

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.

Monday, May 30, 2011

**Tenue à :**

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

le lundi 30 mai 2011



### Errata for the Transcript of Hearings on May 30, 2011

Page	Line	Error	Correction
90	39 - 45	Second on Cultus	Saskinaw and Cultus
90	40	to get it	together

## **APPEARANCES / COMPARUTIONS**

Brian Wallace, Q.C. Lara Tessaro	Senior Commission Counsel Junior Commission Counsel
Tim Timberg Geneva Grande-McNeill	Government of Canada ("CAN")
Boris Tyzuk, Q.C.	Province of British Columbia ("BCPROV")
No appearance	Pacific Salmon Commission ("PSC")
No appearance	B.C. Public Service Alliance of Canada Union of Environment Workers B.C. ("BCPSAC")
No appearance	Rio Tinto Alcan Inc. ("RTAI")
No appearance	B.C. Salmon Farmers Association ("BCSFA")
No appearance	Seafood Producers Association of B.C. ("SPABC")
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.**

Phil Eidsvik	Southern Area E Gillnetters Assn. B.C. Fisheries Survival Coalition ("SGAHC")
Christopher Harvey, Q.C.	West Coast Trollers Area G Association; United Fishermen and Allied Workers' Union ("TWCTUFA")
Keith Lowes	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); Adams Lake Indian Band; Carrier Sekani Tribal Council; Council of Haida Nation ("FNC")
No appearance	Métis Nation British Columbia ("MNBC")

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

No appearance	Sto:lo Tribal Council Cheam Indian Band ("STCCIB")
No appearance	Laich-kwil-tach Treaty Society Chief Harold Sewid, Aboriginal Aquaculture Association ("LJHAH")
No appearance	Musgamagw Tsawataineuk Tribal Council ("MTTC")
No appearance	Heiltsuk Tribal Council ("HTC")

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Vancouver, B.C./Vancouver  
(C.-B.)  
May 30, 2011/le 30 mai 2011

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

6 MR. WALLACE: Good morning, Commissioner Cohen. For  
7 the record, I'm Brian Wallace, counsel for the  
8 Commission, and with me is Lara Tessaro.

9 I'll do two things, if I may, Mr.

10 Commissioner, to start. First, participants will  
11 have received, on Friday late, some documents from  
12 Canada. We received three more documents of the  
13 same ilk this morning. These were as a result of  
14 a request that Commission Counsel made to the  
15 Department of Justice only earlier this month. So  
16 I'm in no way faulting Canada for the timing and,  
17 indeed, I applaud them for their efforts, and  
18 thank you very much on that.

19 The difficulty is that I have not yet  
20 reviewed them. I haven't even looked at the ones  
21 from this morning, nor, I suspect, have many of  
22 the participants. So my proposal is that they --  
23 oh, by the way, they relate to briefings relating  
24 to the Cultus Lake sockeye decision under **SARA**, so  
25 it would have been appropriate to have them here,  
26 but I think that would be unfair to everybody. We  
27 will all have a chance to review them and then  
28 discuss when and if they're to be put before you,  
29 and perhaps we have to call Dr. Davis back for a  
30 few minutes at some later date.

31 This week, Mr. Commissioner, today you will  
32 hear from Dr. John Davis, retired Assistant Deputy  
33 Minister, and other things, from DFO, who will  
34 talk to us about the decision not to list the  
35 Cultus Lake sockeye under **SARA**. That evidence, it  
36 appears, will go into tomorrow morning.

37 Starting tomorrow afternoon, we will have  
38 evidence from -- on what subsequent efforts are  
39 being made at DFO for the recovery of the Cultus  
40 sockeye. That will go into Wednesday morning and  
41 we anticipate that about early afternoon on  
42 Wednesday we'll begin our final block of evidence  
43 on the Wild Salmon Policy, first hearing from the  
44 stakeholders' panel that was hoisted from last  
45 December for lack of time, and finishing off with  
46 a day and a half of evidence on a panel dealing  
47 with Strategy 4 under the Wild Salmon Policy. So



3  
John Davis  
In chief by Mr. Wallace

1 Q And then you were the Regional Director General of  
2 the Pacific Region?

3 A Correct.

4 Q Prior to retirement, I understand that you took on  
5 a position of special advisor to the deputy  
6 minister on species at risk?

7 A Correct.

8 Q And that was a responsibility that was national?

9 A Yes, it was.

10 Q Thank you. Since retiring, Dr. Davis, I take it  
11 you have been also active and in 2010 you chaired  
12 an OECD workshop on the Economics of Adapting  
13 Fisheries to Climate Change?

14 A Correct.

15 Q And this year, earlier, you chaired a workshop on  
16 Marine Ecosystem-Based Management Implementation  
17 for the Pacific Marine Analysis and Research  
18 Association?

19 A Yes.

20 Q Thank you. Going back, Dr. Davis, to your  
21 position as special advisor to DFO, you had a  
22 specific role relating, I take it, to the issue of  
23 whether or not to list the Cultus Lake sockeye  
24 salmon, correct?

25 A Yes. And I should explain the role I had --

26 Q Yes, please.

27 A -- in that capacity. What I was asked to do,  
28 prior to retirement, by the deputy minister, was  
29 to head up the department's overall coordination  
30 of the species at risk legislation implementation.  
31 So I was in charge of a secretariat office in  
32 Ottawa where I had a small staff, and my job was  
33 to help guide the department through the early  
34 days of the implementation of the species at risk  
35 legislation. That meant being basically the  
36 channel or the post box for a lot of the paper  
37 coming in from the different regions.

38 Each of the regions had a process that we put  
39 in place whereby advice on listing and other  
40 activities would come forward from the regional  
41 director general under signature into my office as  
42 the sort of centre for coordination of these kinds  
43 of things. I had a responsibility to work, then,  
44 closely with each of the regions and with the RDGs  
45 and their staff, and also across the department  
46 with the assistant deputy ministers responsible  
47 for fisheries management and policy and science.

4  
John Davis  
In chief by Mr. Wallace

1 I had a responsibility to help with the liaison  
2 with ministers and across with the Department of  
3 Environment as well, with colleagues responsible  
4 for **SARA** in the Department of Environment.

5 And the legislation is such that for aquatic  
6 species the Minister of Fisheries and Oceans was  
7 deemed the competent minister, and for all of **SARA**  
8 the Minister of Environment was responsible,  
9 overall, for the legislation nationally.

10 Q Thank you. Dr. Davis, in your position on **SARA**,  
11 nationally, you chaired a committee called SARCEP.  
12 Can you tell me what that is, please?

13 A SARCEP was the national coordinating committee for  
14 a lot of the day to day as well as the key areas  
15 of business for **SARA** across the Department. So  
16 SARCEP was the place where representatives from  
17 each of the DFO six regions would come to the  
18 table, we would look at funding of **SARA**-related  
19 projects funding for recovery strategies, we would  
20 keep a watching brief on all of the different  
21 species moving through the process under **SARA**, and  
22 we would review various aspects of policy  
23 implementation and coordination, so it formed a  
24 sort of national coordinating body for day to day  
25 business.

26 And also the review body for funding  
27 decisions. I had about a 15 million dollar budget  
28 with which to disburse monies to the regions for  
29 **SARA**-related initiatives.

30 Q And SARCEP was a DFO committee?

31 A It was a DFO committee.

32 Q In that position, who did you work with most  
33 closely in the Pacific Region?

34 A Pacific Region had key **SARA** staff, so one of the  
35 people I worked with a lot was a fellow called Don  
36 Lawseth, who was responsible as a regional **SARA**  
37 coordinator. Also, with the people in the policy  
38 shop, Alison Webb, and legal share a web. From  
39 time to time some of the scientists and  
40 biologists, and particularly with the regional  
41 director general and the regional director  
42 general's management committee who are responsible  
43 for bringing forward **SARA** initiatives on behalf of  
44 Pacific Region.

45 Q On the Cultus issue, did you deal with any  
46 fisheries managers?

47 A From time to time, yes.

5  
John Davis  
In chief by Mr. Wallace

1 Q And who would that have been?

2 A Paul Ryall is one of them, and Burt Ionson. Other  
3 folks, Greg Savard.

4 Q You took on the responsibility for the **SARA**  
5 listing issue on Cultus when?

6 A Well, it's interesting, I was the director general  
7 in 2002, and at that time **SARA** hadn't come into  
8 force. **SARA** came into force in a phased way. It  
9 was first introduced in 2003, and became fully  
10 effective in terms of the prohibitions under the  
11 legislation in 2004. Early on in 2002, I believe  
12 it was, COSEWIC, the arms-length committee that  
13 assesses the status of endangered wildlife in  
14 Canada, had suggested an emergency listing of  
15 Sakinaw and Cultus sockeye. So while I was  
16 regional director general, we were aware that that  
17 recommendation was coming forward from COSEWIC,  
18 and so in my time as RDG I had a contact with this  
19 particular initiative. And then, in 2003, I moved  
20 to this other position as the **SARA** advisor that I  
21 described to you just now.

22 Q Thank you. As RDG, did you create the Cultus  
23 Recovery Team?

24 A I can't recall whether I created it or whether it  
25 was in its inception before I actually was RDG.  
26 Clearly, people were concerned about weak stocks  
27 and about the status of Cultus, so it may have  
28 been starting even before I became RDG.

29 And a point I should make here is that what  
30 was happening was the **SARA** legislation, when it  
31 came into force, requires a recovery strategy to  
32 be developed after listing. However, the  
33 Department, recognizing that weak stock management  
34 is very important, was starting initiatives early  
35 on to get ahead of the game and, consequently,  
36 work was going on with respect to recovery,  
37 thinking about the kinds of challenges to  
38 recovery, and that's very important to recognize  
39 that the Department was taking that approach.

40 Q Thank you, Dr. Davis. Now, let's deal with the  
41 COSEWIC emergency listing question. COSEWIC had  
42 conducted a scientific assessment in mid 2003, I  
43 think, and that was assessed as a -- sorry, and it  
44 was assessed as an endangered species at that  
45 time, correct?

46 A I think it was 2002, but I could be wrong.

47 Q Do you recall what the role was of the Soowahlie

6  
John Davis  
In chief by Mr. Wallace

1 First Nation in that exercise?

2 A My understanding is that COSEWIC examined Cultus  
3 on the basis of concerns that were brought forward  
4 by the Soowahlie First Nation about the status of  
5 Cultus stocks.

6 Q If I could take you to Tab 2.

7 A This is Tab 2 of the Commission binder?

8 Q Of the Commission's binder.

9 A Yeah.

10 Q You have that? Thank you very much. Is this  
11 produced by COSEWIC?

12 A No, this is a response statement, and this is  
13 actually produced by the Government of Canada, and  
14 it's a formal requirement under **SARA** whereby the  
15 minister, on getting advice from COSEWIC, has to  
16 formally issue a response statement that specifies  
17 how the minister will deal with the  
18 recommendations of COSEWIC. So this is part of  
19 the statutory - perhaps I'm using the wrong  
20 language - part of the requirements of the  
21 legislation.

22 Q Thank you. And the reason for the status  
23 designations that are set out in the paragraph so  
24 headed:

25  
26 The Cultus population has unique genetic and  
27 biological characteristics (migratory delay  
28 of adults at the Fraser estuary, protracted  
29 lake residency before spawning, exclusive  
30 lake spawning, late spawning date, deepwater  
31 life of fry). The lack of success with  
32 previous attempts to transplant sockeye to  
33 Cultus Lake and other lakes, suggests that  
34 Cultus sockeye are irreplaceable. The Cultus  
35 population has collapsed primarily due to  
36 overexploitation, including directed and  
37 incidental catches in mixed-stock fisheries  
38 at levels above those that can be sustained.  
39 An additional key source of impact on  
40 spawning adults since 1995 has been very high  
41 pre-spawn mortality, associated with  
42 unusually early migration into freshwater and  
43 with *Parvicapsula* parasite infestation. There  
44 are also ecological impacts to the lake  
45 habitat from colonization by Eurasian  
46 Watermilfoil, land development, stream  
47 channelization, nutrient input, and

7  
John Davis  
In chief by Mr. Wallace

1 recreational use. Under present conditions,  
2 there is a high probability of extinction of  
3 the Cultus sockeye.

4  
5 Now, did DFO agree with that assessment at the  
6 time?

7 A Yes, in the sense that COSEWIC based its  
8 information on advice provided by DFO scientists,  
9 and there is a record, of course, of that  
10 material, and DFO did not disagree with this.

11 Q Now, what steps did DFO take in order to persuade  
12 the Minister of Environment not to list the Cultus  
13 Lake sockeye on an emergency basis?

14 A Well, on an emergency basis is a very, very fast  
15 track process, which I do need to describe in  
16 terms of the timeframe as to how the legislation  
17 works. What was provided to the minister was a  
18 comprehensive action plan, an outline of the  
19 action plan that the Department was going to put  
20 in place, which would allow work to be brought  
21 about that would address these issues and the  
22 reasons that the designation that COSEWIC had  
23 provided with respect to specific programs dealing  
24 with these impacts.

25 In addition, in the fishing plan for that  
26 season in 2004, the Department had initiated  
27 action to change the nature of the fisheries to  
28 reduce the overall impact in terms of catch of  
29 Cultus-origin sockeye.

30 MR. WALLACE: Thank you. Mr. Giles, could Tab 2 of the  
31 Commission's book of documents be marked as the  
32 next exhibit, please.

33 THE REGISTRAR: Exhibit Number 885.

34  
35 EXHIBIT 885: One-page Response Statement for  
36 Sockeye Salmon, Cultus Population, dated  
37 April 21, 2004  
38

39 MR. WALLACE:

40 Q If I may ask you to look at Tab 3 of the book of  
41 documents, Dr. Davis, are those fishing measures  
42 the ones that were referred to in the questions  
43 and answers which are set out at Tab 3?

44 A Okay, could you direct my attention specifically  
45 to --

46 Q Sorry, the third bullet on the first page.

47 A Okay. This is reducing the harvest rate to 10 to



8  
John Davis  
In chief by Mr. Wallace

1 12 percent?

2 Q Yes.

3 A Yes, that's part of the fishing measures. And  
4 that entailed moving the location and the timing  
5 of fisheries, as I understood it. So it was  
6 adjustments to the way the fishery was prosecuted  
7 in-season.

8 MR. WALLACE: Thank you. Mr. Giles, could Tab 3,  
9 please, be marked as the next exhibit?

10 THE REGISTRAR: Exhibit 886.

11

12 EXHIBIT 886: Questions and Answers, Cultus  
13 and Sakinaw Lake Sockeye Salmon Emergency  
14 Listing Decision  
15

16

16 MR. WALLACE:

17 Q If I may direct your attention, please, Dr. Davis,  
18 to Tab 1. This is a memorandum for the minister  
19 of Fisheries and Oceans, and it seems to have a  
20 fax transmission date of, is it, February 24th,  
21 2004? That's the top left-hand corner. Is that  
22 generally when this issue was being considered,  
23 the emergency listing request of the two sockeye  
24 species, or populations?

25 A February 2004?

26 Q Yes.

27 A I believe so, yeah.

28 Q Now, in this memo, DFO, in the memorandum, is  
29 identifying that if it can only persuade  
30 Environment Canada to get sockeye into the normal  
31 nine-month non-emergency listing process under  
32 **SARA**, then socioeconomic factors could be  
33 considered and perhaps trump conservation factors?

34 A I wouldn't agree with that. What would have  
35 happened, had these species been emergency listed,  
36 there would not have been time for thorough  
37 consultation for further development of the  
38 impacts, both benefits and costs of listing, and  
39 there was a strong feeling that, in fact, the  
40 action plan that the Department was putting in  
41 place provided a buffering that season for the  
42 immediate impacts and that given that this was our  
43 first experience with a major listing decision in  
44 **SARA** there needed to be more time to carefully  
45 evaluate the impacts of this, and I do wish to  
46 come back, later, to a lot of the discussion that  
47 was going on around just what emergency listing

9  
John Davis  
In chief by Mr. Wallace

1 and what listing under **SARA** implied.

2 Q So the emergency listing was a decision to be made  
3 on biological considerations; is that correct?

4 A That's correct.

5 Q And the intention, I think, perhaps reflected in  
6 this memorandum, is to establish that there were  
7 mitigation measures being taken to stabilize the  
8 situation and to remove the imminent threat of  
9 extirpation standard, correct?

10 A Yes, I agree with that.

11 Q And the purpose of that was to allow this process  
12 to get into the normal listing process under **SARA**  
13 where socioeconomic factors can be balanced, which  
14 isn't the case in the emergency listing decision?

15 A And those alternatives that appear in this note  
16 set out those issues.

17 MR. WALLACE: Mr. Giles, could this Tab 1 of the  
18 binder, the Memorandum for the Minister, of  
19 February 2004, be marked as the next exhibit,  
20 please?

21 THE REGISTRAR: Exhibit 887.

22

23 EXHIBIT 887: Memorandum for the Minister,  
24 Emergency Listing Request For Two Sockeye  
25 Salmon Populations under **SARA**

26

27 MR. WALLACE:

28 Q So having then succeeded in having the Minister of  
29 Environment not recommend -- or decide not to list  
30 this on an emergency basis, then that started what  
31 I'll call the "normal" process, correct?

32 A That's correct.

33 Q And that process started by referral of the  
34 COSEWIC assessments to the Governor in Council on  
35 April 21st, 2004?

36 A Yes.

37 Q So what was your role at this stage, Dr. Davis?

38 A My role, at that point in time, was as the **SARA**  
39 secretariat supervisor working with the regions  
40 and working with the regions to facilitate the  
41 advice and the documentation that was coming up  
42 from the region to also provide support for the  
43 work that was going on in recovery in the region,  
44 in terms of funding, and to also act as one of the  
45 key players in the review of the material, both in  
46 the regions and in Ottawa, and briefing of  
47 ministers and transmission of advice of the

1 system.

2 In addition, there were formal documentation  
3 requirements, a regulatory impact assessment  
4 statement had to be prepared, which is part of the  
5 machinery of government associated with listing,  
6 and advice documentation that had to be brought  
7 forward.

8 Q Now, did you become involved in technical  
9 workshops at that time with the Cultus Lake  
10 Recovery Team?

11 A I don't recall being involved directly in the  
12 technical workshops in the region, at that point  
13 in time.

14 Q If I may take you, please, to Tab 4, this is a  
15 document to address -- a memorandum addressed to  
16 the Assistant Deputy Minister David Bevan, of May  
17 28th, 2004, relating to the species at risk  
18 listing decision for Cultus, and attached to it is  
19 a timeline for making that decision. Can you just  
20 briefly tell us what that timeline takes us  
21 through?

22 A Yes. Would it be possible just to focus on that  
23 decision process that's on the screen?

24 Q Yes, to the memo, itself? Absolutely.

25 A Yes. Mr. Commissioner, this is an important point  
26 here, in the sense that this really sets the stage  
27 for where we were in **SARA** and under the decision  
28 process paragraph:

29  
30 The decision to list these populations or  
31 not, is the first difficult **SARA** listing  
32 decision facing the department. Discussions  
33 are continuing about what internal decision  
34 process should be followed for making  
35 recommendations. Draft criteria of the costs  
36 and benefits of listing have been prepared to  
37 aid in making a decision. These are the  
38 first attempts to establish some set criteria  
39 for listing decisions so that the Department  
40 can demonstrate consistency in the future.  
41 Not surprisingly these criteria do not  
42 provide guidance in the way of different  
43 criteria. (e.g. When is the likely economic  
44 impact of listing too high so that the  
45 listing should not be recommended? How to  
46 weigh economic impacts against more difficult  
47 to quantify benefits of listing such as

1 protection of biodiversity and cultural and  
2 aesthetic values?)  
3

4 I think, for your discussions of the Wild Salmon  
5 Policy, Mr. Commissioner, this is a very important  
6 point, because basically here you're dealing with  
7 decisions about weak stock management, how you  
8 weight these sorts of things, and how we make  
9 societal decisions with respect to the tradeoffs  
10 and the impacts of such things, and I would very  
11 much like to talk more about this type of thing as  
12 we proceed.

13 And Mr. Counsel, please, if we could go over  
14 the timeline? Sorry.

15 Q Thank you, Dr. Davis. So the timeline that's  
16 attached to the memorandum is a nine-month  
17 timeline. That's a statutory requirement?

18 A Yes. This timeline sets out how **SARA** works for  
19 the "normal" listing process for **SARA** species. So  
20 if I could just quickly take you through that,  
21 would that be helpful?

22 Q Please.

23 A Yeah. So the first step in the process is the  
24 Governor in Council's acknowledgment of the  
25 receipt of the COSEWIC assessments from the  
26 Minister of Environment. So the Minister of  
27 Environment says, "I have received that  
28 assessment," and that formally sets the clock  
29 ticking on the **SARA** process, which is a nine-month  
30 process. The Minister, then, is required to make  
31 a public announcement to start the nine-month  
32 impact listing, which is one of the documents you  
33 referred to earlier.

34 Then the process of consultation with  
35 aboriginal groups, stakeholders, provincial  
36 territorial governments, and the preparation of  
37 the results and the synthesis of those results  
38 from consultations takes place. The regions are  
39 then busy putting together the impact assessment  
40 documentation, this regulatory impact assessment  
41 statement has to accompany the final decisions,  
42 and providing advice through to Ottawa.

43 So I was very involved in terms of the  
44 receipt of the results of that process, the  
45 regional consultations and the activities that  
46 lead to a decision. And you can see as this  
47 timeline moves forward that the development of

1 listing recommendations takes place in this  
2 particular timeline, in the June to July period,  
3 and that there are processes back and forth  
4 between headquarters and the region and the  
5 national DG's committee that is reviewing these  
6 results.

7 During all of this time we have had a number  
8 of briefings with the minister, discussions about  
9 what **SARA** means from the standpoint of its  
10 implications, and a lot of dialogue back and forth  
11 within the department between all the different  
12 groups. So a key point is that there is a lot  
13 going on, and particularly with high visibility  
14 species, like Sakinaw and Cultus sockeye, a fair  
15 bit of dialogue on just what the implications of  
16 listing are.

17 Further into the process, there is then a  
18 requirement for that material to find its way  
19 through into Ottawa, through the ministers and  
20 into PCO and the timeline here is that, for  
21 Cultus, the regulatory packages had to be to PCO  
22 by September. So the decision-making process is  
23 late summer, PCO September, a Treasury Board  
24 decision in the early fall, first a GIC decision,  
25 which is announced in *Canada Gazette I*, which says  
26 this is how GIC is proceeding, a process of public  
27 comment for another 30 days, and consideration of  
28 the public comment by GIC, and then a final  
29 decision of GIC, which is shown here in the  
30 timeline in December, and the nine month period  
31 expires in January. So this is the formal  
32 lockstep process that's prescribed under the  
33 legislation.

34 If something is listed, immediately on  
35 listing automatic protection applies to a species,  
36 and under the legislation you cannot kill, harass,  
37 destroy the habitat of, possess a listed species  
38 unless that is permitted by an allowable harm  
39 assessment, basically a permit. And so one of the  
40 key issues surrounding this timeline was, once  
41 listed, what would be the implications of listing  
42 from the standpoint of weak stocks that are part  
43 of mixed stock fisheries and whether or not there  
44 could be any allowable harm.

