

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:

Hearing Room, 12th Floor
BC Securities Commission
701 West Georgia Street
Vancouver, B.C.

Friday, November 4, 2011

Tenue à :

Salle d'audience du 12^e étage
BC Securities Commission
701, rue West Georgia
Vancouver (C.-B.)

le vendredi 4 novembre 2011



Errata for the Transcript of Hearings on November 4, 2011

Page	Line	Error	Correction
iii		Appearance for WCCSFN	John Gailus

APPEARANCES / COMPARUTIONS

Brian Wallace, Q.C. Wendy Baker, Q.C. Patrick McGowan	Senior Commission Counsel Associate Commission Counsel Associate Commission Counsel
Mitchell Taylor, Q.C. Tim Timberg	Government of Canada ("CAN")
Clifton Prowse, Q.C. Boris Tyzuk, Q.C. Tara Callan	Province of British Columbia ("BCPROV")
No appearance	Pacific Salmon Commission ("PSC")
Chris Buchanan	B.C. Public Service Alliance of Canada Union of Environment Workers B.C. ("BCPSAC")
David Bursey	Rio Tinto Alcan Inc. ("RTAI")
Alan Blair	B.C. Salmon Farmers Association ("BCSFA")
No appearance	Seafood Producers Association of B.C. ("SPABC")
Gregory McDade, Q.C.	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")

APPEARANCES / COMPARUTIONS, cont'd.

Don Rosenbloom	Area D Salmon Gillnet Association; Area B Harvest Committee (Seine) ("GILLFSC")
No appearance	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 Hwilitsum 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")

APPEARANCES / COMPARUTIONS, cont'd.

Joseph Gereluk	Métis Nation British Columbia ("MNBC")
Tim Dickson	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")
Lisa Fong Ming Song	Heiltsuk Tribal Council ("HTC")

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1 Vancouver, B.C. /Vancouver
2 (C.-B.)
3 November 4, 2011/le 4 novembre
4 2011
5

6 THE REGISTRAR: The hearing is now resumed.

7 MS. BAKER: Good morning, Mr. Commissioner. Welcome
8 back, and we are commencing our final submissions
9 in this inquiry today. I have a couple of
10 housekeeping matters. It's Wendy Baker for the
11 Commission. We have a couple of housekeeping
12 matters to review this morning.

13 The first are truly housekeeping, which is
14 just some information about the room we're in.
15 You'll notice that it's very small, compared to
16 what we've been used to. So we have had to ask
17 people to work with us to find space in the room,
18 and I want to thank all the parties for helping me
19 out in that respect earlier this week and last,
20 trying to understand how many people would be in
21 the room. Because we don't have the gallery space
22 that we had in the previous room, I just want to
23 remind everybody on the record that these
24 proceedings are being audio-cast from the Cohen
25 Commission website, so people and their clients
26 can listen if they can't be present in the room.

27 To allow as much space as possible for
28 people, for counsel for other participants to have
29 seating, we've moved Commission counsel up to the
30 front beside the Commissioner. Just so everybody
31 understands why we're there, it's simply because
32 of the seating problem in the room.

33 And one last housekeeping matter. The mikes
34 that you see in the room, in our previous room
35 you'll remember that you pushed a button to turn
36 the mike on. In this room the mikes are on and
37 you push the button to mute them. So it's going
38 to be a bit of a challenge and people need to be
39 careful. And Mr. Lunn actually controls whether
40 the mikes are on or off. So I think only the
41 speaking mike will be turned on for the most part.
42 We'll try and manage that. But if you do need to
43 stand up to make a point when you're not at one of
44 the mikes that's turned on, just give us time to
45 get the mikes turned on. And if you are at a
46 speaking mike, remember the mute if you don't want
47 the conversation to be heard by all.

1 The BlackBerrys that people have with them,
2 if you're at a mike, you must turn it off
3 completely because it will interfere with the mike
4 and the recording. So please be very careful
5 about that. If you have a BlackBerry, if you'd
6 turn it right off so that we don't have that
7 problem.

8 Mr. Commissioner, I wrote to the parties
9 earlier about the housekeeping matters that were
10 on the table for today, and just to run through
11 the list that I have still. There was some
12 qualifications of experts outstanding from the
13 hearings that we'd like to deal with first. Then
14 there are two documents, the WSP review and the
15 MSC audit, which are in draft form, which I'd like
16 to mark and make some submissions on the final
17 documents when they're produced. I understand Mr.
18 Taylor has a submission he'd like to make on some
19 of the content in the reply submissions.

20 Those are the housekeeping matters.

21 I've set aside 90 minutes for that, and we're
22 ten after 10:00 now, so I'll take that down to 80
23 minutes, and I'll get started.

24 First of all, Mr. Commissioner, you'll
25 remember when we were doing the hearings on gravel
26 mining in the Fraser River, we had two experts,
27 Dr. Rosenau and Dr. Rempel, testify and I made
28 submissions on two sets of qualifications for
29 these witnesses. One of the qualifications was
30 objected to vis-à-vis Dr. Rosenau by some of the
31 parties, namely the Province, Canada and counsel
32 for Sto:lo and Cheam, and you ruled that we would
33 deal with this later in final submissions.

34 So I wrote, I made a submission on October 17
35 to counsel, seeking to have the two witnesses
36 qualified in the one area which was not opposed by
37 the parties during the hearing, and that was
38 experts in freshwater fish habitat in flowing
39 waters and rivers, with an emphasis in the Lower
40 Fraser. I have been advised by Mr. Tyzuk for the
41 Province that he has spoken with Canada and
42 counsel for Sto:lo and Cheam, and they're content
43 with that qualification, and I have heard no other
44 objections to that qualification from my friends.
45 So I would ask that those two witnesses be
46 qualified as I've just described.

47 THE COMMISSIONER: Very well, thank you.

1 MS. BAKER: And then Dr. Ken Ashley testified on June
2 14 as part of the wastewater hearings, and counsel
3 for the Commission led evidence on his
4 qualifications in environmental engineering,
5 aquatic ecology and limnology. There was no
6 objections taken by counsel for the participants
7 at that time, but there was an oversight in that
8 the actual qualification was not asked for from
9 me, and so that actual qualification has not been
10 made on the record. So we're asking that that be
11 made, as well.

12 THE COMMISSIONER: Yes, thank you.

13 MS. BAKER: Thank you. And the final housekeeping
14 matter, from my perspective, is two documents that
15 were referred to in evidence and came in following
16 the close of the different hearing topics. One of
17 them is the performance review, the Draft
18 Performance Review of the Wild Salmon Policy
19 prepared by Gardner Pinfold, and that's on the
20 screen now. That's dated September 2011, and I
21 understand that a final document will be coming,
22 as well. And I'll just -- and then I'll identify
23 the other documents.

24 The next document is an audit prepared by
25 Intertek Moody Marine under the MSC program -- and
26 is that document on the screen? There we go.
27 This is dated October, 2011 and again this is a
28 draft document.

29 What we would like the Commissioner to do
30 with respect to these two documents is have the
31 drafts marked as exhibits now, and then I would
32 like to ask the Commission for a ruling that when
33 the final documents are submitted to the
34 Commission that they be marked at that time, and
35 of course circulated to all parties and put on the
36 website, so that we'd have the final documents.
37 They're just not available yet.

38 I don't know what people's positions are on
39 these documents. I haven't heard. So but I --
40 these documents certainly were referred to in
41 evidence as forthcoming. They're here. People
42 have had access to them and I understand will be
43 relying on them to a certain extent in their
44 submissions. I would also propose that when the
45 final documents come in and are marked, that the
46 parties be given an opportunity to make a very
47 short submission, if they say it's necessary, to

1 simply address any changes in the final documents
2 from the draft documents to the extent any of
3 those changes affect their submissions. So not a
4 full submission on the new document, but just to
5 address changes. So those would be the rulings
6 I'm looking for on those two documents, and I
7 don't know if people have a response to those
8 submissions.

9 THE COMMISSIONER: Mr. Timberg.

10 MR. TIMBERG: Yes, Mr. Commissioner. It's Canada's
11 position we're not opposed to these being marked
12 as exhibits. We note that they are drafts. We
13 note that there is a process happening between DFO
14 and the authors of these two reviews. And when
15 they are finalized, we agree that they be marked
16 as an exhibit at that point in time and DFO will
17 -- or Canada will provide a response to the final
18 submissions at that time.

19 THE COMMISSIONER: Thank you. Very well, then.

20 MR. PROWSE: Sorry, Mr. Commissioner.

21 THE REGISTRAR: One moment, please.

22 MR. PROWSE: We agree with the proposal on behalf of
23 the Province. Cliff Prowse, for the record.

24 THE COMMISSIONER: Very well. Thank you, Ms. Baker.

25 MS. BAKER: Thank you. And then the final housekeeping
26 matter before we begin.

27 THE REGISTRAR: Shall we mark them?

28 MS. BAKER: Yes, please, have those marked.

29 THE REGISTRAR: The Draft Performance Review of the
30 Wild Salmon Policy will be Exhibit 1992, and the
31 Draft Surveillance Report of B.C. Commercial
32 Sockeye Salmon Fisheries will be 1993.

33

34 EXHIBIT 1992: Draft Performance Review of
35 the Wild Salmon Policy, prepared for DFO by
36 Gardner Pinfold, September 2011

37

38 EXHIBIT 1993: English et al, Draft
39 Surveillance Report British Columbia
40 Commercial Sockeye Salmon Fisheries, Intertek
41 Moody Marine, October 2011

42

43 MS. BAKER: And we also have a ruling that we mark the
44 finals and allow submissions on the finals when
45 they come in, Mr. Commissioner.

46 THE COMMISSIONER: Yes.

47 MS. BAKER: Thank you. The last matter, then, is a

1 motion, or an application, or a housekeeping
2 matter that Canada would like to address. So I'll
3 turn it over to Mr. Taylor.

4 MR. TAYLOR: What this is about, Mr. Commissioner --
5 firstly, Mitchell Taylor and with me is Tim
6 Timberg for the participant Canada. What this is
7 about is some paragraphs in the replies received
8 last evening of the Conservation Coalition, the
9 Aquaculture Coalition and the Heiltsuk Tribal
10 Council, and I'll come to the specific paragraphs
11 in the course of speaking.

12 Those paragraphs by those participants refer
13 to information that's not in evidence.
14 Specifically, it refers to infectious salmon
15 anaemia or ISA. And further on that, yesterday
16 all participants' counsel were advised that in one
17 way or another the Commission is going to have
18 some reopening of evidence and some day or days of
19 hearings of *viva voce* evidence, as I understand
20 it, and some documentary evidence sometime in the
21 not too distant future.

22 There will be evidence at that time, of
23 course, but right now we have replies that refer
24 to variously media articles and various documents
25 that are not in evidence, all of which are cherry-
26 picked and snapshots, and so forth. And because
27 of that, and because the replies in the normal
28 course will go up on the Commission's website and
29 become public documents, and by putting this stuff
30 in the replies, the participants in question can
31 avoid the undertakings of confidentiality if
32 they're allowed to maintain those submissions.

33 I'm asking that the particular paragraphs
34 that I'll enumerate be ordered struck from the
35 replies in question, that those replies not be
36 posted on the website, and that the participants
37 be directed that they have to file new replies in
38 accordance with any order made.

39 The paragraphs in question are in the
40 Conservation Coalition, paragraphs 19, 33 to 35,
41 40 and 41, and Recommendation J, which is on page
42 38 to 39. In the Aquaculture Coalition it's the
43 first two sentences of the second paragraph on
44 page 4, and in the Heiltsuk reply, it's paragraphs
45 23 to 26. And again because those paragraphs
46 refer to material that's not in evidence and
47 therefore should not be brought before the

1 Commissioner on argument, and because it is
2 particularly controversial material, presumably
3 aimed, amongst other things, at grabbing
4 headlines, and because all of this, that specific
5 topic is gong to be subject of evidence, it's
6 wrong, premature and out of bounds to have it in
7 the replies now and should be struck, the replies
8 ordered not put on the website, and new replies
9 filed, as I say. Thank you.

10 MR. BLAIR: Mr. Commissioner, Alan Blair, appearing for
11 the B.C. Salmon Farmers Association. We support
12 the application by Canada.

13 MS. CALLAN: Mr. Commissioner, Callan, C-a-l-l-a-n,
14 initials T.E., appearing on behalf of Her Majesty
15 the Queen in Right of the Province of British
16 Columbia. The Province agrees and supports
17 Canada's proposal on striking the submissions with
18 respect to the new issues that are not in evidence
19 at this time.

20 THE COMMISSIONER: Mr. Leadem.

21 MR. LEADEM: Good morning, Mr. Commissioner, welcome
22 back. Leadem, initial T., appearing as counsel
23 for the Conservation Coalition.

24 Firstly I want to clear up something that I
25 heard Mr. Taylor say, that this was a breach of
26 undertaking including these materials. I can
27 assure Mr. Taylor that none of the materials that
28 were disclosed by Commission were disclosed in the
29 context of my submissions in reply. So I take
30 issue with his characterization of the paragraphs
31 in that sense.

32 I do make the admission that within the reply
33 paragraphs there is a reference to a newspaper
34 article and information that has been widely
35 disseminated, and is made public through the press
36 and other sources of media, that there was
37 discovered in British Columbia ISAV. And on that
38 basis, and without knowing, I should mention, and
39 hasten to mention, Mr. Commissioner, that there
40 was going to be a process unfolding in this
41 Commission to deal with that particular piece of
42 evidence, I was faced with the challenge of trying
43 to answer submissions from Canada, the Province
44 and the B.C. Salmon Farmers Association that
45 relies heavily on the fact that there has been no
46 discovery of ISAV in this province.

47 And, with respect, it is premature for my

1 learned friend to make the application he's made.
2 I understand from a letter that I received from
3 Commission Counsel, from Mr. Wallace, and
4 proposing that we meet on Monday morning to
5 discuss this very issue, and what will unfold in
6 terms of the hearings.

7 But in the interim, what I'm faced with is
8 this situation, that I have submissions of Canada,
9 the Province, and the B.C. Salmon Farmers
10 Association that rely heavily on facts that are,
11 as I know them now, to be inaccurate. And I am
12 faced with the unenviable task then of responding
13 to those facts, knowing full well - full well -
14 that those submissions cannot possibly stand. And
15 it was that -- with that in mind, that I attended
16 to filing a reply in the manner that Mr. Taylor
17 describes.

18 Now, we're all at a loss, I can imagine, Mr.
19 Commissioner, because I don't have my reply
20 submissions, nor do you have the benefit of having
21 them before you. So I would suggest that before
22 you could even make a substantive ruling on this,
23 you would need to at least review what's in the
24 material and come to terms with it in that
25 fashion.

26 Those are my respectful submissions.

27 THE COMMISSIONER: Thank you, Mr. Leadem.

28 MR. McDADE: Mr. Commissioner, Greg McDade for the
29 Aquaculture Coalition. As I heard Mr. Taylor,
30 I've just been accused of drafting a document
31 that's a breach of confidentiality, and a breach
32 of undertaking, and an effort to grab headlines.
33 The sentence says this:

34
35 Recent testing suggests that ISA is found in
36 multiple species of Pacific salmon, including
37 sockeye, in British Columbia waters. At
38 present, the extent of ISA in B.C. is not
39 known.

40
41 That's what Mr. Taylor makes that kind of
42 allegation based on.

43 Today I read a press release from the
44 Commission that says:

45
46 Testing of samples of Pacific salmon from two
47 areas of the Province has indicated the

1 possible presence of the Infectious Salmon
2 Anaemia (ISA) virus in several Pacific
3 salmon.
4

5 There is nothing in the sentences in my reply that
6 is any more offensive or unreasonable than the
7 sentence in the press release.

8 This is nothing more than a blatant attempt
9 by Canada to yet again suppress evidence that's
10 absolutely critical to avoid, deny, whenever they
11 can. This is -- the Government of Canada has
12 entered into kind of an Alice in Wonderland area,
13 "I see only what I choose to see," and we pretend
14 that stuff doesn't exist that everyone in this
15 room knows to exist.

16 I join with Mr. Leadem in saying simply that
17 this motion by Mr. Taylor, it certainly has value
18 in showing where Canada comes from in responding
19 to this. In the midst of an international clamour
20 over this ISA testing, rather than deal with the
21 evidence, Canada wishes to ignore it.

22 But it's premature. If there is going to be
23 a hearing on these matters, there's nothing in
24 those two sentences I read to you that is the
25 least bit offensive, and certainly the appropriate
26 way to deal with this is just to leave this motion
27 stand where it lays until you hear that evidence.
28 There's nothing controversial in those two
29 sentences, nothing different than what the
30 Commission itself is saying, and to strike them at
31 this point would be to endorse that attitude of
32 suppression and denial from the government.

33 So I simply suggest that this application be
34 adjourned until we have our hearing dates in
35 December and hear the evidence.

36 THE COMMISSIONER: Thank you, Mr. McDade. Ms. Fong.

37 MS. FONG: Lisa Fong, for Heiltsuk Tribal Council. I
38 support Mr. Leadem and Mr. McDade, that the
39 application should be adjourned until December
40 when we address the ISA issue. But I do want to
41 address a few matters which were raised by Canada.

42 I think it's important to know that in terms
43 of timing, our reply submissions were actually due
44 before Commission counsel announced to us what the
45 process would be to deal with this ISA information
46 that was disclosed after the oral hearings, so all
47 the parties, not just us, but everyone was at a

1 loss as to deal with, how do we deal with this
2 issue, because we're filing our final reply
3 submissions. And we had been told earlier by
4 Commission counsel that we have to have everything
5 in our reply submissions, because this was in
6 essence the last chance, unless there was going to
7 be a further allowance.

8 Now, as it turned out, Commission counsel
9 advised us, yesterday almost five o'clock, that
10 there is this new process that we will be able to
11 -- and I'm hopeful, because Heiltsuk is the
12 Central Coast Nation which is affected by where
13 the ISA has been found, that we'll be able to
14 tender new evidence and make further submissions
15 on this very important issue.

16 And I want to be clear, because I think we
17 are the -- and I admit this, we are the guilty
18 party, and it was done absolutely without
19 intention of mentioning a media release, and I say
20 it was done absolutely without intention, and we
21 would be agreeable to striking that one sentence
22 or those three words in our submissions, and
23 providing a reply again.

24 I want to be clear that there was absolutely
25 no intention to breach an undertaking, or to
26 cherry-pick, or to do anything in the public
27 media. We have had very contentious issues, as
28 Heiltsuk, throughout this proceeding. We have
29 never behaved in that way, and we are absolutely
30 opposed and terribly insulted by how Canada has
31 characterized this behaviour.

32 Now, in terms of timing again, I think it's
33 important to note when Canada raised this
34 objection, it was raised at 9:05. That's when we
35 received it this morning. I didn't see it until I
36 got in, and had I been able to talk to Canada in
37 advance, we might have been able to deal with this
38 in a fashion that didn't take up time in this
39 hearing. And I think that would be an appropriate
40 way.

41 But in any event, I agree with Mr. Leadem and
42 Mr. McDade that this is a matter that can be dealt
43 with at the hearings. Thank you.

44 THE COMMISSIONER: Ms. Gaertner.

45 MS. GAERTNER: Good morning, Mr. Commissioner, it's
46 Brenda Gaertner for the First Nations Coalition.
47 I'm not going to speak to the substance of the

1 matter, but I am going to speak to the process.

