 MS. STALBERG: Yes.

46 MR. HOPKINS-UTTER: Mr. Lunn, please --

47 Q Thank you.

18

PANEL NO. 7

Cross-exam by Mr. Hopkins-Utter (BCSFA)

1 MR. HOPKINS-UTTER: Mr. Lunn, please take us to Exhibit
2 8, Wild Salmon Policy. This is electronic page
3 43, upper left-hand side. This is paper page 36.
4 It reads at the top:

5
6 Aquaculture operations will be regulated in a
7 manner consistent with other human activities
8 that may adversely affect salmon or their
9 habitat.

10
11 It then reads:

12
13 Specific conservation units of wild salmon
14 are threatened by aquaculture operations.
15 Corrective actions will be taken under the
16 **Fisheries Act** or --

17
18 - and I emphasize the word "or" -

19
20 -- longer-term solutions will be pursued as
21 part of an integrated planning process.

22
23 Q Do you agree with those statements still?

24 MS. STALBERG: Yes.

25 Q Can you elaborate on what longer-term solutions
26 under the integrated planning process are or
27 perhaps indicate whom we could direct that
28 question to?

29 MS. STALBERG: I think that those types of
30 conversations need to happen. They may already
31 have started to be considered after my tenure
32 ended. So other panel members may be able to
33 answer that. But how these kind of implications
34 are incorporated into Strategy 4, we hadn't
35 started talking about those kinds of -- how they
36 might be managed.

37 MR. HOPKINS-UTTER: At the very bottom of that same
38 blue bar, Mr. Lunn, it reads:

39
40 The risks of hatchery and production --

41
42 This is under WSP Implications Salmonid
43 Enhancement Program. I'll refer this to Ms.
44 Stalberg being on the -- on OHEB but I'll open it
45 to the panel.

46
47 The risks of hatchery production to wild

1 salmon will be assessed through the
2 development of a biological risk assessment
3 framework.

4
5 Can you say what progress has been made on that
6 framework?

7 MS. STALBERG: No, I was not involved in the hatchery
8 aspect or salmon production aspect for the Wild
9 Salmon Policy. That was more Carol Cross. She
10 might have shared some information with me but
11 it's more Carol Cross, Blair Holtby and perhaps
12 other members of the team here.

13 Q Thank you.

14 MR. HOPKINS-UTTER: And this is my very last question.
15 Mr. Lunn, please take us to Exhibit 216,
16 Aquaculture Policy Framework, page 27, second-to-
17 last paragraph, midway through beginning with the
18 word "further". Did you keep up? Page 27, midway
19 through, second-to-last paragraph, the big one at
20 the bottom reads:

21
22 Further, DFO's regulatory decisions supported
23 by enhanced science, improved decision-making
24 and management frameworks will be based on
25 risk management approaches endorsed by the
26 Government of Canada, including adaptive
27 management, involving ongoing monitoring and,
28 where required, the application of the
29 precautionary approach to reduce the
30 likelihood of unacceptable outcomes.

31
32 Q So would you agree with me that since the
33 Aquaculture Policy Framework was, in fact,
34 completed, the year before the document framework
35 for the application of precaution in science-based
36 decision-making about risk, which is Exhibit 51 in
37 the Commission, is it safe to assume that the
38 phrase "risk management approaches", "science-
39 based risk management approaches and adaptive
40 management", in fact, refer to that document or
41 anticipate it? Is it reasonable to read this
42 paragraph in the Aquaculture Policy Framework and
43 say that that document, the framework for
44 application of precaution in science-based
45 decision-making about risk likely applies to the
46 Aquaculture Policy Framework being the government
47 document on the application of science-based

1 decision-making about risk and the precautionary
2 principle?

3 MS. STALBERG: I couldn't say.

4 MR. HOPKINS-UTTER: All right. Thank you very much.

5 Those are my questions, Mr. Commissioner. I
6 apologize for going overtime.

7 MR. WALLACE: Mr. Leadem?

8 MR. LEADEM: Leadem, initial T., for the record, Mr.
9 Commissioner, for the Conservation Coalition.

10

11 CROSS-EXAMINATION BY MR. LEADEM:

12

13 Q My questions to the panel members will all be very
14 general in nature and with an aim of helping me to
15 shape some of the recommendations that my clients
16 may make to the Commissioner at the end of the
17 day. And I'd like to begin by acknowledging, Dr.
18 Irvine, your paper where you learn some lessons
19 about the development and I want to now focus upon
20 the lessons learned in the implementation phase
21 and see if we can flesh some of those out.

22 I'll begin with one that I've heard some of
23 the panel members say that it would have benefited
24 the implementation phase of the Wild Salmon Policy
25 to have a facilitator or a champion -- sometimes I
26 heard that expression used -- that would be able
27 to take on the task of ensuring that the Wild
28 Salmon Policy actually was implemented within
29 certain timeframes would be an enabler. There
30 seems to be some consensus among the panel members
31 that that is indeed something that would have --
32 that the appointment would have benefited the
33 implementation phase. Is that correct?

34 MS. STALBERG: Yes, it is, from my perspective.

35 Q And Dr. Irvine, you were nodding your head while I
36 was speaking.

37 DR. IRVINE: Well, certainly in the manuscript -- the
38 paper you referred to, I did talk about the
39 importance of having a committed and passionate
40 champion. And I would think -- I mentioned, I
41 think it was several days ago that I've noticed
42 that we have been receiving a lot more direction
43 and coordination during the last year or so, so
44 that it -- it certainly does -- the implementation
45 of anything as complicated as the Wild Salmon
46 Policy does require a lot of coordination. And --
47 and as I've just mentioned, I think that task or

1 that activity has been -- I've been seeing a lot
2 of evidence of improvement over the last year or
3 so.
4 Q But if you had a specific individual or a specific
5 team that had, as its primary focus, had as part
6 of its work plan, the implementation of the Wild
7 Salmon Policy, almost on a month-to-month or even
8 a day-to-day, week-to-week basis, that surely
9 would assist the process in -- in moving it
10 towards completion, would it not?
11 DR. IRVINE: And there is such a committee. This is
12 the implementation committee. And I think it went
13 through a number of individuals over the first
14 couple of years. But as I just mentioned, I've
15 seen evidence of a lot more direction in -- in the
16 last year or so.
17 Q All right. So you would agree with me that the
18 sense of direction is important because otherwise
19 you tend to get rudderless and you tend to go
20 around in circles and not find your way to the end
21 of the day. Is that fair?
22 DR. IRVINE: That -- that certainly can happen. You
23 know, it's a very complicated issue. It's got
24 multiple sectors, multiple people, people's jobs
25 are changing, there's many other issues. So it's
26 a complicated task, you know, the implementation
27 of this policy.
28 Q And by its very nature, the fact that it's
29 complicated, that says to me at any rate, looking
30 at -- somebody from the outside looking in, that
31 it would actually benefit from someone with a good
32 sense of direction to guide this home. Isn't that
33 fair?
34 DR. IRVINE: Well, I think you could say that about any
35 -- any activity.
36 Q All right. Okay. I'll move on and talk about
37 another potential submission at the end of the day
38 in terms of recommendations and that's the
39 question of funding. We talked a lot about the
40 funding issue. And I'm not talking about just
41 throwing money at the Wild Salmon Policy in order
42 to get it to a certain phase. I think it has to
43 be a judicious expenditure of money. Would you
44 agree with me?
45 DR. IRVINE: Sure.
46 Q Mr. Saunders seems to be nodding his head as well.
47 MR. SAUNDERS: Yes.

1 Q In other words, you just simply don't throw the
2 money at the problem but you actually have to
3 figure out where to spend the money in the most
4 economical, efficient manner; isn't that fair?

5 DR. IRVINE: Yes, that's the case.

6 Q All right. And I don't want to necessarily
7 suggest where that ought to be spent but my
8 information is, is that the monetary and the
9 habitat seems to be the most costly in terms of
10 the potential costs of this. Is that right, Ms.
11 Stalberg?

12 MS. STALBERG: I don't think we can make that
13 conclusion yet because we haven't seen what
14 Strategy 3 will produce and the type of monitoring
15 that might be involved there and then how that is
16 sort of divvied up; which parties will be
17 undertaking which tasks? So we can't yet say what
18 will be under the auspices of the department and
19 it certainly is expensive to monitor the Strategy
20 2 indicators whether you are minding existing data
21 that may or may not be robust or doing fieldwork
22 or doing it remotely. But we haven't yet
23 developed a framework to determine the cost.

24 Q Thank you. And I'm wondering because the province
25 owns so much of the habitat and is concerned also
26 about habitat, whether there should be some really
27 concrete measures to engage the province more
28 directly in terms of having it have -- do its
29 share of the -- of the fiscal load; in other
30 words, that the province should be actually
31 contributing to some of these fiscal measures.
32 Would you agree with that?

33 MS. STALBERG: Well, it's the department's policy so
34 we're -- the department's responsible for its
35 delivery. There is a federal/provincial MOU on
36 data sharing and I'm not sure what the status of
37 that is, like if it's topical or if it needs to be
38 revitalized but that's an area where the agencies
39 could revisit who's generating what kind of data
40 and how is it shared. So for example, that
41 monitoring work that was done in the Interior
42 Fraser Coho CU that cost \$55,000 to generate,
43 maybe it would cost less through revitalization of
44 that MOU.

45 Q And I fully appreciate the Wild Salmon Policy is a
46 federal policy, obviously. But what I'm driving
47 at is that you will -- there will be some

1 provincial derivatives that will come from this
2 Wild Salmon Policy. In other words, by defining
3 habitat and indicators and looking at these
4 measures, the provincial apparatus for assessing
5 environmental development or development that may
6 impact the environment will also benefit from
7 this, would it not, Mr. Saunders?

8 MR. SAUNDERS: If I might, I agree with Ms. Stalberg's
9 assessment that it's going to take -- it's too
10 early to tell what it's going to take but I also
11 agree, Mr. Commissioner, that there are some
12 linkages between the province and other interests
13 around understanding the state of salmon habitat
14 and ecosystems where there is a tremendous
15 opportunity for synergy. I would hesitate to say
16 that -- to ask others that there's some kind of
17 demand out there for them to participate in a
18 federal -- implementation of a federal policy.
19 But I think there are strong incentives to
20 collaborate and I would sort of refer to the
21 province's Living Water Smart Policy that
22 explicitly talks about the health of watersheds
23 and make some commitments that are very, very
24 closely linked to the Wild Salmon Policy and, in
25 fact, I think their current website refers to that
26 linkage.

27 And I would, you know, look to the -- perhaps
28 the RDG panel to clarify what current discussions
29 are in play and formal agreements. But I -- I
30 think there's a tremendous amount of opportunity
31 to work together. And therein lies some of the --
32 the question around the cost. If we're working
33 together in the -- it's a project that Ms.
34 Stalberg referred to, there is some indication
35 that the costs in sharing the data could be almost
36 minimal or shared across many orders -- several
37 orders of government. So it could be quite
38 feasible to -- to take on these pressure
39 indicators for a cost much below what we currently
40 think it might. So I think there's lots to do in
41 terms of pursuing those -- those relationships.

42 Q So in terms of the actual progress of the
43 engagement of provincial government and local
44 governments that those kinds of questions would
45 better be asked of the RDG panel that's coming up
46 next?

47 MR. SAUNDERS: That's true. Sort of the high-level

1 connection, absolutely. I think we've done a lot
2 of work, as Ms. Stalberg's talked about, at the
3 working level across the two -- the organizations
4 but the formal relationship and agreement to work
5 at a higher level should be discussed with the RDG
6 panel.

7 Q All right. I'll reserve that for them then.

8 MS. STALBERG: And I would add that during my tenure,
9 we did, at the working level, look for synergies
10 between provincial programs and the Wild Salmon
11 Policy. So the fishery-sensitive watersheds,
12 that's a forestry-related program and they, too,
13 are utilizing indicators so trying to build those
14 relationships. Well, are they monitoring certain
15 indicators that we have an interest in? So
16 contacts were made along those kind of lines and
17 then as well I've referred to data mining as one
18 way of reporting out on, figuring out habitat
19 status. And it's sort of only as good as the data
20 that is within the repositories.

21 So we did, through Strategy 2, run a pilot
22 where we gained funding through that Fraser Salmon
23 Watershed, it's the Living Rivers Program, to have
24 DFO's scientific licenses, the reports that came
25 in, automatically be input into what's called the
26 Fisheries Information Summary System. So that's a
27 collaborative data source between the province and
28 DFO. And data may not sound exciting but that
29 kind of information can then lead to, say, new
30 fish observations that can influence boundaries of
31 the conservation units and habitat status so
32 trying to build efficiencies into the
33 relationship.

34 And certainly after that pilot, in talking
35 with the data manager, who was on my team and led
36 the project, the province was still, you know,
37 asking for those reports, "Are any more coming?"
38 So there is a willingness there and these types of
39 pilots show the opportunity for collaboration. It
40 does take, though, energy or resources to set them
41 up.

42 Q All right. I want to move on to another potential
43 recommendation and this strikes me as being a
44 rather obvious one. But if you want a policy,
45 such as the Wild Salmon Policy implemented,
46 there's got to be the political will; in other
47 words, the minister has got to really issue the

1 marching orders. And if the minister were to do
2 that, we all know or expect that the people, the
3 civil servants at any rate, would simply let it --
4 make it happen. Isn't that a fair statement of
5 how things trickle down from the minister's office
6 down to the level of implementation?

7 MR. SAUNDERS: Could you repeat the question again for
8 me, please?

9 Q Well, it's a simple question in the sense that
10 what I'm driving at is, is there has to be a
11 political will to make the Wild Salmon Policy
12 happen, to make it implemented. And if there
13 were, then funding would be found and the program
14 would find the right people to put into the right
15 positions and the job will get done. To me, that
16 seems almost axiomatic.

17 MR. SAUNDERS: Well, I think we can demonstrate, Mr.
18 Commissioner. I would agree that, yes, there is
19 direction from the minister and, in fact, a series
20 of departmental priorities that inform programs
21 moving forward. And indeed the Wild Salmon Policy
22 is imbedded as part of -- and I forget the exact
23 language but fisheries reform, you know,
24 modernization of the fishery, and it is imbedded
25 in there. But I think it's a more complicated
26 question around an expectation. I mean the
27 priority is there as an activity but I'm not sure
28 I would agree with your -- I'm not sure where
29 you're going with how that would modify the
30 situation that we're in right now.

31 Q All right. Well, and I don't want to necessarily
32 debate this with you, Mr. Saunders, but
33 essentially, to my way of thinking and being a
34 product of the civil service for many years
35 myself, the way that things often get done is that
36 the minister speaks and people listen and react
37 and things get done. That's how governments
38 function. There -- they tend to be very top-
39 oriented so that the minister being an elected
40 official has the final say in a lot of these
41 things. So that if there were a real political
42 will to have the Wild Salmon Policy implemented
43 within a year, I can't conceive of how that could
44 not have -- could not happen.

45 MR. SAUNDERS: Well, I think, yeah, the key point
46 you're making is within a year. If that were the
47 case then there would be some level of discussion

1 about how that would actually happen. Would
2 additional resources be required? What would that
3 look like? Or what would -- what would not be
4 done. It might be helpful to -- Mr. Commissioner,
5 to explain -- I mean there is how we move forward
6 on addressing priorities and how we utilize the
7 resources that we have. And I certainly, as a
8 manager, I would see myself as a middle manager
9 responsible for salmon assessment and freshwater
10 ecosystem research. I receive a budget that is
11 relatively stable and of course subject to some
12 fluctuation. Resources come in to address certain
13 priorities. And resources are taken away as a
14 result of reallocation. And we've heard that
15 we're going into a departmental-wide reallocation.

16 So we are certainly -- we operate -- I have
17 within -- I can reallocate within programs but
18 recognize -- within my purview, subject to
19 approval from the regional director of science.
20 The regional director of science has an
21 opportunity to reallocate among programs within --
22 within science and within -- nationally, the ADM
23 of Science has an opportunity if priorities
24 change, to reallocate. And in certain
25 circumstances, we have opportunities to get new
26 monies through Treasury Board submissions and the
27 like.

28 With the implementation of the Wild Salmon
29 Policy, I mean we've operated for the last five
30 years under clear direction of the policy, which
31 states that we are changing the way we do business
32 and we're operating within the existing resources
33 that we have. So it's -- it's really not as -- as
34 we move forward, we're moving forward at the speed
35 that we can with the resources that we have. So
36 unless something changes where something, as you
37 suggest we have to do it now within a year, you
38 know, we -- there may be -- that would be a --
39 something would have to change and we have to
40 reallocate and not do something -- something else
41 or go after new money, Mr. Commissioner.

42 Q Understood. I want to move on to discuss Strategy
43 6.2, that's the five-year review. That's the -- I
44 think -- and let me see if I have the evidence
45 correct because this was just touched on very
46 briefly. Is it the case that Strategy 6.2, the
47 five-year review, is actually in abeyance right

1 now, that it's just been deferred? Is that -- is
2 that -- do I have that correct?

3 MR. SAUNDERS: I think that's a fair -- fair statement
4 but I -- again, we spoke about this earlier, Mr.
5 Commissioner. I think it's a question for the --
6 to clarification to the RDG as the reason behind
7 the abeyance, is the word you use.

8 Q All right. Could I ask you, in terms of your
9 respective roles, whether the -- one of the
10 factors behind the deferral was the fact that this
11 Commission was called?

12 MR. SAUNDERS: Yes, I -- I think that's -- in -- that's
13 my understanding -- personal understanding and
14 it's certainly -- there were discussions and I've
15 said earlier in my testimony that it's for -- as a
16 manager responsible for salmon and freshwater
17 ecosystems so stock assessment research. There's
18 a tremendous workload issue that take on -- in
19 addition to the workload that we've got to take on
20 that review, we felt it would be unfair to staff
21 and impact other -- other deadlines that we have
22 as well relating to our ongoing operational work.

23 Q Right. But certainly getting back to 6.2, the
24 panel would agree with me that that review, when
25 it occurs, will be an independent review? In
26 other words, it's not an internal review of DFO
27 investigating its own policies?

28 MR. SAUNDERS: It is absolutely to be an independent
29 review.

30 Q All right. And just on that deferral awaiting the
31 results of this Commission, we heard some evidence
32 earlier that scientists, such as yourselves, were
33 told that they should not engage members of the
34 public in terms of going to conferences.
35 Specifically, I think there was one that -- at SFU
36 last December on the decline in the Fraser River
37 sockeye. There was also one in March. Recently,
38 there was another conference held by SFU. Is
39 there actually something from somebody that says
40 thou shall not attend -- you, as scientists shall
41 not attend a conference because this review is
42 ongoing, this Commission is ongoing?

43 MR. SAUNDERS: That's true. And again, that's a
44 question, I think, for the RDG's. A decision was
45 made at the RDG level regarding participation in
46 meetings, workshops, conferences, that would
47 relate to the question being addressed by this

1 inquiry.

2 Q We also heard some evidence that scientists were
3 allowed to attend -- DFO scientists were allowed
4 to attend a conference that was hosted by the
5 Pacific Salmon Commission in June. So is there
6 some sort of parameter about which conferences
7 scientists can go to and which they cannot? I'm
8 just trying to get some idea.

9 MR. SAUNDERS: Again, that would be a question for the
10 RD -- RDG panel around the Salmon Commission
11 workshop and why we engaged in that and not in
12 others.

13 Q All right. Does any other scientist want to say
14 anything about this? Dr. Hyatt, do you have any
15 thoughts on this?

16 DR. HYATT: I have -- I have nothing to add to that.
17 It's -- it's beyond my knowledge what the specific
18 rationale was. As Mr. Saunders as said, we have
19 direction to -- or to not participate in external
20 forums, you know, unless there's clearance to do
21 so. And that clearance was provided for the June
22 workshop.

23 MR. LEADEM: All right. Thank you. Those are my
24 questions, Mr. Commissioner.

25 MR. WALLACE: It's ten after 11:00. The next is from
26 Mr. Rosenbloom. I'm not sure if we should start
27 that now or...?

28 THE COMMISSIONER: Well, what I would suggest is if we
29 take the break now for, say, ten minutes --

30 MR. WALLACE: Excellent.

31 THE COMMISSIONER: -- and then return and Mr.
32 Rosenbloom will then have his opportunity to
33 cross-examine. Thank you.

34 MR. WALLACE: Thank you, Mr. Commissioner.

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

37
38 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)
39 (PROCEEDINGS RECONVENED)
40

41 THE REGISTRAR: Order. The hearing is now resumed.

42 MR. ROSENBLOOM: Mr. Commissioner, Don Rosenbloom. I
43 represent Area D Gillnet, Area B Seiner. Mr.
44 Commissioner, I said at the start of this
45 morning's proceedings that I will be some time,
46 and I will certainly be over my estimate. I do
47 remind you, Mr. Commissioner, that as I look at

1 the hearing room today, I appear to be the only
2 lawyer representing any of the commercial
3 interests, the commercial harvesters that are -
4 and I'm not speaking of the Aquaculture group that
5 is here - and is cross-examining, and I would
6 appreciate the courtesy of being afforded the
7 opportunity to obviously have my questions
8 answered.
9

10 CROSS-EXAMINATION BY MR. ROSENBLOOM:
11

12 Q Firstly, if I may follow up on evidence given this
13 morning in cross-examination regarding
14 federal/provincial relations, and mention made of
15 an MOU, a memorandum of understanding, between the
16 two governments. Little was said in your -- in
17 your testimony this morning about it, and we are
18 faced with hundreds of thousands of documents at
19 this inquiry. But I don't believe that MOU is as
20 yet produced, or an exhibit in these proceedings,
21 Mr. Wallace.

22 MR. WALLACE: Mr. Commissioner, the MOU will be
23 produced in the Habitat Management topic, where it
24 is appropriately covered.

25 MR. ROSENBLOOM:

26 Q Is this MOU related exclusively to habitat issues,
27 Ms. Stalberg?

28 MS. STALBERG: I'm not sure, and I don't have a copy to
29 provide to you handy right here.

30 Q Yes.

31 MS. STALBERG: The scope of it I cannot recall.

32 Q I appreciate that, nor did anyone expect that you
33 would have it in your purse to hand over to us
34 today. But I have a general question regarding
35 federal/provincial relations, and I appreciate
36 each of you is specialized within an area and
37 speaking only to that area. In the context of
38 your area of responsibility within DFO, or in the
39 case of you, Ms. Stalberg, your previous
40 responsibilities with Habitat, my question is
41 this. Is the level of cooperation between the
42 federal and provincial government and their --
43 their jurisdictional -- let me rephrase that. Is
44 the cooperation between the two levels of
45 government to what the public would expect in
46 respect to fishery management in the areas of your
47 focus, and I might take it panel member-by-panel

1 member. Does it fall short of what would be the
2 public interest? Ms. Stalberg.