45 MR. WALLACE: Thank you. Again, Mr. Giles, may I ask  
46 that the memorandum at Tab 4, dated the 28th of  
47 May 2004, to the Assistant Deputy Minister, be

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1           marked as the next exhibit, and the timeline as a  
2           sub-exhibit?  
3   THE REGISTRAR: You wish the timeline to be as a sub-  
4           exhibit?  
5   MR. WALLACE: Yes, please.  
6   THE REGISTRAR: Okay, the memorandum will be marked as  
7           Exhibit Number 888; the timeline will be marked as  
8           888A.  
9  
10           EXHIBIT 888: Memorandum dated May 25, 2008,  
11           to Assistant Deputy Minister David Bevan,  
12           Subject: **Species at Risk Act (SARA)** Listing  
13           Decision Process for Cultus and Sakinaw  
14           Sockeye  
15  
16           EXHIBIT 888A: Timeframes for the DFO Species  
17           at Risk Listing Process (2004)  
18  
19   MR. WALLACE: Thank you.  
20   THE COMMISSIONER: Sorry, Mr. Wallace, if I could just  
21           ask you a question here. You're talking about the  
22           binder that I have, called Cultus Lake **SARA**  
23           Listing Decision and Recovery Efforts from 2005  
24           Onwards. Is that the binder you're referring to?  
25   MR. WALLACE: No.  
26   THE COMMISSIONER: It's not? Okay.  
27   MR. WALLACE: This is Cultus Lake Sockeye Listing  
28           Decision.  
29   THE COMMISSIONER: Okay. I have a different binder.  
30   MR. WALLACE: That's a problem.  
31   A   Is there anything that wasn't clear from --  
32   THE COMMISSIONER: No, that was clear, Dr. Davis. I'm  
33           just trying to follow these documents and I have a  
34           different binder. But we don't have to stop now.  
35           I just wanted to double-check and make sure. We  
36           can proceed, Mr. Wallace, and during the break  
37           perhaps I --  
38   MR. WALLACE: The documents will be on the screen, Mr.  
39           Commissioner, and I apologize that you --  
40   THE COMMISSIONER: No, that's fine. Thank you very  
41           much.  
42   MR. WALLACE: -- don't have the hard copy to work with.  
43           Apparently, we are able to provide one. Thank  
44           you.  
45   THE COMMISSIONER: Thank you very much. Thank you.  
46   MR. WALLACE: Thank you very much, Geneva.  
47   Q   You mentioned, Dr. Davis, that the **SARA** listing

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1 summary was developed over the summer for advice  
2 to the minister in August. If I may ask you to  
3 look at Tab 5, and there are three draft listing  
4 summaries there, the first dated June 30th, the  
5 second dated July 20th, and the third dated August  
6 the 18th.

7 Do those reflect the evolution of this  
8 decision-making over the summer?

9 A Yes, they do, and they're interesting in the sense  
10 that you'll notice that they change, that in  
11 one --

12 Q There are a number of changes, when you go through  
13 them; things are added, things are taken out, and  
14 priorities seem to change. But interestingly to  
15 me, the final conclusion of each one seems to  
16 progress from June 30th, where the recommendation  
17 is "List as endangered, consistent with COSEWIC  
18 assessment", the recommendation on July the 24th  
19 is "To be determined", and the listing  
20 recommendation at the end of the August 18th draft  
21 is, "Do not add to schedule 1 of **SARA**".

22 Do those steps pretty much reflect how the  
23 Department was thinking about this at the time?

24 A I think they do, and what they do is they  
25 represent a back-and-forth in terms of looking  
26 very carefully at that decision. Clearly, the  
27 Department wanted to do the right thing and  
28 protect biodiversity and protect species that were  
29 in trouble.

30 The overall impact of listing Cultus, in  
31 terms of the fishery dislocations, were somewhat  
32 less than Sakinaw sockeye, which was another  
33 species under consideration at the time, and you  
34 can see in these listing summaries that both the  
35 benefits and the costs are being evaluated, and  
36 the benefits, of course, are rebuilding weak  
37 stocks and contributing to the preservation of  
38 biodiversity, and addressing the kinds of things  
39 that the intent of **SARA** is designed around, and  
40 also there is a careful evaluation that was going  
41 on at this time of the impacts on the fishery as  
42 well, what kind of economic impacts those would  
43 be, what the dislocation of the access to the  
44 resource would be by different user groups.

45 At the same time within the department there  
46 was some fundamental questions being looked at.  
47 These were questions about, what is the

1           implication of this legislation, which is quite  
2           black and white, overall and into the long term?  
3           First of all, as I mentioned on the timeline, when  
4           something is listed, there are automatic  
5           prohibitions against possessing, catching,  
6           harming, that kick in. If, in fact, these weak  
7           stocks continued to decline into the future, the  
8           fact that you would have an incidental catch of a  
9           listed species would be quite significant from the  
10          standpoint of the impact on the fisheries. Just a  
11          handful of fish left in a stock that continues  
12          down, despite the Department's best efforts, best  
13          recovery plans, could lead to protracted and very  
14          serious closures of the fisheries into the future.  
15          If environmental variation, as we've seen, the  
16          very purpose of this Commission, led to very poor  
17          returns, there could be extremely drastic  
18          implications of a weak stock with respect to  
19          listing. So that was going on in terms of the  
20          review.

21                 In addition, people were saying, "What  
22                 happens if something, once listed, how does it  
23                 become delisted?" and **SARA**'s rather fuzzy in terms  
24                 of what that is all about. So consequently, the  
25                 long term impacts of the legislation, itself, and  
26                 the prohibitions under the legislation, make it  
27                 very hard for a fisheries manager or a minister to  
28                 sign off a fishing plan on the listed species.  
29                 And we'll get into that, I'm sure, in subsequent  
30                 testimony.

31          Q        Yeah.

32          A        And it's fundamental, I think, Commissioner, to  
33                    the Wild Salmon Policy, and comes back to my  
34                    earlier point about where you set the bar and how  
35                    you make these decisions and how you set up  
36                    processes and governance such that you can protect  
37                    weak stocks, but not in such a manner that you  
38                    have no flexibility to deal with something that,  
39                    despite your best efforts, continues to decline.

40          MR. WALLACE: Thank you, Dr. Davis. Mr. Giles, I  
41                    wonder if we could mark these three documents as  
42                    the next exhibit and two sub-exhibits. Is that  
43                    the best way to do it?

44          THE REGISTRAR: That's at Tab 5?

45          MR. WALLACE: Yes, please.

46          THE REGISTRAR: I'll go by the CAN numbers. CAN number  
47                    010030 will be marked as 889; CAN number 004658



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1           will be 889A -- I'm sorry, 685 will be 889A; and  
2           CAN number 006464 (sic) will be 8 --  
3 MR. WALLACE: Sorry, 004664?  
4 THE REGISTRAR: Yes, that's correct. Will be 889B.

5  
6           EXHIBIT 889: **SARA** Listing Summary Draft for  
7           Discussion, dated June 30, 2004

8  
9           EXHIBIT 889A: **SARA** Listing Summary Draft for  
10          Discussion purposes only, dated August 18,  
11          2004

12  
13          EXHIBIT 889B: **SARA** Listing Summary Draft,  
14          dated July 20

15  
16 MR. WALLACE: Thank you.

17 Q       And thank you for your description on how this  
18       decision-making evolved over the summer. Now, and  
19       that, I think, culminated, you suggested, in mid-  
20       August, with the recommendation from the region?

21 A       Yes, somewhere mid to late August.

22 Q       And if I may refer you to the Regional Management  
23       Committee meeting minutes for August the 16th and  
24       17th, which is at Tab 6. And that records that  
25       recommendation?

26 A       Yes, it does. And you'll see, there, that I was  
27       present at that meeting.

28 MR. WALLACE: Thank you. Mr. Giles, could this be  
29       marked, please, as the next exhibit?

30 THE REGISTRAR: Exhibit 890.

31  
32          EXHIBIT 890: Regional Management Committee  
33          Meeting August 16 and 17, 2004, Record of  
34          Decisions minutes

35  
36 MR. WALLACE: Thank you.

37 Q       Now, that was a meeting of the Regional Management  
38       Committee, correct?

39 A       That's correct.

40 Q       And that's where that decision was made?

41 A       Yes.

42 Q       Do you recall the debate at that meeting among  
43       regional directors?

44 A       Not at that meeting, but I certainly recall debate  
45       leading up to this final decision.

46 Q       Had national headquarters been involved in the  
47       evolution of this decision as well?

1 A Yes.

2 Q And were they onside with this recommendation?

3 A Yes, they were, in the sense that I just talked  
4 about a lot of the uncertainties of listing, and  
5 they were involved, and the minister had been  
6 briefed several times on the implications of the  
7 legislation as well.

8 Q And you were involved in those briefings of the  
9 minister?

10 A Yes.

11 Q Perhaps you could just tell us, Dr. Davis, of your  
12 briefings of the minister as this was evolving  
13 through the summer of 2004?

14 A Well, the first point in briefing the minister was  
15 to acquaint the minister with what **SARA** was all  
16 about, so we spent some time with respect to  
17 explaining the legislation and debating the  
18 implications of the legislation. I recall the  
19 minister asking about, "Well, what is the  
20 implication once I list something? What if it  
21 happens to continue to decline in abundance over  
22 time despite our best efforts? What are the sorts  
23 of impacts associated with that?"

24 The minister was also aware that this advice  
25 that had led to the COSEWIC assessment came from  
26 Departmental scientists and that there were strong  
27 views in the region and from our scientists and  
28 some of our managers, that there was a need to  
29 protect biodiversity. So the minister was  
30 certainly aware of that.

31 The minister was also aware of the current  
32 complexities associated with managing the fishery.  
33 We talked about such things as having a change to  
34 the way that we managed the coastal fisheries,  
35 moving to a more terminal type of fishery, and  
36 doing things closer to the mouth of the Fraser  
37 River. The implications to change the entire  
38 nature of the fishery on the west coast were very,  
39 very significant from the standpoint of moving  
40 exploitation down closer to the river mouth into  
41 more terminal fisheries. That would have big  
42 impacts with respect to the capture fisheries on  
43 the approaches, down through Johnstone Strait and  
44 all of the coastal communities up the coast, and  
45 while moving to more terminal fisheries was a  
46 desirable, longer term goal, the clock was already  
47 ticking on **SARA** listing. So insufficient time,

1 really, to look at the move to more terminal  
2 fisheries. But there's other documentation which  
3 I'm sure you'll bring out, which talks about these  
4 kinds of considerations, and some of those  
5 considerations came from the recovery team as well  
6 in its interventions later in the game.

7 Q Now, you've covered a number of things, starting  
8 with a general briefing on the implications of  
9 **SARA**, and then you've got to some quite specific  
10 things related to Cultus Lake. Were all of these  
11 the subject matter at that first briefing with the  
12 minister, or are you amalgamating a number of --

13 A I'm amalgamating a number of them. And there were  
14 several briefings. First of all, "Heads up,  
15 Minister, this is what this legislation's about."  
16 You'll also see in the paper trail that there's  
17 some Notes of Advice to Minister that are for  
18 information only, and referenced to decision-  
19 making paper as well. So there's a long paper  
20 trail here.

21 There are also meetings between the minister  
22 and provincial ministers. In fact, there's a  
23 Council of Fisheries and Aquaculture ministers,  
24 and in September of 2004, and at other times, **SARA**  
25 issues came before the Council of Ministers and  
26 these same issues were being debated with the  
27 provinces, because the provinces were passing  
28 parallel legislation on endangered species and  
29 conducting their work with respect to the type of  
30 listing activities that had to take place in given  
31 provinces and territories.

32 So the point I wish to convey is there was a  
33 lot of discussion of all of these issues along the  
34 way.

35 Q Can you recall just how often and at what times,  
36 more or less, in the process these briefings that  
37 you were involved in with the minister took place,  
38 and also who would be involved besides yourself?

39 A I can't give you specific dates --

40 Q No.

41 A -- and I was hoping I'd have all the paper to find  
42 that, but there were probably three or four  
43 different sessions with the minister where **SARA**  
44 issues were discussed, as I've just recounted.  
45 There was regular dialogue between our deputy and  
46 the minister and they, of course, would talk on  
47 almost a daily basis. And the briefings of the

1 minister typically involved a cross-section of our  
2 ADMs, myself, the ADM responsible for fisheries  
3 management, David Bevan, who you see in the  
4 correspondence that we've talked about, and, in  
5 fact, a lot of the drafting of the advice  
6 materials that you see in this documentation came  
7 through David's shop, because he was responsible  
8 for fisheries management and this was a fisheries  
9 management issue in the region. There would be  
10 the ADM of policy and the ADM of science at those  
11 discussions. And consequently, we were able to  
12 bring the thoughts forward from the perspective of  
13 different activity areas, or different areas of  
14 functional direction within the Department.

15 At the same time, during all of this, there  
16 is a dialogue across between departmental  
17 officials and Environment Canada officials,  
18 because the Minister of Environment is responsible  
19 for the legislation.

20 Q Thank you. Dr. Davis, we're, as always, pressed  
21 for time here, and I wonder if I could just,  
22 without taking you to these documents, just ask  
23 you to identify the documents at Tab 7, which are  
24 a list of decision materials that were forwarded  
25 to the **SARA** secretariat by the regional director  
26 general, in August. You were copied on this  
27 memorandum. And you've had an opportunity just to  
28 look at the materials attached to that, have you?

29 A I don't recognize that one.

30 Q Tab 7?

31 A Tab 7. My Tab 7 doesn't seem to have that one in  
32 it, but let's have a quick look at it. I'm copied  
33 on it. Just quickly reviewing it, counsel, it  
34 looks like an accurate document. I recognize  
35 that, or at least it seems fine to me.

36 Q And the attachments would have been what were  
37 attached to that material?

38 A Yes.

39 MR. WALLACE: Mr. Giles, may this be marked, please, as  
40 the next exhibit?

41 A That may not be the whole story, though. That may  
42 be a piece of it.

43 MR. WALLACE: Thank you.

44 THE REGISTRAR: Exhibit 891.

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1 EXHIBIT 891: Memorandum dated August 20,  
2 2004, to Howard Powles, Coordinator **SARA**  
3 Secretariat, from Paul Macgillivray, Subject:  
4 Legal Listing Decision Materials, with  
5 attachments  
6

7 MR. WALLACE:

8 Q When you say "not the whole story," you mean not  
9 the whole of the attachments, or there's more to  
10 the story than what's included here?

11 A Well, for example, under my Tab 7 I've got a  
12 document called, Analysis of the Benefits, Impact  
13 and Other Considerations of Listing Nine Pacific  
14 Aquatic Species, so --

15 Q Is that the first attachment?

16 A Oh, okay, here it is. Yeah. Good. Thank you for  
17 pointing that out.

18 Q Okay? Thank you. Now, if I may take you, now, to  
19 Tab 10, Dr. Davis --

20 THE COMMISSIONER: Mr. Wallace, just before you go  
21 there, just to clarify this, again, I'm not sure  
22 if I'm looking at the right binder, but I'm  
23 looking at the one that was given to me recently,  
24 under Tab 7. Under Tab 1 of that, under Tab 7,  
25 Tab 1, there's a different document than the one  
26 you've referred the witness to. Tab 2 does have  
27 the attachment that he just mentioned and you just  
28 mentioned, and Tab 1 has a Southern Boundary  
29 Restoration and Enhancement Fund document. I just  
30 want to make sure that we're all on the same page  
31 about documents. Mr. Timberg?

32 MR. TIMBERG: Yes, Mr. Commissioner, Tab 7(1) that I  
33 have is the same one you have, which is different  
34 than what the Commissioner (sic) has just put  
35 forward, and Mr. Tessaro briefly showed it to me,  
36 but I actually haven't seen it and the witness  
37 hasn't really seen the cover page.

38 A Mr. Commissioner, I have that document, which  
39 surprised me in that because it doesn't seem to  
40 relate to this. It's an entirely different  
41 subject matter.

42 MR. WALLACE: Mr. Commissioner, the document on the  
43 screen is the correct document. There seems to  
44 have been some mix-up in some of the binders --

45 THE COMMISSIONER: Okay.

46 MR. WALLACE: -- but that's the document that we've  
47 been discussing, and I think it's the document

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1           that Dr. Davis was referring to, identifying it as  
2           the list of materials that was provided in August.  
3    THE COMMISSIONER: Right. I was just referring to the  
4           fact that the document on the screen --  
5    MR. WALLACE: Yes.  
6    THE COMMISSIONER: -- is not at Tab 1 of the binder.  
7           There's a different document at Tab 1. And then,  
8           at Tab 2, there is a document that seems to relate  
9           to the document that's on the screen, so --  
10   MR. WALLACE: Yes, the document on the screen is the  
11           correct document.  
12   THE COMMISSIONER: All right.  
13   MR. WALLACE: And Dr. Davis was referring to that  
14           document --  
15   THE COMMISSIONER: All right.  
16   MR. WALLACE: -- the August 20th memorandum, the first  
17           tab being the Analysis of the Benefits, Impacts,  
18           et cetera.  
19   THE COMMISSIONER: All right. And just so I  
20           understand, the document on the screen that says  
21           "attachments" in plural, and lists a number of  
22           documents, they're not at Tab 7, they're somewhere  
23           else; is that correct?  
24   MR. WALLACE: I don't know what your document -- Mr.  
25           Lunn, do you have the attachments to the document  
26           that I just referred to?  
27   MR. LUNN: These are the two documents that are also  
28           marked at Tab 7 for me.  
29   A        So Mr. Commissioner, the Southern Boundary  
30           Restoration and Enhancement Fund doesn't, to me,  
31           seem to relate to this at all.  
32   THE COMMISSIONER: No, right.  
33   MR. TIMBERG: And if I could just interject here, it  
34           seems that there's just a typo, the CAN number on  
35           the Southern Boundary Restoration Enhancement Fund  
36           is off by one digit. So to clarify the record,  
37           I'll suggest that this Southern Boundary document  
38           not be included in Exhibit 891 and, for the  
39           record, what should not be included is CAN004515.  
40           Instead, if we could, Mr. Commissioner, look at  
41           the memorandum, then the bottom of the page.  
42   THE COMMISSIONER: I can't quite see it just now.  
43   MR. TIMBERG: The bottom of the memorandum.  
44   THE COMMISSIONER: Thank you.  
45   MR. TIMBERG: And if we could go to the bottom so we  
46           could see the CAN number there? And so Exhibit  
47           891, my understanding is that CAN number 004615

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1           should be the first page of Exhibit 891, and then  
2           the second document that gets attached to it is  
3           the CAN004616.  
4    THE COMMISSIONER: Which is that document on the  
5           screen, right.  
6    MR. TIMBERG: If that's clear.  
7    THE COMMISSIONER: Right. But the balance of the  
8           attachments are not part of the exhibit; is that  
9           what you're saying, Mr. Timberg?  
10   MR. TIMBERG: This document, 004616, is a fairly  
11       lengthy document, it's 55 pages long.  
12   THE COMMISSIONER: I see. All right, thank you.  
13   MR. WALLACE: Yes.  
14   THE COMMISSIONER: Thank you very much.  
15   MR. WALLACE: Thank you, Mr. Timberg. It appears that  
16       something was interleaved here, which is what  
17       caused the confusion.  
18   THE COMMISSIONER: Right.  
19   MR. WALLACE: So thank you, then, for the exhibit as  
20       Mr. Timberg described it.  
21   Q   Now, Dr. Davis, in November there seems to have  
22       been some communication from Mary Hobbs, attaching  
23       a number of the documents that were involved in  
24       this decision-making, which were compiled their  
25       list of seven documents there, starting with the  
26       Socioeconomic Implications of the **Species at Risk**  
27       **Act**, and then financial considerations and several  
28       other documents. You were copied on that, or  
29       received that e-mail and that list.  
30       Were those the key documents that were  
31       considered in the listing decision?  
32   A   Yes.  
33   MR. WALLACE: Mr. Commissioner, I wonder, then, if this  
34       package could be marked as the next exhibit, the  
35       documents at Tab 10?  
36   THE REGISTRAR: How did you wish that marked, in bulk  
37       or A, B, C?  
38   MR. WALLACE: Well, I would like them to be, as long as  
39       it can be done quickly, I would like it to be  
40       marked as the e-mail as the next exhibit, with the  
41       documents attached as the sub-exhibits.  
42   THE REGISTRAR: Okay, the e-mail, itself, will be  
43       marked as Exhibit 892, and the A, B, C, D, will be  
44       892A, B, C, D, as shown.  
45  
46  
47

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1 EXHIBIT 892: E-mail dated November 17, 2004,  
2 from Mary Hobbs to various recipients,  
3 Subject: Reports related to Cultus & Sakinaw  
4

5  
6 EXHIBIT 892A: Background Information Related  
7 to: Financial Considerations Associated with  
8 Potential **SARA** Listing of Sakinaw and Cultus  
9 Lake Sockeye  
10

11 EXHIBIT 892B: Financial Considerations  
12 Associated with Potential **SARA** Listing of  
13 Sakinaw and Cultus Lake Sockeye  
14

15 EXHIBIT 892C: Socio-Economic Implications of  
16 the **Species-at-Risk Act**, Sakinaw and Cultus  
17 Sockeye, prepared by GSGislason & Associates  
18 Ltd., April 2004  
19

20 EXHIBIT 892D: Financial Considerations  
21 Associated with Potential **SARA** Listing of  
22 Sakinaw and Cultus Lake Sockeye, September  
23 10, 2004  
24

25 EXHIBIT 892E: Draft Financial Considerations  
26 Associated with Potential **SARA** Listing of  
27 Sakinaw and Cultus Lake Sockeye, November 9,  
28 2004  
29

30 EXHIBIT 892F: The Economic Importance of  
31 Fraser River Sockeye for Commercial and  
32 Recreational Harvesters, Processors, and  
33 Coastal Communities, August 18, 2004  
34

35 EXHIBIT 892G: Cultus Sockeye Stock  
36 Assessment/Fisheries Management Work Group  
37 Review and Comments of: "Financial  
38 Considerations Associated with Potential **SARA**  
39 Listing of Sakinaw and Cultus Lake Sockeye"  
40 presentation, October 7, 2004  
41

42 EXHIBIT 892H: Listing Cultus and Sakinaw  
43 Sockeye Under the **Species at Risk Act**, a  
44 Sierra Club Analysis of the Facts, released  
45 November 9, 2004  
46

47 MR. WALLACE: So just for the record, the next document

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1           that I have is CAN4607.

2       THE REGISTRAR: That's correct, that will be number  
3           892A.

4       MR. WALLACE: 892A.

5       THE REGISTRAR: It follows the alphabetical sequence  
6           down.

7       MR. WALLACE: Okay, thank you very much.

8       THE REGISTRAR: Is that quick?

9       MR. WALLACE: Thank you. And we can fill in the blanks  
10          later.

11      Q     Dr. Davis, if I may refer you to Tab 11 in the  
12          book, this is not in ringtail, a document produced  
13          by one Mart Gross and others, in November 2004,  
14          entitled, Extinction by Miscalculation: The  
15          Threat to Sakinaw and Cultus Sockeye Salmon. Are  
16          you familiar with this document?

17      A     Yes, I am.

18      Q     And it was produced in response to the decision  
19          not to list, correct?

20      A     It was produced in response to, I think, the  
21          recommendation --

22      Q     Right.

23      A     -- not to list, not the final decision.

24      Q     Yes, the final decision was January, correct?

25      A     Correct.

26      Q     Yes.

27      A     Correct.

28      Q     And if I may just take you to a couple of the  
29          observations at page 2, the criticism relates to a  
30          failure to use benefit cost analysis, and it  
31          quotes from the recommendation:

32   "unacceptably high social and economic  
33   costs," and to justify this conclusion he  
34   states that "[l]ost benefits to fisheries are  
35   estimated at \$125 million".  
36

37  
38          And then he goes to on to suggest that that fails  
39          to consider the benefits. Is that a fair  
40          criticism?