2 If they're only referring to these presses
3 that have come out and are in the public record, I
4 can't see any problem with that, if that's what
5 they had to rely on to bring a matter of serious
6 concern to you in their replies. And it is a
7 matter of serious concern. This is not a light
8 matter, and I'm sure you know that. And so if
9 that's all that anyone is relying on that is over
10 and above the evidence, then I'd like those
11 paragraphs to stay, and I'd like this to be part
12 of the public record.

13 You need the -- all of the submissions of all
14 of the parties and their reply as part of the
15 public record as soon as possible. People read
16 them all over the province. My clients read them
17 from your websites all over the province. And we
18 need to continue our work in collaboration.
19 People need to see what people are saying about
20 these matters.

21 And so to the extent that someone's
22 adjourning an application till further time, if
23 that included these replies not being part of the
24 website or waiting until that moment, I'm not in
25 favour of that. I think it's very important that
26 they move on with all of the information as part
27 of the record. And so I would encourage you to do
28 that, and if something needs to -- I don't -- if
29 they're only relying on a public document, there's
30 a lot of people in their replies, Mr.
31 Commissioner, who have relied on things other than
32 what's in evidence. And so that this one public
33 announcement that's a press release that's caused
34 so much concern is, I think, inappropriate.

35 MR. TAYLOR: I'll deal with them in reverse order, the
36 submissions, that is. I'm assuming that Ms.
37 Gaertner hasn't read the paragraphs that I'm
38 speaking to, because she doesn't quite have it as
39 what those paragraphs say.

40 I will say that in my read, and in my
41 submission, the Conservation Coalition and the
42 Heiltsuk are the worst offending paragraphs of the
43 three.

44 The letter that came from the Commission
45 yesterday about how to deal with the newly arisen
46 piece of information, is very clear. So to the
47 extent that Mr. Leadem is waiting for Monday to

1 find out what will happen, we don't need to.
2 Monday is the detail, but I'm going to read the
3 letter in part. This is a letter from Commission
4 counsel to all participants:
5

6 The Commission will convene an oral hearing
7 restricted to this topic.
8

9 And it goes on to speak to when they think they're
10 going to do that. Obviously there's scheduling
11 issues, but they're aiming for December. The
12 topic in question is "ISA Virus Hearings", and the
13 Commission letter was in my view appropriately
14 worded. It's also something that only counsel
15 gets, and I'm not going to read it all, but it was
16 appropriately worded and neutral.

17 To the extent that there is a Commission
18 media release, which I haven't seen, that says
19 what Mr. McDade says it says, in my respectful
20 submission, the Commission media release has gone
21 too far. But Commission counsel's letter was
22 fine.

23 In any event, the point, the real point is
24 that there is going to be a hearing on this.
25 That's when you get evidence, and that's -- or
26 it's after that that you make submissions, not
27 now. The idea of adjourning and leaving
28 everything in limbo doesn't help because you still
29 have, and I'll use it again, cherry-picked
30 information put up there for anyone to take and
31 use and thereby avoid the undertakings that we're
32 all under.

33 And in terms of cherry-picking, it is
34 selective, what's in the material. There have
35 been some media releases that have been released
36 by government. They're not referred to. They say
37 some different things. But the participants who
38 choose to cite non-evidence, don't choose to cite
39 other non-evidence. And I'm not going to engage
40 in that by myself referring to non-evidence.

41 And picking up on what Mr. Leadem was saying,
42 and Ms. Fong somewhat, as well, which had to do
43 with essentially saying that he or she had a
44 difficult dilemma, what do I do, had to do
45 something, didn't have the letter. Well, none of
46 that explains or justifies counsel, who well know
47 how to make argument and well know how to run

1 hearings and proceedings from a counsel
2 perspective, none of that justifies citing non-
3 evidence. You just don't do that. There's a
4 proper way to do things, make an application for
5 evidence, and so forth. But you don't just stick
6 it in, and then start using it, especially in a
7 selective way.

8 Now, a couple of the counsel pointed out that
9 you don't have the paragraphs in question before
10 you. They're available, of course, and if we can
11 be of any assistance to make them more easily
12 available, we'd be happy to do that. But I'm
13 assuming they're available through the Commission.
14 It certainly makes sense that you would want to
15 look at the paragraphs in question in light of the
16 submissions I've made and the other counsel have
17 made, and that would be fine. But I don't accept
18 that all of this can just be put off until
19 sometime in December. You would need to, in my
20 respectful submission, make a ruling on this
21 before the material goes up on the website, and
22 anything that does go on the website would have to
23 be in accordance with whatever ruling you make.
24 Thank you.

25 MS. BAKER: Mr. Commissioner, Commission counsel has no
26 -- doesn't need to make submissions on the two
27 sides, that's been adequately covered.

28 But one thing I need some clarification from
29 Mr. Taylor on is what exactly does he say is in
30 breach of an undertaking. Because I've heard --
31 I've heard some of the counsel say that they have
32 not released any information that was produced
33 under the undertaking, and I've heard in reply Mr.
34 Taylor say that there is a breach of undertaking,
35 and I'm not -- I'd like him to identify what
36 exactly he says is the breach of undertaking.

37 MS. TAYLOR: Well, I thought I was careful with my
38 words, but let me try again.

39 The concern I have is by putting stuff in
40 submissions that is not evidence, you then allow
41 people to have it on the website and make use of
42 that in the public domain. It's a springboard, if
43 you like, to having statements that are subject of
44 -- or material that's subject of undertaking added
45 on to what's already going out there. I'll have
46 to, if it's important to do so, look at the
47 paragraphs in question to parse out any particular

1 words. But my concern is that they are referring
2 to non-evidence, and that in turn will lead to
3 some spring-boarding, if I could put it that way.
4 MS. BAKER: I would like some clarification on that,
5 because if Mr. Taylor is saying that he's taken a
6 -- that other parties have taken a media release
7 that's public and referred to it in their
8 submission, and then it gets put on the website
9 and becomes public, though it started in the
10 public arena to begin with, so I'm not sure how
11 that's an issue on undertakings. And that would
12 be, I think, from the Commission's perspective,
13 the one issue that we would want to weigh in on,
14 is if there is a breach of undertaking, something
15 was produced through the Commission process that's
16 to be kept confidential until marked in these
17 hearings, obviously we have a concern that that
18 would not be put on the -- as part of submissions.
19 But if they're referring to media releases that
20 are public in the first instance, I'm not sure
21 that the issue of undertakings comes up, in fact
22 that they're then put on our submissions as
23 reference and again put into the public arena,
24 it's not seen to be a concern.
25 MR. TAYLOR: Well, I'll try again. I don't have the
26 various media releases that were referred to in
27 front of me, but one of them came from SFU, and it
28 was related to a report that underlied that. And
29 as I read the material, what was being said went
30 beyond the actual release and into the underlying
31 report, but I don't have the material in front of
32 me.
33 MS. FONG: Mr. Commissioner, Lisa Fong, the Heiltsuk
34 Tribal Council.
35 Mr. Commissioner, if you are going to address
36 this application, I would ask that we do it
37 properly, because these are serious allegations.
38 It's been alleged that counsel are in breach of
39 their undertakings and we would ask, because I
40 only received notice of this, I think in a three-
41 line email this morning at 9:05, that Canada set
42 out its application properly with exactly what it
43 says is the breach of undertaking, its submissions
44 on that, and that we, the parties, the
45 participants who allegedly did the wrong, be
46 entitled to then respond to it properly. Because
47 of course, the ISA, as we all know, has been the

1 subject of this hearing prior to certain
2 information further being released.

3 So, you know, part of the submission that we
4 would be making, because I need to know exactly
5 what he's objecting to, is going to be that there
6 are portions, in fact the majority of it, which
7 was properly part of the hearing. And of course I
8 want to address this issue of the concept of a
9 media release, which is already in the public,
10 being improperly used in submissions.

11 So my point being, as a matter of process,
12 procedural fairness, we'd want the opportunity to
13 respond properly accepted. If Canada's going to
14 bring this application, then it should bring it
15 properly. We should be able to respond to it
16 properly and deal with it.

17 MR. TAYLOR: Well, let me try and clarify again. I
18 think counsel are taking or reading more or saying
19 more into what I was saying than I mean to say,
20 because I wasn't going after counsel as such.

21 There's also some other issues ongoing about
22 undertakings and I don't want to cloud those
23 issues.

24 If it's going to simplify things, I can make
25 the argument, make the motion and the argument
26 that I've made without referring to any existing
27 or current breaches of undertaking.

28 I've raised the point about spring-boarding
29 to something more. But I don't have to rely on
30 anything current or about these paragraphs, or
31 about the specific actions of counsel to make the
32 motion I'm making. It's about non-evidence, it's
33 about non-evidence going into reply, and it's
34 about doing that, in my view, wrongly, and at a
35 time in particular when there is going to be an
36 evidentiary hearing.

37 So I hope that clarifies it. We could deal
38 with this motion without undertakings then.

39 MR. LEADEM: And I thank Mr. Taylor for recanting,
40 because I, too, take my professional obligations
41 seriously, and I have never been subjected to
42 anyone in a public forum or otherwise suggesting
43 that I been in breach of an undertaking. And I am
44 grateful to Mr. Taylor for withdrawing his
45 comments, because it does -- I am personally
46 offended by them. And if he insists on taking
47 this course, which I understand he may not, then I

1 join with Ms. Fong that we're entitled to know
2 exactly how and what way simply referring to press
3 releases is a breach of undertaking.

4 MS. CALLAN: Mr. Commissioner, I think it would be of
5 benefit if we have some ground rules on how the
6 next week of hearings occurs, and in particular
7 with respect to the ISAV issue. It's an important
8 issue and it should be dealt with in a fulsome
9 evidentiary record and in a proper manner.

10 The Province submits that during the course
11 of these hearings that the submissions be -- on
12 this point be not referred to, and as well that
13 any oral submissions not address this point, and
14 deal with the evidentiary record at the time, and
15 then in December when we have the additional
16 hearings, any further submissions then will
17 address this particular point. Because the
18 Province does submit it's a very important issue
19 that needs to be dealt with properly and not done
20 in a haphazard manner at this time.

21 And those are my submissions.

22 THE COMMISSIONER: Ms. Baker.

23 MS. BAKER: Thank you, Mr. Commissioner. I think
24 you're telling me to wrap up this point. You've
25 heard submissions on Mr. Taylor's motion. Ms.
26 Callan has now suggested that the issue not be
27 dealt with at all, and on that point I would
28 simply say that counsel have the time allotted to
29 them for their reply submissions. They will have
30 time to deal with ISA when we reconvene on that
31 point, and it should be up to counsel to decide
32 how they want to treat the issue. They are all
33 professionals and they can decide the best way to
34 address the issue, and I wouldn't put a
35 restriction on how counsel choose to spend their
36 time during their limited reply submission at this
37 point, would be my submission.

38 THE COMMISSIONER: Thank you very much. I hope this is
39 on and you can hear me.

40 Thank you to Mr. Taylor, Mr. Leadem, Ms.
41 Gaertner and the Province, and Ms. Fong and anyone
42 else who has risen on this point. Obviously, as
43 Mr. Taylor pointed out, I have not looked at the
44 reply submissions that counsel have been referring
45 to, but -- and I would want to do that before I
46 made any ruling. But I want to assure all counsel
47 that before reply submissions that are being

1 addressed would go on the website, I would give my
2 ruling, so that there's no further complications
3 arising from concerns that any of the counsel
4 might have respect to the content of those
5 replies. So I don't postpone this matter until
6 December, as has been suggested, but I would like
7 an opportunity to consider your submissions and to
8 consider this material so I can make my ruling
9 accordingly, and I will do that.

10 So I think, Ms. Baker, for the moment I will
11 postpone making a ruling until I've had an
12 opportunity to consider the submissions more
13 fully, and that means that we could, if it's
14 convenient for you and the rest of counsel, launch
15 into submissions this morning.

16 MS. BAKER: Thank you, Mr. Commissioner.

17 THE COMMISSIONER: Thank you very much.

18 MS. BAKER: I'll move away from this chair in a moment,
19 but I'll just introduce the first participant
20 making submissions today will be Canada, and they
21 have 180 minutes. So I anticipate they will take
22 up the bulk of the day, if not all of it.

23
24 SUBMISSIONS FOR THE GOVERNMENT OF CANADA BY MR. TAYLOR:

25
26 MR. TAYLOR: Thank you. Mitchell Taylor, with me is
27 Tim Leadem for the participant -- Tim Timberg
28 today. I have Mr. Leadem on the mind. We're
29 going to finish today, I think. As was indicated,
30 we have three hours. Under the old schedule, we
31 might have spilled over till Monday, but I think
32 there's still three hours left in today.

33 Myself and Mr. Timberg will divide up the
34 presentation of Canada's submissions. Mark East,
35 one of our co-counsel, was also going to be making
36 a presentation, but just before we started, he
37 seemed to have some serious back difficulty, and
38 it looks like he won't be able to do that. So
39 we'll fill in for his part.

40 With that, the general division of topics
41 will be -- well, firstly, let me say and ask, Mr.
42 Commissioner, I hope you have before you a written
43 copy of our final submission and of our reply.

44 THE COMMISSIONER: Yes.

45 MR. TAYLOR: Two documents, thank you. The general --
46 and of course we'll focus on the written
47 submissions, but we may and will to some extent

1 delve into the reply on specific matters. The
2 general division of topics is going to be that I
3 will start, and I will deal with an overview, and
4 something of the sockeye lifecycle, the DFO
5 structure, the legal context, harvest management,
6 catch monitoring, enforcement, and in a second go
7 by me, and I'll explain that in a moment, disease
8 and aquaculture.

9 Mr. Leadem -- I'm going to keep saying that,
10 I can see. Mr. Timberg, for his part, is going to
11 address the policy context in which sockeye is
12 managed, Fraser sockeye is managed, and that
13 includes the Wild Salmon Policy and commercial and
14 recreational fisheries, and as well the science-
15 based approach to working through the possible
16 causes of decline and the 2009 poor return.

17 Mr. Timberg is then also going to address
18 what Mr. East would have addressed, that is, the
19 Aboriginal issues.

20 And I am going to speak for 45 minutes,
21 meaning till the bottom of the hour approximately,
22 and Mr. Timberg will then pick up and go for
23 probably an hour and 45 minutes, taking into
24 account the breaks, and then I will finish up
25 sometime this afternoon with about 30 minutes
26 which that all should add up to three hours.

27 Now, before I begin, I just want to deal with
28 a process point that's been raised by the
29 Aquaculture Coalition in its final submissions,
30 the ones filed on October the 17th, and by the
31 Conservation Coalition in its reply just now. And
32 happily, I think it's less controversial than the
33 matter I raised before and I'm not asking you for
34 a ruling at this time. So you'll be pleased with
35 that, I'm sure.

36 But at page 79 to 80 of the Aquaculture
37 Coalition's final submissions, and at page 32 of
38 the Conservation Coalition's reply, both of them
39 suggest that the Commission Ringtail, that is, the
40 very database that's been accumulated over the
41 last year plus, that that Commission Ringtail
42 collection be made public following the conclusion
43 of this Commission.

44 I'm not going to make submissions on that
45 here and now, but I want to say this. If the
46 Commission were to contemplate taking up that
47 suggestion by the Aquaculture Coalition and the

1 Conservation Coalition, we would want an
2 opportunity to make submissions first. And the
3 reason is that to make public the document
4 disclosure that's been done under compulsion,
5 pursuant to the Rules of this Commission, and in
6 the case of Canada, an order that was made in June
7 of 2010 at our invitation, that would constitute,
8 in my submission, a fundamental upending of the
9 ground rules on which document disclosure for this
10 Commission has proceeded. It would also go
11 against the normal rules of document disclosure,
12 which of course as you, Mr. Commissioner, will
13 well know, is done on implied or actual
14 undertakings of confidentiality in legal processes
15 or proceedings. Exhibits are public, but the
16 normal disclosure behind that is not.

17 So I raise that issue and leave it for future
18 submissions if called upon, if the Commission were
19 to think of up-taking what has been suggested.

20 And just on this in closing, I'll point out
21 that the document disclosure in this Commission
22 over my -- to my chagrin, and over my somewhat
23 opposition, has been quite one-sided. There's
24 approximately 550,000 documents that are in the
25 Commission Ringtail. Most of those, approximately
26 520,000, are from the Government of Canada. That
27 is not to say they're all originally written by
28 the Government of Canada but from the Government
29 of Canada files. And so the document disclosure,
30 unlike a normal legal process, is overwhelmingly
31 one-sided. The Commission chose not to take up my
32 several requests to call for extensive documents
33 from other participants, and so we have the one-
34 sidedness that we do.

35 And just finally, finally, and this will be
36 my final on this, the Commission Ringtail database
37 contains -- potentially contains privileged
38 material. Given the short timeframes for document
39 disclosure, as you can well appreciate, in normal
40 litigation, hundreds of thousands of documents
41 would be disclosed over the course of several
42 years, not in the short timeframe we've done.
43 There's been an understanding that if
44 inadvertently privileged material is disclosed, we
45 can ask to have it hauled back, and that in fact
46 has occurred on a number of occasions. And all of
47 the participants and Commission counsel have

1 cooperated in that regard.

2 So there's an added element, if you like, to
3 just put everything out in the public domain would
4 be potentially putting out privileged material in
5 a context where there's an understanding that
6 there'd be a haul-back opportunity. And that was
7 put in place simply because it wasn't feasible to
8 vet the stuff with sufficient detail in the time
9 available to get the material to the Commission so
10 they could then use most of it. As you know,
11 roughly, or almost 2,000 documents of the 550,000
12 have become exhibits. So I leave that at this
13 point.

14 To the submissions on the merits of the
15 evidence that is before you, Mr. Commissioner.

16 Canada's intent, and I want to be clear in
17 that, Canada's intent in its written material, the
18 final submissions that were filed on October 17th,
19 and in the reply filed on November 3rd, is to
20 provide you, Mr. Commissioner, with a balanced and
21 comprehensive statement of what we consider to be
22 significant evidence on key topics.

23 We're fully aware that you, Mr. Commissioner,
24 and the officials in your Commission will study
25 the written material of Canada and the other
26 participants in depth in the coming weeks and
27 months as part of the process leading to the final
28 report.

29 In these oral submissions, we'll speak to
30 what we consider to be particularly important
31 points within each of the topics covered in our
32 written material, and in some cases expand or
33 explain what is in the written material.

34 In the written material and the oral
35 submissions we do not, and it is our intent
36 anyhow, to not advocate for or against any given
37 position. Nor do we make recommendations or
38 comments on other people's recommendations.

39 The federal government, of course,
40 commissioned this inquiry, appointing you as the
41 Commissioner, and we view that recommendations are
42 something for the federal government to receive
43 after due deliberation by you, and not something
44 that we're going to suggest. We leave that
45 process with you.

46 And as I say, our objective is to assist the
47 Commission and specifically you, Mr. Commissioner,

1 by first having contributed to ensure that there
2 is a comprehensive evidentiary record, both *viva*
3 *voce* evidence and documentary exhibits, and
4 secondly, to point to what in our view is the
5 truly important pieces of evidence.