3 MS. STALBERG: I'm thinking and thinking and thinking.
4 It may take me a while to think about this one.
5 I'm not sure if you want to move on to other panel
6 members while I'm thinking.

7 Q Well, there's a -- there's a comment that lawyers
8 make during a legal process such as this, which is
9 "Let the record show that it has taken you a long
10 time to deliberate about that question". I get
11 the impression, and we're supposed to be obviously
12 here to inform the Commissioner, and it's
13 important that the Commissioner receive your
14 perspective, being on the ground level, dealing
15 with these kind of issues day in and day out. I
16 invite you to be blunt from your perspective,
17 whether you believe that the level of
18 collaboration is what the public would expect.

19 DR. HYATT: I'm willing to begin that response to that
20 question while Ms. Stalberg has some time to
21 gather her thoughts, partly because I do interact
22 with the province at a number of levels through my
23 capacity as a scientist working on implementation
24 of Wild Salmon Policy.

25 So let me first say that at the working level
26 there are a number of important interactions that
27 have taken place and that are ongoing between the
28 federal government and the provincial government,
29 of -- where technical personnel are involved in
30 examining a variety of issues that influence both
31 the province and Canada and that are relevant to
32 the Wild Salmon Policy. I'll cite three.

33 First, there was an initiative undertaken by
34 the province called "Hectares BC" in which the
35 proposal was to essentially assemble data, the
36 kinds of indicator data that both levels of
37 government require to manage and to assess various
38 resource concerns, including Wild Salmon Policy.
39 And the way they propose to do this was to divide
40 the province up into -- and I may get the numbers
41 wrong, but it was something like 16 million or 60
42 million one-hectare cells, and then to associate
43 data on roads and environmental variables with
44 each of these one-hectare cells in such a way that
45 each time a question of resource assessment came
46 up, one could interrogate this database and say,
47 for example, are there wild salmon there? If so,

1 are there CU's of Coho or Chinook present? And
2 then query it further and say, and are any of
3 those problematic in the sense that they are at
4 risk? So this is a brilliant solution to the
5 problem of multiscale assessment, where one has
6 to work at large ecosystem scales, or very small
7 scales to resolve issues that happen at multiple
8 scales.

9 So we participated in this and provided
10 essentially information on wild salmon populations
11 for incorporation into that, and Matt Austin, who
12 was the lead from the provincial side was one of
13 the architects of that initiative.

14 Q Dr. Hyatt, I hate to interrupt you, but my time is
15 so precious --

16 DR. HYATT: Yes.

17 Q -- and I am not so concerned for a listing by you
18 and by this panel of where there has been
19 cooperation, but because my time is so limited,
20 and Commission Counsel can draw these kind of
21 details out of you in re-examination if the
22 Commission feels it's in its interest. I am more
23 interested in the question that I have posed to
24 the four of you, which is, is generally from
25 30,000 feet up, is the level of collaboration
26 between the two levels of government at the level
27 that the public would expect, or do we have
28 problems? Yes, Mr. Saunders.

29 DR. HYATT: Collaboration -- well, just let me finish.

30 Q All right.

31 DR. HYATT: Collaboration waxes and wanes. During the
32 period when we had an active pursuit of watershed-
33 based fisheries planning with the province, it was
34 at a level that the public would expect. Under
35 Wild Salmon Policy implementation, based on that
36 comparative set of activities that occurred
37 previously, one would say we would be looking for
38 a greater engagement at this time to meet the
39 public good, and certainly to accelerate the
40 implementation of Wild Salmon Policy.

41 Q Well, I want to come back to your response and I
42 thank you for it. I believe other panel members
43 want to make a preliminary response to my
44 question. Mr. Saunders.

45 MR. SAUNDERS: Yes. Mr. Commissioner, I wouldn't
46 pretend to know what the public would expect. But
47 my personal -- my personal thoughts on the matter

1 are that we have done -- that there has been a
2 good level of communication and work at the
3 technical level, but that the -- for the
4 collaboration, and this will be, I'm sure, a big
5 subject under Strategy 4. And there's a need to
6 have some kind of a -- it's not one MOU. It's not
7 who's going to meet with who. It's about a whole
8 establishment of a collaborate governance
9 mechanism that's going to allow four orders of
10 government to work together. And do I think we
11 need to do more? Absolutely. Moving forward from
12 here it's going to be the key, absolutely
13 essential.

14 Q So would you agree that it's fallen far short of
15 what would have been your expectations towards the
16 implementation of the WSP?

17 MR. SAUNDERS: I don't know that it's fallen -- I don't
18 think it's fallen short. It's just -- it's
19 something that we're moving towards. I have
20 always thought that Strategy 4 would be probably
21 the hardest piece to move towards. It's just a
22 continuous process to try to get to where we want
23 to go. I'm not going to say that what I thought
24 where we -- I didn't -- I was under no illusion
25 this was going to be an easy thing to establish
26 collaborative sort of governance mechanisms. I
27 think most -- it's like a players, you know, your
28 first elementary school dance and everybody's
29 standing around trying to figure out how to -- how
30 to make this thing happen.

31 And I think that's part of four orders of
32 government, governments are stressed for resources
33 and capacity, and nobody wants to be left
34 committing and holding a single bag. But the
35 power is in the collaboration, and I think we're
36 in the early stages of trying to understand how to
37 make that happen.

38 Q From your perspective is that early stage such
39 that we really are still on the dance floor with
40 the first dance?

41 MR. SAUNDERS: I think there's been a lot of work done,
42 and I can speak to, you know, projects. I
43 referred to the Fraser Salmon Watersheds Program.
44 There's a collaborative watershed governance
45 initiative there that has brought together a
46 provincial and four orders of government to talk
47 about what that might look like, and the idea is

1 well advanced. But in terms of formal discussions
2 between governments, I think it's still in its --
3 probably in its early days.

4 Q Ms. Stalberg?

5 MS. STALBERG: Thank you for the time. I would say
6 that similar to my team members, panel members,
7 that we have yet to figure out, sort out how would
8 the -- the monitoring results would influence
9 provincial decisions. There's one thing to
10 implement monitoring programs, but if there are
11 land use changes needed or how the land base needs
12 to be managed differently, if that's under the
13 auspices of the province, we have yet to -- unless
14 there has been decisions made subsequent to my
15 tenure, those conversations with the province on
16 how they may change the way that they manage
17 water, or manage land use, land types development,
18 had not yet been determined.

19 Q And Dr. Irvine, do you have anything to add?

20 DR. IRVINE: Nothing too specific, except that I don't
21 think any of us can really comment on what the
22 public would expect in terms of collaboration.
23 And just to comment that I have personally
24 collaborated with non-federal scientists,
25 including provincial government scientists, my
26 whole career.

27 Q Yes. Well, let me answer your question about what
28 the public would expect. I'll suggest to you that
29 the public would expect a level of collaboration
30 wherein the provincial government would be working
31 with the federal government to the extent that the
32 federal government could implement as quickly as
33 possible the WSP with full provincial cooperation.
34 All right? That doesn't change your response, Dr.
35 Irvine?

36 DR. IRVINE: Well, no. I mean, I think when you're
37 talking government-to-government interaction you
38 really do have to talk to the RDG's. But at the
39 working level, science is all about -- scientific
40 development is all about collaboration among
41 scientists. So we work very closely with others.

42 Q Thank you. Now, we're all here to try to assist
43 the Commissioner in his later deliberations in
44 respect to these kind of matters. And if I can
45 borrow an idea from Mr. Leadem in his cross-
46 examination, but in a different context. He spoke
47 about a facilitator being brought in, but in a

1 different context. As I hear your responses today
2 regarding federal/provincial matters, can you
3 imagine that it would be of -- of assistance to
4 you in the implementation of WSP if a facilitator
5 was appointed that would really be dealing with
6 the federal/provincial matters to ensure that
7 there is total cooperation on both sides, leading
8 to effective implementation?

9 MS. STALBERG: I have a first take on that suggestion.
10 I'm not sure that it needs to be -- if it's a
11 facilitator as an external facilitator, someone
12 outside of the provincial/federal government. I
13 think that -- that would be one of the roles of
14 the champion, the WSP champion, and that could be
15 -- that could be the role of the coordinator.
16 Again it depends on -- it needs to have the right
17 -- the right person needs to be in that role, so
18 has a broad understanding of the DFO programs and
19 is able to inspire these kinds of collaborative
20 works, but in a realistic pragmatic way, and
21 articulate what we're doing now, what we want --
22 the vision, what we want to move forward to, what
23 changes are required and what resources are needed
24 pursuant to those changes.

25 Q Thank you. Now, before moving onto another topic,
26 Dr. Irvine -- excuse me, Dr. Hyatt, in your
27 response, you gave less than what I would call a
28 ringing endorsement to the level of collaboration
29 that has been experienced up to this point in
30 time. Do you have any recommendations as to how
31 to bring the level of collaboration to a standard
32 that will be more effective for the implementation
33 of the program, WSP?

34 DR. HYATT: Well, coming back to a comment that Mr.
35 Saunders made, it isn't a single memorandum of
36 understanding, but an entire range of formal
37 commitments that -- and informal commitments that
38 need to be made between different levels of
39 government, different orders of government, to
40 cooperatively first identify whether Wild Salmon
41 Policy implementation satisfies common objectives,
42 and then given that it does, to implement, to
43 support implementation to meet those common
44 objectives.

45 To elaborate a little bit on your novel
46 suggestion of a facilitator, I might add to Ms.
47 Stalberg's comments that not only should such an

1 individual be knowledgeable about DFO
2 institutional practices, and, you know, content
3 and process, but also equally knowledgeable about
4 provincial content and process, in such a way that
5 the commonality where common cause can be
6 identified and pursued, it then could -- could
7 find, you know, faster support to see
8 implementation move forward.

9 Q Thank you very much.

10 MR. SAUNDERS: Might I make a -- add to the...

11 Q Yes.

12 MR. SAUNDERS: Your suggestion about a facilitator, Mr.
13 Commissioner, I find quite interesting. I'm not
14 sure, again as Ms. Stalberg said, are you talking
15 about a facilitator that would be there for just
16 process to facilitate movement, or engagement
17 between the four orders of government. But I
18 think there's also a potential there that really
19 we've got four orders of government that want to
20 understand the status of the ecosystems and in
21 varying degrees are working towards that, and they
22 want that to inform their -- make good decision-
23 making around sustainability and governance of
24 their activities.

25 Something along the idea of a board or a body
26 that would take on, on behalf of those four orders
27 of government, the -- you know, bringing together
28 the technical requirements around understanding
29 the state of ecosystems and the ocean, coupled
30 with, you know, assisting in that collaborative
31 move. I think there could be some merit in
32 thinking along those lines.

33 Q Thank you very much. I'd like to move on. I
34 believe in my cursory examination of the agenda
35 for the upcoming hearings in respect to this
36 inquiry that I don't think see any of you again.
37 Do any of you -- are any of you informed that
38 you're going to be back on any panel? And
39 assuming I am correct about that, I have these
40 questions for you, and again if -- and I'll direct
41 them to Dr. Irving and Dr. Hyatt. I think they're
42 most appropriate to the two of you, and I raised
43 these two questions with Dr. Holt yesterday. They
44 deal with the issue of biodiversity and the very
45 foundation of the WSP.

46 Isn't the salmon and sockeye fishery largely
47 dependent on a relatively small number of large

1 stocks. First, do you agree with that?

2 DR. IRVINE: First of all, I don't think any of us know
3 if we're coming back. You know, we didn't expect
4 to still be here --

5 Q All right.

6 DR. IRVINE: -- this week. So what happens next year,
7 who knows, but...

8 Q Well, let's -- we're assuming for a moment in my
9 asking you these questions that I may not have
10 another opportunity.

11 DR. IRVINE: Certainly.

12 Q So your answer to the question?

13 DR. IRVINE: Okay. So the question was is the
14 commercial fishery, I think you were -- are you
15 limiting it to the commercial fishery?

16 Q Well, I'm limiting it to the sockeye fishery,
17 largely dependent on a relatively small number of
18 large stocks.

19 DR. IRVINE: The Fraser commercial fishery for sockeye
20 salmon is largely -- is numerically largely
21 dependent on a limited number of conservation
22 units.

23 Q Of what?

24 DR. IRVINE: Well, we're talking conservation units, or
25 I mean, I'm not sure what you mean by "stock".

26 Q All right.

27 DR. IRVINE: Maybe you could define what you mean by
28 "stock".

29 Q What I mean by "stock" is the sockeye fish of the
30 Fraser watershed.

31 DR. IRVINE: Yes. So stocks are commonly, or one
32 interpretation of a stock is a unit of management
33 convenience. It's not a biological term, which is
34 why we've kind of gone to conservation units. But
35 I think, you know, clearly there are conservation
36 units that contribute the number -- you probably,
37 I don't know what the details would be, they're
38 probably 85 percent of the catch of Fraser sockeye
39 in the Fraser commercial fishery would be
40 represented by, I don't know really, maybe --

41 Q Maybe four stock, four areas?

42 DR. IRVINE: Well, I'd rather you talk in conservation
43 units, because we're not clear what you mean by a
44 stock. I mean, if you think of the four major run
45 timing groups as four stocks, that really
46 comprises all of the conservation units. So I
47 think that you -- you presumably want to drill

1 down a little bit. But certainly there's, what
2 did we say, 30 conservation units, and so the
3 catch would be represented by -- 95 percent of the
4 catch would be represented by fewer than half of
5 the conservation units.

6 Q All right. Now, isn't it true that some of the
7 small stocks that are the main concern for sockeye
8 biodiversity loss in the Fraser rear in smaller
9 lakes like Cultus that have no potential for ever
10 replacing losses if something bad should happen to
11 the larger stocks?

12 DR. IRVINE: Well, yesterday I referred to the work of
13 Dr. Hilborn that showed in --

14 Q Bristol Bay.

15 DR. IRVINE: -- Bristol Bay that --

16 Q Yes.

17 DR. IRVINE: -- that there was a dramatic shift in the
18 stocks, the stocks that contribute to the fishery
19 over time. So it's clear that, you know, certain
20 populations or conservation units do better than
21 others under different climate conditions. But
22 that being said, obviously these maximum size of a
23 conservation unit is limited by -- there's
24 different limiting factors, but certainly the size
25 of the rearing environment is one of the major
26 limiting factors.

27 Q Dr. Hyatt.

28 DR. HYATT: Just to add an element to this, this
29 question, or at least to the answer to the
30 question. When you have small conversation units
31 that represent different elements of biodiversity,
32 those units may do much better under variable
33 environmental conditions than the currently
34 dominant ones. What you're excluding from your
35 question is the prospect that those small units
36 might well repopulate areas with a genotype or a
37 local adaptation that could replace larger units
38 in the fullness of time. So, you know there are a
39 couple of things going on here.

40 Q Right. I want your responses to these questions
41 on record. I thank you for that. Carrying on
42 with that question, isn't it true that if
43 something really bad does happen, for example,
44 because of climate change, that the smaller and
45 less productive stocks are likely the be the first
46 to go?

47 DR. HYATT: I could not agree with that statement,

1 because the smaller and less productive stocks
2 have different adaptations, different
3 characteristics. For example, one of the small
4 and relatively -- well, in terms of total
5 production, stocks that I work on in the province
6 are Okanagan sockeye, and they are a small stock
7 that actually lives in a desert environment where
8 they're exposed year after year, decade after
9 decade, to extremely high temperature conditions.
10 And it may well be that this -- you know, this
11 very small stock is the very type of genotype that
12 will do well under climate change in the future,
13 or provide the genetic material for -- you know,
14 for sustainable production into the future.

15 Q Thank you. Dr. Irvine, do you have anything to
16 add?

17 DR. IRVINE: No, I think that covers it.

18 Q Thank you. Another question on the biodiversity
19 before I move on. If the Wild Salmon Policy is
20 not a policy to protect biodiversity at all costs,
21 but a practical policy to ensure biodiversity --
22 ensure biodiversity, then why does the science
23 backup for it not include explicit analysis of the
24 trade-off relationships between use rate, meaning
25 harvest, and expected biodiversity loss, instead
26 of just specifying a set of benchmarks or targets
27 for conservation units?

28 I posed this question yesterday to Dr. Holt.
29 I would like the response of both of you, Dr.
30 Irvine and Dr. Hyatt.

31 DR. IRVINE: Well, the Wild Salmon Policy doesn't
32 provide all of the guidance and direction.
33 There's a lot of research and activities that are
34 going on pertaining to the Wild Salmon Policy,
35 particularly from a science perspective, that are
36 not articulated in Strategies 1, 2 or 3. My
37 understanding of the FRSSI process in the Fraser
38 is that they are looking at relationships between
39 exploitation and stock abundance, population
40 abundance. So I think it is being, I believe,
41 examined within the FRSSI process. So, yes, I
42 think I'd leave it at that.

43 DR. HYATT: One of the assumptions behind your question
44 is that there is some finite and readily pursuable
45 analysis that one can execute that would relate
46 use rate to biodiversity loss. And that is -- is
47 an oversimplification of really what's involved.

1 The Wild Salmon Policy looks at biodiversity
2 values, not only among the salmon CU's themselves,
3 but regional biodiversity where salmon are linked
4 in important ways to landscapes, habitats and
5 other species, other biota that may be highly
6 dependent, or at least very strongly linked to
7 salmon. And really, the methods -- the
8 methodologies of science and the limits of
9 science, particularly in trying to pursue Strategy
10 3, preclude that kind of finite analysis where we
11 would have any confidence.

12 We barely understand the relationships
13 between exploitation use and the finite
14 probability of loss for salmon CU's themselves
15 within a species, much less among salmon species,
16 and to enlarge that issue to other forms of biota
17 really just transcends our abilities at the
18 present time to do these sorts of analyses. So
19 you do really run up against knowledge limits
20 rather quickly in this area.

21 Q Well, the Policy states that social and economic
22 consequences will be part of the decision-making
23 process. My question is what economic studies has
24 DFO done so far and what studies are in the works
25 in terms of then moving to implementation?

26 MR. WALLACE: Mr. Commissioner, we've drifted, and I
27 think are now squarely into issues of Strategy 4,
28 which will be dealt with in the New Year.

29 MR. ROSENBLOOM: Happy to defer if that's --

30 MR. WALLACE: Thank you.

31 MR. ROSENBLOOM: -- the Commission's desire.

32 Q Dr. Hyatt, do you believe that it should be a high
33 research priority to try and understand the
34 mechanisms that are apparently causing delayed
35 density dependence and cyclic dominance in some
36 major sockeye stocks, and could be partly
37 responsible for observed declines and productivity
38 in recent years?

39 MR. WALLACE: Mr. Commissioner, this is squarely within
40 the Harvest Management issue, and will be looked
41 into at that time.

42 MR. ROSENBLOOM: Oh, but is it, when Dr. Hyatt is
43 present in this panel, and is a scientist
44 assisting DFO towards some implementation of this
45 program. I don't have this chance to ask Dr.
46 Hyatt this question at any later date.

47 MR. WALLACE: Mr. Commissioner, we've asked

1 participants to advise us of witnesses they think
2 should be called on a particular topic. This is
3 unlike a trial where once you have a witness, the
4 witness is there for all purposes and you can be
5 opportunistic to mine the depths of their
6 knowledge. That would be very inefficient here,
7 and we have allowed some of that, I'm afraid. But
8 I would -- if the Commission staff is satisfied
9 that Dr. Hyatt should be brought back on Harvest
10 Management, then we can do that. But -- and
11 indeed Mr. Rosenbloom can apply to you for an
12 order that he do so. But this is not the
13 appropriate time for examination, simply because
14 he's here.

15 MR. ROSENBLOOM: I have a lot of trouble understanding
16 this when I hear evidence for the last, whatever,
17 three, four days of scientific investigation such
18 as habitat evaluation, assessment towards the
19 implementation of the WSP.

20 The question I have for Dr. Hyatt is to what
21 extent is the focus on density dependence, delayed
22 density dependence, a factor in the scientific
23 research being done in connection with the
24 implementation of the program? That's my
25 question.

26 THE COMMISSIONER: Yes, I'll allow you to ask that
27 question.

28 MR. ROSENBLOOM: You will allow me?

29 THE COMMISSIONER: Yes, I will.

30 MR. ROSENBLOOM: Thank you.

31 Q So, would you like the question repeated, or do
32 you have it, Dr. Hyatt?

33 DR. HYATT: I believe I have it. The question you've
34 posed is certainly of great interest to scientists
35 who work on salmon population dynamics. So it's
36 been an ongoing focal point for research for
37 decades of time without -- without firm
38 resolution. The weight of evidence suggests there
39 are delayed density dependent interactions which
40 should be taken into account, and the tradition on
41 the Fraser has been to take such advice from --
42 from science into account, and it does inform
43 management decisions.

44 Whether this should be a -- we have far less
45 than perfect knowledge about this. It would be --
46 there are many elements of these delayed density
47 dependent interactions that have been hypothesized

1 and for which there's some evidence for that we
2 would like to know about. It's an issue that's
3 tractable over time, but it's not something that
4 you can immediately focus on and deliver kind of
5 Nobel Prize winning results by next year, or even
6 within the next three or four years.

7 Q Of course not. But when you speak of relying on
8 science, my question is has DFO initiated
9 scientific investigation of this, either in
10 connection with WSP, the Salmon Policy, or for any
11 other purpose? Or are you relying on science
12 meaning outside science?

13 DR. HYATT: No, there are ongoing investigations by
14 the, for example, the Fraser Lakes Group to look
15 at conditions in the nursery lakes, to look at how
16 changes in density over time and interactions
17 between and among year classes may produce some of
18 these delayed density dependent effects.

19 In the marine environment we're less -- we're
20 less able to pursue this. Our capacity is
21 somewhat more limited because the fish are --
22 disappear for quite a long time, and once they
23 move out onto the high seas, we have relatively
24 little contact with them.

25 Q I'll come back to the issue of marine scientific
26 work later on. But to carry on with this question
27 of delayed density dependence, do you think, Dr.
28 Hyatt, that increased fertility may contribute to
29 the apparent dynamic instability represented by
30 the cyclic dominance phenomenon, and should such
31 instability be a concern in WSP implementation.

32 DR. HYATT: I'm not certain that I understand the
33 question. Would increased fertility?

34 Q Yes.

35 DR. HYATT: Increased fertility of what?

36 Q Meaning the brood year, the increased fertility
37 through what one might argue is over-escapement,
38 may it contribute to the apparent dynamic
39 instability represented by the cyclic dominance
40 phenomenon, and should such instability be a
41 concern of WSP implementation? That's my
42 question.