41      A     Yes, I think it is. It was a short-term  
42          assessment of the impacts, but as I mentioned  
43          earlier, when I was looking at those listing  
44          summaries, there were benefits. They were  
45          described qualitatively.

46      Q     And the next item, B, he's also critical, if I may  
47          summarize, that the \$125 million number to the

1 industry is a revenue number as opposed to a net  
2 income number, to use accounting terms; is that  
3 fair?

4 A Yeah, I'm not an accountant, but I think I  
5 understand the gist of that.

6 Q So basically he's saying that overstates it,  
7 because it doesn't consider the cost in obtaining  
8 that revenue; is that a fair criticism?

9 A I think that's a fair criticism, but one does have  
10 to recognize that the benefits are longer term, in  
11 terms of rebuilding, so they're beyond the  
12 timeline of the four-year impacts that are  
13 associated with those numbers, and they do require  
14 that the stock actually is capable of rebuilding  
15 itself and recovering. So the benefits are -- can  
16 be laid out on a sort of if they rebuild, then  
17 here are the kinds of benefits.

18 Q In your view, does the Department of Fisheries and  
19 Oceans have the capacity to do effective  
20 socioeconomic analyses?

21 A In my view, the Department needs more capacity to  
22 do socioeconomic analysis. I'll explain in the  
23 sense that when I first started with the  
24 Department, we had a lot more economic internal  
25 capability than in later years, and so the  
26 Department had purposely downsized some of its  
27 economic capabilities within and, as I hope to  
28 come to later in my discussion here, making  
29 choices about biodiversity and making choices  
30 about impacts on people is all about being able to  
31 portray what will come in the future, and having a  
32 good socioeconomic analysis is very important.

33 And we've learned a lesson with respect to  
34 all of this process that we've been going through  
35 here with respect to the need for more robust  
36 socioeconomic analysis, more economic thinking,  
37 and the involvement of sociologists, because we're  
38 dealing with people. We manage fisheries  
39 resources on -- we think we manage fisheries  
40 resources on the basis of biology. Biology  
41 informs, but all our regulatory tools are tools to  
42 deal with people. "You can't fish." "This area  
43 is closed." "There's a time and area closure."  
44 So we're basically changing human behaviour  
45 through the management regime, and it's a very  
46 important aspect of how you set out your policy,  
47 and I suggest it's a very important consideration

26  
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1 for the Wild Salmon Policy implementation.  
2 MR. WALLACE: Thank you, Dr. Davis. Mr. Giles, can we  
3 mark the document by Dr. Gross and others as the  
4 next exhibit, please?  
5 THE REGISTRAR: Exhibit 893.

6  
7 EXHIBIT 893: Extinction by Miscalculation:  
8 The Threat to Sakinaw and Cultus Lake  
9 Sockeye, by Mart R. Gross, and others,  
10 Version 1.0, November 19, 2004  
11

12 MR. WALLACE:

13 Q If I may ask you to turn to Tab 12, Dr. Davis, it  
14 starts off as an e-mail, forwarding an e-mail from  
15 you, and the e-mail from you starts halfway down  
16 the page. As I read it, it's a response to a  
17 criticism that socioeconomic studies were not made  
18 available for discussion earlier in the process,  
19 and in it, as I read it, you are of the view that  
20 that would have been a good thing; is that  
21 correct?

22 A Yes. If you can see at the bottom of that memo,  
23 I'd like to emphasize the final point, which is on  
24 the bottom of the screen.

25 Q Yes.

26 A  
27 A lesson from all of this is that we need to  
28 find a way to do socio-economic impact  
29 assessment much earlier in the listing  
30 process for upcoming candidates, share the  
31 analysis, seek feedback, and input the  
32 results along with the COSEWIC advice. This  
33 would help avoid these kind of situations.  
34

35 So, you know, getting that earlier into the  
36 listing process and doing it in a thorough way was  
37 an important lesson learned here.

38 MR. WALLACE: Thank you. I wonder, Mr. Giles, could we  
39 mark the e-mail of Thursday, November 4th, as the  
40 next exhibit, please?

41 THE REGISTRAR: Exhibit 894.

42  
43 EXHIBIT 894: E-mail dated Thursday, November  
44 4, 2004, from John Davis, Subject: Message  
45 for Paul and Ginny Flood - Minister's Office  
46 Briefing Tomorrow at 1530 Ottawa Time  
47

1 MR. WALLACE:

2 Q Your comment at the end is for more general  
3 application of this concept. Would you also agree  
4 that the analyses and the trade-offs relating to  
5 socioeconomics, whether you're talking Cultus Lake  
6 or another consideration must be explicit?

7 A I think people need a lot more information to make  
8 these kinds of choices, and so one needs, in a  
9 socioeconomic analysis, a good, solid  
10 socioeconomic analysis that looks at benefits and  
11 costs, is peer reviewed, and is robust in the  
12 sense that it is there to help people make the  
13 right kind of decisions for the future.

14 MR. WALLACE: Thank you. For the record, then, the  
15 next document is the *Canada Gazette* of January the  
16 26th, 2005, including the reasons relating to the  
17 listing decisions. This is a government  
18 document, Mr. Commissioner. I think it would be  
19 convenient, at this point, just to mark it as the  
20 next exhibit. It's the document, the *Canada  
21 Gazette Part II* reflecting the listing decisions  
22 and the reasons supporting --

23 THE COMMISSIONER: Do you know the tab number, Mr.  
24 Wallace?

25 MR. WALLACE: It's at Tab 14, at least in my binder.

26 THE COMMISSIONER: It's not here, but that's fine.

27 MR. WALLACE: Mr. Giles?

28 THE REGISTRAR: Yes, Exhibit 895.

29  
30 EXHIBIT 895: Volume 139, No. 2. *Canada  
31 Gazette Part II*, Ottawa, Wednesday, January  
32 26, 2005  
33

34 A Mr. Wallace, if I could point out, this is *Gazette  
35 II*, so this is the *Gazette* with the final  
36 decision. So *Gazette I* has announced the  
37 minister's --

38 Q Yes.

39 A -- recommendation, and *Gazette II* incorporates the  
40 feedback from all of the different groups with  
41 respect to the recommendation not to list.

42 Q Thank you, Doctor, that's helpful. Dr. Davis, may  
43 I ask you to go to page 114 of Exhibit 895? This  
44 annex sets out the -- this is in the annex to the  
45 decision. Annex 1 sets out the reasons for not  
46 adding Cultus, and it only refers to financial  
47 analysis, not any social or socioeconomic

- 1 analysis; is that correct?
- 2 A I'd have to look right through it. You're  
3 probably correct, yeah.
- 4 Q And I'd also suggest it reflects the use of the  
5 \$125 million figure that was criticized  
6 previously?
- 7 A That is there, yeah. I think earlier in the  
8 document, too, you'll see reference to the  
9 interventions from the other parties, which talk  
10 about the lack of the robust socioeconomic  
11 analysis. And if you look at page 103, you'll see  
12 some of that summarized.
- 13 Q Thank you. And 102 as well?
- 14 A Yes, that's correct.
- 15 Q And this was done entirely on the basis of the  
16 four-year analysis that you described?
- 17 A The coming up with the number was done on the  
18 basis of the -- and, of course, what was happening  
19 here, too, is Sierra Club tendered their  
20 assessment, and you'll see reference to Sierra  
21 Club in here, where they criticized the  
22 limitations of that short-term assessment.
- 23 Q Right. There's reference to the stringent fishery  
24 restrictions in the document. Was that the 10 to  
25 12 percent that were imposed in 2004?
- 26 A Can you tell me where that is, Mr. Wallace,  
27 please?
- 28 Q That's at page 104.
- 29 A Yes, that refers to the changes, I believe, that  
30 were made in the fishing arrangements on the coast  
31 to try to protect Cultus, and it has a bearing on  
32 the earlier information that I was describing that  
33 relates to what the impact of listing would be  
34 with respect to allowable harm and the kinds of  
35 implications of that.
- 36 Q But as part of the recovery to avoid the emergency  
37 listing, there was an imposition of a limit of 10  
38 to 12 percent, so those are the numbers we're  
39 speaking of here?
- 40 A Yes.
- 41 Q Okay. Do you know if those exploitation goals  
42 have continued?
- 43 A I don't know what's happening in the most recent  
44 years, but I know that there was, I think, after  
45 the 2004 decision, a higher exploitation rate as a  
46 result of differences in what happened during the  
47 season in terms of timing and that sort of thing.

1           So while the department was trying to achieve 10  
2           to 12 percent, I believe there was a higher  
3           exploitation rate.

4       MR. ROSENBLOOM: Excuse me, Mr. Commissioner, I am Don  
5       Rosenbloom, appearing for Area B and D. I  
6       cautioned my friend, Mr. Wallace, and Mr. Timberg,  
7       that I would rise to raise a concern that I have  
8       as to where this evidence might go.

9           I take the position that this Commission  
10       cannot go behind the decision of the Governor in  
11       Council of the Cabinet, nor the Minister of  
12       Environment, in respect to the decision that was  
13       made not to list the two sockeye that we are  
14       focused on here. I have reviewed the Order in  
15       Council. It certainly permits the Commission to  
16       investigate the policies of the Ministry of -- of  
17       the Department of Fisheries, the DFO. I see  
18       nothing that allows the Commission to look at the  
19       policies of the Ministry of Environment or their  
20       reasons for making the recommendations to Cabinet  
21       that resulted in the *Canada Gazette* of the  
22       decision.

23       I fully respect the fact that this Commission  
24       has a right and an obligation to review DFO's  
25       involvement in respect to this process, to review  
26       DFO's recommendations, to review the Minister of  
27       Fisheries' participation in the decision-making,  
28       but when it comes to the decision -- or, excuse me  
29       -- yes, the decision of the Minister of  
30       Environment, to make his or his recommendations to  
31       Cabinet and the Cabinet decision, I say that this  
32       Commission cannot go behind that decision, as  
33       *Gazetted*, and to analyze it in terms of whether it  
34       was or was not appropriate. I don't see that in  
35       the Terms of Reference.

36       I rise, now, as a general comment to the  
37       direction that this might be taking and ask for  
38       your consideration. I don't want to make a big  
39       thing of this and I don't want to spend hours  
40       arguing out a jurisdictional issue, but I wish to  
41       sensitize the Commission to the fact that,  
42       certainly from my perspective, there are some  
43       limits to your Terms of Reference in terms of  
44       where you can review policies of ministries other  
45       than DFO. Thank you.

46       MR. WALLACE: Mr. Commissioner, all of the questions, I  
47       think, that have been asked and answered, relate

30  
John Davis  
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1 to DFO's advice, recommendations and involvement.  
2 This started with COSEWIC looking at advice that  
3 came from DFO on the biological status, and  
4 throughout we've spoken of DFO's capacity to do  
5 things and what their recommendations were. So in  
6 my submission, this is all well within your Terms  
7 of Reference as a consideration of the policies  
8 and practices of DFO.

9 Mr. Commissioner, with that interruption, if  
10 we could have a break at this point, we can clean  
11 this up in a very few minutes, I think.

12 THE REGISTRAR: The hearing will now recess for 15  
13 minutes.

14  
15 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)  
16 (PROCEEDINGS RECONVENED)  
17

18 THE REGISTRAR: The hearing is now resumed.

19 MR. WALLACE: Thank you, Mr. Commissioner.  
20

21 EXAMINATION IN CHIEF BY MR. WALLACE, continuing:  
22

23 Q Dr. Davis, I asked you a question about wherein --  
24 on the *Canada Gazette*, part 2 at page 104, and  
25 there's a reference there to the stringent  
26 fisheries restrictions. The other point made in  
27 that sentence is that there will be habitat  
28 restoration. Has there been any habitat  
29 restoration undertaken by DFO at Cultus from the  
30 date of this, 2005, to your departure in 2008?

31 A I'm not entirely clear of all the details, Mr.  
32 Wallace, with respect to how they've rolled that  
33 out. But my understanding at the time was that  
34 this was a comprehensive package of measures. It  
35 included habitat work, it included the milfoil, it  
36 included the predator controls, the changes in  
37 fisheries management. So I think that might be  
38 better addressed to people who are actively  
39 involved in the restoration work in subsequent  
40 testimony.

41 Q Thank you. Dr. Davis, may I take you to Tab 16,  
42 please. This is a petition to the Auditor General  
43 and Commissioner of the Environment and  
44 Sustainable Development made by the Sierra Club  
45 dealing with a suggested flawed socioeconomic  
46 analysis. You're familiar with this submission,  
47 this petition?

31  
John Davis  
In chief by Mr. Wallace

1 A Yes, I am.

2 Q And at the Sierra Club's request, that was  
3 referred by the Auditor General to DFO for  
4 response. Were you involved in that response?

5 A I wasn't involved in the direct preparation of the  
6 drafting of the response. I was certainly aware  
7 of it and aware that the Department was preparing  
8 it. Again, it was like the listing material, the  
9 advice coming up through the Department from  
10 Pacific Region and through to headquarters  
11 personnel. So certainly in terms of the overall  
12 processing of paper and that sort of thing, yes.

13 Q You've had a look at that, and does that reflect  
14 the Department's views as you recall them at that  
15 time?

16 A Yes.

17 MR. WALLACE: Mr. Giles, may the document from the  
18 office of the Auditor General be marked, please,  
19 as the next exhibit.

20 THE REGISTRAR: Exhibit 896.

21  
22 EXHIBIT 896: Document from office of Auditor  
23 General titled "OAG Decision not to list  
24 Cultus and Sakinaw Lake sockeye salmon under  
25 the Species at Risk Act"  
26

27 MR. WALLACE:

28 Q Your interest in **SARA** was national. Were there  
29 particular issues of -- or challenges to dealing  
30 with **SARA** in the Pacific Region?

31 A I wouldn't say they were unique to the Pacific  
32 Region. There's certainly the challenges dealing  
33 with **SARA** related to any mixed-stock fishery  
34 regardless of where it was in the country with the  
35 potential for interception of listed species  
36 within the mixed-stock fishery.

37 Q At Tab 8 of the book of documents is a memorandum  
38 for the Deputy Minister relating to a response to  
39 a letter from the Deputy Minister of British  
40 Columbia's Ministry of Water, Land and Air  
41 Protection regarding species at risk. Were you  
42 involved in producing that memorandum? It's dated  
43 September 2004.

44 A Right. I wasn't involved in the actual production  
45 of the memorandum, and looking at the signatures  
46 on it, it appears to have come from the policy  
47 shop within DFO. Those are people within the



- 1 policy shop.
- 2 Q You were implicated in the bottom line on the last  
3 page in the sense that -- were you consulted on  
4 it?
- 5 A Yes.
- 6 Q Did you have any discussions with British Columbia  
7 with respect to the application of **SARA**?
- 8 A Yes. As I mentioned earlier, there was a lot of  
9 federal/provincial discussion that went on with  
10 respect to **SARA** because of the provinces passing  
11 their own parallel legislation. These took place  
12 in the Canadian Council of Fisheries and  
13 Aquaculture Minister's forum as well as  
14 bilaterally and directly with provincial  
15 employees, so I definitely talked to Gordon  
16 Macatee who was the Deputy listed here, and Bud  
17 Graham, who was one of the senior managers working  
18 for Gordon.
- 19 Q What was the province's position on the listing of  
20 Cultus and Sakinaw?
- 21 A Well, in a nutshell, the province was very  
22 concerned about the economic impacts of a listing  
23 decision. The province felt that the **Fisheries**  
24 **Act** provided the necessary powers, wherewithal and  
25 flexibility to deal with weak stock management and  
26 the recovery of endangered species. The provinces  
27 across the country, in many respects, felt that  
28 the **Fisheries Act** might be a better instrument for  
29 this type of application than **SARA**, because of the  
30 difficulties with the overall allowable harm  
31 aspects and the prohibitions that were automatic  
32 when something was listed.
- 33 The province - all the provinces basically -  
34 have a strong link to the economic activity within  
35 a province and to jobs and to dollars and income  
36 and the future of communities and to the people  
37 that live therein.
- 38 Q And DFO's response is set out in that memorandum  
39 to the Deputy Minister. It suggests noting the  
40 need with a specific role for **SARA**, page 2.
- 41 A Yes.
- 42 Q Correct?
- 43 A Yes. Sorry, could you take me to that?
- 44 Q Page 2 of Tab 8.
- 45 A Okay, yes. It's the need for addressing  
46 outstanding policy issues to ensure the full  
47 implementation.

1 Q No, the top of the page, "DFO Position" [as read].

2

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Unlike the **Fisheries Act** the provincial  
legislation **SARA** provides recovery  
strategies...

And so on. It was identifying specific benefits  
or addition protection of **SARA**.

A Right, yeah. And in fact you can see here that  
there's a complementarity (sic) between the  
**Fisheries Act** and the kinds of things that **SARA**  
calls for.

Q And throughout your tenure at DFO, that remained  
DFO's position on **SARA**.

A It was certainly a very important aspect of it,  
that we had powerful tools under the **Fisheries Act**  
to do a lot of this work.

Q Is there anything in the memorandum with which you  
disagree?

A Now, that's a hard question to answer --

Q Of course.

A -- without going --

Q It's a short memorandum.

A All right.

Q In looking at the DFO position on page 2.

A Top of page 2?

Q Top of page 2, on issue 1.

MR. TIMBERG: Mr. Commissioner, I'm wondering if my  
friend's pursuing that question if the witness  
could be provided some time to look at the  
document more closely.

MR. WALLACE: There are four bullets at the top of page  
2 dealing with the relationship of **SARA** to the  
**Fisheries Act** and that's what I'm addressing.

A I think those four bullets address the  
relationship between the two pieces of legislation  
and the various types of tools and measures that  
can be used to deal with weak stock management and  
the recovery of endangered species and the kind of  
complementarity that I mentioned.

MR. WALLACE: Thank you, Dr. Davis. Mr. Giles, could  
we mark this one, please? The memorandum to the  
Deputy Minister. The CAN number is 9107.

THE REGISTRAR: Exhibit 897.

34  
John Davis  
In chief by Mr. Wallace

1 EXHIBIT 897: Memorandum to the Deputy  
2 Minister, Response to September 22, 2004  
3 letter  
4

5 MR. WALLACE:

6 Q Almost done. Tab 17, please. This is a draft for  
7 discussion, a framework for integrating  
8 socioeconomic analysis in **Species At Risk Act**  
9 decision-making from September of 2006. Was this  
10 draft ever finalized?

11 A I believe it was. I mean, this says "Draft" but  
12 certainly a framework for integrating  
13 socioeconomic analysis in **Species At Risk Act**  
14 decision-making was an outcome of what we've just  
15 discussed.

16 Q Right.

17 A We recognized the limitations and you saw from my  
18 email that we needed to do this type of analysis  
19 earlier. And so as a result of the concerns and  
20 the concerns brought forward by the recovery team  
21 in the region, talking to my colleagues in Ottawa,  
22 we agreed we had to have a more robust policy  
23 framework for socioeconomic analysis, and this  
24 draft is the result of that work.

25 What we did is prepare this type of  
26 documentation which would form the template for  
27 future species coming forward through the **SARA**  
28 process.

29 MR. WALLACE: Thank you, Dr. Davis. May that document  
30 please - CAN 285130 - be marked as the next  
31 exhibit, please.

32 THE REGISTRAR: Exhibit 898.  
33

34 EXHIBIT 898: A Framework for integrating  
35 socioeconomic analysis in **Species At Risk Act**  
36 decision-making from September of 2006  
37

38 MR. WALLACE:

39 Q And finally to Tab 19. This is an email that  
40 attaches -- it's an email to you from the ADM of  
41 Science and it attaches a publication by Mr.  
42 Hutchings. Who is he?

43 A Dr. Hutchings was the chair of COSEWIC, I believe,  
44 at that time.

45 Q Mooers, I think, is at SFU, correct?

46 A Can't remember, but you're probably right.

47 Q I don't know who Mr. Prugh is, but do you?

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- 1 A Sorry, I'm a little confused. Which document --
- 2 Q Oh, sorry.
- 3 A -- are we looking at, sir?
- 4 Q It's the attachment. The names are on the last
- 5 page. Oddly, they're in the middle, in the centre
- 6 column.
- 7 A So are you talking about the document entitled,
- 8 "Biases in Legal Listing Under Canadian Endangered
- 9 Species Legislation"?
- 10 Q Correct.
- 11 A Okay.
- 12 Q So Dr. Mooers was chair of COSEWIC -- sorry, Mr.
- 13 Hutchings is chair of COSEWIC.
- 14 A Or was. The time frame of this document I think
- 15 is later, 2008 perhaps, something like that. In
- 16 any case, Dr. Hutchings had --
- 17 Q Attached to a memo -- yeah, the email is dated
- 18 April 2007.
- 19 A Okay.
- 20 Q Am I correct that M. Festa-Bianchet is a former
- 21 COSEWIC chair as well?
- 22 A Yes.
- 23 Q So these are credible authors of this publication?
- 24 A Oh, they're certainly people who played a very key
- 25 role in COSEWIC, and as such, were respected and
- 26 credible, yeah.
- 27 Q And you received a copy of this email? It's
- 28 addressed to you and others.
- 29 A Yes.
- 30 MR. WALLACE: I wonder if that may be marked as the
- 31 next exhibit, please.
- 32 THE COMMISSIONER: What is it you're marking, Mr.
- 33 Wallace?
- 34 MR. WALLACE: Oh, I'm sorry, I'm marking the email and
- 35 the attachment so that would be an exhibit, sub-
- 36 exhibit for -- the email is from Wendy Watson-
- 37 Wright to a number of senior DFO officials
- 38 including Dr. Davis and it attaches a paper
- 39 entitled "Endangered List Biased Studies as
- 40 Researchers Claim Animal" -- oh, I'm sorry.
- 41 A I'm having a little trouble seeing exactly what
- 42 email we're talking about too.
- 43 Q Sorry. The attachment is the document CAN 264159
- 44 entitled "Biases in Legal Listing Under Canadian
- 45 Endangered Species Legislation."
- 46 THE COMMISSIONER: Yes, I have that one in Tab 19. I
- 47 also have other pages in Tab 19 and I don't know

1           whether you're marking all the pages or just that  
2           article.

3       MR. WALLACE: The covering email has -- included in it  
4           was the document that I was looking at previously,  
5           "Endangered List Biased Studies as...". That  
6           appears to be part of the email along with some  
7           quotes from other news sources, and then the  
8           document that's attached is the one entitled  
9           "Biases in Legal Listing Under Canadian Endangered  
10          Species Legislation," and I would ask that the  
11          email, including the embedded documents be marked  
12          as the exhibit with the attachment, "Biases in  
13          Legal Listing Under Canadian Endangered Species  
14          Legislation" be marked as a sub-exhibit.

15       THE REGISTRAR: As a separate one?

16       MR. WALLACE: As a sub-exhibit. So the email is the  
17          exhibit, the sub-exhibit is the...

18       THE REGISTRAR: That's correct. The email will be  
19          marked as Exhibit number 899 and the sub-  
20          attachment will be marked as 899A.