6 We do consider that the participation of each
7 and every participant has greatly contributed to
8 the making of a comprehensive evidentiary record
9 before you, and we see value in the numerous
10 different perspectives that have been brought
11 before you, Mr. Commissioner, and will over the
12 next week or so be brought before you for
13 consideration.

14 I've already spoken to the number of
15 documents that we have produced. But in addition
16 there's been tens of witnesses, I think something
17 in the order of 80 witnesses who are federal
18 employees, mainly but not exclusively from the
19 Department of Fisheries and Oceans. Department of
20 Environment had some witnesses, and I think there
21 was one or two other Departments, as well.

22 Next, a brief word on the Terms of Reference.
23 You, of course, will be well familiar that this
24 Commission was established to inquire into and
25 make findings of fact regarding the cause of
26 decline of Fraser sockeye, the current state of
27 Fraser sockeye and long-term projections, and then
28 to develop recommendations for improving the
29 future sustainability of the Fraser sockeye. It's
30 a broad mandate as it concerns Fraser sockeye. So
31 it's narrow in the sense of the topic, Fraser
32 sockeye; broad in terms of what you are mandated
33 to do with respect to Fraser sockeye.

34 Because Fraser sockeye don't live in
35 isolation, they live in a habitat that is impacted
36 by many activities and many organizations and
37 governments, and because other species also live
38 in that same habitat, both aquatic and animal,
39 land animals use it as well, there are many parts
40 to this puzzle, and it's a complex task that has
41 been put -- has been given to you, Mr.
42 Commissioner, and one that will -- everyone will
43 no doubt benefit from the ultimate report.

44 The Commission is to conduct the inquiry with
45 the overall aim of encouraging broad cooperation
46 among stakeholders, and that is something that the
47 Department of Fisheries witnesses have given a lot

1 of evidence on, and something which the Fisheries
2 Department and the Government of Canada endorse,
3 both as it pertains to this Commission of Inquiry
4 and pertains to the management of the fishery
5 generally. You will have heard a lot of evidence
6 about the efforts and resources and time and money
7 that Fisheries puts into stakeholder engagement
8 and cooperation amongst and with stakeholders.

9 We believe that the overall aim of
10 encouraging broad cooperation amongst stakeholders
11 has been accomplished by this Commission. There
12 are a number of processes this Commission has
13 employed, from public forums to site visits, to
14 public submissions on your website, and as well
15 the evidentiary hearings which these submissions
16 are the end product of.

17 And it is, in my submission, the case that
18 participants have all pulled together to assist
19 this Commission in understanding what are the
20 truly important issues and evidence to put before
21 you. There are differing views, of course, but
22 that's to be expected. There are some areas where
23 people have -- some people have concurrent or
24 consistent views, and there's even some areas
25 where virtually everyone, I think, has the same
26 view. And the foremost amongst that is that while
27 we have different objectives or different
28 participants have different objectives and ways to
29 get there, a robust healthy fish stock is a common
30 objective of everyone, I think.

31 This Commission, under the Terms of
32 Reference, is to be conducted without seeking to
33 find fault on the part of any individual,
34 community or organization, and we believe that,
35 too, has been accomplished.

36 So what do the participants bring to the
37 inquiry? I want to speak to that a little bit
38 more. I've spoken what the inquiry is about, but
39 in a nutshell, what happened to cause the decline,
40 what's the current state, and here's the important
41 part, looking forward, what should be done to
42 ensure things are put right and put on an upward
43 curve? Every participant, as I've suggested, has
44 put their heart and soul and mind into the inquiry
45 and brought their own perspective, their own
46 interests, and what they consider to be the truly
47 important things before you.

1 There's been suggestions put forward how to
2 build a good and proper fisheries regime to best
3 manage and conserve fish stocks, and the fishery
4 generally. Some ideas fit with others, some
5 conflict, some are doable quite easily, others are
6 not so doable, others, still others are very
7 costly or complex to implement. You, of course
8 will have to sift through and sort out the wheat
9 from the chaff and decide what you think is the
10 true facts and the most important things to
11 recommend.

12 No doubt about it, there's great complexity
13 and differing interests in play. In a way, Mr.
14 Commissioner, you're put in the position and you
15 can see the challenge that the Fisheries managers
16 have. You, if you like, are not managing the
17 fishery, but at the same time you are being asked
18 to make findings and make recommendations on how
19 to manage the fishery.

20 It's, of course, very clear that the sockeye
21 salmon lifecycle and their associated biology is
22 very complex. It's complex biologically, and it's
23 complicated because you can't see the fish most of
24 the time. You see them, if you like, at the
25 beginning and near the end, for the most part, and
26 not in between. There's a lot that's not known
27 about that in-between time, both as to the fish
28 and what they're doing, and the impacters that are
29 upon them.

30 Now, we see the following themes as the key
31 to improving the future sustainability of the
32 Fraser sockeye. And this is not an exhaustive
33 list, but it's some things that I'm going to leave
34 with you for your consideration, Mr. Commissioner.
35 And some of these things we'll pick up on and
36 speak to in some more detail as we go through the
37 oral submissions, and they're addressed in the
38 written material, too.

39 They are not necessarily in a given order,
40 but the first couple or three, I think, are the
41 most important. They are, conservation,
42 biodiversity, sound science, consultation, balance
43 in what's done, sustainable fisheries, managing in
44 the face of uncertainty and in the face of
45 changing environmental conditions, and next,
46 incremental steps lead to thoughtful and thought-
47 through change, and lastly for now -- again this

1 is not an exhaustive list, but lastly for now look
2 at the big picture or, put otherwise, look long
3 down the field. One can sometimes look two feet
4 in front of oneself, so to speak, and miss what's
5 important because you're looking at the immediate.
6 But it's important to look long down the field.

7 And as part of looking at the big picture,
8 and while it's of course always to mind, it's not
9 necessarily to the front of one's mind, and there
10 really hasn't been much evidence about this next
11 point in this inquiry, but it's important to
12 remember that the Fraser sockeye aren't the only
13 fish in the sea. There's an awful lot of other
14 marine species, fish and marine mammals and
15 crustaceans, and any number of life in the sea,
16 and there's of course all kinds of plant life.
17 But it is important to remember that they aren't
18 the only fish in the sea, and what -- what you do
19 for one can impact the other. Mostly,
20 conservation and biodiversity and habitat
21 protection - I should have mentioned that one in
22 the above, habitat protection - mostly what you do
23 for any species will be of benefit to the other,
24 but it's not always the case.

25 One other thing to remember in the context of
26 the Fraser sockeye not being the only fish in the
27 sea is that there are many others and quite a
28 number of them are not doing so well, either, and
29 that includes salmonids. That would be the case,
30 not only in British Columbia waters, but in the
31 waters of other countries. And it is also the
32 case that we really haven't heard too much
33 evidence about what is going on in other countries
34 with respect to salmon or sockeye, or any other
35 species. We've heard a little bit about Alaska,
36 and there's the odd whiff of Washington State, but
37 not too much.

38 Now, DFO organization and budgets. I want to
39 spend a few moments on that.

40 There's been a lot of evidence on this. This
41 is summarized in our final submissions at pages 14
42 through 23, which of course I leave with you. But
43 I want to speak to a few key points about DFO
44 organization and budgets.

45 First, I want to talk about Science. And I'm
46 now using science as big "S", Science Branch, as
47 opposed to the subject matter science.

1 The key message that I want to leave with
2 you, Mr. Commissioner, is that DFO is a Science-
3 based organization. That is fundamental, in my
4 submission, to understanding DFO. Science is the
5 underpinning to pretty much everything DFO does in
6 relation to fisheries management and conservation.
7 There will be some aspects that will not be
8 heavily Science-dependent, of course, but Science
9 is fundamental to most. Some enforcement
10 activities and so forth probably don't have a lot
11 of science to them, but Science is the
12 underpinning to what DFO does.

13 And you've heard a lot of evidence that DFO
14 and in particular DFO managers place great
15 importance on scientific research and scientific
16 advice in making decisions. It's one element to
17 the decision-making process, but it's a very, very
18 important piece of the puzzle, and very important
19 element. You've heard that loud and clear, as I
20 have seen -- in my submission, as I have seen the
21 evidence unfold.

22 Science, like other sectors in DFO, and other
23 government departments, sets short and long-term
24 priorities. They do that annually, semi-annually,
25 actually, in terms of the process, and it's a
26 repeating, recurring process each year.

27 The priorities that are set are reflective of
28 both government priorities and resources, and
29 conservation needs. But in setting priorities,
30 Science and the scientists in them, and the
31 Science managers act, I say the evidence shows, in
32 an objective, professional manner, reflecting what
33 they believe within the budgets available to them,
34 are the truly important things to do for the
35 better understanding of the sockeye salmon and
36 other species, and for the better ability to
37 advise fish managers, fisheries managers in what
38 they need to know to manage the fishery.

39 I'll speak about budgets now, and any part of
40 the government is impacted by the current need to
41 tighten and be efficient with money, and that's of
42 course not peculiar to the federal government or
43 government generally. It is the fact that any
44 organization, government, industry, non-government
45 organizations, and so forth, are particularly
46 challenged in the present economic climate. It's
47 always going to be the case that there are finite

1 amount of funds, and not everything can be done
2 and not as much of what you do do can always be
3 done as would be ideal, and that's even more so
4 right now.

5 Prioritizing and being efficient with
6 resources and money and technology are key
7 ingredients. They're increasingly important, and
8 a key point I want to underline for you, if I may.

9 Suggestions and recommendations that involve
10 large financial outlays would, I believe, need to
11 meet a fairly high threshold of need. There may
12 be a need, but the more you're talking about, the
13 higher the threshold is probably going to be, and
14 that's simply reality.

15 There have been submissions made by some
16 participants about DFO's budget as it's affected
17 by strategic review. That's the process that has
18 recently been completed by DFO and is about to be
19 implemented, but the numbers are known, as with
20 many things, people can come up with different
21 numbers, depending on how they want to present the
22 numbers.

23 But there was towards the end of the final
24 panel that the Deputy Minister was testifying in,
25 along with Mr. Bevan and Ms. Farlinger and Dr.
26 Richards, the question that, as I recall, both the
27 Deputy and Mr. Bevan were speaking to, where
28 between myself and Mr. Buchanan for the
29 participant PSAC, evidence about what DFO has
30 undergone for strategic review, bottom line, it's
31 in the budget that was tabled in the house, June
32 6th of this year, I think it is, \$56.8 million
33 over three years, that is, in stages was cut. A
34 total of 56.8 million was cut from DFO's budget.
35 They run on about 1.8 or so billion dollars a
36 year, 1.7, something like that. It was a three
37 percent cut. They testified to that. It's not 25
38 percent, it's not 30 percent, it's not 50 percent,
39 as some participants would want to suggest.

40 It's a significant cut. It was a reality but
41 the Deputy said it's doable, and importantly, it
42 has to be done and will be done.

43 There's a further process that's now starting
44 and we don't know where that's going to go. It's
45 called Strategic and Operating Review, a slightly
46 different name, but it's again reflective of a
47 need by the federal government to address expenses

1 and look at what's being done everywhere and
2 prioritize things. At the moment, people are
3 simply being asked to produce scenarios for five
4 or ten percent cuts. It's not known what the
5 outcome will be. That will happen over the course
6 of the next number of months, as I understand it.
7 That's the evidence.

8 Coming back to DFO and its structure, DFO is
9 a highly decentralized and operational Department.
10 That is to say, most of the Department's resources
11 work in regions. The evidence is approximately 85
12 percent of the 11,000 staff work in regions, and
13 most of those staff are in Operations. And we
14 deal with that at paragraph 71 of our final
15 submissions.

16 DFO interfaces with other federal
17 departments, other governments, stakeholders,
18 First Nations, environmental organizations,
19 industry and others regularly. You're going to
20 hear from Mr. Timberg on the processes that
21 provide for First Nation consultation, using the
22 word consultation in the **Haida, Taku** sense, and
23 you're going to hear from Mr. Timberg some more
24 about consultation that's done as part of good
25 governance and management of the fisheries, and
26 engagement with stakeholders.

27 For now what I want to underline is that
28 while DFO has the lead responsibility for fish
29 conservation and fish management, it's not the
30 only agency, person or organization who have
31 responsibility. There's a complex web of
32 interactions of different people, and everyone has
33 roles and responsibilities, and that does need to
34 be remembered, in my submission, in plotting and
35 setting out recommendations. For DFO's part, it
36 works and liaises alongside with many other
37 agencies. That's just part of how they do
38 business. It is, of course, the case that the
39 Province have significant chunks of jurisdiction
40 over matters that bear on fish and fish habitat.

41 The legal context, I want to spend a few
42 moments on that.

43 Firstly, an inquiry's function does not
44 extend to adjudicating on legal issues. We review
45 the legal context applicable to fish and fisheries
46 management in and around paragraph -- pages 25 o
47 51 of our final submissions, but I want to

1 underline the point that, in our submission, it's
2 not the function of this Commission to delve
3 deeply into the legal context, but still the
4 evidence needs to be situated against the legal
5 environment. While some participants seemingly
6 urge you to engage in and address and potentially
7 even adjudicate on legal issues, that's not
8 something for the Commission, for you, Mr.
9 Commissioner, in our submission, to do in this
10 forum.

11 We address this in Canada's reply at
12 paragraph 3 -- sorry, pages -- no, paragraphs,
13 Canada's reply, paragraphs 3 to 8. That is to say
14 that this is not about adjudicating on legal
15 issues, and I leave that with you.

16 What the inquiry is about, of course, is to
17 investigate issues or events, and that is the
18 general role of an inquiry.

19 There's, of course, nothing in the Terms of
20 Reference that would mandate the Commission to
21 reach conclusions of law.

22 The participants, and Mr. Timberg will speak
23 to this, but the participants that I particularly
24 have to mind is that participant number 12, Area
25 G, Mr. Harvey is counsel, has a number of legal
26 propositions that are of dubious validity, in our
27 submission, that he wants to advance. And some of
28 the First Nation participants make representations
29 and invite some conclusions as to the law on
30 Aboriginal fishing.

31 Now, applicable laws and jurisprudence. I'm
32 not going to delve into the law, of course, as
33 I've said, but I do point out that there are a
34 multitude of federal, provincial, municipal and
35 First Nation laws that bear on fish habitat, and
36 in addition there are international treaties, not
37 only but notably the Pacific Salmon Treaty, and
38 that itself is subject of a PPR, a Policy and
39 Practice Report, I think it's Policy and Practice
40 Report Number 4.

41 There are common law principles and
42 jurisprudence on fishing by the public, and on
43 Aboriginal fishing. It can be a complicated area.
44 In terms of Aboriginal law, one of the benefits I
45 find of Aboriginal law is ultimately there's about
46 25 Supreme Court of Canada cases that you need to
47 know, and if you do, you know most of what the law

1 is. If you look at those cases, you will see that
2 the law is evolving in Aboriginal law, and in
3 particular Aboriginal fisheries law, and a lot of
4 the Aboriginal cases come out of British Columbia,
5 and a lot of those are fishing cases. And the law
6 is not so evolving, but still there is some
7 evolving aspects about it to do with fishing by
8 the public. We set out some of that in our
9 submissions, but again it's not for you -- it's
10 not because we're asking you to make findings on
11 the law, but rather to simply provide some
12 context.

13 I think I can leave points to do with other
14 aspects of the law with you, except for a couple
15 of things I just want to underline.

16 DFO has as a tool, as one of the things in
17 its toolkit, s. 35 of the **Fisheries Act**, and there
18 is also s. 36, which is administered by the
19 Department of the Environment. Those are powerful
20 tools.

21 I'll just pause for a moment. Just doing a
22 time check, sorry, Mr. Commissioner.

23 Those are powerful tools and it's important
24 that you have a close look at the evidence
25 pertaining to them. One of the things about s. 36
26 has to do with who should administer it, and you
27 will need to make -- you will reach conclusions
28 about what you think in that -- in that regard.
29 There's considerable evidence before you. There
30 is currently, as I think you've heard in evidence,
31 some consideration about that, and no doubt what
32 you have to say would be welcome as a further
33 piece of information and suggestion how that
34 should be accomplished.

35 The laws pertaining to habitat protection and
36 environmental issues can be a thorny one in many
37 ways, but one of the ways that they can be thorny
38 is from a jurisdictional standpoint. The
39 environment is not an enumerated area of
40 jurisdiction in the **Constitution Act**, 1867. Each
41 of the federal and provincial governments are
42 going to have some jurisdiction over environmental
43 matters. That's led to considerable litigation
44 and then jurisprudence over the course of the last
45 few decades. But for the moment, it's important
46 to remember that because each of the federal and
47 provincial governments have a role, one has to

1 always be mindful as to how far any one government
2 can go on its own with regard to environmental
3 matters, which brings me back to s. 35 in
4 particular, but 35 and 36, which are grounded, if
5 you like, in -- or anchored in fish and fish
6 habitat, and that is used as the federal
7 jurisdiction.

8 Now, I'm going to move to some areas that are
9 near the back of our final submissions, so I've
10 skipped over some sections that Mr. Timberg is
11 going to speak to. And in about ten minutes I
12 will -- in exactly ten minutes I will turn the
13 podium over to Mr. Timberg and then I will come
14 back to some of this, as I pick up towards the
15 end, leaving it for Mr. Timberg to carry on
16 probably after the break. Mr. Commissioner, I'm
17 alive to the time. Am I okay to go for ten
18 minutes, or do you want me to stop for 15?

19 THE COMMISSIONER: I'm content, Mr. Taylor, if you want
20 to carry on for ten more minutes.

21 MR. TAYLOR: Yes, that's okay. I don't see any frowns
22 in front of you, so I think we're okay.

23 I'm now, just for your reference, I'm not
24 asking you to turn this up, but for your
25 reference, I am towards the back of our
26 submissions at page 165, which starts at paragraph
27 563 and following, and it's under a heading of:

28
29 Clear rules for sharing the Fraser sockeye
30 harvest including more flexible approaches to
31 avoid weak stocks, address First Nations'
32 fishery aspirations and improve the economic
33 viability of the commercial fishery
34

35 So I'm now, if you like, jumping ahead, and I'm at
36 the point where this is after Mr. Timberg, if you
37 like, has spoken to some of the detail about some
38 of these things, that is, avoiding fishing on
39 mixed stocks and over-fishing the weak stocks and
40 addressing First Nation fishery issues, and the
41 economic viability of the commercial fishery. So
42 now I'm speaking about the clear rules for that.
43 And I'll take a few moments to start in on this,
44 just in terms of efficient use of time, if you
45 like, before the break, and then give Mr. Timberg
46 an uninterrupted go after that.

47 Clear rules for quantifying and sharing the

1 available harvesting opportunities are important
2 to - very important, in my submission - to reduce
3 conflict, provide certainty for business planning,
4 and promote collaboration amongst harvesters.
5 Change is in the air and in the water, so to
6 speak, and that's driven by conservation needs and
7 biodiversity, and by environmental change, First
8 Nations s. 35 rights to food fish -- food, social,
9 ceremonial fishing, that is, and the desire to put
10 more fisheries closer to their natal streams to
11 reduce fishing on mixed stocks. And there's
12 various demonstration fisheries in that regard
13 that we'll come to later.