43 MR. WALLACE: Mr. Commissioner, in trying to understand
44 that question, it strikes me that the addition of
45 the suffix or the final phrase incorporating the
46 words "Wild Salmon Policy", are -- don't really
47 have much to do with the question. It's a tag

1 line, I suspect.

2 MR. ROSENBLUM: I think it has everything to do with
3 the question. We are here on the Wild Salmon
4 Policy. I'm trying to establish to what extent
5 these scientists believe that delayed density
6 dependence is a relevant factor for the DFO in its
7 scientific investigations leading to
8 implementation.

9 THE COMMISSIONER: I think, Mr. Rosenbloom, it might be
10 helpful to find out whether Dr. Irvine or Dr.
11 Hyatt have in their involvement with the Wild
12 Salmon Policy considered the topic that you are
13 raising now, and have given it any personal
14 investigation, or are aware of whether such
15 investigation is taking place. They may not be
16 the right witnesses to address all of the
17 questions you're asking.

18 MR. ROSENBLUM:

19 Q And then I would tag on a question to Mr.
20 Commissioner's suggestion, which is and do you --
21 if the answer is you haven't given a lot of
22 thought to it, do you believe that thought should
23 be given to it as part of the DFO processes
24 leading to implementation? I wonder if either of
25 you wish to answer.

26 DR. HYATT: Well, certainly some thought is given to
27 it. As Dr. Holt testified previously, one of the
28 -- one of the models that was used to explore
29 potential benchmarks for -- under Wild Salmon
30 Policy was the Larkin Model, which invokes delayed
31 density dependent interaction, and another version
32 of that model, which is the sort of Kalman-
33 filtered Larkin Model that provides more weighting
34 to production declines in recent years, and how
35 that interacts, is an active subject of analysis
36 to look at what the implications are for
37 developing benchmarks under the Wild Salmon
38 Policy. But that is the current limit certainly
39 of my thought on this as a reviewer of that paper,
40 and as a participant in the review itself and this
41 testimony.

42 Q Could you imagine a revisiting of benchmarks at
43 some point in time where there was within the
44 Green Zone a benchmark of an upper Green Zone, an
45 upper-upper benchmark for too many fish? In other
46 words, where remedial steps should be taken
47 because of delayed density dependence?

1 DR. IRVINE: Perhaps I'll comment on that. I mean, the
2 upper benchmark is generally regarded as being the
3 escapement that would produce maximum sustainable
4 yield. So I think -- I think you were exposed to
5 sort of the stock recruit -- the basics of stock
6 recruit analyses.

7 Q Yes.

8 DR. IRVINE: And so depending on whether you're using a
9 Beverton and a Holt or Ricker or a Larkin or
10 Kalman or a hockey stick model, there's about six
11 or seven of these different stock recruit models,
12 it's sort of the point when it bends over, so when
13 your recruits per spawner either asymptotes or
14 starts to decline. So that's the point at which
15 the -- it's generally regarded as that upper
16 benchmark.

17 And I think what you are asking is whether
18 additional escapement beyond that point would
19 somehow be harmful to the environment or the
20 population, is that sort of the intent of the
21 question?

22 Q Well, the intent of the question is whether DFO in
23 approaching the implementation of the WSP is
24 factoring in the issues of delayed density
25 dependence and are prepared to take remedial steps
26 if indeed their findings are that there are those
27 issues of over-escapement.

28 DR. IRVINE: Well, over-escapement is a complicated
29 issue. But essentially what tends to happen is
30 you get reduced survival, but you don't get --
31 shouldn't have said survival. You get decreased
32 recruits per spawner with increasing spawners. So
33 that the -- so you're increasing the numbers of
34 fish on the spawning grounds, and you're not
35 receiving the benefit in terms of additional
36 recruitment that you had further to the left on
37 the stock recruit curve. However, you are -- you
38 are also introducing a lot more nutrients to the
39 environment. And so really from an ecosystem
40 perspective, when you get beyond that upper
41 benchmark, this is normally regarded to be a good
42 thing for the ecosystem. And then, of course,
43 there are delayed benefits from the additional
44 nutrients in terms of the generation of food
45 organisms which the young salmon and other --
46 other critters in the ecosystem will use.

47 It's a very complicated issue, you know. I

1 mean, it's not, you know, you could have a panel
2 up here and debate for days about, you know,
3 whether the Larkin Model is the appropriate model,
4 or the Kalman, or the Ricker, you know, and it
5 also depends very much on the species, too.

6 Q But Doctor, it may be good for the ecosystem, but
7 not good for the stock, don't you agree?

8 DR. IRVINE: No, it's difficult for me to imagine why
9 it wouldn't be good for the stock. I mean -- or
10 at least why it would be harmful for the stock.

11 Q All right. Well, there will be evidence called
12 about those matters later on.

13 I would generally have been asking questions
14 about the socioeconomic studies that have or have
15 not been done, but I will defer and raise those
16 questions to panels that are to be before us
17 subsequently.

18 My question is for Dr. Irvine. You said
19 something that intrigued me earlier on in these
20 proceedings, it feels like a month ago but it was
21 actually December the 3rd, last Friday. And I'll
22 just read it to and if for any reason you want
23 context, Mr. Lunn can put it up. But it relates
24 to the marine environment research matters, and
25 you spoke of it in passing moments ago. You said:

26

27 And then I --

28

29 And this is, for the record, at page 64, line 23
30 of Friday's transcript:

31

32 And then I guess in the last three or four
33 years I've suddenly - well, not suddenly -
34 but I've kind of shifted to the marine
35 environment, so I'm focusing on marine
36 issues, because I feel that those are really
37 what drive the production of Pacific salmon,
38 and so part of that has been the co-chairing
39 this Fisheries and Oceanography Working
40 Group.

41

42 I'm intrigued by how strong your statement is,
43 that the marine environment focus really is
44 driving this fishery. And we've actually heard
45 evidence to that effect, to the extent that Mr.
46 Chamut testified, in fact almost pleaded with the
47 Commission as he left, that there be more

1 attention to the research side of the marine
2 environment of the two of the four years of cycle
3 where the salmon are out in the Gulf of Alaska and
4 the Bering Sea. Would you like to elaborate on
5 your comments?

6 DR. IRVINE: Certainly. It's interesting hearing what
7 I said. You know, I'm not the most well-spoken
8 person, but that sounded particularly awkward,
9 but...

10 Q Well, I didn't read it very well.

11 DR. IRVINE: No, what I really meant to say, or what --
12 I guess as background, you know, I've been
13 studying Pacific salmonids for, you know, 35
14 years. Probably the first half of my career was
15 focused on the freshwater environment. And so
16 what I really meant was I made a conscious
17 decision to shift my research interests into the
18 marine environment, you know, within the last
19 decade or so.

20 In terms of what determines the production of
21 Pacific salmon, you have to kind of think of it
22 almost like a lifecycle event. So, you know, if
23 an average female spawns, lays 3,000 eggs, you're
24 probably going to have 50 percent of those that
25 will survive to become alevins, and perhaps ten
26 percent of those will survive to become smolts.
27 So clearly the -- you know, the factors in the
28 freshwater environment have a huge impact on the
29 production of salmon. But that's where most of
30 the research traditionally has taken place.

31 The research on salmon in the ocean for many
32 reasons was considered to be largely a black box.
33 It was just sort of beyond our capability to get
34 out and understand what's going on in the ocean.
35 And so, you know, a number of us have been making
36 efforts to improve our understanding in the marine
37 environment, and that's been one of my shifts in
38 focus. And I do believe that the ocean is -- the
39 marine environment is a non-constant environment.
40 It's changing. We're seeing shifts in the
41 periodicity and the frequency and the intensity of
42 things like ENSO events, and these have major
43 implications in terms of the survival of young
44 salmon at sea. And that's really where we're
45 trying to go with the fishery -- in part where
46 we're trying to go with the Fisheries and
47 Oceanography Working Group, because we're trying

1 to link together these oceanographic factors to
2 improve our understanding of survival in the
3 ocean.

4 Q And it needs money.

5 DR. IRVINE: Certainly. Additional resources is always
6 beneficial.

7 Q Well, not just beneficial, but am I correct in
8 assuming that if this research is essential, if it
9 is in your opinion necessary, that it will require
10 a commitment from the Government of Canada and
11 from Treasury Board to pull off this kind of
12 expensive initiative.

13 DR. IRVINE: And there are efforts being made. I mean,
14 one of the hats I wear is a scientist with the
15 North Pacific Anadromous Fish Commission, so
16 Canada is one of five signatories to this -- this
17 Commission. So we carry out a number, we
18 participate in a number of collaborative cruises
19 with American scientists, Russian scientists,
20 Japanese scientists, so it's more than just a
21 provincial/federal issue. It's expensive to study
22 in the ocean, and so we need to be looking at --
23 at ways of, you know, things like satellite
24 imagery that we touched on earlier. I mean,
25 there's -- it's an example of a technology that is
26 rapidly developing, and there's the potential to
27 get all sorts of new types of -- well, not new
28 types, but additional information that's relevant
29 to understanding the resource. But we need to
30 have the -- the internal capacity to be able to
31 take advantage of some of these technologies.

32 Q Has DFO proposed scientific investigation that has
33 been turned down by Treasury Board, or budget
34 didn't permit?

35 DR. IRVINE: I can't comment specifically on Treasury
36 Board submissions.

37 Q Right.

38 DR. IRVINE: Perhaps Mr. Saunders can.

39 Q Either Mr. Saunders, or I will ask it to the
40 Director General, Regional Director General when
41 she's on a panel.

42 Mr. Saunders, do you have anything to say?

43 MR. SAUNDERS: Okay. Can you -- what was the specific
44 question about Treasury Board?

45 Q The question is whether there had been proposals
46 by Pacific Region to carry out scientific
47 investigation of marine environment issues such as

1 just been referred to by Dr. Irvine that have not
2 proceeded because the funding has not been
3 approved.

4 MR. SAUNDERS: I'm not -- I'm not aware, but again a
5 good question for the RDG, yes.

6 Q I appreciate that. I'd like to move on to --

7 MS. STALBERG: Excuse me, Mr. Rosenbloom.

8 Q Yes, sorry.

9 MS. STALBERG: I would add that there were Treasury
10 Board submissions made through OHEB to gain
11 funding for the Wild Salmon Policy, and I think
12 they were made '05 through '08. The dates are in
13 the Operations deck that I've referred to in the
14 past. And we got limited funding in one year, but
15 there -- they weren't specific to the satellite
16 imagery question that you were asking about.

17 Q But were they specific to the marine environment?

18 MS. STALBERG: No.

19 Q No. In fact, were they focused on freshwater
20 habitat issues?

21 MS. STALBERG: I can't remember. They were sort of
22 more broad in scope, linking in other programs, as
23 well.

24 Q Thank you. Ms. Stalberg, I now have a series of
25 questions for you. When you arrived here your
26 first day you wanted to make certain corrections
27 to your précis of evidence, and you corrected
28 reference to habitat assessment studies for Cultus
29 Lake. And I believe if I understood what you said
30 at that time, that to the best of your knowledge
31 Cultus Lake assessment -- habitat assessment has
32 not been done. Am I accurately reporting how you
33 informed us that day?

34 MS. STALBERG: Almost.

35 Q Okay.

36 MS. STALBERG: There -- we were talking about the two-
37 tier approach to characterizing the habitat under
38 Strategy Action Step 2.1, and that there were both
39 overview reports and habitat status reports. And
40 I was asked if there was a habitat status report
41 generated for Cultus Lake, because originally that
42 had been put out as part of the pilot, the '05/'06
43 where we were piloting the structure of the
44 overview and habitat status reports.

45 So upon reviewing the files, I found that
46 there wasn't a habitat status report generated for
47 Cultus. There was an overview report. And that

1 overview report included information on the
2 population, status of biological and as well as
3 some of the habitat information.

4 Q All right. What surprises me, and I'd like your
5 response to this, is from the day that I arrived
6 on this file I have seen so much reference to
7 Cultus Lake and the dangers of extirpation of the
8 sockeye of Cultus Lake, so much focus on it. Can
9 you explain to this Commission why as we sit here
10 today there has not been a habitat assessment
11 report for Cultus Lake?

12 MS. STALBERG: I can't say what the Department has
13 decided to do since I left the program on WSP.
14 The habitat status reports were, one, they may
15 have thought that there was already one generated,
16 though it's not within the web-mapping
17 application, or I should say the share drive, as
18 far as I know. So the -- I'm not trying to
19 confuse you.

20 Q How could they possibly think that? Surely the
21 Department knows what they've done.

22 MR. SAUNDERS: Well, I think there's a -- excuse me,
23 Mr. Commissioner, there's a number of ways to get
24 information about status on what's going on in
25 Cultus Lake, and one possible mechanism for that
26 would be a habitat status report. But I mean there
27 is a tremendous amount of literature out there
28 around the recovery team that was convened under
29 -- under **SARA**, with resources from **SARA** to
30 understand what the bottlenecks were with Cultus
31 Lake. So examining the predator pits and all of
32 the things that could be affecting and cause of
33 the decline for Cultus, and keeping Cultus down.
34 So I think it's just one -- one potential tool.

35 Q So do I hear you -- before we go back to Ms.
36 Stalberg, do I hear you to say, Mr. Saunders, that
37 basically to have done a Cultus status report,
38 habitat status report, would have been redundant,
39 that you already had all the information. Is that
40 your evidence?

41 MR. SAUNDERS: No, I'm not saying that. I don't know
42 the answer to your question, like, why we would
43 not have done one. But it is one tool and one --
44 one template that you could use to gather
45 information, and I don't know about the workings
46 of the recovery team, which would be
47 interdisciplinary and have looked at bottlenecks.

1 So I don't know how the two compare. But it's
2 just -- it would be unfair to say that, you know,
3 the Department hasn't considered habitat in
4 developing its response to Cultus.

5 Q Well, sir, if you and Ms. Stalberg cannot tell me
6 why a status report has not been done, who should
7 I be asking that question to? Who would have the
8 answer?

9 MR. SAUNDERS: Well, the status report, I mean, that's
10 a good question. It's not -- it's part of -- the
11 status report was developed, is not -- we haven't
12 identified priority conservation units. There
13 isn't a -- we're still in the development of
14 implementation around Strategy 2. So it has been
15 utilized in some cases, in test cases, and it's
16 not a formal requirement yet across the Department
17 that you need to do a habitat -- fill in the
18 habitat assessment.

19 Q But isn't time being lost as the -- as we go year-
20 to-year towards implementation of WSP. We're five
21 years from the announcement. We can be six,
22 seven, eight. Isn't it critical in the public
23 interest that a status report on habitat be
24 completed and acted upon during the interim while
25 we wait for implementation of the policy?

26 MS. STALBERG: Two parts of your question. The second
27 part is a good question on what actions are being
28 taken to protect Cultus Lake sockeye. And
29 regardless of whether there's a habitat status
30 report, that question would be better directed to
31 Corino Salomi, who is the Area Chief of OHEB for
32 the Lower Fraser area.

33 Q She will be here, will she?

34 MS. STALBERG: I do not know if he will be here as part
35 of, say, the Habitat Panel. The habitat status
36 reports are supposed to capture what has been
37 done, and what could be done to recover the
38 habitat for the species. And I am going to
39 clarify, hopefully not add more confusion, but the
40 05/'06 pilot of the habitat status reports and the
41 overview reports, including -- and the biological
42 reports, Cultus Lake, there was supposed to be
43 generated a habitat status report, and an overview
44 report. And in my Ops deck I even had in there
45 that there was a habitat status report generated.
46 So it wasn't until this Commission that I went
47 into the -- into our files and found that there

1 actually wasn't a habitat status report generated.
2 There was an overview. So that's what I'm
3 referring to about confusion.

4 MR. WALLACE: For the record, Mr. Commissioner, the Ops
5 deck exhibit is exhibit -- the Ops deck to which
6 Ms. Stalberg is referring, is Exhibit 148. It was
7 referred to just now and previously with respect
8 to the Treasury Board submissions.

9 MS. STALBERG: Thank you.

10 MR. ROSENBLoom:

11 Q Again to you, Ms. Stalberg, are you aware that the
12 Pacific Fisheries Resource Conservation Council
13 has been somewhat critical of DFO's approach and
14 track record for habitat protection? That's my
15 first question.

16 MS. STALBERG: Are you referring to a specific report?

17 Q I may be, I don't --

18 MR. WALLACE: Mr. Commissioner, is this question
19 grounded in Wild Salmon Policy?

20 MR. ROSENBLoom: It is, because the collateral question
21 which I was going to ask you once you answered
22 this question, because I assumed that you would be
23 aware that that body has been critical of DFO's
24 approach, but my latter -- my collateral question
25 is going to be do you really expect better
26 performance on habitat issues just because there
27 may be the implementation of the WSP?

28 Q So let's go back to the first question. Are you
29 not aware that the Conservation Council has been
30 critical of DFO for its approach and track record
31 on habitat protection?

32 MS. STALBERG: I remember a David Suzuki report that
33 criticized the Department's habitat management,
34 but I may have read one from the PFRCC, but I
35 cannot recall, so...

36 Q All right. And I don't have it to put to you
37 right now.

38 MS. STALBERG: Okay.

39 Q But let me ask you this, out of -- out of the
40 context of that report. Do you really expect
41 better performance by DFO in habitat protection
42 with the implementation of the WSP?

43 MS. STALBERG: You can gain habitat protection in a
44 couple of ways through the WSP. One is this novel
45 approach of bringing habitat -- the habitat status
46 into integrated planning. So I'll give you a
47 couple of examples, hypotheticals.

1 One might be we've been talking about lake
2 productivity and spawners adding nutrients to the
3 lake. So if there was a sockeye lake that we were
4 tracking the productivity of it and over time it
5 was going down, that's a habitat indicator, and
6 the productivity is decreasing, there could be
7 through Strategy 4 a decision made to increase the
8 escapement from the fisheries, increase the number
9 of spawners back to the lake to naturally boost
10 the productivity within the lake. And as you've
11 questioned Drs. Hyatt and Irvine, there would be
12 significant discussion around that.

13 Another hypothetical possible --

14 Q And we get into delayed density dependence issues,
15 don't we.

16 MS. STALBERG: Yes. Yes.

17 Q Yes.

18 MS. STALBERG: And I cannot speak to that.

19 Q Thank you.

20 MS. STALBERG: But then the -- well, you get into
21 ecosystem benefits, as well.

22 And then another one might be monitoring
23 temperature in the river. That's a habitat
24 indicator. And there may be -- maybe there is a
25 hydroelectric facility on the system that can
26 release flows to support a particular portion of
27 the run coming back to spawn. And so maybe the
28 fishing pressure is adjusted to allow for the
29 escapement during that time.

30 There's a number of ways that I haven't heard
31 how these discussions have gone, like different
32 kinds of hypotheticals, and they may be
33 entertained now within the implementation team.
34 I'm not sure. So that's one way, though, that
35 there could be better protection of the resource,
36 and then --

37 Q Do you have any confidence of those expectations?

38 MS. STALBERG: Yeah.

39 Q Yes.

40 MS. STALBERG: I think the policy is a good one and it
41 sets up the Department to have those discussions.
42 So I do not know if those have started yet.

43 Q All right.

44 MS. STALBERG: Now the actual protection of the
45 habitat, say through project reviews, I think the
46 Wild Salmon Policy, it's a planning piece, in that
47 it identifies these highly productive and limiting

1 habitats that can then be better protected. If
2 they're identified, it's easier to protect them,
3 easier to generate appropriate compensation or
4 restoration. So I think -- and especially if that
5 kind of information is sort of tested with
6 objective indicators.

7 What I'm not sure of is what Dr. Irvine --
8 or, yes, Dr. Irvine talked about in the
9 fluctuations between the Bristol Bay example,
10 where over the space of decades the distribution
11 of the spawners changed from one river to another.
12 And I've seen work presented by Dr. -- is it Dr.
13 Tom Quinn, out of the university of Washington,
14 and similar Bristol Bay work. And though there
15 was no changes in the habitat between two
16 watersheds up there, the production of the salmon,
17 like millions changed. It went up in one
18 watershed over the number of decades, and it went
19 down in another over a number of decades. There
20 was no development within those watersheds.

21 So I'm not sure how those really long-term
22 trends in population may -- distribution in
23 changes may be accommodated within the review
24 process within habitat management.

25 MR. ROSENBLOOM: Thank you.

26 Mr. Commissioner, I have four areas still to
27 cover. I don't mind giving notice to the panel of
28 those four areas. My first area of questioning
29 after lunch will be on funding this WSP. I want
30 to speak about leadership issues. I want to speak
31 about consultation, and lastly, I have a wrap-up
32 question, which I asked to Dr. Holt yesterday and
33 which you may recall, and I invite you to
34 deliberate over lunch about it, which is what
35 advice could you give to this Commission if the
36 Commissioner were of the opinion that he wished to
37 see implementation or advised implementation of
38 WSP at least substantially within two to three
39 years. Those will be the areas that I wish to
40 cover right after lunch. And with leave of the
41 Commission, I'd ask that I start that at two
42 o'clock.

43 MR. WALLACE: Mr. Commissioner, if I may, do you have
44 an estimate of the time this is going to take, Mr.
45 Rosenbloom?

46 MR. ROSENBLOOM: Well, I'm learning not to give
47 estimates to Mr. Wallace, but I appreciate why he

1 asks. I would suspect that I am, depending on the
2 answers, probably 25 minutes or so.

3 MR. WALLACE: We have an hour-and-a-half estimate from
4 Ms. Gaertner, 25 minutes from Mr. Rosenbloom and
5 re-examination for this panel, Mr. Commissioner.
6 So if we could entertain sitting even till five
7 o'clock, that might help alleviate some of that.
8 And if everybody could be as efficient as they
9 possibly can.

10 THE COMMISSIONER: Five o'clock is not possible, 4:30
11 is our adjournment time, and I am going to ask
12 everybody to readjust their thinking about time
13 estimates so we can finish by 4:30 this afternoon.
14 I am sure counsel will be able to do that. Thank
15 you.

