

Commission of Inquiry into the Decline of
Sockeye Salmon in the Fraser River



Commission d'enquête sur le déclin des
populations de saumon rouge du fleuve Fraser

Public Hearings

Audience publique

Commissioner

L'Honorable juge /
The Honourable Justice
Bruce Cohen

Commissaire

Held at:

Room 801
Federal Courthouse
701 West Georgia Street
Vancouver, B.C.

Tuesday, November 2, 2010

Tenue à :

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

le mardi 2 novembre 2010

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Tim Leadem, Q.C.	Conservation Coalition: Coastal Alliance for Aquaculture Reform Fraser Riverkeeper Society; Georgia Strait Alliance; Raincoast Conservation Foundation; Watershed Watch Salmon Society; Mr. Otto Langer; David Suzuki Foundation ("CONSERV")
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1 Vancouver, B.C. /Vancouver (C.-B.)
2 November 2, 2010/le 2 novembre 2010
3

4 THE REGISTRAR: The hearing is now resumed.

5 MR. WALLACE: Good morning, Commissioner Cohen. For
6 the record, Brian Wallace, Commission Counsel, and
7 with me is Meg Gaily, also Commission Counsel, and
8 Jon Major, who is assisting us.

9 I have a couple of preliminary matters.

10 Tomorrow, as you will recall, we have a
11 witness, Dr. Wendy Watson-Wright, who will be by
12 videoconference from UNESCO in Paris. We, to
13 accommodate her time zone, we will start tomorrow
14 morning at 8:30. We are optimistic that this will
15 all work electronically, but you never know. So
16 we are going to go on that basis. And one thing
17 that occurs to me is that we are finding people
18 are wishing to put documents to witnesses that
19 haven't been previously provided. That will be
20 impossible with Dr. Watson-Wright. So if you have
21 any document that you wish her to consider, please
22 provide it to me today and if at all possible this
23 morning.

24 The second point I'd like to raise is with
25 respect to transcripts. They are being
26 circulated, I think, before noon the day after the
27 day they relate to. We will hold them before we
28 send them for translation and later publishing on
29 the website for 48 hours. And if you review them
30 in that length of time and provide us with any
31 errors you see, we will consider those so that the
32 website and the French translations will have an
33 errata sheet to go with it, to reflect errors.

34 Canada asked us to mark as an exhibit the
35 Executive Summary to Previous Recommendations and
36 Responses. That was circulated to all
37 participants yesterday afternoon and, Mr.
38 Commissioner, I would like to tender that as the
39 next exhibit please.

40 THE REGISTRAR: That will be document number 34.

41
42 EXHIBIT 34: Executive Summary to Previous
43 Recommendations and Responses
44

45 MR. WALLACE: And finally, I've had a number of people
46 ask about who is entitled to sit at counsel table.
47 And this is an inquiry, Mr. Commissioner, and I

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Proceedings

1 hope that it's all right with you if we do this a
2 little less formally than courts. There are a
3 couple of different circumstances, assisting with
4 documents for someone examining, someone having an
5 articling student in the room monitoring the
6 proceedings when they are not themselves on their
7 feet, and that sort of thing. It seems to me that
8 so long as it doesn't interfere either with the
9 flow of questioning or with the physical space in
10 the room, I certainly have no objection and I
11 trust that that's all right with you, as well.

12 THE COMMISSIONER: Yes, it is.

13 MR. WALLACE: I have no other preliminary matters. I'm
14 not sure if anyone -- no one has indicated to me
15 they wish to say anything further.

16 Now the next person I have on my list is Mr.
17 Buchanan for the Public Service Alliance and the
18 union of Environmental Workers.

19 MR. BUCHANAN: Good morning, Mr. Commissioner. It is
20 Chris Buchanan for the PSAC and UEW. I understand
21 this panel or substantially the similar panel will
22 be coming back near the end of the proceedings,
23 and I think we -- our questions will be best
24 understood and put in context after you have heard
25 the evidence about finance, the financial and the
26 harvest management, and so forth. So we have no
27 questions of this panel at this time.

28 MR. WALLACE: Thank you, Mr. Buchanan.

29 The next person I have on my list -- this is
30 going very well. We have now done away with 35
31 minutes of anticipated examination. The next on
32 my list is the B.C. Salmon Farmers Association,
33 Mr. Blair.

34 MR. BLAIR: When Mr. Wallace is on a roll, it's a good
35 thing. for the record, Alan Blair appearing for
36 the B.C. Salmon Farmers Association. We listened
37 with interest to the panel's remarks yesterday,
38 both in direct and cross-examination, by our
39 friends from the Department of Justice, and at
40 this time I have no questions in cross-
41 examination. I might say that depending on how
42 other cross-examinations go, I might rise near the
43 end and ask for leave for reply, which I
44 understand is entirely in the Commissioner's
45 discretion.

46 THE COMMISSIONER: Thank you, Mr. Blair.

47 MR. WALLACE: Thank you, Mr. Blair.

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PANEL NO. 3
Claire Dansereau
Cross-exam by Mr. McDade (AQUA)

1 The next -- now, if I leave somebody out,
2 it's because I didn't note or receive any advice
3 yesterday. So I am just going through the people
4 who advised me yesterday that they would or may
5 have cross-examination. And the participant on my
6 list is the Aquaculture Coalition, Mr. McDade.
7 MR. McDADE: Mr. Commissioner, it's Gregory McDade for
8 the Aquaculture Coalition. I do have a few
9 questions for the panel. I understand that this
10 is a session dealing largely with the organization
11 of DFO and I hope to keep the substantive
12 questions to a later time. But let me first say
13 that what I would like to get a little clarity on
14 is the organizational structure relating to
15 aquaculture operations.

16
17 CROSS-EXAMINATION BY MR. McDADE:

18
19 Q And, in particular, let's start with the structure
20 in Ottawa, so I suppose my questions are for the
21 Deputy Minister. Who would be -- who would be the
22 top official in -- top federal official in Ottawa
23 who is most directly tasked with aquaculture
24 matters?

25 MS. DANSEREAU: Thank you for the question. The
26 functions are somewhat split. On the Policy side
27 the most senior person, other than me, would be
28 Kevin Stringer, the ADM Programs, and reporting
29 directly to him is Trevor Swerdfager, someone who
30 has been out in the Region quite regularly that's
31 working on the Policy front. On the Operations
32 front, in Implementation and Delivery, the Senior
33 Assistant Deputy Minister for Ecosystems and
34 Fishery Management would be the person
35 responsible.

36 Q So Mr. Stringer, who is the -- whose programs, he
37 has a wide variety of responsibilities? It's not
38 specifically aquaculture.

39 MS. DANSEREAU: Yes, he does.

40 Q And so Mr. Swerdfager is -- is he exclusively
41 aquaculture?

42 MS. DANSEREAU: Yes, he is.

43 Q And his title is, sorry, there's a -- is he the
44 Director General of Aquatic Management?

45 MS. DANSEREAU: Aquaculture -- Director General
46 Aquaculture Management.

47 Q Aquaculture Management, yes, thank you. And is he

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1 responsible for promotion of aquaculture or for
2 protection of the wild fish from aquaculture?
3 MS. DANSEREAU: He's responsible for management of the
4 program and for making sure that we're well
5 coordinated internally. He's currently
6 responsible also for helping us develop the best
7 -- the best instrument for managing, so the
8 regulation as we're currently developing it for
9 British Columbia falls under his -- basically in
10 his work category. But the overall program, as I
11 say, falls within the overall responsibility of
12 Kevin Stringer, as well.

13 Q So you're aware, are you, that there is a
14 significant public and scientific debate in
15 British Columbia about the impacts of aquaculture
16 on wild salmon.

17 MS. DANSEREAU: I am.

18 Q Yes. And so for those persons who I represent in
19 terms of who are looking for the federal
20 government's response on the regulatory side to
21 protect wild salmon, it's Mr. Swerdfager who is
22 developing those regulations?

23 MS. DANSEREAU: He is guiding the development, but he
24 does it based on information that we all share
25 from our scientists. Our scientists are very much
26 involved in aquaculture management. He -- he
27 doesn't work in isolation of anybody else inside
28 of the Department. So as you know, we have an
29 interest in making sure that we are as integrated
30 as possible between the wild side and the
31 aquaculture side, and that is how we will be
32 moving forward on implementation.

33 Q Yes, of course.

34 MS. DANSEREAU: But he doesn't do it alone.

35 Q No, of course, he consults widely. But he is the
36 senior official in charge?

37 MS. DANSEREAU: He's the senior official in charge of
38 making sure that we arrive at -- he's the person
39 that I would hold accountable to make sure that we
40 are there on time on December 18th with all the
41 pieces in place. He doesn't determine the pieces
42 himself. The Minister has a role, I have a role,
43 and scientists and others in the Department have a
44 role.

45 Q But he's the -- he's the most senior official
46 responsible full-time for aquaculture.

47 MS. DANSEREAU: He's the most senior person in the

5

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Claire Dansereau

Cross-exam by Mr. McDade (AQUA)

1 Department who is -- who has no other functions
2 other than aquaculture.

3 Q Now, as I understand it, the official policy of
4 your Department and the federal government is that
5 you are looking to expand aquaculture operations
6 in Canada?

7 MS. DANSEREAU: The official position of the Government
8 of Canada is that we are not opposed to
9 aquaculture, and where it fits and where it's
10 possible and where it's supported by science we
11 are certainly interested in seeing it further
12 developed.

13 Q Well, wouldn't the -- wouldn't your most -- your
14 highest priority in relation to aquaculture as I
15 saw yesterday in your Performance Report, wasn't
16 it economic growth?

17 MS. DANSEREAU: As I also said yesterday, conservation
18 of our wild stocks and conservation of the
19 fisheries is the top priority in everything that
20 we do.

21 Q So that's why it's not mentioned -- that's why
22 economic growth is mentioned ahead of
23 conservation?

24 MS. DANSEREAU: Conservation is mentioned in all of our
25 documentation.

26 Q all right. Well, I'll come back to that in a
27 minute. Let's, if I might, I wonder if I could
28 get up on the screen the position description for
29 the Director General of Aquaculture Management,
30 which I think was in Exhibit 33. Is that
31 feasible?

32 MR. LUNN: Would you tell me the title again, please.

33 MR. McDADE: Director General Aquaculture Management.
34 I think it's number 7 on the list.

35 Q All right. So Deputy Minister, that's the
36 position description for that position, is it?

37 MS. DANSEREAU: Pardon me, yes, Commissioner, it is,
38 although I'm not sure if this is the most recent.
39 As I said, we've -- I haven't had a chance to look
40 at all of these exhibits in detail overnight to
41 see if these are the most recent, or if they have
42 been changed since the org change.

43 Q Okay. But this -- if there's a changed one,
44 you'll provide it to us, will you?

45 MS. DANSEREAU: Of course.

46 Q Yes. Well, let's go on -- let's go on the
47 assumption that the one that you've tendered is

- 1 the current one, and let's look at --
- 2 MR. TAYLOR: May I just clarify something so that Mr.
3 McDade is under no misapprehension. As I
4 understand it, these work descriptions are work
5 descriptions in the Department. There has been a
6 recent reorganization. There will be new work
7 descriptions as required. New work descriptions
8 can come up to a year after the reorganization
9 occurred, so as and when there are new work
10 descriptions they will be provided, but it could
11 be as late as next May for some cases. Just so
12 Mr. McDade is under no illusion as to when or what
13 will come when.
- 14 MR. McDADE: I thank Mr. Taylor for correcting my
15 illusions.
- 16 Q Can we agree that this is the job description that
17 was in place in 2009 when the -- which is the --
18 the issue we're dealing with in this Commission?
- 19 MS. DANSEREAU: We change these on a regular basis. So
20 we can start from that assumption and from the
21 description of the person to whom he is reporting,
22 I can feel somewhat confident in saying that it
23 also applies today.
- 24 Q Okay. All right. Well, let's just -- this is the
25 position that Mr. Swerdfager would look to, to
26 know what his responsibilities were?
- 27 MS. DANSEREAU: Yes.
- 28 Q All right. Now, if we look at the first line, it
29 says he is:
30
31 Accountable for promoting appropriate
32 responses from the Government of Canada to
33 create conditions for the development of an
34 environmentally sustainable and
35 internationally competitive Canadian
36 aquaculture industry.
37
- 38 Yes?
- 39 MS. DANSEREAU: Yes.
- 40 Q And so his primary -- would you agree that his
41 primary purpose is development of the industry?
- 42 MS. DANSEREAU: No, I would not. I would say it is as
43 it's stated here, that it's sustainable
44 development, that the aquaculture programs that we
45 have in place fit within the broad framework of
46 the other work that we do.
- 47 Q It says he:

1 Serves as [a] conduit between the department,
2 OGDs, the aquaculture sector and other
3 stakeholders.

4
5 So he's responsible for being a conduit to the
6 industry.

7 MS. DANSEREAU: To the industry, to stakeholders, to
8 First Nations, to communities. In the
9 consultations which he undertook in the
10 development of the regulation, he met extensively
11 right across the province with many, many groups,
12 covering all sectors of this interest.

13 Q Okay. Well, if we just go down another sentence
14 or so past this reporting framework, we find the
15 language:

16
17 Fosters the streamlining and harmonizing of
18 legal and policy frameworks to facilitate the
19 growth of, and minimize impediments to, the
20 sustainable development of aquaculture.

21
22 MS. DANSEREAU: Always in the context of the overall
23 mandate of the Department, which is sustainability
24 across the sectors.

25 Q But the very person in the federal government
26 developing our regulations his primary obligation
27 seems to be to facilitate the growth of the
28 industry. Isn't that what it says here?

29 MS. DANSEREAU: Within the context of the Department.

30 Q Yes. What does it mean by "minimize impediments
31 to, the...development of aquaculture"?

32 MS. DANSEREAU: It's to make sure that where
33 aquaculture development is appropriate, where it
34 is sustainable, where it fits with the rest of the
35 mandate of the Department, then it is able to go
36 forward.

37 Q Would public concern about aquaculture be an
38 impediment to growth of the industry?

39 MS. DANSEREAU: No, it would be of interest to us to
40 make sure that we address the concerns.

41 Q So what -- how would he go about minimizing
42 impediments to aquaculture?

43 MS. DANSEREAU: Usually by researching them and finding
44 out what they are, to see if there's something
45 that has to be changed, or either in a positive
46 sense or a negative sense.

47 Q Would it be part of his job description to

1 minimize public concern over aquaculture?

2 MS. DANSEREAU: Depending on your definition, it's the
3 job of the entire Department to make sure that
4 where the public concern is something that we can
5 actually manage, then we minimize it by taking
6 care of it by making it go away because we've
7 addressed the concern. As I said, he does not
8 work alone.

9 Q Well, let's -- let's go to his direct reports, or
10 sorry, let's -- under "Organizational Structure",
11 we have the Deputy Executive Director, whose
12 primary obligation is to develop the Aquaculture
13 Framework Agreement; is that correct?

14 MS. DANSEREAU: I'm sorry, I don't go into the actual
15 detail of all of their specific job descriptions,
16 except in an overall sense.

17 Q Well, this one's only three lines. If I read it,
18 it says:

19
20 ...will allow him/her [to] focus primarily on
21 the creation and implementation of the
22 Aquaculture Framework Agreement.
23

24 MS. DANSEREAU: The Deputy Director tends to have a
25 series of functions, including making it --
26 freeing up the Director, the Director General to
27 do other things.

28 Q Yes. Can you tell us what the Aquaculture
29 Framework Agreement is? Mr. Bevan.

30 MR. BEVAN: Yes. This is a term position as it says,
31 and the Aquaculture Framework Agreement recognizes
32 that there's a variety of jurisdictions that
33 obviously the provinces and the federal government
34 responsible for managing aquaculture activities.
35 The current situation, including in B.C. until
36 December 18th, is that most of the management is
37 conducted by the provinces, however site selection
38 is something that the federal government has a
39 role to play in. But in the Province of British
40 Columbia currently, for another few weeks, and in
41 the rest of Canada, it is the province that looks
42 after a number of the activities that are relevant
43 to how much fish can be raised in the particular
44 area, the controls of those issues, et cetera.

45 The federal government, it's not just DFO,
46 there's other components or other government
47 departments that have a role. And the Aquaculture

1 Framework Agreement is a process that's underway
2 to try and clarify the roles between federal
3 governments -- the federal government and the
4 provincial government, and also within the federal
5 government between health of animals and other
6 organizations that have an impact on aquaculture.

7 Q All right. Thank you. Now, if I could move to
8 the next heading, "The Director Strategic
9 Priorities", that the Director seems to be
10 responsible for:

11
12 The development of an appropriate
13 interdepartmental governance framework to
14 enable other federal departments and agencies
15 to extend existing programs and expertise to
16 aquaculture...

17
18 Right? Is that in support of the industry?

19 MS. DANSEREAU: The approach that we take is in support
20 of the -- not the industry as in the sense of the
21 companies, but the direction towards aquaculture,
22 to make sure that it is suitable to the Canadian
23 context, that it is suitable to the waters in
24 which it is conducted, and that it is suitable in
25 relation to the other programs that we manage.

26 Q Well, don't you refer to the companies as your
27 clients?

28 MS. DANSEREAU: We refer to all companies as our
29 clients, as we do all other stakeholders,
30 including First Nations, environmental groups,
31 communities. They are all our clients.

32 Q I see. If you could just go down about five lines
33 to the line starting:

34
35 Working with other federal agencies,
36 governments, industry and stakeholders to
37 improve confidence in the management and
38 conduct of aquaculture in Canada...

39
40 MS. DANSEREAU: Yes. And that's to make sure that we
41 -- that the work that is done in aquaculture is
42 work that is to the standards that Canadians
43 expect it to be.

44 Q So that's to reduce concern among the public.

45 MS. DANSEREAU: It's to make sure that Canadians are
46 safe, and the Canadian waters, and the fish in
47 Canadian waters are safe.

1 Q Now, I see the distinction there, "federal
2 agencies, government, industry and stakeholders".
3 So the government distinguishes between industry
4 and stakeholders there.

5 MS. DANSEREAU: The terms are sometimes used
6 interchangeably.

7 Q And just can I ask you about the last phrase in
8 that paragraph:

9
10 ...the federal government's role in fostering
11 a responsible aquaculture industry.
12

13 What do you mean there by "fostering"?

14 MS. DANSEREAU: By working with all of the concerned
15 parties to make sure that we are addressing the
16 real concerns, and that we are also addressing the
17 real concerns that come from science. So the
18 federal government's job is to some extent to
19 foster, well, sustainable development, and the
20 same would be true of the role of aquaculture in
21 sustainable development.

22 Q Can I go to the next position here, the Director,
23 Programs and Regulatory Improvement. Now, is that
24 -- that person works under -- or does that person
25 have a role in terms of the development of the new
26 regulations?

27 MS. DANSEREAU: Yes.

28 Q That would be their primary role?

29 MS. DANSEREAU: Yes.

30 Q And again we see there:

31
32 The development of an enabling policy and
33 regulatory framework to support a competitive
34 sustainable industry.
35

36 MS. DANSEREAU: Yes. And a sustainable industry is one
37 that takes into consideration all the factors
38 which we have already outlined.

39 Q Can we go over the page, please, to "Nature and
40 Scope". So this part of the document now
41 describes back to Mr. Swerdfager's role under
42 "Nature and Scope" of his duties. And if I could
43 go to the third paragraph in there, "Within this
44 context":

45
46 Within this context, the Director General
47 Aquaculture Management Directorate, has the

11
PANEL NO. 3
Claire Dansereau
Cross-exam by Mr. McDade (AQUA)

1 lead, on behalf of the federal government,
2 for the facilitation of aquaculture
3 development in Canada...

4
5 That's his job description.

6 MS. DANSEREAU: Yes.

7 Q To facilitate aquaculture development.

8 MS. DANSEREAU: Within the context of all of our other
9 priorities, so within the context of sustainable
10 development, within the context of managing all of
11 our other fisheries, yes; not to the exclusion of
12 or to supersede those.

13 Q Well, that -- can we go to the paragraph above. I
14 take it that's what "Within this context" refers
15 to.

16 MS. DANSEREAU: The context refers to the context of
17 the whole Department.

18 Q Well, might you understand how if I were Mr.
19 Swerdfager reading this document, I'd see the
20 context you describe as being the context that's
21 referenced.

22 MS. DANSEREAU: Sorry, excuse me. The context of the
23 Department is as defined in all of our -- the
24 Report on Plans and Priorities, the Department
25 Performance Report, the -- my mandate, the mandate
26 of the Minister, the **Fisheries Act**, the **Oceans**
27 **Act**, that's the context of the Department, and
28 that's the context within which he works. So we
29 can't have one part of the Department working at
30 harm to another part.

31 Q Well, that makes sense, I think. But the document
32 says -- you'll agree with me that the document
33 refers to the context of the paragraph above.

34 MS. DANSEREAU: His job is within the context of the
35 Department.

36 Q All right. And the paragraph above, I won't read
37 it into the record, but the paragraph above refers
38 all to dollars and cents and jobs and economic
39 indicators, doesn't it?

40 MS. DANSEREAU: It does, and it's within the context of
41 the Department for sustainable development.

42 Q Yes. But would you agree with me that at least in
43 terms of the way this job description is written,
44 this Director General is primarily responsible for
45 facilitating the growth of aquaculture in economic
46 terms.

47 MS. DANSEREAU: No. I'm sorry, it is in the context of

1 sustainable development.

2 Q So where in this context, in the "Nature and
3 Scope", does it refer to risks of aquaculture? It
4 doesn't, does it?

5 MS. DANSEREAU: It does within the context of the
6 Department. It does because the information with
7 which he works, the regulations which he helps
8 develop, which he does not do on his own, are done
9 in the context of science, and within, as I said,
10 overall sustainable development.

11 Q So he's supposed to just know that. It doesn't
12 have to be in his job description.

13 MS. DANSEREAU: It is in his job description.

14 Q Well, I'm looking for, in vain I think, for some
15 reference to the risk to wild salmon from
16 aquaculture. Is there anything in his job
17 description that requires him to try and protect
18 wild salmon?

19 MR. BEVAN: If you look at the top paragraph in that
20 job description, right there, "Nature and Scope",
21 you can see that the first lines are directly
22 quoting from the "Sustainable Fisheries and
23 Aquaculture Strategic Outcome", that's what is
24 referring to. That's what he has to deliver the
25 programs in the context of.

26 So that's the sustainable fisheries and
27 aquaculture. We do the same thing for the
28 fisheries.

29 This is a program supported by science, and
30 his job is to manage the aquaculture activities
31 that are the federal responsibility, and now in
32 British Columbia his job is to put in place the
33 regulatory framework for the new program that
34 we'll be running on December 18th.

35 But it's all in the context of this, and it's
36 also in the context of what's called his
37 Performance Management Agreements, and those are
38 bilateral arrangements between the executive and
39 his supervisor, and in that it's all about
40 reflecting the departmental priorities for
41 sustainable activities.

42 And as noted yesterday, that's why we're
43 looking at aquaculture the same way as we look at
44 fisheries. If one wants to be a conservation
45 organization, we can stop everything, all
46 activities, and forego the benefits that Canadian
47 enjoy from the use of the marine and aquatic

1 ecosystem. But that's not what the public wants.
2 They want to have sustainable activities, and
3 that's why these jobs are put in that context.
4 And that's why the first thing in "Nature and
5 Scope" there is the direct quote from "Sustainable
6 Fisheries and Aquaculture Outcome" that puts the
7 rest of the job into that context.

8 And we want to manage things intelligently.
9 We don't want to have rules and regulations that
10 don't achieve the outcome of sustainability, and
11 that's why it's referring to the regulatory
12 process needs to be streamlined, it needs to be
13 effective, et cetera. But I don't think it's, as
14 the Deputy has said, fair to say that this job is
15 focused on growing the industry at all costs. He
16 works as part of the team. In the time now he's
17 reporting to ADM Programs, but he's part of a team
18 that looks at the overall management of the marine
19 ecosystem.

20 So the group that will be doing the
21 operations is Ecosystems and Fisheries Management,
22 Habitat is in there, Species at Risk is in there,
23 Fisheries Management is in there, all of those
24 activities are part of this process because they
25 all have to work together to ensure that the
26 regulations that they are applying achieve the
27 outcome of sustainable fisheries and aquaculture.

