

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.

Tuesday, November 8, 2011

Tenue à :

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

le mardi 8 novembre 2011

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 Burse Matt Keen	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. Judah Harrison	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 Katrina Pacey	Area D Salmon Gillnet Association; Area B Harvest Committee (Seine) ("GILLFSC")
Phil Eidsvik	Southern Area E Gillnetters Assn. B.C. Fisheries Survival Coalition ("SGAHC")
Christopher Harvey, Q.C.	West Coast Trollers Area G Association; United Fishermen and Allied Workers' Union ("TWCTUFA")
No appearance	B.C. Wildlife Federation; B.C. Federation of Drift Fishers ("WFFDF")
No appearance	Maa-nulth Treaty Society; Tsawwassen First Nation; Musqueam First Nation ("MTM")
John Gailus	Western Central Coast Salish First Nations: Cowichan Tribes and Chemainus First Nation Hwlitsum First Nation and Penelakut Tribe Te'mexw Treaty Association ("WCCSFN")
Brenda Gaertner Crystal Reeves	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.

No appearance	Métis Nation British Columbia ("MNBC")
Tim Dickson Nicole Schabus	Sto:lo Tribal Council Cheam Indian Band ("STCCIB")
Allan Donovan	Laich-kwil-tach Treaty Society Chief Harold Sewid, Aboriginal Aquaculture Association ("LJHAH")
No appearance	Musgamagw Tsawataineuk Tribal Council ("MTTC")
Ming Song Benjamin Ralston	Heiltsuk Tribal Council ("HTC")

TABLE OF CONTENTS / TABLE DES MATIERES

	PAGE
FINAL ORAL SUBMISSIONS	
Submissions by Mr. Leadem (CONSERV)	1/26
Submissions by Mr. Rosenbloom (GILLFSC)	35/47
Submissions by Ms. Pacey (GILLFSC)	62
Submissions by Mr. Rosenbloom (GILLFSC) (cont'd)	65
Submissions by Mr. Eidsvik (SGAHC)	65/79

1 Vancouver, B.C. /Vancouver
2 (C.-B.)
3 November 8, 2011/le 8 novembre
4 2011
5

6 THE REGISTRAR: The hearing is now resumed.
7 THE COMMISSIONER: Mr. Leadem.
8

9 SUBMISSIONS FOR THE CONSERVATION COALITION, COASTAL
10 ALLIANCE FOR AQUACULTURE REFORM FRASER RIVERKEEPER
11 SOCIETY; GEORGIA STRAIT ALLIANCE; RAINCOAST
12 CONSERVATION FOUNDATION; WATERSHED WATCH SALMON
13 SOCIETY; MR. OTTO LANGER; AND THE DAVID SUZUKI
14 FOUNDATION BY MR. LEADEM:
15

16 MR. LEADEM: It's my turn to address you and Commission
17 counsel with respect to my final oral submissions
18 and I'd like to begin, as so many others who
19 preceded me to this podium, by thanking, firstly,
20 Commission counsel for the job that they've done
21 over the many months of this Commission hearing.
22 I jokingly told your senior counsel at one stage,
23 "You must be doing something right because
24 everyone is equally annoyed at you."
25

26 And I'd also like to thank you, Mr.
27 Commissioner, because I have fully appreciated
28 your attention and your involvement with this
29 issue. It's an important issue. It's one that
30 has brought all of us together into this room and
31 it's essentially one that will continue long after
32 your work is finished.

33 My clients, I owe a debt of gratitude to them
34 as well. My clients essentially have told me time
35 and time again, when I said "I don't really want
36 to contest this ruling," or, "I don't want to
37 bring on this application, because I really want
38 to get on with things," they said, "Don't do it
39 for us. Do it for the fish." That is what
40 motivates my clients, that concern for the fish,
41 that concern for the conservation of the fish, and
42 the Conservation Coalition, whom I represent, has
43 as its primary motivation, the conservation of the
44 fish.

45 So as we went through the hearings, more than
46 a year ago when we started the technical hearings,
47 my whole process and my instructions were
predicated on that notion. Find out what's good

1 for the fish, find out what will conserve the
2 fish, and bring that to the attention of the
3 Commissioner, because that will inevitably drive a
4 good result.

5 I'm going to start by examining with you,
6 your terms of reference, not because I don't think
7 you don't know them (sic), but because they will
8 guide me in terms of my representations to you. I
9 want to show you - and I'm sure you're well aware
10 of it - that if we look at your terms of reference
11 at page -- I think it's on the second page right
12 under A.
13

14 To conduct the Inquiry without seeking to
15 find fault on the part of any individual,
16 community or organization --
17

18 And this is what I would emphasize:
19

20 -- and with the overall aim of respecting
21 conservation of the sockeye salmon stock and
22 encouraging broad cooperation among
23 stakeholders.
24

25 It goes on to say -- and in a moment, I will
26 make submissions about conservation, because there
27 are some participants who would urge you
28 otherwise, will say that conservation, there's no
29 legal foundation for conservation and that should
30 give way to sustainability or some other concept.
31 I will get there in due course with you.

32 It goes on to say that you are empowered:
33

34 ...to consider the policies and practices of
35 the Department of Fisheries and
36 Oceans...including the Department's
37 scientific advice, its fisheries policies and
38 programs, its risk management strategies, its
39 allocation of Departmental resources...
40

41 Most of my submission will be - and I don't
42 think it will come as any surprise to you or
43 anyone else in this room - around the Wild Salmon
44 Policy, because my clients, and certainly I, have
45 come to believe that if there's any way to forge
46 ahead in terms of addressing the issues of concern
47 to Fraser River sockeye salmon, it's embodied in

1 that policy. I will spend some time with you in
2 terms of the recommendations that we advanced in
3 the policy. I will also refer you to a recently
4 marked exhibit which, at long last, is a draft
5 review of how DFO -- it's a report card of how DFO
6 is doing with respect to the Wild Salmon Policy.

7 Then under C, you are empowered:

8
9 ...to investigate and make independent
10 findings of fact regarding:

11
12 (i) the causes for the decline of Fraser
13 River sockeye salmon --

14
15 And there are some enumerated conditions there.

16
17 -- the impact of environmental changes
18 along the Fraser River, marine
19 environmental conditions, aquaculture,
20 predators, diseases, water temperature
21 and other factors...

22
23 And then you also are finally empowered to
24 investigate:

25
26 (ii) the current state of Fraser River
27 sockeye salmon stocks...

28
29 Part of my submissions, in fact I will lead
30 off my submissions with dealing with these aspects
31 of the terms of reference.

32 Finally, but not least - and I think this is,
33 with all respect, Mr. Commissioner - the most
34 significant part of your mandate. It's:

35
36 ...to develop recommendations for improving
37 the future sustainability of the sockeye
38 salmon fishery in the Fraser River...

39
40 So I want to go back with respect to the
41 causes for declines. Now, when we commenced the
42 technical hearings a little more than a year ago,
43 I think that there were a number of questions in
44 everyone's mind. What happened? What has caused
45 this decline in the Fraser River sockeye? For a
46 period of a number of years commercial fishermen
47 were not allowed to go out with their boats and

1 catch fish, and even First Nations peoples, whose
2 sustenance was heavily dependent upon fish were
3 not allowed to fish.

4 So that question became a bit of a conundrum
5 when, in 2010, the fish returned in such large
6 numbers. So the question then became, well, why
7 the decline for so many years, and then in 2010,
8 why the sudden upshoot in numbers? I don't know
9 if you were able to see the Adam River run, but
10 the river was basically red with fish. It was an
11 incredible phenomenon.

12 Later the question started to be refrained
13 around - after we started to hear scientist after
14 scientist come before you and say, well, I've
15 studied this phenomenon, I've studied harmful
16 algal blooms, and I can see some connection there.
17 Or, I've studied contaminants and I can see some
18 connection there. Or, I've looked at the numbers
19 of salmon all the way up the coast from Washington
20 all the way up to Alaska, as Dr. Peterman did, and
21 I can see some similarities developing. Or, as
22 the PICES people came and gave evidence, Dr. Skip
23 McKinnell said I think there's something going on
24 in the ocean, that great big blue box where the
25 salmon disappear. I think there's something
26 happening there.

27 At the end of the day, all of these
28 scientists can try to put their finger on
29 something and it's elusive, it's very elusive. So
30 when we finally heard from Mr. Marmorek at the end
31 of the day, who was pulling together the work of
32 all the scientists that had worked so hard and
33 diligently in providing you with advice, and when
34 Mr. Marmorek said, "Well, it's cumulative effects.
35 It's not just harmful algal blooms or it's not
36 just diseases or it's not just aquaculture, or
37 it's not just the surface sea temperature. It's a
38 lot of those things acting together
39 synergistically, sometimes in an additive
40 capacity, and that is what is causing the
41 decline."

42 That makes moving forward much more
43 difficult. It would have been much more easy
44 (sic) for us to have found something and said,
45 "Aha, we've discovered it." But because there's
46 all of these factors that are somehow contributing
47 to the decline of the Fraser River sockeye, or

1 have the potential to contribute to the decline,
2 that makes all of our jobs much more difficult
3 because it means that when you want to move
4 forward, where do you assign the shrinking source
5 of revenue and funds for research? Do you give it
6 over to people that want to study the marine
7 environment? Do you give it to the people that
8 want to study the freshwater environment? Do you
9 give it to the people that want to establish the
10 post-telemetry?

11 These are all worthwhile research projects,
12 and they all help in terms of our ability to
13 understand what is actually going on. But at the
14 end of the day, that is not necessarily your
15 problem either, with all due respect, because
16 science will advance. You can give some
17 recommendations on how the science should advance,
18 and I'm looking forward to those recommendations
19 from you, because I think you can assist the
20 scientists greatly in their endeavours by
21 proposing some protocols and some apparatus for
22 how the questions get framed. You may recall that
23 some scientists said, "It's not only the research
24 that's being done, it's what kinds of questions
25 you're asking that's critical."

26 So moving forward in this, I think that it's
27 really important that we focus, that we can
28 virtually not rule out anything. That's a
29 predicament but, at the same time, that allows us
30 to then set up an apparatus to move forward in
31 terms of trying to check off our list of things
32 that could potentially be affecting the Fraser
33 River sockeye.

34 That's the real benefit to this Commission,
35 because the work that you've already accomplished
36 - and it's been significant in my respectful
37 submission - by assembling a group of scientists
38 who not only came to give evidence, but also
39 produced worthwhile projects and reports, a
40 compendium of knowledge that can allow us to move
41 forward, pool upon that knowledge, work with that
42 knowledge, and I think that we'll get to someplace
43 together in this process.

44 The questions also were raised with respect
45 to the Fraser River stocks, and as we started to
46 go through the evidence, we started to hear more
47 and more about the Wild Salmon Policy. I was

1 gratified to see that the Wild Salmon Policy was
2 marked as Exhibit 8 in these proceedings, one of
3 the earlier documents. My clients had always said
4 to me the Wild Salmon Policy is critical. If you
5 don't understand anything else about what's going
6 on at DFO and the policies, at least read that
7 over. So I endeavoured to read it over several
8 times, and I have to acknowledge that DFO got it
9 right. That despite the fact that my clients,
10 many of them, were members of the Marine
11 Conservation Caucus, lobbied hard for greater
12 inclusion of conservation within the confines of
13 the Wild Salmon Policy, I would have to stand here
14 before you and say that DFO hit a home run when
15 they put that into place, because it contains the
16 blueprint for moving forward.

17 Not only is it a viable blueprint for moving
18 forward, but it was also a process that was bought
19 into by many, many groups, not just my clients.
20 Commercial fishing sector were involved in this
21 process, the First Nations were involved in this
22 process. It's essentially a policy that pools
23 together disparate sources, and it's a policy that
24 very much is transformational.

25 Now, you may recall that Strategy 6 of the
26 policy said that we're going to have a five-year
27 review of the policy to see what's working and see
28 what's not working. If I have one significant
29 criticism of the Wild Salmon Policy, it is the
30 glacial pace at which it is being rolled out. We
31 must be in a situation where that has to advance
32 much more quickly. We have to do it for the fish.

33 If I can have Exhibit 1992, which is the
34 Draft Performance Review of the Wild Salmon Policy
35 prepared for Fisheries and Oceans Canada by
36 Gardner Pinfold? I want to take you firstly to
37 the concluding observations of these consultants
38 who met with many, many people from the Department
39 of Fisheries and Oceans, and I want to take you to
40 page 39. There's a heading there, "Concluding
41 Observations," and I just want to read this into
42 the record because it essentially confirms a lot
43 of what we have been submitting to you throughout
44 the course of these many days of testimony. There
45 authors there say:

46
47 Two foundational pieces have been completed

1 in the six years since the Policy was
2 adopted: delineating CUs --

3
4 Conservation units.

5
6 -- for BC and the Yukon; and, identifying
7 freshwater habitat indicators, metrics and
8 benchmarks. Two other foundational pieces
9 are well advanced: developing criteria to
10 assess the status of CUs; and, developing
11 habitat characteristic templates and
12 completing status reports on six watersheds.

13
14 While these are clearly fundamental building
15 blocks for a fully realized Policy, they are
16 not enough to make more than a modest
17 contribution to the actual objectives and
18 goal of the Policy. They provide the
19 technical basis - the framework - for
20 implementing the extensive work needed for
21 the Policy to succeed. This work requires
22 activity in three essential areas:
23 establishing abundance and distribution
24 benchmarks for each of the CUs and monitoring
25 and assessing their status; [secondly]
26 assessing the habitat status of CUs; and,
27 implementing an interim process for managing
28 priority CUs.

29
30 And then the authors say these words:

31
32 Until these activities produce their intended
33 outputs and [in] outcomes, the Policy
34 objectives will remain largely unrealized and
35 the goal a worthy, but elusive, target.

36
37 That's the status that we're in today. I
38 realize that this is in draft form and I
39 understand that eventually it may be changed or
40 modified, but essentially, that's what we have.

41 I want to now look at what these authors say
42 were some of the "Challenges and Recommendations"
43 portion, the next page, beginning at page 41.
44 There's a heading, "Factors influencing WSP
45 success," and there's an itemization then of the
46 challenges. The first one that they identify is
47 "Complexity and uncertainty". The authors say:

1 These...dimensions of complexity and
2 uncertainty have required more time to
3 resolve than originally expected and,
4 combined with the sequential nature of the
5 Action Steps, have contributed to (but do not
6 fully account for) a slower pace of
7 implementation than anticipated.
8

9 And then the second challenge to the Wild
10 Salmon Policy is "Implementation funding". In a
11 moment, after I'm finished my submissions to you,
12 I think that Mr. Rosenbloom for Area B and D, I
13 think, will address you and he addresses this
14 concept of implementation funding, and we
15 basically and generally support that.
16

17 Policy implementation was to proceed "within
18 the envelope of available funding".
19

20 That's the words that were found within the actual
21 policy itself.
22

23 In addition to imposing an overall constraint
24 on implementation, this also added a layer of
25 uncertainty since it effectively limited the
26 horizon to plan activities to a year or so.
27 The lack of committed resources may also have
28 played a role in influencing the decision not
29 to produce a formal implementation plan.
30 Moreover, the available resources actually
31 declined after 2008...instead of increasing
32 as activities moved from research and
33 development to extensive implementation of
34 monitoring and assessment.
35

36 And then the third factor that I want to
37 point out, which the authors have here come to
38 some conclusions about is "Acceptance within DFO",
39 and this is a critical one. The authors say that:
40

41 Policy was [basically] transformational in
42 its approach to conserving diversity...the
43 use of benchmarks, the integration of habitat
44 and ecosystem information, and the approach
45 to developing ISPs.
46

47 Integrated strategic planning.

1 As such, it would transform the way DFO has
2 to do business. This requires what senior
3 officials describe as a "cultural shift"
4 within DFO, which is likely to present a
5 challenge. Since none of the outputs of the
6 WSP have yet been operationalized, it is too
7 early to tell how great the challenge might
8 be.
9

10 Now, the authors then turn, at page 42, to
11 "Barriers". The first barrier that they identify
12 is a significant one. They call it "Jurisdiction
13 and capacity." This is the problem that we have
14 is that DFO says, well, we can control what
15 happens to the fish, but we don't have
16 jurisdiction over land and the streams and the
17 habitat. The authors here rightly point out that:
18

19 The Province of British Columbia has
20 jurisdiction over land and water use. DFO
21 express the concern that this limits the
22 Department's ability to address habitat
23 issues, other than in a reactive way (in
24 response to potential harm) under Sections 35
25 and 36 of the **Fisheries Act**. The Policy
26 calls for stronger partnerships, and among
27 others, between the federal and provincial
28 governments regarding salmon habitat
29 conservation and restoration.
30

31 I'm just going to pause there because
32 although there was collaboration in this room on
33 many aspects, I was a bit mystified because I did
34 not see that collaboration developing between the
35 Province and the federal government with respect
36 to habitat protection. It may have been there
37 with respect to the united front that they
38 presented with regard to aquaculture, but more
39 critically, it was not there with respect to
40 habitat.

41 Although the Province has come before you and
42 made submissions and says, well, none of the
43 things that we've done, such as logging riparian
44 areas, none of those things have really
45 contributed to the decline so, don't worry, you
46 can basically discount it. That's not good
47 enough. That's not good for Canadians, and it's

1 not good enough for the fish. They have to be
2 there with respect to the habitat protection.
3 There has to be greater collaboration between the
4 Province and the federal government so that
5 working together, they can achieve what
6 independently they cannot.

7 The other barrier that they identify is "Rear
8 and strategic behaviour."
9

10 Fear of outcomes once CU benchmarks and
11 status have been determined could affect
12 support for the --
13

14 Integrated Management Process -- or Plans and the
15 Integrated Strategic Plan -- Process.
16

17 -- IMP/ISP process, resulting in strategic
18 behaviour in planning processes and limiting
19 the effectiveness of CU management.
20

21 Now, I'm going to just stop there as well,
22 because some of the participants will express that
23 fear. It's the fear of the unknown. What's going
24 to happen if this Wild Salmon Policy is fully
25 operationalized, it's up and running. What will
26 it mean for my commercial fishing ability? That
27 fear may be real for certain sectors, but it
28 should not be an excuse for not moving forward
29 with respect to this Wild Salmon Policy.

30 Then finally, if I can now turn to the
31 "Recommendations", because the recommendations
32 mirror some of the recommendations that other
33 participants, including our group, have put
34 forward to you. Beginning at page 44, the
35 "Recommendations", and I know Mr. Buchanan took
36 you very quickly to some of these, and I'm going
37 to spend a little bit more time with you on these
38 recommendations because they are worthwhile.

39 Recommendation number 1:
40

41 The Wild Salmon Policy needs a firm DFO
42 commitment with funding.
43

44 That's a given. The authors say:
45

46 One of the lessons to emerge from the WSP
47 implementation experience since 2005 is that

1 a lack of a firm DFO commitment to implement
2 the Policy is a key reason it has not
3 progressed. So far, the Policy is
4 transformative in principle only. If the
5 Department wants the Policy to be
6 transformative in practice, then it should
7 make it so.
8

9 And it's that easy. If nothing else comes
10 out of your recommendations than an affirmation
11 that the Wild Salmon Policy is a worthwhile goal
12 and that the government should get on with
13 implementing it and making it fully
14 operationalized, then you would have done a lot.

15 Recommendation number 2, which we also fully
16 support:

17
18 Identify priority action steps and target
19 resources strategically.
20

21 You'll hear -- and you've already heard from
22 Canada and they've said it's complicated, it's
23 costly, we can't afford it, we're in an era where
24 we have to cut back. The answer to that is let's
25 be strategic about how we spend the money, then.
26 Let's not just throw a lot of money at it, but
27 let's see where we can get the best bang for our
28 buck.

29 Recommendation number 3, and this is one that
30 we wholeheartedly endorse. It's on page 46:

31
32 Develop a formal implementation plan.
33

34 Part of the reason -- and you may recall that I
35 asked this question of many panels and many
36 people, both from DFO and I was naïve enough to
37 even ask it of scientists on occasion. What's it
38 look like? What does an implemented Wild Salmon
39 Policy look like? I don't think that in all the
40 times that I asked that question, I got a fully
41 satisfactory answer.

42 Well, if you sit down with the Wild Salmon
43 Policy and you map out what it's going to look
44 like, then at least you'll have a worthwhile goal
45 that you can all then proceed for. But DFO has
46 not done that, and they ought to be doing that.

47 Recommendation 4, and this mirrors the one --

1 we called it a champion. They say:
2

3 Make a senior manager accountable for
4 implementation.
5

6 They say:
7

8 This recommendation is aimed at strengthening
9 the accountability framework. At present,
10 responsibility for WSP implementation is
11 spread across branches, with each director
12 accountable for a set of specified activities
13 to be carried out by staff within that
14 branch. Staff are accountable to directors
15 through performance agreements. Directors
16 are accountable to the RDG and the RDG to the
17 Deputy Minister through accountability
18 accords. So, ultimately, accountability
19 rolls up to the RDG, but the RDG's role is to
20 provide strategic guidance rather than
21 operational management.
22

23 You may recall that when the negotiations and
24 process leading up to the actual writing of the
25 Wild Salmon Policy drew to a standstill, DFO did
26 something really smart. They brought somebody in
27 who could take over and take charge, and not off
28 the side of his desk, but actually full-time
29 working on bringing that Wild Salmon Policy into
30 fruition, to get it passed, to get it signed off
31 by the Minister. They brought in Mr. Chamut, and
32 he did that. If they had not done it, we would
33 probably be here talking about when are we ever
34 going to see the Wild Salmon Policy that's still
35 in draft form? So this idea of a champion,
36 somebody who's going to espouse the Wild Salmon
37 Policy and take it on is a critical one.
38

39 Recommendation 5:
40

41 Adopt a strategic approach to consultations.
42

43 You may recall evidence about meeting
44 fatigue. I think it was Mr. Morley who says,
45 "There's so many meetings going on. We're just
46 fatigued. We can't attend any more." There's
47 meeting after meeting after meeting, consultation
after consultation. DFO proudly says, "Well, we

1 have 500 days of meetings with various groups and
2 stakeholders." That proves their commitment.
3 Well, meet strategically. Don't meet for the sake of
4 having a meeting, but meet strategically so you
5 can advance the policy.