16 MR. WALLACE: Thank you.

17 THE REGISTRAR: The hearing is now adjourned until 2:00
18 p.m.

19

20 (PROCEEDINGS ADJOURNED FOR NOON RECESS)

21 (PROCEEDINGS RECONVENED)

22

23 THE REGISTRAR: Order. The hearing will now resume.

24 MR. ROSENBLUM: Thank you, Mr. Commissioner.

25

26 CROSS-EXAMINATION BY MR. ROSENBLUM, continuing:

27

28 Q Ms. Stalberg, with the concurrence of your
29 counsel, you and I had a very, very brief
30 conversation just before the -- at noon time, and
31 at that time, you informed me that you would want
32 to do an add-on to a question that I asked you.
33 My question was in respect to the WSP and whether
34 you imagined that after the implementation of the
35 policy, there would be more attention to habitat
36 issues. I believe that was sort of my question.
37 Do you have something that you want to add?

38 MS. STALBERG: Right. Yes. I think your question
39 earlier, would it effectively protect fish
40 habitat, and one of the other means in which the
41 Wild Salmon Policy would improve the protection of
42 fish and fish habitat is that there would be more
43 science to inform the decisions on what's highly
44 productive and limiting habitats, or the potential
45 impacts of developments. So an example would be,
46 if you recall, I talked about that coldwater
47 refuge zone, that indicator for sockeye lakes.

1 For example, if, hypothetically, there was a
2 development proposed along a lake and there was a
3 discharge proposed to be in the lake, say it was a
4 deepwater discharge, like through a liquid waste
5 management plan or something else, the location of
6 that discharge and the constituents thereof could
7 be reviewed in relation to, well, where is that in
8 relation to the coldwater refuge zone, might it
9 have any impacts on that particularly productive
10 area of the coldwater refuge zone? That's my
11 example.

12 Q Yes.

13 MS. STALBERG: Thank you.

14 Q Which leads me very, very briefly to a collateral
15 question. Is it envisaged that if there are to be
16 -- during -- through the Wild Salmon Policy, there
17 are recognized habitat problems in a CU, that
18 remedial programs will be immediately implemented
19 as primary mitigation? Is that your understanding
20 of how the program will be implemented?

21 MS. STALBERG: I am not sure how the program will be
22 implemented. The -- through undertaking the
23 characterization of the habitat and then
24 monitoring the habitat's status, input -- that
25 information is a key input to guide Habitat
26 Management's decisions on prioritizing restoration
27 efforts and prioritizing conservation efforts.

28 Q Right. I wonder if any of the other panel members
29 would have input into the response to that
30 question? Not hearing anything, I will move on.
31 I want to now deal with funding, and I'll try to
32 compress this as much as possible. Mr. Saunders,
33 in your will-say document, Exhibit 101, there are
34 numerous references to the sufficiency of
35 financial resources --
36

37

(AUDIO RECORDING MALFUNCTION)

38

39 THE COMMISSIONER: Thank you very much, sir.

40 MR. ROSENBLOOM: I'm sure this was Mr. Wallace's tactic
41 to cut me off, but thank you very much. I
42 presume, Madam Reporter, that I can carry on where
43 I was at, or have you missed anything?

44 THE REPORTER: Maybe just go back just a little bit?

45 MR. ROSENBLOOM: Just a little bit? I don't know what
46 quite "just a little bit" means, but --

47 THE REPORTER: One question.

1 MR. ROSENBLOOM: Pardon me?

2 UNIDENTIFIED SPEAKER: I'm not sure if we'd notice
3 that.

4 MR. ROSENBLOOM: I'm sorry?

5 THE REPORTER: The beginning of your cross-examination.

6 MR. ROSENBLOOM: Yes. Thank you.

7 THE REPORTER: Sorry.

8 MR. ROSENBLOOM: I hope you don't mean my first
9 question about an hour-and-a-half ago. Thank you.

10 Q All right. In respect to the funding side of it,
11 Mr. Saunders, I have reviewed your will-say and
12 there are numerous references to the funding
13 issues and Human Resource issues within DFO. And
14 if I can just summarize the thrust of what I
15 understand to be your testimony through your will-
16 say and, again, if you doubt anything in terms of
17 my précis of your evidence, please speak up, and
18 I'm happy to give you references, but you speak
19 about the fact that through the consultative
20 process leading to the announcement of the policy,
21 there were a number of interest groups speaking of
22 their concern whether there'd be sufficient
23 financial resources to implement the plan,
24 correct?

25 MR. SAUNDERS: That's correct.

26 Q Yes, and you also say that, and I'm quoting here:
27
28 Mr. Saunders will agree that additional
29 funds, including for human resources, would
30 have allowed faster WSP implementation over
31 the last five years.

32
33 And you obviously agree with what you've already
34 informed us, correct?

35 MR. SAUNDERS: That's correct.

36 Q You also say, in part:

37
38 He will say that it was made clear to the
39 region that there should -- that they should
40 not seek any new monies for WSP
41 implementation.

42
43 Can you tell me the year or context of that
44 statement?

45 MR. SAUNDERS: Well, that's a -- that's in the policy,
46 itself.

47 Q All right. And forgive me, just bear with me for

1 a moment, when you say it's in the policy, itself,
2 that the Region would not apply for additional
3 funding for implementation? I'm not
4 understanding.

5 MR. SAUNDERS: Well, it is -- I've got it highlighted
6 here --

7 Q Thank you.

8 MR. SAUNDERS: -- on page 35, it says:

9
10 Implementation must be accomplished within
11 DFO's existing resource capability and will
12 be phased in over time.

13
14 Q And do you understand that to mean that it would
15 be inappropriate for your Ministry, for the
16 Minister to go to the Treasury Board to ask for
17 additional funding? Is that how one reads that?

18 MR. SAUNDERS: I don't think I would ever presume, you
19 know, the Minister's -- his or her role as -- her
20 -- his or her prerogative, that's a political
21 question or issue, but we understand that we were
22 working within the existing resources for
23 implementation.

24 Q Is anyone within this panel able to speak to the
25 drafting of that particular provision, what drove
26 that paragraph to be inserted into the policy, as
27 some of you were involved in the drafting of the
28 policy. Does anybody have input into that?

29 MR. SAUNDERS: Well, Dr. Irvine and I were -- you know,
30 as we were on the previous Development Panel, we
31 had a -- you know, a hand in -- well, obviously,
32 in the development, but I think Mr. Chamut was the
33 one who spoke to that, and I think it would have
34 been an interaction with the Deputy, possibly the
35 RDG, and Mr. Chamut that would have worked through
36 that. That wouldn't have been any of us that were
37 on the previous panel that would have made that
38 decision.

39 Q Can I assume, Mr. Saunders, from the evidence
40 you've given through your will-say, and some of it
41 I've just made reference to, that that provision
42 or paragraph within the policy has been to the
43 prejudice of implementing expeditiously the Wild
44 Salmon Policy?

45 MR. SAUNDERS: I think that's a fair statement, that
46 that practice has certainly dictated the pace of
47 implementation, yes.

1 Q You say, in part, in your will-say, and again, I
2 quote:

3
4 He will say that Science is currently at a
5 tipping point with WSP implementation
6 funding.

7
8 What is meant by your use of the term, "tipping
9 point"?

10 MR. SAUNDERS: I don't recall saying "funding," the
11 last word in there. I may have -- I may be --
12 potentially, I said that, but that wasn't -- we
13 were at a tipping point in the implementation. I
14 think Science, a lot of the implementation around
15 Strategy 4, a lot of the uncertainty around what
16 it's going to take to move forward has been
17 removed in that we now understand the number of
18 conservation units, we are -- have a better
19 understanding of the benchmarks, and if we were to
20 go forward now, it would be much -- a lot of the
21 -- in trying to understand what it's going to
22 take, it will be a much easier job, and the
23 tipping point is that that can all start to
24 happen, I think, fairly quickly now.

25 Q Well, I did read directly verbatim from your
26 evidence where you said:

27
28 ... Science is currently at a tipping point
29 with WSP implementation funding.

30
31 You didn't mean that?

32 MR. SAUNDERS: No, the -- up to "implementation" is
33 where I would have ended it, but I didn't catch
34 that in my statement.

35 Q Thank you. We also learned from your will-say
36 that -- and I'm reading again:

37
38 He will be asked if the WSP Implementation
39 Team has ever conducted or been informed of
40 any costing exercise to determine what full
41 implementation of the WSP would cost,
42 including, for implementation, Strategy 4.

43
44 Now, maybe I missed this over all these days, but
45 you obviously affirm what you have stated in this
46 will-say, as I just read it out?

47 MR. SAUNDERS: Yes.

1 Q And has this ever been done up to this moment in
2 time?

3 MR. SAUNDERS: Not that I'm aware of, but as I say, I
4 have been -- there may have been something done in
5 the period that I was away from the Department for
6 -- through 2000 --

7 Q Fair enough.

8 MR. SAUNDERS: -- for part of 2008, yeah.

9 Q Fair enough. And who should I be asking that
10 question to? Would it be the Regional Director
11 General?

12 MR. SAUNDERS: That would -- yes. Yeah, that would be
13 a reasonable question.

14 Q Thank you. I will come back to funding in the
15 overarching question that I asked at the end of
16 the day to Dr. Holt with all of you, but I want to
17 move on to leadership for a moment, and Mr. -- Dr.
18 Irvine, you said, in part, and again, I can refer
19 you to the passage if you in any way doubt my
20 verbatim quote:

21
22 He will say that another limiting factor on
23 Strategy 3, as with WSP implementation
24 generally, is the lack of strong leadership
25 and direction from senior management.

26
27 Now, I'm interested in hearing from you, and I'm
28 sure the Commission is, what quite do you have in
29 mind there? Where has leadership been lacking?
30 Is it at the ministerial level, is it at the DM or
31 ADM level, is it regional, is it with the Regional
32 Director General?

33 DR. IRVINE: No, what I was referring to there is more
34 leadership within the Region.

35 Q Sorry, within --

36 DR. IRVINE: Within the Region.

37 Q Yes? And can we zero in a little more precisely?
38 Does that mean Regional Director General?

39 DR. IRVINE: Well, it could or it could be essentially
40 through the line of command up to the RDG.

41 Q Well, you state --

42 DR. IRVINE: I mean, with -- you know, from the
43 perspective of Strategy 3, you know, one of the
44 issues is sort of how does Strategy 3 relate to
45 Strategy 4? So does the ecosystem include humans,
46 for instance. And if you take the sort of bigger
47 picture of an ecosystem, then, in fact, Strategy 3

1 and Strategy 4 could almost become synonymous. So
2 I think there's just some uncertainty as to how
3 particular aspects of the policy are being
4 implemented.

5 Q Well, Dr. Irvine, your opinions here, your
6 comments here are very valuable to the Commission
7 because you are on the ground level, in many ways
8 piloting, in part, the Implementations Program.
9 Your statement as given in the will-say is, as you
10 see, a lot more than simply Strategy 3. You say:

11
12 ... as with WSP implementation generally, is
13 the lack of strong leadership and direction
14 from senior management.
15

16 Nobody wishes to embarrass you or anybody else in
17 these proceedings, but it's important for the
18 Commission to have a sense --

19 DR. IRVINE: Mm-hmm?

20 Q -- from your perspective of exactly where that
21 leadership has been lacking and how it might be
22 rectified in the future.

23 DR. IRVINE: Certainly. And I have indicated a couple
24 of times, today, and I believe yesterday, that
25 I've seen evidence of significant improvement in
26 the last year, but the policy was passed in 2005,
27 we're now at 2010, and it almost seemed like there
28 was a period of a -- you know, where there was
29 relatively -- the leadership was lacking in terms
30 of implementation. And I think it has become
31 recognized within the Department that this is an
32 important policy, it needs to be implemented. I
33 think there was a lot of burnout. You know, this
34 policy took -- you know, some of us worked on it
35 almost fulltime for a number of years and finally
36 you get the policy passed and, you know, you're
37 ready -- you know, so I think that there was a bit
38 of sort of internal burnout, and I think in the
39 last year, year-and-a-half, we've seen some new
40 people get involved who are a little bit more
41 energized and so we are seeing more effective
42 leadership over the last year or so.

43 Q Thank you. And Dr. Hyatt, you also make reference
44 in your will-say to leadership issues. In
45 particular, you make reference in passing to
46 leadership transition delays. I'm happy to read
47 the whole passage if, for any reason, you wish it

1 to be read to you. What were you speaking of when
2 you made reference to leadership transition
3 delays?

4 DR. HYATT: Well, there are orderly transitions and
5 sometimes there are delays in those transitions as
6 new personnel move from one position to another.
7 Implementation of Wild Salmon Policy is no
8 different. There have been changes at the level
9 of the RDG, although that's -- that certainly
10 doesn't create an inordinate delay. Those RDG
11 successional plans are usually carried out
12 expeditiously, but it takes some time for a new
13 RDG to become familiar with all of the files that
14 they're responsible for and so that will create a
15 certain amount of lag in uptake. At the level of
16 the Implementation Team, there have been, as Dr.
17 Irvine noted, a number of new individuals who have
18 come into that Implementation Team and others who
19 have transitioned out. And again during those
20 periods, if appointments aren't immediate and
21 aren't clarified right away, then you have lag --
22 not only just the normal lag time, but you have a
23 period in which, you know, that particular part of
24 the implementation activity may languish.

25 The Barkley Sound Pilot, which is an
26 important demonstration project to do an end-to-
27 end assessment to test and refine all elements
28 from Strategies 1 right through Strategy 4 is
29 another example where there have been at least two
30 separate transitions and some period of several
31 weeks at a time where there wasn't a clearly
32 identifiable lead. And when that lead finally was
33 appointed, again, it's taken some time for them to
34 catch up with where that initiative actually has
35 been, where it is and where it can go.

36 Q And we're not here to point fingers, but all of
37 this, as you describe it, the history, has been to
38 the prejudice of an effective implementation of
39 the program up till now?

40 DR. HYATT: These things come back to -- really do come
41 back to capacity, to working within existing
42 resources, our ability to carry workloads and
43 multitask and have additional tasks assigned, all
44 of that just simply takes quite a bit of time on
45 the part of the organization and on the part of
46 individuals. You can find that those loads simply
47 can't be sustained and, at the same time, result

1 in acceleration in one of the files.

2 Q And my memory of your testimony on an earlier day
3 is Barkley Sound is part of your particular
4 interest, is it not?

5 DR. HYATT: Barkley Sound is an area that I've spent a
6 good portion of my career as a scientist, actually
7 associated with provision of science advice to all
8 sectoral managers, Habitat, Enhancement, Harvest
9 managers, and it was an area in which we thought,
10 because of the information assets, an end-to-end
11 implementation trial of WSP was warranted and
12 would be highly beneficial.

13 Q And am I right, and I'm just doing this from
14 memory, that I had been informed that the Barkley
15 Sound Pilot Project has been seriously compromised
16 by a lack of funding? Has that not been the case?

17 DR. HYATT: This is entirely a matter of perspective.
18 If you wish the Barkley Sound Pilot to be
19 completed within a finite period of time, then you
20 must balance off the necessary intellectual
21 capital and financial capital to ensure that it
22 can be accomplished within that amount of time.
23 If one wishes to work within the envelope of
24 existing resources, without reallocation, then, in
25 fact, over the fullness of time, this could be
26 implemented, but it will take a much, much longer
27 period of time. And so these are choices that
28 departmental managers have to weigh and then make
29 decisions about.

30 Q I thought I had heard that Barkley Sound Project
31 had run out of money. Is that maybe my error?

32 DR. HYATT: I don't believe it's run out of money yet.
33 It's different sectors within DFO contribute
34 different amounts to the Barkley Sound Pilot so
35 it's a question of --

36 Q And have some of those sectors gone short in terms
37 of making their contribution?

38 DR. HYATT: Some of the contributions are modest.

39 Q That's not answering my question. Are some of the
40 sectors not contributing as they had committed to
41 because they did not have the money?

42 DR. HYATT: I don't believe they've identified that
43 they would commit to -- they've said there's a
44 shortage of capacity, a shortage of both financial
45 and personnel resources to be able to accelerate
46 the Barkley Sound Pilot, but they had not made a
47 commitment in advance to remain on a particular

1 schedule so this was, again, you know, one of
2 these weighing of decisions about will we do it in
3 a short period of time, expeditiously, with a very
4 strong focus, or will it be spread out over a
5 longer period time?

6 Q Thank you. I want to move to consultation very
7 briefly. A great deal of evidence has already
8 been given about consultation and in the context
9 of First Nations, in particular, I want to focus
10 on consultation of First Nations, but in the
11 context of the First Nations that are commercial
12 fishers, as opposed to the First Nations that are
13 up river. I'm speaking of the marine area. My
14 question to you, to the best of your knowledge,
15 these consultative processes that you've embarked
16 on, have you brought in the Native Brotherhood of
17 British Columbia in those consultations? And if
18 you don't know the answer to this, just tell me
19 who I should be asking.

20 MR. SAUNDERS: I don't remember. I would be
21 questioning the Consultation Secretariat so
22 Deborah Phalen for DFO heads up the Consultation
23 Secretariat.

24 MR. ROSENBLOOM: I'm sorry, and is she going to be
25 before us, Mr. Wallace?

26 MR. WALLACE: I don't know.

27 MR. ROSENBLOOM: Oh. Well, I'll, I guess, consult with
28 Mr. Wallace later about receiving an answer to
29 this question, even if it's in writing, it's fine.

30 Q I also have a secondary question on the same
31 matter. Has there been consultation, to the best
32 of your knowledge, with the Aboriginal Fishing
33 Vessel Owners' Association?

34 MR. SAUNDERS: Again, I don't have an answer for that
35 -- on that.

36 Q All right. And I assume the rest of you don't.

37 MR. ROSENBLOOM: I will pursue that with Commission
38 counsel.

39 Q Also in the context of consultation, my clients,
40 the Seiner Fleet of Area B, the Gillnet Fleet of
41 Area D are most interested in your reply to this
42 question. What is the intention of DFO in terms
43 of this point onwards in implementation in
44 consulting with the commercial fishery step by
45 step as you lead towards official implementation
46 of the program?

47 MR. SAUNDERS: I think there -- as there has been in

1 the past, there's sort of a combination of
2 targeted consultative meetings and forums and --
3 that are -- would be of interest, and the
4 organizations that you refer you would all be on
5 the invited list of organizations. We're also
6 open to -- I don't know that we've ever turned
7 down a request to come and provide information to
8 a particular organization that's interested. And
9 finally, existing processes around resource
10 management that would be affected, like integrated
11 harvest planning committees, that your
12 organizations are -- I believe, are associated
13 with, we would be utilizing all of those
14 consultative mechanisms that we currently use.

15 Q Well, you see, Mr. Saunders, I have had
16 consultation with my clients and I could have
17 taken up a whole day at this hearing just in
18 respect to the issues of past consultation with
19 the commercial fishery and, in particular, Area B
20 and Area D. And I have been informed, and I don't
21 want to get into -- this is water under the bridge
22 -- that the consultations, one major consultation
23 in March of 2005 was during the herring season,
24 which all of you, the DFO would be well aware of
25 so the fishers were not available. Secondly, that
26 many of the consultations were just public
27 meetings with presentation to the public,
28 including inviting my clients, but that that --
29 they did not deem to be consultation in terms of
30 one-on-one, where you invited their viewpoint and
31 there was a private discussion back and forth.

32 Rather than going into water under the
33 bridge, my question is will you assure us that
34 your intention in the -- from this point onwards,
35 in implementation, is to have one-on-one meetings
36 with the harvest interests? Much as you testified
37 about meetings with First Nation communities?

38 MR. SAUNDERS: Mr. Commissioner, I think we can say
39 that with absolute certainty that we're committed
40 to a consultative process. That it would be one
41 on one with all of the individual organizations, I
42 don't know that I can commit to that, but I can
43 certainly see working with all the respective
44 organizations to agree on subsequent processes
45 around consultation.

46 Q All right. Something more than just a PowerPoint
47 public meeting?

1 MR. SAUNDERS: Sure.

2 Q Thank you. Now, I'd like to move to my last
3 overarching question, which you've already heard
4 because I posed it to Dr. Holt. I will repeat it
5 and I would ask for the response of all of you.

6 Assuming for a moment, and I have no reason
7 to assume this, but for the purposes of my
8 question, I want it assumed that the Commissioner
9 is of the opinion that the implementation of the
10 WSP is in the public interest. Assuming that, and
11 assuming the Commissioner, again, and I have no
12 knowledge, would want to recommend to the
13 Government of Canada a fairly substantial or full
14 implementation of WSP within a period of two to
15 three years. My question is what recommendations
16 do you wish to deliver to this Commission that
17 should be considered by the Commissioner in his
18 report to the Government of Canada to ensure a
19 substantial implementation within that timeframe.

20 I wonder who we should start with? Maybe
21 I'll just go from left to right, my left, Ms.
22 Stalberg?

23 MS. STALBERG: Mr. Commissioner, you have the daunting
24 task of hearing all of the programs, I believe,
25 within Federal Fisheries that relate to sockeye so
26 this question, while it refers to just the Wild
27 Salmon Policy, asking for additional resources for
28 this program, if it is simply taking resources
29 from another possibly very valuable program within
30 the Region, may be counterproductive. So I
31 qualify my answer with additional resourcing,
32 realizing that even at a national level, there's
33 only so many dollars so something else at a
34 national level is not going to get done if there
35 is additional monies put to the WSP.

36 But we have talked about capacity, the number
37 of people within DFO that could dedicate their
38 energies to work on WSP, and, for example, Mr.
39 Hyatt -- Dr. Hyatt works on a number of
40 initiatives. If he was solely tasked with
41 Strategy 3, that could move it along, but Dr.
42 Hyatt does do important work in the Interior on
43 water issues, as well. So I do think the Program
44 would benefit from a lead within each of the --
45 for each of the strategies. It doesn't have to be
46 the current branches that are leading each
47 strategy, but a lead that there is some more time

1 and resources to support moving those strategies
2 together in coordination with a coordinator. And
3 where that overall -- overarching coordinator
4 sits, I don't have a recommendation on that.

5 I think that there needs to be consideration
6 to the time and effort that it takes to consult
7 and that is no small undertaking and it -- as
8 you're posing the questions, time needs to be put
9 into -- in what you're talking about, a compressed
10 timeframe to deliver on that. And Carrie Holt
11 mentioned it yesterday, sort of longer-term
12 resourcing versus just a quick injection of
13 funding, and the benefit of that is the Department
14 is a large organization and this is a
15 transformational policy that effects so much of
16 our business and it takes time to build awareness
17 and then adoption, and actual advocacy within the
18 Department on delivering the policy. You'll have
19 higher success if that kind of commitment is built
20 within the Department and through a champion, or
21 however this person is considered. Those kind of
22 considerations need to be also provided to
23 external parties that we wish to generate
24 partnerships with for the delivery of the WSP.

25 Now, where we now -- where do we -- what's
26 the vision? Where do we want to go? How can
27 individuals, organizations and branches effect
28 that change?