28 So to search for snippets of this particular
29 phrase looks like he's focused on promotion,
30 that's not in the context that the job actually
31 takes place. And I can assure you, I don't think
32 that Mr. Swerdfager is spending time looking at
33 these job descriptions. He's looking at what's
34 in his agreements for his plans for the year, and
35 what does he have to deliver on, and that is part
36 of the process in boilerplate, in job -- or in the
37 performance agreements, are the context of the
38 Department.

39 Q Well, I don't want to debate the substance of this
40 with you. I'm just looking at the job
41 description. Now, you referred to it as a
42 snippet, but the question of the risk to wild
43 salmon, I think, deserve something in the job
44 description, wouldn't you say?

45 MR. BEVAN: He's reporting to the ADM Programs. The
46 ADM Programs is the ADM responsible for
47 aquaculture, also for fisheries renewal; in

1 fisheries renewal is sustainable fisheries
2 framework, et cetera. So he's reporting through
3 to a broad array of programs. He's in that mix,
4 and that group is looking after the risks, et
5 cetera, and he's -- the regulations and the
6 enforcement process that he's putting in place for
7 British Columbia I think speaks for themselves in
8 terms of addressing the capacity for the federal
9 government to manage those risks.

10 Q Well, you've gone to some trouble to describe to
11 Mr. Swerdfager in his job description the economic
12 advantages of aquaculture. Is there a reason why
13 the risks to wild salmon are not in there?

14 MR. BEVAN: I think, Mr. Commissioner, the risks to the
15 wild salmon are expressed in terms of sustainable
16 -- or the first phrase there:

17
18 The Department of Fisheries and Oceans is
19 engaged in the development and delivery of
20 policies and programs in support of Canada's
21 economic --

22
23 Yes.

24
25 -- ecological and scientific interests in
26 [the] oceans and inland waters...

27
28 And it's environmentally sound, so it's there that
29 the context is put around the economic activity.
30 We have economic activity on wild fish. We have
31 recreational fisheries, aboriginal fisheries and
32 commercial fisheries. They, too, pose a risk to
33 wild stocks. All of them have to be managed in
34 the context of sustainable use and looking at the
35 whole ecosystem.

36 Q So the Department as a whole, of course, is
37 focused on economic, ecological, and scientific
38 interests, but different employees would have
39 different responsibilities under that heading.

40 MR. BEVAN: Yes, that's correct. However, this
41 Director General is -- the job is put in the
42 context of the delivery on the sustainable
43 program.

44 Q So let me just go a little further down in that
45 paragraph if I might, and we'll move on. That's
46 the third paragraph -- sorry, "Within this
47 context", yes. And you'll see that halfway into

1 that paragraph after referring to his membership
2 in the Departmental Management Committee, it
3 appears to be this Director General's job:

4
5 Through the use of a cooperative approach
6 involving the aquaculture industry...

7
8 What does that mean, "a cooperative approach
9 involving the...industry"?

10 MR. BEVAN: Clearly, we are regulating industries,
11 aquaculture, commercial fishing, recreational
12 fishing also has an industrial or economic
13 component to it in terms of lodges and tourism,
14 and it's better when regulating people to try and
15 work with them to find solutions to achieve the
16 outcome of sustainable activities, but not
17 necessarily to have to go directly to a
18 confrontational or coercive approach to achieving
19 the behaviours necessary to have sustainable
20 activities. So it's better to work
21 collaboratively to find the solutions to achieve
22 the outcomes.

23 Q But wouldn't it be better to work collaboratively
24 and cooperatively with the environmental groups
25 and with the commercial fishing industry that's at
26 risk here?

27 MR. BEVAN: That's what the Deputy has done with the
28 reorganization at Ottawa, but it's also part of
29 the way we're approaching the management of
30 aquaculture. Keeping in mind that aquaculture was
31 regulated predominantly by the province, or is
32 regulated predominantly by the province, the new
33 regulations provide the capacity to establish
34 licence conditions to achieve the outcome and we
35 would like to work with the industry to achieve
36 what we want.

37 But clearly, I agree with you, it's better to
38 have the entire group together. And the Deputy
39 mentioned yesterday that what we're looking at is
40 integrated aquaculture management plans, but
41 eventually to have integrated plans for the
42 fishery as well as aquaculture. And a clear
43 example of that would be something like the
44 shellfish aquaculture harvest. Geoducks is a good
45 example. We need to have the plan cover
46 everything, and that's where we're headed.

47 Q So the Director General here, the lead federal

1 official for aquaculture has a job to working with
2 industry, provincial and territorial governments,
3 and all federal departments and agencies, but not
4 -- would it be -- is there some other person that
5 has the responsibility of working with the public
6 and with communities and with the people who are
7 -- who are reliant on wild salmon?

8 MS. DANSEREAU: Throughout the rest of the document we
9 reference stakeholders and other groups, and the
10 Department as a whole works with all of the other
11 stakeholders, as well. So it is the *modus*
12 *operandi* of this Department to be consultative,
13 and Trevor is, and the person in this position is
14 consultative.

15 Q Yes. But doesn't he -- he's responsible for
16 consulting with the public, but he's responsible,
17 according to this document, for cooperating with
18 the industry. Isn't that right?

19 MS. DANSEREAU: We are responsible for cooperating with
20 everybody. So some groups in here may be more
21 specified than others, but as a Department we are
22 cooperative with everybody. But we are the
23 regulators, so at the end of the day we will have
24 our Conservation and Protection Officers will go
25 in and enforce the regulation that has been
26 developed. What we will do through consultation
27 is make sure that that regulation is the most
28 robust possible.

29 Q So let me just finish that sentence, though. What
30 is he supposed to cooperate with industry about?
31 It appears to be:

32
33 ...he/she is accountable for the promotion of
34 appropriate responses from the Government of
35 Canada to create conditions for the
36 development of an environmentally sustainable
37 and internationally competitive Canadian
38 aquaculture industry, and the elimination of
39 unnecessary impediments.

40
41 That's what he's cooperating with industry to do?
42 MS. DANSEREAU: You'll note in there that it says
43 "environmentally sustainable", which means that we
44 need to work with in the same way as we do with
45 the people in the wild fishery, we make sure that
46 we are promoting environmental sustainability and
47 environmental protection in our regulation.

1 Q Can I go to the next paragraph, please, the one
2 starting "The Director General". Yes, thank you.
3 Now, there it says:

4
5 The Director General provides direction and
6 leadership in the development of an
7 aquaculture policy that addresses a wide
8 variety of interests that provinces,
9 territories and municipalities have in
10 expanding and exploiting the socioeconomic
11 capacity of farmed fisheries resources.
12

13 So you'd agree with me that his job is to expand
14 the industry.

15 MS. DANSEREAU: Where it is appropriate to do so, yes.

16 Q Where does it say that?

17 MS. DANSEREAU: It says so in the mandate of the
18 Department in all that we do.

19 Q All right. But this person's job isn't limited by
20 that.

21 MS. DANSEREAU: It's within the mandate of the
22 Department.

23 Q If I might just go down two more paragraphs, "The
24 Director General". The Director General seems to
25 be the person who acts:

26
27 ...as a conduit between the department and
28 the broad cross-section of aquaculture
29 stakeholders...
30

31 Including the industry groups. And then it says,
32 you'll see this language:

33
34 He/she promotes industry interests to other
35 departments and agencies...
36

37 Is that correct, is that what he does?

38 MS. DANSEREAU: Where it is appropriate, within the
39 mandate of the Department.

40 Q And then it says, you can see the last line, that
41 he attempts to:

42
43 ...resolve impediments to the development of
44 aquaculture and aquaculture products.
45

46 Again, can you say anything further about the
47 impediments he's trying to resolve.

18
PANEL NO. 3
Claire Dansereau
Cross-exam by Mr. McDade (AQUA)

1 MS. DANSEREAU: I think we've already covered that
2 ground.

3 Q Okay. Can we go to the next paragraph, please.
4 If we look at the last line there:
5

6 The incumbent plays a strong leadership role
7 in streamlining and harmonizing legal and
8 policy frameworks on aquaculture to
9 facilitate the growth of, and minimize
10 impediments to, the sustainable development
11 of aquaculture.
12

13 So in enacting these new regulations, or in coming
14 up with these new regulations, Mr. Swerdfager is
15 governed by the policy of the Government of Canada
16 to facilitate the growth of the industry.

17 MS. DANSEREAU: Where it is appropriate to do so. And
18 Mr. Swerdfager doesn't enact anything. he
19 develops recommendations, which are then approved
20 by the Minister.

21 Q Two more paragraphs down, please.
22

23 Another of the Director General's
24 accountabilities is the creation of an
25 enabling regulatory environment that up-holds
26 associated legal responsibilities and
27 supports environmentally sustainable
28 practices while encouraging further
29 investment in aquaculture development.
30

31 MS. DANSEREAU: Where it is appropriate to do so, based
32 on the science, as I've said all through this
33 questioning.

34 Q Can I go down three paragraphs further. The
35 Director General's -- sorry, one paragraph up.
36 There we go.
37

38 The Director General provides leadership in
39 the expansion of the aquaculture industry.
40

41 MS. DANSEREAU: We are not against aquaculture.

42 Q His job is to expand the industry, is it not?

43 MS. DANSEREAU: His job is to make sure that where
44 there is expansion it is appropriate.

45 Q Now --

46 MS. DANSEREAU: Within the context of the overall
47 Department.

1 Q If aquaculture in British Columbia turns out to be
2 responsible, through the -- through disease or
3 parasites or some mechanism for declines in wild
4 salmon, then it wouldn't be appropriate at all,
5 would it?

6 MS. DANSEREAU: I can't speculate on that. We will
7 know when -- we are looking forward to the
8 findings of this Commission, but so far the
9 science does not support that, although I
10 understand that it's under dispute and we will
11 certainly address that at the time that there is
12 proof that that's the case.

13 Q My question for you is I looked in vain through
14 Mr. Swerdfager's job description for his job to
15 determine those risks. Who in the federal
16 government in your office has the primary job of
17 determining those risks?

18 MS. DANSEREAU: Our scientists have a very big role to
19 play in any advice related to the risks, as they
20 do in all of our fisheries decisions. Every
21 single total allowable catch decision that we make
22 is based on a risk assessment from our scientists,
23 and the same would be true in this case.

24 Q Well, science provides information, but surely in
25 your office somebody has responsibility for
26 implementing that information.

27 MS. DANSEREAU: Science provides advice. Science
28 provides risk frames and we at the senior level
29 will determine what risks are tolerable and make
30 recommendations on that. It is an iterative
31 process throughout the Department.

32 Q Can I go to Exhibit -- we'll leave that job
33 description for now and let's go to Exhibit 25,
34 which is I think the Business Plan for 2010-11.
35 And if I could go to page 12 of that document,
36 please, which deals with aquaculture. There,
37 right there.

38 Now, this is for the Pacific Region, so I
39 don't know if that's -- who is appropriate to ask?

40 MS. DANSEREAU: Either Paul Sprout or Sue Farlinger.

41 Q Now, as I read the top line of the "Pacific
42 Aquaculture Management Regime" the "Description"
43 is that:

44
45 Aquaculture governance will position the
46 industry for enhanced profitability, self-
47 sufficiency, and international

1 competitiveness.

2
3 Is that the policy of the Pacific Region?

4 MS. FARLINGER: This reflects the policy of the
5 Department. This in fact is consistent with the
6 kind of approach we take in supporting, managing,
7 and regulating all the industries that occur in
8 the -- in the marine environment. So for example,
9 if you were to try and understand this at the
10 level of international competitiveness, you might
11 look at marine -- you might look at eco-
12 certification, for example. Eco-certification is
13 something that aligns very closely with how we
14 regulate both the fishing industry and in this
15 instance the aquaculture industry.

16 So if -- if, for example, an industry is
17 seeking eco-certification in order to market their
18 products, this is the sort of conduit through
19 which we would be supporting international
20 competitiveness, enhanced profitability.

21 Self-sufficiency is really around having
22 clear and understandable regulation for any
23 industry, both the fishing industry and the
24 aquaculture industry, in this instance, so that
25 the industry can self-adapt to economic or market
26 conditions, or in fact in the case of the
27 commercial fishery, to changes in abundance of the
28 stocks. So that self-adjustment is part of being
29 profitable and self-sufficient.

30 Q There is no equivalent goal, as I saw it, in the
31 business plan to protect wild salmon from the
32 risks of aquaculture, is there?

33 MS. DANSEREAU: If I may, there is a goal for the
34 Department to protect wild salmon from all risks.

35 Q No, I was looking -- I'm asking the question of
36 the Pacific Region in terms of the Business Plan
37 document itself.

38 MR. SPROUT: Could I respond to that by referring to a
39 document that was tabled yesterday by the Cohen
40 Commission Counsel, which is called the Regional
41 Implementation Plan for 2006-2010. Would it be
42 possible for me to draw your attention to that
43 document, because I believe that document does
44 address specifically and directly the questions
45 you've raised about the importance of the wild
46 salmon sustainability and how aquaculture has to
47 be looked at in the context of those parameters.

21
PANEL NO. 3
Paul Sprout
Cross-exam by Mr. McDade (AQUA)

1 So that document is called "Pacific Region
2 Implementation Plan".

3 MR. McDADE: Well, as long as it doesn't count against
4 my time in cross-examination, we can go to that.
5 That document is what exhibit number?

6 MR. WALLACE: Exhibit 23.

7 MR. McDADE: 24, sorry?

8 MR. LUNN: There are two versions.

9 MR. WALLACE: No, there is a "Report on Progress",
10 which is 24, which has the same initial wording.
11 "Pacific Region Implementation Plan" is 23.

12 MR. McDADE:

13 Q All right. So is there a section on aquaculture
14 in there?

15 MR. SPROUT: Yes, there is, and I'd like to draw your
16 attention to a few of the references, because I
17 think -- I think what the Department officials are
18 trying to do is to make an argument that you need
19 to look at aquaculture within the broad mandate of
20 the Department, that the job description is part
21 of a bigger whole, and you can't take it out and
22 isolate it. I think that's the argument the
23 Department is making. And I'd like to show you
24 how in this document we link the various elements
25 to position aquaculture in this broader context,
26 and I think it does answer some of the points you
27 have raised today.

28 Q Well, can we go to the section that deals with
29 aquaculture.

30 MR. SPROUT: So for example, on page 1 in the
31 introductory section it introduces the goals of
32 the Pacific Region Plan over a five-year period.
33 And again what we're doing is we are expanding on
34 the national priorities in a Pacific Region
35 context, as I explained yesterday.

36 I'd like to now go to page 17, and I'm going
37 to read one aspect of that that deals with
38 science, the role of science. So you can see the
39 section 1.4, "Pacific Science Renewal" and at the
40 bottom there's a bullet that starts with:

41
42 Support the aquaculture site selection and
43 screening process by providing scientific
44 advice to help guide decision-making and risk
45 assessment processes.

46
47 I'd like now to go the next page under --

1 this is page 18, under section 1.5 "Pacific
2 Aquaculture Framework". Now, this then lays out
3 some of the broad ideas, reviews or actions the
4 Department intends to follow up on over a five-
5 year period. So, for example, we talk about
6 completing a Canada/BC Letter of Understanding,
7 further streamlining application review processes,
8 and the identification of knowledge gaps and DFO's
9 scientific role in addressing these gaps, and on
10 it continues.

11 So the point I wanted to draw your attention
12 to is this document tries to put into, I think, a
13 wider context how aquaculture fits within the
14 Department, and why it must comport with the
15 broader mandate that the Department is required to
16 implement, and how the job description of an
17 individual must be factored into the broader
18 elements of the Department.

19 Q So do you have in the Pacific Region somebody who
20 is specifically responsible for protecting the
21 public against the risks of aquaculture.

22 MR. SPROUT: The way the Region looks at it is as the
23 Deputy previously explained, we have a wide array
24 of people that have a number of responsibilities.
25 So in answer to your question, we have enforcement
26 officers who have a conservation and protection
27 responsibility, so they are the regulatory
28 authority of the Pacific Region. They are
29 required to implement those provisions that were
30 under federal control, and as we know on December
31 the 18th of this year, that control will be
32 extended broadly as we take on significant new
33 jurisdictional responsibilities.

34 We have habitat biologists in the Pacific
35 Region who have responsibility to look at the
36 potential habitat implications of the site
37 locations of aquaculture. So what do they do?
38 Well, they're required to look at what deposit the
39 aquaculture sites might leave in terms of the
40 surface, the ground, and so forth, potential
41 implications on contamination. So those
42 individuals are there.

43 We have fishery managers that would be
44 concerned about the location of the aquaculture
45 sites relative to wild salmon migration. So those
46 individuals participate, as well.

47 So we have a series of people who have

1 responsibility in specific areas, but all of them
2 have to roll up ultimately to whatever the overall
3 mandate of the Department is and it's expressed,
4 in this particular case, in various strategies in
5 our plans.

6 Q So today we're looking at the organizational
7 structure, and what I'm trying to determine,
8 because it appears that there is people who are
9 specifically targeted to promote and cooperate
10 with the industry, is there any person who has the
11 job description that requires them to protect the
12 public from the risks of aquaculture? It's a
13 simple question.

14 MR. SPROUT: As the Deputy has explained on several
15 instances, the entire Department has this
16 responsibility. It's an overriding mandate. So
17 it's across the Department.

18 Q So why do you have individuals who are tasked with
19 promoting the industry?

20 MR. SPROUT: We have individuals that are responsible
21 for recreational fishery management. We have
22 individuals who are responsible for commercial
23 fishery management. We have individuals that work
24 with First Nations. We have -- we partition our
25 responsibilities in order to be effective and
26 efficient.

27 Q All right.

28 MR. SPROUT: As any institution does.

29 Q Well, before we leave this document, can we just
30 go to Exhibit 24, which is the "Report on
31 Progress" and can we go to page 15 of that
32 document. Now, that's the page that deals
33 directly with the aquaculture, is it not? Can we
34 highlight the lead columns there. Thank you.

35 So this is -- it's fair to say that this is
36 the opening lines or the description of the
37 priority of the Department in 2008-2009:

38
39 Providing Canadians with...

40
41 Conditions needed to support a vibrant and
42 innovative aquaculture industry...that is
43 environmentally and socially responsible,
44 economically viable and internationally
45 competitive.

46
47 Promote an industry.

1 MS. DANSEREAU: Promote an industry that is
2 environmentally and socially responsible.
3 Q All right. And in the first paragraph under "The
4 benefits" you list economics, income stability,
5 economic opportunities. In the bullet points you
6 list economics.

7 And under "Specific Progress in 2008", next
8 paragraph down, you talk about the actions that
9 you've taken to improve:

10
11 ...governance, supporting innovation in the
12 sector, increased resources for regulatory
13 research and addressing issues of market
14 access and certification.
15

16 There's not a word in this report about risk of
17 harm. Why is that missing?

18 MS. DANSEREAU: The -- words "managing the regulatory
19 front" or "market access" or "certification" all
20 have to do with risk.

21 Q Let me come back to you, Deputy, on a point you
22 made. I just have a couple of points left on this
23 and then I can sit down. The point you made about
24 science. Can we go back to Exhibit 33 and bring
25 up the position title for Regional Director
26 Science. I'm sorry, I don't know which number
27 that is. Yes.

28 All right, that's the one I'm looking for.
29 Can we go to page 2. The Regional Director of
30 science -- stop there. The Regional Director of
31 Science, it appears to me, is in charge of
32 regulating science for a whole -- for the whole of
33 the Department's priorities. But beneath
34 reporting directly to that person is someone
35 called a Division Head, Aquaculture, which is the
36 paragraph I'd like highlighted. I'm correct in
37 that, am I not?

38 According to this job description for
39 science, the job description of that Division Head
40 is to plan, develop and manage:

41
42 ...scientific research programs in the
43 aquaculture field, particularly salmonid
44 aquaculture but also shellfish and other
45 finfish aquaculture, in support of the
46 aquaculture industry;...
47

1 MS. FARLINGER: Sorry, this -- the responsibilities
2 have changed in terms of the organization since
3 this job description was written. There are
4 individuals who work on fish health that
5 contribute to aquaculture, both shellfish and
6 finfish, that are not -- this section itself
7 doesn't exist any more, and there are also
8 individual scientists and other technical staff
9 who work in the salmon program who are responsible
10 for various elements of this. So this Division,
11 as it is set out in the job description, doesn't
12 exist at this point.

13 Q So up till 2009, however, your Science Division
14 exclusively had the job of doing science in
15 support of the industry. Isn't that a reasonable
16 inference?

17 MS. DANSEREAU: The definition of "in support" I think
18 could be -- could be elaborated on. "In support
19 also means identifying areas where we should not
20 go, and if this job description still were in
21 effect, the next line is:

22
23 ...research into wild stock interactions and
24 potential hazards to wild stocks;...

25
26 So the entire piece would have been considered.

27 Q So you say there's a new job description now in
28 effect?

29 MS. FARLINGER: I'm not entirely sure of the state of
30 the job description. I know that the organization
31 inside Science differs from the one described here
32 in this job description.

33 Q Just while I'm on this point, can we go over to
34 page 3, the third paragraph, the large paragraph
35 there. Yes, thank you.

36 Now, maybe we'll hear more about this at some
37 later point, but this paragraph talks about:

38
39 ...the department has embarked on a series of
40 reforms which have shifted the emphasis from
41 reactive enforcement to the concept of
42 sharing the stewardship responsibility for
43 the resource with all participants in the
44 fisheries.

45
46 Does that mean the industry?

47 MR. BEVAN: Yes. We've done a number of reviews of how

1 we conduct our compliance activities. In the past
2 we focused on reactive enforcement and we didn't
3 work enough on education, didn't work enough on
4 dealing with significant fraud, which happily is
5 not as prevalent on this coast as it is in some
6 other areas. So we've refocused our enforcement,
7 for example, to have three main pillars. Yes, we
8 do work with -- with the people who harvest fish,
9 the people who grow fish, to look at how to
10 maintain compliance. But it's actually what we're
11 doing is suggesting that if you're using a public
12 space to grow fish, if you're using a public
13 resource to fish, you have an obligation to the
14 public to demonstrate that you're using that space
15 or the stock in a responsible way, and you should
16 play a role in the monitoring, control and
17 surveillance.

18 The new regulations, for example, that are
19 being put in place are going to set a series of
20 licence conditions that aquaculturalists will have
21 to comply with, But also put in place requirement
22 to provide information to the Department to
23 demonstrate that they have the adequate controls
24 to deal with parasites and disease and to maintain
25 the ecosystem that they are using. It's not
26 theirs. It belongs to British Columbians, in case
27 of the seabed, and it belongs to Canadians, in
28 case of the waters, and they have an obligation to
29 play a part in that process. So that's what that
30 is attempting to get at.

31 Q So reactive enforcement would be the more
32 traditional model of you investigate and you lay
33 charges.

34 MR. BEVAN: It's the -- that kind of, yes, investigate,
35 lay charges. It's also not -- it's expensive and
36 not entirely effective if you require the officers
37 to go out and find the problem, and then
38 investigate, et cetera. What we want to do is
39 have a system where fishers and aquaculturalists
40 are obliged to provide information that could then
41 be analyzed and look at: okay, so there's some
42 anomaly here, we'd better look into this more, and
43 it provides a more effective way to direct rare --
44 and not rare, but very expensive assets.

45 Q So the Department is moving from that model to
46 something that's more cooperative with industry?

47 MS. DANSEREAU: Sorry, if I may, that doesn't mean we

27

PANEL NO. 3

Claire Dansereau, David Bevan

Cross-exam by Mr. McDade (AQUA)

1 will not investigate and lay charges in the
2 future.

3 Q But that's the trend, is it?

4 MR. BEVAN: No, the trend is actually that we are
5 saying to the people who are using the fish or
6 using the ocean space, you have a role to play in
7 demonstrating your compliance. And therefore in
8 fisheries, we want to know where you are on a
9 real-time basis. We want to know what you're
10 catching on a real-time basis. We want to know
11 where you're landing, and you have an obligation
12 to provide us with that information.

13 And under the new regulations we're going to
14 be requiring aquaculturalists to provide us with
15 information. They will play a role in
16 demonstrating their compliance. In the event that
17 there's a problem, it provides us with a more
18 focused reactive enforcement opportunity so we can
19 go in and find out why are the results not adding
20 up. Why is the information not what it ought to
21 be, and why is the information not consistent with
22 the visit that we're conducting. So there will
23 be reactive enforcement, but it will be augmented
24 by this kind of approach.