21  
22                   EXHIBIT 899: Email from Wendy Watson-Wright  
23                   dated April 17, 2007

24  
25                   EXHIBIT 899A: Attachment to email entitled  
26                   "Biases in Legal Listing Under Canadian  
27                   Endangered Species Legislation"

28  
29       MR. WALLACE:

30       Q       I'd just like to ask you, Dr. Davis, as a final  
31           point, if you can go to that Exhibit 899A, and in  
32           particular, page 2, under the discussion -- sorry,  
33           if I may go to the covering email. The authors  
34           under "Discussion" on page 2 of the Exhibit 899A  
35           in the third column, the author said:

36  
37                   We outline two factors that seem to have  
38                   contributed to the taxonomic and geographic  
39                   biases in legal listing decisions under  
40                   Canada's endangered species legislation. The  
41                   first is a reluctance by wildlife management  
42                   boards and the Department of Fisheries and  
43                   Oceans to accept the additional stewardship  
44                   responsibilities required by **SARA**. The  
45                   second pertains to deficiencies in the cost-  
46                   benefit analyses that precede the legal  
47                   listing decisions.

1 Do you agree with those two?

2 A No, I don't, actually. With respect to wildlife  
3 management boards in the north, those are special  
4 in the sense that there are wildlife management  
5 agreements and those boards are set up with much  
6 more independent powers than you'll find in the  
7 provinces. There is in fact a process of  
8 disallowance which involves the wildlife  
9 management board making a decision in the north,  
10 and the Minister deciding whether the Minister  
11 wishes to agree with or disallow them, with  
12 reasons, and that's all set out in a formalized  
13 way.

14 So that's an issue, and the issue here is  
15 with respect to some of the species that were  
16 coming before the Minister of Environment, like  
17 polar bears and things. I think they're  
18 commenting on that type of decision and process.

19 And then the idea of the Department of  
20 Fisheries and Oceans not accepting stewardship  
21 responsibilities, I totally disagree with that in  
22 the sense that we were out ahead of **SARA**.  
23 Recovery plans were being developed. Money was  
24 being attributed towards this work in a  
25 comprehensive way, and the **Fisheries Act** was being  
26 used. I would suggest, sir, that everything was  
27 being done with respect to the recovery activities  
28 that would have been done under a **SARA** listing and  
29 the **Fisheries Act** was an effective tool in order  
30 to attempt to rebuild these stocks.

31 It comes back to the idea of the  
32 complementarity of the legislation.

33 MR. WALLACE: Thank you. Thank you, Dr. Davis. Mr.  
34 Commissioner, those are my questions for Dr.  
35 Davis. Mr. Timberg, I think, is next.

36 THE COMMISSIONER: Can we get some time estimates from  
37 you, Mr. Wallace, about what's coming?

38 MR. WALLACE: We have time estimates. I have gone on  
39 too long. Mr. Timberg, we have an estimate and  
40 allocation of one hour for him, the same for Mr.  
41 Leadem. Mr. Eidsvik has requested some time; I  
42 see he's not here. Mr. Rosenbloom has asked for  
43 20 minutes, Mr. Harvey has asked for 15, Ms.  
44 Gaertner for 60 to 90, but we're going to ask them  
45 to restrain themselves. We expect Dr. Davis not  
46 to finish today, but to finish tomorrow during the  
47 morning.

1 THE REGISTRAR: Mr. Wallace, Mr. Eidsvik is here.  
2 MR. WALLACE: Oh, I'm sorry. Thank you.  
3 THE COMMISSIONER: Can I just ask you to keep in mind,  
4 whatever your timetable is, to ensure that he does  
5 finish by the time you have allocated to him.  
6 MR. WALLACE: Yes.  
7 THE COMMISSIONER: Thank you.  
8 MR. WALLACE: Thank you.  
9 MR. TIMBERG: Yes, and for Canada, Tim Timberg and my  
10 colleague, Geneva Grande-McNeill.  
11 Mr. Registrar, if we could perhaps quickly  
12 pull up Exhibit 885 that was entered this morning.  
13 If we could go to the middle section,  
14 "Conservation Activities Underway".  
15

16 CROSS-EXAMINATION BY MR. TIMBERG:  
17

18 Q So, Dr. Davis, this morning Mr. Wallace read from  
19 the top of this document with respect to the  
20 statements there, and you were explaining some of  
21 the conservation activities underway. I think you  
22 were not certain as to when those conservation  
23 activities started. I'm wondering if this  
24 document assists you?

25 A Yes, it does. I had recalled it was early and  
26 this specifies under that heading 2001.

27 Q Okay. And we will be getting to the details of  
28 the recovery efforts, but for just the purposes of  
29 this conversation, could you just give the  
30 Commission just a brief overview of those?

31 A My understanding, Commissioner, of the recovery  
32 efforts being put in place initially in 2004  
33 related to reductions in the fishery and changes  
34 in the fishery in order to reduce the incidental  
35 catch of Cultus-origin fish. These recovery  
36 activities, which can be elaborated on much more  
37 by regional specialists, entailed a suite of  
38 things that were being done to recover the Cultus  
39 fish, looking at the habitat, the upwelling of  
40 groundwater in the area, the predation that was  
41 going on in the lake with respect to a predator  
42 fish, the invasive milfoil weed that was part of  
43 the changes that were occurring in the habitat,  
44 the use of the spawning area by the fish, a  
45 captive brood stock program which entailed rearing  
46 fish and releasing young progeny into the system.  
47 Consequently, quite a wide array of activities

1 that were being done.

2 These came forward as proposals to our SARCEP  
3 committee. We funded these proposals and I  
4 insisted that that funding carry on into  
5 subsequent years.

6 Q All right. And the funding then is -- when you  
7 say it comes from SARCEP, so that was national  
8 funding under **SARA**.

9 A Yes, that was the funding administered under the  
10 SARCEP program.

11 Q All right. So the funding for these programs was  
12 coming from **SARA** nationally, and the basis for  
13 which this was -- why were these put in place?

14 A These were put in place because COSEWIC had  
15 identified the concerns with respect to the status  
16 of these stocks, so whenever we got  
17 recommendations from COSEWIC that went under the  
18 SARCEP process, regions were to come forward with  
19 their recovery strategies, proposed budgets and  
20 propose the nature of the sorts of things that  
21 would be done to initiate the recovery. We would  
22 then consider those budget requests and fund them.

23 In addition, in each region, regional staff  
24 and regional salaries and other activities  
25 augmented the allocation from the SARCEP monies  
26 towards recovery.

27 Q All right. In your experience, then, how do you  
28 see the **SARA** and the **Fisheries Act** working  
29 together?

30 A Well, actually, **SARA** provides the incentive to  
31 identify the problem, so in this case,  
32 departmental scientists following the **SARA** process  
33 identified concerns with respect to stock status.  
34 COSEWIC provided its assessments which alerted the  
35 government of Canada to these concerns, and the  
36 **SARA** approach, the funding that I had allocated  
37 for **SARA** allowed us to mobilize funding and use  
38 that towards recovery.

39 The **Fisheries Act** provided the wherewithal to  
40 administer the fisheries in a way that was  
41 designed to reduce the impact of fishing on  
42 endangered species, and the **Fisheries Act** provided  
43 the mechanisms, the regulations, the enforcement,  
44 the protection in order to be able to protect the  
45 fish.

46 So in fact you had a toolbox of two pieces of  
47 legislation that could be used.



1 Q All right. And that was back in 2004 when that  
2 decision was made. I'm wondering if you could  
3 assist us as to how the Wild Salmon Policy that  
4 was passed in 2005 would fit with the **SARA**  
5 legislation?

6 A That's a good question because essentially, in  
7 addition to making the decisions that I've talked  
8 about this morning, the Department was busy  
9 preparing the Wild Salmon Policy, and the nature  
10 of the Wild Salmon Policy is to address weak stock  
11 management. It's all about trying to decide which  
12 components of the individual very complex fish  
13 runs need to be managed. Hence the concept of  
14 conservation units under the Wild Salmon Policy.  
15 How do we define the biodiversity that's there?  
16 Where do we set the bar with respect to what level  
17 of biodiversity you manage to?

18 This is a very interesting and very important  
19 point for the Commission to think about in the  
20 sense that if you are to protect very fine, very  
21 small levels of biodiversity, or very small runs,  
22 you have to set the bar at a very high level.  
23 That means you can't allow much exploitation on  
24 those runs, and consequently you have to have a  
25 much, much tighter management regime for the  
26 fishery.

27 However, to create the necessary basket of  
28 biodiversity, you need to be aware of these  
29 different runs, protect them the best you can, and  
30 develop a management regime that in fact allows  
31 you the flexibility to identify conservation  
32 concerns. That requires working with First  
33 Nations, the stakeholder groups, everyone in terms  
34 of choices.

35 Mr. Commissioner, I think this is a nub of  
36 your task here is where do you set the bar? How  
37 do you make these choices? What information do  
38 you use to enforce and to address those choices?  
39 And what information do you put before Canadians  
40 to make choices about biodiversity?

41 Socioeconomics we've talked about a lot, and  
42 there are winners and losers in all of this.  
43 There's the whole issue of a viable commercial and  
44 recreational and First Nations fishery. If you  
45 set the bar at such a level that those kinds of  
46 activities cannot proceed, then we have given up  
47 important socioeconomic aspects of the country.

1 If you set the bar too high in the sense of, yes,  
2 let's go gangbusters on the big, powerful stocks,  
3 we will lose biodiversity and genetic diversity  
4 that may be very, very important to allow salmon  
5 species to cope with what's to come.

6 I do want to get to the point of what I think  
7 is coming and how one should address surprises and  
8 concerns about uncertainty.

9 Q Okay. What then have we learnt from the Cultus  
10 Lake decision that we can apply to the WSP policy  
11 and future stocks of potential concern.

12 A Well, we've learned that we need to do a better  
13 job and a quicker job of the socioeconomic  
14 assessments. We need to carefully lay out the  
15 costs and the benefits in a very clear way. We  
16 need to have that information which helps inform  
17 decisions about conservation management plans, and  
18 we need to be able to convey that to all of the  
19 different people who are affected by it.

20 One area that I think is very important is if  
21 you're going to ask people to make sacrifices or  
22 make choices, one has to know the implications of  
23 making those kinds of choices. Maybe I won't go  
24 fishing, or I'll fish less this year because in  
25 subsequent years there'll be more fish for me and  
26 my kids and for the boat to be passed on to the  
27 next generation.

28 However, if -- that's all uncertain. It's  
29 much more difficult for people to make those kinds  
30 of decisions, so there's a social and an economic  
31 and a biological context that is very, very  
32 important here.

33 Q All right. I'm wondering if we should turn, then,  
34 to your work at the organization for economic  
35 cooperation and development.

36 MR. TIMBERG: Mr. Registrar, if we could have Tab 18  
37 from Canada's list of documents.

38 Q Dr. Davis, if you could perhaps explain what your  
39 role in this document titled "Setting the Stage,  
40 Rebuilding Sustainable Fisheries for the Future,  
41 Challenges and Opportunities for Fisheries  
42 Managers and Decision-Makers".

43 A Yes. Mr. Timberg, this is a workshop that took  
44 place sponsored by OECD which is the Organization  
45 for Economic Cooperation and Development which  
46 looks into world leadership with respect to  
47 economic issues and biodiversity and these sorts

1 of things. So this workshop was all about how we  
2 address fisheries rebuilding and how we address  
3 fisheries management and decision-making. It sets  
4 the stage for some of the discussions here in the  
5 sense that we're dealing with fisheries that are  
6 depressed and how to rebuild them and how  
7 economics and how science and how public kinds of  
8 processes help with respect to setting the stage  
9 for rebuilding.

10 Q All right. Perhaps you could summarize the  
11 abstract for us at page 1 there.

12 A This abstract deals with the types of things that  
13 were discussed at the workshop, why it's difficult  
14 to achieve change in a public context, and what  
15 has been going on both domestically and  
16 internationally is conflict between all the  
17 competing interest groups and organizations. Most  
18 groups approach these kinds of things from an  
19 interest-based perspective. What will this do to  
20 me, my livelihood, my organization, my future?

21 So it's very difficult with all the  
22 positioning, as I'm sure the Commission has heard,  
23 to see through this to some more cohesive and  
24 cooperative approach amongst people. So the  
25 workshop went into how one might deal with that  
26 and what might inform a better way forward.

27 Q All right.

28 MR. TIMBERG: Mr. Registrar, if we turn to page 10?

29 Q If you could assist us as to what we can learn  
30 from this workshop to help sustain the Fraser  
31 River sockeye?

32 A I want to talk about the transition here, and this  
33 is very much all about people. I mentioned that  
34 we think we manage things through biology, but in  
35 fact all our tools in fisheries management are  
36 about people and either allowing or disallowing  
37 their access. So the psychology, it's very  
38 important here from the perspective of achieving  
39 change and getting a buy-in to policy.

40 People see the status quo as being less risky  
41 than an uncertainty associated with change. We  
42 all fear the loss of benefits and involvement or  
43 our status with respect to our position in a given  
44 lobbying structure or activity. We fear hidden  
45 agendas in the unknown when change comes before  
46 us. We tend to associate our beliefs with others  
47 of similar belief rather -- well, all the guys in

1           this group feel that way, so I should think  
2           likewise, because that's the common understanding  
3           with respect to how we think about this.

4           It's much easier to do nothing than accept  
5           uncertainty of change, and we may not understand  
6           the proposed changes, so in the context of DFO or  
7           the Department or the Commission, rolling out  
8           something new, how all of these societal ideas,  
9           values, how psychology works, is really important.  
10          I used to sit my office as the RDG at the end of a  
11          horrible week and think, boy, everyone out there  
12          I've talked to all week basically wants to do the  
13          right thing for the fish or for the future. They  
14          all share this common understanding, but they  
15          spend most of their time poking each other in the  
16          eye and arguing over it's your fault, or it's the  
17          Department's fault or something like that. There  
18          has to be a better way forward, and I think part  
19          of the route of it is in the basis of  
20          understanding people and understanding how they  
21          approach things and helping them approach these  
22          kinds of creative changes from a conservation  
23          point of view.

24          Q       And so what are your suggestions then?

25          A       I think we tended to always focus on biology. So  
26          we inform everything with science and biology  
27          which is most important to tell you something  
28          about how to manage stocks and their status and  
29          all of these -- and the complexities of it. In my  
30          opinion, we don't use enough social science to do  
31          this and the type of thinking that's related to  
32          these bullets. We need to find a better way of  
33          incorporating the social side of things to assist  
34          people with getting comfort with the changes to  
35          come.

36          Secondly, I don't think we have enough really  
37          good economic analyses that helps inform these  
38          kinds of decisions. So the criticism of  
39          socioeconomics I think is a valid one from the  
40          perspective of the role that economists can play  
41          in informing future decisions. This conference  
42          dealt with bringing economists out early in the  
43          game. What tends to happen is economists are  
44          there at the last minute to say something about  
45          the impact of the proposed policy or change as  
46          we've seen in the **SARA** example. Bringing out the  
47          economics early and helping people make choices

1 and recognize that if you have to make sacrifices  
2 for good reason, these are the benefits that flow  
3 to the future.

4 I think the Department could be strengthened  
5 by having a stronger socioeconomic analytical  
6 capacity.

7 Q And we've been speaking about socioeconomics. I  
8 understand there's the economic side of it, but  
9 could you elaborate on the socio side of a  
10 socioeconomic report?

11 A Well, the socio side is all about, in my simple  
12 mind, understanding about people and about how  
13 people make these kinds of choices and you have to  
14 engage -- you have to recognize from a socio side  
15 that you're dealing with a whole variety of  
16 different perspectives, all of which are  
17 realistic. The perspective of a commercial  
18 fisherman who is really worried about the bottom  
19 line and making the payment on the boat and being  
20 able to have, you know, money in the bank to feed  
21 the kids is just as important as the perspective  
22 of the recreational fisherman that wants to take  
23 their son or daughter fishing, or from the  
24 perspective of a First Nations that have a very,  
25 very tight and appropriate tie to the land and to  
26 the resources and to the cultural aspects.

27 So every one of those individuals comes to  
28 the table with their own perspective. Part of our  
29 challenge is bringing those somewhat disparate  
30 perspectives together in some way where teasing  
31 through that, that common thread of conservation,  
32 that common concern about the future, wins through  
33 and helps us achieve the appropriate kinds of  
34 conservation measures that need to be achieved.

35 So I truly believe that everyone shares that  
36 vision, and it's getting from A to B and getting  
37 past the traditional behaviours is pretty  
38 critical.

39 MR. TIMBERG: Mr. Registrar, if we could just move to  
40 the next page, please?

41 Q This is a section of your -- the workshop on the  
42 role of fisheries economists and fisheries  
43 rebuilding. Do you have any advice with respect  
44 to how you get from A to B?

45 A Well, the conclusion with respect to the  
46 economists is we need more of them. We need  
47 people who are good at and really informed about

1 fisheries economics. They need to play on all of  
2 these decisions early in the game rather than at  
3 the 11th hour to help everyone, government  
4 decision-makers, the various groups that have an  
5 interest in the issue.

6 Q Thank you. If we could then move to the next, Tab  
7 19 in our list of documents.

8 THE COMMISSIONER: Mr. Timberg, did you mark -- is that  
9 already marked, Tab 18?

10 MR. TIMBERG: Oh, thank you, Mr. Commissioner. No, if  
11 that could be marked as the next exhibit.

12 THE REGISTRAR: Exhibit number 900.

13

14 EXHIBIT 900: Document titled, "Setting the  
15 Stage - Rebuilding Sustainable Fisheries for  
16 the Future, Challenges And Opportunities for  
17 Fisheries Managers And Decision-Makers  
18

19

19 MR. TIMBERG: Also Tab 19 is a document titled, "The  
20 Economics of Adapting Fisheries to Climate  
21 Change."

22

22 Q Dr. Davis, if you could identify this document,  
23 please?

24

24 A This is another OACD document that relates to a  
25 meeting that was held in Busan, Korea, that I was  
26 asked to chair in June 2010.

27

27 MR. TIMBERG: If this could be marked as the next  
28 exhibit.

29

29 THE REGISTRAR: Exhibit 901.

30

31 EXHIBIT 901: Document titled "The Economics  
32 of Adapting Fisheries to Climate Change" from  
33 a meeting in Busan, Korea  
34

35

35 MR. TIMBERG:

36

36 Q First of all, can you explain the title, "Adapting  
37 Fisheries to Climate Change"? What was the view  
38 at the workshop?

39

39 A Focus in this workshop was with respect to what is  
40 going to happen to fisheries globally with the  
41 onset of the impacts of climate change, so it was  
42 about what the economic impacts would be on  
43 fisheries, what the management implications would  
44 be, and what is coming. The climate change is  
45 coming at us all around the world with respect to  
46 impacts on fisheries. This was an attempt to  
47 review this from the perspective of experts from

1 around the world, look at the kinds of key issues  
2 that come from it, and be informed in terms of how  
3 we better adapt to the climate changes that will  
4 be coming.

5 Q Okay. And page 1 sets out the description. Page  
6 5 of this document, there's a summary, and you  
7 wrote this summary, "The Chair's Summary"?

8 A Yes, I did.

9 Q All right. And perhaps if we could just turn to  
10 page 8 of the document, at the top of the page,  
11 these four bullets. What can we learn from this  
12 workshop to help sustain Fraser River sockeye  
13 salmon?

14 A Well, the workshop talked a lot about the  
15 expectations of the impact of climate change with  
16 respect to fisheries, and it talked about the  
17 changes that would be occurring in the ocean and  
18 in freshwater bodies around the world with climate  
19 change. Of course, these relate to changes in  
20 oceanography, changes in the temperature  
21 conditions in systems, changes in primary  
22 productivity and the kinds of things that affect  
23 the overall production and the well-being of fish  
24 stocks.

25 As part of that, it's very clear that there's  
26 a great deal of uncertainty associated with  
27 climate change in the future, and that uncertainty  
28 is of various types. Observational uncertainty,  
29 which you've heard of in this Commission, I'm  
30 sure, where we're not exactly sure we understand  
31 what's going on in the system. So do our  
32 observations actually correspond to what's really  
33 going on in the ecosystem? So that type of  
34 scientific uncertainty.

35 Secondly, model uncertainty where people use  
36 models to make predictions about what's happening.  
37 The models are complex things drawn on a board  
38 with all kinds of interconnecting lines and  
39 assumptions, and they're used to make predictions.  
40 Often these are highly uncertain as well.

41 Then there's process uncertainty where  
42 there's a lack of understanding of how the system  
43 really works, what components in the system affect  
44 one another.

45 And superimposed on that, there's policy  
46 uncertainty. What if we follow this policy? What

1 will that mean in terms of the outcomes that come  
2 out the other end of it?

3 So managing uncertainty is a very big part of  
4 the equation. An important lesson from this  
5 workshop and from thinking about the impact of  
6 climate change is that the world is going to be  
7 more and more uncertain as the impacts of climate  
8 change are felt. We know it's just a totally  
9 scientifically accepted body of knowledge that  
10 climate change is happening.

11 In British Columbia we will see probably more  
12 periods of rainfall, and lots of rain when we  
13 don't need it. You'll see protracted periods of  
14 drought. These kinds of things are going to  
15 affect the Fraser River significantly in the  
16 standpoint of temperature regimes, run-off  
17 regimes, the upwelling of groundwater from snow  
18 pack that will change with the onset of climate  
19 change. All of that will affect the life cycle of  
20 the salmon.

21 Salmon are extremely adaptable animals that  
22 have pursued this whole array of multiple species,  
23 multiple behaviours and multiple ways of the  
24 subgroups address their use of the environment.  
25 From birth to death, in the life cycle of the  
26 salmon, at any window in that time there can be  
27 big biological affects in terms of survival and  
28 abundance.

29 So let's envision that what we're facing is:  
30 how best to manage for the future? We're going to  
31 do it in an increasingly uncertain time. So from  
32 the standpoint of the Wild Salmon Policy and the  
33 kinds of issues the Commission is addressing, my  
34 thesis is this is going to be all about surprises.  
35 Your hearing is all about surprises. It's a  
36 surprise that the fish didn't come back and  
37 collapsed, and it's a surprise that it came back  
38 in huge numbers the following year. I would  
39 suggest that that presages what will come for the  
40 future with respect to dealing with this  
41 uncertainty and the impact of climate change.

42 I think what it means is from the standpoint  
43 of science and fisheries management, we need to  
44 think about a number of approaches to this. First  
45 of all, having fishing plans that are really based  
46 on our best guesses with what's going to happen  
47 next year won't do the job from the standpoint of



1 addressing the uncertainty. You can make your  
2 best guess as to what will happen in the coming  
3 year, but I think you need to bound it on both  
4 sides by saying, "Here's our best guess. Here's  
5 the fishing plan that we would address for those  
6 given expectations."

7 But let's also lay out the book ends of this.  
8 Let's say that if the run comes back much weaker  
9 than expected, this would be the set of management  
10 activities associated with that particular  
11 scenario. If the run comes back with a high  
12 abundance, this would be the set of management  
13 actions. If there was a possibility to take that  
14 more complex, yes, but realistic array of the  
15 fishing plan before the various First Nations,  
16 stakeholder and interest groups, get agreement on  
17 the plan ahead of the season, and have a clear  
18 understanding of how it would roll out in an  
19 uncertain future, that would be very helpful. And  
20 you can incorporate into that the kind of weak  
21 stock management and Wild Salmon Policy  
22 initiatives.