6 Finally, the authors here say:

7
8 Finalize and adopt approaches for key
9 operational matters.

10
11 There they talk about planning scale for the
12 CUs. This is the critical part, Mr. Commissioner.
13 Once the CUs are incorporated, you don't have to
14 wait until the Wild Salmon Policy has been fully
15 operational. You can start to incorporate
16 planning of the fishery once the CUs are known,
17 once the benchmarks -- once the lower benchmarks
18 and the upper benchmarks, the limit reference
19 points or target reference points as they're
20 called, and other nomenclature are known, managers
21 can start to address the fishery with those known
22 entities. They will know which conservation units
23 are going to be in the red zone. They will know
24 that in the way that the fishery is conducted,
25 that it may not be possible to actually have
26 commercial harvesting because it will impact those
27 CUs that are in the red zone.

28 One of the biggest conundrums that I've had
29 throughout the course of my appearances here, and
30 a question that I've often posed, is you have
31 these run-timing groups and you have aggradations.
32 And so you're fishing -- and all of the
33 aggradations of CUs -- and a fish doesn't carry a
34 flag saying, "I'm a Cultus Lake sockeye and I'm in
35 endangered, do don't catch me." It gets caught.
36 It gets caught with the other commercial fish in a
37 commercial fishery. So you need to segregate out
38 the run-timing groups to protect the conservation
39 units.

40 There are solutions to that. You've heard
41 some of those solutions: moving towards a more
42 terminal fishery, moving upriver with the fishery
43 to allow for segregation of some of those
44 conservation units which are endangered, which are
45 threatened, which are in the red zone.

46 You will recall that Dr. Sue Grant for DFO
47 has been working very hard and diligently and

1 trying to estimate benchmarks for conservation
2 units, and the paper that she presented back when
3 we first saw that -- I think it was in December or
4 January of last year. I can't recall the exact
5 date. But it's gone through sequential
6 iterations, but the message is still the same.
7 There are conservation units of Fraser River
8 sockeye that we know of. She's identified
9 something in the neighbourhood of 26 of them.

10 Some of them are in trouble. Some of them, a
11 large number of them, are in the red zone. The
12 Early Stuart run, the Takla/Trembleur Lake runs,
13 they're in trouble. They're in the red zone. Not
14 only are they in the red zone now, but the
15 abundance metrics, the long-term forecast for
16 those conservation units, are also in the red
17 zone. What does that mean? Well, it means that
18 if we don't do anything, that if we continue to
19 allow fishing at the early Stuart runs, that there
20 may not be any more fish. That's what the
21 scientists are telling you.

22 Now, I want to go back to the written
23 submissions and examine some of them -- my written
24 submissions, and I should add Mr. Harrison is here
25 with me and I'm grateful to his continued effort
26 and support.

27 Habitat is something that concerned my
28 clients and I want to now focus on certain aspects
29 of my submissions. I want to do that because --
30 primarily because I don't think that they've yet
31 been addressed by many of the parties, and habitat
32 is a critical concept. Beginning at page 20 of
33 the final submissions of the Conservation
34 Coalition, we deal with habitat and habitat loss.

35 The other policy that I wanted to mention in
36 this context is the policy of -- it's an old
37 policy. It's called the "No Net Loss Policy". It
38 was brought in -- I think it was brought in, in
39 1988 or something in that range. It's been around
40 for a while. I may be mistaken about the year,
41 but it's been around for a long time. The policy
42 is like a lot of policies that DFO have. It looks
43 good on paper, but carrying it out has proven to
44 be much more difficult. The policy, the basic
45 premise of the policy is this, is that if you're
46 going to have a development project - I don't care
47 whether it's a hydroelectric facility or whether

1 it's a mine or something of that nature - if
2 there's going to be a development project that's
3 going to destroy habitat, then you have to go
4 about finding replacement habitat or creating
5 replacement habitat for the fish. That's no net
6 loss. Basically you don't want to be in a
7 situation where you're losing habitat for the
8 fish.

9 The DFO representatives who came and gave
10 evidence before you said it's not working. We're
11 losing the battle. We're actually in decline with
12 respect to habitat. Part of the problem with this
13 whole policy is that no one really knows -- or no
14 one knew at the time how much habitat there was to
15 begin with.

16 I'm not a scientist, but I'd like to think
17 I'm a bit of a person that likes logic. It would
18 seem to me that if you have a policy that says
19 that you're not going to allow loss of habitat,
20 you better know what you're starting off with.

21 We say it's impossible to measure the extent
22 to which habitat is being destroyed because DFO is
23 not adequately monitoring habitat loss. This is
24 from the evidence of Patrice LeBlanc, DFO's
25 primary motivator and mover on habitat. DFO has
26 not undertaken recent assessments to the extent to
27 which no net loss has been achieved by permitting
28 projects, and despite acknowledging that reduced
29 oversight of project's impact on habitat is not
30 sustainable and that enhanced monitoring is
31 required, we learn that in 2004, DFO brought into
32 place something called the Environmental
33 Protection Modernization Program, EPMP.

34 You heard some of the participants talk about
35 we're now in a results-based era with respect to
36 environmental monitoring, compliance and
37 enforcement. Now, EPMP is a bit of that and then
38 some.

39
40 [EPMP] has resulted in substantially fewer
41 projects being monitored or assessed by DFO
42 staff for their impact on fish habitat.

43
44 This was the evidence of Mr. Bevan when he came
45 and gave evidence to you right at the end of the
46 hearings.

47 We say that there's a disconnect between this

1 program, the EPMP and the goals and objective of
2 the "no net-loss" policy and the Wild Salmon
3 Policy. Reductions in habitat monitoring staff --
4 you've heard evidence that staff are being
5 reduced. Project compliance, oversight
6 reductions. They're antithetical, we say, to the
7 intentions of the Wild Salmon Policy.

8 We also say that DFO has got it wrong. By
9 saying, well, we'll look at large projects. The
10 smaller projects, we'll pay less attention to
11 because we don't have the time or the money or the
12 inclination to do so. You see, that's just
13 flawed. 'Cause smaller projects, such as even the
14 installation of a culvert, could potentially cause
15 serious harm to fish habitat.

16 We see that EPMP is an effort by the
17 Department of Fisheries and Oceans to do more with
18 less in an era of shrinking resources and
19 shrinking capabilities and less staff. They
20 initiate policies and programs such as the EPMP
21 and say, well, this will allow us to still do our
22 work and carry forward. In effect, what it does
23 is just the opposite of that. It compounds the
24 problem, makes it much more likely that habitat
25 degradation will occur on a fairly consistent
26 basis.

27 Similarly, we had something to say about
28 enforcement of habitat measures. I want to point
29 out, in that regard, the dichotomy between the two
30 departments, the Department of Fisheries and
31 Oceans which basically handles s. 35, and
32 Environment Canada which is basically handling s.
33 36. Now, I acknowledge that Canada, through DFO,
34 has ultimate responsibility over s. 36 of the
35 **Fisheries Act**. That's the deposition of
36 deleterious substance in a stream. But you've
37 heard evidence that the way that's being conducted
38 in the field is to take it out of the confines of
39 DFO and put it into another department altogether,
40 to Environment Canada.

41 Therein lies a problem. Would that we lived
42 in a perfect world where bureaucrats and
43 departments talked to one another with a degree of
44 frequency that they can coordinate their efforts,
45 but we don't live in that kind of a world. So we
46 have a situation where Environment Canada
47 basically does - or does not do more often than

1 not - its thing, and DFO is left on the outside.

2 We say that the time has come to bring s. 36
3 back into the fold of the Department of Fisheries
4 and Oceans. We say that it will yield the result
5 that will actually save money, achieve greater
6 uniformity of prosecutions and allow for a greater
7 overall synthesis of enforcement in the context of
8 habitat.

9 I want to move on in the written submissions
10 to another concept and that's "Urbanization".
11 That begins at page 25 of the written material.
12 We say that the evidence is clear that two of the
13 most pressing threats to riparian habitat -- and
14 you've heard evidence, Mr. Commissioner about the
15 importance of riparian zones to fish. You've
16 heard it in the context of logging operations, for
17 example, that, in the bad old days, commercial
18 harvesting of timber would proceed right down to
19 the watercourse.

20 Now there are leave strips, now there's
21 riparian zones that are left along the stream
22 banks, not only to preserve the integrity of the
23 stream so that you're not depositing things within
24 the water, but also because the trees that are
25 overhanging and by the sides of streams allow for
26 cooler temperatures and this is important in the
27 context of if we are in a realm of global climate
28 change, which I firmly believe and the evidence
29 firmly establishes, then you want to minimize any
30 condition that would exacerbate increases in water
31 temperature. One way to do so is by having
32 riparian zones.

33 So we say that:

34
35 Two of the most pressing threats to riparian
36 habitat are urbanization and development near
37 waterways.

38
39 Humans being humans, we like to be situated
40 near watercourses. Everyone wants a view or we
41 like to have a house on a stream, but that's not
42 necessarily good for the fish. So development,
43 particularly with respect to the riparian area
44 regulations, must take effect with leaving the
45 riparian areas for the fish.

46 Once again, the Province can step up to the

1 plate in this regard, and in some respects they
2 are through the modernization of the **Water Act** and
3 you heard some evidence about that.

4 At paragraph 92, we make the point that:
5

6 There is an inherent conflict of interest
7 between bodies implementing the RAR [Riparian
8 Areas Regulation]; local governments
9 concerned with economic development and DFO
10 or Environment Canada who should be focused
11 primarily upon conservation.
12

13 The evidence shows that:
14

15 A number of local governments still feel it's
16 outside their responsibility to deliver RAR.
17

18 Riparian Area Regulations.
19

20 This creates a problem whereby authority is
21 being given to local governments who don't
22 want the duty, and highlights the difficulty
23 in ensuring local governments are fulfilling
24 their obligations.
25

26 We point to an area that's actually working, and
27 you heard some evidence of this. The Shuswap Lake
28 Integrated Planning Process, we say:
29

30 ...is an example of a multi-agency
31 participatory process in RAR implementation.
32 It involved cooperation amongst various
33 levels of government and other stakeholders,
34 working in the general spirit and towards the
35 goals of the WSP [Wild Salmon Policy].
36

37 And you heard some evidence about that.

38 The next area that I want to discuss with you
39 is the area of contaminants, and that begins at
40 page 28 of my written submissions. We want to
41 begin with a quote by Dr. Ross. I found Dr.
42 Ross's evidence to be very refreshing. He's a
43 scientist within Canada and he, perhaps more than
44 -- well, I shouldn't say that. I think that he
45 embodies the spirit of true science and true civil
46 service. He said:
47

1 ...often sublethal effects of contaminants
2 may not be evident, but when a secondary
3 insult comes along like a virus, like climate
4 change, like a food supply problem or other
5 stress with regard to habitat destruction,
6 that's where the contaminant influence may
7 become a very significant contributing
8 factor...the contaminants would predispose
9 salmon to a secondary insult.

10
11 I hearken back to my earlier submission to
12 you where I said it's not just one factor that is
13 happening to the fish, but our problem is
14 compounded because there's several multi factors
15 that are operating, and so that's what Dr. Ross is
16 saying. He's saying, by themselves, maybe a
17 contaminant is not the cause for the decline. But
18 you better not ignore it, because it may have an
19 effect to an already weakened fish.

20 There are contaminants - you heard evidence
21 of this - of the emerging contaminants, the new
22 ones, the PBDEs, polybrominated -- the fire
23 retardants. I'm not going to say it because I
24 don't know it. Ms. Baker is laughing at me
25 because I don't know what PBDE stands for, Mr.
26 Commissioner, but I know that they're bad.

27 I also know that endocrine disruptors are new
28 agents that are being found. Wouldn't it be
29 something -- and I can hypothesize with the best
30 of scientists because I have an active
31 imagination, but wouldn't it be something that the
32 pre-spawn mortality that we're seeing, where the
33 fish actually gets to the spawning grounds but
34 dies before it could actually spawn, something's
35 gone wrong with their hormonal system, with the --
36 something's happening with their endocrine system.
37 Can we rule out endocrine disruptors in that
38 scheme? I don't think so.

39 We say that the decision by DFO to move away
40 from contaminants -- because you heard evidence to
41 this from Dr. Ross:

42
43 ...move away from this research has left
44 large data gaps, and enhanced the uncertainty
45 in which DFO operates...As a result of its
46 abandonment, DFO is no longer monitoring
47 contaminants such as wastewater, and it is

1 failing to research the connection between
2 ecosystem health and contaminants.
3

4 Like other environmental issues, the danger
5 posed by toxic contaminants cannot be
6 examined in isolation.
7

8 Monitoring...is essential, and DFO currently
9 focuses its monitoring on parameters that are
10 cheapest, rather than those that are most
11 important.
12

13 And finally:
14

15 ...guidelines respecting contaminants are
16 'always' determined by examining a single
17 chemical, instead of the 'toxic soup' of the
18 real world.
19

20 And you heard evidence from Dr. Ross and Dr. van
21 Aggelen on this back in June.

22 I don't want to leave contaminants without at
23 least discussing in part wastewater, because you
24 heard evidence from a panel on wastewater and
25 specifically on what is being dumped into the Gulf
26 of Georgia by Iona, or the Iona Wastewater
27 Treatment Plant. You heard evidence that they are
28 consistently failing a significant test, the
29 biological oxygen demand test, the LD 50 as it's
30 called, so that they're basically -- Iona is not
31 in compliance for vast sections of time. They're
32 breaking the law.

33 There's a promise that there's going to be
34 better treatment facilities at Iona, but that's
35 not until 2020. It's a long time.

36 I want to move on to talk about marine
37 spills. You heard some evidence about how marine
38 spills occur, what happens once they occur, who's
39 responsible for cleanup, and it's a mess. Quite
40 simply, it's a mess.
41

42 A complex jurisdictional matrix results in
43 potential delays in response time due to
44 confusion over who is the lead responder and
45 jurisdictional squabbling.
46

1 This was from the representative from the Canadian
2 Coast Guard who testified to that effect.

3 So we say that calls into question the
4 current capacity of the various agencies to
5 respond to marine spills. There's a notable lack
6 of coordination between agencies who are
7 responsible for marine spills and despite the fact
8 that DFO has the greatest expertise in marine
9 contaminants, it's not a member of the Regional
10 Environmental Emergency Team that deals with
11 marine spills, REET. That simply defies belief.

12 Then even when REET gives advice on ecosystem
13 health to the Coast Guard who's responsible for
14 the actual cleanup, that advice is ignored, and
15 that's the evidence of Dr. Ross.

16 I want to turn now to -- and I'm covering a
17 lot of smaller topics because my fear is that
18 they'll get lost in the shuffle.

19 The pulp and paper effluent and mining
20 effluent: You heard evidence on these topics as
21 well. We say, in paragraph 119 of our written
22 submissions that:

23
24 Under current effluent monitoring standards,
25 there are serious deficiencies that can harm
26 fish habitat or ultimately, create net
27 habitat loss. [There are scientific] studies
28 have shown that...discharge engenders chronic
29 sublethal effects on fish...bleached pulp
30 mill effluents "have been found to be
31 mutagenic using standard tests"...Current
32 levels of testing do not target endocrine
33 disrupting compounds, nor are these addressed
34 during the environmental assessment
35 process...As the status quo is considered
36 unacceptable, Environment Canada should
37 consider changes to sublethal toxicity
38 testing within the...programs.

39
40 We also say that there are gaps which fail to
41 address effluent from placer mines, and we say:

42
43 Now more than ever, with development
44 encroaching on fish habitat, greater numbers
45 of mines and mills in operation, and as there
46 are significant new mine projects planned for
47 the Fraser basin --

1 I think the Prosperity Mine and the Taseko area
2 has reared up again.

3
4 -- research into cumulative impacts, emerging
5 compounds of concern and sublethal effects on
6 fish are necessary.

7
8 I turn now to logging, and yes, there's been
9 some significant changes to the way that logging
10 is being conducted in this Province. So if we had
11 been conducting this inquiry before some of the
12 changes to the forestry legislation were brought
13 into place by the Province, I think that the
14 inquiry would have been much more focused upon
15 this, upon fish and forestry interactions.

16 But there's still concerns, and the concerns
17 deal with riparian standards and fish stream
18 crossing. We know now that we have a significant
19 problem with mountain pine beetle. In order to
20 harvest the dead trees, there's large-scale
21 harvesting operations, salvage operations going on
22 in the Province. We make some recommendations and
23 draw some information to your attention.

24 I'd like to turn now to temperature flow and
25 hydroelectricity. Late in the day, you heard from
26 a panel, and I think Dr. Orr, one of our -- a
27 representative from one of our constituents was on
28 that panel about the relationship between
29 temperature and water flow. Dr. Orr painted a
30 compelling picture of groundwater protection and
31 how critical it was to have groundwater protection
32 in the province so that when the fish are in the
33 egg stage, they would not be subjected to
34 desiccation.

35 You've heard some evidence about the water in
36 some streams being fully subscribed, meaning that
37 if everybody who was allowed to take water
38 pursuant to a water licence took it, there's no
39 water for the fish. These are some of the
40 tributaries to the Fraser River that I'm talking
41 about.

42 Paragraph 130, I make mention:

43
44 Groundwater is critical in maintaining water
45 temperatures that support Fraser River
46 sockeye. [Obviously] it helps cool water in
47 summer and warm water in winter, minimizing

1 thermal stress on salmon throughout all
2 [life] stages.

3
4 This was Dr. Bradford's evidence who was on that
5 panel.

6 The Auditor General for British Columbia did
7 a study and:

8
9 ...concluded that the provincial government
10 is failing to protect groundwater and the
11 viability of ecosystems it supports.

12
13 There's a reference there to Exhibit 1871.

14 I want to come back now to the issue of
15 commercial harvesting and where I'm going, in my
16 last time frame with you is I want to talk to you
17 about commercial fishing harvesting, the
18 commercial sector. I want to have a discussion
19 with you about aboriginal fishing. I want to have
20 a discussion with you about aquaculture, and then
21 I want to conclude my remarks.

22 Earlier in my remarks I alluded to this
23 problem with the run-timing groups and how DFO has
24 chosen to manage the fishery, the commercial
25 fishery, and how, inevitably, that gives rise to
26 problems because you have mixed stock fisheries
27 where the CUs, some of whom are in danger, some of
28 whom are in the red zone, are being fished
29 actively with other fish.

30 Now, the commercial fishing groups in their
31 reply -- in their submissions, and we reply to
32 this in full, deal with a number of these issues.
33 I'll give you the good news story of what we can
34 agree with first, and then I'll tell you what we
35 basically are adamantly opposed to. Area D and B
36 have really good cogent submissions to you on
37 budgeting, and they also have good submissions to
38 you on aquaculture, and we saw them as an ally in
39 our moving forward on the aquaculture hearings.
40 So we certainly endorse those aspects.

41 But other than that, there's very little that
42 we can endorse with respect to the submissions of
43 the commercial fishing sector. I think most
44 disturbing, in the context of the submissions,
45 were the submissions of Area G. Now, Area G
46 develops a legal argument. They say conservation,
47 there's no legal mandate for conservation. We

1 take that on. We say they're just plain wrong,
2 that it's an ill-conceived argument.
3 I'm not going to spend a lot of time with it,
4 but I'm going to commend, in my reply submissions,
5 page 18 commencing with paragraph 66. Actually it
6 goes a little bit further. If you want to start
7 with paragraph 63. I say:

8
9 Much of our reply submission to Area G
10 counters the legal argument that they have
11 developed. We submit that their legal
12 argument that there is no constitutional
13 basis for conservation is a selective
14 rendition and account of the law. The
15 argument runs counter to the express wording
16 of many of the cases that are relied upon.
17 The authors have chosen extracts from the
18 cases and have attempted to weave phrases
19 that mention sustainability in an argument
20 that suggests that sustainability can be
21 achieved without conservation. Many of the
22 other statutes cited are selectively
23 filtered. For example in [their
24 argument]...there is a reference to the
25 preamble in the **Oceans Act**.

26
27 We say that:

28
29 Conservation is highlighted in the Preamble
30 to the **Act** but is ignored for the purpose of
31 the submission.

32
33 And then beginning at paragraph 66 -- and, by the
34 way, I do agree with Mr. Taylor who says that you
35 don't need to necessarily deal with this issue,
36 but in the event that I'm wrong about this,
37 there's a full argument, a legal argument to
38 counter the legal argument developed in Area G
39 submissions.

40 Beginning at paragraph 66, we examine the
41 **Fisheries Act**, mentions of conservation in the
42 **Fisheries Act**, and then we examine the case law.
43 The case law that seems to be mostly supportive,
44 the case that seems to be mostly supported (sic)
45 of the proposition advanced by Area G is a case
46 called **MacMillan Bloedel**. It's a 1984 decision of
47 our Court of Appeal. We say that case is *per*

1 *incuriam* for the reasons developed, because it
2 basically relies upon a County Court judge's
3 determination, and the County Court judge in that
4 case inserted a period where there ought not to
5 have been a period. And if you trace it through -
6 and we developed this in full in our argument -
7 you'll find that the **MacMillan Bloedel** should not
8 be followed and it should not be persuasive of
9 anything.