25 Q So before I leave this document, can I just ask
26 you about the next sentence:

27

28 This change in the Department's operating
29 philosophy will have a profound effect on the
30 Department's clients and stakeholders...

31

32 In that sentence what's the reference to
33 "clients". Is that the industry?

34 MR. BEVAN: That would be -- actually, it should be all
35 people and it will have a --

36 Q Yes, it should be.

37 MR. BEVAN: But the industry will be the ones who are
38 affected, because they're the ones who will be
39 subject to the different approach to obtaining
40 compliance.

41 MR. McDADE: Mr. Commissioner, I have one other set of
42 questions that will take about three minutes. But
43 I'd like to put -- put a website up on -- the DFO
44 website up on the board. Is this an appropriate
45 time for the break and I could set that up?

46 THE COMMISSIONER: Are we on time still, Mr. Wallace,
47 with the other participants' counsel?

28

PANEL NO. 3

Claire Dansereau

Cross-exam by Mr. McDade (AQUA)

1 MR. WALLACE: We have a cushion, I think we're probably
2 comfortably able. But how long will...

3 MR. McDADE: Three minutes. I just want to ask a few
4 questions about the communications line, chain of
5 command.

6 MR. WALLACE: Well, perhaps we could put that up now
7 and take the -- it's a little early for the break.

8 MR. McDADE: Yes, sure. Okay. Can you get up the main
9 DFO website? That's the home site. Can you just
10 click on "Aquaculture" to the -- thank you.

11 So I don't know who the appropriate person
12 for this question is, but which of you -- which
13 official is in charge of maintaining the -- or the
14 policy of maintaining the website?

15 MS. DANSEREAU: It's a combined function but it resides
16 to a large extent with our Communications people.

17 Q So on that site, this is the lead site for the
18 Department of Fisheries and Oceans in terms of
19 aquaculture, and we have the listing "Aquaculture
20 in the World Media". Could you just scroll down a
21 bit. There seems to be four newspaper articles.
22 Well, one is -- one is the Province of B.C.'s
23 Report, so three. One deals with research at the
24 bottom, one deals with PEI aquaculture, and then
25 we have "This science is fishy" from the *National*
26 *Post*. Can we just click on that. Have you seen
27 this article, Deputy Minister?

28 MS. DANSEREAU: I don't recall seeing this article, but
29 I may have. I see literally thousands of
30 documents.

31 Q I suggest, has any -- has any of the panel seen
32 this article? Has anyone seen it?

33 PANEL NO. 3: (No audible response)

34 MR. McDADE: I'm going to describe this article as
35 being a highly biased anti-fish-farm activist,
36 anti-science article. I'm going to tender it as
37 an exhibit. But you don't have to agree with that
38 description.

39 MR. TAYLOR: Mitchell Taylor. This may or may not
40 shorten things up. I'll be objecting to it as an
41 exhibit, so maybe we should deal with that sooner
42 than later before we have a bunch of questions on
43 it.

44 MR. McDADE: Well, let me ask some questions that don't
45 relate specifically to the content of -- of that
46 document, and then we can deal with that question.

47 Q What is the function of putting a media article on

1 the lead aquaculture part of your website? One
2 article -- wouldn't this be something that DFO
3 endorses?

4 MS. FARLINGER: No, the Communications function relates
5 to providing context, both to people inside and
6 outside the Department on current media. And
7 these are changed from time to time when new
8 articles come up. Not every article published on
9 aquaculture is published on this site, but these
10 articles are from time to time selected and put up
11 on the site as just part of general information
12 about aquaculture. And this appears to be one of
13 those.

14 Q But you're aware, are you not, that there are
15 hundreds of articles that are critical of fish
16 farming that have been coming out over the last
17 six months in newspapers.

18 MS. FARLINGER: The articles that are brought up on the
19 -- on the website cover the gamut in terms of
20 perspective. This -- this is an article -- I
21 haven't read it, so I don't know which you say,
22 has a certain prejudice to it. There are other
23 articles that have been brought up and put on this
24 website.

25 The purpose of the Communications aspect to
26 this website is simply to provide information to
27 people on information that is out there, and it
28 certainly doesn't purport to cover all articles.
29 But I think you will find over time that the
30 articles have been posted on this website cover
31 the range of views and understandings around this.

32 Q Are you able --

33 MS. FARLINGER: It's simply an information source.

34 Q So you're saying that on the DFO website they
35 publish articles critical of fish farming?

36 MS. FARLINGER: They have been referenced in this media
37 section on this website, yes.

38 Q Are you able to provide us a list of the articles
39 that have been on that website in the last six
40 months?

41 MS. FARLINGER: I think it's likely that I could.

42 Q All right. The -- if I suggest to you that part
43 of the -- part of the objectives of your
44 Communications people in DFO has been to reduce
45 public concern about the science suggesting risks,
46 can you tell me who is in charge of making that
47 decision? Which individual at DFO would be in

30
PANEL NO. 3
Claire Dansereau
Cross-exam by Mr. McDade (AQUA)

1 charge of the content of that particular site?

2 MS. DANSEREAU: First of all, I want to say that we
3 need to be clear, we are not biased against
4 aquaculture.

5 Q It certainly looks that way.

6 MS. DANSEREAU: And we don't shy away from that fact.
7 What we are responsible for is making sure that
8 the wild fishery is not affected by aquaculture.
9 So whether or not there's an article of this
10 nature on the site is maybe not a surprise. We're
11 not biased against aquaculture. We are in favour
12 of science to support decisions regarding
13 aquaculture and to support decision regarding the
14 interaction between -- between the wild fishery
15 and aquaculture. So if you're looking for us to
16 say that we are against aquaculture, we will not
17 say that.

18 Q Well, you seem to be against aquaculture
19 opponents.

20 MS. DANSEREAU: No, but we are pro-science.

21 Q So do you -- do you stand by this article?

22 MS. DANSEREAU: I did not write this article. I will
23 not stand by this article.

24 MR. McDADE: All right.

25 MR. TAYLOR: Well, Mr. Commissioner, he managed to
26 successfully establish no one knew the article,
27 said he was going to not ask questions about the
28 article, and now wants them to adopt the article.

29 THE COMMISSIONER: Mr. McDade...

30 MR. McDADE: I was done asking questions.

31 THE COMMISSIONER: Thank you.

32 MR. WALLACE: Mr. Commissioner, this perhaps would be a
33 convenient time to break for the morning.

34 THE COMMISSIONER: Thank you.

35 THE REGISTRAR: The hearing will now recess for 15
36 minutes.

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

40
41 THE REGISTRAR: The hearing is now resumed.

42 MR. WALLACE: Thank you. Mr. Commissioner, for the
43 record, we are -- the estimates I have for time
44 are three hours remaining. We have three hours
45 remaining until four o'clock, but that does not
46 allow for re-examination and so I would ask
47 counsel to try and pare ten percent off their time

31
PANEL NO. 3
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Cross-exam by Mr. Leadem (CONSERV)

1 if they possibly can to leave some time for --
2 which I think the likely re-examination that will
3 be sought.

4 THE COMMISSIONER: All right. I would -- I'd be
5 grateful if counsel could do that.

6 MR. WALLACE: And this brings us to the Conservation
7 Coalition. Mr. Leadem?

8 MR. LEADEM: Yes. Thank you, Mr. Commissioner. For
9 the record, Leadem, initial T., appearing for the
10 Conservation Coalition. Mr. Commissioner, I
11 should introduce someone who is seated directly
12 behind me, I believe taking advantage of your
13 directions that someone can -- else other than
14 lawyers can attend at counsel table, and I've
15 invited Dr. Craig Orr from Watershed Watch to sit
16 behind me.

17 THE COMMISSIONER: Thank you.

18

19 CROSS-EXAMINATION BY MR. LEADEM:

20

21 Q I'd like to begin by asking the panel a general
22 question. Would you agree with me that
23 conservation is the primary objective that guides
24 the management of the resource?

25 MS. DANSEREAU: I would agree with you that
26 conservation is the first priority for us and
27 without conservation, we have no other activities,
28 so it is a fundamental aspect of our work.

29 Q And those aren't my words. I believe they're
30 actually your words in terms of conservation being
31 the primary objective, guiding the management of
32 the resource.

33 MR. LEADEM: Mr. Lunn, I was wondering if you could
34 find Exhibit 34, which was just introduced today.
35 This should be a document entitled
36 "Recommendations Related to Fraser River Sockeye
37 Salmon" and if I could ask you to highlight the
38 second page, Theme 1, Conservation and
39 Stewardship, Summary of Responses.

40 Q I take it that this document was prepared by DFO;
41 is that right?

42 MS. DANSEREAU: Yes.

43 Q In that document, you highlight some of the
44 policies that the Department of Fisheries and
45 Oceans have employed over the years to deal with
46 the concept of conservation and the one that I
47 would like to actually focus on to begin with is

- 1 this 1986 Policy for the Management of Fish
2 Habitat; are you familiar with that policy? I see
3 that Mr. Macgillivray is.
- 4 MR. MACGILLIVRAY: Yes, I am familiar with the policy.
5 Q Is that policy also sometimes called "no net
6 loss"?
- 7 MR. MACGILLIVRAY: The principle of no net loss is
8 part of the -- part of that 1986 Habitat Policy,
9 yes.
- 10 Q It's just that sometimes I hear it -- the policy
11 shortened to that expression "no net loss"; is
12 that right or fair?
- 13 MR. MACGILLIVRAY: My understanding is that the term
14 "no net loss" emerged from that policy.
- 15 Q Right.
- 16 MR. MACGILLIVRAY: But there are more aspects to the
17 policy than simply no net loss.
- 18 Q In your opinion is no net loss working or not
19 working?
- 20 MR. MACGILLIVRAY: Difficult to provide a comment on
21 that.
- 22 Q Well, I'll put it to you directly then, that it's
23 not working and that's the problem with that no
24 net policy.
- 25 MS. DANSEREAU: I would, if I may - excuse me for
26 answering, but I would say that that work is -- we
27 are continuing to monitor whether or not no net
28 loss is working. It's a very broad designation,
29 as you can imagine, and so in some cases it's
30 working and in some cases it's not working so well
31 and we are constantly in -- working towards
32 improving our ability to both implement and
33 monitor.
- 34 Q Are you familiar, Deputy, with the 2009 Spring
35 report of the Commissioner of the Environment and
36 Sustainable Development?
- 37 MS. DANSEREAU: Yes, I am.
- 38 MR. LEADEM: And I was wondering if we could possibly
39 bring up Chapter 1 on the screen of that report,
40 Mr. Lunn. Perhaps about 18 pages in is actually
41 where I'm going to take you. You should find a
42 heading just before 1.70, so if you can scroll
43 down some more, you should find 1.70, There we
44 go.
- 45 Q Under the heading "Habitat Loss or Gain Is Not
46 Being Measured", 1.70 says:
47

1 The approach under the Habitat Policy is to
2 achieve no net loss of habitat on each
3 project and, together with habitat
4 restoration and development, achieve a gain
5 in habitat overall.
6

7 Would you agree with that statement?

8 MS. DANSEREAU: I would agree that more work needs to
9 be done on this and we are, as a result of this
10 audit, but also as a result of our own science,
11 working hard to try and improve on statements such
12 as this.

13 Q Well, one of the recommendations that came from
14 this audit was the recommendations that Fisheries
15 and Oceans Canada should develop habitat
16 indicators, if we look down at 1.74 and that:
17

18 The Department should use these indicators to
19 assess whether it is making progress on the
20 Habitat Policy's long-term objective to
21 achieve an overall net gain in fish habitat.
22

23 And DFO agreed with that recommendation; did it
24 not?

25 MS. DANSEREAU: Yes, we did. And we continue to agree
26 with it and we continue to work on it.

27 Q How are you working on it?

28 MS. DANSEREAU: Through our science sector and our
29 habitat managers, working to make sure that we
30 have both a risk framework and an ability to
31 determine what real indicators would be. As you
32 can imagine, it's fairly complicated.

33 Q There's also the comment in that response to the
34 recommendation that DFO is committed to moving
35 toward an ecosystems approach and the increased
36 use of biological indicators. I believe we heard
37 some of that evidence from you yesterday.

38 MS. DANSEREAU: Yes, very much so. It is truly at the
39 heart of how we organize ourselves, and if you'll
40 notice in the Report on Plans and Priorities, it
41 was -- that was introduced yesterday, there is
42 some reference to various indicators and it's --
43 it is a work in progress, we admit that, and it's
44 work started before the commissioner's work and it
45 certainly started long before my arrival in the
46 department and will be an ongoing piece of work.

47 Q The next heading right down from that says:

1 Q All right. I wanted to take advantage of the
2 deputy being there to ask her these questions.
3 This was written in 2009, so if my math is
4 correct, then if the ecosystem science approach is
5 still in the early stages, we can say that we're
6 still in those early stages, can we not?

7 MS. DANSEREAU: I would say that we'll be in early
8 stages for a long time, but that doesn't mean
9 we're not making progress. I think the science is
10 evolving quite rapidly and as it evolves, we will
11 incorporate it, but it will continue to evolve.

12 Q Under 1.80, the recommendations portion:

13
14 Fisheries and Oceans Canada should determine
15 what actions are required to fully implement
16 the 1986 Habitat Policy and confirm whether
17 it intends to implement all aspects of the
18 Policy.

19
20 And the response is contained that:

21
22 The Department accepts the recommendation
23 and, by March 2010, will determine what
24 actions are required to fully implement the
25 Habitat Policy.

26
27 So what have you decided to do?

28 MS. DANSEREAU: We -- this is an ongoing piece of work.
29 There were consultations held by the folks in
30 Ottawa with the people in the regions that are
31 implementing this and there is ongoing work on
32 this. It will not be something that we can
33 address immediately; however, it is a high
34 priority for all of us.

35 Q Well, the date seems definite, March 2010.

36 MS. DANSEREAU: The fact that we accept the
37 recommendation and that we will -- some actions
38 have been determined. I've asked for a review of
39 the policy. Some coordinated work has happened
40 between Ottawa and the regions and we can provide
41 you with some more specifics on the actions. I
42 don't have them here with me.

43 Q All right. Who could I address these questions to
44 from DFO should they come to testify before this
45 commission?

46 MS. DANSEREAU: I think it would be appropriate to ask
47 the question of some of the scientists. It would

1 also be appropriate to ask some of us when we come
2 back, and I can certainly do my best to make more
3 information available throughout the course of
4 your hearings.

5 Q Deputy, to understand my concern, you've got a
6 policy, a no net loss policy, as it's been called,
7 since 1986 that in 2009 the Auditor General says
8 it's not working and DFO says we agree, we're
9 going to do something about it and we're going to
10 do something about it by March 2010, which is a
11 definite date. What I seem to be hearing from you
12 is that we're going to still study it.

13 MS. DANSEREAU: No, we're not studying it. We are
14 looking at the areas where we are potentially
15 insufficient and we will be rectifying those. To
16 say that the -- what the Commissioner of
17 Sustainable Development said was that it's not
18 been fully implemented. They didn't say that it's
19 not working. They said it's not being fully
20 implemented. And so we need to truly determine
21 what areas are not being fully implemented and
22 determine how we can improve on that, and we are
23 doing that work.

24 Q And when can we expect to know some results from
25 that process?

26 MS. DANSEREAU: Well, David Bevan actually can speak to
27 some of the work that happened this summer, as he
28 went across the country and started addressing
29 some of this, but -- and as I said, it's going to
30 be an ongoing piece of work.

31 MR. BEVAN: Now, we - "we" being myself and Kevin
32 Stringer - met with habitat practitioners and
33 managers across the country to discuss the policy
34 and to discuss the implementation of the program.
35 The difficulty we have is right now, the model for
36 the delivery of the program is to receive
37 proposals from proponents and then to review those
38 to determine if there's going to be a hazard or a
39 change to the habitat, a HAD, and whether or not
40 then there has to be an approval process
41 initiated. That is very labour-intensive. It
42 doesn't look at the risks posed by these various
43 projects and you end up trying to treat everything
44 the same and it's not an effective way. So what
45 we're looking at doing is bringing the proponents
46 -- not the proponents, the practitioners of the
47 program together over the course of the Fall to

1 look at a new set of procedures and protocols for
2 how to manage the risks that human activities pose
3 in the habitat of fish and then how to be much
4 more proactive and to spend more time on things
5 like monitoring and then dealing with problems
6 there and less time on low-risk activities where
7 we're looking at an armour stone or seawall or a
8 wharf being put in where we think we can handle
9 that through a different process.

10 So we're looking at revising the program and
11 to ensure that the policies reflect a better way
12 ahead. The real problem we have with no net loss
13 is the development of metrics. How much habitat
14 exists? How do you track it over time? And
15 that's been a significant challenge. We still
16 have that as a goal and we still have the policy
17 in place but we do think that we need to look at
18 the design of the program with a view to being
19 more proactive, more focused on risk management
20 and using better tools to get compliance with the
21 policy and to make sure the policy reflects the
22 actions.

23 That's what we're doing and we have that step
24 done and we're looking at now bringing the people
25 together over the course of the winter to try to
26 be in position for the coming years to modify the
27 approach and to get a better result for Canadians
28 and for the preservation of fish habitat.

29 Q In your answer, Mr. Bevan, and I thank you for it,
30 but in your answer I picked up on some of the
31 jargon that I often hear with respect to the
32 descriptions forwarded to the Environmental
33 Process Modernization Plan or the EPMP; do I have
34 that right?

35 MR. BEVAN: There are elements there of what we're
36 looking at doing. We have a -- have to try to
37 achieve results with the resources we have and
38 being completely reactive in an approach, dealing
39 with low and high risk in the same way, et cetera,
40 is not a very good use of resources and doesn't
41 get you the maximum effectiveness and efficiency
42 out of those resources to protect fish habitat.
43 So I think in the -- we have to deal with the
44 realities of budgets and limits and we are going
45 to look at the best way to achieve results within
46 the reality of those limits and are looking at a
47 much better-focused program than one that is

1 reactive and responsive and doesn't take control
2 of its own agenda to achieve an outcome.
3 Q Well, looking into your crystal ball, can you
4 estimate how long of a process this will entail,
5 with respect to your consultations?
6 MR. BEVAN: The internal consultations are going to be
7 done quickly. The external ones, after that,
8 after we've got some models that we can discuss
9 with stakeholders, that will take a little more
10 time, but we don't have much time. The deputy has
11 given Kevin Stringer a very short timeline and
12 that means that the ADM of Ecosystems and
13 Fisheries Management will also be obliged to seek
14 better program delivery in the coming year or two.
15 Q When you say consultation with stakeholders, you
16 would include within that confines environmental
17 groups, would you not?
18 MR. BEVAN: Absolutely.
19 Q Now, I hesitate to get involved in aquaculture,
20 but I'm going to ask you a few questions about it.
21 MR. WALLACE: Mr. Leadem, is this an exhibit yet?
22 MR. LEADEM: I thank you, Mr. Wallace. We might as
23 well mark it now, Mr. Commissioner.
24 THE REGISTRAR: Marked as Exhibit number 35.
25 THE COMMISSIONER: I'm sorry, Mr. Wallace. Could you
26 just describe on the record what the exhibit is?
27 MR. WALLACE: Thank you, Mr. Commissioner. The 2009
28 Report of the Commissioner of the Environment and
29 Sustainable Development.
30
31 EXHIBIT 35: 2009 Report of the Commissioner
32 of the Environment and Sustainable
33 Development
34
35 MR. LEADEM: If I have time, I will come back to it,
36 just for one topic.
37 Q I'm going to suggest to you that your job is not
38 an easy one, and that you have a lot of challenges
39 that you face and that some of the challenges are
40 to deal with some what I think on the face of it
41 appear to be conflicting mandates. On the one
42 hand, for example, you enable aquaculture and on
43 the other hand, you regulate aquaculture; is that
44 a fair statement?
45 MS. DANSEREAU: That is a fair statement.
46 Q So the challenge is how do you do that? How do
47 you do that? I mean, how do you manage something

1 where aquaculture may bear risks to wild stock and
2 you acknowledge that, do you not, Deputy?

3 MS. DANSEREAU: I do, and I acknowledge that there is a
4 potential and so the same is true, though, in much
5 of our work. The same is true on the wild
6 fisheries side. We regulate it, but we also
7 support it and promote it, and we need to find the
8 right balance between making sure that the
9 industry in the wild fishery are able to -- is
10 able to survive and to thrive, so we really --
11 you're right, it's not an easy -- it's not an easy
12 road to walk down and the minister, of course, and
13 the government is in the same boat. It's tough
14 for a minister to be in this position, as well.

15 But it's -- the fact that we are a science-
16 based department, the fact that we are transparent
17 and collaborative, means that any decision that I
18 make is -- and any recommendation that I make to
19 the minister is based on the fullness of the -- to
20 the best of our ability the fullness of the data
21 that's available and the most up-to-date thinking
22 that's available. So no, it's not easy, but it
23 wouldn't necessarily be any easier if it was
24 separate in other departments.

25 Q I see. Maybe to assist me in asking questions of
26 future panels, you can tell me when you say that
27 you're provided with advice from scientists with
28 respect to this issue of aquaculture, who within
29 DFO science is providing that advice? Can you
30 give me some names?

31 MS. DANSEREAU: The way information comes to me is not
32 directly from individuals but we function, as you
33 know, through briefing notes and through -- and
34 those briefing notes make their way in a very
35 convoluted process through the system, sometimes
36 starting from the scientists and then the science
37 advice is incorporated into other advice, so it
38 moves its way up the system. The Pacific
39 Scientists obviously play a very key role in the
40 regulatory front on aquaculture and they work as
41 we saw earlier, they work closely with others that
42 are managing the wild fishery. And we also have
43 the conservation protection people and the
44 resource managers and they all have a role to play
45 in how the advice comes up.

46 And then it comes to me through -- mostly
47 through the regional directors general and the

1 ADMs responsible for the sector and together we
2 talk through much of this stuff. We don't simply
3 -- nobody dictates in the department. We really
4 work our way through the complexity of the issues
5 and one of the reasons it was important yesterday
6 to spend some time talking about the governance
7 structure of the department, it's really to show
8 that the matrix model is designed to allow us to
9 make them -- really the richest kind of decisions.

10 Q I heard you yesterday talk about the ecosystems
11 approach. Will the ecosystems approach inform
12 some of that challenge that you face with regard
13 to aquaculture --

14 MS. DANSEREAU: Absolutely.

15 Q -- with the risks? And I guess the question then
16 becomes for me, and you have to forgive me because
17 I'm not -- I don't always see things in ecosystems
18 approaches, but would you agree with me that open
19 net fish farms are not part of the ecosystem?
20 They're introduced into the ecosystem.

21 MS. DANSEREAU: They are introduced into the ecosystem
22 but many things are, and it's our job as
23 regulators to make sure that they don't harm the
24 ecosystem that they enter.

25 Q And maybe I'm being too naïve, but I would think
26 that if you have something that could be taken out
27 of the ecosystem, that it might be of benefit then
28 to the ecosystem as a whole, particularly if
29 there's some repercussions that are flowing from
30 that introduced thing into the ecosystem.

31 MS. DANSEREAU: Our job is to make sure that the areas
32 over which we have some responsibility are well-
33 managed. I can't speak to whether or not they
34 should be taken out of this ecosystem and put in
35 another ecosystem where they may have other
36 impacts. I can't speak to that, so I don't know
37 the answer to that. I know that our job is to make
38 sure that the ecosystems in which they are placed
39 are not harmed by their presence.

40 Q And if they -- if the evidence that you get from
41 your scientists suggest that they are being
42 harmed...?

43 MS. DANSEREAU: Then we would put systems in place to
44 -- we have -- one of the determinations, as you
45 heard David talk about, something called the HAD,
46 the Harmful Alteration and...? I had it when you
47 said it.

1 MR. BEVAN: Alteration and Destruction.

2 MS. DANSEREAU: ... and destruction of habitat, if that
3 is to be the case, an environmental impact
4 assessment needs to be done and further work needs
5 to happen. So then there are mitigation measures
6 required and that's when the no net loss policy
7 comes in and there are -- so there's a variety of
8 steps that need to be taken.

9 Q Some of the other challenges that you face are
10 some of the competing legislative mandates that
11 you have. For example, I believe Mr. Bevan,
12 yesterday you talked about the Cultus Lake sockeye
13 and that was up for designation as a listed
14 species within SARA, the **Species at Risk Act**, was
15 it not?