23 Q When you talk about a fishing plan, you're meaning  
24 the IFMP, the Integrated Fisheries Management  
25 Plan?

26 A Correct. Correct, yeah, and so I'm talking about  
27 early consultation on it and a flexible plan.

28 Second point is we really need the best in-  
29 season information we can get. That means good  
30 science, and it means effective test fisheries,  
31 effective monitoring techniques so that you can  
32 actually track the landfall of the fish and the  
33 runs into the system. So effective test fisheries  
34 at entry, real-time information on the stock  
35 composition and the timing, very, very important,  
36 and good monitoring devices up through the river  
37 so that these whole issues about fish passage,  
38 freshet and low flows affecting survival, the  
39 issues about the fish burning out with their  
40 energy reserves being exhausted before they get to  
41 the spawning grounds, the issues about late entry  
42 into the river and parasite infestation, those can  
43 all be looked at in a more effective way through a  
44 better tracking system.

45 Things like the Qualark tracking facility,  
46 improvement at Mission and other types of  
47 techniques that the Commission may be able to look

1 at for in-season management I think are very, very  
2 important.

3 Lastly, it's very interesting that we have  
4 done almost no deep-water sockeye research since  
5 the '50s. When there were concerns about the  
6 interception of Canadian-origin salmon by the  
7 Japanese fleet, there was a lot of collaborative  
8 international work done and in far distant reaches  
9 of the Pacific with tagging programs and  
10 observations that told us something about what  
11 these fish were doing on the high seas. There's  
12 been some work in the near and coastal  
13 environment, but we know relatively little about  
14 the black box of the ocean and what's going on in  
15 distant areas. I'm convinced that given the  
16 changes the oceanographers have seen in terms of  
17 the productivity of the ocean and the unusual  
18 water masses and the productivity and the layering  
19 that's going on out there that stops the nutrients  
20 coming up, that certain groups of fish go to  
21 certain parts of the ocean and that they may do  
22 very well there and come back in abundance. Other  
23 fish that may be progeny of an area quite close by  
24 to where the group I've just referred to, go to a  
25 different part of the ocean and do things  
26 differently.

27 Q Right.

28 A And that's not at all surprising because when we  
29 think about salmon, what salmon did is, you know,  
30 eight to 10,000 years ago, there was four  
31 kilometres of ice here. Since that time, those  
32 creatures have figured out how to colonize all the  
33 systems of the Pacific, North Pacific rim, go up  
34 into the Arctic and developed all kinds of  
35 strategies for survival, so the diversity of what  
36 they do and the way that they're designed, gives  
37 them this adaptability. But that adaptability  
38 will be superimposed on these changes to come. We  
39 have to really recognize that we're dealing with a  
40 very complex organism, but it has enormous  
41 adaptability to deal with the kinds of  
42 complexities that are thrown at it.

43 Q Thank you. Can you comment on the role that  
44 science would play if there is this increased  
45 unpredictability in salmon in the future?

46 A Well, scientists can certainly address the kinds  
47 of uncertainty that we've got on -- that we've

1           seen here, and science can inform effective  
2           decision-making. Certainly as an ADM of Science  
3           in the past, you say, yeah, well, John wants to  
4           see more science. Of course I do, but I'd like to  
5           see science directed at some of these kinds of  
6           things that we've talked about, both the in-season  
7           and the pre-season type of work.

8           I think we need science organizations also  
9           that are focused on really looking into this, and  
10          that the science needs to not be done in silos,  
11          that you need scientists who are ocean scientists  
12          working closely with biological scientists, and  
13          from the standpoint of conveying their views to  
14          the public, social scientists and economic  
15          scientists who can help be the translators.

16          One of the problems of science is we talk in  
17          equations and write things and boards and it goes  
18          right over people's heads.

19          Q       Right.

20          A       We need to convey that clearly.

21          Q       There's been some criticism in these hearings that  
22          science is often reactive as opposed to proactive,  
23          and I was wondering if you could comment on that.

24          A       Well, my point was I think we need a body of  
25          really cross-disciplinary proactive thinkers to  
26          address what is to come, and I think that's a very  
27          important aspect of science.

28          Q       Okay. I was wondering if you could -- how do you  
29          plan fisheries in a way that doesn't deprive the  
30          furthest at sea from an opportunity -- that's my  
31          -- I'll leave my question at that.

32          MR. WALLACE: Mr. Commissioner, Dr. Davis has a lot of  
33          experience in DFO but we've let very broad  
34          reaching questions go on here, but this, I think,  
35          is drifting further and further from our concern,  
36          our topic, and is not an efficient use of the  
37          Commission's time.

38          MR. LEADEM: Well, Mr. Commissioner, I'd like to weigh  
39          in on that objection, because I have been -- I  
40          have found this past discussion very fascinating,  
41          very appropriate to the work of the Commission. I  
42          think that Mr. Timberg should be allowed to  
43          explore this further with this witness.

44          MS. GAERTNER: Mr. Commissioner, I'm also going to  
45          weigh in on this. If the question is, as I  
46          understand it, how to plan fisheries in a mixed-  
47          stock fishery, that's completely germane to the

1 Cultus discussion and what we've learned through  
2 Cultus and I completely support the witness being  
3 asked this question and us hearing the answer.

4 MR. TIMBERG:

5 Q The question being, Dr. Davis, is can you help us  
6 -- how do you plan fisheries in a way - mixed-  
7 stock fisheries - that doesn't deprive those  
8 furthest at sea, perhaps those people up near  
9 Prince Rupert or the mid-coast for example, to  
10 ensure fairness for all?

11 A It's a complex thing to do because the behaviour  
12 of the fish governs what happens. As the fish  
13 make landfall on the coast, as you know, they can  
14 come down the inside through Johnstone Strait or  
15 the outside down the west coast of Vancouver  
16 Island. This requires trying to create in the  
17 fishing plan opportunities for people who are  
18 situated along different parts of the coast or go  
19 there with their vessels. If you move to an  
20 entirely terminal fishery, it would make a fishery  
21 manager's life much easier, because you're  
22 managing fish right at the river mouth or in the  
23 river or even way back what used to be done with a  
24 series of traps along the coast years ago where  
25 you were taking the fish close to a terminal  
26 harvest. That would benefit the people close --  
27 or upstream of the terminal harvest, but at the  
28 expense of people who live more distant.

29 So the trick is to tease apart the runs.  
30 You put in place the kinds of conservation  
31 measures that are needed, and try -- which takes  
32 the wisdom of Job to have a fishing plan that  
33 allows people to have a go at the fish as they  
34 move down the coast.

35 In terms of the process I described earlier  
36 where you need to deal with uncertainty, the whole  
37 issue would be as part of that consideration,  
38 giving people opportunity as best you can and  
39 spreading the benefits. You also need to be able  
40 to think about what would happen in a poor year as  
41 opposed to an average year as opposed to a good  
42 year. Again, you need the good in-season  
43 management information so that a manager with  
44 confidence could say, "I really do know that this  
45 run is coming back and it's pretty abundant in the  
46 entrance to Johnstone Strait," and we could have a

52  
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1 go at it in that area and people would have a  
2 benefit there.

3 At the same time recognizing that there are  
4 special requirements to provide First Nations with  
5 their constitutional requirements for food,  
6 social, ceremonial fish and that all has to be  
7 factored into it.

8 MR. TIMBERG: Mr. Commissioner, I note the time.

9 THE COMMISSIONER: Thank you very much, Mr. Timberg.

10 THE REGISTRAR: The hearing will now recess till two  
11 o'clock.

12

13

(PROCEEDINGS ADJOURNED FOR NOON RECESS)

14

(PROCEEDINGS RECONVENED)

15

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

17 MR. WALLACE: Thank you, Mr. Commissioner. One  
18 housekeeping matter. The documents that I  
19 referred to this morning, as you'll recall, there  
20 are groups of documents from DOJ relating to this  
21 topic, but which they discovered or were able to  
22 find only quite recently. Both of those sets, one  
23 of I think 14 documents, the other of three, have  
24 now been e-mailed to all participants. And in  
25 addition, the ones that were produced this  
26 morning, the three documents, there are hardcopies  
27 for participants, and they are on the front  
28 counter in front of Mr. Lunn. Thank you.

29 MR. TIMBERG: Yes, Mr. Commissioner, Tim Timberg, for  
30 Canada, with my colleague Geneva Grande-McNeill.  
31 I have two documents, I have approximately ten  
32 minutes left with my examination.

33

34 CROSS-EXAMINATION BY MR. TIMBERG, continuing:

35

36 Q Mr. Lunn, if we could have Tab 20 from Canada's  
37 binder of documents. Dr. Davis, could you  
38 identify this document, please.

39 A That's an address I gave to the challenges at the  
40 workshop that took place, that I described was  
41 adapting fisheries to climate change.

42 MR. TIMBERG: Okay. And if we could have this marked  
43 as the next exhibit.

44 THE REGISTRAR: Exhibit 902.

45

46

47

1 EXHIBIT 902: Fisheries Policy-Maker's  
2 Perspective - Challenges and Opportunities in  
3 Adapting Fisheries to Climate Change,  
4 presentation by John C. Davis  
5

6 MR. TIMBERG: And, Mr. Lunn, if we could go to the  
7 first page, or the second page, I guess.

8 Q And, Dr. Davis, can you describe whether what is  
9 coming in the future, whether this trend of  
10 uncertainty in fisheries is being observed  
11 globally?

12 A Yes. You can see here that there are many  
13 fisheries collapses occurring worldwide, and that  
14 the rate of collapse internationally hasn't slowed  
15 over the last 50 years. So there's a major issue  
16 with respect to management of major fish stocks.  
17 Of course, coupled with that is a massive increase  
18 in human population and the challenge of global  
19 food supply, which is associated with that.  
20 Superimposed on all of this are the impacts of  
21 climate change that are to come. So certainly  
22 there is a consensus that these changes and  
23 uncertainty are going to change the world in terms  
24 of how we look at fisheries, and while an ever-  
25 increasingly hungry world is going to need natural  
26 resources in fisheries, we have to look at it from  
27 the standpoint of, you know, what can these  
28 resources produce and what is being done in terms  
29 of the international conservation activities.

30 Q Thank you. And, Mr. Lunn, if we could then have  
31 Exhibit 884. And I'm wondering, Dr. Davis, if you  
32 could provide us with an overview of your  
33 educational background.

34 A Thank you. I studied at the University of  
35 Victoria as an undergraduate and received my Ph.D.  
36 and Master's degree from University of British  
37 Columbia. I worked on Pacific salmon for my  
38 thesis work, particularly the energetics and  
39 exercise physiological abilities of Pacific salmon  
40 as a research topic, and that was relevant to  
41 studying the impact of stresses and pollutants on  
42 fish.

43 And then I was hired by the Department of  
44 Fisheries and Oceans as a research scientist and  
45 engaged in environmental science studies, mostly  
46 with coastal pollution problems for a number of  
47 years, and aquatic water quality, and particularly

1 the dissolved oxygen requirements of Canadian  
2 aquatic life, which formed the basis of a couple  
3 of substantive review articles.

4 Q All right. And perhaps you could provide us with  
5 an overview of your various positions at DFO.  
6 I'll suggest perhaps regionally, nationally, and  
7 then your international work.

8 A In the Pacific Region, starting as a research  
9 scientist in the environmental studies, as I  
10 mentioned, I progressed to become the Associate  
11 Director of the Biological Station at Nanaimo.  
12 And then was hired as the Director General,  
13 Ontario Region, where I was responsible for the  
14 Great Lakes and the Central part of Canada, with  
15 particular relevance to the Department's programs  
16 there, and issues in terms of the recovery of fish  
17 stocks in the Great Lakes and sea lamprey control.

18 I then went up to Ottawa as the Director  
19 General for Pacific and Freshwater Operations,  
20 with responsibility for Central Canada and the  
21 West Coast.

22 Went back to British Columbia as the Regional  
23 Director of Science for 12 years, where I was  
24 responsible for the Biological Station in Nanaimo,  
25 West Vancouver Laboratory, and the Institute of  
26 Ocean Sciences in Sidney, north of Victoria. So  
27 the full spectrum of the Science program, and then  
28 the Science staff that were assigned to work with  
29 Fisheries Management in different parts of the  
30 province and in the Yukon.

31 I then went up to Ottawa and took on the  
32 position of the Assistant Deputy Minister of  
33 Science, and I was responsible for the Science  
34 programs across the country and in the Arctic for  
35 several years. Came back to Pacific Region as  
36 Director General Pacific for a couple of years,  
37 and then was contemplating retirement, and then  
38 went on to become the Special Advisor to the  
39 Deputy for the implementation of **SARA**.

40 I did a lot of international negotiations. I  
41 was head of the Canadian delegation on the Pacific  
42 Salmon Treaty. I was Canadian negotiator for the  
43 Yukon portion of the treaty. We worked on a  
44 resolution to ban driftnets in the North Pacific,  
45 at least big nets that intercepted a lot of marine  
46 mammals and fish stocks. Managed to get a  
47 resolution into the United Nations on that. And

John Davis

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Cross-exam by Mr. Leadem (CONSERV)

1 I've done a lot of collaborative work with Asian  
2 countries on science collaboration and being a  
3 commissioner on various commissions.

4 Q And what's your present position with the OECD?

5 A OECD has hired me to chair these workshops or  
6 participate, and I think it's because what I'm  
7 often asked to do is come to a conference or a  
8 proceeding and listen to it and try my best to  
9 summarize the key findings and outcomes, and  
10 distil things into concepts that help guide the  
11 discussion, and that sort of thing. So I've been  
12 hired in that capacity several times.

13 MR. TIMBERG: Okay. Thank you. Those are all of my  
14 questions.

15 MR. LEADEM: Leadem, initial T., appearing as counsel  
16 for the Conservation Coalition, Mr. Commissioner.

17

18 CROSS-EXAMINATION BY MR. LEADEM:

19

20 Q Good afternoon, Dr. Davis. I will be asking you a  
21 number of questions. I'm not interested so much  
22 in going back into the history of the **SARA** and the  
23 Cultus Lake designation and what happened there.  
24 But I am interested in going forward and  
25 determining what lessons we learned that we can  
26 take into the future. Then I want to come back  
27 and revisit with you some of the interesting  
28 discussion that you had with Mr. Timberg from this  
29 morning.

30 I want to begin by asking you to examine with  
31 me Exhibit 899A. This was the Dr. Mooers authored  
32 paper, "Biases in Legal Listing under Canadian  
33 Endangered Species Legislation". And I want to  
34 refer you to two specified passages. The first  
35 one is at page 3, and in the middle column there,  
36 under the first full paragraph, I find these  
37 words:

38

39 Benefits to listing must also account for  
40 nonuse economic values. These are the  
41 benefits of conservation that can be  
42 reflected in part by the value that society  
43 holds for the preservation of species.

44

45 I just want to stop there and get your reaction to  
46 that. Do you recognize that concept as a benefit  
47 to listing a species under **SARA**?



1 A I do recognize that concept as part of a broadly-  
2 based socioeconomic evaluation, and non-use  
3 relates to the values that Canadians hold with  
4 respect to natural resources. How we value them  
5 as a place to walk in the woods, or ability to  
6 take your kids fishing, and these kinds of things,  
7 or just the ability to have nature present and to  
8 enjoy it was part of our natural ecosystem.

9 Non-use, too, I think, pertains to the way  
10 that people that have a traditional tie to natural  
11 resources look at the world, to the holistic view  
12 of the ecosystem, and particularly First Nations,  
13 or fishermen who are out on the water and value  
14 just getting out in the boat and being there, have  
15 values associated with non-use.

16 Q These are some of the social values that should  
17 get incorporated into a benefit/cost analysis; is  
18 that correct?

19 A I think that's an important dimension, and when I  
20 talked earlier, sir, about, you know, looking at  
21 all of this in a balanced way, it is important to  
22 do it. How you put value on it, and how you state  
23 it in economic terms, is challenging.

24 Q Right. Because it comes -- doesn't it come down  
25 to this, that it's really difficult to put a  
26 dollar value on extinction of a species. I mean,  
27 you can put a dollar value on a commercial -- on a  
28 commercial aspect of a species, such as the  
29 sockeye salmon, because it has commercial value.  
30 But it's very difficult to put into quantifiable  
31 terms, into dollars and cents, what would happen  
32 to us as a society if we lost that Cultus Lake  
33 sockeye. Is that fair to say?

34 A Well, I think when you say it's difficult to put a  
35 dollar value on this sort of thing, yes, that is a  
36 challenge, no question. And I think it's just  
37 something that relates to what kind of values  
38 society holds. I mean, you can look at it in  
39 various ways and say, well, we're going to exploit  
40 the very strong runs in a mixed stock fishery, and  
41 this will provide benefits, and we stop at that  
42 point.

43 But I think the whole purpose for this  
44 Commission is to look at where you set the bar, as  
45 I mentioned earlier, and how you try to obtain  
46 that mix of biodiversity that is so important, but  
47 not set the bar so high that there are huge

1 impacts on Canadians in terms of the economic side  
2 of it for everything that we forego, and that's a  
3 massive argument that's always, you know, that the  
4 challenge between balancing preservation thinking  
5 and exploitation thinking.

6 Q I want to now draw your attention to the last  
7 couple of sentences of this paper, and to get your  
8 reaction to them. The authors say:

9  
10 Biodiversity conservation would be best  
11 served by strict, transparent, legislated  
12 timelines for all aspects of the listing  
13 process following receipt by the Minister of  
14 the Environment of the status assessments  
15 undertaken by COSEWIC.

16  
17 And they go on to say:

18  
19 We also recommend that, within the RIAS --  
20  
21 - that's the Regulatory Impact Analysis -  
22  
23 -- framework, **SARA** require that the full  
24 costs of extinction and the full benefits of  
25 recovery be quantified in externally reviewed  
26 reports so that they can be fairly weighed  
27 against the impacts of legal protection.

28  
29 Do you have a reaction to those two sentences?

30 A I'm not exactly sure what the first sentence  
31 means. It might mean that the authors feel that  
32 biodiversity would be best served by a lockstep  
33 process, where COSEWIC provides advice, and then  
34 it's incumbent on the Government of Canada to  
35 automatically list the species, because that was  
36 an argument that many people made when the  
37 legislation was being prepared. What that would  
38 do, though, would take out the parliamentary  
39 process in terms of the ability of governor-in-  
40 council and ministers to weigh these kinds of  
41 things and to make a decision. And so while some  
42 would prefer that the socioeconomic side of it not  
43 be part of the equation, the way the legislation  
44 was prepared was to provide that kind of  
45 discretion for ministers as part of the process.

46 The RIAS statement suggests that the full  
47 costs of extinction and the full benefits be

1           quantified. Hard to quantify those things. You  
2           can get into all kinds of economic arguments about  
3           contingent valuation, how much value do you put on  
4           having this one fish here for Canadians. And  
5           we've seen that in oil spill litigation, where  
6           people said, well, the contingent value of this  
7           species that was killed is "X". And very  
8           interestingly in the Exxon Valdez situation, they  
9           spent around \$85,000 per sea otter in terms of the  
10          recovery side of it. And so society make a  
11          judgment to value those otters and try to protect  
12          them by doing work that cost a great deal of  
13          money.

14         Q     Doctor Mooers in this paper refers to two specific  
15               examples, and they're obviously not in front of  
16               this Commission, the Atlantic cod example, as well  
17               as the porbeagle shark. In the latter case, the  
18               porbeagle shark, if it was listed, it would have  
19               led to eight jobs being lost, and something really  
20               small, relatively small. So I think that you  
21               would have to agree with me that really it comes  
22               down to weighing things, the significance of the  
23               extirpation of a species, which may happen if it's  
24               not listed, versus the economic benefit that might  
25               accrue to a certain segment of the population.  
26               Doesn't it come down to weighing all of these  
27               things?

28         A     We did talk about that before, that weighing  
29               things is important. And I believe the Commission  
30               is going to have to be very cognizant of that when  
31               you set the bar for conservation units and you  
32               weigh where that bar would be, with respect to the  
33               choices one makes.

34         Q     I trust that you've also had access to some of the  
35               documents that my clients wanted you to review,  
36               the Conservation Coalition documents, and there  
37               were some authored journals. And I want to refer  
38               you to Conservation document number 7. That's a  
39               document entitled "Is scientific inquiry  
40               incompatible with government information control?"  
41               It's authored by Dr. Jeffrey Hutchings from  
42               Dalhousie, Dr. Carl Walters from UBC, and Dr.  
43               Richard Haedrich from Memorial University. Are  
44               you familiar with this paper?

45         A     Yes, I've seen that paper. I'm not familiar in  
46               detail with it.

47         Q     All right. I just want to refer you to some parts

1 of it, and to also get your reaction to what is  
2 being proposed here. And I think the easiest way  
3 in the interests of time is to actually take you  
4 to the very end of the paper, the very last  
5 paragraph on page 1209 of the paper, beginning  
6 with:  
7

8 The present framework of government  
9 departments such as the DFO is based on the  
10 belief that the conservation of natural  
11 resources is best ensured by science  
12 integrated within a political body. Recent  
13 history would suggest otherwise. The  
14 formation of a politically independent  
15 organization of fisheries scientists or some  
16 such reorganization of the link between  
17 scientific research and the management of  
18 natural resources, is a timely idea that  
19 merits immediate, serious, and open debate.  
20

21 And it's that last sentence that I want to get  
22 your reaction to, It's what the authors seem to  
23 be promoting here, Drs. Walters and Hutchings, is  
24 having some independence, so the formation of a  
25 politically independent organization of fisheries  
26 scientists. Do you have any strong views one way  
27 or another about that?

28 A I think you need both, actually. I think that you  
29 couldn't have a Department that was charged with  
30 the management of natural resources without its  
31 very strong internal science capacity.

32 Q Yes.

33 A But there's nothing wrong with other bodies that  
34 are learned scientific bodies that bring forward  
35 information. In fact, you can argue that COSEWIC  
36 is just that, that it is a group of people,  
37 largely academic scientists, who provide arm's  
38 length advice to the federal government, and  
39 there's absolutely, I think, room for both of  
40 these sorts of things. The benefits of an outside  
41 organization is it's not constrained from working  
42 within the natural constraints of an organization.  
43 And these sorts of groups, such as OECD that I  
44 just talked about, can also be clearinghouses or  
45 sources of information for that scientific debate.

46 Q Now, the two examples that are traced through by  
47 these authors, one is the Atlantic cod example

1 that most of us are familiar with, the demise of  
2 the Atlantic cod in the East Coast, and the other  
3 one is the -- in B.C. here, with the Nechako  
4 River, and the damming of the Nechako by Alcan and  
5 the flow regimes, and Alcan. And doubtlessly in  
6 your long career with DFO you came across some of  
7 the internal strife that arose as a result of  
8 science and government not seeing eye to eye in  
9 terms of the flow regime, and litigation that DFO  
10 had commenced against Alcan, and how that was  
11 settled, and so forth. And are you familiar with  
12 that example, with the Kemano example?

13 A I am. It's a long time ago, but I -- it was early  
14 in my days, but I remember it.

15 Q And so the authors trace through those examples  
16 and suggest that DFO would be better served by  
17 having some independence, so that there wasn't  
18 that -- so that that strong integration with  
19 government bureaucrats and science. That was some  
20 time ago. Have you noticed some sort of a shift  
21 in thinking at DFO from those days?

22 A I think there's a recognition that it's healthy to  
23 have both a strong internal science capacity and  
24 other bodies that are looking and bringing forward  
25 ideas from an independent scientific perspective.  
26 So I'm not so sure there's a necessary shift, but  
27 perhaps more of an awareness that as we get into  
28 more and more of these difficult times of  
29 problems, that it's the collectivity of science  
30 thinking that's important.

31 MR. LEADEM: All right. I'm now going to ask you to  
32 take a look at Conservation -- oh, sorry. Could  
33 document number 7, the Hutchings and Walters paper  
34 be marked as an exhibit, Mr. Commissioner.