10 Now there are other issues raised in the
11 commercial fishing sector, not the least of which
12 is they're seeking to bring back into vogue MSY,
13 and to suggest that MSY, maximum sustained yield,
14 be incorporated into the Wild Salmon Policy. I
15 couldn't resist -- I had the ability to work with
16 Dr. Larkin years ago, and then in a reincarnation
17 I appeared before him when he headed up the BCUC,
18 hearings into the Kemano completion project years
19 ago. He has a wonderful sense of humour, and he
20 composed a poem about MSY and I can't resist
21 reading it. It's called, "An Epitaph for the
22 Concept of Maximum Sustained Yield" [as read]:

23
24 Here lies the concept MSY
25 It advocated yields too high
26 And didn't spell out how to slice the pie
27 We buried it with the best of wishes
28 Especially on behalf of fishes
29 We don't know yet what will take its place
30 But we hope it's as good for the human race
31

32 Well, Area G is trying to bring back MSY into
33 vogue. Rather than go into full -- in terms of
34 why they're wrong in that, I simply would refer
35 you to the reply submissions of the First Nations
36 Coalition, because they deal with that at length.
37 I think if you looked at, for example, pages 21 to
38 26 of the reply submissions for the First Nations
39 Coalition, you'll find the reply and we adopt that
40 argument and their position entirely.

41 I'm at the time, Mr. Commissioner, and I'm
42 going to be moving on to aquaculture and I'll be
43 some time with that, so I would suggest this might
44 be a time for a break.

45 THE COMMISSIONER: Thank you, Mr. Leadem.

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

47

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

4 THE REGISTRAR: The hearing is now resumed.
5 THE COMMISSIONER: Sorry for the delay, Mr. Leadem.
6

7 SUBMISSIONS FOR THE CONSERVATION COALITION; COASTAL
8 ALLIANCE FOR AQUACULTURE REFORM FRASER RIVERKEEPER
9 SOCIETY; GEORGIA STRAIT ALLIANCE; RAINCOAST
10 CONSERVATION FOUNDATION; WATERSHED WATCH SALMON
11 SOCIETY; MR. OTTO LANGER; THE DAVID SUZUKI
12 FOUNDATION BY MR. LEADEM, continuing:
13

14 MR. LEADEM: During the break I wanted to correct
15 something. I misspoke when I said that the Iona
16 Treatment Plant was scheduled to come into play in
17 2020. It's actually 2030, so ten more years
18 before we get to have something done about the
19 biological oxygen demand and the LD50 tests on
20 fish.

21 I want to now focus on aquaculture and to a
22 significant extent, I adopt the submissions of the
23 Aquaculture Coalition. I also adopt much of what
24 you heard yesterday from Mr. McDade with respect
25 to aquaculture and disease, and I echo those
26 remarks, and I won't repeat those.

27 And I should say for the record that I
28 represent a number of conservation groups, and one
29 of the conservation groups as you probably know,
30 Mr. Commissioner, is the group called CAAR, the
31 Coastal Alliance for Aquaculture Reform. That
32 group is confined, in terms of its instructions to
33 me, to aquaculture issues alone. So all of the
34 submissions I made with respect to the Wild Salmon
35 Policy, the other issues that I've dealt with
36 prior to the break, they cannot endorse those
37 submissions, because the composition of the CAAR
38 is such that there's some commercial fishing
39 aspects to that. I think it's T. Buck Suzuki is
40 part of that. And so they will, however, endorse
41 what I'm about to say with respect to aquaculture.
42 So I want that made abundantly clear.

43 Aquaculture is covered in the written
44 submissions beginning at page 14. And I begin
45 with a quote by Pat Chamut. I thought it was
46 interesting that way back in November that Pat
47 Chamut said this about aquaculture. It says:

1 ...there's lots of examples where fish farms
2 have, in fact, created problems because of
3 their location or because of their -- the way
4 in which they've been operated.
5

6 And when it comes to aquaculture, I agree
7 with Mr. McDade, that it's location, location,
8 location. It's where they are. And so for that
9 reason, we support his recommendations, in fact,
10 it's our recommendation, as well, that the
11 facilities that are located along the migratory
12 pathway of the Fraser River sockeye be phased out
13 and removed.

14 And I'm going to get to the precautionary
15 approach and what it means in a moment. But
16 before I do so, I want to deal with what we have
17 called the conflict situation that exists within
18 the Department of Fisheries and Oceans.

19 On the one hand, Department of Fisheries and
20 Oceans has a mandate to regulate and support the
21 wild salmon, and they do so through the Wild
22 Salmon Policy, they do so through their
23 interactions with commercial fishing sector, they
24 do so through their interactions and consultations
25 with the First Nations. And yet on the other
26 hand, they regulate and enable -- those are the
27 words that I put to Ms. Dansereau when she first
28 testified way back in November of 2010, they
29 regulate and enable the aquaculture industry.

30 Now, I take Mr. Taylor's point that the
31 aquaculture industry is a fishery, so therefore it
32 comes within the auspices of DFO. But the
33 enabling part, the promoting part, surely must be
34 severed off, because it certainly gives a
35 potential for bias, if not outright bias within
36 the Department.

37 Why do I say -- and so it's so transparent to
38 me that there's a conflict. If I go into a
39 supermarket and I want to buy fish, salmon, Fraser
40 sockeye salmon, side-by-side there's usually
41 farmed salmon or Fraser salmon. I mean, it's
42 inevitable that the conflict extends right into
43 the marketplace. So how can you have a Department
44 that's enabling wild fish and the sale of wild
45 fish and the marketing of wild fish, and at the
46 same time enabling and supporting and funding
47 research collaboratively with the aquaculture

1 industry at the same time.

2 We say that -- and Ms. Stewart spoke to this
3 quite eloquently when she gave her testimony back
4 during the perspectives panel on aquaculture, and
5 she said -- she talked about "our fish" and "their
6 fish", because the fish in the pens are not the
7 public's fish. They're not our fish, they're
8 their fish, and they can market them and sell them
9 and do what they want.

10 But basically it comes down to this, that at
11 the market level, there's competition, so have
12 that off.

13 Sure, if you want to -- if you want to have a
14 branch that enables the aquaculture industry with
15 shellfish and finfish, or whatever format it may
16 take, that's fine. Put that's somewhere else.
17 Get it away from DFO. Because inevitably it
18 brings about conflict within the Department. And
19 if you want to avoid that conflict, the easiest
20 way to deal with it is to segregate it, is to
21 sever it off.

22 Canada supports a lot of businesses. There's
23 nothing necessarily wrong with that. They can
24 support aquaculture industry if they want, but
25 don't do it within DFO. Because the primary
26 mandate of the Department of Fisheries and Oceans
27 must remain "our fish".

28 Now, in the written material we talk a lot
29 about siting, and Mr. McDade talked about this a
30 bit yesterday, but I want to just hone in on one
31 significant aspect of siting. The criteria that
32 are still used for siting farms are decades old.
33 They were developed when the state of science was
34 not known. We've advanced significantly since
35 then.

36 We know a lot more about the migratory
37 pathway of the Fraser sockeye and other salmonid
38 species because of the work that Dr. Welch,
39 amongst others, has done with respect to his
40 telemetry research. His developing signals,
41 implanting those signals, auditory signals in
42 smolts that are migrating out of Cultus Lake, and
43 then being able to track them and follow them up.
44 We now know where they go. We didn't know that
45 ten, 20 years ago, when the siting criteria were
46 developed by the Province.

47 Isn't it time that we revisit that siting

1 criteria and have a look at it in the context of
2 the science as we now know it to be, in terms of
3 the advanced state of knowledge that we now know?
4 I say to you that it is.

5 Now, one of the other aspects that we deal
6 with in terms of our submissions is the amount of
7 money that is being put forward from Canada to
8 promote and support the aquaculture industry, and
9 we deal with that in our submission, beginning at
10 paragraph 54. We say DFO provides direct and
11 indirect financial subsidies to the aquaculture
12 industry, and continues to do so in the midst of
13 budget cuts to core conservation initiatives, such
14 as monitoring.

15 DFO provided the Canadian Aquaculture
16 Industry Alliance, CAIA, with nearly \$400,000 in
17 direct funding in 2010, a sum that is expected to
18 be received again this year. And this was
19 information that came from the Office of the
20 Commissioner of Lobbying of Canada. DFO also
21 spends much of its limited resources promoting the
22 marketability of aquaculture abroad. And there's
23 a reference to Exhibit 1634.

24 And then we have the federal Aquaculture
25 Innovation and Market Access Program, AIMAP. It
26 provides nearly \$70 million in public money to
27 support the aquaculture industry, often in the
28 form of direct grants to fund studies that have
29 absolutely nothing to do with wild fish health or
30 conservation, but instead address industry
31 marketability such as "soft-flesh suppression
32 technology". I recall some of the other programs
33 that they supported were the size of nets that are
34 used in the aquaculture industry. And we say that
35 in times of increasing budget cuts and
36 constraints, increasing threats to wild salmon,
37 limited public funds must go to ensure
38 conservation of the wild fish and their habitat,
39 so "our fish", and not to enhance the
40 profitability of industry.

41 So we pose a number of solutions, some of
42 which are echoed by the aquaculture industry and
43 by Area D and B.

44 And then I want to briefly talk about
45 disease, and I'm going to tread carefully here.

46 I'm going to make a submission that may be
47 renewed in a month or so, that everything that you

1 heard, either in written form or in oral
2 submissions, is now suspect from -- that you heard
3 from the Province, from the aquaculture industry,
4 and from the federal government is now suspect.
5 So let's just shelve that. We may revisit it
6 again in a month's time, but let's just shelve it
7 for the time. I won't say anything more about it
8 until the evidence unfolds that would allow me to
9 elaborate further.

10 You heard from Dr. Kristi Miller and Dr.
11 Miller's research is significant. Whether it's
12 the be all and end all, whether she discovers what
13 has been the cause of the early entry of the late
14 runs of sockeye, I don't know. But we sure should
15 be supporting that kind of research, and Canada
16 should be supporting it. And Canada should be
17 supporting other research topics that they no
18 longer support.

19 We heard some evidence about harmful algal
20 blooms and some potential connection with
21 aquaculture. Well, Canada should be studying
22 that.

23 When it comes down to it, I think what I come
24 down to in terms of in an era where so much
25 science has left us in the -- feeling uncertain,
26 then as I've often asked questions during the
27 course of this inquiry, it comes down to, well,
28 shouldn't we be precautionary about making decisions
29 in the face of scientific uncertainty? Shouldn't
30 we invoke the precautionary approach? And in a
31 moment I'm going to take you to Canada, Canada's
32 expostulation of the precautionary approach.
33 Because with all due respect, it's fundamentally
34 flawed.

35 Exhibit 51, if I could. This was one of the
36 early exhibits. It's an exhibit called "A
37 Framework for the Application of Precaution in
38 Science-Based Decision Making About Risk" and
39 there's a statement about -- and this is the
40 Government of Canada. So this is a Canada-wide
41 document that applies not just to DFO, but to any
42 Canadian institution that's going to be applying
43 precaution in science-based decision making where
44 there's risk taking.

45 If we could just -- I think it's page 2,
46 maybe, there's a -- yes, under the heading "1.0
47 Introduction". Canada in this document asks

1 itself this rhetorical question:
2

3 What is the application of precaution?
4

5 And then they answer it this way:
6

7 The application of "precaution", or "the
8 precautionary principle" or "the
9 precautionary approach" recognizes that the
10 absence of full scientific certainty shall
11 not be used as a reason for postponing
12 decisions where there is a risk of serious or
13 irreversible harm.
14

15 Now, whatever that is, that's not the
16 precautionary principle, or precautionary
17 approach. That's not the Rio Declaration that
18 Canada adopted and it's certainly not the language
19 in, for example, the Canadian **Environmental**
20 **Protection Act**.

21 So I want to just pull up some transcript
22 because -- and I don't mean to belabour this, but
23 I think that the -- this is significant. If we go
24 back to November the 4th of 2010. At page 56, the
25 panel member that I'm cross-examining there is Mr.
26 David Bevan. You may recall that Mr. Bevan, Ms.
27 Dansereau, Ms. Farlinger, and Mr. Sprout, actually
28 gave evidence early on, and then they came back
29 and they were reconstituted, absent Mr. Sprout
30 when they came back.

31 And this bothered me. And so for four pages
32 I take Mr. Bevan through this, and if we could
33 just go to the next page, because in the next page
34 I cite the **Environmental Protection Act** of Canada,
35 it's s. 2(1)(a), there's the precautionary
36 principle and the precautionary approach, as it's
37 come to be known:
38

39 ...the Government of Canada shall, having
40 regard to the Constitution and laws of Canada
41 and subject to subsection (11.1),
42

43 (a) exercise its powers in a manner that
44 protects the environment and human health,
45 applies the precautionary principle --
46

47 - and here, here are the words -

1 -- that, where there are threats of serious
2 or irreversible damage, lack of full
3 scientific certainty shall not be used as a
4 reason for postponing cost-effective measures
5 to prevent environmental degradation...
6

7 Now, if you see the juxtaposition of the words,
8 you'll see wherein lies the problem. Canada has
9 said we're not going to use the lack of -- of
10 scientific uncertainty to postpone decision
11 making. So if it's a decision to build a dam,
12 well, if we don't know whether it's going to
13 perhaps cause -- in the area of scientific
14 uncertainty, if we're not sure what's going to
15 happen, we're not going to allow that uncertainty
16 to stand in issue in a decision to build a dam
17 that may potentially harm fish habitat. So right
18 at the outset, Canada has it wrong. And that is
19 what guides them in terms of their application of
20 the precautionary principle and approach.

21 And if you follow through the discourse that
22 I have with Mr. Bevan on pages 56 to 60, you'll
23 see that eventually he comes around to
24 understanding my concept and saying, well, yeah,
25 maybe we should be studying this. Maybe we should
26 be taking a look at it.

27 And I say to you that Canada should get it
28 right. The precautionary approach means that you
29 put into place cost-effective measures to prevent
30 environmental degradation. What can that mean?
31 Well, in the context of a fish farm, and if we
32 have uncertainty around whether or not that fish
33 farm is causing potential harm to wild stocks so
34 they're migrating past it, what that tells me is
35 that if it's a cost-effective measure to prevent
36 the fish from being degraded or harmed, then we
37 get the nets out of the water. We take it out of
38 the migratory pathway. That's what it tells me.

39 Now, I want to talk to you about the First
40 Nations, and I want to refer you to our reply
41 submissions. If we can go to reply submissions
42 page 28.

43 I've read through the submissions of the
44 First Nations and we support much of the argument,
45 much of the recommendations from the various First
46 Nation groups that participated in this inquiry
47 with regard to cooperative management of the

1 Fraser sockeye fishery. We think that it's time
2 that First Nations are -- become involved in joint
3 decision making and have that place at the table.
4 I'm not sure why there seems to be so much fear
5 around that concept.

6 Certainly my clients, who have as their
7 primary motivation conservation, recognize that
8 First Nations likewise have it in their culture,
9 the conservation of the fish, and the conservation
10 of the sockeye. So we have no hesitation in
11 supporting the First Nations recommendations with
12 respect to co-management. We see it as a way
13 forward, a way towards the future, a way that we
14 can build back the fishery.

15 There are specific recommendations that
16 follow, Mr. Commissioner, and in the interests of
17 time, I'm not going to read them all out. But the
18 First Nations Coalition have done much in terms of
19 their summary of the evidence, and I commend --
20 commend their summary to you. I think they've
21 done an admirable job in terms of summarizing the
22 evidence in a very impartial way, and I commend
23 their analysis to you.

24 I'm not going to obviously argue their case,
25 they're much better suited to do that. But we do
26 adopt a lot of their recommendations, and what
27 follows in paragraphs 121 through 130 are specific
28 recommendations that we adopt. And there's a
29 dichotomy, as you will note there with all the
30 members of the Coalition support certain
31 recommendations, and then other recommendations
32 are only supported by the members absent CAAR.

33 In the few minutes left I want to summarize,
34 and I want to summarize in this way, by recalling
35 with you some of the evidence that I heard from
36 some of the people who came and gave striking
37 testimony to you.

38 And in my mind when I conjure up images of
39 this inquiry, as I will long after it's gone, I
40 remember Mike Lapointe, the biologist for the
41 Pacific Salmon Commission. And Mr. Lapointe was a
42 very credible, very good witness for his -- for
43 the Salmon Commission. He's a biologist and yet
44 he could not disguise from his voice as he was
45 giving evidence his admiration for the fish, for
46 the sockeye that he has devoted his entire life
47 to.

1 We in this room have devoted a year of our
2 life to that fish. That fish has asked us to work
3 for it. We are all here because of the fish.
4 It's the fish that unites us and keeps -- in terms
5 of the common pursuit here. And if you keep in
6 mind what is in the best interests of the fish, as
7 my clients taught me to do early on in this
8 process, you can't go wrong. Because if you
9 protect the fish, then everything else will fall
10 into place. Ecosystems are like that.

11 Now, it's been my honour and privilege to
12 carry this brief for my clients and to appear
13 before you. I can't say that it's been easy.
14 There have been many long days, many days of
15 reading material about models that God help me if
16 I ever have to explain it to anybody. But I would
17 have to say, as friends ask me sometimes, it's
18 important work. It's work that has united us,
19 it's work that will continue to unite us, and it's
20 work that you will leave a legacy to.

21 The last point I want to make is this. That
22 I have all confidence in you and your team, and
23 that I know that at the end of the day there will
24 be something worthwhile coming from this process.
25 I think it will be a major piece of work that will
26 help all of us further our knowledge and further
27 how we deal with the fish that unites us.

28 My only fear, and it may be a fear that you
29 share, is that somehow once our work is done and
30 once your work is done, and you put all of this
31 into recommendations, it's gone, it gets shelved
32 somewhere, it's lost. And I don't know how to
33 prevent that, other than say well, maybe you
34 should make your decisions or recommendations
35 appeal proof, maybe you should put into play in
36 your decisions some mechanism for driving them
37 home, making sure that Canada doesn't just sit on
38 them, like they sat on recommendations from the
39 Auditor General's Office for years and years.
40 That somehow or other, you light a fire, or you
41 instil some hope that will allow all of us to go
42 forward, including Canada. So that Canada, rather
43 than making excuse after excuse, it's too costly,
44 we can't do it, we don't have the technology, will
45 say, yes, we can, Mr. Commissioner, and yes, we
46 will. Thank you.

47 THE COMMISSIONER: Thank you very much, Mr. Leadem.

1 Mr. Rosenbloom.

2
3 SUBMISSIONS FOR AREA D SALMON GILLNET ASSOCIATION; AREA
4 B HARVEST COMMITTEE (SEINE) BY MR. ROSENBLOOM:
5

6 MR. ROSENBLOOM: Thank you. Mr. Commissioner, first
7 let me introduce Katrina Pacey, who is with me as
8 counsel and will be presenting part of our
9 submission when it comes to the aquaculture area.

10 Mr. Commissioner, let me also start off on a
11 personal note. It has truly been a privilege to
12 participate in this inquiry. You know, I got
13 sweet-talked into taking on this job on the basis
14 that I'd always, always had a very elementary
15 intrigue about the story of salmon, the lifecycle
16 of salmon. And I say elementary, because I knew
17 very little about it and, quite frankly, over a
18 period of more than 125 days, I have acquired more
19 than I ever bargained for, and feel that -- all of
20 us feel that we have a certain level of expertise.

21 I only regret, Mr. Commissioner, that in your
22 Terms of Reference, the government did not afford
23 you the opportunity to confer on all of us some
24 form of graduate degree in marine ecology for our
25 work. Because quite frankly, at the end of the
26 day, I'll have little to show for it other than,
27 of course, your important report.

28 Having said that to you in introduction, I've
29 been afforded only one hour, and I say only one
30 hour, because it is a tremendous challenge to us
31 to compress into such a short period of time the
32 numerous areas that we participated in, in our
33 intervention, and to cover them to any substantive
34 extent. As a result, I ask of you that you be
35 obviously directed to our written submission and
36 to our reply, because, for example, I will not be
37 speaking today on some of the areas in reply,
38 because I simply do not have the time.

39 Now, having said that to you, Mr.
40 Commissioner, I want to lead you very, very
41 briefly into our table of contents, which is found
42 at page 1 of our submission, and I want to have
43 you at least appreciate the schematic of how we
44 have approached this submission. And if you will
45 see after the "Executive Summary" and after the
46 "Commission's Mandate" in the table of contents,
47 we meet head on the issue of fiscal incapacity.

1 And, Mr. Commissioner, you have heard from
2 numerous other participants how we have, on our
3 side, very much focused on that issue, both in
4 terms of cross-examination and indeed in terms of
5 our written submission. But we consider the issue
6 of financial incapacity to be so paramount in
7 respect to this Inquiry. It's all well and good
8 for participants to speak of recommendations that
9 obviously are -- that make sense and are
10 commendable, but it won't go anywhere unless the
11 Government of Canada starts recognizing that this
12 is a Department that is totally underfunded, and
13 lacks the fiscal capacity to be effective.

14 So in our table of contents, you'll see our
15 first issue is the fiscal crisis and how it
16 incapacitates DFO in terms of implementing the
17 WSP, and in terms of its general legislative
18 responsibilities.

19 We speak there under the heading of "The
20 Consequences of Under-funding DFO", of the WSP, of
21 its mandate, of how we take the position that DFO
22 has failed in its mandate, but under WSP and under
23 its legislative -- general legislative
24 responsibility. We then speak, and I'm at the top
25 of page 3 of my index, to "The Inequitable
26 Consequences of Only Partially Implementing the
27 WSP and Under-funding DFO", and this will be the
28 first that you have heard of all the submissions
29 so far as to how it has been prejudicial to
30 certain parties before you at this Inquiry, and I
31 intend to deal with that.

32 I then come under topic III to the "Non-
33 Fiscal Issues and DFO's Mismanagement". I deal
34 with over-escapement and the biodiversity debate,
35 allocation issues, consultative process, terminal
36 fisheries, the FSC fishery, aquaculture, which
37 will be dealt with by my colleague, Ms. Pacey.
38 Then finally "Causes of the Recent Decline of
39 Fraser Sockeye" and our "Recommendations" and
40 "Conclusion".