14 But in an atmosphere of change, which can be
15 disconcerting, of course any change can be, it's
16 important to have clear rules. Starting in the
17 1990s, or so, the DFO New Directions Policy set
18 out what might be considered modern allocation
19 principles, and Mr. Timberg is going to speak to
20 some of that.

21 But for now, the seven principles of
22 fisheries allocation are at paragraph 570 of
23 Canada's final submissions. Again, I don't need
24 to take you to it, but I'll leave it with you for
25 later use.

26 But the seven principles are conservation,
27 then -- for allocation, first conservation has to
28 be dealt with or met.

29 And then you have First Nations food, social,
30 ceremonial.

31 The next, or third principle in fisheries
32 allocation is that the common property nature of
33 the resource is respected.

34 And so fourthly, after conservation and First
35 Nation FSC, there is the recreational fishery, and
36 fifthly, the commercial fishery. Those two
37 things, recreational and commercial, are on an
38 even footing. It's not that one's higher than the
39 other.

40 And then a sixth principle of fisheries
41 allocation is encouraging selective fishing.

42 And finally, the seventh, to adjust the split
43 between the gillnet, the seine and the troll over
44 time, to better reflect how each of those gear
45 types deal with conservation requirements and
46 selectivity in fishing through changes to gear
47 types.

1 The Integrated Fisheries Management Plans
2 represent clear implementation rules, and at the
3 same time offer transparency in fisheries
4 management, and that's to be encouraged.

5 It is also the case, and this is a point that
6 I want to underline, that DFO considers and it is
7 right, in my submission, that change in fisheries
8 management is best done incrementally and in a
9 consultative transparent way. Those three words
10 are words that DFO -- are very important to DFO:
11 incremental, consultative and transparency.
12 Because no matter what the activity is, if things
13 are done incrementally, as I said before, that
14 means that they are well thought through, or can
15 be well thought through, and if they're done
16 consultative, you have potential and opportunity
17 and it is DFO's objective for buy-in, because
18 those you are consulting with will be part of the
19 solution. And if it's done in a transparent way,
20 everyone can understand what is happening, even if
21 you don't necessarily agree with it.

22 So incremental, consultative and transparent
23 is done so as to bring stakeholders along. And at
24 the same time, it allows everyone to see how
25 something's working before it becomes entrenched.
26 One could add to this, do things in a
27 demonstration or pilot sort of way before you make
28 it permanent.

29 If something works well through those
30 approaches, and meets conservation and user group
31 needs, then there's likely going to be acceptance.
32 And if it doesn't, further change can occur. And
33 that, in part, is what's behind share-based
34 fisheries and demonstration fisheries in-river
35 that you'll hear some more about from ourselves,
36 and from other participants.

37 Doing things in a demonstration or pilot or
38 test sort of way also allows the feasibility and
39 practicality to be tested and figured out before
40 things become too entrenched. And on share-based
41 fisheries in particular, there's been some
42 positive results and some concerns expressed from
43 some quarters, and those positive sides and
44 concerns can be studied and adjustments made. And
45 we deal with some of the demonstration fisheries
46 and the particulars of those at paragraphs 588 and
47 following.

1 Another area where competence and trust
2 amongst all parties is important is in the in-
3 season management of the fishery. And we deal
4 with that at pages 176 through 178. You've heard
5 a lot of evidence on some of the key programs and
6 facilities for in-season management, but they, of
7 course, include the test fisheries, the hydro-
8 acoustic estimates at Mission and at Qualark, and
9 the stock composition information that comes from
10 biological sampling. All of that's needed. All
11 of it should continue, of course. It's important
12 pieces of information for managing the fishery, in
13 addition to the pre-season work that is done, and
14 you've heard evidence about that, as well.

15 In terms of this, that is, in-season
16 management and other areas, it's important going
17 forward that there be increased use of technology,
18 including increased use of technology over
19 resource-intensive measures. That's the way
20 forward in the 24th Century. And what technology
21 can offer, of course, is even more accuracy than
22 you otherwise would have, and it can offer
23 efficiency and ease with which to gather
24 information. It's of course important that you
25 have technology that has databases, and good
26 databases, underlying it, and databases that can
27 talk to each other.

28 So as I indicated, Mr. Commissioner, I am
29 currently in the back part of the submissions.
30 There's a whole chunk from about page 50 to about
31 page 150 that Mr. Timberg - formerly Mr. Timberg
32 and Mr. East - but now Mr. Timberg will speak to
33 over the next roughly hour and 45 minutes. And I
34 propose that following the adjournment, if that's
35 -- or the break, if that be the case now, that Mr.
36 Timberg take the podium and we'll carry on.

37 THE COMMISSIONER: Thank you very much.

38 THE REGISTRAR: The hearing will recess for 15 minutes.

39
40 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)
41 (PROCEEDINGS RECONVENED)

42
43 THE REGISTRAR: The hearing is now resumed.

44 THE COMMISSIONER: Mr. Timberg.

1 SUBMISSIONS FOR THE GOVERNMENT OF CANADA BY MR.
2 TIMBERG:

3
4 MR. TIMBERG: Yes, Mr. Commissioner, Tim Timberg for
5 the Government of Canada.

6 I will be spending approximately an hour
7 talking about the development of policy, focusing
8 then on the Wild Salmon Policy, and speaking
9 briefly to our reply submissions. My intention is
10 to follow Canada's written submissions quite
11 closely, and I have provided a list for Mr. Lunn,
12 our registrar, to assist me in our -- in my oral
13 submissions. So I will be going from paragraph to
14 paragraph in our written submissions.

15 I'd like to start in Canada's written
16 submissions at page 103, paragraph 353. And this
17 is to provide the factual context to the state of
18 the fisheries on the West Coast.

19 The Wild Salmon Policy was created in a
20 context that began almost 30 years ago, with
21 issues of biodiversity and conservation biology
22 coming to the forefront in the early 1980s.

23 The first significant event is the Pacific
24 Salmon Treaty was signed in 1985, required the
25 identification of specific stocks in mixed-stock
26 salmon fisheries, which in turn led to the
27 application of newly-developed genetic research
28 methods to salmon and an increased understanding
29 of their genetic diversity. During this time, key
30 science papers on conservation and environmental
31 events were published and there was a growing
32 environmentalism.

33 The second, paragraph 354, this emerging
34 concern for biodiversity culminated on the
35 international stage with the signing of the **UN**
36 **Convention on Biological Diversity** in 1992 at the
37 Rio de Janeiro Earth Summit. David Bevan and Marc
38 Saunders spoke about the **Convention** being a major
39 driver for the development of the Wild Salmon
40 Policy.

41 Over to paragraph 355. And in the late '80s
42 and early '90s we saw the beginning of this
43 decrease in sockeye and other Pacific salmon
44 species productivity, and corresponding management
45 actions by DFO to restrict outer marine fisheries,
46 reduce exploitation rates, and move progressively
47 towards a more conservative approach in fisheries

1 management. Brian Riddell, Dr. Riddell, spoke
2 about this move to protect "weak" stocks was
3 perhaps best exemplified by DFO's response to the
4 1998 "coho crisis" by reducing the exploitation
5 rate to zero.

6 In this context of declining productivity and
7 exploitation rates, that a more precautionary and
8 more conservative approach to fisheries management
9 was reflected in the 1998 New Direction Policy
10 document.

11 So I'd like to focus on that document this
12 morning. If we can put page 51 of our
13 submissions. This is a section that I'll now run
14 forward, talking about policy development at DFO.
15 And this section, "What is a Policy?" paragraph
16 194. DFO manages fisheries in accordance with a
17 series of policies developed to provide guidance
18 on numerous and complex issues. They provide a
19 framework for decision-making, but they do not
20 fetter the Minister's discretion under s. 7 of the
21 **Fisheries Act.**

22 Over at paragraph 196, we set out that
23 policies come in a variety of forms, depending on
24 the audience and intent of the policy. And as Sue
25 Farlinger and David Bevan spoke about, there's
26 several different terms used by DFO in the
27 development and presentation of policies. For
28 example, a "discussion paper" is often written to
29 help facilitate consultation. Once consultation
30 has been completed and a policy is approved, it's
31 often called a "vision", "reform", "new direction"
32 or "framework".

33 So with that brief overview of policy, if we
34 could turn over the page to paragraph 202 at page
35 53. What we say is that the development of DFO
36 policy, there emerges four key policy themes, and
37 that is (1) conservation, (2) sustainable use, (3)
38 consultation and decision-making, and (4)
39 collaboration and co-management.

40 It's not in our written submissions, but
41 Exhibit 1924 is an exhibit that Sue Farlinger
42 entered, where she divided DFO's policies into
43 those four themes, and we suggest that's a helpful
44 place for you to organize DFO's policies around
45 those themes.

46 And I note it's not in our written
47 submissions, but Exhibit 1923 and 1923A was the

1 large chart that we prepared of all of the
2 Treaties, Acts, Regulations and Policies, Programs
3 and Procedures, and you have a hyperlinked disk to
4 assist you with that.

5 So these four policy themes, then, are
6 captured in the 1998 paper "A New Direction for
7 Canada's Pacific Salmon Fisheries", which
8 described conservation as the primary objective
9 for managing the wild salmon resource. And as
10 I've stated, the impetus for that was
11 conservation.

12 I think it's helpful for us to look at these
13 12 broad principles that are set out in New
14 Direction. So I'm wondering if, Mr. Lunn, we
15 could go to Exhibit 32. And if we could go to
16 page 5. And, Mr. Commissioner, I thought -- this
17 policy is still in effect. This is the
18 Conservation -- the New Direction Policy, and I
19 thought it would be helpful just if we could
20 briefly look at these 12 policies.

21 So the first one:

22
23 Conservation of Pacific salmon stocks is the
24 primary objective...

25
26 So there is it, front line and centre, it's the
27 number 1.

28 If we go down to Principle 2:

29
30 A precautionary approach to fisheries
31 management will continue to be adopted.

32
33 So again, tying it back to the international
34 Convention.

35 The Principle 3:

36
37 Continue to work toward a net gain in
38 productive capacity for salmon habitat...

39
40 So the importance of habitat.

41 Principle 4:

42
43 An ecological approach will guide fisheries
44 and oceans management in the future.

45
46 And we can see that with Deputy Dansereau's
47 testimony about the importance of ecosystems

1 management that's being implemented now.

2 Over the page to Principle 5 at the very
3 bottom:

4
5 The long term productivity of the resource
6 will not be compromised because of short term
7 factors or considerations - tradeoffs between
8 current harvest benefits and long term stock
9 well-being will be resolved in favour of the
10 long term.

11
12 We can see that principle continuing to exist
13 through the Wild Salmon Policy and other
14 management decisions today.

15 Over the page to Principle 6:

16
17 All sectors - First Nations, recreational and
18 commercial - will use selective methods to
19 harvest salmon.

20
21 Selective Fishing Policy comes from this.

22 Over the page to Principle 7:

23
24 First Nations requirements for food, social
25 and ceremonial purposes will continue to have
26 first priority after conservation
27 requirements.

28
29 Principle 8:

30
31 Whenever possible, the recreational fishery
32 will be provided with more reliable and
33 stable fishing opportunities.

34
35 And then over the page to Principle 9:

36
37 The commercial fishery will be a more
38 diversified (less dependent on salmon) and
39 economically viable sector, better able to
40 withstand fluctuations in the cycles of the
41 resource and the market.

42
43 And we've heard about the decline of the share
44 that commercial salmon has in the commercial
45 fishery.

46 Over to the next page, Principle 10:
47

1 Clear, objective and relevant information on
2 major issues requiring decisions will be
3 provided to the public with sufficient time
4 and opportunity for review, comment and
5 feedback. Periodic review of progress and
6 achievements will be initiated to facilitate
7 accountability for the sound management of
8 the salmon resource and its habitat.
9

10 Clearly this comes out, you can see in the Wild
11 Salmon Policy these principles resonating
12 throughout what DFO does.

13 Principle 11:

14
15 Government and stakeholders will together be
16 responsible and accountable for sustainable
17 fisheries.
18

19 So that all partners work together to ensure a
20 sustainable fisheries.

21 And over the page, Principle 12:

22
23 Enhanced community, regional and sector wide
24 input to decision making will be pursued
25 through a structured management and advisory
26 board system.
27

28 Which ends up kind of being the IFMP process that
29 is developed.

30 So this is back in 1998. It's a core
31 document, a Policy, and I just thought it would be
32 helpful to suggest that those principles are
33 certainly alive and well in that Policy today, but
34 can assist the Commissioner in making your report
35 and recommendations.

36 If I could then go back to our written
37 submissions at page 54, and that would be
38 paragraph 204. So out of the New Direction paper,
39 this committed DFO to developing a detailed set of
40 operational policies for the management of the
41 salmon resource, and what came from that was An
42 Allocation Policy for Pacific Salmon (1999);
43 Improved Decision Making (2000); A Policy for
44 Selective Fishing (2001); and Wild Salmon Policy
45 (2005).

46 So that's the start of the big important
47 Conservation Policy.

1 We then in our written submissions talk about
2 the four key themes and we break them down:
3 conservation, sustainable use, consultation and
4 decision-making.

5 I'll just flip through this because it speaks
6 for itself, Mr. Commissioner. But under
7 "Conservation" we talk about the Sustainable
8 Fisheries Framework, and then over to page 55,
9 Wild Salmon Policy.

10 Paragraph 210 we note the Pacific Salmon
11 Revitalization Strategy initiated in 1996. That
12 was a program with money involved, and that was a
13 fleet reduction program through licence
14 retirement. So it's just an important factual
15 program.

16 And paragraph 212 we note important for
17 conservation is the Policy for the Management of
18 Fish Habitat.

19 And so those are the ones that fit together
20 under that theme.

21 "Sustainable Use", at paragraph 215, we have
22 the Policy for Selective Fishing in Canada's
23 Pacific Fisheries. I note that a number of the
24 participants in their submissions said that this
25 however wasn't continuing. The program ended in
26 2002, but the policy continues.

27 So this is the policy, and we've summarized
28 the five principles, and the main part really
29 being with respect to selective fishing policy.
30 We set out the five principles which I'll leave
31 for you to read.

32 But at paragraph 217, we say it's the
33 avoidance of non-target species is the best
34 possible option in selective fishing, to not catch
35 the bycatch. You only catch what you're after.
36 And then the second next best option is to release
37 non-target fish and vertebrate seabirds alive and
38 unharmed. And so that -- that is an ongoing
39 policy today, and that affects decisions with
40 respect to a move to more in-river fisheries, some
41 of the directions with the share-based management,
42 choosing beach seiners over gillnetters. You can
43 see that that's a very important policy.

44 Moving down to page 58, the bottom paragraph,
45 222, we set out "Consultation and Decision-
46 Making", and the key policies there. Much of
47 those at paragraph 224 relate to Aboriginal

1 consultation,

2 I'll focus a bit on paragraph 226. DFO
3 initiated an independent review of their decision-
4 making with the University of Victoria. And that
5 resulted in a Framework for Improved Decision-
6 Making -- that's right, 226.

7 And at 227 the goal was to establish a
8 framework that's more open and predictable with
9 decision-making. And this established the IHPC
10 committee, the Integrated Harvest Planning
11 Committee flowed out of that.

12 Paragraph 229 we summarize the guidance
13 provided to DFO with respect to A Framework for
14 the Application of Precaution in Science-based
15 Decision Making About Risk. So paragraph 229,
16 that's the Treasury Board policy that the
17 government -- that applies to all of government.
18 And that provides guidance on application of
19 precaution to decision making about risks of
20 serious or irreversible harm where there is lack
21 of full scientific certainty.

22 Paragraph 230 is the DFO policy, and that's A
23 Fishery Decision-Making Framework Incorporating
24 the Precautionary Approach. So this policy is to
25 -- how to incorporate the precautionary principle
26 in harvest strategies. So if the Treasury Board
27 is about decision-making, the DFO one is about how
28 to incorporate that into harvest strategies. So
29 it's more operational.

30 Now, sticking on paragraph 230, Mr.
31 Commissioner, David Bevan, when he spoke about the
32 precautionary approach, said this is DFO's policy
33 on the precautionary approach, but it doesn't
34 apply to salmon because of the lifecycle of
35 salmon. It's such a short life, they go out and
36 they come back, and they only spawn once. So he
37 said DFO's response to the precautionary approach
38 is the Wild Salmon Policy. They needed to write a
39 very separate and specific policy to address
40 precautionary approach just for salmon, and they
41 did that.

42 So you can see we have the international, we
43 have Treasury Board, and we have DFO, all talking
44 about precautionary approach, and for salmon it's
45 the Wild Salmon Policy. And I've jumped, but
46 that's in our submissions at page 106, paragraphs
47 364 to 367. I won't take you there.

1 If you go over the page to page 61, we've got
2 this fourth theme of "collaboration and co-
3 management, and we've listed the policies
4 associated there at paragraph 232. So I'll leave
5 that.

6 But I would like to talk about paragraph 238,
7 "Pacific Fisheries Reform". So Pacific Fisheries
8 Reform was introduced in 2005, and I will like to
9 jump here to page 171 of our submissions, to
10 paragraph 581, to -- yes, thank you, Mr. Lunn. So
11 this is a paragraph that describes the genesis for
12 Pacific Fisheries Reform. The concept of share-
13 based management of Pacific salmon came into focus
14 with the report of the Joint Task Group on Post-
15 Treaty Fisheries. It's a document called
16 "Treaties in Transition" commonly, in which an
17 "individual transferable quota" was recommended as
18 a way of improving the management and
19 sustainability of the commercial salmon fishery.
20 So that was pretty strong medicine, perhaps some
21 people might say. The report of the First Nations
22 Panel on Fisheries, commonly called "Our Place at
23 the Table", opposed the further expansion of
24 individual transferable quotas until First Nations
25 interests had been addressed. That was the other
26 significant document.

27 DFO's response to these two reports was the
28 announcement of a fishery management reform
29 initiative called Pacific Fishery Reform. And
30 this acknowledges that more certainty and
31 stability in the commercial fishery could be
32 achieved through some type of share-based
33 management, but that doesn't -- that's not a full
34 explanation of Pacific Fisheries Reform, because
35 this is in a Share-based Management section. But
36 I just wanted you to highlight that Pacific
37 Fishery Reform is a response to the treaty
38 process.

39 So with that, if we can go back to page 62
40 and back to paragraph 238. So Pacific Fisheries
41 Reform contains policies, principles associated
42 with improving the economic viability and
43 sustainable management of commercial fisheries;
44 for addressing First Nations' interests in FSC
45 fisheries, commercial access, and involvement in
46 management; for ensuring all fishery participants
47 enjoy certainty and stability; and for ensuring

1 that participants are self-reliant, self-
2 adjusting, treated fairly and equitably, and
3 involved in decision-making. And then work has
4 also been initiated with the recreational sector.

5 I go over the page then to paragraph 239.
6 Pacific Fisheries Reform is intended to guide
7 reform initiatives, and is the standard against
8 which alternative approaches will be evaluated.
9 This is -- Pacific Fisheries Reform is at Exhibit
10 269, and I thought we should perhaps look at this,
11 also. Mr. Lunn, could you pull up 269.