16 MR. BEVAN: It was recommended by COSEWIC that it would
17 be -- that it would be endangered under -- and
18 they make a recommendation. Then it's a
19 determination of the Government of Canada as to
20 whether or not it would be listed. And the law is
21 very explicit as to what factors can be considered
22 in determining whether a species will be listed.
23 In that case, the Minister of Fisheries conducted
24 socioeconomic analysis, a scientific analysis as
25 to whether or not these species could be rebuilt,
26 et cetera, and the recommendation from the
27 Minister of Fisheries to the Minister of the
28 Environment was that it would not be listed and
29 that a rebuilding plan would be established under
30 the **Fisheries Act**.

31 Q Would you agree with me that generally speaking,
32 the **Species at Risk Act** is much more stringent in
33 terms of its ability to protect a species,
34 particularly an endangered species, than the
35 **Fisheries Act**?

36 MR. BEVAN: I'm not -- I'm not going to agree with you
37 on that entirely. The reason is this. The
38 **Species at Risk Act** is much more proscriptive.
39 That I will absolutely agree with you on; whereas
40 the **Fisheries Act** is an enabling piece of
41 legislation that allows the government, through
42 the Minister, to do a wide variety of things.
43 **Species at Risk** is based on the premise that you
44 stop the decline of a species and put in a
45 rebuilding, but it doesn't talk about the
46 interaction of that species, it doesn't look at an
47 ecosystem in which that species is situated and

1 doesn't consider the broader issues. So there's
2 some limitations on the **Species at Risk Act**. It is
3 very proscriptive and obliges government to take
4 specific types of action, but because of its
5 narrow focus, it also doesn't look at the species
6 in the context of a broader perspective and that
7 can be done under the **Fisheries Act** because the
8 **Fisheries Act** is not proscriptive but rather
9 enabling and therefore there's a lot more
10 flexibility to deal with that particular species
11 in a wider context.

12 Q You're correct in suggesting that the SARA, the
13 **Species at Risk Act**, is proscriptive, and I would
14 put to you that if, for example, the Cultus Lake
15 sockeye were designated as endangered, it would be
16 very difficult to conduct a fishery in the Fraser
17 River.

18 MR. BEVAN: That's correct.

19 Q And it's -- that's one of the reasons why it was
20 not listed; is that not fair to say?

21 MR. BEVAN: One of the reasons it wasn't listed was the
22 very extensive socioeconomic implications. If one
23 were to take it to the extreme, one would have to
24 look at all the development taking place in the
25 Fraser River watershed above Cultus Lake and
26 including in Cultus Lake, so there's huge
27 socioeconomic implications and that -- the **Species**
28 **at Risk Act** provides government with some
29 flexibility on the list or not list, but after
30 it's listed, there's a very significant suite of
31 steps. Not all of them are like -- are going to
32 actually have the kind of outcomes we're looking
33 for in that they would stop fishing, they would
34 stop development, they would do all of that, but
35 would they look at the fish in the context of the
36 broader ecosystem and that's a question in my
37 mind, but certainly I agree with you, there would
38 be some significant impacts on the economy of the
39 Lower Mainland of British Columbia.

40 Q Are any of the panel members familiar with the
41 harvest rates for the Cultus Lake sockeye from
42 this past return in 2010? Were you aware, for
43 example, that the target was set at 30 percent and
44 roughly 50 percent of the Cultus Lake sockeye were
45 taken?

46 MS. FARLINGER: I can say that in general I'm familiar
47 with the harvest rate target that we set in the

1 Integrated Fishery Management Plan for Cultus Lake
2 sockeye. The intention of setting that harvest
3 rate was to, and the objective was to meet the
4 rebuilding objectives for the Cultus Lake stock.
5 There's still work going on to come to the final
6 understanding of all the data that is required
7 around the escapement of the stocks and the actual
8 harvest rates and so that probably won't be
9 available till a bit later in the Fall. Certainly
10 in season there was some indication that the
11 harvest rate on Cultus did go above 30 percent.
12 It went above 30 percent only at the time that
13 Fisheries and Oceans was confident that the
14 rebuilding objectives and that is the escapement
15 for Cultus Lake would at the very least meet the
16 rebuilding goals.

17 MR. LEADEM: Is there someone that will be coming later
18 on from DFO to speak to these issues that you can
19 tell me will come here and will be able to answer
20 some of the questions I have with respect to
21 escapement rates?

22 MR. WALLACE: Yes.

23 MR. LEADEM: Do we have any names that I can learn?

24 MR. WALLACE: I don't at this point, no.

25 MR. LEADEM:

26 Q Does the panel have any names? Obviously this
27 question I would like to put to another person
28 from DFO. Do you have a name that I could put
29 this question to, anyone on the panel?

30 MS. FARLINGER: I don't have the entire list of people
31 who will be providing testimony at the commission
32 here in front of me. I think it's exceedingly
33 likely that those who have been asked to provide
34 evidence will include those who've been -- who are
35 directly responsible for the management of the
36 fishery. I should say that if we do make changes
37 to the Integrated Fishery Management Plan in
38 season we do seek approval in the department to do
39 that and do set out conditions for any changes to
40 that plan.

41 Q Deputy Minister, I want to take the opportunity,
42 since you're available, to ask you some questions.
43 While you were the Associate Deputy Minister of
44 Fisheries one of the issues that you were tasked
45 with following was the controversial one of gravel
46 removal from Fraser River, was it not?
47

1 MS. DANSEREAU: Yes, it was.

2 Q And just so that we're clear on the area that's
3 canvassed by that gravel removal, that's the area
4 from Mission to Hope, is it, in the Fraser River?

5 MS. DANSEREAU: I think so. I -- I was more interested
6 in developing a process that would ensure that our
7 needs to protect fish habitat and the province's
8 need for flood protection, we were bringing
9 together the two sets of needs to make sure that
10 we both achieved our objectives. But the work was
11 done by the region and Paul Sprout can certainly
12 speak more fully to that.

13 Q All right. Well, either one of you will, perhaps,
14 be better poised to answer some of the questions I
15 want to ask.

16 MR. LEADEM: If I could have the last exhibit put --
17 placed up on the screen again.

18 Q One of the case studies from the Report from the
19 Office of the Auditor General was a report or a
20 case study that focused upon Fraser River Gravel
21 Removal Plan Agreement; you're familiar with that,
22 Deputy?

23 MS. DANSEREAU: Yes, I am. However, Paul Sprout, I
24 must say, Paul would be the person who should
25 answer these questions. He's much more familiar
26 with it.

27 Q All right. Well, I'll direct my questions then to
28 Mr. Sprout.

29 MR. LEADEM: If I could have the actual page, it should
30 be right after paragraph 1.40. 1.40. It's either
31 there or in the appendix.

32 MR. TAYLOR: Page 24.

33 MR. LEADEM: Thank you, Mr. Taylor. If you could just
34 highlight the portion that says "Fraser River
35 Gravel Removal Plan Agreement". Thank you.

36 Q In the first paragraph, there's a notation that:

37

38 The Department determined that gravel removal
39 was harmful to fish habitat.

40

41 Is that accurate, Mr. Sprout?

42 MR. SPROUT: I would have to qualify that. So my
43 understanding is that gravel removal under some
44 circumstances, if not done properly, depending on
45 the time of the period that it's done, depending
46 on the amount that's removed, and depending on how
47 it's actually done could be harmful. But if

1 certain conditions are met with respect to all the
2 parameters I've just noted, then it is our view
3 that there is no significant or long-lasting
4 harmful effects.

5 Q One of the species that's -- one of the 28 species
6 of fish that has high-quality habitat in that area
7 is the Fraser River sockeye; is it not?

8 MR. SPROUT: Fraser River sockeye in this area?

9 Q Yes.

10 MR. SPROUT: What are you thinking about?

11 Q Well, I'm --

12 MR. SPROUT: Are you thinking of juveniles?

13 Q I'm thinking that the Fraser River sockeye in some
14 portion of its life cycle would be using this
15 gravel.

16 MR. SPROUT: Okay. Well, just to back up a little bit
17 and talk about the lifecycle of sockeye, the bulk
18 of Fraser River sockeye are spawning in the upper
19 reaches of the Fraser River, the middle and upper
20 reaches, with some exceptions. Most of the
21 sockeye migrate out as one-plus individuals. In
22 other words, they're a year and a bit old. They
23 migrate quickly out of the river and don't reside
24 in the river. They tend to migrate downstream
25 quickly into the ocean and then head off to the
26 North Pacific.

27 Now, there are some populations that will
28 spend some period of time in the river for a
29 longer period of time than the majority, so I'm
30 not sure which you're referring to.

31 Q Well, can we agree that when this report says this
32 area has high-quality habitat for at least 28
33 species of fish that one of those species of fish
34 would be sockeye?

35 MR. SPROUT: I think we'd have to talk some more about
36 that to better understand it. I think when
37 they're talking about the 28 species, they're
38 referring to freshwater species, trout, whitefish,
39 sturgeon. They're probably referring to pink fry
40 because they're -- the area from Mission to Hope
41 is a spawning ground, portions of it are, for pink
42 salmon. There are also portions of that area that
43 are spawning grounds for chum salmon. Sockeye in
44 that area are typically spawning in lakeshore
45 areas. They might be migrating through that area,
46 but I'm not aware unless you have some information
47 about the residency rates of young sockeye in this

1 area, so I think we'd have to talk some more about
2 it.

3 Q All right. Well, let's go on and talk about flood
4 control, because one of the positions that the
5 province has taken in terms of its discussions
6 with the Department of Fisheries and Oceans is
7 that the gravel removal is necessary in order to
8 deal with flood control. You understand that to
9 be the case?

10 MR. SPROUT: Yes, that's what they have advised us.

11 Q All right. In this report - if we can just scroll
12 down a little bit, Mr. Lunn, please - under the
13 heading "Flood control", I find these words:

14
15 Engineering and scientific studies at
16 different sites, some commissioned by the
17 Department, concluded there was no reduction
18 in the flood profile after gravel removal.

19
20 So the department there, I take it to be the
21 Department of Fisheries and Oceans; is that right,
22 Mr. Sprout?

23 MR. SPROUT: Yes.

24 Q
25 These studies stated that changes in the
26 flood profile were minimal in the removal
27 area and were local to the removal site.
28 Thus, gravel removal would not significantly
29 affect the potential for flooding.

30
31 Are you of that view?

32 MR. SPROUT: I have two observations on this point.
33 The first is the Province of B.C. is a credible
34 organization with trained staff with competencies
35 and part of their role and responsibilities is to
36 determine whether they believe gravel accumulation
37 could have effect on human infrastructure and
38 therefore to advise us accordingly. It's not the
39 job of the Department of Fisheries and Oceans.
40 That's not our role and responsibility. It's the
41 province. And the province has competency in this
42 area, so that's the first observation I have.

43 The second observation I have is the studies
44 that you're referring to did suggest that if you
45 remove these quantities of gravel, the overall
46 height of the river throughout that section would
47 only decrease by a few inches; however, the

1 province has reacted to that very observation.
2 The province has said that may be the case, but
3 there are accumulations of gravel at certain
4 specific locations that would be substantially
5 reduced if removed and the water levels in those
6 specific locations would be reduced enormously.
7 And further they've argued that those particular
8 accretions of gravel if not removed would cause
9 the water, the flow of the Fraser, to deflect into
10 banks, to erode the banks and to flood fields.

11 But I come back to my first observation.
12 This is the role of the province. Our job as a
13 department is to say okay, if that is the problem,
14 if you're concerned about infrastructure
15 implications, then our job is to say that under
16 what conditions could gravel be removed? How
17 could we minimize the effects on stocks that we
18 would be concerned about? And so that's our role.

19 Q So you would simply say well, if the province is
20 coming to us with this plan and proposal and the
21 province is credible in terms of its presentation,
22 that our job then is to see how we can accommodate
23 the province's request; is that a fair statement?

24 MR. SPROUT: Our job is to implement our policies.
25 That's our job. The deputy has explained that.
26 So our policies and our programs with the
27 resources we have, so what are our policies in
28 this case? Well, it's a habitat policy. We have
29 environmental legislative responsibilities and so
30 our test is to see how well we've implemented our
31 policies and our legislation. And it is the
32 province's role to determine what they believe is
33 relevant relative to the flooding implications.
34 Our role is to react in a way that assures us that
35 we've been consistent with our policies, given the
36 resources that we are able to direct at that
37 particular activity.

38 Q And you're aware that there's some studies done by
39 UBC that show that there's no flood benefits to be
40 derived from the gravel extraction?

41 MR. SPROUT: You know, what I'm aware of is this is
42 controversial. What I'm really struck by again
43 and again in this field is there's -- it is
44 controversial. There are people that feel
45 passionately that gravel removal is absolutely
46 essential. There are communities in the area that
47 you've talked about between Mission and Hope -

1 Chilliwack is one - that are absolutely insistent
2 on gravel removal because they're concerned about
3 the flooding effects on their community.

4 There are other interests that are very
5 worried about gravel removal because they see it
6 as harmful to fish. So it is rife with
7 controversy. That I am aware of.

8 But again, from the department's perspective,
9 what we have to go into these issues with is,
10 okay, what is our policy? What are we trying to
11 do? What are the resources we have? And try to
12 adhere to that as best we can, recognizing that
13 there may be diverse views on this matter plus
14 many others.

15 Q But the driving policy -- we started off this
16 discussion, the driving policy that should inform
17 your decision-making is conservation; is it not?

18 MR. SPROUT: The primary policy, as you correctly
19 pointed out and you've drawn from departmental
20 literature, is conservation. But in this case
21 here, if I could elaborate, we're guided by our
22 habitat policy, the 1986 Habitat Policy, and we're
23 guided by legislation, environmental legislation.
24 And we're further guided by consultation
25 arrangements and understandings. So all of those
26 things we need to bring to bear in considering the
27 question of gravel removal and how the department
28 would react to it to satisfy ourself that on
29 balance we think that the gravel removal is done
30 in the least harmful fashion possible, recognizing
31 that this is very challenging and it's remarkably
32 challenging to try to reconcile the differences of
33 views in this area on gravel removal.

34 Q Well, I agree with you that it's quite
35 challenging. It's just another one of the
36 challenges that faces DFO; is it not?

37 MR. SPROUT: Well, I thought you made a really good
38 observation earlier when you talked about us being
39 an enabler and a regulator and I thought this is a
40 really thoughtful summary of the department. It's
41 the way I see us as well. And so you asked the
42 question about how do we strike that balance? And
43 earlier yesterday I argued this. I think one of
44 the ways we strike the balance, notwithstanding
45 our policies, is by talking with people and by
46 bringing people together with diverse views. So
47 whether that's in fisheries or in habitat, you

1 talk with people that might believe in the
2 removal; we talk with people that wouldn't believe
3 in the removal and through that conversation, it
4 -- I think it helps the department achieve this
5 challenge of being an enabler plus a regulator.
6 It's not perfect, but I believe the process side
7 of this is an important consideration in answering
8 the question that you posed about how.

9 Q Well, also I will put to you that one aspect of
10 maintaining or surmounting that challenge is to be
11 transparent, is it not; is to be absolutely
12 transparent in the amount of information that you
13 give to members of the public; is that not
14 correct?

15 MR. SPROUT: Yes. I think ideally you do want to be
16 transparent and I would argue that there is a
17 significant transparenence in the departmental
18 system. And I think it's a model that if you look
19 at the department over time you can see
20 increasingly, particularly with the access to
21 information technology and so forth that
22 transparenence has actually become something that is
23 being given more and more consideration. So I
24 agree with it on an idealistic basis and I believe
25 the department is aspiring towards that objective
26 and we can point out instances where we have moved
27 toward there, but I believe it's something that is
28 a work ultimately in progress.

29 MR. LEADEM: I'm going to allow my ten percent and stop
30 now, Mr. Commissioner, and I look forward,
31 Gentlemen and Ladies, to your return when I may
32 have more specific questions to ask you. Thank
33 you.

34 MR. WALLACE: Thank you, Mr. Leadem. I have Mr.
35 Rosenbloom next on my list for the Gillnet
36 Association and Area B Harvest Committee.

37 MR. ROSENBLOOM: Yes. My name is Don Rosenbloom and I
38 appear on behalf of Area D Gillnet and Area B
39 Seiner. I'm mindful that this panel has been
40 presented to us in respect to organizational
41 structure. I appreciate that we're talking from
42 30,000 feet of elevation and I want to maintain
43 that elevation, but I'm not in the slightest
44 slighted if commission counsel interrupts me and
45 indicates that there will be more appropriate
46 individuals to advance a few of these questions to
47 you. But I want to make sure that these questions

1 are aired at this inquiry and therefore, I pose
2 them now for your consideration.
3

4 CROSS-EXAMINATION BY MR. ROSENBLOOM:
5

6 Q Ms. Dansereau, we learn about your background in
7 terms of bringing your skills to your current
8 position as deputy minister and we also learned
9 that you moved into the fisheries field as ADM two
10 years ago in 2008 and we learn a little bit about
11 your previous background. We also -- I have been
12 informed by my clients that a previous regional
13 director general for the Pacific Region, a Donna
14 Petrachenko, was put into that position directly
15 from a position at Parks Canada; is that correct
16 to the best of your understanding?

17 MS. DANSEREAU: Oh, that was long before my time. One
18 correction. I didn't come in as ADM. I came in as
19 associate deputy minister.

20 Q Thank you very much.

21 MS. DANSEREAU: But I guess --

22 Q About two years ago?

23 MS. DANSEREAU: Yes.

24 Q Yes.

25 MS. DANSEREAU: Yes.

26 Q And in any event, others in your panel will
27 correct me if I have in any way misstated the fact
28 that Ms. Petrachenko came directly to the director
29 general position Pacific from Parks. My question
30 to you is this: what, in your opinion, is the
31 efficacy of bringing people into such senior
32 management positions of either associate deputy
33 minister or indeed director general of Pacific
34 Region when, in fact, they have not been nurtured
35 through the Fishery bureaucracy of DFO in assuming
36 such high positions and being responsible for
37 management?

38 MS. DANSEREAU: Well, thank you for the question. I
39 believe that at the more senior level, a big part
40 of our job is to be integrators of all information
41 and integrators of all points of view in order to
42 provide the best possible advice, and we become
43 far more generalist than we ever are specialists
44 in any one field, because for a person to be a
45 specialist in any part of this department, in my
46 job, they would have to be a specialist in too
47 many fields to pick from.

1 So the skill set that I bring comes from
2 significant amount of natural resource management
3 in British Columbia. I was quite involved in
4 forestry here and managing a large department, so
5 I was Deputy Minister of Transportation in British
6 Columbia. That's a large department, as well.
7 It's a skill set that is really, as I said, an
8 integrator, a bringing people together, an
9 analyzer of risk regardless of the field and I
10 personally agree with the approach obviously,
11 because I think it -- I can be a challenger to the
12 information that comes before me in a way that is
13 not -- I don't have any historical vested interest
14 in.

15 Q And you would apply the same analysis to the
16 appointment of Ms. Petrachenko?

17 MS. DANSEREAU: I don't know. I can't speak to her --

18 Q All right.

19 MS. DANSEREAU: -- appointment. I didn't know her.

20 Q So it's a bit of an unfair question, but you're
21 saying that you are supportive of the concept of
22 bringing individuals into senior management
23 positions within DFO who don't actually have a
24 background in Fisheries?

25 MS. DANSEREAU: I do to some extent, although I -- and
26 I have filled some of the senior positions myself
27 in the department. The management team, I was
28 looking at the risk, the integrated risk profile
29 and the champions that were identified next to
30 them and many of those people have now moved on.
31 We're in a period in the federal government of
32 significant demographic change and so people are
33 moving around, but there's a skill set and there's
34 an approach in values and ethics that we -- that
35 is shared across the system, so as a general rule,
36 I think if a person's own ability through our
37 merit system, through the interview process and
38 through the testing that we do as people, every
39 promotion in the federal system is based on a
40 merit principle. The merits are determined by the
41 people who interview and who assess, if that
42 person is determined to hold the proper
43 qualifications, then the specific background is
44 not necessarily relevant.

45 Q So you don't feel that you are prejudiced by being
46 given the senior appointment starting in 2008
47 without a direct background in fisheries?

1 MS. DANSEREAU: No.

2 Q All right. The -- I'm sorry?

3 MS. DANSEREAU: That's my view of myself, so...

4 Q Yes. I appreciate that. I want to focus for a
5 moment with lower management backgrounds,
6 individuals, their backgrounds and their skills
7 and my clients, keep in mind they're the
8 commercial fishery, they have provided me with a
9 comment and I just want to read it to me for your
10 response. In a briefing memo to myself from my
11 clients it reads, in part:

12
13 Up until the mid-1990s DFO maintained a large
14 fleet of patrol vessels of various sizes.

15
16 Let's stop there for a moment. I assume you agree
17 with that?

18 MS. DANSEREAU: I think that's true, although David
19 Bevan is much better suited to speak to that
20 history.

21 Q I welcome anyone on the panel speaking to this.

22 MR. BEVAN: In the mid -- we ran a fleet of patrol
23 vessels operated by the Ships Branch. We also had
24 a number of what we call program vessels. The
25 program vessels were not particularly good at that
26 time and when we were faced with budget decisions,
27 as we were, we chose the option of reduction of
28 the patrol vessels and to increase the number of
29 program vessels. Those are the ribs and the work
30 boats that are run by fishery officers, as we have
31 a very, you know, significant fishery, for
32 example, the gillnet fishery, the fisheries that
33 are conducted close to shore. And those platforms
34 are very good at getting fishery officers where
35 they need to go.

36 We also took a decision in the face of budget
37 restraint to do that so that we could avoid having
38 an undue impact on the fishery officer cadre, so
39 that's what we did at the time in the face of the
40 need to respond to budget reductions, to tackle
41 the deficit.

42 Q Okay. Hear me out, as my clients in a memo
43 briefing document carry on. They say:

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45 Many of these patrol vessels were out on the
46 water year-round monitoring both fisheries
47 and fish stocks.

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You generally agree with that?

MR. BEVAN: I think they were out there for longer than the program vessels can be, but I would also point out that the fisheries and the fish are not always there in the year-round process. So that means that the capacity of the program vessels is such that we can cover off the time when the fish and the fishermen are there and the reduced fleet is able to cover off the rest of it.

MR. ROSENBLOOM: All right. I see Mr. Wallace has comment.

MR. WALLACE: Mr. Commissioner, if this line of questioning is going towards enforcement, I can ensure -- assure Mr. Rosenbloom that that will be covered, but I may be wrong in the direction.

MR. ROSENBLOOM:

Q It is not actually going towards enforcement so much as it's going to the issue of whether the more junior management positions with DFO are individuals that have had experience on the grounds and know the fishery, and so allow me just a few more lines of this so you appreciate my -- in fact, I will read a number of sentences and then ask for your comment.

They say:

Many of these patrol vessels were out of (sic) the water year-round monitoring both fisheries and fish stocks. These vessels were also the training platforms for almost all fishery personnel, whether a young biologist or aspiring fisheries officers. In those days there wasn't a division between management and enforcement. People saw the fish, the various commercial fisheries, walked the streams and enumerated the returning salmon populations. DFO is now at the point where all of those personnel that acquired the empirical knowledge of the fisheries either have retired or will be in the next few years. Because the entire patrol fleet was decommissioned several vessels were retained to serve double duty as part of the Coast Guard and enforcement, is out of the water in a small fleet of Zodiacs. The new guard of DFO managers have little

1 real knowledge or experience with either the
2 fish or the user groups that they are charged
3 with managing.

4
5 In fact, the DFO now hires through the
6 standard government job competition postings.
7 If a person has the right points, they can be
8 hired to take over the management of a
9 resource that they have no knowledge of.
10 Case in point...

11
12 And then they speak to this regional director,
13 Donna Petrachenko.

14 Now, there's a lot there, but I ask for your
15 comment, any of you. Am I being briefed in an
16 accurate way in the sense that would you agree
17 that there has been a dramatic change in the
18 opportunities for those that are now holding
19 management positions within DFO to be out on the
20 grounds, learn about the fishery and conduct
21 themselves with empirical background?

22 MS. DANSEREAU: I would say, and Sue Farlinger will
23 answer more fully on the succession planning that
24 happens in the region here, but in terms of the
25 federal government as a whole, we still have many,
26 many young people coming into the department that
27 come from university backgrounds in fisheries, in
28 resource management, that make their way up
29 through the system and will eventually be the
30 people sitting in these chairs in future, so we
31 are -- I'm not sure -- I can't speak to whether or
32 not you've been briefed correctly.