41 I'd like to get right into my submission at
42 page 1 of the "Executive Summary". I'm not going
43 to be reading my submission, but for a few
44 passages that I want to put into record in terms
45 of my oral submission.

46 At page 1, under "Executive Summary", we
47 start the submission with the following passage.

1 This submission documents the Department of
2 Fisheries and Oceans' total ineffectiveness in
3 discharging their statutory responsibilities to
4 the citizens of Canada. The sockeye salmon of the
5 Fraser River, an iconic public resource, having
6 cultural, ecological and economic significance,
7 may suffer catastrophic consequences unless
8 radical and immediate action is taken by DFO. The
9 loss of this resource, if it is permitted to
10 happen, will be history repeating itself after the
11 loss of the East Coast cod fishery. The
12 Government of Canada demonstrated foresight in
13 calling this costly Inquiry, and their initiative
14 can be taken as evidence that Ottawa is both
15 concerned with the sustainability of the Fraser
16 sockeye and committed to taking radical action
17 where necessary.

18 And I will come back to that significant bit
19 of -- that significant fact that Ottawa, in my
20 opinion, is -- has put itself in a position where
21 it expects from you, Mr. Commissioner, some
22 radical solutions to the problems, and if those
23 radical solutions include increased funding from
24 Treasury Board, so be it.

25 I say in the Executive Summary that DFO has
26 failed to discharge its constitutional
27 responsibilities. I say it in fact has abdicated
28 from its responsibilities.

29 And I then obviously document the deficient
30 financial capacity of DFO, and deal with the
31 budgetary issues which my colleague, Mr. Buchanan,
32 spoke to yesterday, and I'll make mention of that
33 in a moment.

34 And then at page 2 of my Executive Summary, I
35 deal with the Wild Salmon Policy. I say it is a
36 total failure, and indeed is deemed to be a total
37 -- to prognosticate, will be a total failure into
38 the future, unless radical things happen, and I'll
39 talk about that in my submission.

40 That leads me to the first of my areas. I
41 deal with "Commission's Mandate" at page 5. I
42 need not go into that.

43 I'd like to go to page 6, and the heading
44 "The Fiscal Crisis Incapacitates DFO From
45 Implementing the Wild Salmon Policy and Generally
46 Fulfilling its Legislative Responsibilities".

47 Now, I take the position, Mr. Commissioner,

1 that DFO is indeed in a full-fledged financial
2 crisis, in spite of what you have heard from the
3 senior managers of DFO. And I say that in turn
4 has rendered the Department totally impotent in
5 terms of its ability to properly implement the
6 WSP, and again its general statutory
7 responsibility. The insight and creativity of
8 this Commission in making recommendations will
9 have little impact if the funding crisis is not
10 solved. It will be for naught.

11 Now, some might say to us, Mr. Commissioner,
12 that to be focused on the financial issue, and to
13 make recommendations to you, and to plead to you
14 to call upon Ottawa to review its fiscal
15 commitments to DFO, is unrealistic. There will be
16 people who will suggest that one should approach
17 this on the basis that you're not getting more
18 money, and you're wasting your time to ask for it.

19 I say that is totally unrealistic. I say
20 that you have heard evidence at this Inquiry from
21 middle management and from senior management of
22 DFO, that I will suggest to you was spoken with an
23 attitude of fatalism, of defeatism, that, listen,
24 we're in an environment of statutory -- excuse me,
25 of budgetary cuts, and we have to meet the demands
26 of Treasury Board.

27 Mr. Commissioner, Treasury Board is
28 constantly dealing with priorities, and, yes, it
29 is the Government of Canada's commitment to reduce
30 deficit so in terms -- that in turn speaks to the
31 fact that the Government of Canada wants reduced
32 expenditures on an annual basis. But within that
33 budget, there are tradeoffs, there are priorities
34 that are given more money, and there are projects,
35 past projects that don't receive money.

36 We recently saw the controversies of Minister
37 Clement and his riding, and building fountains in
38 his riding that are now under the scrutiny of
39 Parliament. Indeed, into the future, the
40 Government of Canada will have to assess how
41 important this resource, the sockeye salmon of the
42 Fraser, is balanced against other projects that
43 are obviously coming before -- before Cabinet and
44 before Treasury Board and have to be prioritized.

45 I do not approach it on the basis that some
46 of the evidence we heard from the Deputy Minister
47 and from other senior and middle management, that

1 this is the way it is until we have to live with
2 it. All of this flies in the face of the
3 government's decision to strike this Inquiry.

4 You know, Mr. Commissioner, this isn't the
5 first inquiry in Canada. But interestingly
6 enough, in my review, and I'm not suggesting I've
7 necessarily been exhaustive about it, there have
8 been very few inquiries or royal commissions that
9 are federal in nature relating to species that are
10 indigenous to this country. The three that I
11 could come up with was our own, it was the Pearse
12 Royal Commission of 1982, it was Senator Kirby's
13 Commission on the East Coast cod in again 1982.

14 Now, there are all kinds of endangered
15 species in this country. There are in fact 1,600
16 endangered species. But the government hasn't
17 called a royal commission in respect to the
18 northern spotted owl, or the mountain caribou, or
19 any of the other listed species. They struck an
20 inquiry to investigate the sockeye salmon of the
21 Fraser River. Well, why?

22 The answer is obvious. It's trite. It is
23 because sockeye salmon is firstly an economic
24 driver of great importance to the economy of
25 British Columbia. Secondly, it is because salmon
26 obviously is an important food source for all of
27 us. And I say all of us, and most definitely for
28 the First Nation community, but for the rest of
29 us. Thirdly, because salmon happens to be an
30 iconic species of this region of Canada, and
31 fourthly, because salmon is not only iconic and a
32 food source, but something of very special
33 cultural significance to First Nations of our West
34 Coast.

35 The Government of Canada chose to expend a
36 significant amount of money, purported to be over
37 \$26 million to conduct this Inquiry. Now, if the
38 government was prepared to commit itself to a
39 process to investigate of this great cost, surely
40 the government will be prepared to read your
41 report, Mr. Commissioner, and to accept your
42 recommendations if indeed you come to the
43 conclusion that the funding of this Department is
44 so pathetically underfunded that it made it -- it
45 has made it impossible for DFO to discharge its
46 responsibilities, both under the WSP and again
47 generally under its legislative responsibilities.

1 Now, the -- Mr. Buchanan spoke to this
2 business of what the cuts are into the future, and
3 I don't have time to deal with it, other than
4 totally adopting Mr. Buchanan's submission. I
5 suggest he should know better than anybody.
6 There's some controversy between Mr. Buchanan, and
7 for that matter myself, as to whether the cuts are
8 25 percent or even up to 33 percent, as he spoke
9 yesterday, or whether we have the version of the
10 Government of Canada in their reply that it's
11 something significantly less. I don't understand
12 the reasoning behind the Government of Canada's
13 position on it. Mr. Buchanan has put it for you
14 -- before you, and I adopt totally what he has
15 said in that regard.

16 And if the budgetary cuts are anything like
17 25 percent, seeing how DFO has been incapacitated
18 to discharge its responsibilities up till now, and
19 we're looking at a future budgetary cut of great
20 significance over the next three years, I say we
21 are in real trouble in terms of seeing the
22 interest, the public interest being protected.

23 Now, I come to an exchange I had with the
24 Deputy Minister, early on, in fact one of her --
25 well, it was her first appearance in the -- before
26 this Commission, and I want to focus on it for a
27 moment. At page 7 of my submission, down at the
28 bottom, I have the exchanges lifted directly from
29 the transcript. I asked the Deputy Minister this
30 question:
31

32 Well, this is an awfully general question to
33 you, Ms. Dansereau, but would you agree with
34 me, or let me ask you this, are all science
35 programs, departments, projects, stock
36 assessments, stream enumerations, et cetera,
37 adequately funded up till now, in your
38 opinion, during the time of your tenure?
39

40 And Ms. Dansereau answers:

41 I would say yes...

42 And then she goes on and says, well, others might
43 disagree with me. But that's the state of mind of
44 the senior managers of DFO that everything is
45 unfolding as it should, and that the Department is
46
47

1 being properly funded, and that they are
2 discharging their responsibilities to the public,
3 in an acceptable standard.

4 I say with great respect to Ms. Dansereau,
5 that either she is in denial, and I want to be
6 careful in my language, Mr. Commissioner, I
7 recognize that the idiom of this particular
8 process has been one of civility and I do not want
9 to cross the line of that standard. But either
10 she is in denial, or alternatively, unfortunately,
11 she simply isn't grasping the reality of what in
12 fact is happening out in the field. Anybody that
13 reads the transcripts of the testimony that has
14 been given throughout this proceeding, mainly by
15 DFO officials, of middle management, can't
16 possibly conclude or stand before you and testify
17 under oath that in fact things are unfolding
18 appropriately and that the proper standard is
19 being met in terms of protecting public interest.
20 I don't see it.

21 And what's interesting is Ms. Dansereau came
22 back to the inquiry at a second appearance laid
23 on, and I put this exchange to her, our exchange
24 of the earlier day, and asked her whether she had
25 been briefed about the testimony given to this
26 Inquiry. Indeed she said she had. And I asked
27 her whether she would care to reflect upon what
28 she had told us and change her mind, and she said,
29 no. She went back to saying, yes, she thought
30 everything was acceptable. Well, if that is her
31 state of mind, she is obviously not fighting the
32 case in front of Treasury Board for what we take
33 the -- we say is a crisis situation with the
34 sockeye salmon of the Fraser.

35 Now, having said that, I, in my submission,
36 speak of Dr. Riddell and he clearly did not adopt
37 Ms. Dansereau's opinion. He said, in fact, when
38 he left senior management of DFO in 2005,
39 everything was -- it was a -- it was at a
40 marginally responsible level when it came to stock
41 enumeration, and carrying out their
42 responsibilities.

43 I say, and I'm at page 10 of my submission,
44 the Department needs a significant infusion of new
45 money if the following consequences are to be
46 avoided: the WSP will never be comprehensively
47 implemented; other DFO programs for Fraser sockeye

1 will suffer, and many other programs in the
2 Pacific Region will also suffer shortfalls.

3 It is important to note, Mr. Commissioner,
4 that the warning was given to you by Dr. Riddell
5 on a few occasions, that there is a risk here,
6 that there will be -- that DFO is stealing money,
7 or taking money from other programs to feed the
8 sockeye salmon program of the Fraser because of
9 international treaty obligations, and that is at
10 great risk to other stocks.

11 And even though this proceeding has been a
12 one-note proceeding in the sense that it was
13 exclusively relating to the sockeye salmon of the
14 Fraser, the fact is my clients and the public
15 generally depend upon the health of and
16 sustainability, not just of sockeye salmon of the
17 Fraser River, but obviously the full array of
18 specie, marine specie up and down the coast, and
19 one cannot afford to have a situation where DFO is
20 robbing Peter to pay Paul.

21 I come to at page 11, "The Consequences of
22 Under-funding DFO". I say that the Wild Salmon
23 Policy, the architects of that policy
24 intentionally or unintentionally took this policy
25 and routed it down a road to failure. How could
26 it possibly have ever been implemented in a
27 fulsome way when in fact it was written into the
28 policy there will be no funding for it. You have
29 to take it from other programs that are currently
30 within your budget. And that position of the
31 Government of Canada has continued to this very
32 day.

33 And as we prognosticate about the future, it
34 isn't as if some knight in -- dressed in white
35 came before us from the federal government to
36 announce that indeed the government had changed
37 its mind and would start funding and allocating
38 specific money for the implementation of the WSP.
39 That is not the evidence before us.

40 Mr. Chamut testified, being obviously of a
41 past very senior position at DFO, that the program
42 needed 30 to 40 million. Now, some will say he
43 was speaking in a facetious way in calling for 30
44 or 40 million, but there's significance to it. He
45 basically was telling us that clearly he joined in
46 the opinion that significant money had to be
47 injected into the coffers of the Pacific Region if

1 indeed this WSP was going to amount to anything.

2 Mr. Saunders, and I'm now at the bottom of
3 page 12, and there are references to everything
4 I'm saying here, but I don't have time, obviously,
5 to ask Mr. Lunn to put them on the screen. He
6 spoke to how the lack of funding prejudiced
7 expeditious implementation of the program.

8 We have Sue Farlinger up at the top of page
9 13 speaking of the naivety in thinking that they
10 could pull this off without funds. And this is
11 interesting, Mr. Commissioner, because you're the
12 one that posed the question to Ms. Farlinger
13 during, I think, one of her more recent
14 appearances, about in retrospect whether indeed
15 she felt that it was naïve to expect any form of
16 significant implementation, and she agreed it was
17 naïve.

18 I then followed your questioning of Ms.
19 Farlinger by saying, well, if you concede, Ms.
20 Farlinger, that it was naïve back in 2005 to
21 expect implementation, let's prognosticate about
22 the future. Aren't you continuing to be naïve if
23 you are in any way suggesting to this Commission
24 that unless there's a funding change, we're going
25 to have any significant implementation. And you
26 will see she says on page 13 of my submission,
27 line 38:

28
29 And I think that it would be very difficult
30 to put a date or a time or, in fact, any kind
31 of end point on the gathering of even the
32 first tranche of that information.
33

34 Now, that's not very comforting to us, to my
35 clients, to the Conservation group. Basically,
36 she has come forward and is not prepared to commit
37 the Government of Canada to any form of fulsome
38 implementation of the WSP. It doesn't instil
39 confidence in the process.

40 Now, I will come a little on in my submission
41 to how this all prejudices the commercial
42 industry, and I'd rather just speak for my
43 clients, and leave it to others to speak to their
44 clients. But in terms of the seiners and the
45 gillnet Area D, there are huge consequences to
46 what has unfolded here in terms of the history of
47 WSP.

1 I want to speak basically to "The Limited
2 Implementation of the WSP". Ms. Dansereau, again
3 seems to be - I'm trying to be charitable here -
4 in denial, in believing that the WSP is being
5 implemented in any significant way. Look at the
6 bottom of page 13 of my submission, line 25. She
7 says:

8
9 Now, there are pockets of insufficient
10 knowledge, I completely grant you that, but
11 those knowledge gaps, we are working to fill.
12

13 Pockets? Pockets implies that there has been
14 substantive or at least significant implementation
15 of the WSP, and I take the position, as I will
16 show in a moment, that there has not been. And to
17 imply that it is for the most part been applied,
18 or that the spirit of the WSP has been applied,
19 is, I'm suggesting to you, very, very misleading
20 to this Inquiry.

21 Now, I take the position that most components
22 of the WSP have remained totally non-
23 operationalized up to this point in time. We have
24 Mr. Chamut, I'm at page 14, he gave his very
25 evidence, was my honest reaction is one of
26 disappointment, about where things stood right
27 now.

28 And then finally on this matter, we have the
29 Gardner Pinfold report, albeit in draft. But the
30 Gardner Pinfold report, forgive me, but I say it
31 totally substantiates and supports what I'm
32 saying, what Mr. Leadem has been saying about the
33 ineffectual implementation of the WSP to date.

34 Just quoting from one page of the report,
35 that's our Exhibit number 1992. I don't need Mr.
36 Lunn to put it up. I'm only reading one sentence
37 at page Roman numeral "ii" under the heading
38 "Contribution to meeting objectives is modest",
39 the authors wrote:

40
41 This...CUs and monitoring and assessing their
42 status --
43

44 Excuse me just one moment:

45
46 This work requires activity in three
47 essential areas: establishing abundance and

1 distribution benchmarks for each of the CUs
2 and monitoring and assessing their status;
3 assessing the habitat status of CUs; and,
4 implementing an interim process for managing
5 priority CUs.
6

7 The authors then say, quote:
8

9 Until these activities produce their intended
10 outputs and outcomes, the *Policy* objectives
11 will remain largely unrealized and the goal a
12 worthy, but elusive, target.
13

14 Unquote. Now, that's in draft, but we'll see it
15 probably in its final form. And I submit, it
16 totally supports where we're going with this.

17 I'm at the top of page 15, Mr. Commissioner.
18 I say in terms of the failure to implement, first
19 of all, DFO has done no costing out of the Policy.
20 I say DFO has done no implementation plan of the
21 Policy. I say DFO has not provided a date for
22 full implementation of the Policy, and I now come
23 to the topic of "The Mandate Specific to WSP" of
24 what one would have expected in their -- in their
25 implementation.

26 I say firstly at the top of 16, not one CU
27 has been completed, even on a pilot basis, after
28 six years. Not one socioeconomic study has been
29 conducted. And I don't have time to go into this,
30 but, Mr. Commissioner, you are well aware that the
31 WSP requires as an important component of its
32 implementation socioeconomic analysis. Not one
33 has been completed to date.

34 I'm now at page 18. This is an interesting
35 little moment in the Inquiry. Dr. Carl Walters
36 approached this Commission asking that there be a
37 socioeconomic analysis done of the losses to
38 harvest since the policies of DFO in restricting
39 harvest and increasing over-escapement. And at
40 page 18 you will see at line 1 in the paragraph
41 how he estimated the losses were \$200 million and
42 up to \$240 million.

43 Well, my learned friend, Ms. Gaertner, took
44 great exception in her cross-examination that Dr.
45 Walters had done this calculation, and did he have
46 the background to do statistical work and economic
47 analysis. And he was honest and he said, no, but

1 I'm doing it because nobody else has done it.
2 It's the best evidence we have at this Inquiry as
3 to what those losses were as a result of DFO's
4 policy of limiting harvest and increasing over-
5 escapement.

6 Dr. Riddell acknowledged that clearly in
7 retrospect -- there's been no retrospective
8 socioeconomic analysis of the issues relating to
9 reduced harvest.

10 I come to page 19 of my submission, "The
11 Mandate Specific to WSP and to Overall Statutory
12 Direction". There has been -- I see we're two
13 minutes over. I would, unless it's inconvenient
14 to you, I would at least like a few more minutes,
15 but -- thank you.

16 In respect to "The Mandate Specific to WSP
17 and to Overall Statutory Direction", I say they
18 have failed to do proper stock enumeration and
19 catch monitoring.

20 Dr. Riddell spoke about how when he left the
21 Department in 2005 they were down to a critical
22 assessment level. That's all there at the bottom
23 of page 19.

24 Page 20, Mr. Whitehouse spoke about the
25 critical tipping point in terms of stock
26 enumeration. He spoke about the crisis coming
27 into play in that passage I cite.

28 We then have the evidence that's been brought
29 before you that stock enumeration has been reduced
30 from a 25,000 figure to a 75,000 figure for high
31 precision stock evaluation. And there's been a
32 lot of evidence as to the significance of that and
33 how it clearly is a diminished standard in terms
34 of what information or database the Department
35 would be working with.

36 We then have the evidence of Ms. Holt, that
37 her work, as critical as it is, she said it was
38 suffering deficiencies because of the lack of
39 enumeration data that she needed, and that it --
40 these are her words, they prejudiced the quality
41 of her work.

42 I come to page 21, "Habitat Management,
43 Enforcement, Enhancement and Restoration". I
44 guess this will take me a little time, and so
45 possibly it is an appropriate time for the break.

46 Thank you.

47 THE COMMISSIONER: Thank you very much.

1 THE REGISTRAR: The hearing is adjourned until 2:00
2 p.m.
3

4 (PROCEEDINGS ADJOURNED FOR NOON RECESS)
5 (PROCEEDINGS RECONVENED)
6

7 THE REGISTRAR: The hearing is now resumed.

8 MR. ROSENBLOOM: Thank you very much, Mr. Commissioner.
9

10 SUBMISSIONS FOR AREA D SALMON GILLNET ASSOCIATION; AREA
11 B HARVEST COMMITTEE (SEINE) BY MR. ROSENBLOOM,
12 continuing:
13

14 MR. ROSENBLOOM: I spoke at the outset about three
15 Royal Commissions that I counted that were focused
16 on specie indigenous to the country, and I spoke
17 in particular of the two that were fish related,
18 Pearse and the Senator back east with the cod
19 fishery, Senator Kirby. I should just inform you
20 the third Royal Commission that I determined
21 related to specie was the Royal Commission on
22 seals, and the sealing industry in Canada. It's
23 interesting all three Royal Commissions focused on
24 species that are of economic significance to the
25 nation. And as I say, 1,600 species they could be
26 focused on where there are issues of extinction,
27 but clearly the government puts priority on these
28 particular species for obvious reasons.

29 I have 35 minutes left. Graciously, Mr.
30 Leadem has provided me with ten minutes that he
31 didn't use during his submission, and I believe
32 with Ms. Baker's approval, we might be able --
33 might require those ten minutes.

34 I'm at page 21 of my submissions relating to
35 "Habitat Management, Enforcement, Enhancement and
36 Restoration". I have covered, as you see from my
37 table of contents, areas where I suggest there is
38 a litany of non-performance by DFO, and I
39 attribute most of that non-performance to
40 financial incapacity.

41 When it comes to habitat management,
42 enforcement, enhancement and restoration, I
43 suggest that the record is sad in its performance
44 to date by DFO. And my learned friend, Mr. Leadem
45 did a very persuasive job in speaking to this
46 issue, and I don't want to spend a lot of
47 additional time, other than to make mention of the

1 following.

2 At page 21, I speak of Mr. Duncan's
3 testimony. Mr. Duncan, you'll recall was a First
4 Nation witness, and he spoke about how the single
5 most devastating impact on sockeye salmon was from
6 his perspective habitat related. And I think that
7 a lot of other people would probably -- would
8 agree with the testimony he gave at this inquiry.