35 THE REGISTRAR: Exhibit number 903.

36  
37 EXHIBIT 903: Hutchings, Walters and  
38 Haedrich, Is scientific inquiry incompatible  
39 with government information control?  
40

41 MR. LEADEM:

42 Q The next document I'd like to go over with you  
43 very briefly, Dr. Davis, is Conservation Coalition  
44 document number 2. And this is a paper entitled  
45 "Science, Policy, and Species at Risk in Canada,  
46 authored by Dr. Mooers, there's a whole group of  
47 them. Are you familiar with this paper?

1 A I've seen this as part of the documentation that I  
2 was provided on the weekend, so it's part of my  
3 four-foot stack of papers.

4 Q Okay. I don't -- well, now you know what it feels  
5 like to be a lawyer sometimes, looking at the same  
6 stack of papers.

7 A My heart goes out to all of you. I don't know how  
8 you folks cope with this day in, day out.

9 Q Yes. If I could ask Mr. Lunn to turn to page 2 of  
10 that document, you'll see a chart there. And what  
11 the authors are suggesting - if you could just  
12 blow up that chart a little bit - and I don't know  
13 if you've had a chance to really take a look at  
14 this, Dr. Davis. If you haven't, that's fine.  
15 But basically what the authors seem to be  
16 promoting here is the context of **SARA** is a  
17 separation from the scientific component, from the  
18 decision-making component. And they do so by  
19 referring to this chart here, chart "a" being the  
20 present regime, and chart "b" being the promoted  
21 regime, where the -- for example, if you follow  
22 through on looking at part "B", you'll see  
23 "Socioeconomic analysis" being feeding into the  
24 "Public consultation" and "Legal Listing", not  
25 something that's actually integrated into the **SARA**  
26 process. Do you have any reaction, having  
27 reviewed the paper, to that kind of a suggestion?

28 A I haven't reviewed this paper in detail at all. I  
29 was aware it was there, and I'm not sure I totally  
30 understand it. So maybe you could explain your  
31 thinking on that one.

32 Q Right. Well, just following through in terms of  
33 "b". You'll see in the heading there it says:

34  
35 Potential modification highlighting enhanced  
36 separation of science activities (in white)  
37 from government action (ochre). In this  
38 scheme, independent, peer-reviewed science  
39 offers transparent input to government  
40 decisionmaking. COSEWIC, Committee on the  
41 Status of Endangered Wildlife in Canada.

42  
43 Do you have any reaction, just to that  
44 description, that having a transparent,  
45 independent, peer reviewed science aspect of **SARA**  
46 listing is something that should be sought after?

47 A I think that's what you have with COSEWIC,

- 1           actually. COSEWIC has species subcommittees and  
2           they review documentation and provide advice,  
3           and --
- 4       Q     But if you look at the socioeconomic analysis that  
5           you've raised, as something that we learned in the  
6           **SARA** listing of Cultus, you'll see that if you  
7           actually separate that from the **SARA** listing so  
8           you can, you do that as a peer-reviewed,  
9           transparent process and have as much input as  
10          possible, wouldn't you agree with me that that's  
11          better than incorporating it into the decision-  
12          making process of **SARA**?
- 13       A     Well, I think the paper we've referred to earlier,  
14          which was the 2006 framework for socioeconomic  
15          analysis --
- 16       Q     Yes.
- 17       A     -- that the Department put together as a result of  
18          the experience learned with the Cultus listing,  
19          Sakinaw listing decision, is helpful in the sense  
20          that you'll see in that paper there's recognition  
21          that the socioeconomic analysis needs to be peer-  
22          reviewed --
- 23       Q     Yes.
- 24       A     -- and externally peer-reviewed. So I agree --
- 25       MR. WALLACE: For the record, that's Exhibit 898.
- 26       A     So certainly there's a recognition that peer  
27          review is very important in the socioeconomic  
28          analysis.
- 29       MR. LEADEM: All right. Might this be marked as the  
30          next exhibit, please.
- 31       THE REGISTRAR: Exhibit 904.
- 32
- 33                   EXHIBIT 904: Mooers et al, Science, Policy,  
34                   and Species at Risk in Canada
- 35
- 36       MR. LEADEM: And I can ask now, Mr. Lunn, to pull up  
37          Conservation Coalition document number 4.
- 38       Q     This is a paper authored by Dr. Vanderzwaag and  
39          Dr. Hutchings entitled "Canada's Marine Species at  
40          Risk: Science and Law at the Helm, but a Sea of  
41          Uncertainties". It's a rather lengthy paper. I  
42          don't expect you reviewed this in any great detail  
43          did you, Dr. Davis?
- 44       A     No, I didn't.
- 45       Q     All right. Let me see if I can at least prompt  
46          you in terms of a reaction that you may or not  
47          have to some words I find right at the end of the

1 paper. If I can just ask you, Mr. Lunn, to go  
2 right to the very end. Before the footnotes, if  
3 we could just go to the end of the text. You can  
4 see it, it's very heavily footnoted. I think  
5 we've got it there. Just go to the last  
6 paragraph, and I want to see if you can -- I'm  
7 hoping you have a reaction to this, because it  
8 strikes me that this is very similar to things  
9 that I heard you say earlier. It says:

10  
11 Saving of species in the end will involve  
12 much more than law reforms and improving  
13 scientific knowledge regarding species and  
14 marine ecosystems. Society as a whole has to  
15 move from a "deathbed" approach to  
16 conservation towards "holistic health" where  
17 humans live within the bounds of ecological  
18 integrity and biodiversity richness.  
19

20 It goes on to say:

21  
22 Changing human values and curbing strong  
23 commercial, industrial, and recreational  
24 interests will not occur through "quick  
25 fixes" or come easy. Legal principles, such  
26 as the precautionary approach, ecosystem-  
27 based management, and intergenerational  
28 equity, are contributing to paradigm shifts,  
29 but societal transition will take all the  
30 energies that the humanities and social  
31 sciences can muster.  
32

33 So do you have a reaction just to that general  
34 statement?

35 A I like that. I do. I think it's very high level,  
36 and it's similar to some of the things I talked  
37 about earlier.

38 Q That's what I thought.

39 A In fact, to those conclusions, yes.

40 Q Yes.

41 A And it really is where we find ourselves in this  
42 universe, and where, how we establish ourselves as  
43 conservationists and also people who have an  
44 impact on the globe, and exploit resources.

45 Q So we've heard some talk about -- in this room in  
46 the context of ecosystem-based management. That's  
47 something that we should be aspiring to in terms



1 of the sockeye salmon, is it not?

2 A I think that's a very important thing, because the  
3 sockeye is embedded in the very ecosystem that  
4 supports it, and it's the subject of another  
5 workshop I was just involved in. But it is easy  
6 to say, hard to do.

7 Q Exactly. And that leads me to the Wild Salmon  
8 Policy, because sooner or later I was going to get  
9 around to that. We heard a lot about the Wild  
10 Salmon Policy, in fact, as when you exit, we'll be  
11 talking about the Wild Salmon Policy and the  
12 implementation of it. And concomitant with the  
13 **SARA** listing, we heard some evidence from you  
14 earlier, that the Wild Salmon Policy was coming  
15 into being. And that some of the fixes that if,  
16 for example, if the sockeye, the Cultus Lake  
17 sockeye was not listed, some of the remedies and  
18 some of the fixes could come from the Wild Salmon  
19 Policy, at least we were told that. Is that  
20 correct, do I have that right?

21 A Well, certainly some of the fixes for weak stock  
22 management in general, and based on conservation  
23 units, and for stocks that are in low abundance or  
24 small, compared to those that are being co-  
25 harvested, could come from the Wild Salmon Policy.

26 Q Right. And we've heard some evidence from some of  
27 the people that were intimately involved with the  
28 Wild Salmon Policy and its derivation and its  
29 thinking and the consultations around it. And it  
30 strikes me that it's taken an inordinately long  
31 period of time to get the Wild Salmon Policy into  
32 a state where it's actually implemented. And I  
33 want to get your reaction to that as a former DFO  
34 bureaucrat, scientist. What seems to be the  
35 problem with DFO that they can't ever -- they get  
36 bogged down, they can't get through some of these  
37 things. It takes a long time to actually bring  
38 these things, such as the Wild Salmon Policy, to  
39 fruition. What happens? Why is that going on?

40 A Well, it's been three years since I retired, so I  
41 have no knowledge of what's been going on in the  
42 last three years. But I think part of the  
43 challenge, and it goes back to what I said before,  
44 in implementing any new policy changes, is that we  
45 deal with a huge diversity of interests, First  
46 Nations and stakeholders. We operate in a very  
47 Canadian way, by wanting to achieve consensus on

1 things. It's very difficult to move and to make  
2 changes. It's very difficult to get all the  
3 different vested interests, you know, on the same  
4 wavelength and track and to move forward, and I  
5 think DFO suffers from that. Probably coupled  
6 with the problems of resources and available  
7 people and money, these are not the best of  
8 economic times, so it would be worth looking at  
9 whether there's sufficient budgets to roll out the  
10 Wild Salmon Policy and whether or not there's, you  
11 know, enough wherewithal to do that.

12 Q And although I think you may be a bit fair in  
13 saying that part of it is that you've got all  
14 these competing interests, isn't part of the  
15 problem also DFO itself, that it's not able to  
16 actually make or bring people to the table in a  
17 way where decisions can actually be made and where  
18 all of the various interest groups can have their  
19 say? I mean, you've got to engage people and  
20 bring them to the table. So isn't there something  
21 that's something wrong with the culture of DFO  
22 that causes this not to happen?

23 A I'm not so sure it's the culture or the experience  
24 or the process. If you looked at the number of  
25 consultations across the country in a given year,  
26 I would certainly challenge us to find any kind of  
27 government department that is engaged into that  
28 degree in comparison to the Department of  
29 Fisheries and Oceans, it's incredible for  
30 fisheries managers and for people of all levels in  
31 terms of the amount of consultation that occurs.  
32 Is it adequate? Do people feel it's adequate? Do  
33 they feel they're open? There are different  
34 perceptions about all of that. But there's an  
35 awful lot goes on. Could it be better, or could  
36 we find bodies, mechanisms, ways of doing it that  
37 are more effective?

38 Part of the problem with a Department like  
39 DFO is that much of the detailed decision-making  
40 rests with the Minister or senior accountable  
41 person, such as the Director General. Now, that  
42 is a position where you become the arbiter of  
43 virtually every decision. I think the Department  
44 could make great use of external advisory  
45 processes that are effective, or bodies which are  
46 a constituency of different interest groups, but  
47 charged with the responsibility for making some

1 key decisions. That's helpful for the Minister  
2 from the standpoint of not being on tack for every  
3 issue that has to be decided. It's an impossible  
4 job to be at the helm of all of those decisions  
5 and to balance all those different interests. So  
6 if we can find effective processes that bring  
7 like-minded people together with a commonly bound  
8 objective, that could be very, very helpful. And  
9 I don't think we've been that good at it so far.

10 MR. LEADEM: All right, thank you for that. Could we  
11 have this document that's on the screen marked as  
12 the next exhibit, please, Mr. Registrar.

13 THE REGISTRAR: Exhibit 905.

14  
15 EXHIBIT 905: Vanderzwaag and Hutchings,  
16 Canada's Marine Species at Risk: Science and  
17 Law at the Helm, but a Sea of Uncertainties  
18

19 MR. LEADEM:

20 Q Now, the next document I am going to pull up,  
21 hopefully it's a document that you're much more  
22 familiar with, because it's a DFO document. It's  
23 Conservation Coalition document number 5. And  
24 it's a Government of Canada document entitled --  
25 well, it's not, I misspoke, it's not DFO. It's "A  
26 Framework for Science and Technology Advice:  
27 Principles and Guidelines for the Effective Use of  
28 Science and Technology Advice in Government  
29 Decision Making". Are you familiar with this  
30 document, Dr. Davis?

31 A Yes, I am.

32 Q All right. I thought sooner or later I'd find one  
33 that you were familiar with. I want to go through  
34 the -- I found these principles that are  
35 articulated in this document quite useful, and I  
36 want to make sure that I get your reaction to  
37 them. And the first principle is one of "Early  
38 Issue Identification" at page 3. When you said  
39 you were familiar with it, did you have a hand in  
40 authoring this?

41 A No. I think this was developed, and I might be  
42 wrong, it was developed when I was ADM Science, so  
43 a lot of discussion in Ottawa about the scientific  
44 decision-making and the kinds of overall  
45 objectives and that sort of thing. I think that's  
46 the genesis of this document.

47 Q And before we go to Principle I, I could not find

1 a date on this document and I'm trying to pin it  
2 down in terms of a -- of a general circa 2000?  
3 A If this is indeed the one I'm thinking of, there  
4 was, I think, prepared by one of the central  
5 agencies contracting senior scientist had  
6 developed it for the overall government  
7 departments around the year 2000, something like  
8 that.

9 Q Okay.

10 A 1999/2000, if this in fact is the same document.

11 Q All right. Let's look at "Principle I", and it's  
12 entitled "Early Issue Identification". I'll just  
13 read the first sentence:  
14

15 The government needs to anticipate, as early  
16 as possible, those issues for which science  
17 advice will be required, in order to  
18 facilitate timely and informed decision  
19 making.  
20

21 I find that eminently sensible, do you, as well?

22 A I do. And I think I said something like that  
23 earlier with respect to the change that's coming.

24 Q And we can now look at Principle II at page 4, and  
25 I'm going through this quickly because I only have  
26 a limited time with you. If you can just scroll  
27 down, if you find "Inclusiveness". There it is.  
28 "Principle II" is entitled "Inclusiveness":  
29

30 Advice should be drawn from a variety of  
31 scientific sources and from experts in  
32 relevant disciplines, in order to capture the  
33 full diversity of scientific schools of  
34 thought and opinion.  
35

36 And that's something I think you would readily  
37 agree with, as well, is it not?

38 A Well, it's virtually the same thing I said when I  
39 said we needed biological, economic and social  
40 science thinking as part of these decisions.

41 Q And not just taking it from government scientists,  
42 but outside government, as well. I mean, there  
43 should be a free exchange of ideas in the  
44 scientific community if you're going to focus on a  
45 specific problem. Do you agree with that?

46 A I agree that you should draw on the widest body of  
47 scientific knowledge that you can.

1 Q At page 6 there's "Principle III", Mr. Lunn,  
2 "Sound Science and Science Advice":  
3

4 The government should employ measures to  
5 ensure the quality, integrity and objectivity  
6 of the science and science advice it uses,  
7 and ensure that science advice is considered  
8 in decision making.  
9

10 And as a past person that was associated with  
11 Science in the Pacific Region, you would certainly  
12 readily agree with that, as well, would you not?

13 A And as a scientist and the scientific process is  
14 one where you don't get your paper published until  
15 it's peer-reviewed and, you know, it's thoroughly  
16 and objectively evaluated.

17 Q Now, page 8, "Principle IV: Uncertainty and Risk":  
18

19 Science in public policy always contains  
20 uncertainty that must be assessed,  
21 communicated and managed. Government should  
22 develop a risk management framework that  
23 includes guidance on how and when  
24 precautionary approaches should be applied.  
25

26 And are you familiar with that concept?

27 A I'm familiar with that concept. In fact, we put  
28 in place something like this for stock assessment  
29 advice in a number of instances. And what we  
30 would have, what we called a "streetlight"  
31 approach, where something could be green, yellow  
32 or red. And depending on the risk associated with  
33 the advice, you know, how much exploitation could  
34 occur in a given fishery, you could talk to the  
35 Minister and say, "Minister, this is a green. If  
36 you set the bar in terms of that quota at this  
37 level, there's a very strong confidence that you  
38 will not be exceeding the allowable catch or  
39 causing any threat. If it's yellow, you're on the  
40 edge. If you go into the red and allow so many  
41 tons of cod to be caught in Atlantic Canada, this  
42 is the consequence." So you can put a risk  
43 assessment or a degree of qualification on these  
44 sorts of things.

45 Q And in an era of climate change, that you've  
46 already indicated you fully accept that we're in  
47 that era of climate change, the uncertainties as

1           you say have increased immensely. And so in that  
2           context of uncertainty, isn't it really critical,  
3           then, to apply a precautionary approach to your  
4           decision-making so that you're achieving a result  
5           that's not going to upset the ecosystem and that  
6           you're trying to preserve as much of the  
7           biodiversity as possible?

8           A     Well, a precautionary approach is important, but  
9           also, given uncertainty, having the kinds of tools  
10           and mechanisms and early warnings and these sorts  
11           of things that tell you that something is going  
12           sideways, or that the run is less than expected  
13           and allow you to make intelligent decisions is  
14           important. It comes back to what I was talking  
15           about earlier, with developing an Integrated  
16           Fisheries Plan that has protocols in it to deal  
17           with the uncertainties that may come.

18          Q     Right. I found that to be actually very useful  
19           information, and a very useful recommendation to  
20           this Commissioner, that if you're going to have  
21           Integrated Fisheries Management Plans where  
22           there's a number of stakeholders who have a -- who  
23           have an interest in what the plan is, that you  
24           have a certain set of scenarios predicated on if  
25           this happens, then here's what we're going to do.  
26           I think I really endorse that. I like that  
27           approach.

28          A     It's a complicated approach that makes the life of  
29           the predictors and the managers much more  
30           difficult, but one, to me, that seems imminently  
31           sensible, given where we're going.

32          Q     Just finishing with Principle V, page 9 contains  
33           "Principle V", and this talks about "Transparency  
34           and Openness":

35  
36                   The government is expected to employ  
37                   decision-making processes that are open, as  
38                   well as transparent, to stakeholders and the  
39                   public.  
40

41           And that's critical, is it not, if you're going to  
42           engender public support for the decision-making,  
43           it's really important that the decision-making  
44           process be as transparent and as open to scrutiny  
45           as possible, isn't that right?

46          A     Remember when I presented the social  
47           characteristics that I thought were important for

1 decision-making, one of them was that people fear  
2 hidden agendas and things like that. It is very  
3 important to the degree that one can to be open  
4 and to have decision-making processes that involve  
5 individuals in such a manner that you're building  
6 trust and you're building part of the  
7 understanding.

8 Q Now, I'm curious as to what the status of this  
9 paper is now. Are you able to tell me, is it used  
10 routinely in government decision-making where  
11 Science is going to be called upon? Do you know  
12 what the status of this particular paper is?

13 A I don't, and it's been some time since I was up  
14 there in this Science capacity. So it would be  
15 interesting to find out if it's still sort of the  
16 boilerplate of the way the federal government  
17 approaches things.

18 MR. LEADEM: All right. Might this document,  
19 Conservation Coalition document number 5, be  
20 marked as the next exhibit, please.

21 THE REGISTRAR: Exhibit 906.

22  
23 EXHIBIT 906: A Framework for Science and  
24 Technology Advice: Principles and Guidelines  
25 for the Effective Use of Science and  
26 Technology Advice in Government Decision  
27 Making, Government of Canada  
28

29 MR. LEADEM:

30 Q I want to go back just briefly to some of the  
31 comments that you made earlier in discussion with  
32 Mr. Timberg, because I found them to be really  
33 useful, I think, in terms of trying to guide us of  
34 where we should be headed. And I want to go back  
35 to this uncertainty concept that you talk about.  
36 And I'm going to suggest to you that there are  
37 certain ways that we can deal with uncertainties  
38 as they arise, and that you objectified it very  
39 well by referring to the Integrated Fisheries  
40 Management Plan. I want to expand upon that a  
41 little bit, and maybe take it from a higher level.  
42 And I would say that if you've got a situation  
43 that involves a lot of uncertainties around it,  
44 that it's important that there be a free exchange  
45 of information around the uncertainties so that  
46 you have as many minds turning their attention to  
47 solving whatever issues are caused by the

1           uncertainty as possible. Would you agree with  
2           that? I'm thinking about a collaborative approach  
3           of science along with economics, along with  
4           sociologists, with people from various sectors  
5           turning their attention to it. And I think you  
6           were headed in that direction.

7           A    Yes. I think that it all revolves around trying  
8           to make public policy and trying to make  
9           management decisions in the face of very different  
10          perspectives and very different objectives that  
11          people come to the table with. For example,  
12          somebody who is worried about paying the bills  
13          tomorrow is going to have a very, very high degree  
14          of concern about making a short-term adjustment to  
15          their access to fisheries resources or whatever.  
16          Somebody who values the kind of non-consumptive  
17          values that we talked about earlier has a very  
18          different perspective on being able to walk  
19          through the forest and have it intact and  
20          everything about it reflect that biodiversity.

21                Now, I think often those peoples are -- they  
22          come from very different perspectives. We all  
23          bring our own into the room, and so when we get  
24          into these kinds of consultative fora and start to  
25          talk about where we go for the future, what may  
26          not be happening is effective communication  
27          between those quite divergent interests, and, you  
28          know, fear of losses in the short term working  
29          against embracing important conservation concepts  
30          for the future. So we've got to find a better way  
31          of talking, I think, is what it's all about, sir.

32          Q    It's not just a better way of talking and  
33          communicating and sharing that information, but  
34          it's also making sure that everyone who, as you  
35          say, coming to the table, everyone has a place at  
36          the table, so that all the First Nations that have  
37          been -- that might be impacted by decisions  
38          involving fisheries, the environmental groups, the  
39          stakeholders, the commercial fishers, they all  
40          have to have a place at that table. And  
41          otherwise, you're going to be leaving somebody on  
42          the out and your decision is going to not be as  
43          comprehensive as you ought to have. Do you agree  
44          with that?

45          A    I think I do in a general way. Those groups would  
46          argue, though, that there are those that have a  
47          very strong stake in the resource, and of course



1 we have the responsibilities under the  
2 Constitution and under the special provisions for  
3 First Nations that have to be respected. So it  
4 would be difficult for me to stand here and argue  
5 that you have to treat First Nations exactly the  
6 same way that you treat everyone else. There's a  
7 special responsibility, and there's in fact an  
8 obligation of the Department to consult and to  
9 respect those kinds of fiduciary responsibilities.  
10 So that is a somewhat different aspect of things.

11 But there is also a need to try when we're  
12 making decisions to bring all the different people  
13 to the table. And that's why I think the  
14 Department is very interested in local area  
15 management and trying to develop approaches to  
16 coastal resource planning and management that  
17 involved people who really are part of the  
18 equation and part of the decisions about what you  
19 do in a given place.

20 Q That's interesting, saying local area management,  
21 because if you look at the Fraser River, I mean,  
22 it's a big river and it goes through many, many  
23 ecosystems, as you know. But if you break it down  
24 into local areas and have the stakeholders in  
25 local areas approach it, that sounds to me that it  
26 might be much more manageable to resolve  
27 difficulties and to come to terms with issues on a  
28 local level, as opposed to Fraser River system  
29 wide.

30 A It would be, if you were talking about some things  
31 like land use planning, or maybe water  
32 conservation, or something like that. The added  
33 difficulty with the Fraser River is these fish  
34 that transit from mouth to the top of the river,  
35 with people all along the way who have a direct  
36 interest in them. So they are in fact the  
37 integrator and if you do something in one part of  
38 the river, it's going to affect somebody else  
39 somewhere else, so you can't leave those folks  
40 out.

41 Q I want to just end with a quick question about you  
42 mentioned that some of the consultations with  
43 respect to **SARA** involved talking to the provinces,  
44 and some of the provinces have their own species  
45 at risk legislation. And I just want to make it  
46 clear for the record, British Columbia does not  
47 have a species at risk legislation, does it?