33 I know the point system is not something that
34 we use in terms of hiring at this point. We -- we
35 have a merit-based approach and that merit-based
36 approach determines at all levels whether or not
37 the person had the competencies to do the job, to
38 meet the job description requirements, so it's
39 still based on the job description. The person is
40 interviewed, is tested, various tests at various
41 levels, and so they must have an understanding and
42 a knowledge of the work that they're doing and the
43 more junior they are, the more narrow their
44 expertise is expected to be.

45 I can say that pretty much everybody in our
46 department is expected to have some experience or
47 to gain some experience at working with our client

1 groups and as we defined them earlier, our client
2 groups include everybody from communities to
3 commercial fishers to recreational fishers to
4 aquaculturists to environmental groups, so the
5 knowledge base is broad. I would say that those
6 who think that people in the past had more
7 knowledge, I'm not sure I would agree with that
8 point.

9 Q Well, let me direct it to Mr. Bevan --

10 MS. DANSEREAU: Okay.

11 Q -- because he has been so deeply involved in the
12 department for so many years. Would you agree
13 with me that the new generation or new cadre of
14 management team at DFO have not -- will -- are not
15 bringing to the job the empirical experience that
16 you recall in the past where your officers and
17 your fishery civil servants were out on the
18 grounds?

19 MR. BEVAN: I think I'll let Paul speak perhaps to the
20 B.C. Pacific Region or Sue to the specific issues
21 around British Columbia. Clearly, we're in a
22 demographic challenge. It's noted as one of the
23 risks that the department faces and we're taking
24 steps to deal with it.

25 One of the choices we made when we took those
26 vessels out was to make sure we could maintain in
27 the face of budget constraints, hiring of fishery
28 officers, for example. So we continued to hire
29 fishery officers. We had a few years where we
30 didn't, but most of the time during those
31 restraint years, we were still hiring people to
32 keep the cadre of officers renewed. And as they
33 gain experience, they gain the knowledge from
34 their fellow officers. And it's a three-year
35 process now for a new recruit in the fishery
36 officer cadre to go through the cadet phase and
37 then to go into the field where they're going
38 through formal on-field training.

39 For our resource managers, I can't speak
40 again to the specifics here, but generally we are
41 again making sure we do whatever we can to have
42 that intergenerational corporate knowledge passed
43 on. It has been situations in some regions where
44 they've had the opportunity to job-shadow and
45 bring a person on before the other person leaves,
46 so we are putting in place formal processes to
47 make that happen, but the reality is your clients

1 had a lot of experience working with people who
2 had a lot of experience and they're now faced with
3 the situation that those individuals are going to
4 move on and we have a challenge of replacing them.

5 I don't think the only way to learn how to do
6 the job is to spend time on a vessel. On one
7 hand, it is a fact that you should and we do this
8 with our resource managers. We allow them to go
9 on cruises. We encourage them to go on cruises to
10 get a feel for the science work that's done, and
11 if there's an opportunity for them to spend time
12 in fleets where there are short trips, we'd also
13 encourage that, want that kind of experience. But
14 it's not the -- it's not the only thing we do for
15 them.

16 Q Mr. Sprout, briefly...?

17 MR. SPROUT: I partially agree with your clients' views
18 on this and I'd like to give myself -- I'd like to
19 show my -- use myself as an example. But I also
20 want to explore very briefly why things have
21 changed based on my own personal experience.

22 When I started in the department back in the
23 mid-1970s, as a biologist, I did work on the
24 patrol vessels and on charter vessels and I did
25 work in the -- I did work with the commercial
26 fishing industry. That was the principal industry
27 at that point. That was the principal client.

28 Now my view is, is that over time, it's more
29 and more challenging for our staff to be able to
30 have the access I had for the reasons you've
31 indicated. But at the same time, is it completely
32 gone? And my answer is no, it's not. Because we
33 still conduct charters in British Columbia where
34 we engage commercial fishermen and individuals can
35 go out and work on commercial charters and we
36 still have patrol vessels in British Columbia
37 where individuals from the department can go on
38 the patrol vessels. It's not like the degree that
39 it was when I started, but it's still present.

40 Now, the other point I wanted to make is
41 this. When I started, back over 30 years ago, we
42 had really just one client. It was the commercial
43 fishing industry. We -- the recreational fishery
44 was in Georgia Strait. There was virtually no
45 recreational fishery in Northern B.C., not much to
46 speak of in the West Coast of Vancouver Island.
47 Obviously, First Nations were there, but we did

1 not have strong relationships.

2 Environmental movement in B.C., frankly, was
3 very modest, if even present at all in my
4 recollection. So when you skip forward to today,
5 that's all changed. So a young DFO member coming
6 into the department today has to have a
7 relationship not just with the commercial
8 industry, but with First Nations,
9 environmentalists, recreational fishing interests.
10 So I think you have to look at this more broadly.
11 So in summary, yes, I partially agree with the
12 Area D Gillnet/B Seine. Things have changed over
13 time. Staff probably don't have the access that I
14 had when I first started out over 30 years ago,
15 but also, the context has changed remarkably and
16 the kind of people that you really want today are
17 people that are familiar with all of the
18 constituents, all of the clients. It's not just
19 one group any more. And people that are able to
20 bring them together, the integration element, so I
21 would provide that perspective from my point of
22 view.

23 Q And it's partly a budgetary issue, isn't it?

24 MR. SPROUT: It's not just a budgetary issue. It's too
25 simple to say it's a budgetary issue. The reality
26 is, is DFO has to change over time. The context
27 changes over time. We -- constituencies emerge,
28 issues occur that didn't occur in the past and you
29 have to be capable of adjusting. I think the
30 department has made those adjustments, but I
31 represent part of the old group that's now retired
32 where I came up through the ranks that you
33 described that your clients referred to. But
34 today's person, I think, has to be informed and
35 get experience from other sources than just what
36 might have been done traditionally.

37 MR. ROSENBLOOM: I have further questions obviously.
38 This might be the correct time for a break, lunch.

39 THE COMMISSIONER: Yes. Thank you. Mr. Wallace, if
40 you could renew your discussions with counsel
41 before they leave, just to make sure. We've got
42 two hours remaining and I want to get everybody
43 in.

44 MR. WALLACE: Thank you, I will do that.

45 THE COMMISSIONER: Thank you.

46 THE REGISTRAR: Hearing is now adjourned until 2:00
47 p.m.

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

4 THE REGISTRAR: Order. The hearing is now resumed.
5 MR. WALLACE: Good afternoon, Mr. Commissioner. We
6 have another five minutes from Mr. Rosenbloom.
7 MR. ROSENBLUM: Thank you very, very much. My learned
8 friend has forgotten the fact that Mr. Blair
9 kindly gave me his five minutes just at the lunch
10 hour and so I actually have ten. Look, I think
11 the relevant thing here, Mr. Commissioner, is
12 obviously time is of the essence in this inquiry,
13 I respect that, but if there are questions being
14 asked that are of assistance to the Commission at
15 the end of the day in terms of the report, I hope
16 that the Commission will appreciate the fact that
17 we may be going over time, where we'll all learn a
18 lesson in terms of being counsel and informing
19 Commission counsel the night before that we're
20 going to inflate our time by two or three times so
21 we don't have this kind of pressure, but I will be
22 brief.
23

24 CROSS-EXAMINATION BY MR. ROSENBLUM:
25

26 Q I want to turn to the matter of aquaculture for a
27 moment, and I may be the only one in this room not
28 understanding this issue, but we have the **Morton**
29 decision of last year, 2009, and we learn that the
30 DFO will be applying the jurisdictional advice
31 that the Supreme Court has given in respect to
32 that issue and yet, we learn that out in the
33 Maritimes, in the east coast, you were not
34 applying that principle. Can you, very briefly,
35 inform me how the decision of the B.C. Supreme
36 Court, which has not been appealed, which deals
37 with jurisdiction, would have application in
38 British Columbia, but not in the rest of Canada?

39 MS. DANSEREAU: I can certainly do my best in answering
40 the question. The British Columbia decision had a
41 lot to do with definition of a fishery, but also
42 the instrument that we use to define our
43 relationship between the Province and the Federal
44 Government. We use different instruments in
45 different provinces and we have different
46 negotiated approaches to how we manage the issues.
47 So each province is somewhat different and we have

1 accepted that, in British Columbia, we had to
2 develop a new way of dealing with our shared
3 jurisdiction because it is, in fact, still shared.

4 Q But I gather from your response that you are of
5 the opinion that issues raised and deliberated
6 upon by the B.C. Supreme Court do not apply to the
7 east coast?

8 MS. DANSEREAU: Well, the regulation that we are
9 developing at the moment applies to British
10 Columbia.

11 Q That doesn't quite answer my question, does it?
12 My question is are you taking the position, as a
13 department of the government, that the B.C.
14 Supreme Court decision, in terms of jurisdiction,
15 does not apply to the east coast?

16 MS. DANSEREAU: Yes.

17 MR. TAYLOR: Mr. Rosenbloom is pretty close to law
18 here, and I don't think it's appropriate to be
19 calling on these witnesses to answer.

20 MS. DANSEREAU: I am definitely not a lawyer.

21 MR. ROSENBLOOM:

22 Q Thank you. My colleague --

23 MR. TAYLOR: But at the same time, she's right.

24 MR. ROSENBLOOM: In which case, if she knows the law
25 that well, I'll carry on with this line of
26 questioning. My colleague, Mr. McDade, raised the
27 business of the website and the article from the
28 *National Post* that was and is currently on your
29 website. My colleague here to my left has
30 indicated that he has objections to the
31 admissibility. Mr. Commissioner, I don't want to
32 take up valuable time in arguing this out now, but
33 I do take the position that that article should go
34 into the record. I take the position that I'm
35 requesting of the Panel that there be production,
36 especially from Ms. Farlinger, that there be a
37 recording of the articles that have been on the
38 website over, let's say, approximately, the last
39 six months. So I'm formally making that request
40 and if there are issues by counsel for the
41 Department and myself about admissibility, I think
42 it should be argued at another time. We don't
43 have to take up the valuable time of this panel to
44 argue that matter out, but I am making that
45 request.

46 THE COMMISSIONER: Mr. Rosenbloom, may I then suggest
47 to Commission counsel, and to yourself, and to Mr.

1 Taylor, that the article you're referencing, I
2 believe is the one that was linked on the DFO
3 website --

4 MR. ROSENBLOOM: That is correct.

5 THE COMMISSIONER: -- and that's a DFO website that was
6 brought up on this day, and I would suggest that
7 the article be marked purely for identification
8 purposes so when it comes time, if it becomes
9 necessary to have any submissions, it is, in fact,
10 the article that this panel and yourselves
11 actually viewed today.

12 MR. ROSENBLOOM: I appreciate that and, yes, the
13 article is entitled, "This Science is Fishy," and
14 if I may be permitted not only to file the article
15 in the manner you have suggested, but also, I have
16 the page from the website so there's reference in
17 the website to the link of this article so there's
18 no misunderstanding. It's a four-page -- five,
19 six, seven-page document. I'll show it to counsel
20 before I suggest that it be marked.

21 MR. TAYLOR: Well, I certainly have no objection to it
22 being marked as an exhibit for identification, and
23 then we can argue about it later.

24 THE COMMISSIONER: Right. Well, that's fine. If
25 counsel, Commission counsel, Mr. Rosenbloom and
26 Mr. Taylor are in agreement, it would be filed
27 strictly for identification purposes.

28 MR. WALLACE: Thank you, Mr. Commissioner. Then for
29 identification --

30 THE REGISTRAR: L.

31 MR. WALLACE: -- L. This is an extract from the
32 Fisheries and Oceans Canada website of some seven
33 pages, or so, containing an article from the
34 *National Post* of June 18, 2010, entitled, "This
35 Science is Fishy."

36 MR. ROSENBLOOM: And may I have an understanding that
37 Ms. Farlinger will produce the articles that have
38 been on the website for the last, approximate, six
39 months?

40 MR. TAYLOR: Mr. Commissioner, we have an arrangement
41 with Commission counsel that only Commission
42 counsel ask us for material. It works pretty
43 well. Mr. Rosenbloom can ask Commission counsel
44 and he can make a request to me if he wishes. I
45 don't think we need to take up time here.

46 MR. WALLACE: Again, if we can take this under
47 advisement and discuss it with counsel, and if

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PANEL NO. 3
Claire Dansereau
Cross-exam by Mr. Rosenbloom {cont'd}

1 there's a -- something on which you need to make a
2 ruling, we'll come back to you.
3 MR. ROSENBLOOM: Thank you. I would now ask that this
4 document be marked as an exhibit for
5 identification.

6 THE COMMISSIONER: That's L, yes.
7

8 EXHIBIT L FOR IDENTIFICATION: 7-page extract
9 from the Fisheries and Oceans Canada website,
10 containing an article from the *National Post*,
11 June 18, 2010, entitled, "This Science is
12 Fishy."
13

14 MR. ROSENBLOOM: Thank you.

15 THE COMMISSIONER: Thank you, Mr. Rosenbloom.

16 MR. ROSENBLOOM:

17 Q My last area of examination relates to the funding
18 of your department. And again, if I venture below
19 the 30,000-foot range, and Commission counsel
20 wants to inform me of a better party to ask these,
21 direct these questions to, I'll obviously take his
22 suggestions.

23 I read, Ms. Dansereau, from your précis of
24 your evidence that you were to give here this
25 week, that the Department is facing a five-percent
26 budget reduction, and I assume that is for the
27 fiscal year 2011 to '12; is that correct?

28 MS. DANSEREAU: Pardon me. The Federal Government is
29 in a process called strategic review, and this
30 would be not just for one year, it's a permanent
31 reduction in the allocations, but it's an ongoing
32 process that we have been asked by the Treasury
33 Board, and by the Minister of Finance, and the
34 structure to analyze all of our programs to --
35 with the view of reducing our expenditures by five
36 percent. So it's not in the old ways of putting a
37 five-percent cut across, it's simply for us to
38 present to Treasury Board where five-percent cuts
39 could come from programs that may no longer be
40 necessary.

41 Q Now, but did I understand you to say it's a
42 permanent thing in the sense that you're being
43 asked to do that year after year, or did I
44 misunderstand?

45 MS. DANSEREAU: No. No, no. Forgive me. No, it's
46 five percent once and we get to implement it over
47 a three-year period.

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PANEL NO. 3

Claire Dansereau

Cross-exam by Mr. Rosenbloom {cont'd}

1 Q I see. Now, this past fiscal year we're currently
2 dealing with, 2009 -- excuse me, 2010 to 2011, was
3 there also a budget cut for your department during
4 that time?

5 MS. DANSEREAU: No, but there was an operational freeze
6 and --

7 Q An operational --

8 MS. DANSEREAU: Freeze, which meant that in the budget,
9 it was decided that we would not receive increased
10 appropriations, but the salary increases that had
11 been negotiated with the unions would come into
12 play anyway, and so we have to absorb those
13 increases without receiving new money.

14 Q Okay. Now, in addition to absorbing those
15 increases, would I be correct in suggesting to you
16 that you're having to absorb some unanticipated
17 costs, and I speak firstly of the **Morton** decision
18 and the fact that you're now inheriting a portion
19 of jurisdiction that wasn't your jurisdiction up
20 till recently; you agree with me there?

21 MS. DANSEREAU: I agree with you that we will have
22 additional costs as a result, but we did receive
23 money to cover off those costs.

24 Q I see. And money to your satisfaction in terms
25 of --

26 MS. DANSEREAU: Yes.

27 Q -- being able to do it?

28 MS. DANSEREAU: Yes.

29 Q And so this was an added advancement to you
30 through Treasury Board?

31 MS. DANSEREAU: Yes.

32 Q And in addition to that, you've had to bear a
33 great expense in respect to this very inquiry,
34 haven't you?

35 MS. DANSEREAU: Yes.

36 Q And was that also accommodated for --

37 MS. DANSEREAU: Yes.

38 Q -- in your budget?

39 MS. DANSEREAU: Yes.

40 Q And when you speak of being -- facing down a five-
41 percent reduction for next year, is there going to
42 be some special accommodation to cover both the --
43 this judicial inquiry, this Royal Commission, and
44 the aquaculture jurisdiction?

45 MS. DANSEREAU: The aquaculture funding that we
46 received is permanent so it's what we call in
47 addition to our base.

1 Q Yes.

2 MS. DANSEREAU: And will remain year over year. The
3 strategic review process, however, is one where we
4 look at all of our programming and we will make
5 recommendations hopefully around programs that
6 could be either accommodated under some other
7 mechanism, or that we no longer need to do and we
8 will provide that information to the Treasury
9 Board ministers who will make a decision on that,
10 and the decisions will be then communicated via
11 the budget next year.

12 Q Well, the fact that there's going to be a five-
13 percent cut is, obviously, consequential to all
14 stakeholders in respect to this industry, isn't
15 it?

16 MS. DANSEREAU: I would say -- well, to -- it could be.
17 It depends on -- we hope we've done a
18 significantly good enough job to make sure that we
19 -- that there is not that much pain felt.

20 Q Well, this is an awfully general question to you,
21 Ms. Dansereau, but would you agree with me, or let
22 me ask you this, are all science programs,
23 departments, projects, stock assessment, stream
24 enumerations, et cetera, adequately funded up till
25 now, in your opinion, during the time of your
26 tenure?

27 MS. DANSEREAU: I would say yes, but it -- you know,
28 I'm sure if we spoke to others at a greater --
29 more directly connected to each of the activities,
30 they would probably prefer to have more money.

31 Q And you'd probably agree with me that within your
32 department, there would be controversy and there'd
33 be those that didn't agree with you on that
34 question?

35 MS. DANSEREAU: Always.

36 Q Always.

37 MS. DANSEREAU: In any department.

38 Q Yes. I also read that in the B.C. Budget Plan,
39 and this is a document that we had yesterday, just
40 give me a moment, please, I read in your business
41 plan, 2010/2011, I'm not good at exhibit numbers,
42 but Mr. Registrar will give me the exhibit number
43 for Business Plan 2010/2011.

44 THE REGISTRAR: 25.

45 MR. ROSENBLUM: 25? Thank you.

46 Q I read, under -- at page 3 of 28, it's the
47 Intergovernmental Relations section, down at the

1 bottom of the page, you say, in part -- you, the
2 Department, says, in part:

3
4 Additionally, the B.C. budget situation is
5 resulting in withdrawal of funding for
6 provincial source management programs,
7 services and initiatives which places higher
8 expectations and pressures on Duo's funding.
9

10 My question to you is this. Can you just brief
11 us, even in a cursory way, what are you facing
12 there in terms of British Columbia budget and how
13 is it affecting DFO and your department's
14 financing?

15 MS. DANSEREAU: I can't speak to the B.C. budget at
16 all, but I can say that there is an increase in
17 activity that could have an impact on fish habitat
18 monitoring and fish habitat analysis and so we
19 will -- as B.C.'s economy progresses and then
20 grows, we will have an added workload. That is
21 essentially what I -- what -- this is what I think
22 Sue is best placed to speak to that specific item.

23 Q Yes, I wonder if you could explain that paragraph,
24 Ms. Farlinger.

25 MS. FARLINGER: Well, once again, I'll say that Mr.
26 Sprout was RDG when this business plan was put
27 together, but I certainly participated in that.
28 There has been an increase in the number of people
29 on the ground on some provincial programs, and
30 these are folks that we work together with in
31 terms of some of our work on fish habitat. There
32 is a reference there to new projects, in terms of
33 our having to do reviews and, therefore, respond
34 to issues on fish habitat with new projects.

35 Q Is the B.C. budget situation putting added
36 pressure on your budgetary situation?

37 MS. DANSEREAU: Sorry, I would -- I'm sorry, I just
38 don't think it's the B.C. budget pressure, it's
39 more the growth in the economy and in the resource
40 side of things that would be putting pressure on
41 our activities.

42 MR. ROSENBLOOM: Might I ask, Commission counsel, will
43 there be other opportunities to explore this
44 critical question of the funding of the
45 Department, and whether it's adequate and whether
46 it's providing the services?

47 MR. WALLACE: Indeed, Mr. Rosenbloom. Thank you. At

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PANEL NO. 3
Paul Macgillivray
Cross-exam by Mr. Harvey (WCTAGA/UFAWU)

1 the -- the last two panels scheduled for the
2 hearing are a return of senior officials, I
3 anticipate, including the Deputy Minister, and
4 immediately before that, a panel on budgeting.
5 That's a factor that it seems to be appropriate to
6 deal with those things after we'd heard the
7 individual issues and, also, we don't yet have all
8 the information we require.

9 MR. ROSENBLOOM: Thank you. I have no further
10 questions. Thank you.

11 MR. WALLACE: Thank you. Thank you, Mr. Rosenbloom.
12 Mr. Harvey?

13 MR. HARVEY: So it's Chris Harvey for the Area G
14 Strollers and the UFAWU. I have a few questions
15 to put to the panel on the -- under the general
16 subject head of organization structure, and my
17 questions pertain to the analysis of economic
18 impacts of fishery management decisions.

19
20 CROSS-EXAMINATION BY MR. HARVEY:

21
22 Q First, Mr. Macgillivray, I see from your c.v. that
23 from 1994 to 1997, you were the Chief Economic and
24 Commercial Analyst in the Pacific Region; is that
25 correct?

26 MR. MACGILLIVRAY: Yes, that's correct.

27 Q Yes. Can you just give a description of what that
28 position involved?

29 MR. MACGILLIVRAY: Yes. Various aspects to the
30 position, but maybe I'd start with on fish
31 harvesting issues like -- I'll use an example of
32 how the commercial salmon fishery is managed, and
33 during that period, 1994 to '97, there was quite a
34 bit of work done looking at, in particular, the
35 commercial fishery and changes to the licensing
36 and allocation arrangements for commercial salmon.
37 In 1995, there was a big, what was called a
38 Pacific Policy Roundtable that explored various
39 potential changes to the commercial salmon
40 fishery. The outcome is what was known as the
41 Mifflin Plan which introduced area licensing,
42 single-gear licensing, there was a licence
43 retirement program, those types of things.

44 Q Yes.

45 MR. MACGILLIVRAY: As part of that process, the group
46 that I headed at the time worked with the large
47 number of participants, mainly drawn from the

1 commercial fishery, to identify possible changes
2 in the management and licensing of the commercial
3 fishery. And again, as part of that exercise, our
4 group prepared a variety of papers. So we looked
5 at what would be the impact of a licence
6 retirement program, what would be the likely
7 impact of single-gear licensing and area
8 licensing, and so on.

9 Part of that analysis was economic analysis
10 to get a better appreciation of the potential
11 financial implications on the fishing fleet,
12 itself, as a result of changes. So I'd use that
13 as one example.

14 Q All right. Well, that's sufficient on that, but
15 on that subject, did you look at the impacts with
16 respect to reduced employment, did you look at the
17 impacts on coastal communities in remote areas of
18 B.C.?

19 MR. MACGILLIVRAY: Partly looked at the impact on
20 individuals and communities through that process
21 and subsequently, after the Mifflin Plan was
22 introduced, there were a number of reports,
23 studies that focussed almost exclusively on
24 impacts on communities and individuals, and that
25 was used as the basis for government programs that
26 were designed to help with that transition from a
27 large salmon fleet distributed throughout the
28 province, to a smaller salmon fleet employing
29 fewer people.

30 Q Was that done in your Economic and Commercial
31 Analysis Unit?

32 MR. MACGILLIVRAY: No, the latter -- I'll back up.
33 Part of what we looked at in the Pacific Policy
34 Roundtable, and generally, when we're looking at
35 changes in the way that a fishery, commercial
36 fishery, for example, might operate, we looked at
37 several factors. One would be what would be the
38 expected change, expected impact of the change
39 from a biological management perspective? So from
40 a -- if you look at the conservation objectives
41 for the fishery, how would a change like area
42 licensing, for example, influence the ability to
43 achieve conservation objectives? The second would
44 be what's the impact on the economic or financial
45 performance of a commercial fishery? The third
46 thing is looking at the distributional impacts.
47 So are there changes in the way that the revenue

1 from the fishery would be distributed as a result
2 of a change in the way fisheries management is
3 managed, or the question that you raised, the
4 number of people employed. So that gets picked up
5 in terms of the distributional impacts.