29 And as well, I think that another
30 consideration is looking at -- this is a
31 transformational policy and business can be done
32 differently, but who is most affected? And this
33 isn't the only change within the Pacific Region
34 and policies. There is a **Species at Risk Act** that
35 is bringing new responsibilities to the Habitat
36 Management Program. There's the EPMP that we
37 talked a little bit about this morning, and the
38 changes, when you look at those programs and step
39 back, a lot of the -- the majority of the changes
40 hit sort of field-level staff that have to deliver
41 on these. So how do you prepare them to deliver
42 on the program? And again, it's -- it takes time
43 to -- lots of communications and building
44 awareness, and then adoption, okay, they
45 understand and they can deliver on the program,
46 and then actually if you build up your
47 communications and understanding enough, that they

1 advocate the program and they can speak to the
2 benefits more broadly. That would be my
3 recommendation.

4 Q Thank you very much. Mr. Saunders?

5 MR. SAUNDERS: Yes, Mr. Commissioner, I think the core
6 of what I would suggest is that we need -- I
7 talked about the tipping point earlier on the
8 implementation, that a lot of the background
9 science and process, information that's required
10 to sort of go to the next level of implementation
11 is close to being completed, and I'll come back to
12 that in a second, but I think if we took that
13 information and went into a business, an
14 integrated, collaborative, multi-interest business
15 planning, or call it strategic plan, if you like,
16 around how we're going to move forward on
17 implementation with all of the potential interests
18 engaged in that, I think that would be one of the
19 key activities that I would go forward with.

20 Before I went into that, though, I think
21 there are some things we need to complete that are
22 well in -- are close to being in hand. Completion
23 of the stock assessment framework, completion of
24 the synoptic analysis that gives us, similar to
25 the Slaney paper that Dr. Hyatt and Dr. Riddell
26 spoke about earlier, a process to give us a
27 synoptic view of the status of salmon, rather than
28 dealing with one CU at a time and one issue in a
29 -- you know, pinning, trying to look at just one
30 issue. Try to get the whole -- excuse me -- the
31 whole problem or sort of synoptic scope in front
32 of us. Some completion of the benchmarks. We
33 need to do some work on planning units. We were
34 sent away by our senior management to do one pilot
35 in Barkley because it was unclear what the
36 implications would be and the complexities of what
37 exactly a planning process would look like. So
38 take the results of that and we need to understand
39 how we would implement, do some work on what a
40 governance model for planning processes would look
41 like.

42 We also have a review that's pending which
43 could inform how we would go forward. So with
44 some of that -- those underpinnings completed
45 within that -- if you're going to use -- hold me
46 to a two-year -- two to three-year timeframe, I
47 would then go into an integrated planning process.

1 And I think you framed it in the context of
2 thinking about, you know, are more resources
3 needed, do we need a Treasury Board submission, do
4 we need to do some reallocation? I think, in that
5 business plan, across all the partners, we would
6 also look to not just new resources, we would look
7 at -- or reallocation of existing ones, we'd look
8 at efficiencies. We would look at partnerships
9 and we would look at technology to say, "What are
10 we actually -- what can we all bring to bear to
11 make this work?" So that would be my suggestion
12 around how to move forward, would be engaging the
13 multi interests in a development of a business
14 plan going forward.

15 Q Thank you very much. Is it reasonable for the
16 Commission to have the expectation of substantial
17 implementation within two years, in your opinion?

18 MR. SAUNDERS: I have trouble with the word,
19 "substantial," Mr. Commissioner. I think work --
20 we -- I -- that's a matter of debate whether we've
21 made -- I believe we've made substantial progress,
22 and I believe that we will continue to make good
23 progress. I don't know how you would qualify and
24 understand when you would hit a benchmark of some
25 sort around 100-percent or 80-percent
26 implementation.

27 Q Well, maybe we're at cross purposes here. When I
28 use the term, "implementation," I'm assuming at a
29 point where the baseline work has been done and
30 the managers are reviewing the status of a stock
31 in a CU and where it may be into those zones that
32 require remedial steps, that those remedial steps
33 would be taken pursuant to the Wild Salmon Policy.
34 That's my definition of "implementation." Is that
35 off base?

36 MR. SAUNDERS: I don't think it's off base, but you --
37 you know, are you talking about such advice being
38 given for all CU's? Are you talking -- yeah.

39 Q This is precisely why I use the term,
40 "substantial," because I'm sure that you'll say
41 within two years, or even three or four, you still
42 won't have total implementation in the sense that
43 there won't be stock assessment of all the CU's in
44 the Province of British Columbia. That is
45 precisely why I speak of "substantial." I speak
46 of "substantial" in the context of the important
47 CU's that obviously are within the watershed of

1 the Fraser. And my question is is it reasonable
2 to expect a substantial implementation within two
3 years?

4 MR. SAUNDERS: I feel uncomfortable with that, just
5 precisely because of the inability to define what
6 "substantial" is.

7 Q All right.

8 MR. SAUNDERS: Yeah.

9 Q I've done my best. Dr. Irvine?

10 DR. IRVINE: Yes, thank you. I actually have five
11 points I'd like to raise in terms of advice that I
12 might provide the Commissioner in terms of ways
13 forward, and the first I would categorize as
14 organizational within DFO and I've -- I made this
15 point in my statement, that I think that as far as
16 the Wild Salmon Policy implementation, we need to
17 become much more integrated and we should be going
18 away from the action step by action step process.
19 I feel that we should be focussing on one
20 particular action step and that's Action Step 4.2.
21 And Action Step 4.2 is basically the
22 implementation of a fully integrated strategic
23 planning process for salmon conservation.

24 So recognizing that this a policy and, as I
25 mentioned the other day, we didn't -- when we
26 wrote it, we didn't really expect a bunch of
27 lawyers to be examining it clause by clause, you
28 know, I think that we've sort of come to the point
29 where we should be looking at the -- we should be
30 looking at it almost from a top down, at least
31 from a Strategy 4 perspective. And then to try to
32 determine what scientific information is required,
33 so a little bit less stove piping. So that would
34 be my first recommendation or piece of advice.

35 Secondly, is dealing with the articulation of
36 objectives for particular conservation units and
37 groups of conservation units. So here, I'm not
38 talking about the benchmarks, the scientific
39 benchmarks, I'm talking about the Management
40 objectives. And there's a phrase that's sometimes
41 used in the literature called the plurality of
42 legitimate objectives, and we need to recognize
43 this. And what is meant by that is that you, as
44 somebody that's representing the commercial
45 fisheries' interest have particular objectives
46 with regard to the harvest of salmon, which are
47 completely legitimate. The Environmental

1 Coalition have alternate objectives which are
2 entirely legitimate. So I guess what I'm saying
3 is that it's -- I think, a step that would be
4 useful would be the articulation of these
5 objectives from the perspective of multiple
6 interest groups for particular conservation units
7 and groups of conservation units. So that would
8 be my second.

9 Q Number three?

10 DR. IRVINE: That would be my second piece of advice.
11 The third -- my number three is capacity. And so
12 we've talked about -- you've got a couple of
13 graveyards up here who are sort of working on
14 ecosystem and habitat kind of issues and have been
15 for, you know, two or three decades now, you know?
16 We kind of need some -- we need, you know,
17 additional scientific capacity, youthful capacity.
18 We saw Dr. Holt yesterday.

19 Q Yeah.

20 DR. IRVINE: So we -- certainly, in terms of the -- in
21 the field of ecosystem-based management, this is a
22 career, it's not something that you do in two
23 years. So we do need capacity. But I just want
24 to touch on --

25 Q And not to put too fine a point on it, that means
26 money, doesn't it?

27 DR. IRVINE: Well, everything needs money. But I want
28 to -- to me, it's more important to articulate
29 what's needed, rather than to identify that we
30 need money. But a couple of issues or areas that
31 -- in terms of capacity that we haven't touched
32 on, and that's outside of the natural science
33 realm, and I feel very strongly about this. I
34 mean, the Department needs to have more capacity
35 with regard to things like resource economics,
36 social -- evaluation of social alternatives, so
37 kind of getting outside of the science issue.

38 And again, we're talking about Strategy 4,
39 which is what I've said is really where -- what we
40 should be focussing on.

41 My fourth sort of area is better involvement
42 of what is referred to as the extended peer
43 community. So the --

44 Q Sorry, the what?

45 DR. IRVINE: Extended peer community.

46 Q Yes?

47 DR. IRVINE: So the extended peer community basically

1 includes people like -- that you represent, so
2 stakeholders, First Nations, non-government
3 biologists, people that -- members of the public
4 that are interested in the future of wild salmon
5 in British Columbia. So I think the Department
6 can do more to work with this extended peer
7 community. And I say that for a couple of
8 reasons. One, that we can obtain knowledge,
9 whether it's aboriginal traditional knowledge, or
10 whatever, but it's also that in terms of dealing
11 with complicated conservation issues where you
12 have multiple objectives which are often in
13 conflict, potential conflict with each other, you
14 can find solutions by involving individuals from
15 different backgrounds. And so --

16 Q I appreciate that point. And your last point?

17 DR. IRVINE: Okay. My last point is one that we've
18 touched on before and it's simply better linkages
19 with different levels of government so that's
20 First Nations, municipal and provincial.

21 Q Yes.

22 DR. IRVINE: Thank you.

23 Q I appreciate that. Dr. -- it's so late in the
24 day. Yes, Dr. Hyatt, I wonder if you would
25 briefly give your response to my question?

26 DR. HYATT: Yes, I've summarized in my will-say
27 document five points that would accelerate this.
28 Others have spoken about the need for a range of
29 agreements, both bilateral and multi-party.
30 Foremost among those, a formal agreement or a set
31 of agreements between the Government of Canada and
32 British Columbia to make common cause in
33 implementing Wild Salmon Policy towards common
34 objectives that both have.

35 The second is that in order to implement Wild
36 Salmon Policy Strategies 1 through 5, we really do
37 need a successful pilot that takes us through the
38 entire range of familiar and to unfamiliar, rather
39 novel strategies like ecosystem-based management
40 to inform Strategy 4 and to allow us to formulate
41 an assessment framework under Strategy 5. And if
42 we omit steps, omit development, we're going to
43 find that we have to pay for it later and go back.
44 So we need a successful end-to-end to pilot to
45 show both how content standards and process
46 standards can be developed for application and
47 acceleration of implementation in other areas of

1 the province.

2 Third, DFO needs to clarify its sector-
3 specific objectives under the various strategies.
4 Dr. Irvine just mentioned this with respect to
5 Strategy 1 and CU's, but we also need to do this
6 with respect to Strategies 2 and 3 where sector
7 activities have particular impacts on either
8 habitat or on ecosystems.

9 Fourth, and this is something that has been
10 touched on, but not really explored very deeply,
11 DFO will need to invest in significant efforts to
12 access, integrate, analyze and interpret data from
13 a multitude of fragmented monitoring frameworks
14 and databases that are maintained by other
15 agencies, governments, and industry. The point is
16 is that we don't carry sole responsibility for
17 this, but the Wild Salmon Policy does make us the
18 executors of the assembly analysis interpretation
19 application of those data to meet Wild Salmon
20 Policy objectives. That isn't a responsibility of
21 others. They may wish to help us, but that is a
22 principal responsibility that we carry.

23 And fifth, we will need to initiate some new
24 Science programs to examine marine and freshwater
25 ecosystem linkages to -- in salmon production
26 variations in order to reduce severe knowledge
27 gaps we have both on how ecosystems influence
28 salmon, wild salmon, which this inquiry is
29 particularly interested in, on the Fraser, but
30 also to clarify how wild salmon influence
31 ecosystems, about which we currently have limited
32 science capacity to examine.

33 MR. ROSENBLOOM: I thank all four of you for your
34 patience and your contribution. Thank you very
35 much.

36 MR. WALLACE: Mr. Commissioner, Mr. Lunn has asked for
37 a few moments to deal with a couple of documents
38 which have been sprung on him at the last minute
39 so perhaps we could take a six-minute break?

40 THE COMMISSIONER: Very well, we'll now recess for six
41 minutes.

42
43 (PROCEEDINGS ADJOURNED)

44 (PROCEEDINGS RECONVENED)

45
46 THE REGISTRAR: Order. The hearing is now resumed.

47 MS. GAERTNER: Mr. Commissioner, Brenda Gaertner, and

1 with me is Leah Pence, for the First Nations
2 Coalition. I'll just give you an overview of what
3 I intend to do. I'm hoping that I actually will
4 be shorter than my time estimate; I think I only
5 will need an hour. And I'm only going to focus on
6 two areas: one, is the consultative process that
7 has unfolded with First Nations after the
8 implementation, or after the passage of the
9 policy; and the second is the challenges
10 associated with integrating traditional ecological
11 knowledge into the work ahead of us. And so those
12 are the two primary areas of focus.

13 And the -- for the benefit of the panel
14 members, the approach that the First Nations
15 Coalition has instructed me to do at this stage in
16 the inquiry and with this evidence, is to actually
17 lay the foundation through this implementation, or
18 through the questions on the implementation of the
19 Wild Salmon Policy as an example of some of the
20 challenges that are associated with engaging with
21 First Nations and entering into consultative or
22 collaborative processes with them and seeking to
23 see whether or not this is a good example of some
24 of the ways that we can benefit and move forward
25 together. So that's the approach.

26 Mr. Saunders, as you might expect, many of my
27 questions will be directed to you. I have some
28 questions for Dr. Hyatt.

29
30 CROSS-EXAMINATION BY MS. GAERTNER:

31
32 Q I just want to do a very brief -- just a recap of
33 where we were, Mr. Saunders, at the end of the
34 development panel and, in particular, you were
35 able to confirm for the Commissioner the kinds of
36 concerns First Nations had raised and the issues
37 they raised during the development; in particular,
38 the importance of governance structures and
39 decision-making during the implementation,
40 ensuring that implementation met the honour of the
41 Crown and did not infringe title and rights and,
42 in particular, the food, social and ceremonial
43 rights and the priority that they have in law, and
44 that they were concerned that there wasn't
45 sufficient DFO and First Nations capacity, both
46 human and financial, to successfully implement the
47 Wild Salmon Policy. And at the time in which the

1 policy was passed, you were able to confirm that
2 DFO was -- did know and that had -- that First
3 Nations expected to be involved in the development
4 of an implementation plan, the identification of
5 conservation units, and the determination of their
6 status. They expected to be involved in
7 developing a strategic planning process. And they
8 expected to be involved in the development of a
9 transparent decision-making structure.

10 So now I want to turn your attention, first,
11 to Exhibit 213, and what I'm going to do, Mr.
12 Saunders, is yesterday you asked me whether or not
13 I could do an overview and a step-by-step through
14 the consultative process. That's what I'm going
15 to do with you in the next while. I'm just going
16 to take you through the different steps that we
17 were able to determine, through the documents and
18 some discussions as to what has happened with
19 respect to consultation.

20 So I'm going to turn you, first, to Exhibit
21 213, and that's the minutes of the meeting that
22 was held on December 7th, at Musqueam, that was
23 facilitated by Chris Corrigan. Both yourself and
24 Dr. Irvine were present at that meeting. And I
25 want to just direct your attention -- actually,
26 I'm going to go to pages 4 and 5, and then 6 and
27 7. You may not need the minutes, but they may
28 refresh your memory.

29 Specifically, already at the implementation,
30 you'll agree with me that littered throughout that
31 policy is a commitment by the Crown to integrate
32 traditional ecological knowledge and First Nations
33 in the implementation of the Wild Salmon Policy;
34 correct?

35 MR. SAUNDERS: That's correct.

36 Q And initially and immediately upon the passage of
37 the Wild Salmon Policy, there are concerns raised
38 with you and others regarding how to incorporate
39 traditional ecological knowledge into the
40 benchmarks?

41 MR. SAUNDERS: I'm not sure about the benchmarks. Can
42 I have the question again, please?

43 Q Sure. If you go to page 4 and 5 of the minutes.
44 And you'll see, at that point, we're talking about
45 conservation units. I'm at page 4. And then, if
46 you go over to page 5, you'll see a question, "How
47 do we incorporate traditional ecological knowledge

1 into benchmarks?"

2 MR. SAUNDERS: Yeah, I think it's fair to say there's a
3 commitment to however TEK can -- or ATK can inform
4 our -- be integrated with our science. There's a
5 commitment to do that.

6 Q And then if you go over to the bottom of page 6,
7 and a concern was raised at the bottom of the
8 page:

9
10 Consultative approaches - issue of
11 incorporating traditional ecological
12 knowledge. Unless we deal with this out
13 front, we risk losing it under a scientific
14 process. Perhaps we need a foundation
15 document that characterizes TEK/ATK - will
16 help to define the role of First Nations.

17
18 You will agree that that concern and that
19 suggestion was made right after the policy was
20 passed?

21 MR. SAUNDERS: Yes.

22 Q Now, Dr. Irvine, at page 9 of those minutes --
23 actually before that, I'm sorry, could you flip
24 back to page 7? Mr. Saunders, I want to also have
25 you confirm that at the same meeting once again it
26 was confirmed with the DFO representatives that
27 TEK is site specific and tribal specific in areas;
28 that's a matter you already knew, probably, but
29 that was reemphasized with you at the time of that
30 meeting?

31 DR. IRVINE: Yes, that's true.

32 Q Dr. Irvine, at page 9 of the minutes, you're
33 talking about Strategy 3 and the inclusion of
34 ecosystem values and monitoring. And will you
35 agree with me that at that meeting you proposed
36 that an expert panel would be formed, including
37 academics, stakeholders and First Nations, and
38 that this group would meet with different
39 stakeholders and First Nations, and the idea is
40 that we would develop an ecosystem framework over
41 the next 18 months using such a forum?

42 DR. IRVINE: Yes, we proposed to do that at this
43 meeting.

44 Q Do you recall your thinking behind that and what
45 the idea was in terms of trying to use a panel
46 like that? Actually, maybe I'll take you -- maybe
47 it will be useful to refresh your memory at the

1 page - I should have done that earlier, I'm sorry
2 - the bottom of page 9 and over to page 10.

3 DR. IRVINE: Yes. No, I remember this now, yes. I
4 mean, the concept was a little bit -- was somewhat
5 analogous to the process that we had used when we
6 were completing the development of the policy
7 where we had, you know, an expert panel or a group
8 that we met with multiple times and essentially
9 learned from each other during the period, and
10 then these -- this expert panel would represent
11 others and -- yes, that's -- yes, no, I remember
12 that. Yes, no, we did propose to do this.

13 Q So it was a method of actually integrating the
14 different perspectives and the different kinds of
15 knowledge that would be held?

16 DR. IRVINE: That's true.

17 Q All right. Could I next turn to Exhibit 137B.
18 Gentlemen, what happens next is there's a -- the
19 next day there's a meeting of all the -- the First
20 Nations and the stakeholders. Both of you were
21 present at that meeting; that's correct? And what
22 I'm placing before you is not so much the minutes
23 but a report that occurred that was provided to
24 the Department of Fisheries and Oceans by Norton-
25 Arnold and Company on that forum meeting.

26 Again, I'm going to have to have you say,
27 "Yes."

28 DR. IRVINE: Yes.

29 MR. SAUNDERS: Yes.

30 Q Thank you. And I want to turn you to page 4 of
31 that report, please, and I'd ask you to review the
32 paragraphs just before comments on Strategy 2, so
33 we're actually talking about Strategy 1 and the --
34 you'll see that on the page before. But I just
35 want you to read the paragraphs regarding the
36 summary of the First Nations perspective on the
37 conservation units.

38 And you'll agree with me that First Nations
39 were pleased with the breakdown of the populations
40 and that -- I think it's so elegantly said there
41 that I'm going to confirm it again:

42
43 First Nations break down populations into
44 nations, then tribes, then families, and then
45 individuals.

46
47 So the discussion there was talking about how they

1 identify themselves as people within their
2 homelands.
3

4 We would never sacrifice any one individual.
5 The same analogy applies to fish. We would
6 never say that we have enough of one type of
7 individual and we can ignore it. We would
8 never do that. The CU concept seems to be a
9 shortcut route to the management of
10 individuals.
11

12 And what I want to stress with you is that that
13 comment was something, Mark -- Mr. Saunders, that
14 you would have heard over and over again how
15 important it was for First Nations to make sure
16 that individual - using the scientific term -
17 conservation units were properly looked after and
18 managed not from only the perspective of
19 abundance, but for ensuring that individual
20 communities had access to fish; is that correct?

21 MR. SAUNDERS: Yes.

22 Q And then the next paragraph, the summary on how
23 First Nations wanted to be involved and how that
24 was brought to your attention was that they asked
25 to be involved and establish relationships with
26 local communities in establishing conservation
27 units; do you agree with that?

28 MR. SAUNDERS: Yeah, I'm assuming the report's
29 accurate, yeah.

30 Q Do you recall that at the meeting?

31 MR. SAUNDERS: I don't recall that specifically related
32 to CU's, but yes, it's been -- I've heard it
33 before, yeah.

34 Q Okay. Now, I want to turn you to page 9 and 10
35 and 11 of this document, and the facilitator at
36 this meeting then provides specific
37 recommendations to DFO at that meeting. Do you
38 recall reviewing those recommendations, Mr.
39 Saunders??

40 MR. SAUNDERS: I don't recall reviewing them, but I
41 would have, yes.

42 Q When DFO hires a facilitator and gets a report, it
43 would have been your job to take a look at it and
44 make sure that any of the wisdom of the report
45 would have -- and the meeting would carry on; is
46 that correct?

47 MR. SAUNDERS: Absolutely.

1 Q All right. And so it's clear that you've gotten
2 very specific recommendations on a number of
3 matters, many of which you've spoken about, one of
4 which is to make sure that you make a clearer case
5 for conservation units. Get all the players to
6 the table. Continue to build partnerships. All
7 of these things you've talked about. Build a
8 constituency for Wild Salmon Policy implementation
9 through communication and education.

10 Let me just pause on that for a moment, and
11 you'll see, as we go forward, but at the time in
12 which this meeting occurred, its your
13 understanding and your experience that there is a
14 varying level of understanding on technical issues
15 within the First Nations community; is that
16 correct?

17 MR. SAUNDERS: Yes, it is.

18 Q And that it's somewhat challenging sometimes to
19 translate scientific documents into practical
20 approaches of First Nations? I'm at page 11 -- or
21 page 10.

22 MR. SAUNDERS: Yes.

23 Q And so that part of what was being talked about at
24 that meeting, and something that needed to be
25 considered, was to how to properly build the
26 necessary communication and the necessary dialogue
27 on a go-forward basis with First Nations both at a
28 larger forum level but also right into the
29 communities; is that correct?