John Davis

Cross-exam by Mr. Leadem (CONSERV)

Cross-exam by Mr. Rosenbloom (GILLFSC)

1 A I think they all have parallel legislation, unless  
2 I'm mistaken.

3 Q All right. Well --

4 A I may be wrong on that point and --

5 Q Okay.

6 A -- needing clarification. But my understanding is  
7 they do, or they're in the process of putting it  
8 in place.

9 Q Or they should be. Would you agree with me that  
10 if they don't, they should be?

11 A Well, my understanding was that they were all  
12 doing it. The territories were behind, last I  
13 checked.

14 Q Well, that maybe lump us in with the territories,  
15 then, of British Columbia. As the last time I  
16 looked onto the statute books, B.C. did not have a  
17 species at risk or something like that piece of  
18 legislation.

19 A Perhaps you're right, sir.

20 MR. LEADEM: I won't ask you to take judicial notice of  
21 that, Mr. Commissioner. If necessary, I'll lead  
22 evidence on the -- on the lack of provincial  
23 legislation in that respect.

24 Thank you, Dr. Davis. Thank you, that was an  
25 interesting discussion.

26 A Thank you.

27 MR. WALLACE: That's the risks of asking a witness for  
28 a legal opinion. Mr. Eidsvik. Mr. Rosenbloom.

29 MR. ROSENBLOOM: I introduced myself previously to you.  
30 My name is Don Rosenbloom, counsel for Area D  
31 Gillnet, Area B Seiner.

32

33 CROSS-EXAMINATION BY MR. ROSENBLOOM:

34

35 Q I want to focus in a very limited way in respect  
36 to your evidence, and in particular I want to  
37 speak generally to the issue of the matters that  
38 generally should be under consideration when  
39 looking at species at risk, for example, Cultus  
40 Lake. And I don't speak of the species listed  
41 necessarily under federal legislation, but just  
42 generally. And would you not agree with me in  
43 respect to the Cultus Lake situation there are  
44 many critical matters that really should be the  
45 focus of DFO when considering a threatened species  
46 such as sockeye in that lake system. You would  
47 agree with that, wouldn't you?

- 1 A I'd agree that the Cultuses and any fish stock  
2 which is subject to harvesting and subject to all  
3 of the environmental issues, variables, survival  
4 characteristics, is a complex subject and there  
5 are many aspects to the --
- 6 Q Yes.
- 7 A -- the management and conservation of that  
8 resource.
- 9 Q And if we can just very generally maybe go through  
10 the list of some of the more obvious ones, and  
11 they've been spoken about today in your testimony,  
12 obviously exploitation rate is an issue that one  
13 focuses on in respect to these issues, correct?
- 14 A Yes.
- 15 Q And also obviously one looks at issues of predator  
16 eradication, in other words, pikeminnow and other  
17 prospective predators --
- 18 A Correct.
- 19 Q -- eradication. Then one obviously looks at lake  
20 habitat issues, for example, Eurasian milfoil?
- 21 A Correct.
- 22 Q Water milfoil.
- 23 A Correct. Yes.
- 24 Q One looks at recreational pursuits within that  
25 water system from motorized vehicles to swimming  
26 localities within the lake system?
- 27 A Correct.
- 28 Q One looks at fishing, fishing that takes place  
29 within sensitive areas within that water system,  
30 I'm talking about recreational fishing.
- 31 A Recreational fishing.
- 32 Q You agree, have I hit some of the...
- 33 A You've hit a number of them, and in fact ones that  
34 are all part of the recovery strategy or the  
35 aspects that were associated with the low returns  
36 of Cultus fish.
- 37 Q Thank you.
- 38 A There's a few more.
- 39 Q Yes. And they are?
- 40 A Important aspect is groundwater, and you'll notice  
41 with respect to Cultus that that area is developed  
42 particularly at one end of the lake where there's  
43 a big housing development, and there was a lot of  
44 groundwater upwelling in spawning areas associated  
45 with that part of the lake.
- 46 Q And I gather the cottages that are found at the  
47 perimeter of the lake are with septic tanks, are

1 they?

2 A I'm sure they are, yes.

3 Q Thank you.

4 A So there's basically the lake is an integration of  
5 a whole number of human-related activities, and  
6 it's a summer playground for people.

7 Q Yes. And you said you had another point that  
8 probably should be on the critical list?

9 A It was all this, all the aspects of survival of  
10 the young fish going out, and, you know, their  
11 ability to go from fry to smolts and enter the  
12 ocean, and all aspects of the other parts of the  
13 life stages associated with Cultus.

14 Q Thank you, Doctor. Now, my question to you is  
15 this. You have testified this morning that you  
16 were a participant with a number of the briefing  
17 sessions with the Minister back in 2004 in respect  
18 to this critical decision whether or not the  
19 specie in question should have been listed under  
20 **SARA**, correct?

21 A Yes.

22 Q Yes. Can you tell me, did the Minister get  
23 advised in respect to the remedial initiatives  
24 that could be taken in respect to the list you and  
25 I have just gone over, other than obviously  
26 exploitation rate?

27 A Absolutely.

28 Q Yes.

29 A In fact, when the Minister first of all changed  
30 from an emergency listing to a normal listing  
31 process, it was on the basis of addressing all of  
32 those things. And Minister Anderson was very,  
33 very strong that we had to put in place those  
34 remedial actions to try to rehabilitate the Cultus  
35 stock. And subsequently Minister Regan in the  
36 briefings was very much aware of the nature of the  
37 action program that was being put in place and the  
38 diversity of issues that you've just summarized,  
39 that was being addressed.

40 Q And having been a participant in that consultative  
41 process with the -- or advisory process with the  
42 Minister back in 2004, are you satisfied that  
43 indeed the expectations that were spoken about  
44 back in 2004 in terms of the remedial actions that  
45 we speak of, have in fact been implemented?

46 A Certainly at that time I was confident they were  
47 being implemented, and I funded them, so my

- 1 responsibility was to approve those programs.  
2 Now, whether they've all been carried through to  
3 this day and time is another issue. I've kind of  
4 lost the thread since I retired.
- 5 Q Right.
- 6 A But I think a robust program was put in place, and  
7 I was satisfied that it was being delivered.
- 8 Q All right. And in fairness to you, you have been  
9 retired for three years, and I don't intend to ask  
10 you to do an overview of whether things have  
11 unfolded since your retirement the way one  
12 expected. But in fairness, in the period until  
13 your retirement, are you satisfied that the  
14 remedial steps as discussed with the Minister back  
15 in 2004 were robustly, to use your language,  
16 implemented?
- 17 A Most of them. I mentioned one earlier which was  
18 where the exploitation rate that was set at the 10  
19 to 12 percent --
- 20 Q Yes.
- 21 A -- was exceeded in one of the years, and I'm not  
22 sure that that was intentional, but it was a  
23 result of whatever unfolded in that fishing  
24 season. So there's those kinds of issues that  
25 could be looked at.
- 26 Q Yes. But focusing on the list, other than the  
27 exploitation rate, for example, the eradication of  
28 milfoil within the lake system, are you saying to  
29 us today that you believe from 2004 until your  
30 retirement that DFO effectively dealt with that  
31 remedial initiative?
- 32 A At the time it was initiated, I was certainly  
33 comfortable that a robust program was being put in  
34 place. In subsequent years I did not go back to  
35 check that each and every one of them was  
36 thoroughly evaluated. That would be an excellent  
37 question for some of the other folks who are going  
38 to testify as to what the track records of success  
39 was with this.
- 40 Q But in the period -- and I appreciate, yes, we  
41 will ask to the next panel.
- 42 A Yes.
- 43 Q But in terms of your stewardship of these  
44 initiatives, when it came to the milfoil, are you  
45 suggesting that until your retirement, 2004 until  
46 your retirement, DFO aggressively carried out a  
47 milfoil eradication program?

- 1 A I'm not sure about the milfoil, specifically. I  
2 was comfortable that a comprehensive set of  
3 initiatives were being put in place to recover the  
4 stock, so...
- 5 Q All right. I appreciate that. But I would like  
6 to deal with each of what I'll call the remedial  
7 initiatives one by one. When it comes to milfoil,  
8 is it your testimony, and I'm not trying to in any  
9 way be confrontational with you, Doctor, but is it  
10 your evidence that you're not sure at this time  
11 whether between 2004 and your retirement there in  
12 fact was an effective milfoil eradication program?
- 13 A As far as I knew, there was a comprehensive  
14 program in place. I did not go back and do a  
15 comprehensive audit of each and every one of those  
16 initiatives.
- 17 Q All right. And we'll come to this tomorrow with  
18 the other panel. Going through the list, for  
19 example, the predator eradication, pikeminnow in  
20 particular, would you agree with me, sir, that  
21 that initiative has for the most part been funded  
22 by the commercial industry and not by DFO?
- 23 A Hmm, I was not aware of that.
- 24 Q Were you --
- 25 A But I was aware that we had put money into the  
26 initial program to fund the what I thought was the  
27 pikeminnow program.
- 28 Q Yes. And is it your belief that DFO has put  
29 significant funding into that initiative in  
30 addition to the commercial investment, commercial  
31 industry investment?
- 32 A Certainly initially. And again I'd suggest to  
33 follow up on that.
- 34 Q I appreciate that. What about the other remedial  
35 initiatives as we discussed them in the list at  
36 the start of my cross-examination with you, with  
37 habitat restoration. We spoke of the groundwater  
38 issues, and so on. Do you recollect during your  
39 tenureship of this initiative that these  
40 initiatives were being pursued robustly, to use  
41 your language?
- 42 A I think some of the habitat work was done in the  
43 early years of that program. I'm not sure how far  
44 it went later. One has to recognize, too, that I  
45 had a responsibility from Ottawa to oversee the  
46 implementation of these programs and the recovery  
47 initiatives, to find the funding for them. And

1 the overall accountability for putting things in  
2 place and delivering rests with the RDG and with  
3 the regional staff, and there was a necessity then  
4 for them to follow up.

5 Q Yes. And so is it fair to say that you are not  
6 too much in a position to really give us your take  
7 on whether or not these initiatives have been  
8 effectively carried out or implemented by DFO?

9 A That's correct. But I would suggest it's a very  
10 useful thing to follow up, and for two reasons, to  
11 look at the robustness, if you wish, of it, and  
12 secondly to evaluate what has actually worked and  
13 what hasn't worked. Because when one makes these  
14 kinds of investments in programs, and on the basis  
15 of understandings that indeed they would go  
16 towards the betterment of the recovery of the  
17 resource, what can we learn from that from the  
18 standpoint of techniques that might be applied  
19 with other species, other stocks in other  
20 locations.

21 Q Yes. And when you were a participant in advising  
22 the Minister back in 2004, was there scientific  
23 analysis given to the Minister at that time  
24 whether these remedial steps we've just been going  
25 through on our list would in fact resolve, or at  
26 least complement the ER decisions when it came to  
27 ensuring the stability and abundance of the  
28 specie?

29 A Well, certainly when specialists in the region,  
30 who through a recovery team are tasked with the  
31 job of coming up with a recovery strategy, that  
32 has in place a number of different activities, one  
33 takes on board the fact that you've got the best  
34 group of people assembled to provide the necessary  
35 advice. And that it represents a comprehensive  
36 and effective way of improving the chances of  
37 recovering the stocks. So when we're briefing the  
38 Minister, we're telling the Minister this is the  
39 suite of programs that the region has come forward  
40 with. The nature of the work complies with the  
41 assessment by COSEWIC of the causes of leading to  
42 the declines of the resource, so you've got a  
43 suite of programs addressing those initiatives,  
44 and one has confidence in the regional staff that  
45 a good comprehensive program is being put forward.

46 Q So the best of your memory, the Minister would  
47 have walked away from those meetings with some

- 1 confidence that had these programs of, what I'll  
2 call remedial programs, been effectively  
3 implemented, that that would make a significant  
4 difference to the stability of the resource, of  
5 the specie.
- 6 A He would have walked away with some confidence,  
7 but also part of that discussion was, "Minister,  
8 despite our best efforts, these stocks may  
9 continue to decline. We are not all-knowing and  
10 all-seeing. There may be circumstances or causes  
11 that have not been described that will lead to a  
12 continuing decline, and, Minister, you may be  
13 faced with a situation further on in with listing  
14 that the stocks continue to decline, there will  
15 continue to be a situation where you can only  
16 allow a little bit of allowable harm, or none, and  
17 consequently there is no certainty. This is the  
18 best we can do, but it is by no means a guarantee  
19 of success."
- 20 Q But the advice given to the Minister was  
21 predicated upon significant funding being advanced  
22 for the remedial program that we've spoken about.
- 23 A And the remedial program being put in place with  
24 those provisos that I mentioned.
- 25 Q Yes. And, Doctor, you being the gatekeeper of the  
26 financial side of these remedial programs during  
27 those early years, were you satisfied that the  
28 monies being allocated by government to your  
29 office would effectively ensure the implementation  
30 of these remedial programs?
- 31 A The monies that we provided were the monies that  
32 were necessary to do the work according to the  
33 proposals that came forward. So in essence we  
34 were allocating the resources that were asked for  
35 by the region, recognizing, too, that the region  
36 also was investing people, time, salary, and  
37 regional resources, as well. And of course, we  
38 had a budget that had to deal with a whole number  
39 of endangered species, so funding issues across  
40 the country. But we never denied the funding to  
41 the Sakinaw and Cultus program, and even though  
42 they weren't listed, I insisted that that funding  
43 be continued for the recovery initiatives.
- 44 Q So you are saying that the region received all the  
45 money that they requested in respect to these  
46 remedial programs?
- 47 A We funded the requests that came in from the



1 region.

2 Q But that isn't quite answering my question. But  
3 to the degree that the monies that were requested  
4 by region were received by region?

5 A As far as I know.

6 Q All right. Now, I just have a few more minutes.  
7 I want to speak to Exhibit --

8 MR. WALLACE: Actually, you don't actually have a few  
9 more, but that's the allotment as I see it, but if  
10 you have a couple more questions, please...

11 MR. ROSENBLOOM: Thank you.

12 Q Exhibit 899, which is a document which Mr. Lunn  
13 will put up. And you were speaking to this as I  
14 believe the last series of questions by Mr.  
15 Wallace to you before lunchtime. And you were  
16 referred to page 2 of that document, and you were  
17 referred to the third column, and you were  
18 referred to the top paragraph, and you were  
19 referred in part to mid-paragraph, which reads:

20  
21 The first is a reluctance by wildlife  
22 management boards and the Department of  
23 Fisheries and Oceans to accept the additional  
24 stewardship responsibilities required by  
25 **SARA**.

26  
27 And you were asked about that, and you said "I  
28 don't agree with that." Are you suggesting -- and  
29 you testified this morning that you believe that  
30 DFO has embraced the stewardship responsibilities  
31 in respect to Cultus Lake and the threatened  
32 specie at Cultus Lake; is that correct? Is that  
33 your evidence?

34 A My evidence was that way ahead of the requirements  
35 in **SARA** and before the requirement made it  
36 necessary to put in place a recovery strategy, the  
37 Department took a lot of action in terms of  
38 changing the nature of the fishery and putting in  
39 place the recovery initiatives that we've talked  
40 about. And that to me is evidence of accepting  
41 stewardship responsibilities. And all of our  
42 approach to endangered species across the country  
43 was to get out ahead of **SARA** with respect to  
44 putting in place those recovery actions and  
45 stewardship initiatives.

46 So I think that the Department did accept  
47 that, very much so, and saw **SARA** as a useful and

John Davis

Cross-exam by Mr. Rosenbloom (GILLFSC)

Cross-exam by Mr. Eidsvik (SGAHC)

1 complementary piece of legislation whereby the  
2 **Fisheries Act** could be used, as well. I would put  
3 to you, sir, if we didn't have **SARA**, I wonder if  
4 we would have done all of the things that we did  
5 with respect to Cultus and Sakinaw and whether or  
6 not there would have been a program for those two  
7 stocks that cost nearly a million dollars and  
8 continued for a number of years.

9 Q Well, you and I have had an exchange this  
10 afternoon about the degree to which DFO has in  
11 fact effectively implemented remedial steps at  
12 Cultus Lake, and because of your retirement for  
13 three years, you have acknowledged you're not  
14 really au courant with exactly where things stand  
15 now, correct?

16 A Correct.

17 Q And therefore the question whether DFO has  
18 continuously been an effective steward of the  
19 issues of species at risk at Cultus Lake are really  
20 beyond your personal knowledge at this point in  
21 time because you obviously have been away for some  
22 time; is that not fair to say?

23 A I've been away for several years, and, yes, I  
24 didn't carry out a comprehensive audit in the last  
25 years of my tenure. But as far as I knew, the  
26 Department was taking effective action.

27 MR. ROSENBLOOM: Thank you. I have no further  
28 questions.

29 MR. WALLACE: Thank you, Mr. Rosenbloom. I have Mr.  
30 Eidsvik at a ten-minute estimate.

31 MR. EIDSVIK: Good afternoon, Mr. Commissioner.  
32 Philip. Good afternoon, Mr. Davis. Philip  
33 Eidsvik for the B.C. Fisheries Survival Coalition  
34 and the Area E Gillnetters.  
35

36 CROSS-EXAMINATION BY MR. EIDSVIK:  
37

38 Q I was interested on the issue of science. Mr.  
39 Rosenbloom has asked some questions that I was  
40 going to ask, so that saves us some time today.  
41 And you say that generally when you meet with  
42 people, everyone wants to save salmon and make  
43 things better. But often their interests, when  
44 they get directly involved, there's a change of  
45 attitude. And I guess as an example would be park  
46 visitors are an issue at Cultus Lake. Do you have  
47 any idea how many park visitors a year, roughly?

- 1 A No, I don't, but, you know, having gone up there  
2 in the summertime, I don't want to be there in the  
3 summer, so there's a lot of people.
- 4 Q Yes. It wouldn't surprise you if it was in the  
5 millions?
- 6 A Not at all. I mean, it's an amusement park in  
7 parts.
- 8 Q Now, people that visit the park might have a -- if  
9 you had to decrease the amount of park visitors to  
10 save Cultus sockeye, they might say, no, I still  
11 want to go to the park, close fisheries, or do  
12 something else. Is that possible?
- 13 A I guess that's possible, I mean --
- 14 Q Real estate developers who want to develop on the  
15 lake, they might say, no, stop the swimmers or the  
16 visitors, but let us develop our real estate.
- 17 A It's an example of the kinds of mixed objectives  
18 that people bring to the table.
- 19 Q So at some point somebody has to say, this is what  
20 we're going to do, because you're not always going  
21 to get agreement from all people.
- 22 A That's correct.
- 23 Q And under the **Constitution** that's DFO.
- 24 A Yeah.
- 25 Q So just to quickly follow up on a couple of  
26 questions that Mr. Rosenbloom asked, so in terms  
27 of park visitors, did DFO do anything to limit  
28 park visitors?
- 29 A Not to my knowledge, and I'm actually not sure  
30 what the jurisdictional issues would be there, and  
31 how DFO would approach that. And maybe you could  
32 be more specific from the standpoint are you aware  
33 of activities from park visitors that are  
34 threatening the survival or the rebuilding of  
35 Cultus?
- 36 Q Yeah, I think we'll go on that tomorrow with your  
37 other crew. Other than, and I guess the question  
38 that both Mr. Rosenbloom and I are interested in  
39 is other than fishing, we've seen some activities,  
40 have we seen any decrease in real estate  
41 development or sewage lines into the lake that  
42 DFO's controlled?
- 43 A I haven't looked at that recently. My impression,  
44 going up there a few years ago, was that the  
45 development was perhaps somewhat static, but I may  
46 be wrong.
- 47 Q So far as building docks on beaches like Lindell

- 1 Creek, one of the spawning areas, DFO ever take  
2 the docks out of there?
- 3 A You'll have to ask the regional folks.
- 4 Q Okay. That helps, and I think it would be really  
5 helpful if we had a summary of what exactly DFO  
6 did and when.
- 7 Talking about the pike removal program, were  
8 you aware of a pike removal program run by the  
9 seine sector in the early '90s, late '80s?
- 10 A I can't recall, no. I do recall a lot of interest  
11 coming from seiners and from that sector in this  
12 program, but I can't remember just how it was  
13 funded or who did it, and that sort of thing.
- 14 Q Do you remember when the first pike removal  
15 program started post-COSEWIC review?
- 16 A No.
- 17 Q No. Would it surprise you that the Area E  
18 Gillnetters threatened a protest fishery with  
19 gillnets to get pike out of the lake if DFO didn't  
20 begin one?
- 21 A It wouldn't surprise me.
- 22 Q And would it surprise you that Area E Gillnetters  
23 ran the first pike, northern pikeminnow removal  
24 program?
- 25 A It wouldn't surprise me, but I think it's awesome.  
26 I mean, that's the kind of thing that we should be  
27 talking about in terms of how various people can  
28 contribute to conservation. I think that's good  
29 for the Area E.
- 30 Q Did you recognize that there was a large degree of  
31 frustration that industry thought DFO was moving  
32 too slow on some of the remedial programs like  
33 pikeminnow removal and milfoil?
- 34 A I'm not aware of that, but certainly likely.
- 35 Q The last question I wanted to ask was about  
36 science, and we've talked a bit about that. And  
37 I've noticed, and maybe perhaps you might have,  
38 have you seen the politicization of science,  
39 fisheries science, in the past 15 to 20, 25 years?
- 40 A I don't think so.
- 41 Q I'm talking about if you had the scientists with  
42 the Suzuki Foundation talking about, say, the  
43 impact of a cold water release at the Kenney Dam,  
44 they might have a different opinion than the  
45 scientists for Alcan? Those are the kind of  
46 things I'm thinking about. Scientists for the  
47 Suzuki Foundation might have a different view on

John Davis

Cross-exam by Mr. Eidsvik (SGAHC)

Cross-exam by Mr. Harvey (TWCTUFA)

1 Cultus Lake ability to rebuild it at a certain  
2 exploitation rate than a scientist for the  
3 commercial sector.

4 A Well, I could see that the different groups and  
5 different organizations would use scientific  
6 information according to their particular  
7 perspective, and that people may spin science in  
8 that way. I think that's human nature and that's  
9 basically the kind of debate you see about climate  
10 change. Where folks come forward who are  
11 basically climate change deniers and, you know,  
12 they're touted to have scientific expertise that  
13 says none of this is happening, folks.

14 Q Even your use of the word "deniers", some would  
15 say that that was a pejorative term for the  
16 scientists who -- so there's, what I'm saying  
17 is --

18 A Yes.

19 Q -- there's a debate in science much the same as  
20 the debate goes on in politics, but in the end DFO  
21 has to make the choice because they have the  
22 constitutional authority.

23 A DFO. The buck stops with DFO (indiscernible -  
24 overlapping speakers).

25 MR. EIDSVIK: It may not be that we can't all hold  
26 hands around the table and sing "Kumbaya", DFO  
27 might have to lay down the law. Thank you, Mr.  
28 Davis.

29 A Thanks, Phil.

30 MR. WALLACE: Mr. Harvey?

31 THE COMMISSIONER: Mr. Wallace, are you planning to  
32 take a break this afternoon?

33 MR. WALLACE: What a good idea. Thank you.

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

36  
37 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)

38 (PROCEEDINGS RECONVENED)

39  
40 THE REGISTRAR: Order. The hearing is now resumed.