12 So the five, if we could perhaps go to page
13 5. So this at the top of the page sets out "The
14 Key Elements of Pacific Fisheries Reform", and
15 then the key elements are "Improved Resource
16 Conservation", so that's obvious. And then over
17 to page 6, "Improved Certainty and Stability".
18 This is all in relationship to making room for
19 treaty. Page 6, "Nations' Place in the Fishery";
20 7, "Shared Management Responsibility and
21 Accountability", and then "Realizing the social
22 and economic potential". So I just share these
23 three points and draw your attention to them.

24 At page 22 of this document, this is not in
25 our written submissions, but page 22 has a section
26 titled "Reform and the Pacific Salmon Fishery".
27 So this is again, salmon being different than the
28 other fish in the se, it required its own special
29 section to address under Pacific Fisheries Reform.

30 And so I just -- and so to here obviously we
31 have to address conservation, defining catch
32 shares is deemed to be important, and that's so
33 that we can understand catch shares as between the
34 various stakeholders.

35 Transferability, the bottom of -- middle of
36 page 23 is important, to be able to transfer
37 shares between the marine fisheries and possibly
38 in-river fisheries, and to ensure that there can
39 be some fairness and clarity with respect to any
40 transfers that happen so that the various
41 participants and stakeholders know what's
42 happening.

43 Over the page, recreational fisheries have
44 their place, and then co-management, this move
45 towards co-management.

46 So I thought those were the two key policies
47 that you should be alive to, and the themes and

1 the issues as you consider the task before --
2 before yourself.

3 If we could then go back to Canada's
4 submissions, at paragraph 240 on page 63. The
5 Pacific Integrated Commercial Fisheries
6 Initiative, PICFI. So PICFI is not a policy, it's
7 a program, and it had money attached to it and it
8 will be sunseting this coming July 2012. And it
9 emerged out of Pacific Fisheries Reform. And it
10 operationalized the themes and the policy
11 directions set out there.

12 So the PICFI builds on the on the work under
13 Pacific Fisheries Reform, and at paragraph 241,
14 and it's aimed at establishing fully integrated
15 commercial fisheries, where all commercial
16 harvesters fish under common and transparent
17 rules, with a higher standard of accountability
18 for all resource users, and strengthened
19 collaboration and cooperation. PICFI also
20 supports British Columbia Aboriginal groups in
21 integrated commercial fisheries to develop
22 sustainable fisheries enterprises, and to increase
23 Aboriginal groups participation in fisheries
24 management decision making processes.

25 So I would now like to move to page 171 of
26 our submissions, and this is sort of where are we
27 today. If that was perhaps some of the building
28 blocks of the policy to date, this section I will
29 suggest sort of states where we are now, and go to
30 582. So this section, my colleague, Mr. Taylor,
31 provided an overview. This section of our written
32 submissions, and, Mr. Commissioner, deals with
33 international allocation, domestic allocation,
34 FSC, recreational, the IFMP process, and I thought
35 I'd just focus a bit on the share-based
36 management.

37 So at 582, DFO has an interest in moving to
38 share-based management where it can be
39 demonstrated it is feasible and effective in
40 advancing the vision articulated in Pacific
41 Fisheries Reform, that of a sustainable fishery in
42 which full social and economic potential are
43 achieved. We've set out the benefits there.

44 At paragraph 583, we just note the evidence
45 that DFO has been working with willing commercial
46 fleets and Aboriginal groups since 2005 to test
47 alternative forms of share-based management

1 through demonstration fisheries.

2 And so the section there, "Why Demonstration
3 Fisheries?" The reason why DFO uses demonstration
4 fisheries, first, demonstration fisheries have
5 been undertaken to test and evaluate share-based
6 management before a recommendation to the Minister
7 as to a more permanent implementation in the
8 salmon fishery. So the ability of share-based
9 management to deliver must be evaluated. And so
10 that's why we have the demonstration fisheries.

11 Go over to paragraph 586. Second, while an
12 share-based management approach has been
13 enthusiastically embraced by some harvest
14 interests, some in the commercial sector who are
15 strongly opposed to it. And we talked about the
16 evidence, the SCORE report, and the various sort
17 of studies that have been done.

18 And then going down to "How do demonstration
19 fisheries work?" at paragraph 588. DFO puts out
20 annual calls for proposals for demonstration
21 fisheries that are consistent with the visions and
22 principles of Pacific Fisheries Reform. So again,
23 the linkage back to the policy.

24 590, two different types of share-based
25 management fisheries have been tested. Neither --
26 a decision has not been made.

27 If we could go over to page 175, we've got
28 the "Evaluation of Share Based Management and
29 Future Steps". We just note at paragraph 594, the
30 pace of demonstration fisheries has been slow due
31 to recent closures of the fisheries when there
32 were the low returns, and that's hampered the
33 ability of these demonstration fisheries.

34 And then over at page 176, we just note the
35 testimony of Sue Farlinger, that:

36
37 A timeframe for the provision of DFO advice
38 to the Minister on share-based
39 management...has not yet been determined.
40

41 So with that policy overview, I'll just sort
42 of walk you through then a few smaller sections in
43 our written submissions and provide some
44 highlights.

45 If you go to page 77, Mr. Lunn. So this
46 section of our written submissions provides
47 background material on the summary of key evidence

1 regarding the causes of the decline of Fraser
2 River stocks. It's my own personal opinion, and
3 this is not that contentious, given the evidence
4 that's been led. Paragraph 287, I'll just move
5 through this fairly quickly, just note some of the
6 high points.

7 A consensus appears to be emerging amongst
8 scientists that biophysical changes in the marine
9 environment stand out as the most strongly
10 inferred factors explaining the pre-2010 decline.
11 And we heard this consensus coming through a
12 variety of workshops and David Marmorek spoke
13 about that.

14 If we could then go to page 80, paragraph
15 300. The Panel has also agreed that "multiple
16 hypothesized causal mechanisms are very likely to
17 be to be operating simultaneously and their
18 effects may be additive, multiplicative (i.e.
19 synergistic), or may tend to offset one another's
20 effects", i.e., there was no one smoking gun
21 found, that there were a number of factors. Mr.
22 Marmorek spoke to that, as did the conclusions to
23 the various workshops.

24 If we could then move to page 94. This now
25 is a section -- actually, 93, perhaps we should
26 look at page 93, Mr. Lunn, the entire page. It's
27 a new section:

28
29 Summary of Key Evidence Regarding "the
30 Current State of Fraser River Sockeye...and
31 the Long Term Projections..."
32

33 There's the chart of Fraser River sockeye
34 productivity that we've had evidence about with
35 the increased returns in 2010 and '11.

36 And I just note at the bottom there, page --
37 paragraph 330, we just caution that it's important
38 to note that this graph represents all Fraser
39 sockeye and that there's an increased amount of
40 variation in productivity between Fraser sockeye
41 stocks. So that's an average of all the stocks.
42 So there's even more variation when you look at
43 the different CUs within that.

44 Now over to paragraph 332, we just note the
45 important evidence that the decline in
46 productivity for Fraser sockeye stocks
47 corresponded with similar declines in productivity

1 for other sockeye salmon stocks. And that led to
2 throughout the hearings comments from the
3 scientists that not only do we need data and
4 information about the Fraser River, but we also
5 need that data and information from other rivers
6 and other systems to be able to place the Fraser
7 in context. So that's -- that was an important
8 reminder.

9 And if we could go to page 97, please, Mr.
10 Lunn. At paragraph 338, we've reproduced here the
11 evidence of David Bevan, Associate Deputy
12 Minister, where he spoke about the precautionary
13 approach. And he commented that the maximum
14 sustainable yield, which is an assumption that you
15 can have a sustained yield of high level based on
16 a higher level of population, that, well, we have
17 rejected that as a reality, that this idea that
18 lakes have a maximum sustainable yield that you
19 can aim for, that that, due to the precautionary
20 approach, has been rejected.

21 And then if we could move to page 102 at
22 paragraph 351, we've just summarized the important
23 evidence of Dr. John Davis, who spoke about his
24 work internationally dealing with climate change,
25 and that climate change is, of course, not just
26 affecting Fraser sockeye. It is creating more
27 uncertainty with respect to fisheries around the
28 world. And that managers around the world must
29 increasing account for these uncertainties in
30 managing fisheries resources and ecosystems.

31 Now, over the page, Mr. Lunn, we have a new
32 section to our submissions:

33
34 D. Summary of Key Evidence Regarding
35 "Improving the Future Sustainability of the
36 Sockeye Salmon Fishery in the Fraser River"
37

38 Now, at paragraph 353 and on, we summarize --
39 oh, sorry, I started there, but this is about the
40 Wild Salmon Policy, Mr. Commissioner. And if we
41 could start at 357, paragraph 357. Here you'll
42 see, Mr. Commissioner, that we note the
43 connections between the Wild Salmon Policy and the
44 New Direction Policy that I brought you to
45 earlier. And so here we've taken the 12
46 principles from the New Direction Policy and we've
47 linked them to the strategies and steps in the

1 Wild Salmon Policy. So you can see that the
2 direction that was provided back in 1998 under New
3 Direction has found its way into the Wild Salmon
4 Policy in 2005: conservation as the first
5 priority; continued adoption of a precautionary
6 approach, et cetera. So we've done that linkage
7 for you.

8 If we could then go to page 105, paragraph
9 359. And it's stating the obvious now, but
10 Principle 1 of the Wild Salmon Policy states that,
11 quote:

12
13 ...[c]onservation of wild Pacific salmon and
14 their habitats is the highest priority in
15 resource management decision-making.
16

17 And while stock-specific management had been
18 utilized by DFO since the 1980s, pursuant to the
19 direction of the Pacific Salmon Treaty, the Wild
20 Salmon Policy was a step forward in that it
21 indicated with specificity what needed to be
22 conserved, the genetic diversity as defined by the
23 conservation unit.

24 If we could then go to paragraph 368, yes,
25 and actually 367 above is the connection between
26 the precautionary principle and the Wild Salmon
27 Policy, and it expressly adopts the precautionary
28 approach.

29 And then I just -- 368, in reviewing this,
30 the Wild Salmon Policy has two benchmarks to
31 ensure the conservation of salmon, not one
32 benchmark, it's two benchmarks. And it's one
33 between the red and the amber, and one between
34 amber and red, and the two of them work together
35 to ensure the conservation of the salmon and they
36 require different steps to be taken. And so I'm
37 just as a refresher, paragraph 369, the lower
38 benchmark is intended to provide a buffer, not
39 only above a minimum viable population level, but
40 it's intended to allow for continued FSC fishing
41 by First Nations on particular local conservation
42 units, conservation permitting. So again it ties
43 in conservation and FSC fishing.

44 So you can see this interweaving of
45 conservation and treaty obligations coming
46 together in DFO's policies as to how they're
47 managing the fisheries, and it's those two core

1 aspects that are needed to be pulled together.

2 Over to page 108, paragraph 371, so here
3 under "Strategy 4", just note that the societal
4 views that may dictate one approach one day may
5 change very quickly, meaning that prescriptive or
6 top-down management decisions will quickly be out
7 of date. Pat Chamut spoke about that, Dr. Irvine
8 spoke about that. Even the notion of a single
9 "optimal escapement target" is a view from the
10 past -- optimal escapement is not something that
11 is stable over time. And these are part of the
12 reasons for this consultative approach to strategy
13 4 decision-making, to ensure that it's responsive,
14 it's an ongoing part of the management decisions.

15 And then page 112, paragraph 383, it's the
16 "Pace of Implementation of Action Steps". And I
17 just note in the middle of paragraph 383, the WSP
18 states at page 35 and 36 of the actual Policy,
19 that implementation will be phased in gradually,
20 and it does not specify a timeframe for full
21 implementation. It's this context that has set
22 the pace. And Sue Farlinger in her testimony, the
23 RDG said that:

24
25 The timelines for the implementation of all
26 Action Steps contemplated within DFO in the
27 early stages of implementation planning were,
28 with hindsight, unrealistic.

29
30 Moving on, and, Mr. Commissioner, we've
31 summarized the steps taken on each Action Step in
32 the Wild Salmon Policy in our written submissions.
33 I'm just taking you to highlights.

34 If we could go to page 118, paragraph 408. A
35 number of the participants in their submissions
36 said that no habitat status reports have been
37 completed under the Wild Salmon Policy. And the
38 evidence is that five habitat overview reports and
39 nine partial habitat status reports were piloted
40 prior to 2008. That was the testimony of Heather
41 Stalberg. And then six habitat status reports
42 have since been completed for the Somass, Bedwell,
43 San Juan, Lower Harrison, Sarita and
44 Cowichan/Koksilah systems.

45 If we could then move to page 122, paragraph
46 423. Mark Saunders spoke about the scientific
47 foundation of Strategies 1 to 3 has nearly been

1 laid, and progress on those strategies will
2 continue. Implementation is now at a tipping
3 point where status assessment can begin and
4 Strategy 4 implementation can begin. However,
5 Strategy 4 is the most challenging Strategy to
6 implement. That's just a reminder that much of
7 the work to date has been on this background
8 science of steps 1, 2 and 3, and much of that now
9 is completing.

10 Over the page, paragraph -- the top of page
11 123. We filed in evidence Exhibit 945A, it's a
12 large spreadsheet of 516 meeting days since 2005
13 that DFO has held that are relevant to aspects of
14 implementation of the Wild Salmon Policy,
15 including Strategy 4. That exhibit, you can click
16 -- it's an active CD, you can click on it and you
17 can -- it will take you to each of the agendas of
18 those meetings and the minutes of meetings for 516
19 meeting days.

20 So a huge amount of consultation has been
21 done on Wild Salmon Policy implementation,
22 including Strategy 4.

23 The next section, "Work on Identification of
24 Priority CUs". This is an issue that has been
25 raised by a number of participants in their
26 submissions.

27 At paragraph 426, to date, a methodology for
28 identification of priority CUs presented to senior
29 management has not been approved. However, in the
30 absence of the identification of priority CUs as
31 described in the WSP, DFO has in the interim
32 prioritized the "stocks of concern", as identified
33 in the annual Salmon Outlook. So we had evidence
34 from Mark Saunders and others about how the Salmon
35 Outlook is being utilized.

36 Paragraph 427. Interim prioritization on the
37 basis of "stocks of concern" does not negate DFO's
38 intention to identify priority CUs. DFO plans to
39 re-initiate this process once the Grant et al
40 working paper is complete. And there will be more
41 information on her paper shortly, I'd expect.

42 And then finally, in addition, in 2009 the
43 Strategic Directions Committee - I'm at paragraph
44 427 - gave support to the development of a "rapid
45 assessment" methodology. A draft of that
46 methodology and assessment since has been
47 completed by Dr. Holtby and is currently

1 undergoing revisions.

2 So I note the time, Mr. Commissioner.

3 THE COMMISSIONER: Thank you.

4 THE REGISTRAR: The hearing will now adjourn until 2:00
5 p.m.

6

7 (PROCEEDINGS ADJOURNED FOR NOON RECESS)

8 (PROCEEDINGS RECONVENED)

9

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

11 MR. TIMBERG: Just for the record, Mr. Timberg, for the
12 Government of Canada.

13

14 SUBMISSIONS FOR THE GOVERNMENT OF CANADA BY MR.

15 TIMBERG, continuing:

16

17 MR. TIMBERG: I have one correction from a statement
18 earlier this morning at page 63 paragraph 240.
19 The written submissions state that PICFI sunsets
20 in July 2012 and that should read March 2012, the
21 end of the fiscal year.

22 And then if we could, Mr. Lunn, go to page
23 127, paragraph 438, and this is just to conclude
24 the section on WSP with respect to the status of
25 how WSP is presently being implemented in a
26 variety of ways, Sue Farlinger provided in her
27 testimony a list of the following points:

28

- 29 • decisions about harvest rates that
- 30 specifically protect weak stocks;
- 31 • more recent management decisions to utilize
- 32 conservation units and their benchmarks
- 33 such as the Early Stuart sockeye and Cultus
- 34 sockeye;
- 35 • A significant reduction in the harvest
- 36 rate;
- 37 • With respect to habitat, the implementation
- 38 of a risk-based approach and identifying
- 39 the pathways of effect;
- 40 • The development of a framework for habitat
- 41 reviews;
- 42 • The allocation of science priorities;
- 43 • Adjustments to account for in-river
- 44 mortality;
- 45 • Application of the Selective Fishing
- 46 Policy;
- 47 • Demonstration share-based fisheries; and,

- 1 • Demonstration in-river fisheries.

2
3 And so that's perhaps a helpful summary of how
4 it's presently being applied.

5 At this point, Mr. Commissioner, I'll be
6 switching to the topic of Aboriginal Fisheries,
7 and I won't be following the written submissions
8 as closely in this part of the oral submissions;
9 however, I have arranged for Mr. Lunn to bring
10 them up when I speak about a particular topic.

11 So this morning Mr. Taylor cautioned that
12 this Commission should refrain from making rulings
13 on law or findings of fact that affect the legal
14 rights of participants. And in addition, the
15 participants in this Inquiry have rarely had an
16 opportunity to fully and completely test the
17 evidence on many important issues. And with
18 respect to the evidence of Dr. Douglas Harris,
19 I'll use that as an example, he prepared a report
20 and testified to the history of government
21 regulation of the Pacific Aboriginal fishery, and
22 while Dr. Harris is a respected academic and
23 offered some useful evidence and historical
24 context to the Commission, Canada respectfully
25 submits that some of the historical and legal
26 interpretations are controversial.

27 We set out in Canada's reply submissions, at
28 page 66, at paragraphs 208 to 209 - I'm not sure
29 if you could bring that up, Mr. Lunn - at that
30 part in our reply submissions, we just note that
31 the participants only had a few minutes to cross-
32 examine Dr. Harris on his wide-ranging report on a
33 topic that spanned a century or more and which
34 summarized two books and numerous academic
35 articles. In a trial proceeding there would have
36 been an opportunity for full cross-examination and
37 other expert evidence to balance the evidentiary
38 record. We therefore respectfully submit that any
39 submissions based on evidenced from Dr. Harris
40 should be considered with caution and take into
41 account the dearth of evidence before you on some
42 of the issues he testified to.

43 Mr. Commissioner, as you indicated in your
44 Interim Report last fall, it is important that
45 your findings and recommendations are consistent
46 with the existing legal framework, including the
47 law with respect to Aboriginal and treaty rights.

1 And we submit that Policy and Practices Report #1,
2 titled Aboriginal and Treaty Rights Framework, is
3 a generally fair and accurate summary of the law
4 in this area. We have some comments that we set
5 out in our reply submission to that report that
6 Mark East provided on the subject last October.
7 So with that caveat, we recommend PPR1 to you.

8 So to discuss Aboriginal issues, we suggest
9 that the Integrated Aboriginal Policy Framework
10 from 2006 is perhaps a good place to start. And
11 if we could go to page 138, paragraph 483 of
12 Canada's final submission. So in this section, we
13 describe how, in 2006, DFO developed the
14 Integrated Aboriginal Policy Framework, and that's
15 Exhibit 1187, as a guide for DFO employees "for
16 the renewal of DFO's Aboriginal policies and
17 programs, to provide strategic policy direction
18 for the development of operational guidelines and
19 programs, and to guide DFO in discussions and
20 collaboration with other federal agencies,
21 provinces, territories, stakeholders and
22 Aboriginal groups".