6 In the later work -- and there are other
7 factors, as well. I won't go into those. But in
8 the later work that was focused on individual and
9 community impacts associated with changes that
10 were introduced in the Pacific salmon fishery,
11 those studies were -- there were two major
12 studies, actually three. Two were carried out by
13 the B.C. Job Protections Commissioner, and one was
14 carried out by a panel led by three individuals,
15 one representing the Province of B.C., one for the
16 Federal Government, and an independent chair.

17 Q I see. Does -- so that is not something that is
18 routinely done within the Department of Fisheries
19 and Oceans, itself, is that -- am I correct in
20 that?

21 MR. MACGILLIVRAY: Conducting community impact
22 assessments?

23 Q The impacts on the communities up and down the
24 coast of fishery management decisions.

25 MR. MACGILLIVRAY: From my experience, that's not
26 something that I had done a lot over the years,
27 other than in the context that I described in
28 terms of looking at the distributional impacts
29 associated with a proposed change.

30 Q Yes. Does the position, Chief Economic and
31 Commercial Analysis still exist within the DFO
32 organizational structure?

33 MR. MACGILLIVRAY: I believe so. I believe the
34 position still exists. There's an economics group
35 within the policy sector. What I don't know is if
36 the title of the job has changed, but there is
37 a --

38 Q Who -- sorry.

39 MR. MACGILLIVRAY: There is a position that would have
40 been similar to the one that I held.

41 Q Yes. Because I understand from previous testimony
42 and information I've received that the Economics
43 Unit within DFO has been much reduced from what it
44 was 20 and 30 years ago; would you agree with
45 that?

46 MR. MACGILLIVRAY: I would think that's probably true.
47 I didn't describe other parts of this work, but

1 the economics group that existed at the time that
2 I headed that group, and previously, also, I
3 talked about the harvesting side of the job, on
4 the production side, the salmon enhancement side,
5 there was a fairly large group of economists that
6 were put in place back in the late 1970s when the
7 Salmon Enhancement Program was set up, and the
8 focus of that group was to largely conduct benefit
9 cost analysis and determine the most effective
10 investments for salmon enhancement. And then over
11 the years, that work would carry on to look at
12 should there be changes in where the salmon
13 hatchery investments take place. And again, over
14 the years, that function has diminished as the
15 program stabilized. There are currently, I
16 believe it's 19 hatcheries. The amount of work
17 that had been done previously on benefit cost
18 analysis is no longer required and so that part of
19 the economics group, that focus for an economics
20 group is no longer there. And I believe the
21 numbers are significantly lower.

22 Q Yes. All right. I don't want to get into too
23 much detail, but I'd like to ask Mr. Bevan about
24 something that he said in the course of his
25 testimony, and that was that an economic analysis
26 was done when the question arose whether Cultus
27 stocks should be listed under **SARA**, the **Species at**
28 **Risk Act**; is that correct?

29 MR. BEVAN: That's correct.

30 Q Yes. And can you help me identify that economic
31 analysis and let me know where I can find it?

32 MR. BEVAN: I can't recall the -- it was done,
33 obviously, at the time of the decision to not list
34 the Cultus Lake. I can't recall the actual form.
35 It was done by our policy people who also have the
36 responsibility within that --

37 Q Yes.

38 MR. BEVAN: -- group to do the economic analysis. But
39 I can't identify a specific document off the top
40 of my head.

41 Q All right. And you don't know whether that's been
42 disclosed in these proceedings, or not?

43 MR. BEVAN: No, I don't.

44 Q All right. Well, that -- I'll follow that up with
45 Mr. Taylor or Mr. Wallace. If the Cultus and
46 Saginaw stocks had been listed under the **Species**
47 **at Risk Act**, do you agree with me that there would

1 be a requirement every five years to conduct an
2 analysis of the socio-economic impacts and to --
3 and, I think, to -- I'm not sure what has to be
4 done with the study, but it does -- it would have
5 to be done every five years?

6 MR. BEVAN: There's provision for review of the status
7 of the stocks after five years.

8 Q Yes.

9 MR. BEVAN: And the government would have to then
10 conclude what they would do with the updated work
11 from COSEWIC. So COSEWIC would evaluate the
12 status of the stock after five years --

13 Q Yes.

14 MR. BEVAN: -- as they've done, for example, on the
15 Atlantic Coast with several species, and at that
16 point, the government would have to determine what
17 work and information would be needed to support a
18 decision to be taken relevant to any significant
19 change in status. If the status doesn't change,
20 then the government would have to evaluate whether
21 or not further work would be needed to inform --

22 Q Yes.

23 MR. BEVAN: -- the ministers as to what the next step
24 should be. So it doesn't automatically mean that
25 there would be an updated valuation of the
26 economic impacts.

27 Q Well, let me be a bit more specific. I'm
28 referring to s. 55 of the **Species at Risk Act**,
29 which reads:

30
31 The competent minister must monitor the
32 implementation of an action plan and the
33 progress towards meeting its objectives and
34 assess and report on its implementation and
35 its ecological and socio-economic impacts
36 five years after the plan comes into effect.

37
38 MR. BEVAN: That's for a plan that's under the **Species**
39 **at Risk Act**.

40 Q Yes.

41 MR. BEVAN: And in the case of Cultus Lake, the
42 decision was made to use the **Fisheries Act** as the
43 vehicle by which we would authorize the rebuilding
44 plans.

45 Q Yes. And does that mean that the Minister is
46 relieved of the duty that he would otherwise have
47 to report on socio-economic impacts every five

1 years?

2 MR. BEVAN: Yes, that's the case because those
3 provisions are not included in the **Fisheries Act**.

4 Q Yes. Now, I think it was Ms. Dansereau who said,
5 "We, at the senior level, determine what risks are
6 tolerable." Do you make that determination
7 without the benefit of a socio-economic impact
8 report?

9 MS. DANSEREAU: The first risks that we assess are
10 always the biological or ecological risks, and we
11 do those separate from a socio-economic analysis.

12 Q Have you done a socio-economic analysis of the
13 impacts of the -- what's been referred to as the
14 weak stock management methodology?

15 MR. BEVAN: We have an obligation to maintain
16 biodiversity and we have seen that there's an
17 obvious, and significant, and severe, in some
18 cases, socio-economic impact of not looking after
19 the resources that we're responsible for managing
20 in a sustainable way. So we did not necessarily,
21 I don't believe, and I'll have to turn it over to
22 the regional people, but we didn't do a socio-
23 economic analysis when looking at the fundamental
24 issue of should we take action to conserve stocks
25 and to conserve the biodiversity of those -- of
26 the populations that support economic activities
27 as we have considerable and unpleasant experience
28 in situations where we didn't look after the
29 stocks first and socio-economic impacts were much,
30 much more severe than had we taken care of the
31 fish first, and the -- that would have allowed us,
32 then, to have fish to take care of fisheries.

33 Q All right. Well, I'll come back to this question
34 when you next appear, and in the meantime, I will
35 work with other counsel to determine whether there
36 are any analyses in the productions with respect
37 to ecological and socio-economic impacts. So I'll
38 leave that for now.

39 We've heard of the shift from -- shift to
40 eco-based or ecosystem-based management, the shift
41 away from simply counting fish, as I think it was
42 described. This has been accompanied, has it not,
43 with a number of different models which are
44 applied in the decision-making process; is that
45 correct?

46 MR. BEVAN: There's a number of -- it depends on the
47 strategies used for the management of the

1 particular fisheries and the group of fisheries.
2 On this coast, of course, there's an interesting
3 model with the integrated ground fish process, and
4 that looks at a number of species and tracks the
5 catch and bi-catch, et cetera. In other cases, in
6 quota-managed fisheries, we would look at the
7 productivity of the ecosystem to inform what kind
8 of decisions should be taken and also look at the
9 status of the stock relevant to abundance.

10 Q Yes.

11 MR. BEVAN: Age, class, makeup and things of that
12 nature. So there's no one model that would be
13 applicable across the whole suite of fisheries and
14 ecosystems. Rather, there's a number of models
15 that would be applied, depending on their
16 appropriateness for the circumstances.

17 Q Would you -- let me just tell you the information
18 that I'm receiving from my clients and see whether
19 you wish to comment on it, and this follows up on
20 Mr. Rosen bloom's questions about the loss over
21 the years of the empirical knowledge. I'm told
22 that there's been a -- with the loss of empirical
23 knowledge and the challenges you have that you've
24 described already with respect to recruitment of
25 personnel, there's more and more reliance on
26 models such as, for example, a model indicating
27 that in the seine fishery, off the mouth of the
28 Fraser, there will be a three-percent limit on the
29 uptake of North Thompson Coho. That's just to use
30 one example. But this is the sort of thing that
31 goes into a model now, rather than being based on
32 empirical experience.

33 MS. FARLINGER: Perhaps I can start to get to that
34 question, but I do think there are a couple of
35 sections coming up in the evidence with, first of
36 all, the experts from the Pacific Salmon
37 Commission, and also the stock assessment experts
38 that can speak to how models are used either to
39 arrive at parameters or, in fact, to model in-
40 season run size for -- in this instance, for
41 Fraser sockeye.

42 There are different kinds of models used for
43 different purposes, and those are based on both
44 historical and recent information. But once
45 again, I think the best experts in terms of what
46 kind of models are used for what question would be
47 best addressed to the stock assessment.

1 Q All right. Thank you. I'll move on. The final
2 area I'd like to question you on is this, and this
3 is with respect to the organizational structure.
4 Is there any organizational mechanism for
5 determining whether or not this new eco-based
6 system is working? And this is in the context of
7 apart from 2010, we've had a steady decline in the
8 sockeye run since 1992, or thereabouts. So what
9 I'm asking is what kind of analysis, if any, goes
10 into assessing the ecosystem-based model, as
11 opposed to the former model that existed prior to
12 the 1990s?

13 MR. SPROUT: My response is going to be long because
14 you raise a number of points. There isn't --
15 there never has been one model. And I'd like to,
16 again, explain from my perspective, as a
17 management biologist, and later as a manager, how
18 we manage some of the fisheries, and I'd like to
19 deal with your clients on the west coast of
20 Vancouver Island.

21 Prior to the early '80s, we opened the troll
22 fishery on April the 1st, and then we closed it
23 sometime in the fall of that year. We never
24 counted the fish that were caught at all during
25 the season, period. At the end of the season, we
26 collected sales slips. So this is where the
27 fisherman land their fish, the processors buy
28 their fish, and that transaction creates something
29 called a sales slip.

30 Q Yes.

31 MR. SPROUT: So over the course of the year, the
32 fishery was largely not managed. It was allowed
33 -- it was opened and then closed and then at the
34 end of the year, the fish were tallied.

35 Now, I want to go forward to today. Today,
36 we use DNA analysis, we use all sorts of stock
37 assessment identification techniques to actually
38 try to determine the presence of stocks of concern
39 mixed with many other populations to determine
40 when that fishery can take place, how many fish it
41 can catch, and when it should close. Now, that's
42 happening today. Now, that approach, today, is
43 much more sophisticated than the approach in the
44 1980s.

45 Now, the question you're -- you might be
46 asking is, "Well, okay, is the sophistication
47 you're applying, is that the reason why we're not

1 catching as many fish? Is that the reason the
2 population is declining?" Well, the Department
3 believes that one of the reasons, the fundamental
4 reasons that populations have been declining is
5 because of poor ocean productivity. We can track
6 the decline in marine productivity starting from
7 the late 1980s through to today. The evidence is
8 compelling that the fish that are going out into
9 the ocean are not surviving at the rates that they
10 used to survive at prior to the 1990s, certainly
11 in the period when I was a management biologist.

12 So the sophistication of the techniques today
13 are not the explanation for the current challenges
14 with our salmon. We think it's much more likely,
15 the explanation, are the issues around marine
16 productivity and possibly some habitat issues, but
17 those would be localized.

18 So I'm trying to answer your question.
19 You're giving the impression that you -- that
20 there's a model that existed at a certain point,
21 and then a new one was adopted and that there are
22 two models to compare, but, in fact, there's not
23 two models to compare. There is a gradual
24 sophistication over a period of decades increasing
25 attention to populations because of sophisticated
26 assessment techniques, much more attention to
27 catch and monitoring and documentation over a
28 period of time.

29 Q Well, Mr. Sprout, you say that, but if there had
30 been a run prior to the 1980s, a run size like we
31 had this year, the strollers on the west coast
32 would have been fishing those fish. There would
33 have been -- under that management model,
34 decisions would be capable of being made which
35 would have allowed them to fish, whereas this
36 year, I'm told, and you're no doubt aware, that
37 the models dictated a result which meant that they
38 were not fishing, did not have any access at all.
39 None of the west coast fishermen or communities
40 had any access to the sockeye runs this year.

41 MR. SPROUT: Okay. The models were not the reason why
42 the Area G Strollers weren't able to fish. What's
43 happened is that the Department, today, is very
44 sensitive to the weak populations that are mixed
45 with the productive populations. So we talked
46 about Cultus sockeye. In fact, one of the -- we
47 have been questioned on what the exploitation rate

1 was in 2010 with a view that it was higher than it
2 should have been. In the 1980s, and before, we
3 would have managed only to the most productive
4 sockeye populations so we would have applied an
5 exploitation rate of 70 percent. We would have
6 harvested seven out of every 10 fish that came
7 back, in the 1980s, or before.

8 Today, what we are trying to do is to
9 increase our genetic diversity, is to protect it.
10 So that means you have this dilemma. You have
11 populations that are mixed in outside fisheries,
12 like the west coast of Vancouver Island, that are
13 mixed with populations that are not productive,
14 like Cultus. And so the challenge is what is a
15 reasonable exploitation that still permits some
16 harvest, but still allows for the protection of
17 those stocks that are depressed. The policy that
18 we're following today was developed over the
19 course of the '90s and into the period of 2000,
20 and so the explanation for why Area G Strollers
21 did not fish in 2010 is not the models. You must
22 go to the policy. You must go to what drives the
23 Department and that are the policy objectives that
24 it's trying to achieve. Those objectives have
25 changed over time to reflect our orientation on
26 genetic diversity.

27 MR. WALLACE: Thank you. Mr. Commissioner, if we're
28 going to spend more time on this, this is very
29 much part of harvest management, which we will be
30 hearing about in a few weeks. Are you done, Mr.
31 Harvey? Thank you.

32 MR. HARVEY: No, I'm just taking a break for two weeks.

33 MR. WALLACE: Mr. Caldwell for the B.C. Wildlife
34 Federation and B.C. Federation of Drift Fishers.

35 MR. CALDWELL: Mr. Commissioner, I did estimate 20
36 minutes for my cross-examination, however, Mr.
37 Rosenbloom did take some of the wind out of my
38 sails, so to speak, so I don't anticipate needing
39 as much time. I do have one question which I
40 would like to ask Mr. Bevan, which arose from a
41 question that he was asked by Mr. McDade, and I'm
42 not sure of what the protocol is, if I might be
43 allowed to ask that question at this point in
44 time? Okay.

45

46

47

1 CROSS-EXAMINATION BY MR. CALDWELL:
2

3 Q Now, Mr. Bevan, during your cross-examination by
4 Mr. McDade regarding the sustainability of
5 aquaculture, you said, and I'll quote you as best
6 I can, that, "If one wants to be a conservation
7 organization, one can stop everything, all
8 harvest, but that is not what the people of Canada
9 want." Now, the question that I would have for
10 you is would you agree that the same view applies
11 with respect to weak stock management of Fraser
12 River sockeye? And what I mean by that is if the
13 Department of Fisheries wants -- Fisheries and
14 Oceans, wants to be a conservation organization,
15 it could stop all fishing of all Fraser stocks,
16 but would you agree that the people of Canada do
17 not want to stop all fishing of all stocks on the
18 Fraser River to protect the weak stocks?

19 MR. BEVAN: As noted by the Deputy, it's the ministers,
20 and the government, and parliamentarians that
21 provide us with broad policy guidance. We are
22 charged on behalf of Canadians to manage the ocean
23 spaces, aquatic ecosystems and the fisheries
24 resources to sustain an economic activity, but
25 also, as I said, it has to be sustainable. So I
26 don't think that people want us to shut down all
27 activities in order to create a oceans park that
28 nobody gets to use and that we, therefore,
29 preserve it. And I think what we are looking at
30 is the balanced approach between maintenance of
31 biodiversity and maintenance of the ecosystem so
32 that today's generation and future generations
33 will have an opportunity to have an economic
34 activity and to sustain themselves in other ways,
35 it's not just money, on those resources.

36 We don't believe we can actually do that with
37 the old models. The old models, we have seen not
38 just in the Pacific, we have seen that when we
39 fish too hard and simplify populations, that they
40 become very susceptible to ecological shock and
41 then they're gone and no longer able to sustain
42 communities, et cetera. So we have learned, and
43 we are supported in this process by ministers and
44 that, to us, is where we receive the mandate from
45 the public through a process that's supported
46 through Parliament. We, of course, as Mr. Sprout,
47 has gone -- has explained, we have dialogued with

1 people with a wide variety of views and we try to
2 come to a balanced approach that looks at that.

3 So we haven't gone out and done a poll as to
4 whether or not weak stock management is your
5 preference. We know that there are certain people
6 who want to go back to the old way of doing
7 business. We don't think that in the current
8 environmental conditions that would be sustainable
9 for any length of time and that it would be a
10 problem for future opportunities, anyway. So it's
11 not a model that we would recommend and it's not
12 where we are at this time. So no polls were done,
13 but I think in terms of the collective views that
14 we have received from stakeholders in our broad
15 consultations, that we have landed on the right
16 balance.

17 MR. CALDWELL: Thank you. Those are my questions.

18 MR. WALLACE: Thank you, Mr. Caldwell. Next on my list
19 is the First Nations Coalition, Ms. Gaertner.

20 MS. GAERTNER: Thank you, Mr. Commissioner. It's
21 Brenda Gaertner for the First Nations Coalition.
22 I want to begin by thanking the panel for your
23 willingness to be here for the last two days. And
24 just to inform you a little bit about the approach
25 of the clients that I represent in this
26 Commission, I'm representing a large spectrum of
27 First Nations organizations, including a couple of
28 the First Nations organizations like the First
29 Nations Fisheries Council, and the Fraser River
30 Aboriginal Fisheries Secretariat, which are two
31 more aggregate organizations.

32 And I also want to let you know, in terms of
33 the line of questioning that I'm asking today,
34 that one of the primary focuses of the clients I'm
35 representing in this inquiry, which I've let Mr.
36 Commissioner know on a number of occasions, is the
37 importance of his recommendations coming out of
38 this inquiry and the goal of achieving those in
39 some kind of collaborative manner. I appreciate
40 that the more time I spend in this courtroom, the
41 more difficult the sense of collaboration can be
42 achieved, but I can venture to say that many of
43 you that have been working in the fishery, and I
44 heard from Mr. Sprout's comments earlier that one
45 of the biggest challenges associated with
46 management is collaboratively working together.

47 So in my line of questions, I'd like to focus

1 on the decision-making structures that you've
2 talked about and, in particular, some of the
3 challenges associated with your decision-making
4 structures and some of the First Nations'
5 decision-making structures that I'm more familiar
6 with, and that will be largely the focus of my
7 questions going forward.
8

9 CROSS-EXAMINATION BY MS. GAERTNER:

10
11 Q Mr. Bevan, I'm going to start with you because you
12 began, or you've sort of grounded some of the new
13 work of the Department of Fisheries and Oceans in
14 the ecosystem approach. And you'll appreciate
15 that from a First Nations' perspective, an
16 ecosystem approach is very welcomed. And I want
17 to begin by seeing whether you'll agree with me on
18 a couple of things. First of all, you can't
19 really do ecosystem approach from the 70,000-foot
20 level, that ecosystem approaches are really best
21 found locally and grounded in the environment?

22 MR. BEVAN: They have to be grounded in the
23 environment, obviously. And again, this goes back
24 to what kind of challenge you're facing. Some
25 populations are local, some they don't -- they're
26 not subject to a wide variety of pressures across
27 the ocean and through many jurisdictions. So if
28 you have a local population, it's more amenable to
29 local knowledge and local management. When you're
30 dealing with something like sockeye where we have
31 the possibility of interception fisheries, and
32 when you have the whole range of exposure to
33 potential mortalities, it becomes a lot more
34 difficult to have a local focus on it. Local
35 focus is good for the management of the fishery in
36 that area and helps understand the ecosystem's
37 impact on the migrating fish, for example, and way
38 back to the spawning grounds, but in the case of
39 salmon, it does require international cooperation
40 right from the North Pacific Anadromous Fish
41 Commission that ensures drift netting does not
42 take place on the high seas, through to
43 collaborative science, through to Pacific Salmon
44 Treaty where the countries that can, that's Canada
45 and the U.S., the countries that can cause fishing
46 mortality are cooperating, and through to working
47 with all the First Nations with an interest those

1 stocks. So it's -- in salmon, it's more difficult
2 to get -- have the whole picture localized because
3 of the huge range in scale and where the fish can
4 be subject to mortality and the fact that we need,
5 that's all the countries in the north Pacific, to
6 work on not fishing on the high seas and stopping
7 others from doing so illegally, through to
8 collaborative science and collaboration with our
9 partners in the United States and all of the
10 fishing interests, and all of the First Nations.

11 Q So you might agree with me that one of the
12 challenges associated with ecosystem management
13 for the Fraser River sockeye is not so much, as
14 you said yesterday, managing the fish, we don't
15 really manage the fish, we watch the wild stocks
16 and we assist in the habitat, but more challenging
17 is managing the people that are relating to those
18 fish?

19 MR. BEVAN: That is -- well, not managing the people.
20 It would be nice if we could work collaboratively
21 with the -- and partner with them. And that's
22 been a big change that we've seen in the -- excuse
23 me -- in the Pacific Salmon Treaty context was the
24 treaty was signed in the '80s, but we didn't come
25 to agreement with the Americans for some time on
26 the details and the regional people can talk more
27 -- with more authority and more detail on that,
28 but that led to competition for the fish, and then
29 any time there's a fish war or competition, it's
30 not the people who are the first casualty, it's
31 the fish. So that recognition pulled us together,
32 and we can use the **Fisheries Act** to manage people
33 if it's -- but that's really our last resort. We
34 would prefer to have a collaborative approach and
35 everybody to put the salmon first and to work
36 collaboratively on how to achieve that, and then
37 how to use it in a sustainable way.

38 Q All right. So there's just two more questions I
39 have in this vein of you, Mr. Bevan, and the first
40 is there was quite a long discussion at one point
41 in time, at the national roundtable, on the
42 environment and economy in 1988, and I'm not going
43 to turn you to any document, but one of the things
44 that I learned from that discussion, and I'm
45 wondering if you'll agree with me on, is that in
46 order to really implement successfully an
47 ecosystem approach to a complex resource

1 management, you need to develop capacity within
2 the people, the communities, all the various
3 governments, and the various organizations in
4 order for them to identify and resolve the
5 challenges and the problems, themselves, within
6 the ecosystem?

7 MR. BEVAN: I think capacity to do that is important.
8 We are still working on our own capacity, so to
9 speak, as we made the switch from one type of
10 management to another, and that's meant that we
11 have to use the transition of people, et cetera,
12 to help us make that. We do recognize capacity,
13 obviously, with a number of our programs, the AFS
14 program, AAROM, and other programs, that those are
15 programs that are help -- move us in that
16 direction. So I recognize that and we have put --
17 directed some of our programming to that effect,
18 to achieve that.

19 Q All right. And so then I want to ask, as you
20 begin to implement more directly the policies
21 around ecosystem management that have now been
22 developed at the headquarter level and at the
23 regional level. What work has DFO begun to do to
24 geographically link the ecosystem approach in the
25 Fraser River, for the Fraser River sockeye, and
26 your earlier comment clearly identified, there's
27 not just one ecosystem in the Fraser River
28 sockeye, there are many ecosystems within the
29 Fraser River sockeye. What work are you doing to
30 link that ecosystem approach with the development
31 of collaborative management approaches within the
32 various ecosystems? And if you haven't identified
33 particular policies, what steps are you taking
34 towards doing that work?

35 MR. BEVAN: I think we -- looking at it from the
36 national level, and you're looking at it from the
37 region so I'll ask if Sue Farlinger can respond to
38 it.

39 Q I'd be happy to have Sue's answer.

40 MS. FARLINGER: Thanks for that question. Not
41 surprisingly, it's a fairly complex answer. Part
42 of the work that we've been doing is in capacity
43 building and that is in trying to advance the
44 collaborative relationships that have been built
45 in some measure over the last 15 to 20 years. And
46 those are occurring in a couple of ways.

