



Department of Justice
Canada

Ministère de la Justice
Canada

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April 7, 2011

By Email

Commission of Inquiry into the Decline of Sockeye
Salmon in the Fraser River
2800 – 650 West Georgia Street
Vancouver, British Columbia
V6B 4N7

Attention: Brian J. Wallace

Dear Sir:

**Re: FRASER River Sockeye Salmon - Commission of Inquiry - DFO
Canada's Written Reexamination for the Wild Salmon Policy (Part 1) RDG panel –
Questions and Answers
Our File: 2-272052**

Further to our letter of March 23, 2011 (attached for your convenience), we write to provide you with Canada's questions and answers in connection with the written re-examination of this panel. The questions and answers are set out in the table below with the witness who answered the question in bold text.

No.	Questions for Re-examination:
1.	<p data-bbox="240 1318 613 1350"><u>Cross Examination Question:</u></p> <p data-bbox="240 1392 1414 1461">On page 55, line 38 of the transcript from the hearing on March 4, 2011, Ms Gaertner of the First Nations Coalition asked Paul Sprout the following:</p> <p data-bbox="310 1503 1414 1591">“... at the time the Wild Salmon Policy was passed, what was DFO's vision on how management based on the conservation units could be implemented through the in-season decision-making of the Fraser Panel or otherwise.”</p> <p data-bbox="240 1633 573 1665"><u>Answer from Paul Sprout:</u></p> <p data-bbox="310 1707 1398 1795">“So Canada with the Wild Salmon Policy would develop its perspectives around what it required for conservation, consistent with the policy, following client discussions or discussions with other parties, including First Nations.”</p> <p data-bbox="240 1837 1430 1938"><u>Canada's re-examination question 1: To clarify this answer, to what extent is it necessary to identify Conservation Units as management units in order for DFO to be accountable for Conservation Units under the Wild Salmon Policy?</u></p>

	Answer
	<p>Paul Sprout:</p> <p>“[T]he WSP does not compel DFO to identify CUs as the management units. The decision on what aggregation or disaggregation of CUs should guide management will emerge from the IFMP process, consultation with all parties and will typically require Ministerial approval.”</p> <p>Sue Farlinger:</p> <p>“Identification of Conservation Units is important in terms of understanding what the management of habitat and harvest is trying to protect. In my view these do not necessarily need to be identified as management units in order to manage the harvest to respond to the requirements of the Wild Salmon Policy. To clarify, the current stock groupings used in managing the Fraser River can and do take into account stocks of concern (or Conservation Units) within them - for example in constraining the harvest of late Run Fraser sockeye in order to protect the South Thompson Coho (a Conservation Unit).</p> <p>My thinking does not preclude further refining of management units for a variety of objectives, including managing to protect diversity under the Wild Salmon Policy; however, I don’t know t believe it is a necessary condition to meet WSP objectives.”</p>
2.	<p><u>Cross Examination Question:</u></p> <p>On page 30, line 41 of the transcript from the hearing on March 4, 2011, Mr. Lowes of B.C. Wildlife Federation; B.C. Federation of Drift Fishers asked Paul Sprout the following:</p> <p>“...I think you indicated in the course of your argument that potential problems of over-escapement would be taken into account in the decisions made after implementation of the Wild Salmon Policy. Am I correct, though, that the decision whether or not to override a lower limit decision to protect a small stock is the minister’s decision, under the AFS; it’s the minister’s decision to decide whether or not to put a small stock at risk?”</p> <p><u>Answer from Paul Sprout:</u></p> <p>“The ones that I am familiar with, Cultus being the most obvious, that was a ministerial decision. ...So in that particular case, you are correct. I would envision in the future that those kinds of stocks at risk, where there’s argument for fishing even more greatly on those stocks, my expectation would be the minister would continue to have a significant role, a deciding role, in those situations.”</p> <p><u>Canada’s re-examination question 2:</u> <i>To clarify this issue, would the issue of over-escapement be dealt with differently under the Wild Salmon Policy?</i></p>
	Answer
	<p>Paul Sprout:</p> <p>“I am not sure that I understand the intent of the question. The issue of over-escapement is not new and it certainly predates the WSP. If your question is on the decision process itself, the adoption of the WSP makes no difference to how the decision procedure would follow -</p>

eg, prepare IFMP plan, consult and then decision most likely by Minister. If the question was, would a decision on over-escapement be changed as a result of the WSP, I would have to say that depends on the specific situation. In short, I would need more details (level of CU risk etc) to say one way or the other.”

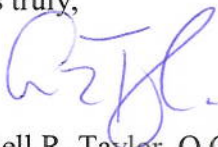
Sue Farlinger:

“There are many factors that are considered in terms of setting escapement goals, as one of the tools to respond to a stock of concern under the Wild Salmon Policy. Consideration of the benefits or potential impacts of over escapement is certainly one of those factors. As mentioned, this was the rationale for the examination of possible impacts of over escapement on production of Fraser sockeye stocks done by the Pacific Fisheries Resource Conservation Council several years ago. DFO consults with scientists within and outside the organization in setting up escapement strategies, and considers new analyses and information. I do not see a material change in that process under the Wild Salmon Policy; although ecosystem impacts of actions are now intended to be explicitly considered under Strategy 3, the questions regarding escapement targets are open to review and adaptation as they have been in the past.”