9 Action Step 5.3 of the WSP states in part:

10
11 Habitat program work will shift from being
12 largely reactive, to being planned and
13 strategically directed in order to protect
14 habitat and to implement management measures
15 that meet the long term objectives specified
16 by Strategic Plans (Strategy 4).
17

18 Nice words. I certainly didn't see any initiative
19 leading in that direction.

20 The **Fisheries Act**, ss. 35 and 36 impose upon
21 DFO statutory responsibility. And yet, the
22 evidence before this Tribunal is that DFO has
23 failed miserably in discharging those statutory
24 responsibilities.

25 We have Mr. Sprout, at page 22, who was an
26 apologist for DFO in so many facets of their work.
27 And yet he said at page 22 of my submission that
28 DFO, quote "still struggle" in the habitat area,
29 those were his words. We have Mr. Sprout
30 conceding that their capacity with habitat
31 initiatives, quote "has been very curtailed",
32 unquote.

33 None of this is very comforting. These are
34 individuals, who in the case of Mr. Sprout who was
35 an RDG, if my memory's right, and who has just
36 retired from the Department, but spoke in defence
37 of the Department in so many areas. And yet, this
38 was his assessment of their -- of DFO discharging
39 their responsibilities in habitat.

40 The PPR8 that was before you, paragraph 6 of
41 the PPR spoke in part with the following
42 statement:
43

44 Loss of fish habitat has been identified as a
45 leading factor in the decline of Canada's
46 fisheries resources, and salmon in particular
47

1 Mr. Hwang, who was a witness before this
2 Commission, who is an Area Manager in the
3 Ecosystem Management Branch in the Interior said
4 "habitat is changing for the negative". These are
5 quotes. They're all documented and footnoted in
6 my submission. This failure to meet the most
7 minimal standard of acceptability should be of
8 great concern to the Commission, and in turn to
9 the Federal Government and the Canadian public.

10 Now, the evidence highlighted some of the
11 more glaring examples of DFO's abdication of this
12 responsibility.

13 Mr. Morley testified how critical habitat is
14 as a significant component of the WSP. And he
15 also spoke about how FRSSI does not apply habitat
16 issues in their assessment leading to management
17 decisions.

18 I come at the top of page 24 to "Habitat
19 Management". There is evidence before you that
20 certainly up to the closure of evidence, as I
21 understood it, there is not one habitat status
22 report that had been completed. Now, I am mindful
23 of the fact that the Government of Canada has
24 filed a reply that says now there are six
25 completed. And I have not understood how they
26 come about that assessment of six, but let's
27 assume that it is correct.

28 Of the six, from my knowledge of geography of
29 British Columbia, only one of those six areas as
30 stated in their reply is within the Fraser River
31 Watershed, and that one is the Harrison area.
32 Well, it's somewhat ironical that indeed if the
33 Department has completed the habitat status report
34 work in respect to Harrison, it's the one area
35 where we appear to have a healthy, vibrant stock
36 with increased productivity of that stock year in
37 and year out of recent times.

38 What I don't understand, Mr. Commissioner,
39 and I have questioned so many witnesses at this
40 Inquiry, who presumably could bring information to
41 this Inquiry, is why has Cultus Lake been ignored
42 by DFO in respect to this habitat status report.

43 You will recall the evidence given by those
44 in authority who were responsible for that
45 initiative of carrying out habitat status reports,
46 and you will recall that the evidence was it had
47 not been done, and my learned friend, Mr. Taylor's

1 reply confirms it hasn't been done.

2 Well, I don't get it. I don't get it in the
3 -- when we have been informed from day one if
4 there's any watershed that was spoken about and
5 focused upon by this Inquiry day in and day out,
6 it was Cultus Lake, for obvious reasons. It is a
7 weak stock, and it is a stock that is driving DFO
8 in its management decisions to curtail the harvest
9 of my clients. And yet how do my clients look at
10 this in seeing that the Cultus Lake situation is
11 so unimportant to DFO that they would not
12 prioritize the habitat status report for that
13 particular lake.

14 Then the question is well, why did that
15 happen? And the answer really lies again back to
16 the financial situation. Ms. Reid, in her
17 testimony, Rebecca Reid, said that the financial
18 situation was the cause of her problems in
19 discharging these responsibilities, and she said
20 that in previous years the spending over \$300,000
21 a year in her Department, but now it's only
22 \$50,000 a year. Herein lies the defence of DFO to
23 their failure to do what seems somewhat intuitive
24 to any of us who have been following or tracking
25 the concerns of weak stock in the Fraser
26 Watershed.

27 Now, Mr. Sprout, and I'm at page 25 of my
28 submission, raised another troubling layer to this
29 whole issue of habitat, and that is that there has
30 been a loss, from his perspective, a loss of
31 provincial capacity. And we have learned about
32 the inter-jurisdictional responsibilities when it
33 comes to habitat, and he and others, I believe,
34 spoke to the provincial incapacity, or more to the
35 point, a provincial loss of capacity, as opposed
36 to the past, when it came to attempting to ensure
37 habitat protection.

38 We have Mr. Nelitz, Marc Nelitz who testified
39 that it was difficult to implement Strategies 2
40 and 3, where there was a weakness with the habitat
41 database, as he put it. So it undermined so much
42 of the WSP implementation process.

43 We have David Carter at page 26 saying there
44 was no reason to be optimistic into the future.
45 This exchange took place, I believe it was my
46 cross-examination, quote:
47

1 Q And you also heard testimony yesterday, and
2 I'm sure you were well aware of this, that
3 there's no reason to be optimistic, certainly
4 for this present fiscal year, correct?

5 A Yes.

6
7 That can't comfort the public, the Canadian
8 public, when it -- when we're facing down further
9 budgetary reduction in DFO's budget for the West
10 Coast, and this is the state of affairs at this
11 moment in time.

12 We then have concern about DFO's failure to
13 really discharge any semblance of responsible
14 surveillance and enforcement of habitat. And my
15 learned friend, Mr. Leadem, did such a good job in
16 that respect, and spoke this morning about small
17 projects going completely under the radar. Well,
18 as I heard it, the evidence was if you, as a
19 proponent, filed a referral, you got some
20 attention from DFO because they would look at your
21 program, your project, and would give some advice.
22 But the evidence is clear from the witnesses that
23 if you chose as a proponent to go under the radar
24 and not file a referral, you would not be pursued
25 by DFO for any form of surveillance whatsoever.

26 Well, the people that are bona fide, that are
27 concerned about our environment, that are
28 concerned about our habitat, would of course go to
29 DFO to have their plans reviewed because they
30 would be concerned about causing detrimental
31 effect to the environment.

32 It's those that are not bona fide, that do
33 not hold those values, will obviously not file
34 referral, and in turn get away with what can be
35 significant violations of the **Act**, and indeed in
36 turn it leading to serious environmental damage.

37 Mr. Carter, at page 27, spoke how he couldn't
38 sleep at night because of the situation.

39 Mr. Hwang at the top of page 28 testified
40 that DFO has seen a trend towards non-compliance,
41 given the lack of follow-up on applications or
42 referrals, or where parties don't even submit a
43 referral.

44 Mr. Nelson, who I thought was one of the most
45 forthright witnesses to come before you from DFO,
46 interestingly enough he's about to retire, he
47 testified also of sleepless nights, saying

1 frankly, he didn't know how things were going to
2 unfold. He was obviously frustrated with the
3 budgetary situation and with what appeared to be
4 future budgetary restraint.

5 "Habitat Restoration", my next topic, I saw
6 no sign whatsoever. I saw no evidence brought
7 before this inquiry that DFO was doing any
8 significant habitat restoration work anywhere
9 within the watershed that is the focus of this
10 inquiry. When it comes to enforcement, we had
11 evidence that quite frankly the DFO C&P officials,
12 who are bestowed with the responsibility of
13 enforcement, simply could not do the job.

14 We had the unbelievable evidence of Mr.
15 Nelson that to prosecute parties under s. 35/36,
16 or to ticket them, really was futile because they
17 did not have the means to enforce those violations
18 and to collect those fines. He told us there's
19 over \$1 million in fines for the Pacific Region
20 that remain unpaid. Well, when word gets out that
21 DFO does not have the capacity to even enforce and
22 collect on fines imposed, we're in a pretty sad
23 state of affairs, if I may put it that way to you,
24 Mr. Commissioner.

25 Now, I then deal briefly at page 35 with --
26 excuse me, page 30 of my submission with no net
27 loss. I'm not going to spend a lot of time on it.
28 Again, an admirable policy. One that one would
29 have thought would be embraced in a comprehensive
30 way by DFO, and we learned that quite frankly it
31 is nothing more than -- worth no more than what
32 the paper it's written on, that in fact we have
33 not been really enforcing the no net loss
34 situation. And we had evidence that indeed we are
35 losing that battle, and that we are -- the sum
36 total of it is that we are in a negative situation
37 on no net loss, not a positive, as was meant to
38 be.

39 I come at page 31 -- and I put all this in
40 the context of Ms. Dansereau saying everything is
41 fine, we've got proper funding and there's nothing
42 to be concerned about.

43 I go on with my checklist, "Nursery Lake
44 Assessment". We learn, and I'm at page 31, that
45 under the former Pacific Salmon Fisheries
46 Commission, there was an extensive program. Now
47 there are only three lakes under this program of

1 nursery lake assessment, and all three lakes are
2 large lakes. Mr. Commissioner, the whole
3 foundation of the WSP is looking at weak stocks,
4 and some of these weak stocks are in small lakes.
5 One would have thought, be intuitive to expect,
6 that DFO would be putting some money into nursery
7 lake assessment of those lakes that -- that are
8 home to some of these weak stocks, but that is not
9 what is happening.

10 Mr. Whitehouse did indeed speak to the fact
11 that obviously one should have expected some focus
12 on small lakes. In questioning he said -- first
13 my question to him:
14

15 And you appreciate, sir, under the direction
16 that the WSP takes us, that the health of
17 stock in some of the small CUs can be
18 critical to the harvest rate of my clients
19 out in the marine environment obviously?
20

21 And his answer was:
22

23 Absolutely.
24

25 And yet it's not being done.

26 I come to the next item on my checklist of
27 non-performance, page 32, "Selective Fishing".
28 There you heard that the program, its funding ran
29 out in 2002 and has not been further pursued. Yet
30 Mr. Hargreaves in his testimony spoke about the
31 importance of programs to develop new means of
32 fishing in a mixed fishery in a more selective
33 way.

34 I don't want to spend time on this, but my
35 clients testified at these proceeding of their
36 commitment, of the commercial fishing industry's
37 commitment to selective fishing, to cooperating
38 with the DFO in trying to develop new techniques
39 in a mixed fishery. I mean, it's obvious that
40 it's in my clients' interest that they support
41 this process.

42 My learned friend for the First Nations
43 Coalition speaks about one little incident back in
44 2004 where there was some testimony given by my
45 client, Mr. Chris Ashton. It is totally explained
46 in my reply to this Commission of what is raised
47 by the First Nations Coalition. It is one

1 isolated incident where the seiner association
2 that I represent said that there had been five
3 years of testing of this particular bunt
4 mechanism, and that it should be taken to
5 scientific review, because that was the agreement
6 made from the beginning, and it never was. Then
7 in any event, the government went ahead with the
8 program that year and to this day there has never
9 been scientific review.

10 I say that the evidence is conclusive that my
11 clients were supportive of selective fishing. Why
12 would they not be, for obvious reasons.

13 I come to "Habitat Stewardship Program",
14 another on my checklist here. Again, effectively
15 abandoned by the government. We heard evidence
16 about it. I have reference to it.

17 The next item, "The Salmon Enhancement
18 Program", reduced as of the mid-1990s, no longer
19 really viable.

20 The "Lake Enrichment Program", the program is
21 now defunct, but for one Vancouver Island lake.

22 The "Test Fishery" area, if there's anything
23 that I think everybody agreed to in this
24 Commission, it's that the test fishery is critical
25 for proper management of the resource. And yet we
26 had Ms. Dansereau in her more latter appearance
27 before this Commission unwilling to make a
28 commitment that even the test fishery would be a
29 program continued when funding ran out next year,
30 I believe at the end of this fiscal year, March
31 31st of 2012. Even that is on the block and could
32 be chopped to pieces.

33 When it comes to "Research", again a total
34 lack of commitment by DFO to do any form of
35 adequate funding. I break that down, "Research",
36 into three areas: project abandoned, projects
37 where -- that are currently underway, that have an
38 uncertain future, and thirdly research that's
39 being recommended. Let me deal with each of them
40 very briefly.

41 On "Projects Abandoned", I give as an example
42 in my written submission the radio telemetry work.
43 We've heard over and over again of the importance
44 of telemetry work in trying to figure out some of
45 this complicated science of what's really going on
46 with the fish and why they might be making an
47 early entry into the river, and early migration,

1 and things of that sort. Well, the program was
2 abandoned, it was spoken to by a number of
3 scientists, and frankly there was some evidence of
4 how disappointed those scientists were that that
5 program has been abandoned. Why has it been
6 abandoned? Presumably again financial.

7 I come to the second area under "Research",
8 "Current Research with an Uncertain Future".
9 Well, if there was one witness who was more
10 anticipated for this Inquiry than any other, it
11 was Dr. Kristina Miller. And she came forward
12 with some important findings of her research, that
13 everybody hung on every word of her testimony.
14 Yet even she testifies at this Inquiry that as for
15 her project, it was currently, I quote her words,
16 "insecure". She described her current situation
17 as "troubling and stressful". And, Mr.
18 Commissioner, if even she is stressed with a lack
19 of funding for a project that appeared so
20 important, so critical to DFO, so help me, for all
21 the research that is currently underway with
22 uncertain futures.

23 Lastly, "Research being recommended". You
24 have heard from so many scientists of research
25 that they feel is necessary. Most recently with
26 Dr. Laura Richards speaking of research in the
27 field of the relationship between salmon farm
28 disease and the transmittal to the wild stock.
29 Again are we going to see any of that work done?
30 It all depends on the financial situation of the
31 Department into the future.

32 Now, I say that unless DFO's budget is
33 increased, the recommendations that this
34 Commission makes in terms of future research is,
35 quite frankly, totally for naught, and our time
36 has been wasted.

37 I come now to the next topic at page 37, "The
38 Inequitable Consequences of Only partially
39 Implementing the WSP and Under-funding DFO". I
40 say it's been a piecemeal implementation of WSP.
41 I've made the point already to you that
42 stakeholders bought in on the assumption that
43 there be a fulsome implementation with all
44 components being recognized by DFO as being
45 important to the sustainability of the stock, and
46 that all those programs would be properly funded
47 and the programs would be implemented. Gardner

1 Pinfold speaks to that, and I say no more in that
2 regard.

3 I say that what has happened here, is that
4 when some of these witnesses, Farlinger and
5 Dansereau, and so on, spoke about the spirit of
6 the WSP being implemented, what they were talking
7 about was the closure of harvest rights, the
8 closure or limiting of harvest in return for
9 greater escapement. That, I suggest, is all that
10 they could really speak to as being what has been
11 implemented to date in terms of affecting the
12 public interest.

13 Mr. Morley spoke to this at page 38 of his
14 submission. I have a quote that basically, if I
15 can paraphrase what he said so well, it is that
16 DFO has taken the route of least resistance, and
17 of least cost to them by simply closing the gates
18 on harvest without paying the slightest attention
19 to all the other responsibilities that come with
20 the so-called protection of weak stock.

21 Dr. Riddell spoke about transferring the cost
22 to other people, at page 40 of my submission. Dr.
23 Riddell said in part that:

24
25 ...whether it's the commercial fisheries
26 outside that have been substantially
27 curtailed. Other people are bearing some
28 very substantial costs by us not doing
29 sufficient monitoring and science.
30

31 And he was speaking of my clients and the First
32 Nation community when he said that. He went on
33 and said at the top of page 41 of my submission:

34
35 ...so it's a tough environment and I think we
36 are passing costs on to other people if we're
37 not going to do the fundamental work to
38 really examine things like Carl's now finding
39 evidence out for delayed density dependence.
40

41 Clearly, I submit to you, Mr. Commissioner,
42 that the commercial fishery has taken the brunt of
43 loss as a result of DFO's limited approach to WSP
44 implementation and harvest management strategies
45 in general.

46 I come now to Part III Of my submission, the
47 "Non-Fiscal Issues and DFO's Mismanagement". "The

1 Revisiting" -- and I subtitle this "The Revisiting
2 the Biodiversity Debate, Over-Escapement and the
3 WSP". Now, down at the bottom of page 41, I said
4 I wouldn't read much of my submission. I do want
5 to read a mid paragraph at the bottom. I say,
6 however, the question must be asked to what extent
7 the WSP effectively responds to the bio-diversity
8 concerns and at what cost. The underlying problem
9 arises when escapement figures are dictated by a
10 few small weak stocks, which leads to the result
11 that exploitation rate for abundant stocks in a
12 mixed stock fishery is curtailed to meet weak
13 stock spawning needs. That, in turn, leads to
14 over-escapement of strong stocks, the consequences
15 of which are described further in my submission.

16 I take the position that the WSP is a failed
17 experiment with an aftermath of significant
18 problems.

19 Dr. Woodey appeared before this Commission,
20 and I don't want to overstate this, Mr.
21 Commissioner, but I think you heard from people
22 that they approached him as if he walked on water.
23 He is an extremely respected scientist in Canada
24 in the field of fish ecology, and his record
25 speaks for itself.

26 And he said, and I have a number of quotes
27 here, and I invite the Commission in its own time
28 to review exactly what Dr. Woodey said. At page
29 42 he said in part about over-escapement, that the
30 over-escapement problem, quote, was "not an
31 insignificant issue from the standpoint of future
32 returns and harvest". This is not a quote of
33 nobody. This is a quote of Dr. Woodey. Then
34 further on he described in the context of this
35 issue of overstatement at line 17 in a quote:

36
37 ...we're conducting big experiment by seeing
38 these large escapements, and as we are seeing
39 these large escapements fail to produce,
40 we're learning more as to what the optimal
41 escapements are. But, at the same time, we're
42 seeing these failures starting to show up,
43 because it's been only in the last eight or
44 ten years that we've experienced these very
45 large escapements.

46
47 And he goes on in quotes that are before you.

1 At page 43, a quote from Mr. Lapointe. Now,
2 Mr. Lapointe also is someone of great respect. He
3 appears to have the confidence of this country in
4 being appointed the head of the Pacific Salmon
5 Commission, and he is a scientist. And he said at
6 page 43 of my submission:
7

8 And to think that there is no risk, no
9 consequence to the ecosystem of a very large
10 escapement, I think, is not consistent with
11 all of our training.
12

13 That's pretty sobering from a man with that
14 experience.

15 And then we come to Dr. Walters. Well, some
16 of my learned friends would like to just dismiss
17 Dr. Walters as if he didn't ever come before this
18 Commission, and he didn't testify. But they're
19 flying in the face of a scientist with an
20 incredible reputation, not just nationally, but
21 internationally. Even Dr. Riddell, who I think
22 this Commission relied on to a certain extent. He
23 was certainly a frequent witness here. He refers
24 to Dr. Walters as "probably one of the world
25 leaders". He further referred to him as a "world-
26 renowned leader in fish population dynamics".

27 You know, my learned friend representing the
28 First Nations Coalition, in her reply, and I think
29 this deserves just a second of time. At page 26
30 of her reply she says in paragraph 8 -- 80, I
31 should say:
32

33 By his own admission, Dr. Walters' concerns
34 regarding over-escapement arise not from the
35 point of view of the biology or ecology of
36 the [Fraser River Salmon] but from the point
37 of view of commercial access to available
38 harvests.
39

40 She then has footnote 82.

41 Well, I have read footnote 82 from the
42 transcript, I've had others read footnote 82. It
43 isn't even a quote of Dr. Walters for the most
44 part, a portion of it is, and it has absolutely
45 nothing to do with a statement that suggests, if I
46 am interpreting this -- if I am interpreting this
47 correctly, it is implying that Dr. Walters is in

1 the pocket of the commercial industry and has come
2 before you and is only focused on the issue of
3 commercial viability of the fishing industry.

4 He is a scientist who has dedicated his life
5 to the marine ecology, he is published and is
6 world-respected. I heard no evidence that he has
7 ever done any work for the commercial industry.
8 He -- there was never any suggestion in cross-
9 examination that he somehow or other carried a
10 bias. And yet my learned friend implies from that
11 paragraph, as I read it, that he's not really
12 concerned about the ecology. He's concerned about
13 whether fishers are making an adequate income. I
14 don't want to be the one to tell Dr. Walters that
15 was said about him at this inquiry.

16 I want to carry on with the whole issue at
17 page 44 of "Over Escapement and its Concomitant
18 Consequences". I say there are three consequences
19 to the over-escapement issue: first that there
20 has been no appreciable improvement with the
21 status of the weak stocks; (2) that the harvest
22 management decision of over-escaping of strong
23 stocks has led to serious detrimental effects, and
24 (3) the losses of commercial harvest have been
25 devastating to the industry.

26 I say that if my learned friends want to take
27 this issue on, and take the position that there is
28 no case to be met that over-escapement is causing
29 an effect on the productivity of major salmon
30 stock within British Columbia, they have to answer
31 the evidence of these three scientists: Walters,
32 Woodey and Lapointe.

33 Dr. Walters at page 45 said at line 41:

34
35 Taken together with the Gilhausen
36 reconstruction, I think we have to now admit
37 substantially higher risk of severe stock
38 declines and severe cyclic population
39 behaviours under reduced harvest rates.
40

41 He went on at page 46 at the top. He said:

42
43 Well, I'd say in the Quesnel case, a drop
44 from in the millions down to in the hundred
45 thousand or so is pretty catastrophic, yes.
46

47 So here we have Dr. Walters, and I'm going to

1 suggest to you nobody really challenged him in his
2 testimony, speaking of the situation being
3 catastrophic.