47 Part of our programming has been dedicated to

1 working very closely with all of the First Nations
2 who have accessed Fraser sockeye through a process
3 I think you're familiar with called the forum.
4 This is really to better inform DFO and to build
5 capacity in the aboriginal communities and in DFO
6 to understand what the knowledge in those
7 communities is, and what the challenges are
8 between the communities. With so many First
9 Nations needing access to those stocks for their
10 food, social and ceremonial fisheries, the
11 challenges there are huge. So that's partly on
12 the people side. Another piece on the people side
13 is some work we've been doing that Mr. Sprout
14 initiated about three years ago in the integrated
15 salmon dialogues. And these are aimed at the same
16 thing, which is to try and create that capacity in
17 the various fishing sectors to work together, to
18 work collaboratively.

19 So I'll just stop there. There are other
20 efforts being supported in that vein. In terms of
21 bringing ecosystem considerations into management,
22 some of the work we've done between resource
23 management and science are to integrate the salmon
24 stock assessment information into the State of the
25 Oceans Report, which we do annually, and to take
26 the information back the other way into the --
27 some of the science that's done on individual
28 stocks and both the assessments and any forecasts.

29 We've also -- and I think we're going to go
30 into this later in terms of looking at
31 implementing the wild salmon policy, but I'll just
32 speak to it generally, the definition of
33 conservation units, the development of indicators
34 for those units, such as limit reference points,
35 the habitat kind of indicators that are set out as
36 a commitment in strategy 2 in the wild salmon
37 policy, the piloting of multi-sector groups on key
38 watersheds, including some of the work in the
39 Fraser, on the Somas River, and in the Skeen
40 River. So this just gives you a general overview
41 of the kinds of different strategies we're trying
42 to use at the people level, at the science level,
43 and then at the management level to begin to bring
44 an ecosystem bent into all of those activities and
45 ultimately, into the management of the salmon.

46 We have done some work with First Nations on
47 the integration of traditional knowledge. I would

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1 say that there is much work to be done on that
2 front.

3 MS. GAERTNER: Thank you. That's very helpful. I have
4 a few questions --

5 MR. WALLACE: Sorry, Ms. Gaertner. Mr. Commissioner,
6 it's a little after 3:00. We're about halfway
7 through the afternoon. I'm not sure if this is a
8 good time to break?

9 MS. GAERTNER: That's fine.

10 THE COMMISSIONER: That's convenient to you, Ms.
11 Gaertner?

12 MS. GAERTNER: It's a convenient time to break, yes.

13 MR. WALLACE: Thank you.

14 THE REGISTRAR: The hearing will now recess for 10
15 minutes.

16

17 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)

18 (PROCEEDINGS RECONVENED)

19

20 THE REGISTRAR: The hearing is now resumed.

21 MS. GAERTNER: Thank you, Mr. Commissioner. I'm going
22 to turn now to a few questions that I have for the
23 Deputy, if I may. And these are very general
24 questions to start with and then I'll turn to your
25 regional staff to bring it home into the
26 watershed, if I may.

27

28 CROSS-EXAMINATION BY MS. GAERTNER, continuing:

29

30 Q And I just want to start by observing that what
31 I've heard over the last two days is one of the
32 challenges in governance in the Fisheries and, in
33 particular, the Fraser River sockeye is needing to
34 have a resilience and an ability to cope with
35 increasing complexity?

36 MS. DANSEREAU: Yes.

37 Q And I would say increasing controversy?

38 MS. DANSEREAU: Yes.

39 Q And in a modern context, my observations around
40 good governance, as I made -- began was a
41 collaborative approach. And I'm just going to
42 give you a few other principles of good governance
43 and I'm wondering if you would agree with them or
44 not. The first one, and I've heard a number of
45 times, is the transparency. Would you agree with
46 that?

47 MS. DANSEREAU: Yes.

1 Q And by that, we mean that it's clearest to those
2 that have an interest, including the public, on
3 the considerations being made and the outcomes
4 that are -- that are derived?
5 MS. DANSEREAU: To the best of our ability, yes.
6 Q And inclusive. That's the collaborative approach.
7 You want to include those that have an interest in
8 the outcome?
9 MS. DANSEREAU: Yes.
10 Q And accountable. You want to be clear on the
11 decisions that you've made and -- and be able to
12 challenge those decisions and evolve them over
13 time?
14 MS. DANSEREAU: Absolutely.
15 Q And another one that I've heard quite often is you
16 want to make informed decisions and --
17 MS. DANSEREAU: It's at the base of how we work.
18 Q It's always more comfortable to have more
19 information.
20 MS. DANSEREAU: Much more.
21 Q And you'll agree with me that some of the most
22 difficult questions are the ones that we don't
23 have enough information about?
24 MS. DANSEREAU: Yes.
25 Q And finally, we spoke briefly about capacity. And
26 we need to have good governance. We need to have
27 a budget. And we need to have an ability, both at
28 a human resource and a financial resource to
29 implement those; is that correct?
30 MS. DANSEREAU: Yes. Although recognizing that money
31 doesn't solve all problems, an organization can
32 help.
33 Q And then I just have another few basic questions
34 around co-management and models for co-management.
35 And again, just on the basic level. There are
36 different models out there, one of which would be
37 multiple decision-makers with authority to make
38 decisions that are working together. That's one
39 model of co-management.
40 MS. DANSEREAU: It certainly is, yes. But we have --
41 if I may, just on the issue of co-management, we
42 have to remember that we have -- the minister has
43 absolute discretion on making these decisions.
44 Q Well, my next question for you is going to be
45 that's the one that's most uncomfortable for the
46 Department of Fisheries and Oceans, that model,
47 right, because -- because of the discretion and

1 the ultimate decision-making authority that the
2 minister has?

3 MS. DANSEREAU: Well, yes and no. I think if the -- if
4 the information provided to the minister and the
5 -- the substructure of the decision is sound, then
6 the decision that the minister makes will be sound
7 as well. And the minister is the only person
8 truly that can speak on behalf of all Canadians.
9 And so the decision has to stop somewhere and why
10 not with an elected official?

11 Q That actually helps me go to the next model and
12 the one that I have begun to see more and more.
13 And that's these models that you have advisory
14 committees that are charged with trying to make
15 consensus recommendations.

16 MS. DANSEREAU: Which we use extensively throughout the
17 department.

18 Q And then the third model that is a little bit more
19 difficult is just a model in which there's just an
20 information exchange amongst different people.

21 MS. DANSEREAU: Yes, and I think we use a variety of
22 all the tools that you've just described because
23 it depends on what the decision is that is
24 required.

25 Q And is it fair to say that one of the older
26 models, perhaps an imprint model that's a bit
27 difficult to get rid of and for sure in the First
28 Nation context, one of the problems is an old
29 model, which was to go out -- the Department of
30 Fisheries and Oceans would go out, get
31 information, take it back and it get lost in your
32 department somewhere and decisions would be made?
33 And that's a model that you're changing from?

34 MS. DANSEREAU: Yes, it's not one that I have seen in
35 practice.

36 Q And now I'm going to take those lofty ideas and
37 bring them home a little bit to the Fraser
38 Watershed. And I'd like to direct my questions to
39 either Paul, Ms. Sprout or Sue Farlinger. I'm not
40 sure which ones. But if you guys can decide
41 amongst you which ones you would prefer -- which
42 ones you would ask. I think it's fair to say from
43 the First Nations vantage point that it's not
44 these principles of good governance that are the
45 challenge; it's applying those principles in a
46 very complex setting, particularly a complex
47 setting like the Fraser River Watershed

1 geographically and with the multiple numbers of
2 First Nations that are involved. Is that a fair
3 observation?

4 MS. FARLINGER: Certainly a complex situation, yeah.

5 Q All right. And that one of the second components
6 of that complexity is that -- is the difference in
7 approach in decision-making structures between the
8 department and First Nations and I'll just
9 elaborate a little bit more before I ask a
10 question. And that is, that, as we've heard
11 yesterday and today, the department's line of
12 hierarchy and decision-making is really what we
13 would call a top-down line of authority. We've
14 got ministers that are charged with very concrete
15 and deputy ministers and associate deputy
16 ministers that do a lot of the strategic work,
17 getting -- getting input from below. And then
18 we've got the regional director. We've got
19 program directors. We've got area directors. And
20 we've got field officers. And mandates come from
21 top and go to the bottom; is that a fair overall
22 summary of who the department is structured?

23 MS. DANSEREAU: The final mandate does work that way
24 but it's developed. As I said earlier -- as I
25 said yesterday, very much from the ground up as
26 well and so it's an iterative process.

27 Q Okay. Is it your experience then, I'm going to
28 suggest, that the First Nation organizations along
29 the Fraser River sockeye migration route actually
30 work on a -- on almost an opposite approach. Is
31 it their authority and the strength of their
32 authority lies in the communities and at the
33 tribal level and that it only -- only later will
34 -- the further away you go from that, the less
35 authority necessarily people are going to have so
36 at the watershed level or at the provincial and --
37 and national level? Is that an observation that
38 you would agree with me on?

39 MS. FARLINGER: I think it would probably be fair to
40 say that generally that may be the case. In our
41 interaction with First Nations, we've put a lot of
42 time and effort, as have the First Nations, in
43 trying to figure out what it is that DFO works
44 with First Nations at the community level, at the
45 aggregate tribal level potentially, or at the
46 First Nations organization level. And -- and that
47 that is a significant challenge for us in terms of

1 understanding how the First Nations governance
2 works and -- and how it is we can best interact at
3 the right level for the right kind of question.

4 MS. DANSEREAU: If I may -- excuse me, if I may add
5 something to this. The -- the authority that I
6 have and the authority that we have at each level
7 is, in part, driven by the mandate that we have by
8 virtue of our title but also we would not be able
9 to exercise that authority with any real outcomes
10 if we didn't have a moral authority that went with
11 it where we had the respect of the people all the
12 way through the system below us. So it's not
13 simply top down. It really -- I am guided by what
14 I -- making sure that I have the respect of the
15 people that work for me.

16 Q Again, you're one step ahead of me, Deputy,
17 because I was just going to link it together that
18 no matter which process you use, the authority
19 always has to come back to those that you're
20 governing; is that correct?

21 MS. DANSEREAU: Yeah.

22 Q All right. Now, Mr. Sprout, I'm going to ask you
23 the next -- the following next questions because
24 they're a bit historic in nature and I just want
25 to set a setting. And I'm going to turn now to
26 what I have generally called over the years the
27 Fraser Watershed process or a Fraser Watershed
28 process and I think those of you that are close to
29 the river will get a sense of what I might mean
30 there. And perhaps for Mr. Commissioner, what I
31 am talking about there is DFO First Nations
32 process that would be collaborative, integrated
33 and assist in making good decisions or
34 recommendations on key issues. And again, Mr.
35 Commissioner, you've heard me mention and I know
36 you're familiar now with the terms "Tier 1" and
37 "Tier 2". And those are all -- both terms that,
38 Mr. Sprout, you're familiar with and comfortable
39 with, I'm sure. All right. I want to begin.
40 It's my observation that it was -- there's only
41 been one Fraser Watershed agreement that's
42 actually been in place between the Department of
43 Fisheries and Oceans and the First Nations. And
44 that was an agreement that was signed in 1993, as
45 part of the AFS strategy. Do you recall that
46 agreement?

47 MR. SPROUT: With the entire watershed? Because we

1 have --

2 Q Oh, no. I'll agree with you that we didn't have
3 the entire watershed signing that agreement; is
4 that correct? But it was an agreement in which
5 multiple tribes along the Fraser River signed in
6 about 1993, as part of the AFS strategy?

7 MR. SPROUT: I'd have to refresh my memory. I -- I do
8 know that that would be the early days of the
9 aboriginal fishery strategy, probably the first
10 year, and wouldn't obviously reflect the
11 arrangements we have today. And we would have far
12 fewer organizations in that arrangement. So I
13 think there would be a small number but I'm just
14 not sure it's just -- it's just the one
15 organization so I'd --

16 Q All right.

17 MR. SPROUT: -- have to refresh my memory.

18 Q All right. Well, I'm just going to refresh your
19 memory a little bit from my memory and then we'll
20 see where we go with that, which is that in 1993,
21 there was an AFS watershed agreement signed by
22 those First Nations that also signed an AFS
23 agreement at that time. And it was that agreement
24 in which the Fraser River Aboriginal Fishery
25 Secretariat was first formed. Is that something
26 that rings true to you, Ms. Farlinger?

27 MS. FARLINGER: Yes, I recall that.

28 Q And that that agreement has now expired and it did
29 expire in 1999; is that correct?

30 MS. FARLINGER: I know it's expired. I don't know what
31 the date was.

32 Q And is it fair to say that in -- that there hasn't
33 been another agreement similar to that but rather
34 there have been a number of processes that have
35 attempted to try to move towards the Fraser River
36 Watershed decision-making process, like FROG,
37 Forum, the roadmap process, efforts around the
38 Inter-Tribal Treaty process; is that correct?

39 MS. FARLINGER: Yes.

40 Q And I want to see whether or not you would agree
41 with me that some of the challenges associated
42 with those processes are challenges that are
43 facing both DFO and First Nations organizations.

44 MS. FARLINGER: Yes.

45 Q And I'm going to list a couple of the challenges
46 and see whether or not you would agree with them.
47 First of all, that there apparently is a challenge

1 to obtaining clear and transparent and mandated
2 political processes to support a watershed
3 process. Would you agree with that?

4 MS. FARLINGER: Yes.

5 Q And you would also agree that there is a
6 complexity associated with the multiple First
7 Nations and the scope and complexity of issues
8 that they face, together with DFO, and that there
9 is no clear umbrella organization that they all
10 work under?

11 MS. FARLINGER: Well, I would say that we -- we have
12 had some attempts that have been more or less
13 taking us in that direction and I would point to
14 the First Nations Fisheries Council and before it
15 to the B.C. Aboriginal Fisheries Commission,
16 which, in -- in their own way, are high-level
17 organizations, which, as you say, don't represent
18 First Nations, which -- but which are certainly
19 attempt to get at that larger issue. But at the
20 scale simply of the Fraser River, the attempts
21 that you described in your previous question are
22 really where that is now.

23 Q And I guess I would just want to make sure that
24 we're using the same language and understanding
25 each other well enough. There is, as you
26 mentioned, the First Nation Fisheries Council, who
27 is a client of mine in this inquiry. That's a
28 provincial organization. But they're not mandated
29 to speak on behalf of tribes on the rights and
30 title issues that they are concerned with; is that
31 correct?

32 MS. FARLINGER: They have advised us of that and that's
33 clear between us, yeah.

34 Q And so that one of the challenges that I'm trying
35 to get at here and primarily to see if we can go
36 -- see where we can go with it, is that at the
37 present time, there isn't a mandated Fraser River
38 tribal process working with DFO. Would you agree
39 with me on that?

40 MS. FARLINGER: I would. Not one single process.

41 Q All right. And that the efforts that we have made
42 towards that are what, as best described, as the
43 Tier 1 process. Do you agree with that? Well,
44 we'd have to go to Tier 2.

45 MS. FARLINGER: Tier 2, yes. I think --

46 Q Yes.

47 MS. FARLINGER: -- I would say that I know there's been

1 work at Tier 1 that supports the Tier 2 work that
2 we've done, yeah.

3 Q And it's your experience that without -- that
4 First Nations are clearly advising DFO that in
5 order to get to an effective Tier 2 process, we
6 need a good Tier 1 process?

7 MS. FARLINGER: Yes.

8 Q And in fact, to get to Tier 3, which is truly the
9 collaborative process that DFO aspires to, they
10 are also saying that we need a Tier 1 and then a
11 Tier 2. It's -- it is somewhat linear although
12 they are interactive.

13 MS. FARLINGER: That's certainly been the model that
14 First Nations have consistently put forward and
15 the view that they have put forward to us.

16 Q All right. My next line of questions on this same
17 topic is my last line of questions. And this is
18 in the area of something more positive than just
19 imagination but I am trying to see whether or not
20 when we go forward with the decision-making
21 structures, whether you could imagine or foresee a
22 watershed process that assisted in making good
23 governance decisions. And I just want to list a
24 couple of tasks that I think a useful Tier 2
25 process could provide and see whether you would
26 agree with that. First of all, a Tier 2 process
27 or a Fraser Watershed process could assist DFO and
28 First Nations in engaging at both an operational
29 and a strategic level. Would you agree with that?

30 MS. FARLINGER: Yes.

31 Q Would you also agree that it would assist them in
32 meeting their respective responsibilities both to
33 future generations and your respective legal
34 obligations?

35 MS. FARLINGER: I -- I think we're going probably well
36 down the lane in this speculation but we would
37 certainly have objectives of -- of doing that.

38 Q And would you also agree that an effective Tier 2
39 process would provide the foundation for engaging
40 and further discussions with non-governmental
41 organizations in the commercial and recreational
42 sectors, i.e., the Tier 3 approach?

43 MS. FARLINGER: Well, in general, anything that builds
44 relationships would certainly support the further
45 more collaborative relationship that you're
46 describing. But we wouldn't in any way get in the
47 way of or refuse to support First Nations to other

1 users or stakeholders' relationships in any way.
2 And in fact, as part of the work we've been doing
3 through the Pacific Integrated Commercial
4 Fisheries initiative, we have been supporting
5 processes that, in fact, are like that. So while
6 -- in general, while it seems reasonable, the
7 premise you put forward that a Tier 2 process
8 would support a Tier 3 one, we wouldn't in any way
9 stand in the way of -- of processes that would be
10 First Nation to other stakeholders without DFO
11 being involved.

12 Q Yes, my questions I'm absolutely sure, as you
13 know, that there are processes where First Nations
14 are directly talking to the other -- to sectors
15 and that that's a useful conversation as it
16 develops. My questions were more to try to assist
17 in -- in the relationship between First Nations
18 and DFO and the processes that could be useful in
19 that area. And so I was just trying to give Mr.
20 Commissioner, who has a broad range of issues that
21 he has coming before him, a sense of the
22 government decision-making so the decision-making
23 structures that could be useful going forward and
24 what that process could provide. And so I'm just
25 going to finish. I've got a couple of other
26 things that I think that process might be able to
27 do and I just want to see whether you'll agree
28 with me on this. It may also be a mechanism for
29 better compiling and integrating aboriginal
30 knowledge with scientific knowledge. Would you
31 agree with that?

32 MS. FARLINGER: It certainly could assist in that.

33 Q And also could provide a forum for better
34 decision-making regarding escapement and other key
35 fisheries management matters, both in a pre, in-
36 season and post-season setting. Would you agree
37 with that?

38 MS. FARLINGER: If I understand your last point, it
39 really is that it could assist in gathering the
40 kind of information that would support those
41 activities. Is that what you mean by that?

42 Q Yes, and helping actually make good
43 recommendations or decisions associated with that.

44 MS. FARLINGER: Yes, yes.

45 Q Essentially, what I'm -- I guess I could summarize
46 it by saying it's a good way of trying to see if
47 you can develop collaborative mechanisms for

1 cooperation and consensus; is that correct?

2 MS. FARLINGER: Could certainly support those, yeah.

3 Q All right. Just a couple more questions on this
4 line, one of which is some of the criteria that
5 could be used for success in this area because I
6 think you'll agree it's been a difficult task.
7 And one of them, I would agree -- I wonder if
8 you'll agree with this, that there needs to be
9 political will both on the part of the Department
10 of Fisheries and Oceans and First Nations for
11 wanting to put such a process in place. In
12 particular, it's my observation that, if you'll
13 bear with me on the metaphor, we need a dedicated
14 group of foot soldiers that are going to be --
15 work over more than a one-year process to put
16 something like this together.

17 MS. FARLINGER: I think I would say that evidence of
18 the -- the work we've done together over really
19 since the early '90s is -- is pretty clear that we
20 all want some kind of a process that -- that would
21 help us communicate better, gather information
22 together in a better way and arrive at
23 recommendations that would be understood and
24 supported through the aboriginal community and --
25 and through the DFO management system. So I think
26 I've answered your question.

27 Q And would you also agree that one of the
28 challenges associated with achieving that is the
29 challenges associated with getting commitments for
30 multi-year funding?

31 MS. FARLINGER: I think that if we are talking
32 specifically about existing programs, we have gone
33 through periods where there have been challenges
34 in looking at multi-year funding and that does
35 have an impact on our relationship together in
36 terms of the capacity building on both sides. And
37 where we have been able to move to multi-year
38 funding, and actually I would point out that there
39 -- there is a new set of terms and conditions out
40 there. We are discussing with focus groups with
41 First Nations and others to try and move to a
42 program model that will allow us to support multi-
43 year funding. And the reason we support that is
44 because we think continuing the programs over
45 multi years is more effective.

46 Q Mr. Sprout, I'm wondering -- you haven't had much
47 to say on this topic and you've lived with this

1 issue for a long time. I wonder if you care to
2 comment?

3 MR. SPROUT: Well, I have two observations. The first
4 is, is I think moving to a multi-year funding
5 arrangement has a lot of merit and so I'd like --
6 I'd like to advance that or I'd like to support
7 that. But I'd also like to -- to put this into a
8 bit of context because perhaps everybody's
9 following on Tier 1, Tier 2 and Tier 3 but I just
10 want to explain. Like Tier 1 is First Nations
11 working with First Nations, working out
12 arrangements or understandings sometimes on
13 sharing fish, on agreements related to fisheries
14 management. Tier 2 is First Nations and
15 government, in this case, principally the federal
16 government doing the same thing. And Tier 3 is
17 bringing in all the other participants.

18 So this is the model that many First Nations
19 would -- would like to practice. So first of all,
20 working out the First Nations relationships.
21 Secondly, working out the First Nations
22 relationships bilaterally with government. And
23 thirdly, working out the relationships with other
24 parties. To a certain extent, I think the
25 department has certainly supported significant --
26 with significant financial resources since the
27 launch of the aboriginal fisheries strategy to
28 support First Nations capacity building, to
29 involve them in stock assessment, in science, in
30 various aspects of management, stock enumeration
31 and so forth. All of that trying to, I think,
32 encourage the movement to, I think, this third
33 level.

34 And I'd like to talk about the third level
35 for a moment because when you look at the issues
36 that are facing the Fraser River sockeye, what the
37 Commission, I'm sure, must be struck by already is
38 how complex those issues are and the fact that
39 scientific uncertainty is likely to remain. So
40 what you're forced to deal with it then is how do
41 you make decisions under those circumstances? And
42 I think the model that the department has been
43 trying to encourage recently is the model of
44 bringing people together collaboratively to talk
45 about that scientific uncertainty, to try to come
46 to decisions that make the most amount of sense.

47 And I think that model must have First

1 Nations and non-natives in the same room at the
2 same time because I think to manage the Fraser
3 River sockeye, you need to manage it as a group
4 with all the parties that have an interest
5 present.

6 And so I offer this additional qualification
7 to the Tier 1, Tier 2, Tier 3. Clearly, I
8 personally agree with the notion of collaboration
9 and cooperation. I understand the desirability --
10 the desire of First Nations to move systematically
11 through the levels that you've described. I think
12 there is merit in multi-year funding along the
13 lines that you've noted. But I'm also cognizant
14 of the fact that to really aspire and move forward
15 we must bring the participants, native and non-
16 native, into the same room with government at the
17 same time dealing with these very difficult
18 societal questions and making the best choice
19 under scientific uncertainty.

20 Q Mr. Sprout, I don't take any issue with what
21 you've said from a good governance perspective.
22 It's more the questions of the challenge of
23 implementing that. And I think you've already
24 acknowledged and then I'll just get -- make sure
25 that I'm right on this, that from a First Nations
26 perspective, they have very much wanted to make
27 sure and ensure that their capacity puts them in a
28 room at a level playing field with the others in
29 the room. Is that a fair comment?

30 MR. SPROUT: It is. And -- and they -- and it's clear
31 -- and I think you were correct earlier, that if
32 they don't have the capacity, they're not in a
33 position to actually get into the room and to have
34 those frank discussions. So capacity, I think, is
35 a -- is required. As Sue Farlinger indicated,
36 there has been significant resources through the
37 department to try to address that capacity issue
38 and that is an important component of making the
39 integrated approach with native and non-natives'
40 work. So on this point of it being a challenge,
41 yes, I concur.