30 MR. SAUNDERS: Yes.

31 Q And you'll agree with me that one of the things
32 that people did encourage was the development of
33 the website?

34 MR. SAUNDERS: Yes.

35 Q But you'll also agree with me the development of a
36 website is a one-way information street?

37 MR. SAUNDERS: Generally.

38 Q And that at page 11 of this document, one of the
39 other strong recommendations is that you continue
40 consultations with respect of the Wild Salmon
41 Policy implementation; would you agree with me on
42 that?

43 MR. SAUNDERS: Yes.

44 Q And that was something that was vey important to
45 First Nations in terms of ongoing implementation
46 of the Wild Salmon Policy, is that they stay
47 actively involved?

1 MR. SAUNDERS: Yes.

2 Q All right, the next chronology that we go to is -
3 thanks for being patient - I can't help but call
4 it the sticky note meetings. And we then do a
5 range of meetings in October of 2006 to November
6 -- the end of November 2006. And am I correct,
7 Mr. Saunders, that you were at most of those
8 meetings?

9 MR. SAUNDERS: I was at a number of those meetings. I
10 don't know if it was the majority or not, but...

11 Q Were you at the meeting in which the Upper Fraser
12 Fisheries Council presented, when they attended up
13 in Prince George?

14 MR. SAUNDERS: I believe I was at the Prince George
15 meeting, yes.

16 Q Do you recall them letting you know that they were
17 interested in becoming a pilot group for
18 benchmarks and habitat monitoring and that they
19 wanted to be involved in this knowledgeable
20 persons panel that was being suggested?

21 MR. SAUNDERS: I don't recall that specifically, but I
22 do recall that a lot of requests to be the WSP
23 pilot from a lot of organizations, including a lot
24 of First Nations.

25 Q I guess I should take you to Exhibit 213, then.
26 Oh no, sorry, I haven't marked this as an exhibit,
27 yet. I'm actually becoming exhibit challenged.
28 Could you pull up for me Exhibit 13. Is it the
29 minutes of these meetings?

30 MR. LUNN: What are the dates of the meetings, again?

31 MS. PENCE: Sorry, Mr. Lunn, it was on the handwritten
32 list we gave you yesterday.

33 MR. LUNN: I gave that list back to you.

34 MS. GAERTNER: So the ringtail number I have is Canada
35 CAN1684910001.

36 MR. LUNN: Thank you.

37 MS. GAERTNER: And if I may, could I have that marked
38 as the next exhibit? These are on a list; these
39 are not new documents.

40 THE REGISTRAR: That will be marked as Exhibit 217.

41
42 EXHIBIT 217: Summary of Meeting Notes from
43 DFO Fall 2006 Consultations, Wild Salmon
44 Policy
45

46 MS. GAERTNER: And actually, I think, just for ease, we
47 might as well do the next document on the list,

1 which is Canada 016908.

2 THE REGISTRAR: That document will be marked 218.

3

4 EXHIBIT 218: Department of Fisheries and
5 Oceans Fall 2006 Consultations Report
6 prepared by Chris Hoffman, Norton-Arnold and
7 Company, dated February 20, 2007

8

9 THE REGISTRAR: The Canada number is CAN16908. I think
10 that's one number short.

11 MS. GAERTNER: Thank you for your patience.

12 MR. WALLACE: Excuse me, Mr. Commissioner. Ms.

13 Gaertner, could you describe the document that's
14 been marked as Exhibit --

15 MS. GAERTNER: Yes, I'll describe both of them. The
16 first -- these are -- you know what, I just have
17 to say that my notes on the front of the document
18 don't tell me exactly what list I got them from.
19 These are not new documents to the parties.

20 The first is a summary of the meeting notes
21 from DFO's Fall 2006 Consultations regarding the
22 Wild Salmon Policy, so it's a summary of 11
23 meetings that were held, the sticky note meetings.

24 The second is a report of the Department of
25 Fisheries and Oceans on those meetings, and the
26 recommendations arising from them.

27 THE REGISTRAR: Do you have dates for the meetings --
28 or for the notes?

29 MS. GAERTNER: There is no date on the document, it's
30 just called Summary of Meeting Notes from DFO,
31 Fall 2006; that's the document.

32 THE REGISTRAR: Fall 2006.

33 MS. GAERTNER: The second document is dated February
34 20th, 2007.

35 Q Sorry, it's actually fairly -- it's important that
36 you have these documents before you. I don't have
37 to do too much with them, so I just want to
38 confirm, and now I want to take you to the meeting
39 that occurred -- well, actually, I'll take you
40 through the documents so you're clear about the
41 kinds of items that are being raised by First
42 Nations.

43 The theme in Prince George, in particular,
44 that I was referencing you to, is on page 2, there
45 clearly raising with you habitat monitoring,
46 benchmarking and pilot projects. So under the
47 themes from the Prince George meetings, is that

1 helpful to you, Mr. Saunders?

2 MR. SAUNDERS: Yes.

3 Q And so you'll -- perhaps it refreshes your memory
4 on the types of issues that the UFFCA, which are
5 specifically noted in the document, raised with
6 you at that meeting?

7 MR. SAUNDERS: Yes.

8 Q And particularly, they raised habitat monitoring,
9 benchmarking and pilot projects. You'll see that
10 in the action items and technical information
11 below it. They also raise with you local
12 communities have extensive ATK to contribute to
13 ecosystem work. Scroll down to the end of that
14 page. And that UFFCA wants to be involved in the
15 KPP, and I'm assuming that the KPP is that
16 knowledgeable person panel that was being
17 discussed?

18 MR. SAUNDERS: Yes.

19 Q All right. If you flip down, then, to the end of
20 page 3, there's a meeting in Kamloops, and at that
21 meeting, already concerns that the budgets won't
22 be forthcoming to implement the Wild Salmon Policy
23 are raised with DFO; is that correct?

24 MR. SAUNDERS: Yes.

25 Q And that on the next page over, the top of page 4,
26 the fourth bullet back, they're asking that:

27
28 Report back to the participants on
29 accomplishments, including establishment of
30 funding and partnerships.

31
32 Is that correct?

33 MR. SAUNDERS: Yes.

34 Q And then at page 6, you had a meeting in Merritt,
35 and at that meeting in Merritt, under conservation
36 units, they clearly raise with you the
37 incorporation of TEK and ATK and gathering
38 knowledge about the conservation units?

39 MR. SAUNDERS: Yes.

40 MS. GAERTNER: I'd like to go, now, to the next
41 exhibit, now, Exhibit 218.

42 MR. LUNN: Sorry, MS. Gaertner, I think there's a
43 number missing from that CAN number. Thank you.
44 It's got a zero.

45 MS. GAERTNER:

46 Q I want to take you to pages 15 through 18 of that
47 document. Mr. Saunders, I'd just like you to

1 scroll through that, I think that will be helpful,
2 and just let the registrar know when you need
3 to --

4 MR. SAUNDERS: This wouldn't have been anything I would
5 have been involved with.

6 Q No, sorry, page 15.

7 MR. LUNN: Sorry, the numbering on the electronic
8 version is different.

9 MS. GAERTNER: Seventeen on the ringtail, if that
10 helps. There you go.

11 MR. LUNN: There we go.

12 MS. GAERTNER:

13 Q And I just need you to confirm for specific areas
14 in which it all became clear to you as a result of
15 this report and continuing on, was that there was
16 regional differences regarding the setting of
17 conservation units. There was some concerns in
18 some areas that there would be too many
19 conservation units and that in others there
20 wouldn't be enough. Is that something that you
21 recall as a result of these meetings, that there
22 were different concerns about how conservation
23 units would be set?

24 MR. SAUNDERS: Yes.

25 Q Also confirm that there was strong concerns raised
26 about the importance of provincial involvement in
27 habitat work?

28 MR. SAUNDERS: Yes.

29 Q And there was strong concerns about incorporating
30 ecosystem values and Wild Salmon Policy in the
31 implementation stage; is that correct?

32 MR. SAUNDERS: Yes.

33 Q If you could turn to page 2 and 3 of that
34 document, now, and those are the list of
35 recommendations that resulted as -- or as a result
36 of those meetings. And the recommendations
37 clearly included that you needed to be clear on
38 the topics of consultation.

39 Recommendation 2 is to discuss the topics
40 that are relevant to each geographic area, so it
41 was important to ensure that when you did
42 consultation you were specific about the areas and
43 the issues that arose in the different areas.

44 Recommendation 3 is that you would allocate
45 more time to developing the key issues.

46 Recommendation 4 is that you follow through with a
47 more robust and regular reporting back mechanism.

1 Recommendation 5 is that you get out of the box.
2 And recommendation 6 is that you secure formal
3 agreements for the participation of the Province
4 in consultations with stakeholders and First
5 Nations.

6 Do you agree with me on all of those
7 recommendations, and would those have been
8 recommendations you would have reviewed after the
9 holding of the sticky note meetings?

10 MR. SAUNDERS: Yes, I'm not sure I would call these the
11 sticky note meetings, though.

12 Q Oh, isn't this a summary of the meetings that were
13 held in the different areas?

14 MR. SAUNDERS: But it's, I think, and I could be
15 mistaken, but I think the sticky note meetings
16 were meetings when we were getting feedback
17 specifically on the first round of conservation
18 units. Maybe Dr. Irvine can recall more clearly
19 than I can.

20 DR. IRVINE: Well, no, there were presentations on the
21 four strategies, so one, two, three, and I believe
22 four.

23 MS. GAERTNER: Perhaps you could go to page 5 of the
24 document, and I think that might help the
25 witnesses. You don't have the full document in
26 front of you. It's page 7 of the electronic
27 version. This is a listing of all of the meetings
28 that were held that are the foundation of this
29 report.

30 MR. SAUNDERS: Okay, my mistake. My colleagues seem to
31 think the sticky note is a consistent reference.

32 DR. IRVINE: I mean, the sticky notes were just
33 providing information on the conservation units.

34 MS. GAERTNER: I'm just actually using it, I'm sorry,
35 and I mean no disrespect, whatsoever.

36 DR. IRVINE: It's a good term.

37 Q I was just using it to refer to that round of
38 meetings that was held in 2006, in those various
39 places and the type of interaction and work that
40 was done there. So I was just trying to use it as
41 a descriptive --

42 DR. IRVINE: I'd just like to make one comment: the
43 meetings actually did go through until January
44 2007, so that there was a meeting at Alert Bay.

45 Q Oh, I see.

46 DR. IRVINE: And I don't think that's listed. I'm not
47 sure that this is the -- or at least the list you

1 had in the previous report I don't think is
2 complete, and I'm not sure whether this shows them
3 all or not. The meetings did go through until
4 January, or at least there was at least one
5 meeting in January, in Alert Bay.

6 Q Thank you. Okay, I'd like -- I'm finished with
7 that exhibit. I'd like to now go to Exhibit 193.
8 And in terms of the chronology, the next
9 chronology of meetings that I'm aware of is we go
10 to March 27 and 28, as meetings of the Department
11 of Fisheries and Oceans Wild Salmon Policy forum
12 in Richmond. And again, it's my understanding
13 that at this meeting Mark Saunders, you were
14 there, Dr. Hyatt's there and Dr. Holt is there; is
15 that correct? Do you recall those meetings?

16 MR. SAUNDERS: Yes.

17 DR. HYATT: Yes, I do.

18 DR. IRVINE: I'm pretty sure I was there, too.

19 Q Oh, did I miss you?

20 MS. STALBERG: And myself, as well.

21 Q Oh, sorry. Now, again, if I may, I'd like to take
22 you to another document. I want to think about
23 that meeting and what I am going to provide to you
24 is a summary that DFO did of that meeting. I
25 think that might be a faster way of getting
26 through the important outcomes of that meeting.
27 And it's a document on Canada's -- 166562, number
28 1 on Canada's list.

29 MR. LUNN: Thank you.

30 MS. GAERTNER:

31 Q And this is a document that provided highlights,
32 as it says, from the Wild Salmon Policy
33 stakeholder forum of March 2008, and it's my
34 understanding that this was presented at a Wild
35 Salmon Policy planning meeting on May 14 and 15,
36 as reflected on the front of the document.

37 Can I confirm, Mr. Saunders, Dr. Irvine, Ms.
38 Stalberg, and Dr. Holt (sic), you were all a part
39 of that team at that point in time; is that
40 correct?

41 MR. SAUNDERS: I don't think I was, at this point.

42 DR. HYATT: I've been part of the planning team fairly
43 continuously, so I would have been part of this
44 planning meeting.

45 MS. STALBERG: I was part of the implementation team in
46 May 2008.

47 Q All right. So Mr. Saunders, you may not --

1 DR. IRVINE: Me, also.

2 Q -- have seen this document, then, but as I
3 mentioned, it's a highlight of the forum of the
4 meetings that you were at, and so to the extent
5 that that might help refresh your meeting and
6 provide a summary, I'm going to try to pursue that
7 with you.

8 If you'd like to go back to a more detailed
9 summary, just let me know and I'll go there. And
10 I want to go to page 2 of the -- it's the second
11 page of the summary, and it's also second page of
12 ringtail. What we wanted to come away from in the
13 forum, and you'll confirm that those were the
14 goals that you had at the time of the forum?

15 MR. SAUNDERS: Yes.

16 Q And I want to take you to Strategy 1, page 5.
17 Actually, I better be clear on the record. The
18 two areas that you wanted to come out of the forum
19 was communications and engagement; is that
20 correct?

21 MR. SAUNDERS: Yes.

22 Q Thank you. And if we go to Strategy 2 -- sorry,
23 Strategy 1, page 5. and Strategy 1, of course, is
24 the establishment of the conservation units and at
25 this meeting and at the discussions at that point
26 in time, it's clear that one of the things that
27 came out of those regional meetings was that one
28 of the best ways to inform and engage people in
29 the work on this CU was to use existing processes
30 and structures. That's the third bullet. Would
31 you agree with me on that?

32 MR. SAUNDERS: Yes.

33 Q And particularly, I want to turn your attention to
34 the fifth and sixth bullet of that document. And
35 it's clear as a result of those regional meetings
36 that the best -- one of the best ways to inform
37 and engage people on the work of the CU's was to
38 develop an engagement strategy for each
39 stakeholder group and to develop in-depth dialogue
40 forums for meaningful discussion; is that correct?

41 MR. SAUNDERS: Yes.

42 Q And then over to page 6. As a result of those
43 meetings, it was clear that the process should
44 integrate LEK and TEK with benchmark data
45 collection; is that correct?

46 MR. SAUNDERS: Well, maybe we could just clarify. I
47 mean, I think what we're looking at here is what

1 we heard, not necessarily an endorsement of what
2 we think should be done as a result of what we've
3 heard.

4 Q Yes, but you also agree that the policy, itself,
5 suggests that you integrate, where available, TEK
6 and --

7 MR. SAUNDERS: No, absolutely, yes.

8 Q Yeah. And one of the bullets under the
9 Partnership Building, including involving First
10 Nations, is to expand DFO capacity to interact and
11 seek partnerships with First Nations and
12 stakeholders; is that correct? That was clearly
13 something you heard at the time?

14 MR. SAUNDERS: Yes.

15 Q And over to page 8, Strategy 2. One of the things
16 you heard very clearly at the time was scientists
17 need to better understand TEK and LEK and better
18 incorporate it into your decision-making; is that
19 a fair summary of some of the concerns that were
20 raised?

21 MR. SAUNDERS: Yes.

22 Q And Dr. Hyatt, as it relates to Strategy 3, at
23 page 9 of that document, you'll agree with me that
24 there were certain themes, or the themes that are
25 -- well, if you could just take a moment to look
26 at that and see if that reflects your recollection
27 of the types of themes that were coming out of
28 those meetings and the issues that were raised
29 with you at this meeting?

30 DR. HYATT: As Mr. Saunders has indicated, this appears
31 to be a record of some of the concerns or focal
32 points that were identified, yes.

33 Q And that as part of Strategy 3, there was an
34 interest raised by those in the various regions to
35 again use TEK and work with First Nations to
36 identify and/or test indicators?

37 DR. HYATT: Yes, as a general principle, that's part of
38 the policy and something we've accepted as
39 something that's desirable.

40 Q And then finally, at page 13 of that document, as
41 a result of the work that was done at this
42 meeting, there were comments from the facilitator
43 and general recommendations. Do any of you recall
44 reviewing that? Do any of those surprise you?

45 MR. SAUNDERS: No, they don't surprise me.

46 Q So they're -- and particularly working with
47 stakeholders to co-create a new engagement

1 process, so there was a goal of actually engaging
2 the stakeholders and working with them to actually
3 develop the process that would be used?

4 MR. SAUNDERS: I don't remember that one specifically,
5 but, I mean, this is the facilitator's
6 recommendations, or it's not clear to me whether
7 it's the facilitator's recommendation or the
8 general consensus coming out of the meeting.

9 Q Again, it doesn't surprise you? These are issues
10 and suggestions that have been raised by First
11 Nations with the Department of Fisheries and
12 Oceans regarding the implementation of the Wild
13 Salmon Policy?

14 MR. SAUNDERS: I would agree with the general thrust of
15 the recommendations there.

16 Q So those were all recommendations that came out of
17 that forum meeting in March 27 and 28, in
18 Richmond, which was a forum, as I recall and as
19 the minutes reflect, that brought both First
20 Nations and multi-interest parties together. That
21 forum didn't have a separate First Nations meeting
22 before that; is that correct?

23 MR. SAUNDERS: That's correct.

24 Q Now, it's my working knowledge, and that's all it
25 is, is working knowledge, that -- and I'm going to
26 take you to the document subsequent to that, but
27 that's the last large forum meeting that's been
28 held specifically with either First Nations or
29 multi-stakeholders on the implementation of the
30 Wild Salmon Policy; would you agree with me?

31 MR. SAUNDERS: That's my recollection, yes.

32 MS. GAERTNER: Mr. Commissioner, the next document that
33 I'd like to take Mr. Saunders to is a document
34 that I absolutely confess I gave late notice on.
35 Oh, can I mark that last one?

36 THE REGISTRAR: Do you -- yes, the last document?

37 MS. GAERTNER: Yes, please.

38 THE REGISTRAR: That will be marked as 219.

39
40 EXHIBIT 219: Highlights from WSP Stakeholder
41 Forum, March 2008; WSP Planning Meeting May
42 14-15, 2008
43

44 MS. GAERTNER: Thank you. This is a document that came
45 to my attention late. One of my clients brought
46 it to my attention very, very recently, as a
47 result of a phone call I had with them around the

1 topics and issues that are being discussed. I've
2 provided a copy to counsel. It is a document
3 totally relevant to this issue and on point, and
4 so I would like to refer to it to complete the
5 story on the consultative record.

6 Mr. Timberg, are you going to speak to it?
7 Do you want to speak to it? All right,
8 apparently, there's no objection.

9 MR. TIMBERG: Mr. Timberg for Canada. There's no
10 objection to these documents.

11 MS. GAERTNER: All right, so this is Canada 172578 and
12 Canada 172579. I would like these marked as
13 exhibits. Mr. Saunders, you may not have seen
14 these documents, I appreciate you were no longer
15 there. I'm not sure whether any of the other
16 panel members would, but particularly I want to
17 bring to the attention of Mr. Commissioner, and to
18 be complete in my assessment of the steps that
19 were taken --

20 Oh, I'll have them marked as an exhibit.

21 THE REGISTRAR: Okay, the Canada document ending in 578
22 will be 220, and the Canada number ending in 579
23 will be 221.

24
25 EXHIBIT 220: Fraser River Aboriginal
26 Fisheries Secretariat letter, dated May 26,
27 2008, from Neil Todd to Amy Mar, re: Fraser
28 River First Nations Wild Salmon Policy Forum

29
30 EXHIBIT 221: Fisheries and Oceans Canada
31 letter, dated June 9, 2008, from Amy Mar to
32 Neil Todd

33
34 MS. GAERTNER: And for the record, these are letters
35 that are written from the Fraser River Aboriginal
36 Fisheries Secretariat to Ms. Amy Mar.

37 Q She took over your position after you left from
38 the department on your secondment; is that
39 correct, Mr. Saunders?

40 MR. SAUNDERS: That's correct.

41 Q And the letter reflects a request by the Fraser
42 River Aboriginal Secretariat to host a meeting,
43 giving special attention to the relationship
44 between First Nations and the Wild Salmon Policy
45 and, in particular, how that -- on the Fraser
46 River level, the Fraser River Aboriginal Fisheries
47 level; is that correct?

1 MR. SAUNDERS: I don't -- that's the first time I'm
2 seeing this and I wasn't there at the time, so I
3 have no knowledge of the situation.
4 Q So I just bring to your -- the attention, then, on
5 paragraph one, two, three -- the last paragraph:
6

7 To that end, the Fraser River Aboriginal
8 Fisheries Secretariat requests that DFO
9 sponsor a forum related to the Wild Salmon
10 Policy as part of your communications,
11 engagement, and implementation strategy
12 that's outlined in your e-mail of May 22nd.
13

14 And then on page -- the next exhibit,
15 Exhibit 221, is Ms. Mar's response. And there's a
16 letter that says they'll consider it; that's what
17 the response reflects?

18 MR. SAUNDERS: I don't know what to say. The letter's
19 there and --

20 Q Speaks for itself.

21 MR. SAUNDERS: -- speaks for itself, I guess. I don't
22 know. I have no relationship with this issue.

23 Q Just before I take you to the next set of
24 documents, and Mr. Saunders, I appreciate that you
25 were away, and so I just - I actually need to put
26 these documents in as part of the record - you
27 requested a sort of overview of all the
28 consultative meetings and I'm trying to respond as
29 best I can to that request.

30 Mr. Saunders, I'm curious, when you hold
31 those tier 2 and tier 3 meetings on Wild Salmon
32 Policy in the forums in somewhere like Richmond,
33 what's the rough estimate of the cost of such a
34 meeting?

35 MR. SAUNDERS: My recollection is that they're probably
36 between -- in the neighbourhood of \$40,000 to
37 \$60,000 to do that.

38 MS. GAERTNER: The next document I want to take you to
39 and bring Mr. Commissioner's attention to is
40 number 9 on Canada's list.

41 Q Now, again, Mr. Saunders, you were likely away
42 during this time period; is that correct??

43 MR. SAUNDERS: I would have returned to the department
44 in February of 2009, at the very tail end of this.

45 Q Did you attend any -- well, no, you wouldn't have
46 attended any -- either of the two meetings that
47 are reflected under Wild Salmon -- three meetings

1 that are -- two meetings that are reflected under
2 the Wild Salmon Policy; a meeting in the Central
3 Coast Marine Use Planning Committee, and a meeting
4 of the Fraser Watershed Joint Technical Committee?