4 We have Mr. Lapointe at page 46 midway down,
5 he said:

6
7 I've know Carl for -- since 1982. He's
8 brilliant. He's usually right.
9

10 Sadly, DFO appears to blindly pursue this
11 strategy of over-escapement at the expense of
12 serious losses to healthy stocks that make up the
13 majority of the Fraser sockeye runs.

14 Mr. Nelitz acknowledged that over-escapement
15 was not factored into the WSP benchmarks.

16 Dr. Woodey at page 47 said in part, line 6:

17
18 ...the "experiment" has shown that the over-
19 escapement, that I term over-escapement as,
20 has resulted in disastrous results for the
21 Quesnel Sockeye run.
22

23 It's very difficult, Mr. Commissioner, to
24 understand how DFO can continue to ignore...

25 With respect, my learned friend says I'm
26 without time. I had 35 minutes even without
27 getting ten minutes from Mr. Leadem. I had 25
28 minutes from five after 12:00 to 12:30. That was
29 25 minutes. I came back from lunch. I have in
30 total an hour, and I can have five of my learned
31 friend's. I was given ten minutes by Mr. Leadem,
32 so I don't follow my learned friend.

33 MR. WALLACE: Well, in my calculations, it included Mr.
34 Leadem's time, but if you can wrap up...

35 MR. ROSENBLOOM: Well, I can't wrap quickly. Mr.
36 Commissioner, with respect, if indeed I had been
37 given 15 extra minutes, I still have Ms. Pacey to
38 do her section, which will take approximately
39 eight minutes. I would like to complete this. I
40 have taken up 35 minutes right now, but I'm given
41 an extra 15. And we are above -- I understand
42 that our schedule is well within means right now.

43 THE COMMISSIONER: Why don't you proceed for another
44 ten minutes, Mr. Rosenbloom.

45 MR. ROSENBLOOM: Thank you. Page 47, Dr. Woodey goes
46 on to speak of the experiment of over-escapement
47 as being a disaster. At the bottom of page 47 I

1 then say it is very difficult to understand how
2 DFO can continue to ignore the strongly held
3 opinions of these highly respected scientists.

4 I come to Canada acknowledging that there is
5 a serious -- that there is a risk about over-
6 escapement. In Canada's reply at page 5, Canada
7 says this at paragraph 16:
8

9 While Canada acknowledges there may be risks
10 associated with over-escapement, it is clear
11 that these risks must be balanced with the
12 negative consequences of under-escapement,
13 i.e. not achieving escapement targets.
14

15 So even Canada acknowledges these dangers.

16 Now, my learned friends, and I don't have
17 time to deal with this obviously, Mr. Dickson
18 speaks about how there was no evidence of any
19 diminished return, or any decline in stock because
20 of over- escapement, I say it totally flies in the
21 face of all the evidence that I've been speaking
22 about. Even the quote that both he relies on and
23 Ms. Gaertner rely on from Dr. Peterman and Dorner,
24 even that quote speaks to a recognition by those
25 two scientists that Quesnel could well be affected
26 by the over-escapement issue. And I leave the
27 paragraphs that my learned friends cite for the
28 Commission's review. But even that evidence
29 acknowledges an over-escapement problem within the
30 watershed of Quesnel.

31 You know, Mr. Commissioner, this is very much
32 like the canary in a cage. In the old days in
33 mines in Britain, miners would go down and would
34 bring with them a canary in a cage, and if that
35 canary died after their arrival, they knew they
36 had a gas problem and they quickly retreated from
37 the mine site. This is the same situation. This
38 is a canary in a cage where the canary has died.
39 It happens to have died at Quesnel. But who's to
40 say that if it's happening at Quesnel, it's not
41 going to happen in other locations, in other
42 watersheds. And in fact, Dr. Walters is of the
43 opinion that it already is happening, and so does
44 Dr. Woodey believe it's happening in other
45 watersheds.

46 This is a serious issue, and it's an issue
47 where the precautionary approach is -- should be

Submissions by Mr. Rosenbloom (GILLFSC)

Submissions by Ms. Pacey (GILLFSC)

1 applied. And my learned friend, Mr. McDade dealt
2 with precautionary approach yesterday in a totally
3 different context. I say that DFO has failed to
4 recognize the precautionary approach or apply a
5 precautionary approach when it comes to the whole
6 business of over-escapement. I think it's an
7 important thing.

8 There is an exhibit before this Tribunal
9 which is Exhibit 1851, and I've asked Mr. Lunn to
10 have it available. It is a very significant
11 exhibit and it will be before you on the screen in
12 just a moment. Because it shows a reduction in
13 productivity of the Fraser sockeye starting around
14 1989/1990, and it happens to coincide with a
15 decision by DFO to apply a reduced harvest as a
16 management decision, and a return to increased
17 escapement. And that correlation between what was
18 decided upon by government back around 1989/1990,
19 and the productivity decline of the stock during
20 that time, I suggest is somewhat sobering and
21 should be considered by DFO in future management.

22 I now hand matters over to my colleague, Ms.
23 Pacey.

24 THE COMMISSIONER: Thank you very much, Mr. Rosenbloom.

25
26 SUBMISSIONS FOR AREA D SALMON GILLNET ASSOCIATION; AREA
27 B HARVEST COMMITTEE (SEINE) BY MS. PACEY:

28
29 MS. PACEY: Thank you, Mr. Commissioner, Katrina Pacey
30 for Area B and D. I am fortunate that many of the
31 points I was going to make have been made by the
32 Conservation Coalition and the Aquaculture
33 Coalition, so I will be able to move through my
34 submissions fairly quickly.

35 The first point that I wish to make and one
36 recommendation that we urge upon yourself, Mr.
37 Commissioner, is that the commission make a
38 recommendation with regards to DFO's conflicting
39 mandates as they relate to aquaculture. And in
40 this respect I do adopt the submissions of the
41 Conservation Coalition, of Mr. Leadem this
42 morning.

43 And just to add, just to make the point
44 clearly, the Department has an overarching
45 responsibility to make decisions in the interest
46 of the conservation and protection of fish. And
47 yet, as you will see in my submissions at page 48,

1 DFO has assumed an active role in the business
2 development and promotion of the aquaculture
3 industry.

4 It is our submission that this conflicting
5 mandate will continue to impede DFO's ability to
6 meet its mandate, to protect wild salmon from the
7 impacts of aquaculture, and that the Department
8 must really be in a position to focus its fiscal
9 resources and policy decisions regarding
10 aquaculture on its conservation priorities, and
11 should be really insulated from the business
12 interests of the aquaculture industry.

13 The second area by which we make
14 recommendations are with respect to research, and
15 I'll move through these very quickly, because the
16 first point is simply to follow upon Mr.
17 Rosenbloom's submissions, that it's very important
18 that the Department allocate fiscal resources
19 appropriately towards its research activities, and
20 that more broadly DFO is funded properly to carry
21 out its mandate.

22 In addition, we urge DFO and we urge the
23 Commission to consider making a recommendation
24 regarding the direction and area in which DFO does
25 conduct this research, and that it really
26 prioritize research activities, but look into its
27 conservation mandate and conservation questions
28 and be in a position to have effective and
29 evidence-based -- will be able to engage in
30 effective and evidence-based decision making
31 regarding fishery management and conservation.

32 We make several submissions in our written
33 submissions regarding increasing transparency and
34 cooperation within the aquaculture industry. The
35 first point is with respect to fish health data.
36 It is our submission that this data should be
37 readily available to the public and that the fish
38 health data should be available, both at the farm
39 and fish level.

40 To respond to some points raised by the
41 Province, we say that their justification for
42 wishing to hold this information as somewhat
43 private is unjustified. To say that the public,
44 because they may not have the scientific
45 background to be able to understand that data,
46 should not be privy to it, we think is not an
47 appropriate justification to hold that information

1 privately, and to say that public disclosure would
2 limit the industry's willingness to make that
3 report to the Province, in this case the
4 Department of Fisheries and Oceans, is simply
5 unacceptable.

6 So we ask the Commission for a recommendation
7 that detailed fish health data be made publicly
8 available in a timely manner.

9 Very briefly, with respect to "Siting of Fish
10 Farms", at page 63 of our submission, and with
11 respect we disagree with submissions of my learned
12 friend, Mr. Blair, for the B.C. Salmon Farmers
13 Association.

14 And unfortunately I don't have time to get
15 into the great debate between Drs. Dill and
16 Noakes. But what I do say in our written
17 submissions is that Dr. Noakes makes a series of
18 over-broad and over-generalized statements that
19 are not founded in the data that he was working
20 with. And this critique is echoed by many peer
21 reviewers whose comments are found at Appendix 4
22 to his report, and in my reading he does not
23 address those critiques appropriately, and
24 continues to make over-statements, such as:

25
26 ...salmon farms pose no significant threat to
27 Fraser River sockeye salmon and that salmon
28 farming has not contributed to the recent
29 decline in Fraser River sockeye salmon
30 productivity.

31
32 And we say that the conclusions of Dr. Dill,
33 relying on the work of Dr. Connors, which in their
34 report says, quote:

35
36 ...the relationship between farm production
37 and Fraser sockeye survival in the long-term
38 data set suggests that the farms are having
39 some sort of negative impact on wild salmon
40 productivity, most likely in concert with
41 other factors in the marine environment.

42
43 And we say that in light of the fact that
44 there are gaps in the research and that there's a
45 general consensus that more data is needed to
46 really understand the impact of aquaculture, we
47 suggest that Dr. Noakes is not in a position to

Submissions by Ms. Pacey (GILLFSC)

Submissions by Mr. Rosenbloom (GILLFSC) (cont'd)

Submissions by Mr. Eidsvik (SGAHC)

1 say that he has disproven that aquaculture is
2 having a harmful effect.

3 And that in fact, looking at the long-term
4 data series that Drs. Dill and Connors rely on is
5 sufficient for this Commission to apply the
6 precautionary approach, say that in this context
7 the risk posed by aquaculture meets the threshold
8 of the precautionary principle, and that as a
9 result this Commission should urge government to
10 take immediate steps to move open net fish farms
11 off of migratory pathways.

12 And finally with respect to the "Fish Farm
13 Audit" question, I'll simply say that we adopt the
14 submissions of the Aquaculture Coalition and the
15 Conservation Coalition in this regard.

16 Thank you.

17
18 SUBMISSIONS FOR AREA D SALMON GILLNET ASSOCIATION; AREA
19 B HARVEST COMMITTEE (SEINE) BY MR. ROSENBLOOM,
20 continuing:

21
22 MR. ROSENBLOOM: I'll be 30 seconds just to indicate to
23 you, Mr. Commissioner, there is the submission
24 that obviously I didn't get to, in particular
25 "Allocation" and "Terminal Fisheries", which is a
26 big issue to my clients, both spoken about in the
27 final submission and in the reply, and obviously
28 we ask the Commission to give consideration to
29 those submissions as the topics that obviously we
30 have not had time to cover today.

31 We set out a set of recommendations. They
32 speak for themselves. They are obviously
33 consistent with the position you've heard in our
34 submission today. And thank you very much for the
35 courtesies that you have afforded to us and to all
36 counsel throughout these proceedings. Thank you.

37 THE COMMISSIONER: Thank you, Mr. Rosenbloom and Ms.
38 Pacey.

39 Mr. Eidsvik.

40
41 SUBMISSIONS FOR THE SOUTHERN AREA E GILLNETTERS
42 ASSOCIATION; B.C. FISHERIES SURVIVAL COALITION BY
43 MR. EIDSVIK:

44
45 MR. EIDSVIK: Good afternoon, Mr. Commissioner. Philip
46 Eidsvik for the Area E Gillnetters Association and
47 the B.C. Fisheries Survival Coalition. I have an

1 hour, and hopefully won't use it, because I see
2 Ms. Baker back there looking for more time, and I
3 hope to be able to give her some at the end.

4 I'm not going to go through our submissions
5 in detail. I will refer to a bunch of -- number
6 of exhibits and highlight some of the areas that I
7 think are important. And I think you probably
8 read better than I can speak, so I don't think
9 there's any need for me to read my -- our
10 submissions into the record.

11 First, if I could bring up Exhibit 1947, and
12 I need to deal with a little bit of a difficult
13 issue at first, and then move on. And this is the
14 "BC Sockeye Salmon Population Declines: Probable
15 Causes and Recommended Response Strategies". And
16 I bring it up because the report was prepared by
17 the Commission scientist, chief Commission
18 scientist, Mr. David Levy. And in the report at
19 page 26 he talks about the need to restructure
20 B.C. commercial fishery. And he talks about the
21 effect of mixed stock fisheries. And at page 26
22 in the second paragraph he says:

23
24 The best opportunity for restructuring the
25 fishery lies in the development of terminal
26 fisheries. To protect sockeye biodiversity
27 and the reduction of fishing...on weak
28 stocks, this will require the development of
29 commercial inland fisheries. There will be a
30 reduction in the value of the fishery due to
31 reduced fish quality. Nevertheless, a
32 cannery grade product can usually be
33 obtained...
34

35 And if we go to page -- back to page 21, he speaks
36 specifically about the high exploitation rate
37 leading to the Cultus sockeye crash. And we agree
38 that Cultus sockeye was overfished, though we --
39 it might have been a different story if we had
40 looked after the habitat, as many of the previous
41 submissions today have been said.

42 Nevertheless, we have a concern with Mr. Levy
43 continuing on inside the Commission, advising the
44 Commission on whether terminal fisheries are a
45 good thing or a bad thing. We fear that no matter
46 what we say in the Commission, he will have the
47 last word, compared to ours.

1 And I'm not going to go into too much detail
2 on that.

3 But I do note on Early Stuart, at page 14, he
4 talks about the impact of the Early Stuart
5 fishery, and I have heard earlier today about the
6 Wild Salmon Policy is needed to protect Early
7 Stuart sockeye. But as Mr. Rosenberger from DFO
8 testified, the public coastal commercial fishery
9 hasn't fished Fraser sockeye, only twice in the
10 last 20 years. Just a fishery and a stock that
11 the public coastal commercial fishery generally
12 does not -- does not fish. And that's at page 9
13 of our final submission, and the quote from Mr.
14 Rosenberger is footnote number 9.

15 So I'm going to make an unusual
16 recommendation and suggest, Mr. Commissioner, that
17 the -- Mr. Levy be removed from further
18 participation on the Commission at this point.
19 And that's the difficult issue I was -- didn't
20 want to deal with, but I know when I go back down
21 to the dock, if I didn't say something, I might be
22 hung by the yardarm. So as the only fisherman in
23 here and non-counsel, I had to get that on the
24 record.

25 That said, I'd like to thank the
26 Commissioner. I know you sat through 125 days of
27 hearings, and for your patience with the only non-
28 lawyer in here. And I say this now because I
29 always run out of time at the end and I wanted to
30 express our thanks, for the administrative staff
31 at the Commission, as well, and Natasha Tam and
32 Sarah Panchuk, and Natasha Doucas, and Leo Perra
33 and Len Giles, and Karen Hefferland, who's tried
34 to transcribe me as I talk too fast. And the web
35 designers and maintainers who did such a wonderful
36 job and made the handling of the vast amount of
37 documents and exhibits here much easier with their
38 quick posting and easy-to-use website. I've been
39 involved in some litigation, but never this volume
40 of documents and never had the pleasure and joy of
41 working with such an efficient way to handle
42 documents. So thank you for that.

43 And I want to move on to our submissions now.

44 And the first issue I want to deal with is
45 water temperature and climate change, because we
46 get talked about that lot. And if I could have
47 Exhibit 74 up, Mr. Lunn. It's a 2005 "Report of

1 the Fraser River Panel". And if we can go to page
2 24 when we get there, it's the issue of water
3 temperature, and we recognize that warm water in
4 the Fraser River contributes to mortality.
5 There's no denying that. But it's not the -- it's
6 not the sole equation.

7 And we can see here at the top graph, we're
8 seeing actually passage in fairly reasonable water
9 temperatures in 2005. And of course 2005 is
10 important, because that was the progeny year of
11 2009. So the water conditions weren't bad.

12 And if we go to page 37, Mr. Lunn, at the
13 bottom paragraph. And my hesitation here, Mr.
14 Commissioner, is to make sure that we don't just
15 throw up our hands and say, well, it was water
16 temperature, and everything flows from that and
17 the story's over.

18 At the last paragraph, and I'll just read the
19 bottom part of it at page 37:

20
21 River conditions that relate to migration
22 success were in ranges generally considered
23 benign, particularly for Summer-run fish.
24 Thus, if elevated mortality levels occurred
25 they may not have been due to the same
26 processes observed in the years when high
27 discharge or temperature levels led to high
28 en route mortality. A radio tagging program
29 confirmed the levels of en route loss but
30 information was insufficient to determine
31 causal mechanisms.

32
33 So here we have a case where a large number
34 of fish went missing in the Fraser River. The
35 temperatures weren't bad, and it's -- so we had
36 radio tagging which said, yes, fish were lost,
37 fish disappeared, but of course radio tagging only
38 tells you that they disappeared. It doesn't tell
39 you why they disappeared. And here's an example
40 where you just can't point and say water
41 temperature's the whole answer. There's other
42 factors, as well, and I'll try to get to some of
43 them in my submission.

44 And it's one of the problems that we have in
45 science -- and I'm sorry, Mr. Lunn, to jump
46 around. I'm at page 33 of my submission right
47 now, of our final submission. And there was a

1 conclusion in the Cumulative Impacts paper by the
2 Commission, and the theory was it's climate
3 change, it's warm water, and if we look at these
4 various other fisheries around the coast, the same
5 thing happened to them that happened to Fraser
6 sockeye. We saw a decline in productivity.

7 One of those areas was -- page 33, Mr. Lunn.
8 I'm in the first submission, not the reply. And
9 so we went and looked at Barkley Sound. And of
10 course in Barkley Sound we had a very large
11 incidence during the time of productivity drop
12 with a mackerel attack, where we had mackerel
13 eating the salmon smolts. And I asked Mr.
14 Marmorek in cross-examination if he was familiar
15 with that, and he wasn't. But of course Regional
16 Director Sue Farlinger was aware of it.

17 And it's one of the problems of being over-
18 reliant, sitting in an office somewhere looking at
19 computer models without knowing what's going on in
20 the field. And this is just not an unusual
21 circumstance, it happens time and again.

22 And sorry, Mr. Lunn, if I'm jumping around.
23 I'm going to Exhibit 1424. And this relates to
24 the Okanagan -- and I'm at page 9 of it, to the
25 Okanagan Lake sockeye run, and of course if we're
26 going to look at Barkley Sound or Skeena, the
27 other areas that Mr. Marmorek relied upon, we
28 should look at all of them. And this is an
29 interesting one, because the entry to Okanagan
30 Lake, of course, is through the Columbia River
31 system.

32 If we look at the graph, we can see very high
33 levels of fish in 2008, 2009 and 2010. Yet
34 Okanagan sockeye pass dams. They have a very long
35 migration route. They're further south than the
36 Fraser River sockeye run. So again you just can't
37 point to warm water and say everything's warm
38 water, it's all climate change.

39 Here we have a run that's in a more difficult
40 area to rebuild than Fraser sockeye. And yet
41 2009, '08 and '10, three years of study by this
42 Commission, all show pretty good abundance levels.
43 So I'm cautious not to -- I'm suggesting the
44 Commission not read warm water, climate change in
45 isolation to other factors.

46 And if we go to the cover page of this, I
47 think it's helpful as well on the terminal fishery

1 issue, Mr. Lunn. I point to this picture, and I
2 bring it up, the colour picture on the front.
3 These are fish that are caught in the terminal
4 fishery in the Okanagan Lake. You can see the
5 poor quality of them. The yellowish is actually
6 an off-colour. They're turning black. It's
7 certainly not a silver bright sockeye salmon
8 caught in the Lower Fraser, in the seine fishery
9 in Johnstone Strait, or, even better, in the troll
10 fishery on the outside. This is not a product
11 that we built our world markets on, and I'll move
12 on from that.

13 And one of the helpful exhibits that I've
14 noticed throughout this process has been Exhibit
15 75, by John Roos, restoring Fraser River sockeye.
16 And if we can pull that up, and I'm going to go
17 quickly to it. And I want to go quickly to page
18 144, Mr. Lunn, and the last paragraph. And while
19 you're bringing it up, I'll -- this is about
20 predicting Fraser River pink salmon, but it's
21 useful because the Commission initially had a
22 really difficult time predicting the abundance of
23 pink salmon. And they in this section here from
24 page 142 to 144, they went through a variety of
25 processes. One of the ones they looked at was
26 changing salinity in the entrance to the Fraser
27 river. If you had a high flow, you'd have reduced
28 salinity. If you had a low flow, you had
29 increased salinity.

30 But what's interesting to me is in the very
31 last paragraph of this page, the Commission's
32 statement:
33

34 In predicting Fraser pink salmon returns the
35 Commission learned there was not yet just one
36 reliable method to use for consistently
37 forecasting... It appeared for a number of
38 years...the salinity-survival relationship
39 held considerable promise but how long it
40 will be useful for predictions only time will
41 determine.
42

43 And this is one of the constants in the management
44 of Fraser River sockeye and Fraser pinks, it's
45 change. There is a little bit of climate change.
46 There's salinity changes. There's flow changes.
47 There's predator changes.

1 The complaints of the current managers, that
2 they're bewildered by complexities and
3 uncertainties, is simply not a reasonable excuse
4 for the decline of the stock, or the decline of
5 the fishery. There's always uncertainties and
6 declines. What's changed is DFO's ability to deal
7 with it.

8 And I'd like to pull up one more exhibit if I
9 could, Mr. Lunn, Exhibit 608. And this is the
10 1961 report of the International Pacific Salmon
11 Fisheries Commission, and it's the PDF page, page
12 6 of 45, Mr. Lunn.

13 MR. LUNN: I'm getting a document error.

14 MR. EIDSVIK: Okay. Well, to save going to it, I have
15 it up on my computer and I'll read the passage
16 that I was after. And 1961 is an interesting
17 year, because a large amount of decent escapement
18 in the previous -- four years previous, good fry,
19 good smolt production.