42 Q Thank you. I'm going to turn now to another area
43 and -- which is the priority around food, social
44 and ceremonial fisheries, which again I would say
45 is one of the challenges associated with managing
46 this fishery. And Mr. Sprout, maybe I'll just ask
47 you this question, which is, again, an imprint

1 question. Another challenge that I would say is
2 facing DFO is that there is a history of distrust
3 or mistrust that has gone on between federal
4 government and First Nations and that's part of
5 just the history that we're dealing with and
6 moving forward. And that one of the difficulties
7 they face when working with the Department of
8 Fisheries and Oceans is historically they have
9 experienced trade-offs as being ones in which
10 their fisheries were not provided the priority.
11 And based on your earlier comments about the troll
12 fisheries then otherwise you would say that that's
13 a reasonable experience for First Nations; is that
14 correct?

15 MR. SPROUT: I wouldn't characterize it as black-and-
16 white as that but I would agree that if you go
17 back certainly in the time period that I was
18 describing in responding to that question, the
19 Department of Fisheries and Oceans at that time
20 was putting the emphasis on productive populations
21 of sockeye and was not paying nearly to the
22 attention of the more depressed populations that
23 typically are smaller and would have been of
24 interest to First Nations, particularly in the
25 upper reaches of the -- of the Fraser River. So
26 these are the populations that are mixed together
27 with productive stocks and those populations,
28 particularly in the upper Fraser, are harvested
29 only really by First Nations for food, social and
30 ceremonial purposes. And in the -- in past times,
31 those populations would have not gotten the
32 attention that they're getting today.

33 Q All right.

34 MR. SPROUT: So it's not quite black-and-white as
35 you've described it. I've nuanced it.

36 Q Things rarely are.

37 MR. SPROUT: But it is relevant.

38 Q Thank you. Because I think it's often useful to
39 focus sometimes on where we have made successes
40 rather than where we are always having troubles, I
41 was wondering if you would agree with me, Ms.
42 Farlinger, that in the work that's going on
43 between the DFO and First Nations around the Early
44 Stuart sockeye that we're beginning to see some
45 successes. Would you agree with that?

46 MS. FARLINGER: I would.

47 Q And one of that is that the Early Stuart sockeye

1 is one of the very important food, social and
2 ceremonial fish for most -- for the Fraser River
3 people and especially the people on the -- what I
4 call the "upper headquarters".

5 MS. FARLINGER: Certainly, for -- it is an important
6 food fish and -- and, of course, as you point out,
7 most important for those for whom it is the only
8 source of fish.

9 Q And would you agree with me generally, and I'm not
10 going to say this specifically, but I'm going to
11 go generally, that one of the successes can be
12 identified in the work that was done in Sayoth
13 (phonetic) this year in May of 2010. There was a
14 two-day session, a Tier 1 and Tier 2 session. And
15 the first day, the First Nations worked together
16 and agreed and proposed to DFO, a maximum 25
17 percent exploitation rate and a four-week closure.
18 And in fact, DFO accepted that on day two and has
19 implemented that more or less successfully this
20 year.

21 MS. FARLINGER: I think that's certainly an example of
22 where the -- both the conservation objectives and
23 the objectives of meeting the FSC priority were
24 something we were able to agree on and implement.

25 Q And you would agree with me that if we could begin
26 to build those kinds of bridges on all the more
27 complex outruns that that would make your life, as
28 RDG and others within the department, a lot
29 easier?

30 MS. FARLINGER: Certainly the more common understanding
31 we have of -- and clarification of objectives on
32 both the First Nations side and DFO's side and
33 really the identification of the common ground we
34 have, it's very helpful in terms of managing the
35 fishery and certainly meeting our obligations to
36 conservation and our legal obligations.

37 Q And just to do a little bit of a contrast, and
38 again I don't want you to take this as criticism.
39 I think the work of fisheries management is an
40 extremely complex job. But I'm going to contrast
41 that -- that success with the Fraser River early
42 time spring Chinook. And again, this is a this-
43 year example so I'll direct the question to Sue
44 Farlinger. You'll agree with me that that was a
45 little bit more difficult to implement this year.
46 And primarily the difficulty arises because of the
47 marine and -- the difference of opinion between

1 First Nations around what needs to happen with the
2 stock and the pressures that are occurring in
3 order to allow the marine and the recreational
4 fisheries access to that Fraser River early time
5 spring Chinook.

6 MS. FARLINGER: I think the -- the issues around that
7 particular problem that you describe certainly
8 involved the -- the First Nations fisheries and
9 the priority for those Chinook at the -- up the
10 river. They -- and also, the fact that other
11 people intercept those -- those fish along the
12 way. There is a -- I think the larger problem may
13 very well be the underlying problem of declining
14 productivity in the south coast Chinook stocks.
15 And we've certainly started working with First
16 Nations and others on -- on a strategy to address
17 that early days, I'll say. But thirdly, I would
18 say that a forum for the kind of discussion that
19 you've just been talking about and a common
20 understanding of the information and the problems
21 really has been lacking.

22 There were a few attempts made at it and
23 certainly one of the chiefs was very effective in
24 going to the recreational community and clearly
25 describing the issues as -- as he saw them this
26 year, which is -- one hopes in the future to
27 advance that place where those discussions can be
28 had and everybody can have the same information
29 and perspective. So it is a challenge but I think
30 it is a challenge because of the declining
31 productivity because we have not yet developed
32 that forum and because there are different people
33 who are using that stock -- those stocks, rather.
34 Pardon me.

35 Q Briefly, on the consultative obligations that the
36 Department of Fisheries and Oceans carry, again,
37 I'm going to try to keep you away from the legal
38 issues and keep you on the challenges of
39 consultation. And as we know, good governance
40 includes consultation across a wide range of
41 matters. But I think it's fair -- would you agree
42 with me, for those that are implementing processes
43 in the province, that there are significant
44 differences of view that arise between First
45 Nations and the Department of Fisheries and Oceans
46 regarding the scope, the timing and the approach
47 to consultation?

1 MS. FARLINGER: Yes.

2 Q Would you also agree with me that a well-resourced
3 Tier 1, 2 and 3 process would assist in that?

4 MS. FARLINGER: I certainly think it's one of the
5 things that could help.

6 Q I know this may seem -- I don't know if I'm
7 belabouring issues. I've made submissions on
8 this, Mr. Commissioner. I just feel like it's
9 important for you to hear from those that are
10 implementing these matters rather those legal
11 counsel that are making submissions on this. And
12 so I have repeated that from the submissions but I
13 did feel like it was important for you to hear it
14 from the -- those that are in charge with
15 implementing some of these.

16 MS. FARLINGER: Excuse me if I -- if I may on that last
17 question?

18 Q Yes.

19 MS. FARLINGER: I -- it is true that we keep coming
20 back to the question of financial resources and I
21 will always also come back and say on their own
22 they are not -- that's not the solution. So it's
23 impossible to say if we had more money we would
24 have better decisions. I'm not sure that that's
25 -- they don't -- I'm not sure that they naturally
26 go together.

27 Q No, and I'll just say that I don't always mean
28 more money when I say better resourcing into the
29 processes. More people dedicated to the
30 processes, more time dedicated to the processes.
31 It's not always just more money. Often people in
32 time equate to money but those are the -- that's
33 the commitment that's necessary. Would you agree
34 with that, deputy?

35 MS. FARLINGER: Sometimes it comes down to better
36 organization, better understanding of each other,
37 better how we -- really it's about organization as
38 much as it is about resources, I would say. So
39 not always more but certainly better.

40 MR. WALLACE: Mr. Commissioner, I just noticed we have
41 ten minutes remaining till four o'clock. I have
42 -- there is one more participant who wishes to
43 examine this panel and I know of one question for
44 re-examination. So I'm not sure whether Ms.
45 Gaertner can wrap up quickly.

46 Q I'll do my best. Deputy, I have a couple more
47 questions for you now, a broader perspective. And

1 one of the things that Mr. Commissioner has heard
2 from us about already is the challenges of
3 reconciliation and the broader issues around
4 aboriginal title and rights. And I just wanted to
5 get a sense from your decision-making structure
6 how you and Ottawa get informed about these larger
7 issues of title and rights and the effects of
8 those. I didn't see that in the structure. At
9 one point in time there was an Aboriginal Affairs
10 Department within the Department of Fisheries and
11 Oceans. I know that no longer exists. And so
12 it's not clear to me how, in headquarters, you're
13 informed of those matters. Could you let us know
14 about that?

15 MS. DANSEREAU: Yes, the ADM programs that you saw in
16 the org chart has within his responsibilities
17 working on matters of aboriginal programming and
18 policies. So we -- and also, obviously, as you
19 know, much of the discussions that we have take
20 place in the context of court cases and so --
21 because those are ongoing. But also, in relation
22 to all of our decision-making really, we have to
23 ask the question at the start of any decision
24 whether or not there are some aboriginal
25 considerations that need to be taken into account
26 in our decision-making. So it's potentially today
27 more permeated across the department than it might
28 have been at one point where we were segregated and
29 we are much less segregated now in how we do our
30 work.

31 Q And one of the other areas that's not clear to me
32 from your decision-making structures or to my
33 client's is there are mandates that are obtained
34 for treaty negotiations and interim measures and
35 opportunities outside of that. And who makes the
36 decision, or how is it made within the department?
37 What things are offered outside or inside a treaty
38 process?

39 MS. DANSEREAU: Oh, that's done very much in
40 consultation with the broader government. And so
41 if a treaty negotiation is going down a certain
42 way then we need to seek a mandate from cabinet
43 and within that we'll have the discussion as to
44 what should be in or out.

45 Q Perhaps this a question more locally again. I'm
46 not sure but we've heard from the Tsawwassen First
47 Nation on the opportunities that have been

1 obtained through their treaty process and the
2 comments that were made by their legal counsel
3 that they -- from a management perspective some of
4 those processes could easily be available inside
5 and outside of a treaty but that's been difficult
6 to achieve. Who would have made the decisions or
7 how would the decisions have been made more
8 locally in the province as to what opportunities
9 are available inside and outside of treaty for
10 management decisions?

11 MS. FARLINGER: As the deputy mentioned, when we're
12 looking at a mandate for a treaty, we go through a
13 process to cabinet. I think the processes that we
14 work on operationally are -- are really very much,
15 as you've described them. We develop them as much
16 as we can given the capacity and weight on the --
17 on the ground and the need to fundamentally focus
18 on managing the fishery, as opposed to settling or
19 dealing directly with the rights issue.

20 Q Just one final question, Mr. Commissioner. We've
21 heard a number of comments and questions around
22 the challenges perhaps to implementing a shift
23 from a predominantly mixed stock fishery to a more
24 selective and terminal fishery. We're going to
25 hear lots more about that. I just want to make a
26 proposal and a suggestion and see how you would
27 respond to that. It seems to me that a
28 collaboratively-developed plan as to how to do
29 that shift that would be developed at a Tier 2 and
30 Tier 3 might be useful for implementing such a
31 daunting task. Would any one of you like to
32 comment on that and provide any perspective with
33 respect to that?

34 MS. DANSEREAU: I think you will get into this in more
35 detail later and I may be -- I may be wrong in
36 what I'm about to say and others of the panel can
37 correct me. But my understanding is that the five
38 years that went into developing the wild salmon
39 policy was, in fact, not necessarily a formal Tier
40 3 process but certainly was heavily consulted.
41 And so the outcome would be the same.

42 Q I think I need to get more specific and, Mr.
43 Sprout, maybe you could help me with this. The
44 wild salmon policy gives us policies and broad
45 spectrums. I'm thinking more of something much
46 more practical and -- and perhaps a five-year -- a
47 five-year plan or something like that to implement

PANEL NO. 3

Paul Sprout

Cross-exam by Ms. Gaertner (FNC)

David Bevan

Cross-exam by Mr. Dickson (STCCIB)

1 a shift from the mixed stock -- the predominantly
2 mixed stock into the more selective terminal
3 fisheries. Do you have a comment on that?

4 MR. SPROUT: I do. I believe that you do have to bring
5 First Nations and non-natives together with the
6 department to look at operationalizing (sic) some
7 of the policies we have, like WSP being one. Even
8 with the policy, it raises important strategic
9 questions that have yet to be answered. What
10 should the exploitation be on some of these
11 populations? How much should you -- what should
12 be the -- how do you deal with productive
13 populations mixed with less productive
14 populations? I think these are very, very
15 difficult questions and I believe that they're
16 best addressed, at least initially, through bodies
17 of First Nations and non-natives in government
18 trying to find a collaborative plan, an agreed
19 plan, a consensual plan, if possible. Failing
20 that, then maybe a decision process to deal with
21 whatever -- whatever gaps have been narrowed. So
22 fundamentally, if that's what you're suggesting, I
23 believe it has merit.

24 MS. GAERTNER: Thank you. Those are my questions.

25 MR. WALLACE: Thank you, Ms. Gaertner. The last
26 participant, who has indicated a desire to
27 question is for the Sto:lo and Cheam, Mr. Dickson.

28 MR. DICKSON: Yes, for the record, Tim Dickson for the
29 Sto:lo Tribal Council and Cheam Indian Band.

30 THE COMMISSIONER: Mr. Dickson, how long will you be?

31 MR. DICKSON: I have ten minutes. I'll aim to be five.

32 THE COMMISSIONER: All right. Thank you.

33
34 CROSS-EXAMINATION BY MR. DICKSON:

35
36 Q Mr. Bevan, this morning Mr. McDade, who's counsel
37 for the Agriculture Coalition, was asking about
38 certain of those position descriptions. And one
39 that he asked about was of regional director of
40 science. And there was a portion of that position
41 description that speaks about the department's
42 shift in philosophy from reactive enforcement to
43 the concept of sharing the stewardship
44 responsibility for the resource with all
45 participants in the fisheries. Do you remember
46 that?

47 MR. BEVAN: Yes, I do.

1 Q And Mr. Lunn, perhaps you could bring up Exhibit
2 33. It's Tab 10, I believe, and it's the position
3 description for the Director General of
4 Conservation and Protection. That's the one. And
5 I'd like to go to page 3, please. In the first
6 full paragraph there. Yes, conservation and
7 protection. In this -- this paragraph contains
8 that same language. It says:

9
10 In response to the increasing emphasis, which
11 the government is placing on creating and
12 maintaining partnerships with stakeholders in
13 the administration of regulations, the
14 department has embarked upon a series of
15 legislative reforms that will shift the
16 emphasis from reactive enforcement to the
17 concept of sharing the stewardship
18 responsibility for the resource with all
19 participants in the fisheries.

20
21 It says:

22
23 This will have a profound effect on the
24 department's clients and stakeholders.

25
26 And as I heard your testimony this morning,
27 sharing the stewardship responsibility is about
28 having more self-reporting to the department; is
29 that correct?

30 MR. BEVAN: This -- the shift is a balancing, balanced
31 question. What you have right now, as we've had
32 in the past, a lot of reactive enforcement and
33 less emphasis on education, less emphasis on
34 seeking the means by which the people who use the
35 marine space or the fisheries can participate in
36 the monitoring, controlling and surveillance to
37 ensure compliance with the needed rules to attain
38 the compliance and conservation. We did have an
39 intention in previous draft fisheries acts that
40 did not -- or died on the order paper to have fish
41 management orders and other legal mechanisms to
42 allow us to enter into those kinds of
43 arrangements. But even in the absence of that
44 legislative tool, we believe it's the
45 responsibility of resource users to demonstrate to
46 Canadians that the -- that the use of the resource
47 that they are undertaking is, in fact, sustainable

1 and that they are -- can provide us with the
2 information needed to help them in that regard.
3 Q What's being described in that paragraph is
4 generally a shift toward more self-regulation, not
5 complete. There will be a mix but it's in the
6 direction of more self-regulation.

7 MR. BEVAN: I think self-regulation might -- to me,
8 regulation is much more than -- than participating
9 in the monitoring, control and surveillance
10 activities. It would be looking at the rules, et
11 cetera, and so that's -- that's a bit more than
12 what is anticipated by that particular part of the
13 job description. But the -- the three pillars of
14 the compliance program conducted by conservation
15 and protection are built around major
16 investigations, fraud, et cetera, that -- or
17 collusion between various parts of the -- the flow
18 of the fish into the marketplace, education. And
19 education would include working with the people
20 involved in the fishery to develop the right suite
21 of tools and -- and measures to demonstrate
22 compliance to Canadians and then reactive
23 enforcement. Reactive enforcement will be there.
24 We would hope, through collaboration with license-
25 holders and people who have a right to fish or a
26 privilege to fish that we'd be able to avoid the
27 need to spend a great deal of reactive enforcement
28 maintaining compliance there and that we would be
29 able to deal with poachers and people who are
30 intending to break the law. That's naïve in some
31 cases because we have a long way to go and it's --
32 but it's going to require a cultural change.
33 People who use the fish resource should be
34 inclined to conserve it.

35 Q Sorry, Mr. Bevan, that was a long answer but tell
36 me this. This is describing a shift in department
37 philosophy away from such an emphasis on reactive
38 enforcement?

39 MR. BEVAN: It's describing a re-balance, less reactive
40 enforcement for people who have a license or who
41 have a right to fish and more focus on the
42 education and partnership. So it's not a shift
43 away from; it's re-balancing.

44 Q This morning, I think you mentioned two rationales
45 for such a re-balancing and one being that
46 reactive enforcement is expensive and the other
47 that it's -- isn't always very effective. Is that

1 so?

2 MR. BEVAN: That's correct. Obviously, for people who
3 are looking to break the law on the -- at the
4 outset, poachers or whatever, we have to have
5 reactive enforcement. But if you're dealing with
6 commercial or recreational or First Nations
7 fisheries, there should be a mutual understanding
8 that we're all in that together and we need to
9 have a suite of measures that can demonstrate to
10 each other that you're in compliance. So landing
11 requirements and reporting and -- and so on and so
12 forth are a part of the process where you can
13 provide yourselves the confidence that it's under
14 control and you can demonstrate to the other
15 people who are in the fishery and you can
16 demonstrate to the markets and the Canadian public
17 as well.

18 Q And so when this document describes this shift or
19 this re-balance, as you say, and speaks of
20 increasing sharing of the stewardship
21 responsibility for the resource with all
22 participants in the fisheries, all participants
23 includes First Nations?

24 MR. BEVAN: It includes First Nations, yes.

25 Q So when this Commission comes to examine DFO's
26 aboriginal fishery scheme, it should be expected
27 to see this shift as well happening with respect
28 to the aboriginal fishery. Is that so?

29 MR. BEVAN: It's part -- it's always been part of the
30 concept around the AFS program that we were
31 providing funds to First Nations to participate in
32 the -- the management and to an extent to
33 participate in, demonstrating compliance so that
34 we can say to all the participants. And it goes
35 for the other side, too. It's fine for people to
36 call upon First Nations to prove they're in
37 compliance but they also have to be taking actions
38 to demonstrate to the public and demonstrate to us
39 and demonstrate to you or your clients that
40 they're in compliance as well. So it's -- it's
41 worked in some areas where -- a good example being
42 the Integrated Groundfish Fishery in the west
43 coast here where the monitoring helps provide all
44 the fleet components with a high level of
45 assurance that they're all playing by the rules.
46 And in that case, then you have a more
47 collaborative approach. It's when peoples'

1 suspicions are allowed to have room to play that
2 it's a problem and this shift or the balance is to
3 try to get the -- all of the players to be able to
4 demonstrate their commitment to compliance and to
5 conservation.

6 MR. DICKSON: Thank you. Those are my questions.

7 THE COMMISSIONER: Thank you, Mr. Dickson.

8 MR. WALLACE: Thank you, Mr. Dickson. Mr.

9 Commissioner, I'm aware only that Mr. Taylor has
10 one question in re-examination (sic).

11 MR. TAYLOR: Mitchell Taylor, Mr. Commissioner. And as
12 I go into my question I'm reminded of something by
13 a point of questioning that Ms. Gaertner put
14 forward and that has to do with consultation. And
15 I just take this opportunity to say that the
16 Supreme Court of Canada last Thursday, the 28th,
17 decided the **Rio Tinto and Carrier Sekani** case,
18 which elaborates upon the **Haida and Taku**
19 principles that you've heard about. And you'll
20 hear about **Rio Tinto** when we come to final
21 submissions. But it's there from last Thursday
22 that you may want to have a look at. There's
23 another case yet to come from the Supreme Court of
24 Canada called **Little Salmon/Carmacks**, which will
25 also deal with aboriginal consultation under the
26 **Haida and Taku** principle. It's been outstanding
27 for about a year now so it could be any time.

28

29

CROSS-EXAMINATION BY MR. TAYLOR:

30

31

Q My question of the panel, and I think I'll start
32 with Mr. Bevan. Others may have something they
33 want to say to this. And it comes from some
34 questions that Mr. Harvey was asking you. Mr.
35 Harvey, as I understood him, was suggesting that
36 the modelling that is used now prevented or
37 hindered his client from fishing and Mr. Bevan
38 said that that is not correct at all. In this,
39 and going beyond your answer to a related point, I
40 think, Mr. Bevan, does selective fishing come into
41 play? And how does that play into it, if it does?

42

MR. BEVAN: I think some of the people from the region
43 perhaps are better suited, particularly with
44 respect to salmon. But clearly, across this
45 country, if you're targeting the species and can
46 do so selectively, your opportunities are not
47 constrained by the bycatch or incidental mortality

1 you're causing elsewhere in the ecosystem. But I
2 know there was specific work done with regard to
3 selective fishing in salmon.

4 Q All right. And maybe one of the regional people,
5 either Ms. Farlinger or Mr. Sprout, Mr.
6 Macgillivray want to speak to that in the context
7 of Mr. Harvey and his clients -- or the question
8 by Mr. Harvey and his clients. And perhaps in
9 that you might explain, because I'm not sure it's
10 clear, what gear type Mr. Harvey's clients are.

11 MR. SPROUT: Well, Mr. Harvey's clients are trollers on
12 the west coast of Vancouver Island. And I think
13 the explanation the department was providing as a
14 matter of clarification was -- is in response to
15 the question, well, what would affect the capacity
16 of that group to be able to harvest? And there
17 was a reference to the fact that the model has
18 changed over time and the model itself is stopping
19 the harvest. And I think the department said, no,
20 that's not the case. What's -- what's affecting
21 the harvest are policy objectives. The status of
22 the populations and the ability, particularly of
23 the troll group to discriminate between those
24 populations that are at risk. So for example,
25 these sockeye all are indistinguishable when they
26 migrate at the same time in the same area. You --
27 there's not a Cultus sockeye that's physically
28 distinguishable from a Shuswap sockeye and on it
29 goes. They're -- they're very similarly shaped
30 and -- and sized within reason.

31 So the -- it's very difficult to separate
32 those populations of sockeye. And if you're
33 trying to protect a particular component of that
34 larger group, it means that you may not be able to
35 have access to more productive populations until
36 those fish get into the river or into geography
37 where they start to separate and you can start to
38 distinguish them better. So that's part of the
39 rationale that is driving that. There are other
40 factors regrettably. This is even more complex
41 than what I've just described. There are
42 allocation issues where we divide the harvest that
43 is available amongst the seiners and the
44 gillnetters and the trollers and the First
45 Nations, which is another constraint that affects
46 the ability of the more seaward fisheries to
47 harvest. So all of those are relevant in the

1 answer to Mr. Harvey.

2 MR. TAYLOR: Thank you.

3 MR. WALLACE: Thank you, Mr. Commissioner. I believe
4 that concludes this panel and I would thank them
5 for their attendance. You may speak about this.

6 THE COMMISSIONER: I want to add my appreciation to the
7 members of the panel for making yourselves
8 available yesterday and again today. It's been a
9 long day for all of you. And my thanks to
10 counsel, who have been so cooperative in ensuring
11 that, for the most part, you were able to stay
12 within your time limits. I'm very grateful to all
13 of you for that. Thank you. I believe we're
14 underway at 8:30 tomorrow morning?

15 MR. WALLACE: Thank you for reminding us. That's
16 correct. 8:30 tomorrow morning.

17 THE COMMISSIONER: We will see Paris but we won't enjoy
18 Paris.

19 MR. WALLACE: I would ask counsel to be a few minutes
20 early just so that -- maybe 20 after or 25 after
21 in their seats so we can do this as efficiently as
22 possible. Thank you.

23 THE COMMISSIONER: Thank you all very much.

24 THE REGISTRAR: The hearing is now adjourned until 8:30
25 tomorrow morning.

26

27 (PROCEEDINGS ADJOURNED AT TO NOVEMBER 3,
28 2010, AT 8:30 A.M.)

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