5 MR. SAUNDERS: No.

6 Q But if you could, the fifth column over on
7 "Outcomes" and "Barriers/Challenges", I wonder if
8 you could review those? And at the same time, I
9 also wonder if you could also review the "Lessons
10 Learned" from those meetings?

11 MR. SAUNDERS: Okay.

12 Q And you'll agree with me that one of the things
13 the department is learning through moving from the
14 more forum-like provincial meetings and bringing
15 them a little bit more local in the areas, they're
16 experiencing technical challenges -- or
17 experiencing challenges associated with explaining
18 technical implications to a non technical
19 audience, while there's a high expectation for DFO
20 to implement the Wild Salmon Policy more quickly.

21 And you'll also agree with me that one of the
22 barriers and challenges that's reflected in this
23 document is that participation by First Nations in
24 the process is challenged because of the lack of
25 resources and the dissemination of information to
26 all of the First Nations -- actually, we have to
27 go over to the next page - with interest in the
28 salmon fisheries; is that correct?

29 MR. SAUNDERS: The third -- before you do that, if you
30 could go back. The third line is related to the
31 Pacific Salmon Treaty, which I don't -- maybe I
32 don't understand -- that's not clear to me what
33 that meeting would be, whether this is a -- how
34 the Wild Salmon Policy is -- fits not that. I'm
35 having trouble understanding that.

36 Q All right.

37 MR. SAUNDERS: I will say, on the barriers and
38 challenges, I think we, as science organization
39 and scientists, we always have an ongoing
40 challenge to communicate technical issues. But I
41 will say that I think, Mr. Commissioner, that the
42 time -- that the work that we've done, in
43 particular in the last several years -- well, I
44 should say that maybe over the whole course of it
45 has required sort of a science -- has a strong
46 science basis, so we're always challenged by that
47 communication.

1 But we've also maintained a strong connection
2 and, again, it's this level in a forum. If I can
3 -- if I'm -- I can't point to where it will be in
4 the documents, but my recollection is that at the
5 last major forum in that 2008 one, people said the
6 usefulness -- we're getting to the point where we
7 have very technical issues and the -- there tends
8 to be a fairly high level participation of
9 representatives at -- for both First Nations and
10 others at those meetings, and they felt that (a)
11 we needed to be -- come back to that larger group
12 when we had more -- something really substantive
13 to put on the table that we'd done, and in the
14 interim we should be meeting with -- we should be
15 dealing with audiences that appreciate and
16 understand that technical nature.

17 So you'll see that we've done a lot of work,
18 the work around the conservation units, the
19 benchmarks, the habitat indicators, engaged people
20 in a much more -- a subset rather than this higher
21 level. So it's always a question of whether it's
22 appropriate to come back to the larger table or to
23 go and have smaller meetings, and I think we have
24 a very strong connection with First Nations,
25 technical representatives and the various
26 commissions, such as the FRAFS and the Skeena
27 Fisheries Commission and the Nuu-chah-nulth, et
28 cetera. So there's a lot of work going on in the
29 background that isn't -- and meetings that aren't
30 reflected in, you know, these high level forums.

31 Q Just for the record, I think I know what you mean
32 by "high level" participation. Are you meaning
33 leadership, political leadership that attends the
34 larger forums?

35 MR. SAUNDERS: Yes.

36 Q And they would not necessarily be informed on
37 technical aspects and they would prefer that you
38 meet directly with those technical people that
39 they have access to; is that correct?

40 MR. SAUNDERS: Yes.

41 Q And that these meetings, for example, the meeting
42 with the Fraser Watershed Joint Technical
43 Committee, is actually an attempt to do that?

44 MR. SAUNDERS: Yes. I wasn't at that meeting and I
45 actually have not, myself, had the opportunity to
46 participate in a joint technical committee, so I'm
47 not familiar in exactly how the discourse

1 proceeds.

2 MS. GAERTNER: Yes, I just have to make sure I put the
3 entire bundle before them.

4 So I'd like to mark as an exhibit a bundle of
5 documents that are reflected in this -- that this
6 was an attachment to. And if I'm using the
7 numbers right, it's DFO 154372.

8 MR. LUNN: Do you have CAN numbers?

9 MS. GAERTNER: CAN166561.

10 MR. TIMBERG: Mr. Commissioner, these documents that
11 Ms. Gaertner is entering right now, we were
12 provided copies of these last night. They are in
13 bundles, and so my agreement was that we would
14 have these entered as a bundle, because the bundle
15 shows usually an e-mail -- they're all e-mail
16 trains with attachments. And so it explains these
17 attachments.

18 So Ms. Gaertner is going to the attachments,
19 and I just want it on the record the actual
20 bundle, because it will become relevant when, in
21 future hearing dates when our future witnesses
22 will be able to speak to these, because I note
23 that none of these panel members actually received
24 these correspondences.

25 So I expect we'll see these again, and so the
26 recommendation is that the three bundles be
27 entered as, I would suggest, as one exhibit each,
28 so we would have three exhibits with attachments,
29 would, I think, be the best means of doing that.
30 And perhaps Mr. Lunn, the Registrar, and the
31 parties, can do that after the court is over, and
32 we can just clarify that on the record in the
33 morning.

34 That might be the most efficient way of doing
35 it.

36 MS. GAERTNER: I'm through with that attachment, and I
37 apologize with the time it's taken to get through
38 that. Okay, the last two documents in the
39 consultative -- sorry?

40 MR. LUNN: So the current document, is that going to be
41 marked as part of the bundle?

42 MS. GAERTNER: Yes.

43 MR. LUNN: Okay, thank you.

44 THE REGISTRAR: Shall we mark it now, then, or in the
45 morning?

46 MS. GAERTNER: We can mark it in the morning.

47 THE REGISTRAR: Thank you.

1 MS. GAERTNER: Finally, I want to go to Exhibit -- or
2 second to last in the process of consultation is
3 Exhibit 191, and that's the June 2008 consultation
4 plan that DFO developed, and I'd like to turn your
5 attention to page 2.

6 Q So this is three years after the passage of the
7 Wild Salmon Policy, and at page 2 of the document
8 it confirms that funding for consultations is
9 still to be determined - 5.2 - you'll agree with
10 me on that?

11 MR. SAUNDERS: I was away at this time, but I'll agree
12 that that's what it says, yes.

13 MS. GAERTNER: Thank you. And in two thousand -- and
14 then go to Exhibit 189. This is a next document
15 challenge that I have, Mr. Commissioner, which is
16 this is an actual, it's Exhibit 189, but Ms.
17 Pence, when reviewing the actual exhibit
18 discovered, today, that the exhibit that's marked
19 is only one page, where the document, itself, is
20 10 pages, so we're going to need to address that.
21 I'm not sure whether or not you now have the full
22 document or not. You do have nine pages?

23 And so I wonder if we could just keep the
24 same exhibit number with the full document?

25 MR. WALLACE: I think that, Mr. Commissioner, is the
26 simplest way to deal with it, that, for the
27 record, Exhibit 189 has nine pages.

28 MS. GAERTNER: Thank you.

29 Q And this, again, Mr. Saunders, you're now back
30 with the department; is that correct?

31 MR. SAUNDERS: Yes, I am.

32 Q And you'll reflect, under paragraph 2.0, the
33 fourth paragraph - I'm on page 1 - and it reflects
34 that while a forum was planned for the fall of
35 2009, it didn't take place. As well, this year,
36 the fall dialogue meetings are not going to take
37 place.

38 MR. SAUNDERS: Yes.

39 Q And was that because there was nothing to report?

40 MR. SAUNDERS: I don't recall the -- that --

41 Q Or was it because there was no funding?

42 MR. SAUNDERS: No, I think it was the issue that I
43 spoke to a moment ago, that whether or not there
44 was a -- the group that would be brought together
45 would be high level and that we still had interest
46 in doing more targeted work around the benchmarks
47 and the other pieces that were coming -- that were

1 slated for review and making progress that year,
2 would be better -- the time would be better
3 invested in doing a multi-stakeholder forum later,
4 a dialogue session, rather than in that year.

5 Q And if you go to page 2 of that document, second-
6 last -- the second two -- second-last paragraphs
7 in section 3.0, just before the key stakeholders
8 list, there continues to be recognition within the
9 implementation of the Wild Salmon Policy that new
10 refined governance structures would be necessary,
11 and that the team considered a proposal to set up
12 an external advisory board with First Nations;
13 however, they decided not to go ahead with that.

14 MR. SAUNDERS: I don't recall that discussion, but I'm
15 sure this statement is accurate.

16 Q And then if you reflect at page 5 -- section 5.0
17 on the consultation strategy, 5.2, any activities
18 under consultation would require reallocation.
19 There's no money for consultation in Wild Salmon
20 Policy.

21 MR. SAUNDERS: That's true and that's -- but that's
22 been the case right from the very beginning, that
23 it's always been determined at the beginning of
24 each year what contributions would be received
25 from each sector, and if we had decided to go
26 ahead we would have pulled together the resources
27 to do that.

28 Q Thank you. I'm now going to turn to the next
29 issue. That has me full circle on the efforts on
30 consultation. Is there anything else that you
31 would like to add, Mr. Saunders, in terms of the
32 chronology of the consultative efforts to date?
33 I'm going to take you to the traditional
34 ecological knowledge work next.

35 MR. SAUNDERS: Okay, well, I think that's, again, how
36 you define -- I know consultation has a very
37 strict meaning and interpretation with First
38 Nations and others, but I think if you were to
39 take a -- there's a fuller description of -- that
40 would go down another layer down in terms of
41 technical meetings and workshops related to
42 Strategy 3, there were a number of specific
43 workshops related to moving forward on Strategy 3,
44 which would have included the articulation of the
45 -- of why -- of how we, you know, moved forward
46 with the knowledgeable persons panel or not, were
47 a result of some of those meetings.

1 Some of the documents -- or some of the CSAS
2 proceedings, I would say, while not necessarily
3 meeting a certain description of consultation,
4 they are open processes that we chose to develop
5 and move forward on implementing -- or on coming
6 to ground on scientific methodology.

7 So there are another -- if we drill down
8 another layer, there's a lot more work that was
9 going on during that time, and I would
10 characterize the last several years as being very
11 much in a technical mode and may fly under the
12 radar of being consultation.

13 MS. GAERTNER: All right. I need to, next, take you to
14 document number 1 on our November 22nd list.

15 Mr. Commissioner, concerns around time are
16 being raised with me. I am going to take probably
17 the amount of time that I estimated. I had hoped
18 I could condense this. I'm going as fast as I
19 can.

20 And then if you could also bring document
21 number 2 on November 22nd, our list, and have both
22 of those documents in front of Mr. Saunders.

23 Q Mr. Saunders, I don't know if you had a chance to
24 read that e-mail, but it reflected a proposal that
25 you were working on with Fred Fortier and Dave
26 Moore. You're familiar with both of those
27 individuals?

28 MR. SAUNDERS: Yes, I am.

29 Q And you'll confirm for us that they're First
30 Nations -- Fred Fortier was a First Nations
31 representative from the Secwepemc Fisheries
32 Commission, and Dave Moore was one of the
33 consultants working at that time?

34 MR. SAUNDERS: Yes.

35 Q And together the three of you drafted, in 2006, a
36 Proposal for the Development of Guidelines for the
37 use of Aboriginal Traditional Knowledge Management
38 of Fisheries Resources in DFO's Specific Region?

39 MR. SAUNDERS: Yes.

40 Q And that proposal is in front of you?

41 MR. SAUNDERS: Yes.

42 MS. GAERTNER: May I have that marked as the next
43 exhibit?

44 MR. LUNN: The proposal?

45 MS. GAERTNER: The proposal, yes.

46 THE REGISTRAR: Number 222.

1 EXHIBIT 222: Department of Fisheries and
2 Oceans Consultation with Aboriginal Groups,
3 April 1, 2008 - March 31, 2009, Information
4 by Sector
5

6 MS. GAERTNER:

7 Q And you'll agree -- could you actually -- Mr.
8 Saunders, do you remember this work?

9 MR. SAUNDERS: Yes, I remember the general intent of
10 it, yes.

11 Q And that was to draft guidelines and have those
12 guidelines reviewed by both DFO and First Nations
13 on the use of traditional ecological knowledge and
14 the work of the WSP Implementation?

15 MR. SAUNDERS: Yes.

16 Q And that the goal was to have that work done in
17 August of 2006 through to June 2007?

18 MR. SAUNDERS: Yes, we -- well, this proposal was
19 developed but then subsequently revisited several
20 times as to whether we would actually move
21 forward. And when I say "we", I'm talking about
22 Mr. Fortier, as well as myself, how to move it
23 ahead.

24 Q And at that point in time, the budget that's
25 reflected in this document is approximately
26 35,000?

27 MR. SAUNDERS: I don't recall but yes, that sounds
28 right.

29 Q I'll take you to page 2 of the proposal. That
30 sounds about right; is that what you said?

31 MR. SAUNDERS: Yes, that sounds about right.

32 Q It's our knowledge that none of this work has
33 proceeded with respect to this proposal; is that
34 correct?

35 MR. SAUNDERS: That's true. I can add to that in that
36 I think I spoke to this in the last day or two
37 but, Mr. Commissioner, this was a recognition in
38 discussions with Mr. Fortier and Mr. Moore and
39 others that -- that First Nations -- it would be
40 appropriate for First Nations to take the lead
41 role in explaining their position or their
42 understanding of how best to incorporate ATK. And
43 we certainly struggled with it as a western
44 science organization on how to do that, extremely
45 interested and recognized the commitments that we
46 made.

47 Mr. Fortier and Mr. Moore were working within

1 the context of the Aboriginal Fisheries Commission
2 because they recognized that it's not just two
3 people that can bring this forward; they would
4 need engagement of -- of interior, coastal,
5 northern and southern First Nations in this. So
6 there was a piece that they were working on how to
7 do that engagement. And when the Aboriginal
8 Fisheries Commission was disbanded, there was a
9 vacuum there for them to actually go about how to
10 pull that together. So we never -- while the
11 money would not have been an issue, the ability
12 for them to move forward without a framework to
13 work within, they were hoping that they would be
14 able to work within the context of the then
15 emerging First Nations Fisheries Council.

16 But I left around that time and we did talk
17 about it subsequently when I was with the Fraser
18 Salmon and Watersheds Program. But I think the
19 new council had more -- was in its infancy and
20 start-up and so we just never had a good
21 opportunity to put that proposal back on the table
22 again. And since then, Mr. Fortier has -- is not,
23 to my knowledge, actively sort of engaged in the
24 Council. But I -- it would be something that I
25 would see it going back to the Council to discuss.

26 MS. GAERTNER: And I think just for the record then, I
27 should put number 3 of our November 22nd letter in
28 as -- I've marked the last one as an exhibit
29 already, which is an email exchange between Amy
30 Mar, your -- and Brenda McCorquodale, of the First
31 Nations Fisheries Council from...

32 MR. LUNN: Yes, I have it.

33 MS. GAERTNER: You have it there on the left there.

34 MR. LUNN: Yes.

35 MS. GAERTNER: Great. If you could mark -- if we could
36 tender it as the next exhibit?

37 Q So this confirms that there's ongoing interest in
38 doing this work?

39 MR. SAUNDERS: Yes.

40 THE REGISTRAR: That's Exhibit 223.

41
42 EXHIBIT 223: Email exchange between Amy Mar
43 and Brenda McCorquodale
44

45 MS. GAERTNER:

46 Q But as of 2008, that work has not yet been done.
47 And as of 2010, that work has not yet been done.

1 MR. SAUNDERS: I am not aware. There may be other
2 initiatives within the -- within the region that
3 I'm not aware of.

4 Q Within the -- any work done on the Wild Salmon
5 Policy, in specific, a report collaboratively done
6 by DFO and First Nations on the integration of
7 traditional ecological knowledge and the
8 implementation of the Wild Salmon Policy?

9 MR. SAUNDERS: Again, I'm not aware of anything else
10 but I can't -- I couldn't -- there may be others
11 that are involved in something that I'm not aware
12 of.

13 Q Okay. The next report that I want to tender as an
14 exhibit is -- it was document number 5 on the
15 coalition list. It's dated on the first --
16 preface page March 2009. And this is a report
17 that was provided to the Department of Fisheries
18 and Oceans. Do any of the panel -- have any of
19 you seen this report? Have you --

20 MR. SAUNDERS: Yes.

21 Q It's been brought to your attention? Great.

22 DR. IRVINE: Yes, I've seen it.

23 Q Great.

24 THE REGISTRAR: Exhibit 224.

25

26 EXHIBIT 224: Wild Salmon Policy Technical
27 Review and Analysis Report

28

29 MS. GAERTNER:

30 Q And I'm just going to take you through the summary
31 of that report. And Mr. Saunders, you'll confirm
32 that Julie Gardner provided an extensive overview
33 and summaries and recommendations that was brought
34 to the attention of the Department of Fisheries
35 and Oceans regarding the integration of
36 traditional ecological knowledge and other forms
37 of knowledge and that's reflected in this report;
38 is that correct?

39 MR. SAUNDERS: Yes.

40 Q And at page 4 of that report, Roman numeral iv,
41 sorry, it provides an overview of the challenges
42 associated with the integration of science and
43 traditional and local knowledge?

44 MR. SAUNDERS: Yes.

45 Q And in particular, at the bottom of page iv and
46 over to page v, it provides limitations on the
47 integration of traditional local knowledge -

1 that's the TLK frame - into the integrated
2 planning process will include a number of
3 challenges?

4 MR. SAUNDERS: I'm not sure what you're asking me to
5 agree to.

6 Q Or actually, all of you -- any of you. One of the
7 challenges associated with integrated traditional
8 ecological knowledge and scientific knowledge is
9 the difference in approach in the gathering of the
10 information and how it's used and how it's
11 integrated. Mr. -- Dr. Hyatt may have something
12 to add to this.

13 DR. HYATT: Well, I've certainly had some experience in
14 this area in terms of integrating traditional
15 environmental knowledge or traditional local
16 knowledge with the more formal kind of western
17 approach to science. And these are some of the
18 challenges and concerns that are commonly raised,
19 accuracy and verification. This is a reasonable
20 list that would appear in many publications.

21 Q And then, at page vi and vii and viii of the
22 document, Mr. Saunders, you -- did you review --
23 have you reviewed this document and considered it
24 in the context of implementing the Wild Salmon
25 Policy?

26 MR. SAUNDERS: I certainly have read it and thought
27 about it in terms of where we're going. I don't
28 have a -- but that would be the extent of what I
29 -- yeah, I would have read it and considered it in
30 how we're moving forward.

31 Q And if I take you to Roman numeral viii, the
32 report sets out some of the challenges associated
33 with collecting and processing that information?
34 Dr. Hyatt, Mr. Saunders, those are challenges
35 you're familiar with?

36 DR. HYATT: Yes, those are -- those are certainly
37 challenges I'm familiar with. I've actually
38 published a paper or two on how to -- how to
39 retrieve information and systematically assemble
40 it from local environmental knowledge within
41 knowledge frames that -- that local informants
42 feel comfortable with and -- and are able to -- to
43 populate in a way that that information then
44 becomes not only useful to them but useful to --
45 to technical forums.

46 Q And in that work, Dr. Hyatt, is it clear that
47 working closely with the First Nations and -- and

1 in a way in which -- respects the traditional ways
2 in which they hold the knowledge on how it's
3 communicated as a necessary component?

4 DR. HYATT: It's an essential component and, in my
5 experience, it's a rate -- to some extent it's a
6 rate-limiting component. It takes -- I've worked
7 with many First Nations groups. It takes upwards
8 of several years to a decade to build the kind of
9 trusting relationship with local informants,
10 elders, even with groups that have some technical
11 capacity that are of First Nations orientation in
12 order to work effectively together. And there is
13 actually no replacement for that. There's -- you
14 can attempt to accelerate it but you know the
15 fundamental trust that has to be built on is -- is
16 something that is irreplaceable.

17 Q Thank you, Dr. Hyatt.

18 MS. GAERTNER: I think hopefully I'm near -- the last
19 of the documents is document 17 on our November
20 22nd list. This is the work plan for 2009 for the
21 Wild Salmon Policy Implementation. And I'd like
22 to go to page 8 of that work plan. Now, I
23 appreciate that Mr. Wallace might be concerned
24 that it relates to Strategy 5 but there is -- it's
25 the only indication of traditional ecological
26 knowledge in this work plan. Could I have this
27 marked as an exhibit?

28 THE REGISTRAR: Exhibit Number 225.

29
30 EXHIBIT 225: Wild Salmon Policy
31 Implementation
32

33 MS. GAERTNER:

34 Q And it reflects that Aboriginal traditional
35 ecological knowledge is now in the work plan, but
36 it's -- you'll agree with me that it's new to the
37 work plan. That's what's confirmed in this
38 document? I'll start, Dr. Hyatt?

39 DR. HYATT: Sorry, could you repeat the question?

40 Q Sure. I'm going to take you to the -- the only
41 entry for Aboriginal traditional ecological
42 knowledge in this work plan, which is the second
43 bullet, or the second square.

44 DR. HYATT: I see.

45 Q All right?

46 DR. HYATT: And so in the second square, it says, "New
47 to work plan"?

1 Q Yes.

2 DR. HYATT: Yes.

3 Q And you'll then confirm that there is no money
4 allotted to that item?

5 DR. HYATT: That's correct. And there -- I do recall
6 some discussion within the implementation team
7 around this item to the effect that there were
8 broader initiatives underway to develop a kind of
9 standardized approach to Aboriginal traditional
10 environmental knowledge. And these broader
11 initiatives were taking information and -- and
12 sort of best practices from some of the work that
13 had been done by other government departments in
14 the Yukon, in the Yukon Treaty Settlement
15 Agreement so outside of the -- the implementation
16 area for Wild Salmon Policy.

17 And my recollection, although if you later on
18 have opportunity to speak to either Lisa Wilson or
19 to Wesley Hamilton, they may be able to give you
20 better -- a better recollection than I can. But
21 my recollection was that we had been informed that
22 these departments were bringing information
23 forward into a standardized approach that would
24 benefit us considerably because a lot more work
25 had been put into this than we were able to do
26 locally. And so we were hopeful that that might
27 provide a way forward.

28 Q So I'm just confused actually and I just -- if you
29 could help me. It seems to be a common
30 understanding that in order to develop and use
31 traditional ecological knowledge, you have to work
32 closely with the First Nations, who are holders of
33 that. Mr. Saunders, as soon as you started the
34 implementation you worked with some of the
35 gentlemen on the Fraser River to develop an
36 approach -- wasn't even a very expensive approach
37 -- as to begin to provide some guidelines. But if
38 I read this document correctly, you've -- DFO and
39 the members of this committee have now decided
40 that:

41
42 A draft targeted approach to how we like to
43 include ATK should be developed before
44 seeking additional First Nation input.