20 MR. LUNN: Which page?

21 MR. EIDSVIK: I'm on page 4, on the PDF I'm on page 4 -
22 - oh, 6 of 45, sorry, 6 of 45, and at the top of
23 the page. And so that the IPFC back in 1961 was
24 confronted with exactly the same problem this
25 Commission was confronted with in 2009. Enough
26 fish got on the spawning grounds four years
27 earlier. Sufficient numbers of fish made it out
28 of the river. But we should have had a big
29 return, and in 1961 the fish didn't come back.
30 And they sum it up in the second paragraph there,
31 that:

32
33 The anomalies in the runs of Fraser River
34 sockeye and pink salmon, apparently related
35 to unusual fluctuations in marine
36 environment, have occurred with alarming
37 frequency during the past ten years. These
38 anomalies were discussed in the 1959 Annual
39 Report and have been individually referenced
40 for several years. While similar anomalies
41 occurred prior to 1950, it appears that they
42 occurred with far less frequency although the
43 data for prior years is meagre and confused
44 by other factors such as the Hell's Gate
45 obstruction.

46
47 So here we are now, that's 1961, we're

1 hearing the same kind of claims about disaster,
2 crisis, we don't know what happened, and 1961 the
3 Commission kind of summed it up in about two
4 paragraphs, something went on in the marine
5 environment after the fry got down to the mouth of
6 the river. And again it's just getting to the
7 point that there's fishery management involves
8 managing change and responding to change.

9 If I can go to our reply submission, Mr.
10 Lunn, please, at page 24 -- yes, sorry, I should
11 have had them better labelled.

12 This is a graph of gross escapement data that
13 we took from the Commission PPR that was produced
14 that was quite useful. And the blue bars
15 represent the number of fish that passed through
16 all public commercial fisheries in the coast and
17 got as far as Mission. And we've heard a number
18 of people point fingers at mixed stock fishery and
19 the troubles with the public coastal commercial
20 fishery, how rapacious they are.

21 And here beginning, if we look at the 2008
22 cycle year, which is the proper way to look at
23 this is by cycle, and we see a low of 1964. And
24 you can see that every single year since 1964, a
25 long time before the first Greenpeace, a long time
26 before the Suzuki Foundation, or any Conservation
27 Coalition, commercial fishermen with the IPFC were
28 rebuilding the Fraser River sockeye run.

29 And if we look at the 2009 cycle, again the
30 same issue.

31 If we could flip to the next page, Mr. Lunn.
32 This is the 2010 cycle. Again pretty steady
33 rebuilding, with the exception of 1994, and I go
34 into that in my submission.

35 And again in the 2011 cycle, a little bit
36 more difficult, but a trend is still going
37 steadily upwards.

38 So way back for 40 years before this
39 Commission came, the commercial fishery was doing
40 its job and getting enough fish to Mission to not
41 only sustain the run, but to greatly enhance it.

42 And if we look at the chart on the side, for
43 example, if we look at the 2010 cycle, in 1946 the
44 gross escapement was 2.9 million, in 2002 it was
45 12 million. We think that was too high, but you
46 can see them in 1986 it was 5 million, in 1990,
47 6.6 million. So what you have is a

1 conservationist approach to fishery management
2 that was lock, stock and barrel integral to the
3 management of the fishery, going way back to the
4 1960s.

5 So what this means is a couple of things.
6 One, the problem of a decline, any decline in the
7 Fraser River sockeye fishery is not an issue that
8 happened in the public commercial fishing fleet.
9 They did their job. Put the fish to Mission.

10 So you can't solve the decline of the Fraser
11 River sockeye, for example, by putting share-based
12 management systems in the public commercial
13 fishing fleet, because that's not where the
14 problem is, and these graphs are solid evidence of
15 that.

16 Selective fishing in the coastal commercial
17 fishing fleet won't solve the problem of Fraser
18 River sockeye, because, as the graph shows, every
19 single year with the exception of maybe two or
20 three in 40 years, the run got bigger.

21 Reallocation to upriver commercial fisheries
22 won't solve the problem, because the problem is
23 not in the public coastal fishing fleet. This
24 graph is definitive of that point.

25 Now, Mr. Lapointe testified that past
26 Mission, upriver from Mission, where the public
27 commercial fishing fleet has been prohibited from
28 fishing for more than 100 years, 15 million fish
29 have gone missing since 1992. We don't have
30 answers to that yet. But the public commercial
31 fishing fleet stops fishing at Mission. Anything
32 that happens upriver from Mission is not the
33 responsibility of the public fleet.

34 In the recommendation on this, I thought it
35 would be useful if the Commission could complete
36 the end of the run size and escapement data to
37 produce similar graphs by run timing groups, so we
38 could find out, you know, what was the escapement
39 on the Early Stuart.

40 And there has been, in the PPR there's gross
41 escapement and net escapement, but it would also
42 be useful to have for these graphs a harvest by
43 user group, as the first step in determining has
44 there been overfishing, is determining, well, if
45 there was overfishing or was there not. And if
46 there was overfishing, who overfished. And as
47 I've said, the Early Stuart is one of the problem

1 groups. But the public commercial fleet doesn't
2 fish Early Stuart sockeye.

3 Now, getting back to the missing fish between
4 Mission and the spawning grounds, I'd like to go
5 to Exhibit 604, Mr. Lunn, please. And this is the
6 2001 Fraser River Salmon Fishery report.

7 Mr. Commissioner, am I doing all right for
8 time? I'm not sure what time you'd like to take
9 the afternoon break.

10 THE COMMISSIONER: No, I think you're doing fine.

11 MR. EIDSVIK: Okay.

12 THE COMMISSIONER: We'll go another ten minutes.

13 MR. EIDSVIK: Thank you.

14 THE COMMISSIONER: Thank you very much.

15 MR. EIDSVIK: Exhibit 604, Mr. Lunn. And this is the
16 2001 report of the Fraser Standing -- the
17 Parliamentary Standing Committee on Fisheries, and
18 I'm going to page 17. And it describes the --
19 this report was a lot of investigation into the --
20 of course, the 2001 Fraser River salmon fishery.
21 And in there the table at the bottom, Mr. Lunn,
22 compares the 2001 salmon fishery with the 1987
23 salmon fishery. And this is useful, because the
24 run size is a little bigger in 1987, but not a
25 heck of a lot bigger.

26 And so we had 1,200 seine boat days. That's
27 the seine boat that is fishing on the coast, and
28 lawfully, how many days of fishing they had. So
29 if the fleet was 100 boats, they had 12 days of
30 fishing. So they had 1200 days in 1987, 40 in
31 2001, 10,000 gillnet days in 1987 and zero in
32 2001, and the public commercial harvest on a run
33 of 7.7 of 3.2 million, and in 2001 about a
34 quarter of a million sockeye harvested.
35 Substantial growth, though, in the Aboriginal
36 fishery.

37 So the 2001 fishery, that was the beginning
38 of the 2005 fishery, led into the 2009 fishery,
39 which was the original subject of this Commission.
40 So the evidence is public commercial fleet didn't
41 fish in 2001, they didn't fish in 2005. So when
42 you're looking for problems for 2009, we have to
43 look elsewhere.

44 And if we go to page 10 in that, it's also
45 useful, Mr. Lunn. Because this Table 1 shows the
46 huge reduction that's already been made in the
47 public commercial fishing fleet from an original

1 536 seine licences, we're down to 271, from 2,200
2 gillnetters, we're down to 1,000 and 1,100, troll
3 is down from 1,30 to 529. So massive decrease in
4 the size of the public commercial fishing fleet
5 since 1996. And of course the seine is two areas.
6 So that fleet is split between the north and the
7 south. The gillnet is three areas, and the troll
8 is three areas. So huge reduction in public
9 commercial effort on the Fraser River sockeye run.

10 So at my request on the recommendations for
11 this section is simply that the Commission
12 complete a PPR, updating the tables of net
13 escapement by area and by stream, and you'll see
14 in the "Restoring Fraser River Sockeye"
15 publication if the tables that ended in 1985 at
16 pages 382 to 397 were continued into 2011, it
17 would be very useful. And then of course the
18 harvest by country and user group.

19 Now, I'm going -- a quick comment that's an
20 issue that's come up again and again, is how to
21 settle disputes in the -- in the commercial,
22 Aboriginal and recreational fisheries. And we
23 often get told in the context of Aboriginal
24 issues, the issue is negotiate rather than
25 litigate.

26 As the evidence has shown, pilot sales were
27 put in on the Fraser River in 1992. So that was a
28 negotiated settlement with an open and commercial
29 fishery, all the fish will be counted. But of
30 course one of the participants, who was a Sto:lo,
31 the Sto:lo litigated the *Van der Peet* case into
32 the B.C. Court of Appeal, 1993. Appealed to the
33 Supreme Court of Canada and a ruling was issued by
34 the S.C.C. in 1996, and just a myriad of cases
35 since then, a number of which I have cited in our
36 submissions.

37 So the principle of negotiate versus litigate
38 is only effective if there's a cessation of
39 litigation. Clearly, a number of groups continue
40 to litigate and negotiate. To me it's one or the
41 other. And what we're seeing is all the major and
42 important issues about Aboriginal claims and
43 rights are going to be litigated by one Aboriginal
44 group or another. Food fishing rights, commercial
45 fishing rights, title, it's all going to be
46 litigated. It's just a matter of who. So the
47 negotiate versus litigate is to me a false

1 paradigm, or untrue inaccurate analysis of the
2 issue.

3 I want to talk about enforcement for a
4 minute. And perhaps I can go to September 27,
5 2011, the transcript, Mr. Lunn, and page 27, line
6 43.

7 MR. LUNN: I'm sorry, just a minute. September...?

8 MR. EIDSVIK: September 27th.

9 MR. LUNN: And page?

10 MR. EIDSVIK: Page 27, line 43. And this is Mr. Bevan
11 speaking on behalf of the federal government, of
12 course, he's a senior Ottawa official, an
13 Assistant Deputy Minister, I believe. And there's
14 been complaints by enforcement officers about the
15 lack of support at senior levels inside the
16 Department for the enforcement function. Our
17 organization thinks enforcement is DFO's number
18 one priority, takes precedence over everything
19 else. We can have all the wonderful policies we
20 want, Wild Salmon Policies, meetings and
21 discussions, and we can decide to protect Thompson
22 River coho, but if we don't have the enforcement
23 resources in the Fraser River to enforce the
24 closure, then all those wonderful meetings and
25 policy statements are for naught.

26 And Mr. Bevan at that line, he -- I'm at line
27 43, and he's referring to Mr. Nelson, who is a
28 highly respected enforcement supervisor. And Mr.
29 Bevan, he's just being a bit critical, because
30 he's saying he wants to do the same things in the
31 old ways.

32 And then if I jump down to page 53, and we're
33 talking at this sequence about being able to
34 distinguish between a food fish and a legally
35 caught commercial fish. And Mr. Bevan at line 26,
36 he responds to the question, and he says:

37
38 Well, actually, what we are doing now is
39 separating FSC from the commercial
40 [fisheries], economic opportunities in order
41 to make that a much clearer separation so
42 that we can have more capacity to ensure that
43 the FSC is used for its intended purpose.
44

45 So in evidence I entered Exhibits 1948, 1949
46 and 1950, and they're a series of opening, of
47 licence opening times. We don't have to go there,

1 Mr. Lunn. And what we did we looked at one page,
2 and so we went from August 10th to the August
3 31st, and those three stacks of licences. And
4 between August 10th and August 31st, there was
5 only four days of no fishing in the Lower Fraser
6 River by Aboriginal interests. That doesn't
7 include the commercial fishing for my fishermen,
8 my fellow fishermen, the public commercial
9 fishery. Almost every day on the Fraser River
10 there was some type of fishing activity. And even
11 if separation wouldn't work, clearly there is no
12 separation. And Ms. Farlinger spoke to that, and
13 I'll just give you the reference, on September
14 27th at page 35, line 26, she recognized that
15 there's simply not enough days in the week to
16 separate all the groups, because we have so many
17 fisheries going on on the Fraser River right now.

18 And this is a marked contrast to the
19 traditional fishery pre-1992, where there was
20 usually one day of commercial fishing, and one or
21 two days of Aboriginal food fishing. So there was
22 three, sometimes four, clear days on the Fraser
23 River, where fish could get -- once they got past
24 Mission, they were safe. There was a sanctuary
25 above Mission where they could pass through
26 uninterrupted, unmolested on the way to the
27 spawning grounds at least three to four days a
28 week. We've lost that.

29 And so we come to the recommendations part on
30 enforcement. And, Mr. Lunn, if I could go to
31 Exhibit 77. and this is the Fraser River 1994
32 report. Enforcement issues and enforcement
33 problems are not new to anybody who's been around
34 the Fraser River for the last 20 years. Peter
35 Pearse complained about it in 1992. If we could
36 go to page 60, please, Mr. Lunn. John Fraser in
37 his report complained about it in 1994, and
38 Williams complained about it in -- sorry, in 2004,
39 Parliamentary Standing Committee repeatedly.

40 So at the last paragraph of this, this is
41 John Fraser's recommendation, the very bottom.
42 And I'm going to jump to the second sentence, and
43 he's referring to the enforcement budget:

44
45 The first step in the process must be a
46 proper assessment of what is required, at a
47 minimum, to ensure adequate enforcement.

1 That cannot be achieved in the context of a
2 budget exercise. Once the essential elements
3 of an effective enforcement system have been
4 specified, then and only then can the
5 authorities look to see if the available
6 funding is sufficient. If at that time it is
7 perceived that the existing budget cannot
8 support adequate enforcement capacity, DFO
9 should be prepared to reallocate priorities
10 within the Department.

11
12 Now, I can't think of much stronger language
13 for a commission or investigation body to use.
14 The message is clearly, DFO, your first priority
15 is enforcement. You will return an enforcement
16 budget what you need to properly enforce the
17 fishery. And then you'll go ask for the money and
18 if the money's not enough, then the Department
19 should reallocate within the Department. But as
20 we've seen from testimony by persons like Mr.
21 Bevan, enforcement is simply not a priority.

22 So we're seeing high levels of poaching,
23 illegal sales. We see 97 percent of the
24 Aboriginal food fish being sold illegally. We see
25 habitat not being dealt with and not properly
26 enforced. As Mr. Leadem and Mr. Rosenbloom did a
27 fine job on that.

28 So the Fraser -- my point is that the John
29 Fraser, the Peter Pearse, the Williams
30 recommendations are pretty well useless.

31 Mr. Commissioner, you can urge that they have
32 an effective enforcement scheme, or a strong
33 enforcement scheme. It's pretty well useless
34 because strong enforcement or effective
35 enforcement will be looked at completely
36 differently by the Deputy Minister sitting behind
37 a desk in Ottawa, versus the fishery officer stuck
38 on the river at midnight on Saturday night. He's
39 out there with not enough staff, maybe in some
40 years they didn't have gas for their boats.

41 So our recommendation is that you need to get
42 something that's measurable that the Standing
43 Committee can assess at the end of the year, that
44 the public can assess at the end of the year. And
45 we're saying that the measurable factor is in B.C.
46 you need 250 fishery officers. We have about 150
47 right now. The evidence is they cost about 60,000

1 a year. This is only \$15 million in the context
2 of \$150 million budget. And they need a certain
3 amount of funding for O&M, which I don't have the
4 evidence before us to deal with that. But if you
5 say 250 fishery officers, the Standing Committee
6 can -- every year they can say, "Well, how many
7 fishery officers do you have? What's their
8 budget?" But if you simply recommend that they
9 have strong enforcement or good enforcement, all
10 that does is start a debate about what is or what
11 is not strong enforcement.

12 And we urge that a separate line item in the
13 budget be dedicated solely to C&P and that the
14 Regional C&P Heads report to an Assistant Deputy
15 Minister of C&P in Ottawa, not through the
16 Regional Directors here. The tendency is money
17 comes out here, supposedly included for the C&P
18 budget and then often it gets distracted into
19 other projects.

20 And I see it's quarter after, Mr.

21 Commissioner, perhaps a good time.

22 THE COMMISSIONER: Yes, thank you very much.

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

24
25 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)

26 (PROCEEDINGS RECONVENED)

27
28 THE REGISTRAR: Order. The hearing is now resumed.

29 THE COMMISSIONER: Mr. Eidsvik.

30
31 SUBMISSIONS FOR SOUTHERN AREA E GILLNETTERS ASSOCIATION
32 AND B.C. FISHERIES SURVIVAL COALITION BY MR.
33 EIDSVIK, continuing:

34
35 MR. EIDSVIK: Mr. Lunn, I'm at Exhibit 605, and I'm
36 going to page 6. And this deals, again, Mr.
37 Commissioner, with the question of safe passage
38 through the Fraser River once fish have passed
39 through the public commercial fleet, and two
40 issues that arise that the Standing Committee
41 dealt with in 2004 was the question of dropouts in
42 gillnets, specifically set nets, and the blockage
43 effect.

44 And if we go to page 6 of the report, right at
45 the very bottom, the Standing Committee is
46 referring to Dr. Pearse's 1992 report, and the
47 quote there:

1 Catches on the lower river and up through the
2 canyon probably exceeded estimates by 200,000
3 fish. Significant losses can also be
4 attributed to fishing-induced mortality –
5 dead fish dropping out of nets and fish dying
6 of stress after escaping from nets.
7

8 So this is not anything particularly new; it's
9 been a problem for a long time and there's been
10 numerous efforts to address it. And, of course,
11 the Standing Committee here is raising it again.

12 And if we go to page 32 of the same report,
13 please, Mr. Lunn, at the bottom paragraph again,
14 page 32. And this is the Standing Committee
15 summing up the evidence of one of the people who
16 testified before the Standing Committee once. And
17 they said, "Another significant factor," and I
18 don't need to read that to you, Mr. Commissioner.

19 And it continues on the next page, and Mr.
20 Gould, who is referred to here:
21

22 ...shows that because of a "drop-out"
23 phenomenon, a set net left unattended in the
24 water for 24 hours will land only one sixth of
25 what would have been landed if the net had
26 been checked every two hours. Mr. Gould
27 assumed that the remaining five-sixth of the
28 catch dies, falls from the net, is swept
29 downstream, and is unaccounted for. Mr. Gould
30 argued that set nets are extremely destructive
31 and their use was a major contributing factor
32 to the missing fish in 2004.
33

34 Now, we don't know how often set nets in the
35 Fraser Canyon are picked. Certainly, probably
36 with the commercial fishery, they're picked more
37 often than the food fishery, but they're often
38 left overnight. There's 500 of those nets in the
39 Fraser Canyon in a heavy commercial fishery, there
40 may be more. This is a very intense, biggest
41 commercial fishery on Fraser sockeye on the coast
42 right now, in terms of fishing effort.

43 So even if Mr. Gould is wrong, and it's maybe
44 one out of 10 fish drop out of the nets, we're
45 still looking at, in an average year, very large
46 numbers of fish that this could be accounting for
47 some of the difference between estimates.

1 And what's peculiar is we're now -- you know,
2 Pearse was 2002, he wrote about it. The Standing
3 Committee wrote about it in 2004. Exhibit 1738,
4 which I'm not going to bring you to, Mr.
5 Commissioner, describes a memo from written -- and
6 it was a request to PSARC, the science salmon sub-
7 committee for DFO recommending a study on this,
8 and the advice was ignored again.

9 So a big, serious issue, and I think it's
10 revealing for the Commission to say, "Why wasn't
11 this studied?" Certainly if the seine fleet or
12 the troll fleet or the public coastal commercial
13 fleet had that type of mortality rate arising,
14 there would have been intensive studies and
15 serious steps taken to deal with it. So that's
16 the drop-out rate.

17 The second factor is at the bottom of page 33.
18 I think you're there, Mr. Lunn, already, and
19 carries onto the next page. I'm sorry, the next
20 page, Mr. Lunn, page 75, a long way from the next
21 page. Page 75. And the Standing Committee again
22 refers to the dramatic impact of set nets in the
23 Fraser Canyon, and they talk about, at the inset,
24 the impact of set nets pushing salmon from the
25 back eddies, where they rest in strong current,
26 because there's now nets in the back eddies,
27 they're pushing them into the centre of the river.
28 Of course, the current is strong, they have to
29 work harder, and then when they do go into the
30 back eddy to rest, they're often caught in a
31 gillnet.

32 And this was especially noticeable in the next
33 paragraph after the quotation, and they're talking
34 about 2004, and there's talk:

35
36 The variation in daily estimates of fish
37 passing Hell's Gate in 2004 also highlights
38 the blockage effect of the set-net fishery. In
39 2004, the intensive aboriginal fishery between
40 Mission and Sawmill Creek was closed on August
41 15th. In the next four days, 80,200 sockeye
42 were recorded going by the counter at Hell's
43 Gate. In the previous 10 days, only 52,800
44 sockeye were recorded passing Hell's Gate or
45 5,280 per day.

46
47 So we've gone from 5,200 a day to 20,000. Now, if

1 that's a one-day fishery, not really that big an
2 issue, because the intention of fishing, of
3 course, is catching fish. But if the fishery is
4 going on two days and three days and four days,
5 you can imagine the impact, especially in warm
6 water, of the blockage effect on fish that aren't
7 even necessarily being caught but are held
8 fighting in the centre of the current, held in
9 back eddies, approaching a net drifting back.

10 And again, the Standing Committee, in their
11 report, they recommend these issues be studied.
12 And if I read your report correctly, your interim
13 report, these issues were not looked at and not
14 studied. And I think it's really informative for
15 the Commission to ask, "Why weren't they studied?"