23 And if we go to paragraph 484, here we
24 describe how the Framework provides a vision or a
25 theme to guide DFO's role in managing Aboriginal
26 fisheries by:

- 27
- 28 • Supporting healthy and prosperous Aboriginal
29 communities through building and supporting
30 strong, stable relationships;
- 31 • Working in a way that upholds the honour of
32 the Crown; and
- 33 • Facilitating Aboriginal participation in
34 fisheries and aquaculture and associated
35 economic opportunities and in the management
36 of aquatic resources.
- 37

38 So we suggest that this Framework provides an
39 action plan with a number of strategies to attain
40 this vision, and we will organize these oral
41 submissions around these four points. So I'll now
42 elaborate on these four points for you.

43 So first:

44

45 Taking into account Aboriginal and treaty
46 rights,
47

1 The starting point for Aboriginal and treaty
2 rights is the Aboriginal Fisheries Framework, and
3 we've set that out at page 143, starting at
4 paragraph 494 of our submissions. And here the
5 Aboriginal Fisheries strategy was developed in
6 1992 to address several objectives related to
7 Aboriginal groups and their access to fisheries
8 resources, including:
9

- 10 • Improving relations with Aboriginal groups;
- 11 • Providing a framework for the management of
12 Aboriginal fisheries in a manner consistent
13 with the 1990 *Sparrow* decision;
- 14 • Greater involvement of Aboriginal groups in
15 the management of fisheries;
- 16 • Increased economic returns from Aboriginal
17 participation in commercial and other
18 economic opportunity fisheries.

19
20 So the AFS continues to be the principal
21 mechanism supporting development of relationships
22 with Aboriginal groups. It includes consultation,
23 planning and implementation, and development of
24 capacity to undertake fisheries management, stock
25 assessment, enhancement and habitat.

26 Annually, DFO enters into approximately 100
27 AFS agreements with approximately 170 First
28 Nations in British Columbia. The AFS is an
29 ongoing program with annual national funding of
30 approximately 35 million dollars. Of that, in
31 2009, approximately 20 million was allocated to
32 the Pacific Region; 14 million for the cooperative
33 management activities; and 6 million for the
34 allocation transfer program.

35 I'd like to now discuss the FSC allocations.
36 Starting at page 145 of our submissions, paragraph
37 501, we discuss DFO policy with respect to FSC
38 allocation and harvest under the Aboriginal
39 Fishing Strategy, and this received some attention
40 in the evidence before the Commission.

41 And before we move into that, I'm wondering,
42 Mr. Lunn, if we could have PPR18 brought up at
43 page 45. So Mr. Commissioner, this Figure 9, this
44 map shows the percentages of Canadian Fraser River
45 sockeye caught by sector from 1992 to 2009. And
46 this chart demonstrates that Aboriginal FSC and
47 pilot sales are economic opportunity fisheries in

1 the early 1990s, we're dwarfed in comparison to
2 the commercial fishery, but in more recent years,
3 particularly 2007, 2008 and 2009, the FSC harvest
4 took virtually all of the Canadian total allowable
5 catch. So that's a helpful figure to see the
6 relationship.

7 The next figure is Figure 8 at page 44, the
8 previous page, and this graph tells the same story
9 in a different way. It demonstrates how, as a
10 sockeye total allowable catch declined since the
11 early 1990s, the brunt of the conservation
12 measures have been borne by the commercial
13 fishery, which includes the Aboriginal economic
14 opportunity fishery. You can see that the FSC
15 sockeye harvest, which has priority in law, has
16 remained relatively stable.

17 So the next point, when we think about FSC,
18 and the point there is that we can see that FSC
19 remains stable and when there are years of low
20 return it encompasses almost the entire fishery
21 and, in some cases, is the entire fishery.

22 The next point is questions about how FSC
23 allocations are determined. Throughout the
24 hearings we heard from Aboriginal groups, needs
25 for increased food, social or ceremonial, FSC,
26 fisheries. And the evidence is that allocations
27 are not set on a per capital basis. It's not a
28 per capital allotment. Canada's submissions on
29 this point are set out at - if we could go back to
30 our submissions, at page 145, paragraph 502 - the
31 evidence is that FSC allocations represent a
32 negotiated outcome, taking into account the
33 Aboriginal groups' interests and needs, as
34 expressed by the group itself, and considering a
35 number of factors, including:

- 36
- 37 1. Population size;
- 38 2. Recent historical harvest levels;
- 39 3. Availability of other stocks or species;
- 40 and
- 41 4. Preferences and fishing capacity of the
- 42 group in question.
- 43

44 Another issue that came up is, is there a
45 definition of what is food, social or ceremonial
46 allocations? And in response to questions from
47 Commission Counsel during the hearings, the

1 evidence of Kaarina McGivney was that DFO does not
2 have an approved definition of food or social or
3 ceremonial purpose fisheries. Rather, consistent
4 with the concept that FSC allocations are
5 negotiated based on the group's needs and
6 interests, DFO provides one allocation for
7 Aboriginal groups to distribute as they see fit.
8 This approach respects the reality that each
9 community's needs and preferences will differ.
10 And I won't take you there, but we have further
11 information on this topic at our reply submissions
12 at page 81.

13 A third point that came up during the
14 hearings was concerns that FSC allocations are
15 sufficient. Some witnesses representing
16 Aboriginal groups testified that their community's
17 FSC allocations under the Aboriginal Fishing
18 Strategy were insufficient for their needs.

19 The evidence shows that allocations were
20 initially negotiated in the early 1990s at the
21 start of the Aboriginal Fishing Strategy, and that
22 these allocations have remained relatively stable
23 over time, as we've seen in the chart we've just
24 looked at.

25 Some Aboriginal groups complained that these
26 allocations were inadequate, and this was a
27 particular concern with the Pacific Fisheries
28 Reform process that I spoke about earlier, in
29 2006. So as a result of the Pacific Fisheries
30 Reform, DFO developed a framework for evaluating,
31 among other things, increases in FSC allocations.
32 And so this framework provides a standardized set
33 of guidelines and criteria for DFO officials to
34 assess such requests in a consistent and
35 transparent manner. There are a number of
36 document relating to this Framework in evidence,
37 but we guide you to Exhibit 1226 and Exhibit 1227
38 being the most assistance to you. And more detail
39 can be found in our submissions at paragraphs --
40 let me just go 503 to 507.

41 A fourth issue that's arisen is changes to
42 FSC fishing areas. Considerable evidence was
43 provided about DFO's policy of licensing FSC
44 harvests in areas consistent with Aboriginal
45 groups' traditional fishing areas. Some groups in
46 coastal areas sought opportunities to harvest
47 migrating Fraser sockeye stocks in areas outside

1 of their traditional fishing areas. Most notably
2 are the Heiltsuk Tribal Council submissions to
3 which Canada has responded in some detail in our
4 reply submissions. And I just note that's at
5 pages 89 to 92 of our reply submissions.

6 But as noted above with respect to changes to
7 the fishing area, DFO has developed a detailed
8 evaluation framework to assess requests for
9 harvesting in a different fishing area. DFO takes
10 such requests seriously, requiring evaluation of
11 harvest management impacts, consultation with
12 other First Nations potentially impacted by any
13 such decision, so the whole overlapping territory
14 issue, and ultimately sign off by the Pacific RDG.

15 Barry Rosenberger testified that this policy
16 is commonly referred to as the adjacency
17 principle, and it's important for the orderly
18 management of the fishery, particularly where the
19 harvest for all four general runs of sockeye are
20 already fully subscribed. Although DFO is
21 criticized for lacking flexibility in the
22 application of this policy, such requests for
23 changes to fishing areas are best addressed in the
24 pre-season harvest planning process.

25 If we could then go, Mr. Lunn, to page 141,
26 paragraph 486, this is a section of our
27 submissions on consultation. So another area
28 where DFO takes into account Aboriginal and treaty
29 rights through its consultations with Aboriginal
30 groups, and at paragraph 490 we note that in 2004,
31 prior to the Supreme Court of Canada decisions in
32 Haida and Taku River, DFO had produced a document
33 titled, "Consultation Framework". That's Exhibit
34 594. So among other things, this document
35 observes that:

36
37 In the context of consulting with First
38 Nations, the term "consultations" is often
39 understood to be the sum of a series of
40 interactions, both formal and informal, or an
41 ongoing process built around a relationship,
42 rather than one specific consultation
43 "event".
44

45 So that was back, prior to Haida/Taku.

46 What we'd like to emphasize is that DFO
47 officials engage with and consult with Aboriginal

1 groups on a range of levels, from formalized co-
2 management arrangements and high level strategic
3 policy forums, to meetings, letters,
4 teleconferences, e-mails and informal discussions.

5 If we could just roll back to paragraph 47,
6 Barry Huber testified to the importance of
7 consultation in the work of DFO area office staff
8 and how a significant amount of DFO officials'
9 time and resources are devoted to consultations
10 bilaterally with Aboriginal group sand engaging
11 with Aboriginal organizations in the variety of
12 consultation processes.

13 Most consultations occur from the Pacific
14 Region area offices throughout B.C., but there's
15 also a consultation secretariat that sort of
16 coordinates these consultations. Sue Farlinger
17 entered into evidence Exhibit 1926, which is the
18 DFO public calendar of events, which provides the
19 date, the meeting and the minutes of consultation.
20 So that's a unifying place and a public place to
21 keep track of the various consultations.

22 Paragraph 491, Mr. Lunn, and 492, we just
23 note that the consultation framework has been
24 updated with more recent consultation guidelines,
25 including the Consultation with First Nations:
26 Best Practices, and that's Exhibit 596. And we
27 also have the government-wide document, Aboriginal
28 Consultations and Accommodation, at Exhibit 1212.

29 In meeting its legal obligations to consult
30 with Aboriginal groups, DFO typically is required
31 to consult bilaterally with Aboriginal groups. In
32 some circumstances, Aboriginal groups have
33 aggregated to have an organization represent their
34 legal rights and the interests collectively, but
35 this is likely the exception rather than the rule.
36 In most cases, Aboriginal groups have insisted on
37 retaining a bilateral consultation relationship
38 with the Crown. This is a reality that DFO must
39 respond to, but it is an onerous one.

40 Barry Huber testified about the difficulties
41 inherent in consulting on a regular basis with
42 over 200 B.C. First Nations, and how it's an
43 unsustainable demand on resources when budgets are
44 under pressure. DFO is, therefore, very
45 interested in encouraging and supporting
46 Aboriginal groups to collaborate in order to
47 consult with DFO collectively. And for your

1 reference, that was Barry Huber's testimony from
2 June 30th, page 99 of the transcript.

3 We heard evidence about recognizing rights
4 and determining strength of claims. There was
5 evidence that DFO should explicitly recognize
6 Aboriginal groups' Aboriginal rights and title, or
7 treaty rights where appropriate, including rights
8 to fish for economic purposes and the right to
9 manage the fishery. We respond to this evidence
10 in our reply submissions at page 71 and 72.

11 Existing Aboriginal and treaty rights are, of
12 course, recognized and affirmed pursuant to s. 35
13 of the **Constitution Act, 1982**. I just note that
14 DFO does not have a mandate within the Federal
15 Government to recognize the Aboriginal or treaty
16 rights of a specific group. This mandate rests
17 with the Department of Aboriginal Affairs and
18 Northern Development of Canada. And as I will
19 discuss in a moment, the policy response to this
20 mandate is the B.C. treaty process.

21 After the **Sparrow** decision, DFO responded on
22 a policy basis with the Aboriginal Fishing
23 Strategy and the **Aboriginal Communal Licence**
24 **Fishing Regulations**, which provide Aboriginal
25 groups with priority access to fish for FSC
26 purposes, and also provides some economic
27 opportunities and support for co-management
28 activities.

29 As I'll discuss shortly, DFO facilitates and
30 supports Aboriginal participation in commercial
31 fishing, again on a policy basis.

32 So going back to this issue of strength of
33 claim assessment, the strength of Aboriginal
34 groups' legal claims will vary and, inevitably,
35 they will overlap and may conflict with rights
36 asserted by other groups. Aboriginal rights are
37 not generic in scope or content; they are fact and
38 site specific. Each group's rights will vary
39 depending on the factual context. Determining the
40 nature and scope of an Aboriginal groups'
41 Aboriginal or treaty rights claims would require
42 historical, ethno-graphic and legal analysis.

43 As a result, engaging Aboriginal groups on a
44 strength of claim basis would be inherently
45 divisive. DFO is attempting to develop stronger
46 relationships with Aboriginal groups and involving
47 DFO in disputes about overlapping and conflicting

1 rights claims would be antithetical to that goal.
2 Barry Huber testified that in his daily engagement
3 with Aboriginal people and groups, he's never been
4 asked to assess a group's strength of claim or to
5 make decisions on that basis.

6 Ultimately, DFO would prefer that Aboriginal
7 groups resolve issues of conflicting rights
8 amongst themselves. This is consistent with
9 testimony from the Aboriginal witnesses and from
10 the First Nation Panel on fisheries report "Our
11 Place at the Table". And that's Exhibit 493, and
12 that was their recommendation number 3.

13 The next theme I'd like to talk about is the
14 B.C. treaty process. Canada's submissions on the
15 B.C. treaty process are found in our submissions
16 at paragraphs 539 to 547. The negotiation of
17 modern treaties, including the negotiation of
18 treaty fishing rights, has been and remains
19 Canada's primary policy response to Aboriginal
20 claims to Aboriginal rights and title. Two
21 treaties in legal effect provide allocations for
22 Fraser sockeye: the Tsawwassen treaty and the and
23 Maa-nulth final agreement. A few other agreement
24 with specific Fraser sockeye allocations, such as,
25 for example, the Yale and the Sechelt, and perhaps
26 others, may come into effect in the next few
27 years.

28 We've heard some evidence about the benefits
29 of the Tsawwassen treaty, with Chief Kim Baird in
30 particular, commenting on how the management and
31 self-government provisions have created more
32 certainty around the Tsawwassen's rights, roles
33 and responsibilities in managing its fishery.

34 Modern treaty negotiations under the auspices
35 of the B.C. treaty process began in the early
36 1990s, contemporaneous with the establishment of
37 the AFS. Indeed, the AFS and other policies have
38 been considered a bridge to treaty.

39 If we can go to paragraph 548, as we discuss
40 paragraphs 548 to 550, it has become evident,
41 however, that the treaty process is complex and a
42 long-term process and that most Aboriginal groups
43 in B.C. will not be entering into final agreements
44 in the near to medium term. While the Government
45 of Canada, including DFO, remains committed to
46 negotiating treaties in the B.C. treaty process,
47 DFO recognizes that Aboriginal programs outside of

1 treaty need to be established on a more permanent
2 basis and, importantly, integrated with the goals,
3 objectives and outcomes of the ongoing treaty
4 process.

5 This realization resulted in the Coastwide
6 Framework policy development process, which is
7 summarized in the Aboriginal Fisheries Framework
8 document, which, for your assistance, is Exhibit
9 1426. The work on the policy initiatives
10 described in this document has been generally
11 deferred pending the outcome of the Cohen
12 Commission and consideration of the Commission's
13 final report and recommendations.

14 One aspect of the Coastwide Framework is
15 being used, that being the allocation endpoints
16 for salmon and non-salmon species. The actual
17 percentage number is a Cabinet confidence, but we
18 heard evidence from Kaarina McGivney that the
19 percentage represents an allocation endpoint for
20 all salmon species for both FSC and commercial
21 purposes. The purpose of the endpoint is to
22 ensure that the allocations fixed in treaty
23 agreements leave room for all Canadians to
24 continue to participate in the fishery.

25 The endpoint does not prescribe allocation
26 endpoints for specific species or sockeye stocks.
27 Therefore, there remains considerable flexibility
28 in specific negotiations with Aboriginal groups
29 and organizations to agree on an appropriate mix
30 of salmon species and sockeye stocks, in
31 accordance with the criteria outlined previously.
32 Moreover, as Ms. McGivney articulated, the
33 allocation endpoint is a target to be managed as
34 an average over a number of years because, as
35 recent harvest levels indicate, in low run years,
36 Aboriginal FSC harvests will account for a
37 significant proportion, and sometimes all, of the
38 total allowable catch.

39 The next point I'd like to cover is the Boldt
40 decision and model. The Boldt decision has been
41 espoused by some of the witnesses as an allocation
42 and co-management model for the Commission to
43 consider in British Columbia. And in our reply
44 submissions, pages 82 to 83, paragraphs 260 to
45 261, we make some observations about the Boldt
46 decision and the allocation model.

47 First, the Sto:lo-Cheam submission errs in

1 referring to the trial judgment of Judge Boldt,
2 who ruled that Washington State tribes had a
3 treaty right to 50 percent of the fishery "after"
4 meeting its needs for subsistence and ceremonial
5 purposes. This aspect of the judgment was
6 ultimately overruled by the U.S. Supreme Court.
7 The U.S. Supreme Court says that the 50 percent
8 "includes" the tribe's subsistence and ceremonial
9 needs into the 50 percent share.

10 And then, most importantly, the U.S. Supreme
11 court was explicit in ruling that the treaty and
12 non-treaty fishers hold "equal" 50/50 share in the
13 fishery. In other words, the Washington State
14 tribes, outside of their reserve lands, enjoyed no
15 general priority of harvest over other fishers in
16 the state. It was 50/50. There was no priority
17 of FSC over the commercial fishers.

18 So I emphasize this as an important
19 difference between the Boldt model in Washington
20 State and the Canadian constitutional framework
21 and jurisprudence, where FSC fishing is accorded a
22 priority. And we note that the report of the
23 First Nations panel, "Our Place at the Table",
24 recommends that 50 percent of all fisheries in
25 B.C. should be transferred to Aboriginal groups
26 for economic purposes. That's their
27 Recommendation #2.

28 The FSC allocations, according to the Our
29 Place at the Table report, would not be included
30 in this 50 percent allocation for economic
31 purposes. That's their Recommendation #1.

32 Moreover, the First Nation Panel envisioned
33 50 percent as a starting point, noting that
34 Aboriginal groups may be able to establish
35 Aboriginal rights or title to a greater share of a
36 particular fishery.

37 So we point this out to illustrate that any
38 recommendation in favour of the Boldt allocation
39 model in B.C. must also consider how that model
40 would adapt to Canada's different constitutional
41 and legal framework.

42 The third theme is supporting increased
43 Aboriginal participation in co-management of
44 aquatic resources. So the role of Aboriginal
45 groups in the management of the Fraser sockeye
46 fishery has been a major theme of these hearings.
47 We've set that out in our submissions, beginning

1 at page 148, paragraph 512.

2 From DFO's perspective, effective
3 co-management arrangements with Aboriginal groups
4 are essential as a means to manage the fishery in
5 an efficient and effective manner with limited
6 financial resources. Separate co-management
7 arrangements with 130 individual Aboriginal groups
8 would be obviously inefficient and unsustainable
9 in terms of financial and human resources.

10 DFO witnesses were, at times, questioned to
11 describe DFO's vision for co-management with
12 Aboriginal groups. There are some aspects of
13 co-management that are immutable for at least the
14 foreseeable future, the most important of these
15 being the authority of the Minister of Fisheries
16 and Oceans, and the role of DFO as the overall
17 manager of the fishery, a role recognized by the
18 courts in **R. v. Nikal**, Supreme Court of Canada,
19 paragraph 101.