45
46 Is that what that document reflects? It's at the
47 second from the right column, same entry, last

1 sentence. And I'm just confused, frankly, that's
2 all. And if you could help me. If it's a funding
3 issue, that's fine. You can just say that, if
4 that's what the challenge is. If it's a challenge
5 that you don't know. Clearly, you knew at that
6 point in time that you could not do this work on
7 your own and so I'm surprised to see a document
8 that suggests that DFO was going to work on this
9 on their own.

10 DR. HYATT: Mr. Saunders, perhaps I'll come first,
11 because I do recall this -- this discussion. I
12 think this -- the language in that particular
13 comment in the column does not communicate the
14 full intent here. I think, as I recall from the
15 discussion, there's both a content requirement for
16 dealing with ATK or local -- local environmental
17 knowledge, as well as a -- as well as a process
18 requirement. And we had neither and certainly
19 it's acknowledged that in order to develop those
20 close work with First Nations groups, Aboriginal
21 Groups, is a necessary source of -- of formulating
22 such content and process standards that are
23 agreeable to both First Nations and non-First
24 Nations participants.

25 And again, relating to my previous comments,
26 the -- the expectation was that a group nationally
27 were working on this and were going to provide in
28 -- in the near future at the time of this writing,
29 materials that could actually help guide us before
30 we then began the engagement of a regional process
31 that attempted to replicate this both with respect
32 to content and process. None of us on the
33 implementation team regarded ourselves as -- as
34 ATK specialists or, you know, people with a wealth
35 of experience with -- with this area.

36 Q All right. I'm just going to go -- hearken back
37 to the summary that I gave -- or I presented to
38 you, Mr. Saunders, at the time in which the policy
39 was completed. The expectations of First Nations
40 would be that they would be directly involved and
41 how do you -- the expectations of the First
42 Nations in British Columbia that you can -- that
43 you engaged in discussions with was they would be
44 involved and there would be an open and
45 transparent decision-making, at least as it
46 relates to traditional ecological knowledge, never
47 mind the whole of the process. I couldn't find

1 any information and I wasn't provided any
2 information how the decision that you've just
3 reflected, Dr. Hyatt, was made. It definitely
4 wasn't made in consultation with First Nations,
5 was it?

6 DR. HYATT: No, this particular decision resulting from
7 that discussion was not made in consultation with
8 First Nations.

9 Q All right. I just have a couple of closing
10 questions. You know, I want to say again at the
11 beginning of my presentation, my client is looking
12 for learning form the experiences we're having.
13 I'm surprised I haven't -- are any of you aware of
14 budget submissions within the Wild Salmon Policy
15 to engage in the traditional ecological knowledge
16 and the gathering of traditional ecological
17 knowledge?

18 MR. SAUNDERS: I am not, to my knowledge. There may --
19 you know, again, policy branch, you know, Lisa
20 Wilson and -- and others, and Amy Mar before that,
21 may have been involved in something I'm not aware
22 of.

23 Q But under -- in work in progress right now, you're
24 not aware of any funding that's --

25 MR. SAUNDERS: I'm not aware. I'm not aware, no.

26 Q And so is it -- is it your recommendation that in
27 order to begin to implement some of the work
28 around integrating traditional ecological
29 knowledge that there be funding that's provided
30 for that work and a mechanism and assistance to
31 DFO in how to implement it through a consultative
32 process with First Nations?

33 MR. SAUNDERS: I think it's an issue that we need to
34 continue to work on, and I can't recall clearly,
35 but it may have been a priority that we
36 established in -- with the First Nations Fisheries
37 Council. So I would say that the First Nations
38 Fisheries Council is the first place that I
39 personally would look to for some engagement
40 between DFO and that Council to work on how you --
41 how to move forward and in that discussion
42 consider how to -- you know, appropriate mechanism
43 and how to fund it.

44 Q And you'll agree with me that at that level, what
45 you'll be able to achieve, hopefully, is an
46 overall guideline for how to implement that
47 commitment; is that correct?

1 MR. SAUNDERS: Personally, that's what I've thought was
2 -- was reasonable. I don't know if the department
3 has -- you know, we have not -- I don't recall
4 coming to the conclusion that that's the absolute
5 way to go. That was where I was proceeding as a
6 coordinator, and I still would stand by that.

7 Q And that -- and once you've got those types of
8 guidelines, Dr. Hyatt, your experience is that in
9 order to do this work you have to go right into
10 the communities and work strongly with them and
11 that that would take time, effort and resources in
12 order to do that; is that correct?

13 DR. HYATT: That's correct. And certainly in some of
14 the projects that we have underway, which down at
15 the working level, that is the approach.

16 Q And would that be the approach that you're using
17 in the work that you're doing in Barkley Sound?

18 DR. HYATT: That would be what we -- we hope to do in
19 Barkley Sound. We have quite -- again, it was one
20 of the reasons that that area was selected as a
21 pilot is that the participants -- a number of the
22 participants in the Barkley Sound pilot already
23 have the several years of engagement and trust of
24 First Nations representatives and their -- and
25 their technical advisors, and so that makes things
26 move along much -- at a much quicker pace and
27 makes it possible to achieve a better outcome.

28 Q And am I -- have I heard you right then, Dr.
29 Hyatt, that the -- at the gathering of traditional
30 ecological and -- has not been done in Barkley
31 Sound?

32 DR. HYATT: The gathering of traditional environmental
33 knowledge has not been done by us. There -- there
34 certainly are a number of groups outside of the
35 department. And in fact, some of the individuals
36 involved with this did presentations at the
37 Barkley Sound Knowledge Symposium last spring that
38 was well-attended and well-represented --
39 representative of First Nations' views. So there
40 is material that has been assembled. But again,
41 with respect to using this material or bringing it
42 into and integrating it into Strategy 2 and
43 Strategy 3 of Wild Salmon Policy, that's a
44 requirement that Fisheries and Oceans Canada will
45 have to -- will have to pursue but it's quite
46 feasible to do it there.

47 Q And have you developed experience in the Barkley

1 Sound pilot to provide some recommendations to DFO
2 as to how that will be done?

3 DR. HYATT: The work plan has -- I can't say that the
4 work plan has progressed to that level of
5 providing explicit recommendations. It's
6 certainly a general category of activity that's
7 part and parcel of the pilot. The Nuu-cha-nulth
8 Tribal Council is engaged. We're currently
9 reviewing terms of reference with Westcoast
10 Aquatic that are mutually acceptable to Westcoast
11 Aquatic Group, as well as DFO. And within
12 Westcoast Aquatic Organization, the First Nation
13 group -- First Nations groups are well
14 represented.

15 Q And so can we look forward to a report through the
16 pilot project on how to integrate traditional
17 ecological knowledge into Strategy 3?

18 DR. HYATT: Certainly there -- there should be a -- as
19 part of that end-to-end pilot, there should be a
20 chapter, if you will, or a report that could stand
21 alone. Of course, it's better if it's linked to
22 the other components of WSP Implementation so one
23 can see how they're -- they all integrate
24 together.

25 MS. GAERTNER: I just have two remaining questions of
26 the panel.

27 Q Mr. Saunders, I think you're best suited to answer
28 them. If I'm wrong, please -- you heard my
29 questions yesterday of Dr. Holt and the confusion
30 that my clients have around how quickly the
31 benchmarks for conservation units are now being
32 set without consultation or without engagement
33 with First Nations. Did you recall that
34 discussion I had with Dr. Holt yesterday?

35 MR. SAUNDERS: I recall that, yes.

36 Q Am I'm wondering now if you could offer some
37 observations as to why that is happening given the
38 expectations that you confirmed earlier that at
39 the time of the passage of the Wild Salmon Policy
40 and subsequent to that, and in the reports that
41 you've heard, First Nations definitely want to be
42 involved in setting the benchmarks and confirming
43 the benchmarks for conservation units.

44 MR. SAUNDERS: Yes, I think -- you know, we've taken
45 the course of action that we would use the CSAS or
46 the peer review process to move forward on any
47 development of a scientific methodology and we've

1 done that with the habitat indicators, with the
2 conservation units and now with the benchmarks.
3 We did have -- and the paper, Grant *et al*, follows
4 that mould. But I think it gets back to my point
5 earlier where I think we've been in a -- in a
6 development mode right now that -- where very
7 technical details are being around the --
8 analytical things are being developed. And I
9 think First Nations are -- at the technical level,
10 are very much engaged in -- as we move forward on
11 these pieces so the Fraser River technical bodies,
12 the -- the work that's being done in the Somass
13 Pilot, the work that's being done up in the Skeena
14 engages the -- the Skeena Fisheries Commission
15 technical staff. So I don't think there's an
16 intent to exclude First Nations from -- from these
17 processes.

18 MS. GAERTNER: Could I go to Exhibit 8, the Wild Salmon
19 Policy?

20 Q Sorry, Mr. Saunders. I want to take you to step -
21 - Action Step 1.2. You're not excluding First
22 Nations from this process but as I understood the
23 evidence after the completion of this report, the
24 goal of the Department of Fisheries and Oceans is
25 to set the preliminary benchmarks for the
26 conservation units for the Fraser sockeye salmon;
27 is that correct? And we've got about -- I think
28 by February of this year -- of next year, 2011, if
29 that paper completes, we'll have the initial
30 benchmarks?

31 MR. SAUNDERS: Well, as Dr. Holt was speaking to, I
32 think there may be -- I would have to -- I can't
33 recall exactly. I thought there was a discussion
34 around splitting the current document and the
35 intent of that document in two. So she did refer
36 to a subsequent piece of work and I think that
37 would include sort of the final stage of the -- of
38 the benchmarks.

39 Q My recollection of the evidence was that she said
40 the benchmarks will continue to evolve.

41 MR. SAUNDERS: Oh, absolutely. Absolutely, yes.

42 Q But that the intention is within this -- in the --
43 the finalization of the paper is to set the first
44 benchmarks.

45 MR. SAUNDERS: I'm not clear on that.

46 Q All right. If you can, you'll recall, and you'll
47 recall your evidence on how important every word

1 in this policy was to First Nations. And you'll
2 go to page 17 of the policy, which is Action Step
3 1.2, and the determination of the benchmarks. And
4 in this policy, at the bottom of main paragraph,
5 there -- it reads:

6 There is no single rule to use for a
7 determination of the lower benchmark.
8 Rather, it will be determined on a case-by-
9 case basis and depend on available
10 information and the risk tolerance applied.
11 The determination of the risk tolerance to
12 apply is a value judgment that requires
13 consultation with First Nations and others
14 affected by this choice.

15
16 You'll agree with me that that's what's in the
17 policy?

18 MR. SAUNDERS: Yes.

19 Q And you'll agree with me that once this paper is
20 finalized, there won't have been even engagement
21 on the benchmarks set up, never mind consultation,
22 with the First Nations with respect to the setting
23 of the initial benchmarks?

24 MR. SAUNDERS: Again, it gets back to how you're
25 defining consultation but I --

26 Q Other than the -- other than the -- the scientific
27 peer reviews and the participation perhaps by Mike
28 Staley of the reports, there won't be any other
29 engagement with First Nations around the setting
30 of these benchmarks?

31 MR. SAUNDERS: I don't -- I think it's -- saying it
32 would just be Mike Staley might be too narrow. I
33 think there would be engagement of other technical
34 -- and I -- as this is being moved out into the
35 area staff, so Carrie Holt, Dr. Holt, is working
36 on the development of this piece. But Sue Grant
37 and then a host of other authors and area people
38 are involved. So we would -- you would need to
39 talk to Ms. Grant and others about how they --
40 what the engagement, again, at the technical level
41 was. But was there a meeting at that higher level
42 of -- you know, of a public --

43 Q A forum?

44 MR. SAUNDERS: -- sort of an open forum? No, there
45 wasn't.

46 Q So there wasn't even a forum on the setting of
47 those benchmarks?

1 MR. SAUNDERS: Well, I wouldn't say "even" a forum.
2 No, there wasn't. So I -- I'm not disputing that.
3 It's -- I haven't -- I don't -- I think it's
4 worthy of some thinking about where the next steps
5 are on the benchmark. We've been very locked down
6 -- not -- locked down is the wrong word but very
7 focused on trying to move through the development
8 of these benchmarks. And if there's a step that
9 we're missing, I would like to talk to our area
10 staff to understand how that will roll out in the
11 areas and I think that's worth having that
12 discussion to understand the level of comfort that
13 we've got with First Nations on how they would
14 like to be involved in -- in those -- in that
15 step.

16 Q And that's a commitment you're prepared to make?

17 MR. SAUNDERS: I'm prepared to make that, yes.

18 Q All right. I have one final question for you, Mr.
19 Saunders. You're familiar with Tier 1, Tier 2,
20 Tier 3?

21 MR. SAUNDERS: Yes.

22 Q All right. Would you agree with me that a well-
23 mandated Tier 1, 2, 3 process would be useful in
24 the ongoing implementation of the Wild Salmon
25 Policy?

26 MR. SAUNDERS: A clearly articulated process, yes, that
27 would be very helpful.

28 Q And would you also agree with me that a scale-
29 based analysis on what type of topics could be
30 dealt with at a Tier 1, Tier 2 and Tier 3 and what
31 needs to go into the -- into the areas
32 specifically could be helpful to the Department of
33 Fisheries and Oceans?

34 MR. SAUNDERS: I think that would be helpful, yes.

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

36 MR. WALLACE: Mr. Commissioner, I've been advised by
37 Mr. Timberg he has ten minutes or so of re-
38 examination. If I beg your indulgence, the
39 Commission counsel would like to ask one small
40 series of questions and put the remainder, which
41 are clarifications essentially, in writing, if
42 that's agreeable and get written answers rather
43 than putting -- so all-in-all, I think it's about
44 20 minutes.

45 THE COMMISSIONER: I would prefer not another 20
46 minutes, Mr. Wallace. If you can do it in ten,
47 I'm content.

1 MR. WALLACE: Thank you. Mr. Timberg, I'm not sure if
2 perhaps written clarifications might work for you
3 as well?

4 MR. TIMBERG: I'm just considering this for the first
5 time. Just one moment.

6 MS. GAERTNER: Just as he's considering that, I just
7 want to put on the record that my time estimate as
8 of this morning was an hour and a half and that's
9 exactly how long I took.

10 MR. TIMBERG: In recognition of the amount of time that
11 this panel has been here for and especially Mr.
12 Saunders and Dr. Irvine, I'll agree to following
13 up in writing, if we can let them go.

14 THE COMMISSIONER: All right.

15 MR. WALLACE: Thank you. That just leaves one line of
16 questions from Ms. Tessaro, if I may?

17 THE COMMISSIONER: Can we do that in 10 minutes, Ms.
18 Tessaro?

19 MS. TESSARO: Definitely, Mr. Commissioner.

20 THE COMMISSIONER: Okay, thank you.

21 MS. TESSARO: My name is Lara Tessaro. I haven't had
22 the opportunity to introduce myself to you on the
23 record yet. Actually, we will be following up, as
24 Mr. Wallace had said, with some written questions
25 for you. They're all in the nature of
26 clarification. But for one line of questions,
27 which arises from a document that we did not have
28 at the time of our initial examination. And
29 that's the document that's been referred to by
30 you, Ms. Stalberg, and by Mr. Timberg, as the
31 habitat overview report for Cultus Lake. And I'm
32 just wondering if that could be quickly pulled up.
33 That's Exhibit 212.

34

35 RE-EXAMINATION BY MS. TESSARO:

36

37 Q Ms. Stalberg, I just want to confirm that you're
38 relatively familiar with this document. Have you
39 read it recently?

40 MS. STALBERG: Just very briefly, quickly pulled it up
41 and brought it to the proceedings. So no, I'm not
42 really familiar with the contents of the document.

43 Q Are you familiar enough with the document to say
44 that it is, in fact, what's been characterized as
45 a habitat overview report?

46 MS. STALBERG: I can say that it is a combination of
47 population information and habitat information.

1 The population information is part of the
2 biological status information that was sought in
3 the '05/'06 pilot. And it contains some habitat-
4 related information, I think, from the recovery
5 planning process that was being drafted for Cultus
6 Lake sockeye earlier.

7 Q Would it be common that a habitat status report --
8 sorry, habitat overview report under the Wild
9 Salmon Policy wouldn't reference the Wild Salmon
10 Policy, because this document doesn't?

11 MS. STALBERG: I wouldn't think that would be common,
12 no. You would be talking about the conservation
13 unit on the top and then there would be probably
14 some reference to the Wild Salmon Policy relating
15 to some of the habitat restoration or management
16 priorities that might be input into the habitat
17 management program pursuant to the Wild Salmon
18 Policy. Something like that.

19 Q Maybe I can assist you with just referring to the
20 language of Strategy 2, Step 2.1, where:

21
22 Habitat overview reports are said to 'provide
23 sufficient information on key habitats to
24 identify priorities for protection,
25 rehabilitation and restoration. It will also
26 identify information gaps and factors such as
27 water quality and quantity that potentially
28 threaten the future health and productivity
29 of habitats.
30

31 That's what you were just referring to, the kind
32 of the information that you'd expect to see in a
33 habitat status -- habitat overview report; is that
34 right?

35 MS. STALBERG: That's correct.

36 Q Are you able to identify any such information in
37 this document that -- that provides sufficient
38 information on -- on key habitats that would help
39 identify priorities for protection and
40 rehabilitation?

41 MS. STALBERG: I think if you scroll towards the end is
42 where the habitat component is. But I will say
43 that --

44 MS. TESSARO: Can you just scroll quite slowly, John?

45 MS. STALBERG: Slow. No, keep going, thanks. Okay.
46 So -- and there is -- this was an early pilot, so
47 this is testing out the thinking. And this

1 doesn't have the habitat status template
2 information within it. But there is some habitat-
3 related information in here: Eurasian water
4 milfoil -- thank you. So we didn't have our
5 indicators at the time again. So I'm not saying
6 that this is the best example of an overview
7 report. I'm saying this is a product of the
8 0'5/'06 attempt to test the thinking on what we
9 wanted within overview reports, population or the
10 biological status reports and the habitat status
11 reports.

12 Q I appreciate that you don't have indicators yet
13 because indicators -- or the work, as you've
14 explained that was done, up to 2009 when your
15 report was published. But my understanding is
16 that the habitat indicators, the pressure and
17 state indicators that you've given evidence on,
18 those are a feature of habitat status reports.
19 This, I understood you to have characterized as a
20 habitat overview report. So am I right about
21 that?

22 MS. STALBERG: No, this -- so this is to reflect some
23 of the elements that we wanted within the overview
24 report and this is a combination of the population
25 status report sought by -- through Strategy 1 and
26 overview information sought through Strategy 2.

27 Q And so if I have your evidence right, and you may
28 need to further scroll down the remaining pages,
29 I'm not sure, and I think this is my final
30 question. Your evidence is that that direction in
31 the Wild Salmon Policy that an overview report
32 will provide sufficient information on key
33 habitats to identify priorities for protection,
34 rehabilitation and restoration, that direction is
35 served by this paragraph on water milfoil? Or is
36 there another place --

37 MS. STALBERG: I did not say that.

38 Q Well, could you tell me perhaps where, in the
39 document, that direction would be satisfied by
40 this -- by this document?

41 MR. SAUNDERS: Go ahead.

42 DR. IRVINE: Yeah, I think I should --

43 Q Actually, sorry, Ms. Stalberg, my question's for
44 you. If you could tell me where in this document
45 the direction that an overview report will provide
46 information on key habitats to identify priorities
47 for protection, rehabilitation and restoration,

1 where that information is found in this document.
2 If Mr. Lunn needs to keep scrolling through, he
3 can.

4 MS. STALBERG: Yeah, you can keep scrolling. I don't
5 think from my recollection that it is in here. It
6 has some information about habitat that was pulled
7 out of the recovery planning process but it didn't
8 meet the needs of what we were looking for. So
9 common threats and then the outlook. It doesn't
10 have what we would seek in the overview report. I
11 think that is something that needs to be resolved
12 as part of moving forward with the Wild Salmon
13 Policy, is finalizing the overview report, like
14 making sure that -- because we went through that
15 data that indicators monitoring process and found
16 that was very expensive and that was -- and
17 challenging. And we thought that would be a ready
18 source to pull out things like predominant threats
19 within a CU. And that is -- that turned out to
20 not be a ready source of information. So I think
21 that is still -- that needs to be resolved, the
22 overview report there, how the information is
23 going to be gained in there in a ready fashion.

24 Q Thank you. And Dr. Irvine, I have just really one
25 minute, so if you have -- I understand that you
26 have actually reviewed this document before back
27 in 2005, but do you have any recollection of this
28 document?

29 DR. IRVINE: Well, I was involved in the development of
30 the template. But the comment I really want to
31 make is I think there's some confusion about these
32 different reports. So Ms. Stalberg was talking
33 about a habitat status template. This is a
34 conservation unit template, right? So this is --
35 my recollection is that this was intended to
36 include, you know, information primarily from a
37 Strategy 1 perspective but where habitat concerns
38 would be thought to be possible for the -- perhaps
39 a decline in status that you would input that
40 information. But this is clearly drawn from the
41 recovery document that was developed for Cultus
42 Lake sockeye.

43 Q That's helpful context, thanks.

44 MS. TESSARO: Commissioner, that's my only question
45 orally.

46 THE COMMISSIONER: Thank you very much, Ms. Tessaro. I
47 want to thank the members of the panel very much

1 for making yourselves available far beyond what
2 you anticipated you would have to put yourself
3 through. So I'm grateful for that and thank you.
4 Each and everyone one of you, thank you very much.
5 We're adjourned then until 10:00 a.m. tomorrow
6 morning.

7 THE REGISTRAR: The hearing is now adjourned until
8 10:00 a.m. tomorrow morning.
9

10 (PROCEEDINGS ADJOURNED TO DECEMBER 9, 2010,
11 AT 10:00 A.M.)
12

13 I HEREBY CERTIFY the foregoing to be a
14 true and accurate transcript of the
15 evidence recorded on a sound recording
16 apparatus, transcribed to the best of my
17 skill and ability, and in accordance
18 with applicable standards.
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22 _____
23 Karen Acaster

24 I HEREBY CERTIFY the foregoing to be a
25 true and accurate transcript of the
26 evidence recorded on a sound recording
27 apparatus, transcribed to the best of my
28 skill and ability, and in accordance
29 with applicable standards.
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33 _____
34 Pat Neumann

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

Karen Hefferland

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