We further enclose the form of written answers received from the witnesses. Please be advised that the redaction made to Mr. Sprout’s answer is to remove a personal email address.

We trust you will find the above in order and look forward to receipt of Commission counsel’s questions.

Yours truly,



Mitchell R. Taylor, Q.C.
Senior General Counsel

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Enclosures



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March 23, 2011

By Email

Fisheries and Oceans Canada
Suite 200 401 Burrard Street
Vancouver, British Columbia
V6C 3S4
Canada

Attention: Sue Farlinger and Paul Sprout

Dear: WSP RDG Panelist

Re: Fraser River Sockeye Salmon - Commission of Inquiry - DFO
Our File: 2-272052
Canada's Written Reexamination for the WSP (Part 1) RDG Panel

Please find attached correspondence from the Commission Counsel setting out the rules that will conduct the two-stage written re-examination process to your testimony on March 4, 2011 by the Department of Justice and then the Commission Counsel. (Note that this December 13, 2011 letter sets out the general process but not the timelines.)



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en re-examination of

I have drafted two questions for re-examination to be completed by either or both of Paul Sprout and Sue Farlinger, separately. We remind you that you are still under cross examination so that you are not to discuss the questions and answers with anyone, and that in writing your answers you are bound by your affirmations.

We have copied the Commission counsel on this correspondence for distribution to participants.

Please provide written responses **by Wednesday, April 6, 2011** to myself and Geneva Grande-McNeill, ccing Heather Szabo (Paralegal) and Barbarah Yu (Legal Assistant). We will then forward your responses to Commission counsel for distribution to all participants.

Once you have answered our questions, Commission counsel will forward their written questions (if any) to us, and we will provide them to you for your reply. Your responses to both sets of written questions will then be tendered as exhibits.

As you are still under cross examination, we are not to discuss these questions and answers with you.

The two questions for re-examination are:

Re-examination Question #1

Cross Examination Question:

On page 55, line 38 of the transcript from the hearing on March 4, 2011, Ms Gaertner of the First Nations Coalition asked Paul Sprout the following:

“... at the time the Wild Salmon Policy was passed, what was DFO’s vision on how management based on the conservation units could be implemented through the in-season decision-making of the Fraser Panel or otherwise.”

Answer from Paul Sprout:

“So Canada with the Wild Salmon Policy would develop its perspectives around what it required for conservation, consistent with the policy, following client discussions or discussions with other parties, including First Nations.”

Re-examination Question:

To clarify this answer, to what extent is it necessary to identify Conservation Units as management units in order for DFO to be accountable for Conservation Units under the Wild Salmon Policy?

Re-examination Question #2

Cross Examination Question:

On page 30, line 41 of the transcript from the hearing on March 4, 2011, Mr. Lowes of B.C. Wildlife Federation; B.C. Federation of Drift Fishers asked Paul Sprout the following:

“...I think you indicated in the course of your argument that potential problems of over-escapement would be taken into account in the decisions made after implementation of the Wild Salmon Policy. Am I correct, though, that the decision whether or not to override a lower limit decision to protect a small stock is the minister’s decision, under the AFS; it’s the minister’s decision to decide whether or not to put a small stock at risk?”

Answer from Paul Sprout:

“The ones that I am familiar with, Cultus being the most obvious, that was a ministerial decision. ...So in that particular case, you are correct. I would envision in the future that those kinds of stocks at risk, where there’s argument for fishing even more greatly on those stocks, my expectation would be the minister would continue to have a significant role, a deciding role, in those situations.”

Re-examination Question:

To clarify this issue, would the issue of over-escapement be dealt with differently under the Wild Salmon Policy?

We look forward to receiving your written responses to these two re-examination questions.

Yours truly,

A handwritten signature in black ink, appearing to read 'Tim Timberg', with a long horizontal stroke extending to the right.

Tim Timberg
Senior Counsel
Department of Justice

Cc: Commission Counsel – Brian Wallace, Q.C. and Lara Tessaro

Cc: Heather Szabo, paralegal, and Barbarah Yu, legal assistant

Enc.



December 13, 2010

Via email

Department of Justice
900 – 840 Howe Street
Vancouver, BC V6Z 2S9

Attention: Tim Timberg

Dear Sir:

Re: Written re-examination of the WSP panel

I am writing to set out how we will conduct the written re-examination of the WSP implementation panel:

1. Counsel for Canada will provide their re-examination questions to the witnesses tomorrow, December 14th, requesting answers by Thursday, December 16th. Counsel will remind the witnesses that they are still under examination, so that they are not to discuss the questions and answers with anyone and that in writing their answers they remain bound by their affirmations;
2. Canada will copy Commission counsel with the re-examination questions for distribution to participants;
3. Commission counsel will provide their questions to the witnesses on receipt of the witnesses answers to Canada's re-examination questions.
4. Commission counsel will copy participants with the questions, and request answers within two working days; and
5. Commission counsel will copy participants with the witnesses' answers, and will tender the exchanges of questions and answers as evidence in the hearing.

From our telephone conversation today, I understand that you agree to this procedure.

Yours truly,

Brian Wallace, Q.C.

cc: All Participants

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