20 Barry Rosenberger also testified that an
21 essential feature of any co-management structure
22 is one with clearly defined roles, mandates and
23 responsibilities.

24 You have heard and will hear more about ideas
25 and models for a co-management with Aboriginal
26 groups. However, from DFO's perspective, a
27 co-management process or arrangement, to have
28 credibility, must be developed by agreement. It's
29 for this reason that DFO funded processes for
30 dialogue between DFO and Aboriginal groups, such
31 as the Forum on Conservation and Harvest Planning
32 for Fraser Salmon, and related Roadmap process.

33 Another factor to consider when reviewing the
34 participants' general and specific recommendations
35 relating to co-management is the reality that
36 Aboriginal groups in the province are not unified
37 politically, nor in agreement on their respective
38 interests and objectives. This is perhaps not
39 surprising considering that some 130 Aboriginal
40 groups harvest Fraser River sockeye salmon in
41 marine areas, the lower Fraser, and in upper
42 terminal fishing areas.

43 We've often heard at these hearings it's for
44 Aboriginal groups to resolve their differences
45 themselves. For example, the First Nations
46 Coalition submission at paragraph 692 stated that.
47 DFO can and does assist with financial and

1 administrative support to facilitate dialogue and
2 develop the technical and managerial capacity
3 necessary to make such dialogue meaningful.

4 And we have programs such as AAROM and PICFI
5 which encourages Aboriginal groups to work
6 together for the better management of the fishery.
7 AAROM is currently funded as an ongoing program
8 with Pacific Region, receiving between six to
9 seven million annually out of a national budget of
10 over 11 million. And DFO provides AAROM funding
11 to AAROM bodies through a contribution agreement.
12 And as of 2009, there were 18 AAROM agreements,
13 representing 123 British Columbia Aboriginal
14 groups with 6.2 million in annual funding.

15 Numerous bodies and organizations discussed
16 at this Inquiry are supported by AAROM funding and
17 from other DFO programs. These include the First
18 Nations Fisheries Council, the Fraser River
19 Aboriginal Fisheries Secretariat, the Inter-Tribal
20 Treaty Organization, the First Nations Caucus to
21 the Pacific Salmon Commission, Aboriginal
22 representation on the Integrated Harvest and
23 Planning Committee, the Upper Fraser Fisheries
24 Conservation Alliance, the Lower Fraser Fisheries
25 Alliance, and several other organizations and
26 groups.

27 Ultimately, these processes, like the forum
28 in the Roadmap, the challenges and difficulties
29 inherent in achieving a workable co-management
30 regime with approximately 130 Aboriginal groups
31 can be worked through and resolved. This will, in
32 turn, ideally enable First Nations to have
33 mandated representatives appointed to important
34 Tier 3 bodies and organizations, such as the
35 Integrated Harvest Planning Committee, Fraser
36 River Panel, and Pacific Salmon Commission.

37 The fourth theme is to provide for increased
38 Aboriginal participation in integrated commercial
39 fisheries and economic opportunities. We've heard
40 extensive evidence about the various programs that
41 DFO has to encourage greater Aboriginal
42 participation into an integrated commercial
43 fishery. We start this at page 161, paragraph 551
44 of our submissions.

45 And to summarize some of these programs, we
46 have the Allocation Transfer Program as a
47 component of the AFS. From 1994 to the present,

1 177 salmon licenses were acquired at a cost of
2 over 19 million dollars. Currently, the Pacific
3 Region of DFO receives between four to six million
4 annually to fund the Allocation Transfer Program,
5 of which a portion goes to acquiring salmon
6 licenses.

7 Certain Aboriginal group sin the lower Fraser
8 have access to economic opportunity fisheries,
9 which are communal commercial fisheries,
10 authorized for under the **ACFLRs**, the **Aboriginal**
11 **Communal Fishing Licence Regulations**, and part of
12 the AFS.

13 The Pacific Integrated Commercial Fisheries
14 Initiative, PICFI, I was talking about earlier,
15 and one of its goals is to provide, and with
16 greater access, to diversify commercial fishing
17 opportunities. 115 million of the PICFI budget
18 allocated over five years is dedicated to
19 acquiring a variety of fisheries access to be
20 provided to Aboriginal groups. As of December
21 2010, DFO had expended approximately 70.5 million
22 related to relinquishment of 314 licenses,
23 including 151 salmon licenses. And I note that
24 another 43 salmon licenses were acquired in the
25 same period through the Allocation Transfer
26 Program.

27 Finally, PICFI funds have been used to
28 purchase licenses to support in-river
29 demonstration fisheries, the purpose of which is
30 to explore the economic viability of an in-river
31 commercial fishery for sockeye and other salmon
32 species. Canada's submissions on this can be
33 found in our final submissions at paragraph 560.

34 The concept of an in-river fishery, if
35 viable, is consistent with DFO's Wild Salmon
36 Policy, New Directions Policy we discussed this
37 morning, and Pacific Fisheries Reform. It also
38 potentially provides socioeconomic opportunities
39 to Aboriginal communities in the Interior of the
40 Province. It also fits well with DFO's interests
41 in moving towards a share-based fishery, where it
42 can be demonstrated that it is feasible.

43 So DFO clearly understands that this work of
44 exploring in-river demonstration fisheries is
45 exploratory and, at some point, must be proven to
46 be viable and self-sustaining. At present,
47 results are mixed and more work is required.

1 Those are my submissions on the Aboriginal
2 rights. I have a few comments to make in respect
3 to Canada's reply to the various submissions of
4 the other parties. Mr. Lunn, if we could go to
5 the first paragraph of Canada's reply submissions.

6 I just wanted to highlight that in the first
7 paragraph we just note that the participants'
8 submissions affirm the widespread interest in
9 British Columbia and the Fraser sockeye resource.
10 The submissions also reflect the Participants'
11 often divergent perspectives on issues related to
12 Fraser sockeye and its habitat. The Participants'
13 submissions helpfully set out these divergent
14 perspectives, they frame the issues differently,
15 and serve to both educate and inform us.

16 If we could go to page 4, paragraph 9. Mr.
17 Commissioner, we noted in the variety of the
18 participant submissions three cross-cutting issues
19 that arose throughout. The first is over-
20 escapement, and we summarized the parties that
21 have made arguments with respect to over-
22 escapement being a likely cause of long-term
23 decline of Fraser River sockeye. And we
24 respectively suggest there's some errors in the
25 submissions, largely of omission, regarding the
26 topic of over-escapement.

27 So paragraph 10 we just set out a brief
28 summary of what we consider the important evidence
29 that should be considered when over-escapement is
30 considered. So we just note at paragraph 11,
31 Technical Report #10 by Dr. Randall Peterman, he
32 concluded that:

33
34 Our results do not support the general
35 hypothesis that efforts to rebuild Fraser
36 populations in recent years may have resulted
37 in over-spawning, thereby causing substantial
38 declines and productivities for these stocks.
39

40 Paragraph 12 we note that David Marmorek, the
41 author of *The Cumulative Impacts*, agreed with that
42 assessment.

43 Paragraph 13, Dr. Brian Riddell, on December
44 1st, 2010, clarified that, although there is
45 finite carrying capacity in lake environments,
46 there is no evidence that at very high levels of
47 escapement the number of juveniles produced

1 crashes.

2 Paragraph 14, again, David Marmorek, the
3 *Cumulative Impacts* principal author, compared the
4 analysis of Dr. Walters and Dr. Peterman, and he
5 said:
6

7 So they're both excellent fisheries
8 scientists. But what we have here is one very
9 detailed report by Peterman and Dorner
10 describing all their methods, on the other
11 hand we have an e-mail with a graph in it. So
12 I think that if you're going to have an
13 apples-to-apples comparison, what you really
14 need is a very detailed description of
15 exactly the methods that Dr. Walters used.
16 Because I found in many previous cases that
17 unless you know exactly what data and methods
18 they're using, it's very hard to compare the
19 conclusions.
20

21 And then finally, paragraph 15, the DFO Science
22 Workshop from April of this year concluded that
23 density dependence and delayed density dependence
24 likely contributed to reduced productivity in a
25 number of stocks but are unlikely the cause of the
26 widespread declines observed within and beyond the
27 Fraser River. And as I recollected, they said it
28 was only really in the Quesnel Lake where that was
29 observed.

30 The second cross-cutting theme is Ecological
31 Benefits and Economic Viability of Inland
32 Commercial Sockeye Fisheries. And paragraph 19, I
33 think the main point, and it ties back to the
34 reality of mixed stock fisheries, given the
35 importance of biodiversity, managing coastal mixed
36 stock fisheries to harvest Fraser sockeye is very
37 challenging. I think that's the one thing we all
38 aren't -- and that harvesting at exploitation
39 rates appropriate for large, productive CUs, or
40 even those with average productivity, will result
41 in the over-harvesting of less productive CUs.
42 They're all swimming together, and that's the big
43 problem to protect biodiversity. Over time, that
44 could result in the extirpation of some CUs, and
45 the reduction in resilience and production from
46 all Fraser sockeye CUs. So we just note that as a
47 factual element of how the fish return, that much

1 of what DFO does manages to accommodate that to
2 ensure conservation.

3 So at paragraph 20, the move towards terminal
4 areas is seen to be one method amongst many to try
5 to protect the weaker CUs. And at this point, DFO
6 understands that moving towards terminal fisheries
7 is exploratory and that more work is required, but
8 it's certainly a tool in the toolbox.

9 The third cross-cutting issue is DFO's
10 capacity to consider and weigh social and economic
11 issues. And here we just outlined the role, at
12 paragraph 23, of socio-economic analysis in
13 decision-making central to Strategy 4 of the WSP,
14 and to a variety of policies that need to consider
15 that. And we just highlighted here, at paragraph
16 26, that before socio-economic analysis can be
17 completed, DFO sometimes undertakes pilot projects
18 to acquire data and develop a more thorough
19 determination of what alternative approaches for
20 doing such analysis would require in terms of
21 resources, and to assess and the implications for
22 stakeholders. So again, there's ongoing work with
23 the share-based management fisheries and the
24 in-river fisheries.

25 I'll let our reply speak for itself. There's
26 a few cases that I'd like to just comment on that
27 a few of the participants have raised. If we
28 could move to page 44 and paragraph 77.

29 I'd just note that the Conservation Coalition
30 stated, at paragraph 2 of its submissions, as
31 follows:

32
33 The Precautionary Principle has been
34 expressly accepted into Canadian
35 jurisprudence by the Supreme Court of Canada
36 in **114957 Canada Ltée**.

37
38 And we just note that in the paragraphs that the
39 decision referred to, the Supreme Court of Canada
40 only discusses whether the precautionary principle
41 may have become a norm of customary international
42 law, without concluding that it has. The court
43 notes that its interpretation of the statute at
44 issue in that case respects international law as a
45 precautionary principle.

46 And if we could go to page 34, paragraph 114.
47 The Conservation Coalition Recommendation ii.2

1 states that:
2

3 Ensure that decision making occurs in as
4 transparent a fashion as possible by
5 suggesting that Ministers must give full
6 reasons for decisions such as the listing of
7 CUs under **SARA**.
8

9 We just note that the power to decide to list or
10 not list a species under the **Species at Risk Act**
11 is conferred on the Governor in Council by the Act
12 under 27(1). And further, the Act already
13 requires that the Minister publish the reasons for
14 any decision either to not list a species or to
15 refer the matter back to the Committee on the
16 Status of Endangered Wildlife in Canada under
17 s. 1.2

18 If I could just then go to page 43, this is
19 the submissions of the West Coast Trollers Area G
20 Association, and so here's an example of a
21 divergent perspective. These submissions, under
22 paragraph 136, their submission is that they
23 contend that the purpose of the **Fisheries Act** and
24 other Federal statutes and treaties is to provide
25 yield (harvest benefits) not conservation of fish
26 *per se*. And then they cite a number of cases.

27 And we disagree with that. We note that, in
28 paragraph 137, we say it's unnecessary for you to
29 consider these issues in order to fulfil your
30 mandate and we say your mandate does not include
31 an exercise of constitutional interpretation.

32 For your assistance, at paragraph 140, we
33 just have summarized the court decisions, the
34 **Fisheries Act** and other relevant statutes that
35 confirm that conservation efforts are a valid
36 exercise of the Minister's discretion. And so
37 we've got **R. v. Robertson** in 1882, **Fowler** in 1980,
38 **R. v. Sparrow** in 1990, and they're all confirming
39 that it's clear that the value of conservation has
40 long been recognized.

41 I'll leave that for you. And those are our
42 submissions.

43 THE COMMISSIONER: Thank you very much.

44 MR. TIMBERG: They're my submissions. Mr. Taylor is
45 going to continue.
46
47

1 SUBMISSIONS FOR THE GOVERNMENT OF CANADA BY MR. TAYLOR,
2 continuing:
3

4 MR. TAYLOR: I'm going to pick up where I left off at
5 about 11:30, and I'll explain that in a moment.
6 But just before that, Mr. Commissioner, I'm just,
7 partly for myself, doing a time check. It is
8 2:55, in rough terms, and by my count we have 35
9 minutes left. Ms. Baker's agreeing with me. In
10 that regard, and just to let the Province, who are
11 next up, I may even be less than 35 minutes.

12 When we left off, I was in an area of our
13 final submissions that is part of a section we
14 have starting at around page 176 on instilling
15 confidence and trust and various means to do that.
16 And before I left off I had covered confidence and
17 trust amongst the parties with regard to in-season
18 management, and I had also, in that regard,
19 referred to clear rules for sharing the harvest
20 and so forth, of Fraser sockeye.

21 I'll now turn to confidence through
22 compliance with fishing regulations, and we deal
23 with that at pages 179 to 181 of our written
24 submissions. In my submissions, I'm not asking or
25 saying that you need to turn up these sections,
26 I'm simply going to make my oral submissions and
27 leave the written text with you. I may
28 occasionally refer to particular paragraphs, but
29 that's simply to anchor you as opposed to
30 necessarily having you go to them.

31 So Mr. Commissioner, compliance, voluntary
32 and enforced, must occur in any regulated
33 activity. That's a given. With that, voluntary
34 compliance is best and that, in turn, entails
35 education, it entails reasonable and transparent
36 measures or rules, and it entails objective and
37 reasonable enforcement. And if you have those
38 things, you've gone a long way, in our
39 submissions, to having buy-in and, thus, voluntary
40 compliance. And that is an objective that DFO
41 seeks to achieve. It's a good way to proceed, in
42 our submission, and it's a way to proceed that is
43 an efficient use of resources. There was some
44 talk of patrols and foot power and whether you
45 have a fisheries officer at every turn or
46 whatever. That's not possible, given the
47 geography, given the nature of the activity. You

1 just can't do that.

2 So voluntary compliance is very important.
3 And Fisheries, in my submission, is making
4 considerable headway in that regard, and that can
5 be compared to what the situation was seven or 10
6 years ago, and there is evidence on that.

7 DFO has a three-pillar approach to compliance
8 and that is set out on page 179 in paragraph 607
9 of our oral submissions. But shortly stated,
10 Pillar 1 is education and stewardship sorts of
11 activities; Pillar 2 is patrol; and Pillar 3 is
12 intelligence-based enforcement.

13 In enforcement, technology is more and more
14 necessary and the way to go. Mr. Bevan, in his
15 evidence, in the last panel at the end of
16 September, spoke to this at fair length.
17 Technology, in our submission, can better monitor
18 the situation or assist people power or people
19 resources to monitor the situation than not having
20 it or having foot power alone. Technology makes
21 the work of staff more efficient, more accurate,
22 and easier. And it is the case, cost efficient,
23 and I've already spoken to this, that that is an
24 important consideration.

25 In all of this, there needs to be databases
26 that talk to each other, interrelate and so forth,
27 and those are all things that are considered
28 important and we leave them for you for your
29 consideration and deliberation of the evidence and
30 in ultimately making recommendations.

31 There is, further, the need to have
32 confidence through reliable data on spawner
33 abundance, and we deal with that at pages 181
34 through 185 of the written submissions. It's
35 there in the text and I'm going to leave that with
36 you. I don't think I need to take you through it.
37 You, of course, have and will continue to read it
38 in time.

39 Next, there is confidence through reliable
40 catch data, and that's dealt with at pages 185
41 through 190 of Canada's final submissions. This
42 is an obvious area where there needs to be
43 confidence built. If each user group doesn't
44 trust the catch data of the other user group, and
45 you've heard some evidence about that, you've
46 already got a problem, and it's therefore
47 necessary to have reliable data and transparency

1 so that each group can understand how the data or
2 the catch information for the other group is
3 collected.

4 Still work to be done in that regard, you've
5 heard evidence on that, some headway is being
6 made, but it's an area where it's important to
7 have reliable information so that you can instil
8 confidence. DFO is working towards efficient and
9 effective technology and useful recommendations in
10 this area amongst others would be very
11 informative.

12 Now, at pages 190 to 198, we deal finfish
13 aquaculture, and I want to turn to that now, if I
14 may. As an overview, and saying this, firstly,
15 aquaculture and disease are two of the most highly
16 contentious topics in which the Commission has
17 heard evidence. And that's not surprising in that
18 these two topics have been - that is, aquaculture
19 and disease - have been flashpoints for
20 controversy in British Columbia for years. You,
21 Mr. Commissioner, have heard something of the
22 history of aquaculture and, in particular, finfish
23 aquaculture, but there's also shellfish
24 aquaculture, that finfish aquaculture in British
25 Columbia which, shortly stated, seems to have come
26 into British Columbia in and around the late '70s,
27 early '80s, and started up with what might be
28 considered mom and pop sorts of operations, very
29 small companies. There's still a few of those
30 around, but not so much in the finfish.

31 And then things went along and through the
32 '90s and then into the 2000s, and in particular in
33 about the last two to three years there's been
34 huge consolidation in the industry and over 90
35 percent of the finfish farms, now, are with four
36 companies I think it is. There had been tens or
37 even close to 100 companies at one point in time
38 way back.

39 So there's been quite a change, and the long
40 and the short of it is, it's no longer, and hasn't
41 been for some time, a mom and pop sort of
42 operation, but rather, it's huge, efficient, large
43 conglomerates that are running it, and people will
44 have opinions about that, but what it leads to is
45 that huge capitalization and sophistication,
46 professionalism and ability to run things in a
47 business-like, professional manner. What's

1 important, of course, is the fish health and
2 guards that are in place against any problems that
3 might arise.

4 We address aquaculture, as I say, not only in
5 the pages that I've referred to in the final
6 submissions, 190 to 198, but we also deal with it
7 in pages 13 to 23 of our reply, and 28 to 30 of
8 our reply, where we provide some submissions in
9 reply to the Aquaculture Coalition's submissions
10 and the Conservation Coalition's submissions.

11 Now, both the Province and the B.C. Salmon
12 Farmers address aquaculture and disease in detail
13 in their final submissions and replies, and the
14 Aquaculture Coalition and the Conservation
15 Coalition deal with aquaculture and disease in
16 some detail in theirs. They will all speak to
17 that, of course.

18 With regard to the Province and the B.C.
19 Salmon Farmers Association, we're content to leave
20 the detail for them to make submissions on, and
21 I'm not going to go into a huge amount of detail
22 in my oral submissions. I expect they will, and
23 I'm content to rely on what they have to say about
24 disease and aquaculture in oral as well as some of
25 their written.