41 MR. WALLACE: Mr. Harvey?

42 MR. HARVEY: Yes.

43  
44 CROSS-EXAMINATION BY MR. HARVEY:

45  
46 Q Dr. Davis, I'd like to start off by referring back  
47 to the last question, I think, last answer you

1 gave to Mr. Wallace's question and the first  
2 answer to Mr. Timberg's question. You said, "If  
3 my note is right that the Department was in  
4 advance of **SARA** and that everything was done that  
5 would have been done under a **SARA** listing with  
6 respect to the Cultus stocks."

7 A Yes, I felt there was a comprehensive program put  
8 in place to address the concerns associated with  
9 Cultus and a broad suite of initiatives was put in  
10 place, funding was found and it was done in  
11 advance of the timelines of **SARA**.

12 Q Yes. And I think in response to Mr. Timberg's  
13 question you said that the incidental harvest had  
14 been reduced since 2001 and habitat restoration  
15 programs go underway.

16 A Yes.

17 Q Yes. So I'm going to look in a moment at the  
18 record from 2001 on but when you say everything  
19 was done that would have been done under **SARA**  
20 listing, you would concede, I think, that the  
21 socioeconomic analysis that is required by section  
22 49(e) of the **SARA Act** was not done.

23 A Okay. Can you remind me, sir, what 49(e) refers  
24 to?

25 Q Well, let's see. **SARA** requires both a recovery  
26 plan and an action plan, I think. Would you agree  
27 with that in general terms?

28 A Yes.

29 Q And under action plan, 49 deals with the contents.  
30 It says:

31  
32 An action plan must include, with respect to  
33 the area in which the area in which the  
34 action plan relates...

35  
36 - identification of critical habitat, et cetera -  
37

38 And then (e) says:

39  
40 ...an evaluation of the socio-economic costs  
41 of the action plan and the benefits to be  
42 derived from its implementation.  
43

44 So there's a statutory requirement for  
45 socioeconomic evaluation under **SARA**.

46 A There is in terms of the description as it relates  
47 to the action plan; however, **SARA** requires that

- 1 the first thing that you do is put in place a  
2 recovery strategy so action plans were intended to  
3 come later and be informed by the recovery  
4 strategy. In fact, action plans are later in the  
5 sequence of activities so there was no requirement  
6 on initial listing to develop a full-blown action  
7 plan at that stage.
- 8 Q But correct me if I'm wrong. What I gather from  
9 the documents is that a socioeconomic analysis is  
10 one of the early matters that has to be done  
11 before a recovery plan can be drawn up?
- 12 A No, no.
- 13 Q Because is not in this context, we're dealing with  
14 Fisheries, an allowable harm assessment part of  
15 what has to go into a recovery plan?
- 16 A Yes, an allowable harm assessment has a look at  
17 what allowable harm can take place; in other  
18 words, how many of those fish could be harvested  
19 without jeopardizing their recovery? So that's a  
20 legitimate piece of the initial activity. In  
21 fact, there is paper in some of Commission  
22 counsel's documents that refers to the allowable  
23 harm assessment aspects of it. So that's a key  
24 piece but that is not a socioeconomic analysis.
- 25 Q All right. But you don't get a recovery plan  
26 before you get a listing or you don't get the  
27 statutory requirement for a recovery plan or an  
28 action plan before a listing, do you? Listing  
29 comes first.
- 30 A Listing comes first under the Act.
- 31 Q Yes.
- 32 A My point that you started your question on was  
33 talking about some of the things that I had  
34 described that happened in advance of **SARA**. And  
35 my point was that the Department funded and put in  
36 place recovery initiatives prior to having to do  
37 so under the requirements of **SARA** legislation.
- 38 Q Yes. But if a listing was to be considered for  
39 Cultus, then a socioeconomic analysis would have  
40 had to have been done, wouldn't it, to guide the  
41 listing authority?
- 42 A Well, the way it would have, if it had played out  
43 exactly according to legislation, the listing  
44 would have happened, then the recovery strategy  
45 for an endangered species would have had to be put  
46 in place within one year of listing.
- 47 Q Yes.

- 1 A And mind you, we're ahead of the game.
- 2 Q Yes.
- 3 A And then down the line, later on, a full-blown  
4 action plan that takes the framework that the  
5 recovery strategy developed and expands it in a  
6 more meaningful way, would be put in place. And  
7 that's several years out after listing.
- 8 Q All right. I'm sorry. Did you agree or not agree  
9 that a socioeconomic assessment is an integral  
10 part of the listing process?
- 11 A No, I didn't agree, sir.
- 12 Q All right. I'm sorry. I can't put my finger on  
13 it but I thought that the government requires or  
14 the agency that makes a listing determination  
15 requires a review of the socioeconomic  
16 implications of listing.
- 17 A Socioeconomic implications can be considered by  
18 cabinet in the GIC decision-making process.
- 19 Q Yes.
- 20 A So it can be part of that process. But in terms  
21 of the way the COSEWIC advice is dealt with and  
22 the biological advice associated with a threat to  
23 the stock, that is not a requirement of that part  
24 of the process.
- 25 Q I see. All right. Well, whenever the appropriate  
26 stage for the socioeconomic analysis comes in, it  
27 was not done by 2001 when the Department began to  
28 get ahead of **SARA** and to reduce incidental  
29 impacts.
- 30 A In 2001, **SARA** legislation didn't exist.
- 31 Q Yes, but that's when the incidental harvest  
32 reduction began, according to your evidence.
- 33 A When the Department started to recognize that  
34 there was concerns about the status of Cultus Lake  
35 stocks and in 2002, from the evidence COSEWIC  
36 first made its assessment, that they would be  
37 putting forward to government. And you'll see  
38 that that was based on evidence coming from  
39 Departmental scientists who had written the  
40 documentation that COSEWIC used. So that is an  
41 indication that within the region there was  
42 recognition and scientific work being carried out  
43 that flagged the problem with Cultus and Sakinaw  
44 stocks.
- 45 Q Yes. I'm going to ask you to look at a document I  
46 put in at Tab 4 of my materials. And it's the  
47 last page. It's a whole lot of statistical



1 analyses. But I want to refer to the 2001 period  
2 on. We'll probably have to identify this later,  
3 Pacific Salmon Commission data. And then  
4 following that, I've done an analysis comparing  
5 the exploitation rates.

6 MR. HARVEY: Do you have the second, third and fourth  
7 page, Mr. Lunn?

8 MR. LUNN: Yes, I do.

9 MR. HARVEY:

10 Q Comparing the results of the 2001 going forward,  
11 harvest reduction. If we go to the last page in  
12 that tab.

13 MR. LUNN: I have four separate documents under that  
14 tab.

15 MR. HARVEY: Yes, all right. It's this one.

16 MR. LUNN: Is it?

17 MR. HARVEY: Yes.

18 MR. LUNN: Okay.

19 MR. HARVEY:

20 Q I don't think I can thoroughly explain the whole  
21 thing but basically this compares the escapement  
22 levels, which, of course, involved exploitation  
23 levels. According to the model that existed up to  
24 the end of the '80s and compares it with the model  
25 in later years and in particular, from 2001 on.  
26 And you'll see starting in 2001 and 2002, if we go  
27 to the right-hand column, the landed value of  
28 excess escapement in the terms of excess over the  
29 pre-existing --

30 MR. TIMBERG: Mr. Commissioner, I'm sorry to interrupt  
31 but I'm just questioning what the source of this  
32 document is. Where this information came from?

33 MR. HARVEY: All right. Well, I'll explain more fully.  
34 I'm trying to quickly. The basic statistics come  
35 from the Pacific Salmon Commission. And this is  
36 my own analysis that I've done because, in the  
37 absence of any analysis that I've been able to  
38 find in any of the ringtail documents, and it  
39 compares the old style with the new style  
40 basically, the new style being a lot more fish up  
41 in the spawning grounds and a lot less  
42 exploitation. And it attempts to be a value on  
43 that in economic terms.

44 Q And it compares with the 125 million value that  
45 was in some of the documents, Dr. Davis, that you  
46 put in. And it shows in the right-hand column,  
47 for example, starting in 2001, the difference in

- 1 landed value, 51 million in 2001, 107 in 2002 and  
2 on down as a result of less exploitation and more  
3 fish on the spawning grounds. Now, I don't expect  
4 you to say whether that's correct or incorrect in  
5 that analysis and we'll have to deal with the  
6 arithmetic later.
- 7 MR. TIMBERG: And is this for Cultus only or where?
- 8 MR. HARVEY: This is as a result of the change in style  
9 from 2001 on. It actually gets worked back before  
10 that. But the reduced harvest levels. The weak  
11 stock management --
- 12 MR. TIMBERG: But for which runs? Just so I can  
13 understand where -- like is this for sockeye  
14 salmon in the Fraser River? Or where are we  
15 talking?
- 16 MR. HARVEY: Yes, Fraser River sockeye.
- 17 MR. TIMBERG: The entire Fraser River?
- 18 MR. HARVEY: It includes all the runs.
- 19 Q Because, Dr. Davis, you appreciate, do you not --
- 20 MR. WALLACE: Excuse me, Mr. Commissioner. Mr. Harvey,  
21 this evidence should be tendered somehow. It's  
22 not attributed anywhere. I don't see anything  
23 about the source of any of it and I gather the  
24 panel on the right is your own arithmetic; is that  
25 correct?
- 26 MR. HARVEY: The analysis is it'll be a document I'll  
27 be using in final argument. The first is based on  
28 the statistical data in the first sheet which is  
29 Pacific Salmon Commission data, which I will have  
30 to, as you say, properly identify in the course of  
31 it. But what I'd like to do, and I'm trying to do  
32 it in a very short space of time, is deal with the  
33 facts and the socioeconomic consequences of the  
34 change in harvest management that took place in  
35 the last couple of decades, particularly from 2001  
36 on. At this point, I'll just ask that it be  
37 marked as a lettered exhibit for identification so  
38 that I can get to my question to Dr. Davis. Is  
39 that acceptable?
- 40 MR. WALLACE: Well, I don't know what to say. You're  
41 making a very large leap and asking the witness to  
42 make huge assumptions so I'm not in favour of this  
43 going in at all.
- 44 MR. TIMBERG: I'll file an actual objection to this  
45 document being utilized. We've had no notice.  
46 This was provided in a bundle of documents last  
47 week without any identification or explanation or

1 advance notice of the content of the document nor  
2 of the calculations. Dr. Davis has had no ability  
3 to consider this. It seems to be more in the  
4 sense of like an expert opinion where my friend's  
5 attributing values and numbers himself and is  
6 asking the witness, without any notice, to speak  
7 to it. So I object to this being tendered.  
8 MR. HARVEY: All right. Well, let me withdraw it. But  
9 to give Mr. Timberg notice that with the Wild  
10 Salmon Policy witnesses, I will again be  
11 attempting to get the statistics before them, the  
12 statistics that show the results of the Wild  
13 Salmon Policy. So perhaps Mr. Timberg will take  
14 up my invitation to discuss these documents with  
15 the witnesses.  
16 MS. GAERTNER: Well, perhaps I'll just register my  
17 concerns about this document, if the intention is  
18 to use it again. It's Brenda Gaertner for the  
19 First Nations Coalition. I found the document  
20 extremely confusing. I don't know which is your  
21 analysis or which is independent information. It  
22 seems to circle in years and so it's unclear what  
23 cycle you're using or what reliance you are. And  
24 if it is something that you've created, Mr.  
25 Harvey, I think this is a matter for final  
26 submissions, as distinct from an exhibit in this  
27 hearing.  
28 MR. HARVEY: Yes, it is for final submissions. But the  
29 statistical data is data, being the first page is  
30 data which obviously has to go in as part of the  
31 evidence. And what counsel do with that data is  
32 for final submissions. But I don't want to absorb  
33 my time by arguing about this.  
34 Q Let me go instead to Dr. Davis' evidence that 125  
35 million was the calculated loss over a four-year  
36 time period, if I have it right, or would be, as a  
37 result of Cultus listing; is that as I understand  
38 it?  
39 A No, that's not correct. That was second on Cultus  
40 to get it.  
41 Q Second on Cultus, all right. Well, with that  
42 qualification, it is right that second on Cultus  
43 listing has been calculated by somebody in the  
44 Department has having a price tag attached to it  
45 of 125 million over four years.  
46 A Yeah, and you'll find that in some of Commission  
47 counsel's documentation.

- 1 Q All right. And you've agreed with me that you've  
2 been doing pretty much exactly what you would have  
3 been required to do under **SARA** listing through the  
4 modern style of harvest management commencing in  
5 2001?
- 6 A I've stated that a comprehensive plan was put in  
7 place that included harvest management changes and  
8 a number of other initiatives to assist in the  
9 recovery of the stocks.
- 10 Q Yes. All right. Would you agree with me, and I'm  
11 now referring to your evidence, and you were  
12 certainly quite forthright in saying this, that  
13 proper social information, proper economic  
14 information is required in the decision-making  
15 process to assess the implications of the various  
16 choices?
- 17 A Yes, I've agreed that indeed we needed more robust  
18 socioeconomic analysis and the Department did put  
19 in place that police initiative to draft a  
20 framework for socioeconomic analysis.
- 21 Q Yes. And what you also need is ecosystem-based  
22 biological information from the discipline of  
23 population dynamics, do you not?
- 24 A Well, interesting. Perhaps you could explain to  
25 me what you mean by "ecosystem-based approach".
- 26 Q Well, it's a broad term but if I could narrow it  
27 down. In this field where you're dealing with a  
28 number of different Fraser River sockeye stocks,  
29 if you reduce exploitation in order to deal with a  
30 weak stock, you are going to end up having to  
31 reduce exploitation on the stronger stocks as  
32 well?
- 33 A That's correct.
- 34 Q That's correct?
- 35 A When they're comingling.
- 36 Q All right. And that will have the result of  
37 putting more of the stronger stocks into the  
38 rearing lake system, correct?
- 39 A What that does is changes the distribution on the  
40 spawning grounds but that, in fact, is not  
41 ecosystem-based management *per se*.
- 42 Q But you would want to have the information as to  
43 the detrimental effects, not only the  
44 socioeconomic effects but also biological effects  
45 of dramatically increasing escapement on the  
46 stronger stocks, would you not?
- 47 A Yes, when we were talking about that earlier, we

1 talked about where you set the bar and how you  
2 devise a plan that deals with those mixed stock  
3 relationships. And of course, if you're  
4 protecting the weaker ones you will have to suffer  
5 in mixed stock fisheries a reduction in the catch  
6 of the stronger stocks. And biologists also have  
7 to think about how many fish is that going to put  
8 on the spawning grounds? What is the optimal  
9 spawning density? And in the case of the Fraser,  
10 with all of the problems of survival and fish  
11 passage in-season, how do we get those fish to the  
12 spawning grounds in the appropriate numbers to  
13 optimize spawning?

14 Q Yes. But there's a limit to the carrying capacity  
15 on the spawning grounds and also in the rearing  
16 lakes for the progeny of the spawners, correct?

17 A Yes, this is an issue.

18 Q All that has to be taken into account because by  
19 focusing on the weak stocks, you may be doing harm  
20 to the ecology that supports the strong stocks,  
21 correct?

22 A I'm not sure "doing harm to the ecology" is  
23 correct but you might be creating a situation  
24 where you have over-spawning and so you've  
25 foregone some benefits that could have been  
26 enjoyed or you have multiple spawning happen where  
27 fish are spawning on top of the location where  
28 others spawned and disturbing the reds all those  
29 sorts of things. So it's very much a balancing  
30 act and one that requires a good sound look at  
31 those sorts of things.

32 Q Well, we've had some evidence here that the two  
33 successive years of very large spawners in the  
34 Quesnel system, 2001 and 2002, caused what Dr.  
35 Peterman called a long-term decline affecting  
36 those stocks. That's what I mean by --

37 MR. TIMBERG: Mr. Commissioner, that's not my  
38 recollection of Dr. Peterman's evidence on harm  
39 flowing from Quesnel Lake.

40 MR. HARVEY: Well, the record will show that.

41 Q But you agree with the concept, that, biologically  
42 speaking, you can exceed the carrying capacity of  
43 the rearing lakes and thereby do harm to those  
44 stocks?

45 A Well, one thing to think about in this context is  
46 that that happens naturally and has happened  
47 before any kind of human interventions and in

1 years where there's very abundant returns. That's  
2 probably gone on since time immemorial. But from  
3 the standpoint of fine-tuning fisheries, it's  
4 desirable to try to get the right number of  
5 spawners to the spawning grounds and to optimize  
6 the ability to harvest them as well.

7 Q Yes. And that's what the Department is expected  
8 to do, is it not?

9 A The Department is expected to do its level best to  
10 manage the fishery as best it can.

11 MR. HARVEY: All right. Now, with all the problems I'm  
12 probably going over the time but I understand that  
13 Ms. Gaertner would prefer to start tomorrow  
14 morning in any event.

15 MR. WALLACE: I am trying to have this witness  
16 completed as quickly as we can because we have a  
17 long week ahead of us.

18 MR. HARVEY: All right.

19 Q Well, let me go through quickly then the remaining  
20 matters I wish to put to you. Exhibit 891, you  
21 were asked about. In Exhibit 891, there's this  
22 statement that I got from my note, that:

23  
24 The incremental effects of listing hinge, to  
25 a large degree, on the ability to issue  
26 incidental harm permits under the Act.

27  
28 And I think it's section 73 of the Act. Because  
29 listing does not mean that you stop all the  
30 harvesting; it just means that you stop harvesting  
31 that is not covered either by the recovery plan or  
32 permits, correct?

33 A Listing a species requires an assessment of  
34 whether there can be any additional harm. The Act  
35 requires that if there is incidental harm that  
36 will affect the survival and recovery of the  
37 listed species then that should not take place.  
38 However, there could be a scientific assessment to  
39 say we will allow some incidental harm. The  
40 stocks are not so depressed there can't be any  
41 incidental mortality. And so in order to be able  
42 to catch/retain in any way a listed species, one  
43 has to have an incidental harm assessment done and  
44 the ability of that incidental catch to be  
45 encountered without jeopardizing the possibility  
46 of recovery.

47 Q Yes. And that's basically what the Department is

- 1 doing, not under the **SARA**, but under the Wild  
2 Salmon Policy and its management structure, as  
3 you've described it?
- 4 A Under the Wild Salmon Policy, I'm not -- I've been  
5 talking about **SARA**. But under the Wild Salmon  
6 Policy, I think the Department is attempting to  
7 manage to conservation units, as I understand it.
- 8 Q But basically what it's doing is it's attempting  
9 to mirror what would have happened under a **SARA**  
10 listing, correct?
- 11 A I'm not sure about that. I think the Wild Salmon  
12 Policy is designed to protect weak stocks and to  
13 identify weak stock components.
- 14 Q Well, it must be the way I'm putting the question.  
15 I'm just referring back to you general evidence  
16 that the Department is doing -- everything is done  
17 that would have been done under a **SARA** listing.
- 18 A With respect to the application of the **Fisheries**  
19 **Act**.
- 20 Q Yes, yes. And instead of a permit under **SARA**  
21 allowing some harvesting of Cultus, the harvesting  
22 is being done under the Fisheries Act licences and  
23 open and close time management, correct?
- 24 A Cultus is being managed under the normal  
25 provisions of the **Fisheries Act** and on the  
26 regulations and approaches that are used in day-  
27 to-day application of the **Fisheries Act**.
- 28 Q Yes. Now, my clients are from the commercial  
29 sector but they have the feeling that they would  
30 have been better off under **SARA** because then there  
31 would have been the statutory requirement for a  
32 socioeconomic assessment and there would have been  
33 the assessment of the allowable harm and there  
34 would have been the five-year review that's called  
35 for under the Act. Would you care to comment on  
36 that?
- 37 A It's an interesting view and you seem to have  
38 associated the socioeconomic assessment with an  
39 action plan which would have been a number of  
40 years down the road after the recovery strategy.  
41 My impression of what could have happened,  
42 particularly in years of poor return, is a very,  
43 very curtailed west coast fishery on returns of  
44 Sakinaw and Cultus fish coming back to the Fraser  
45 River and a very significant impact on your  
46 clients. So I'm not sure I agree with that.
- 47 Q Well, you say that. But they would have at least

1 had the benefit of a socioeconomic impact  
2 assessment by now, as required by **SARA**, wouldn't  
3 they?

4 A Well, we've said that the only socioeconomic  
5 assessment that is really required under the  
6 legislation was the socioeconomic factors being  
7 considered by GIC at the time of listing. And  
8 you'd mentioned it's your position that, with an  
9 action plan, there should be a requirement to do  
10 socioeconomics. And I've agreed earlier on that  
11 robust socioeconomics informs the process and  
12 informs the decisions taken by the Minister. But  
13 I think one has to be careful in terms of  
14 attributing what the future might or might not  
15 have been based on the application of that  
16 particular approach.

17 Q All right. Well, I won't ask you to speculate.

18 MR. HARVEY: But I would like to finally refer to  
19 Exhibit 892 that was put in earlier today, two  
20 factors in here. First of all, at page 1, which  
21 is ringtail 002. I'm sorry. This is Tab 10-F so  
22 I think it's 892-F probably.

23 MR. LUNN: 892-F, yes.

24 MR. HARVEY: Yes. Over the page to ringtail 002.

25 Q And this is a 2004 document but it does say at the  
26 beginning of the fourth paragraph down:

27  
28 As an allowable harm assessment has yet to be  
29 undertaken...

30  
31 So there was at this time no allowable harm  
32 assessment. Has there yet been an allowable harm  
33 assessment, to your knowledge, in this sense?

34 A My understanding was that Science, DFO, did do an  
35 allowable harm assessment analysis as part of this  
36 process. The reason that it's referred to there  
37 perhaps as has not yet been undertaken is maybe  
38 the timing sequence. There's some other paper  
39 somewhere in the process that talks about DFO  
40 Science doing allowable harm assessment.

41 Q I see, all right. On this document, if I could go  
42 to the next page, top of the next page, this just  
43 summarizes what is later in page 13 of the  
44 document, but it says:

45  
46 The analysis demonstrates that the northern  
47 east coast of Vancouver Island has the



1 highest concentration of dependence on Fraser  
2 River sockeye. Many of the coastal  
3 communities in this area face significant  
4 challenges, as these communities are among  
5 the least economic diverse economies in  
6 British Columbia...

7  
8 Et cetera, et cetera. This is the sort of  
9 socioeconomic impact assessment that you've been  
10 talking about, I think, is it not?

11 A That's a piece of it --

12 Q A piece of it.

13 A -- with respect to having a look at how people are  
14 dependent on fisheries up and down the coast and  
15 areas where a number of your clients would be  
16 actively fishing.

17 Q Yes. Well, this note, and this is on page 13 of  
18 the report, communities affected that they're  
19 talking about are Port Hardy, Port McNeil and  
20 Alert Bay. And I think I saw in one of the other  
21 reports, Quadra Island.

22 MR. HARVEY: Those are my questions, thank you.

23 A Thank you.

24 MR. WALLACE: Mr. Commissioner, Mr. Harvey has  
25 successfully run out Mr. Gaertner's clock so  
26 that's it for today.

27 THE COMMISSIONER: Well, I understand the Doctor will  
28 be finished his testimony by the morning break  
29 tomorrow morning; is that correct?

30 MR. WALLACE: That's my -- yes.

31 THE COMMISSIONER: Thank you.

32 THE REGISTRAR: The hearing is now adjourned for the  
33 day and will resume at ten o'clock tomorrow  
34 morning.

35  
36 (PROCEEDINGS ADJOURNED TO MAY 31, 2011, AT  
37 10:00 A.M.)  
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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.

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Karen Hefferland

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.

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Diane Rochfort

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.

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Karen Acaster