16 Mr. Rosenbloom raised the question of
17 selective fishing. I'm sorry, Mr. Lunn, Exhibit
18 607. This is a fishery proposal to DFO submitted
19 by the organization that I represent and the
20 fishermen that I represent, and it just deals with
21 the question of selective fishing and why it was
22 - at page 11, Mr. Lunn - why it got quite
23 controversial. And you saw pushback on the part
24 of the fleet to selective fishing proposals.

25 If we jump down to the next page - sorry, stay
26 right there, yeah - and it talks about in 2001
27 some selective projects were the subject of
28 intense criticism and controversy. And then the
29 next bullets list some of the problems. A small
30 number of people were benefitting. Certain
31 projects gained approval because there was a
32 belief that the personal relationships between the
33 participants and DFO officials were interfering.
34 Certain projects provided data of questionable
35 value.

36 So Area E said - and if you go down to the
37 next bit - "From now on, let's do them all through
38 Area E. Let's make sure everybody in the fleet
39 benefits, at least from the research, make sure
40 that they're targeted at actually providing
41 fishing opportunities for the fleet, rather than a
42 couple people who everybody thought were friends
43 of DFO." And I'm not making -- suggesting that
44 was the case, but that was the view on the dock.

45 So it's not a case that the commercial fishing
46 fleet -- public fleet didn't support selective
47 fishing, they just wanted a fair process where the

1 opportunities were fair. And I think you saw some
2 of that same complaint reflected in the submission
3 of Area -- the seine fleet, Area B.

4 And I'm going to jump quickly to the **Fisheries**
5 **Act** without going anywhere. I've seen the
6 Province has suggested a new **Fisheries Act** be
7 passed and I'd certainly like to bring your
8 attention to the controversy over that, Mr.
9 Commissioner, and it's a very big, serious issue
10 and we hope that that wouldn't be a
11 recommendation. We certainly don't support it.

12 If I could go to, in my reply submission, Mr.
13 Lunn, if we could go to page 31, and you'll see at
14 paragraph 87 I've done fairly bad math there, Mr.
15 Commissioner, and the last column in that table
16 there, the figure should be 3,080, \$1,670. That's
17 right, \$1,670 and \$180, rather than the low
18 numbers you see there. It doesn't stop the point
19 that we're trying to make, that upriver commercial
20 fisheries, even if you reallocated all the fish
21 only to Aboriginal groups, when you divide it by
22 the amount of people there are, there's simply not
23 enough fish to build sustainable fisheries.

24 And there was a lot of discussion on terminal
25 fisheries and they're not a management panacea.
26 They can often cause as many problems as they
27 solve, especially if they led to larger than
28 necessary escapement of spawners, as we've seen.
29 For example, if a run of three million is
30 harvested in terminal areas instead of the marine
31 fishery, there may be overcrowding in the
32 migratory routes, larger numbers. It would be
33 like trying to pack a million cars through the
34 Deas Island Tunnel. We're actually better off to
35 harvest those fish on the coast, because we're
36 never going to harvest all of them, because the
37 migratory routes are broad, and so fish -- a lot
38 of fish will not simply run into a net.

39 If we try and harvest these fish in terminal
40 areas, especially if we go into terminal areas
41 like Shuswap Lake or the Stuart and Takla Lakes,
42 you're harvesting fish that have already survived
43 that arduous journey up the Fraser River. And if
44 there's anything to genetic selection, the
45 toughest fish are getting up there; the weakest
46 fish are dying. So we're actually now targeting
47 the fish that are most genetically predisposed to

1 make it up to the top of the Fraser to the
2 spawning grounds.

3 We just don't think, in summing up our
4 submission on the terminal fisheries, and we dealt
5 with it quite a bit, is that there simply hasn't
6 been enough research done. DFO can't tell you,
7 where am I going to put a terminal fishery, for
8 example, to not harvest driftwood Early Stuart
9 sockeye run. They can't tell you where to put the
10 terminal fishery to not harvest the Bowron run but
11 harvest other stocks.

12 So, you know, a fair recommendation is that it
13 be studied properly. And if terminal fisheries
14 are the only way to solve some problems, then
15 maybe a terminal fishery is appropriate. But if
16 that happens and if we come to that day, then
17 every terminal fishery has to be open for every
18 Canadian. The idea that we're going to reserve
19 terminal fisheries for certain groups is
20 unacceptable in Canada in 2011. And by opening it
21 to every group, we take one big part of the
22 equation out of it, is are we trying to create
23 economic benefits for a certain group or are we
24 trying to deal with the conservation problem -
25 thanks, John - and that will clearly make the
26 focus -- it's obviously not (indiscernible)
27 economic benefits because it's open for everybody.
28 That means we'll open it to every Canadian so it's
29 not favouritism for one group, it's actually going
30 to deal with the conservation problem, if that's
31 the only way. So we certainly say if a terminal
32 fishery is the only way, if fishing in non-title
33 waters is the only way, then it must be open for
34 all Canadians.

35 Could I pull up Exhibit 75, please, Mr. Lunn,
36 and go to page 301. I've relied on this exhibit
37 considerably in our written and oral submissions.
38 It's the people who manage that were successful.
39 These men and women took over the Fraser fishery
40 in 1946. They had no computers, they had no
41 models, they had no photocopies, they had no cell
42 phones, and yet they built the fishery from
43 extremely low levels, and I know you've heard the
44 Horsefly story, 841 spawners in 1941; nine million
45 spawners in 1993. A fantastic and magnificent
46 rebuilding.

47 And I bring your attention to this section

1 because it's the reasons for the IPSFC's success,
2 and I think these reasons are really important.
3 And if I could go to page 303, Mr. Lunn. And at
4 almost the second -- the first sentence in the
5 left-hand column:
6

7 It was clear that the Parties' intentions were
8 that the Commission would have the authority
9 to preserve, protect and extend the resource.
10 There was no indication that this would be a
11 responsibility shared with any other entity in
12 any respect. The necessary biological and
13 engineering investigations were the
14 Commission's responsibility. The sole
15 authority of the Commission in regard to
16 management of the fisheries was clearly
17 identified...
18

19 We say that this is the model. We've heard all
20 kinds of policy documents, all kinds of
21 consultations and strategies and roadmaps and
22 processes all in the past 20 years with a record
23 of failure . This is the model that rebuilt the
24 fishery from far, far lower levels than the
25 Department, and we say that this isn't the proper
26 model. And the last paragraph on this page:
27

28 The Commission's ability to get the job done
29 was primarily related to the simplicity of its
30 mandate and the efficient manner in which it
31 was permitted to implement the decision-making
32 process.
33

34 In tests those are keys. And I'll bring you to
35 one last point. Page 310, Mr. Lunn, and there's a
36 -- that particular insert there, Non-Political
37 Control. And I think that's as important as
38 anything that I've ever said before this
39 Commission or any witness has said:
40

41 The Commission from 1937 to the early 1970s
42 focused on the needs of the resource.
43 Additional problems also arose during these
44 years. However, the Commission enjoyed a free
45 reign to pursue these without undue
46 interference from the governments or the
47 fishing industries.

1 I'm part of the fishing industry and my fellow
2 fishermen are, but we recognize that there has to
3 be one manager with a narrow, efficient mandate
4 targeted at managing the fishery. The Department
5 of Fisheries is not in the business of building
6 capacity in Aboriginal groups. It's not in the
7 business of seeing how many fish we need to
8 support bears in Adams Lake. It's not in the
9 business of aquaculture promotion. It's a narrow
10 mandate. It's a mandate to protect and encourage
11 the fishery. And right now the Department is
12 spread all over the place, doing a terrible job of
13 everything.

14 We think there's excellent people inside the
15 Department who, given the proper mandate and the
16 proper tools, could rebuild the fishery in the
17 same way the IPSFC did. And we don't see it
18 happening in the environment, we don't see it
19 happening in the Wild Salmon Policy. I note in my
20 submission where I quoted Mr. Sprout referring,
21 "Sure we have an objective," and he talked about
22 the little house in the Wild Salmon Policy, and we
23 have 17 strategies and six principles under the
24 strategies. In another document in the Commission
25 evidence there's 47 different policies and
26 priorities the Department has. It's simply too
27 broad. Management authority is spread all over.

28 And I have about 10 minutes, so I'd like to go
29 to -- and I'm sorry, Mr. Lunn, but I've missed my
30 exhibit number, but if you could find it for me by
31 -- it's the Comprehensive Fisheries Agreement for
32 sockeye, pink and chum salmon.

33 MR. LUNN: I'll see if I can find that for you.

34 MR. EIDSVIK: Thank you. And I bring this up because
35 we're very concerned about balkanization of
36 fishery management authority. And you've seen a
37 number of proposals where DFO is getting into
38 discussions through PICFI, through other
39 discussions, the Northern Planning Process,
40 administration of parks where a variety of groups
41 will decide what goes on in a fishery in a certain
42 area. We think that's entirely the wrong
43 approach. As much as we object to the management
44 over the past 20 years, there still has to be one
45 manager.

46 And an example of this is in the document Mr.
47 Lunn was kind enough to find for me, and it's a

1 Comprehensive Fisheries Agreement with a number of
2 Sto:lo groups on the Fraser River. And if we look
3 at the index on the next page, Mr. Lunn, you can
4 see the variety of issues being discussed there
5 and the variety of subjects and it continues onto
6 the next page. And I'm just going to read through
7 a couple of those issues in the document. If we
8 could go to page 8, please, Mr. Lunn.

9 THE COMMISSIONER: What exhibit number is this?

10 MR. LUNN: Exhibit 1250.

11 THE COMMISSIONER: Thank you.

12 MR. EIDSVIK: Exhibit 1250. Thank you, Mr. Lunn. So
13 this is an issue resolution process between the
14 Sto:lo and the Department of Fisheries. And if
15 you read down, there's a number of steps. Now,
16 this isn't just a food fishery, this is also
17 commercial fishing. Of course, there's no process
18 like this in the fishery that I work in. But if
19 there's a dispute and the parties can't resolve
20 it, the supervisors are involved. And then at
21 15(a), (b), (c), they can refer the matter, with
22 written details, to the Regional Director General,
23 and at any point they can have a facilitator, and
24 after the fishing season they go back through the
25 issues.

26 Now, this is the agreement for the Sto:lo.
27 Multiply that with the agreements for potentially
28 97 bands in the Fraser River, or the 147 bands
29 that access Fraser River sockeye. So when I go
30 through this, you can keep that in context.

31 If we can go to page 15, Mr. Lunn, and clause
32 2(a) in the Fishing plan:

33
34 DFO agrees to manage Pacific coast fisheries
35 and other related fisheries with the goal of
36 providing the Bands with a reasonable
37 opportunity to catch the quantities of salmon
38 set out in Appendix 1 and Appendix 2...

39
40 Now, clearly, that's a priority, a commercial
41 priority for a user group that's not extended.
42 They're saying, "We'll shut down the coastal
43 public commercial fishery to make sure that you
44 have a reasonable chance to catch your fish."
45 Again, different fisheries operating under
46 different rules.

47 Now, if we go to page 16, Mr. Lunn, please, at

1 2(j), and this is how fishing times are developed:
2

3 Each week when fisheries are planned, or as
4 otherwise required, the Planning Committee
5 will review the Plan and provide the RDG with
6 a recommendation...
7

8 This is the Fraser Panel's job. By treaty between
9 the United States and Canada, the Fraser Panel is
10 supposed to be managing commercial fisheries.
11 Here, we have a joint technical committee with a
12 group, private group, setting and recommending to
13 the RDG when they're going to fish, a process that
14 exists outside of the Fraser Panel. And again,
15 think of this process multiplied by the various
16 groups up and down the river.

17 And 2(k) it says:

18
19 Consensus recommendations of the Planning
20 Committee will be implemented by DFO and the
21 Bands in a co-operative manner, subject to the
22 final decision-making authority of the
23 Minister.
24

25 So the way I read this, if the Planning Committee
26 comes up with an idea, there's DFO staff in there,
27 and they say, "Let's do this," DFO must implement
28 that. And the only way they cannot implement it
29 is going to the Minister. Now, sometimes we want
30 to fish on Monday, or sometimes we want to fish on
31 a Wednesday. You can see the kind of difficulties
32 this causes, especially if you have a whole number
33 of groups.

34 On page 18, Mr. Lunn, there is quite a bit of
35 discussion during the hearings on the definition
36 of what "social" is in food, social and
37 ceremonial. For example, September 2nd, page 54,
38 line 21, it was talked about. And food, social,
39 ceremonial, of course, came out of *Sparrow*, and
40 after 20 years they still haven't defined what
41 "social" is. Now, here, at 3(b):
42

43 For greater certainty, subsection 3(a) shall
44 not be interpreted as precluding the
45 traditional exchange or distribution of fish
46 or fish products within and between Aboriginal
47 people and Aboriginal communities.

1 So DFO has added a fourth term in here, and I
2 can't really define what traditional exchange or
3 distribution a fish is. So rather than clarifying
4 where we are in terms of what DFO's required to do
5 under FSC fisheries, we've broadened it. And how
6 does DFO now enforce if we're shipping herring
7 spawn on kelp from Bella Coola to the Sto:lo, or
8 if we're shipping Sto:lo fish to some Aboriginal
9 group in Alberta? Almost an impossible
10 enforcement problem. And at section 4(a) on the
11 same page there:

12
13 For management purposes, DFO will issue to the
14 Bands a Communal Commercial Licence...

15
16 Now, in Comeau's Sea Foods, DFO litigated to the
17 Supreme Court of Canada to preserve the Minister's
18 discretion. Of course, the Minister signs this
19 contract every year and commits to issue licenses.
20 Now, we would call that an unlawful fettering of
21 the Minister's discretion, but you can see the
22 types of problems that it does cause.

23 If we go to page 25, Mr. Lunn, under section
24 9(a). Again, we're talking about hails and
25 estimations. And I asked a fair amount of
26 questions about that in our cross-examination.
27 And we don't have much faith in hail programs. We
28 know they don't work in our fishery. They're not
29 acceptable as a means to catch or record fish in
30 any fishery. But here, they're still maintaining
31 a hail program. And I know that Dr. Pearse talked
32 about it in his 1992 report. It's long been a
33 critical issue.

34 And the last section I'd like to go to is page
35 28, Mr. Lunn, and if we go to 10(f), it says here:

36
37 The Planning Committee will determine catches
38 of salmon under the Communal Commercial
39 Licence from summaries of Landing Slip...

40
41 And then 10(g) and 10(h) go on, what happens in
42 the event there's a dispute, and the Planning
43 Committee, of course, is comprised of Aboriginal
44 fisherman and DFO. So this Planning Committee
45 determines what the catch is, and if there's a
46 dispute they can appeal to the RDG. That doesn't
47 go on in the public commercial fishery because,

1 number one, DFO has to have the flexibility to
2 determine catches. As we've heard, there's
3 recorded catches and sometimes there's leakage.
4 In our fishery, DFO commonly adds a percentage to
5 cover the leakage so that we have an accurate
6 number that's recorded. Here, the Band can fight
7 with DFO over what the catch is. I mean, clearly,
8 a delegation of DFO's management authority to
9 another group at a most fundamental level.

10 And at page 35, clause 3, Mr. Lunn, and this
11 is the monitoring and enforcement protocol that
12 starts at 36, but I just want to start here. In
13 clause 3, at the very top:

14
15 Monitors will not fish in the Fishery while on
16 duty.
17

18 Now, in my written submission, I noted the **Fishery**
19 **(General) Regulations** about what it took to be an
20 observer and the necessity not to have an interest
21 in the fishery. And this is unacceptable for a
22 monitor to have an interest in the fishery,
23 because it's a clear conflict of interest. It's
24 these types of problems -- and at page 36 there's
25 a monitoring and enforcement protocol, and I won't
26 go into it.

27 But the overall effect of this agreement is
28 that in the public commercial fishery there's
29 gillnet, troll and seine. We're governed by
30 regulations. The regulations are published. They
31 go through the Governor in Council. We're also
32 governed by licence conditions. They apply to
33 every single one of the fishermen using a specific
34 gear type. In this type of agreement, everything
35 is up for grabs every year. Depending on how good
36 the negotiators are, we may have one set of rules
37 for one group and a different set of rules for
38 another group, and multiply that by the chaos of
39 10 or 20 or 30 or 50 agreements, and it's just one
40 more path that DFO headed down. And I've heard
41 suggestions, and I see it in some written
42 submissions, that it's a requirement of **Sparrow**
43 where co-management is a requirement, but clearly
44 it's not. And I'm not an expert on the law, so
45 I'll let other counsel address that.

46 But what it does, it sets up a continuous
47 fight between DFO and user groups. The people

1 with these agreements will try and get a leg up
2 over the commercial fleet in their negotiations.
3 One of the agreement signatories may try and get a
4 leg up over another group, so continuously
5 fighting over content of agreements and trying to
6 seek advantage. We fought like crazy between
7 seine, gillnet and troll fleets, but the
8 difference was, I could always join the seine
9 fleet or the troll fleet or the gillnet fleet and
10 it didn't matter. If you thought the seiners were
11 getting the advantage, well, maybe you could
12 switch. But at least the rules were transparent
13 and public for everyone.

14 I see, Mr. Commission, I have about two
15 minutes left, and I think I'll be done.

16 And I want to bring you - and I don't have to
17 bring you to it - but it's March the 4th, page 25,
18 and it's the testimony of Mr. Sprout, a former RDG
19 for DFO. And on cross-examination I asked him, I
20 says, "What has changed in the management of
21 fishery that caused the chaos?" because the IPSFC
22 was doing such a wonderful job, "What change led
23 to the chaos?" And on March the 4th, at page 22,
24 line 25, he cited a number of things. He said,
25 "We had the **Sparrow** decision, then we had climate
26 change and human population growth and water
27 withdrawal and invasive species."

28 Almost all of these changes happened all the
29 time. We had climate change, we had pre-spawning
30 mortality in the seventies and huge numbers in the
31 Horsefly run. Significantly, Mr. Sprout never
32 acknowledged that there was a problem in DFO.
33 Never admitted the mistake. And I note Mr.
34 Walters admitted, "You know, I was wrong about the
35 over-escapement issue." And I note in the IPSFC
36 you'll see regularly they say, "You know, we tried
37 this, it didn't work, so we moved on with this,"
38 and admitting mistakes and admitting failure is an
39 important part of getting better.

40 The Department is -- either they just simply
41 refuse to admit mistakes because it would be a
42 tough thing to do, or they don't think they've
43 ever made a mistake. Yet we have a Commission
44 that's been appointed, a fishery in chaos.

45 And if we look at the real changes that
46 happened in 1992, we had DFO slowly assuming more
47 and more control, management control from the

1 Pacific Salmon Commission, we had the creation of
2 a huge new commercial fishery, we had AFS
3 agreements up and down the coast, as I explained,
4 they're complex and confusing.

5 So a lot of the so-called complexities and
6 uncertainties are DFO's creation. And if I had
7 one message to the Commissioner on how to fix this
8 fishery, it would be, "Let's get DFO out of all
9 the other stuff. Let's get them focused back on
10 the simple mandate," and then maybe the DFO isn't
11 capable and we may have to go back to -- and I
12 would recommend, actually, going back to the IPSEC
13 model, where the United States sort of kept Canada
14 honest and Canada kept the United States honest.

15 And the last subject that's really important
16 to our members - and I'll be done in 30 seconds,
17 Mr. Commissioner, thank you - is the question of
18 what type of fishery should be have in the future?
19 And I'm not going to go into the details, because
20 it's highly controversial.

21 And in the decision of the Provincial Court **R.**
22 **v. Kapp** and the cite is 2003 BCPC 0279, the
23 learned Judge Kitchen went into detail about why
24 this program that we complain about in the Upper
25 River is wrong, and I think the testimony of the
26 fishermen, the real impacts of the people on the
27 water, it encapsulates it there well. And Jack
28 Groven, one of the fish processors, I think,
29 summed up the whole problem, because it used to be
30 happy fishing, everybody got along. The fights
31 and controversy you've seen in this room didn't
32 used to happen, because we worked together. When
33 a fisherman's boat was sinking, you'd go pull him
34 off the beach. It didn't matter who he was.
35 There was marriages and people were dating each
36 other and you went to funerals and christenings,
37 and it was a true community, and Mr. Groven, he
38 says:

39
40 [T]hese different fisheries that are being
41 granted to Natives, and stuff, have caused
42 hard feelings and guys have got arguments and
43 fights on the boat. And actually, in some
44 cases, fist fights and stuff and now the
45 Native boats are pretty well just Native and
46 the white ones are all white and it's lots of
47 bickering.

1 That's at paragraph 103. Thank you.
2 THE COMMISSIONER: Thank you very much, Mr. Eidsvik.
3 MR. EIDSVIK: And thank you, Mr. Lunn, for handling all
4 the exhibits today.
5 THE COMMISSIONER: We're adjourned until tomorrow
6 morning. Thank you very much.
7 THE REGISTRAR: The hearing is now adjourned until
8 tomorrow at 10:00 a.m.

9
10 (PROCEEDINGS ADJOURNED TO WEDNESDAY, NOVEMBER
11 9, 2011, AT 10:00 A.M.)
12
13

14 I HEREBY CERTIFY the foregoing to be a
15 true and accurate transcript of the
16 evidence recorded on a sound recording
17 apparatus, transcribed to the best of my
18 skill and ability, and in accordance
19 with applicable standards.
20

21
22
23 _____
24 Diane Rochfort

25 I HEREBY CERTIFY the foregoing to be a
26 true and accurate transcript of the
27 evidence recorded on a sound recording
28 apparatus, transcribed to the best of my
29 skill and ability, and in accordance
30 with applicable standards.
31

32
33
34 _____
35 Pat Neumann

36 I HEREBY CERTIFY the foregoing to be a
37 true and accurate transcript of the
38 evidence recorded on a sound recording
39 apparatus, transcribed to the best of my
40 skill and ability, and in accordance
41 with applicable standards.
42

43
44
45 _____
46 Karen Hefferland
47