26 Having said that, to the extent if either the
27 Province or the Salmon Farmers say something
28 against Canada, I should not be taken as having
29 agreed to it to that extent. They've got a
30 significant amount of time that they can devote to
31 those topics in their oral submissions. We, of
32 course, overall have a lot of time, but not a lot
33 of time for any one topic.

34 Aquaculture and disease are two separate, and
35 they should be kept separate, but overlapping
36 topics. And they were, of course, heard as a
37 matter of evidence, one after the other, before
38 this Commission.

39 In terms of disease and aquaculture and
40 science, these are two areas where science really
41 comes into the fore. You've heard from DFO
42 Sciences and scientists from other organizations
43 about disease and aquaculture, you've got the
44 technical reports #1 and 1A, which are on disease,
45 and you've got the four Technical Report 5s. Two
46 of them are, if you like, the substantive reports,
47 Dr. Noakes and Dr. Dill.

1 The scientists have provided, those
2 scientists as well as DFO scientists, Dr. Johnson,
3 Dr. Jones, Dr. Miller, Dr. Garver, Dr. Shepert,
4 there's Dr. McKenzie of one of the fish farm
5 companies, Dr. Marty of the Province, there's
6 others that I've missed, but the scientists, each
7 and every one of them, have provided to this
8 Commission their best professional scientific
9 opinion on matters within their respective
10 expertise.

11 In our submission, the Commission should
12 place great weight on what the scientists say,
13 testifying within their respective expertise. In
14 a lot of areas the scientists agree, and I'm going
15 to leave it to the salmon farmers and the Province
16 to speak to much of that, but I want to give, as
17 an example, that the disease science, or the
18 disease panel of scientists on the 22nd and 23rd,
19 Drs. MacWilliams and Johnson and Kent and Stephen,
20 I think it was, and the technical report
21 scientists on August 25, 26, 29 - if I said
22 "October" 22, 23, I meant August, for disease -
23 but the Technical Report 5 scientists on August
24 25, 26, 29, all agreed - some had a couple slight
25 nuances - but they all agreed that the sea-bottom
26 fallout and sea lice are unlikely contributors to
27 the 2009 poor return or to pose a real threat to
28 sockeye as a population.

29 Some participants will nip around the edges
30 on some of those topics, but they are really off
31 the table as a cause. And so that's an example,
32 in our submission, of where scientists agree.

33 Now, why aren't those things a problem?
34 Well, they're not a problem, or not a cause of the
35 decline, largely because, well, if there -- they
36 could be a problem, but they're not a problem
37 because of proper husbandry and fish health
38 management. Proper husbandry and fish health
39 management are practiced and so the fallout and
40 the sea lice have been put to rest, if you like,
41 as an ongoing problem.

42 And furthermore, in relation to that, in
43 disease and other potential problems, generally
44 monitoring, testing and enforcement is very
45 important in having a robust, regulatory regime
46 that provides for that, and a strong industry that
47 practices that is very important and, in our

1 submission, you have ample evidence that those
2 things exist.

3 Again, Mr. Commissioner, I urge you to rely
4 on the expert evidence that scientists have
5 brought forward on these and other matters. Much
6 of what is put in evidence and much of what is
7 talked about call for specialized knowledge and
8 the application of sound science to the question
9 at hand.

10 You will be urged by some participants to
11 reach conclusions on scientific matters that are
12 based on what I will refer to as selected evidence
13 or emotion or soap box material. But again, I
14 think and submit to you that objective,
15 professional science opinion is what is to be
16 given the greatest weight. At the very least,
17 statements and propositions based on selected
18 evidence or emotion or soap box material needs to
19 be put up against the expert science opinion and
20 conclusions and tested against that. These
21 scientists, of course, are experts in their fields
22 and have years of training, experience, research
23 laboratory work behind them.

24 I want to spend a few moments, now, on the
25 work of Dr. Kristi Miller. Dr. Kristi Miller's
26 work on genomic signature has come to the fore in
27 this Commission. It's important work, it's novel
28 work, and it remains to be seen where it will end
29 up, but it is promising work and it is to be
30 encouraged and is being encouraged.

31 But one of the things that's occurred with
32 Dr. Miller's work is that some participants have
33 and will continue to urge upon you that Dr. Miller
34 has concluded or found or reached conclusion on
35 any number of things or viruses of all sorts. And
36 before Dr. Miller testified, long before she
37 testified on August 24 and 25, some participants
38 had stated in this hearing and outside this
39 hearing, but in this hearing, that she had found
40 any number of things.

41 When Dr. Miller testified, she gave evidence
42 that she hadn't found or concluded many of the
43 things that was being said she had or should have.
44 She has a hypothesis, her hypothesis has altered
45 course based on changes in what she's finding as
46 she moves forward with her work. The fact is that
47 there are hypotheses and theories, but it's a work

1 in progress and remains so and what will come out
2 the other side is yet to be known. But again,
3 it's important, it's novel and there is promise in
4 there.

5 Dr. Miller has pointed out that she is not a
6 virologist. Dr. Kyle Garver, another scientists
7 who I haven't mentioned yet, but Dr. Kyle Garver,
8 a DFO scientist, gave evidence as well. Dr.
9 Miller relies on Dr. Garver for the virology side
10 of things, and Dr. Garver gave a number of pieces
11 of important evidence, but one of the things he
12 said is quoted on page 196 of our final
13 submissions in paragraph 678, and it's from his
14 evidence on August 24th. You may recall this, Mr.
15 Commissioner, but he was being pressed to agree
16 that all sorts of things were being found or
17 should be concluded from what Dr. Miller and he
18 are doing, and he said, at one point, and I'm
19 going to read it, because I think it's very
20 important, Dr. Garver testified:

21
22 As a scientist, I'm really concerned with all
23 the speculation that's going on here. We
24 have a parvovirus sequence. We don't have it
25 linked to a disease. We don't have it linked
26 to mortality. We don't know how it's
27 transmitted. We don't know if it causes
28 disease. We don't have any pathology
29 associated with it. So if we're sitting
30 around discussing scientifically hypothesis,
31 this is fine, but if we're actually trying to
32 get to some answers, it's pure speculation.
33

34 And I refer to that because of the important
35 message that's contained in there, not only for
36 the specific thing that Dr. Garver was speaking
37 of, but generally, that there's a tendency by some
38 to jump ahead of what science supports. Hard as
39 it may be, science takes time and there will be
40 twists and turns and dead ends and so forth.
41 That's science. But we should let the scientists
42 do their work and, importantly, pay attention to
43 what their opinions are and give weight to them.
44 And what we should not give weight to is the
45 submission that "X" is true because the media says
46 so or because there's selective evidence that you
47 can put this and that together and ignore other

1 things and come to this conclusion.

2 I'd now like to turn to science inside of
3 government. There has been a suggestion by some
4 in the questioning, and I think there's going to
5 be in the submissions to follow us, that science
6 could or should be done in part or in total
7 outside of DFO or the science branch should be
8 walled off somehow from the rest of DFO or DFO
9 managers.

10 Now, before proceeding on this, it is
11 certainly the case that multiple organizations
12 should do science and universities and industries
13 and non-governmental organizations and others are
14 perfect to do science and should do science. What
15 we're really talking about, here, is the science
16 that is then used by Fisheries managers to make
17 decisions. And Fisheries managers don't only need
18 to have regard to DFO science, but the immediate
19 question is: Should DFO Science Branch provide
20 science advice to government or should someone
21 else?

22 No one seems to suggest that DFO scientists
23 are not competent, and it is my submission that
24 they're extremely competent, extremely
25 professional, and they are thoroughly objective.
26 Some participants seem to suggest, though, that in
27 one way or another DFO scientists are not
28 independent and/or they're swayed by political
29 consideration, but that overlooks and ignores the
30 evidence. The DFO scientists and DFO
31 professionals -- DFO employees, as I say, are
32 thoroughly professional, objective and hard-
33 working, and there's ample evidence from the
34 senior managers that they find DFO Science and the
35 advice provided by scientists of immeasurable
36 value, and they don't seek to influence what that
37 advice should be. It is one factor in decision-
38 making, it's an important factor, but the advice
39 comes as the scientists view it should be, or what
40 the scientist's best opinion is.

41 I want to speak to the **Morton** decision of the
42 B.C. Supreme Court which, of course, led to a
43 regulatory regime change in British Columbia for
44 finfish aquaculture, where it moved from the
45 Provinces having the lead role in regulatory
46 control to the Federal Crown having it and, as you
47 know, it is only in British Columbia, at this

1 time, that the Federal Government has the lead
2 role in regulating finfish aquaculture, and it is
3 because of the **Morton** decision.

4 Some participants suggest that aquaculture
5 should be managed outside of DFO and/or portions
6 of aquaculture regulation and control should be
7 managed outside of DFO. The fact is that the
8 Department of Fisheries and Oceans is the
9 department of government that is mandated to deal
10 with fisheries and, specifically, the fishery
11 powers under 91(12) of the **Constitution Act, 1867**.

12 As I'm launching into **Morton** here, which this
13 particular part will take me a few minutes, I see
14 it's 3:15. Do you want me to carry on or stop for
15 a few minutes?

16 THE COMMISSIONER: We could take a break at this point,
17 Mr. Taylor.

18 MR. TAYLOR: All right.

19 THE REGISTRAR: The hearing will recess for 15 minutes.

20
21 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)

22 (PROCEEDINGS RECONVENED)

23
24 THE REGISTRAR: Order. The hearing is now resumed.

25 THE COMMISSIONER: Mr. Taylor.

26 MR. TAYLOR: Thank you, Mr. Commissioner.

27
28 SUBMISSIONS FOR THE GOVERNMENT OF CANADA BY MR. TAYLOR,
29 continuing:

30
31 MR. TAYLOR: I was dealing with the **Morton** decision and
32 simply pointing out that, firstly, DFO is the
33 department the government mandated to deal with
34 fisheries, and the **Morton** decision did conclude
35 that finfish aquaculture is a fishery, so it's
36 properly within the mandate of DFO. It's
37 paragraphs 154 and 155 and 156 in the **Morton**
38 decision that I particularly rely on, but there
39 Mr. Justice Hinkson did say, amongst other things:

40
41 I conclude that the fish which are reared in
42 finfish farms -

43
44 -- it's almost a tongue-twister, for me at
45 least --

46
47 - that are reared in finfish farms on the

1 coast of British Columbia are either a part
2 of the overall British Columbia Fishery or
3 are a fishery unto themselves. In either case
4 they fall under the jurisdiction of
5 Parliament under s. 91(12) of the
6 **Constitution Act, 1867.**
7

8 That, of course, only takes it as far as putting
9 it into the Federal domain, but given that they
10 are a fishery like other fisheries and DFO is the
11 department handling fisheries, they, like wild
12 fisheries, are within the Department and properly
13 so.

14 Now, there are some who will say that the --
15 what's sometimes characterized by people as the
16 promotions side of aquaculture be put in another
17 department, but in our submission it's important
18 to understand what it is that DFO is doing. DFO
19 is not marketing or a marketing arm for the
20 aquaculture industry. DFO provides support.
21 Sometimes that's economic support, sometimes it's
22 informational and advisory support, sometimes it's
23 partnering and providing information to outsider
24 support, but DFO does that with any number of
25 stakeholders and people in the fishery, including
26 the commercial fishers and including First Nation
27 fishers and so forth, so there's no reason why
28 they wouldn't be engaged in some of that support
29 sort of activity, including economic support for
30 the finfish aquaculture.

31 DFO, of course, aims to be even-handed with
32 the various stakeholders and participants in the
33 various fisheries that it is engaged with.

34 Next are the Project 5 technical reports. I
35 largely leave that to what's in our written
36 material and in what the salmon farmers and the
37 Province say and will, in oral submissions, say,
38 but in my read of those reports and the evidence
39 that the experts gave, particularly Dr. Noakes and
40 Dr. Dill, Dr. Dill does put some caveats around
41 some of this, but in the end he mostly agrees, and
42 where there is disagreement, we think that Dr.
43 Noakes is to be preferred. They conclude that
44 overall salmon farms pose no significant threat to
45 the Fraser sockeye, and salmon farming has not
46 caused the decline in the Fraser sockeye
47 productivity, and we deal with that in and around

1 paragraph 672 of our written submissions.

2 The reason why they don't pose a significant
3 threat is, again, as it is with sea lice and the
4 bottom fallout, is that there is good fish
5 husbandry and fish health management regimes and
6 monitoring and an enforcement regime in place.
7 And those are important things, I say, again.
8 Those are areas that, in my submission, it's
9 important to focus on in this Commission, and the
10 alternative, extreme approach of pulling
11 everything out of the water, is not necessary.

12 As to the new regulatory regime, the one that
13 came into being for finfish aquaculture as a
14 result of the **Morton** decision in December of 2010,
15 firstly, I point out, as is in the evidence, that
16 this was developed over a very short span of time.
17 It's quite something to go from zero to a full
18 regulatory regime, and it's not surprising that
19 there would be a heavy draw on the regime that was
20 in place through the Province before that. But
21 you've heard evidence that the Federal Crown, in
22 their regulatory regime, have changed a number of
23 things. And this is not to be critical of the
24 Province by any means, but it is to say that when
25 you have something and you take responsibility and
26 you can see what's gone before, you can identify
27 where you might add to it.

28 They've added transparency and there is the
29 public reporting on websites and increased calls
30 for reporting from the companies that have to be
31 given to DFO and, in turn, put on the websites,
32 and there is the very robust, in my submission,
33 conditions of licenses, or finfish licence that
34 are pages and have to be complied with, and there
35 is enforceability about that. Not only is there
36 enforceability, but you've heard evidence from
37 Brian Atagi and others that there is monitoring
38 and inspection going on. Yes, they're ramping up,
39 but that's to be expected, but yes, they've done a
40 -- Mia Parker and Andy Thomson gave evidence on
41 this, too, there's been quite a number of
42 inspections done, and since they gave evidence,
43 tens more have been done.

44 And it's our submission that DFO has done a
45 darn good job in putting a new regime in place,
46 the content of it, and getting it actioned and
47 robust monitoring, inspection and enforcement

1 underway.

2 Certainly the regime remains under review.
3 It will be adjusted. Mr. Thomson, in particular,
4 spoke considerably about this to fill any gaps
5 identified, make adjustments, meet the new needs
6 that might be identified, and in part because it's
7 new and in part because it is still being
8 developed, this, in particular, is an area where
9 the work of this Commission will provide good
10 information and ideas and suggestions and
11 recommendations for DFO.

12 There is a suite of policy documents on
13 multiple aspects of the regulatory regime.
14 They're in evidence. They were put in, in the
15 panel on the 30th, or 31st, I think it was, of
16 August or thereabouts.

17 Finally, I'll speak briefly, well, almost
18 finally, rather, I'll speak briefly to incentives
19 and structures and supports to promote effective
20 collaboration. You've heard a lot of evidence
21 about collaboration and DFO has seen that as very
22 important. Engaging with others and having them,
23 if they will, agree -- give ideas to DFO and then
24 agree on any number of things that DFO wants and
25 gets input on.

26 DFO makes great efforts and devotes
27 significant time and resources to engaging the
28 stakeholders and others in engagement and
29 consultation. Pages 198 through 208 of our
30 written submissions we leave with you. We cover
31 this off. But collaboration includes such things
32 as integrated harvest management planning,
33 integrated fisheries management plans, AAROM,
34 habitat and stewardship processes, integrated
35 salmon dialogue forum, the Roadmap process.

36 And in addition to collaboration, which is
37 good in itself, but another aspect of
38 collaboration is consultation, engagement and
39 collaboration brings with it and it is the case,
40 in any event, that it would be so, shared
41 responsibility. Shared responsibility is key.
42 It's not good enough for the stakeholders or any
43 stakeholder to say, "We'll take advantage of the
44 fishery, but we won't engage and take on
45 responsibility." Stakeholders, industry user
46 groups, have to engage and, for example,
47 participate in new gear types and technology that

1 will assist with conservation and avoiding bycatch
2 and that sort of thing.

3 I now come to the conclusion of our oral
4 submissions, Mr. Commissioner, and point out and
5 acknowledge that the Commission, you, Mr.
6 Commissioner, have a challenging and important
7 mandate. Our aim, as I've said, has been to
8 provide, in our written and oral material and
9 throughout the course of the Inquiry, with
10 information to your Commission Counsel and staff
11 and witness interviews, and providing people who
12 become witnesses, and it won't surprise you, of
13 course, that there have been more people
14 interviewed than there have been put on the stand,
15 that's normal. Our aim has been to provide
16 contextual information and to assist the
17 Commission in its work. We have intended, in
18 these written and oral submissions, to highlight
19 what we consider to be the key.

20 I'm going to close, then, by leaving with you
21 the following six elements, and this is set out on
22 page 209 of our written submissions, so it's there
23 for you to take away and read later as well. But
24 the following six elements of the science-based
25 management system that we see as very important to
26 the future sustainability of the Fraser sockeye
27 fishery, and they are, firstly - it's coming up
28 now; thank you, Mr. Lunn:

- 29
30 1) A clear conservation framework to guide the
31 planning, consultations and work;
32 2) A strong scientific foundation;
33 3) To managing Aboriginal fisheries in an
34 effective and respectful manner;
35

36 And I would add, "and in accordance with the
37 applicable jurisprudence," of course. Fourthly,
38 clear rules, and I've spoken to this before:
39

- 40 4) Clear rules for sharing the Fraser sockeye
41 harvest, including means to avoid weak stocks,
42 address First Nations' fishery aspirations,
43 and improve the economic viability of the
44 commercial fishery;
45 5) To instil -
46

47 -- and this is what I've been speaking about most

1 recently --

2
3 - instil confidence and trust among all
4 parties that Fisheries are being effectively
5 managed, regulations are complied with, catch
6 and spawner data is reliable, and finfish
7 aquaculture is effectively regulated; and
8 then,

9 6) Good and effective collaboration and shared
10 responsibility for future sustainability.

11
12 And again, on that last point, it takes everyone
13 working together, not being partisan, and using
14 and relying on sound science to ensure that we
15 have a robust and healthy fish stock.

16 Those are Canada's oral submissions, Mr.
17 Commissioner.

18 THE COMMISSIONER: Thank you very much, Mr. Taylor.

19 MR. PROWSE: Mr. Commissioner, I note the hour. The
20 Province is prepared to commence submissions. I
21 understand there's ample time in the schedule for
22 next week. Our preference would be to start on
23 Monday morning, but we're in your hands.

24 THE COMMISSIONER: Well, I'm content if you want to get
25 underway, Mr. Prowse. Either way, I'm content,
26 frankly, but - I think my mike is probably off.
27 I'm sorry. Is it off?

28 MR. PROWSE: Monday's our preference then, Mr.
29 Commission.

30 THE COMMISSIONER: All right.

31 MR. PROWSE: Thank you.

32 THE COMMISSIONER: Very well, then we'll adjourn until
33 10:00 a.m. on Monday morning. Thank you very
34 much.

35 THE REGISTRAR: The hearing is now adjourned until
36 Monday, November 7th, at 10:00 a.m. Thank you.

37
38 (PROCEEDINGS ADJOURNED TO MONDAY, NOVEMBER 7,
39 2011, AT 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.

Pat Neumann

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

Karen Hefferland