

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:

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

Tuesday, April 5, 2011

Tenue à :

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

le mardi 5 avril 2011

APPEARANCES / COMPARUTIONS

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Boris Tyzuk, Q.C. Clifton Prowse, Q.C.	Province of British Columbia ("BCPROV")
No appearance	Pacific Salmon Commission ("PSC")
No appearance	B.C. Public Service Alliance of Canada Union of Environment Workers B.C. ("BCPSAC")
David Burse	Rio Tinto Alcan Inc. ("RTAI")
Shane Hopkins-Utter	B.C. Salmon Farmers Association ("BCSFA")
No appearance	Seafood Producers Association of B.C. ("SPABC")
Lisa Glowacki	Aquaculture Coalition: Alexandra Morton; Raincoast Research Society; Pacific Coast Wild Salmon Society ("AQUA")
Tim Leadem, Q.C. Judah Harrison	Conservation Coalition: Coastal Alliance for Aquaculture Reform Fraser Riverkeeper Society; Georgia Strait Alliance; Raincoast Conservation Foundation; Watershed Watch Salmon Society; Mr. Otto Langer; David Suzuki Foundation ("CONSERV")
Don Rosenbloom	Area D Salmon Gillnet Association; Area B Harvest Committee (Seine) ("GILLFSC")

APPEARANCES / COMPARUTIONS, cont'd.

No appearance	Southern Area E Gillnetters Assn. B.C. Fisheries Survival Coalition ("SGAHC")
Christopher Harvey, Q.C.	West Coast Trollers Area G Association; United Fishermen and Allied Workers' Union ("TWCTUFA")
No appearance	B.C. Wildlife Federation; B.C. Federation of Drift Fishers ("WFFDF")
No appearance	Maa-nulth Treaty Society; Tsawwassen First Nation; Musqueam First Nation ("MTM")
No appearance	Western Central Coast Salish First Nations: Cowichan Tribes and Chemainus First Nation Hwlitsum First Nation and Penelakut Tribe Te'mexw Treaty Association ("WCCSFN")
Leah Pence Anja Brown	First Nations Coalition: First Nations Fisheries Council; Aboriginal Caucus of the Fraser River; Aboriginal Fisheries Secretariat; Fraser Valley Aboriginal Fisheries Society; Northern Shuswap Tribal Council; Chehalis Indian Band; Secwepemc Fisheries Commission of the Shuswap Nation Tribal Council; Upper Fraser Fisheries Conservation Alliance; Other Douglas Treaty First Nations who applied together (the Snuneymuxw, Tsartlip and Tsawout); Adams Lake Indian Band; Carrier Sekani Tribal Council; Council of Haida Nation ("FNC")
Joseph Gereluk	Métis Nation British Columbia ("MNBC")

APPEARANCES / COMPARUTIONS, cont'd.

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

TABLE OF CONTENTS / TABLE DES MATIERES

	PAGE
PANEL NO. 27 (cont'd)	
JASON HWANG	
Cross-exam by Mr. Harrison (cont'd)	1/5/10/12/18
Cross-exam by Mr. Rosenbloom	34/37/38/39/41/46/48/51/ 57/61
Cross-exam by Mr. Harvey	65
Cross-exam by Ms. Brown	71/77/84
Re-exam by Mr. Martland	92
REBECCA REID	
Cross-exam by Mr. Harrison (cont'd)	1/7/10
Cross-exam by Ms. Glowacki	25/27
Cross-exam by Mr. Rosenbloom	35/36/37/38/39/41/42/44/ 47/50/53/57/58/65
Cross-exam by Ms. Brown	68/76/81/85
Cross-exam by Ms. Robertson	87
Re-exam by Mr. Martland	90
Cross-exam by Mr. Taylor (cont'd)	93
PATRICE LeBLANC	
Cross-exam by Mr. Harrison (cont'd)	2/6/8/13/16
Cross-exam by Ms. Glowacki	21
Cross-exam by Mr. Rosenbloom	35/38/42/43/45/51/56/59/63
Cross-exam by Ms. Brown	69/79/83/85
Cross-exam by Ms. Robertson	86
Cross-exam by Mr. Taylor (cont'd)	92/93

EXHIBITS / PIECES

<u>No.</u>	<u>Description</u>	<u>Page</u>
661	Briefing Note for Director General of Habitat Management, Meeting With the BC Salmon Farmers Association Regarding Public Confidence and Aquaculture	18
662	OHEB Key Issues, Draft Memo, dated July 2007	20
663	Series of 97 referral letters from Department of Fisheries and Oceans to Transport Canada, dated July 19, 2005	31
664	Reality Stewardship - Survival of the Fittest for Community Salmon Groups	47
665	DFO and EC Response to May 2009 CESD Audit Report and Progress Made - Final Version	57
665	New document replacing Exhibit 665 entered on Page 57	92
666	Letter from John Henderson and Ken Malloway, Co-Chairs of FNFC to Greg Savard, Direction of OHEB at DFO dated September 22, 2010 re concerns about mitigation measures for hydroelectric operations in B.C.	73
667	No Not Less of Fish Habitat - A Review and Analysis of Habitat Compensation in Canada	80
668	Aboriginal/Non-Aboriginal Partnerships FBC Special Report, Sustaining the Basin Spring 2000	82
669	Minutes from Assembly of First Nations National Policy Analysis Group Meeting, Habitat Management Session - December 2007	85
670	Interim Guide to the Application of Section 35 of the Fisheries Act to Marine Salmonid Cage Aquaculture	87
671	Regional Habitat Regulatory Decision Framework - July 2010	90

EXHIBITS FOR IDENTIFICATION/PIECES POUR L'IDENTIFICATION

W	High and Dry: An Investigation of Salmon-Habitat Destruction in British Columbia, written by the David Suzuki Foundation	16
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1 Vancouver, B.C./Vancouver (C.-B.)
2 April 5, 2011/le 5 avril 2011
3

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

5 THE COMMISSIONER: Mr. Martland.

6 MR. MARTLAND: Thank you. Mr. Commissioner, we're slow
7 off the mark because we had an all counsel
8 meeting. I just thought I'd indicate to these
9 witnesses, who may have been wondering, it wasn't
10 about them, but that was a meeting for counsel to
11 hash through some different procedural issues.

12 I have, on my list, Mr. Harrison with 45
13 minutes remaining in his estimate.

14 MR. HARRISON: Thank you. Good morning, Mr.
15 Commissioner, good morning, Panel, again. There's
16 a potential that I do go over my estimate --

17 THE COMMISSIONER: Yes.

18 MR. HARRISON: -- but I will try my darndest not to. I
19 will try very hard not to.
20

21 CROSS-EXAMINATION BY MR. HARRISON, continuing:
22

23 Q I'd like to start with just a really basic,
24 fundamental question, and that is: Would you
25 agree that threat to habitat is one of the primary
26 threats to fish, generally, and to Fraser sockeye
27 in particular? In other words, threats to
28 habitat, is degrading habitat among the primary
29 threats to fish and Fraser sockeye in particular?
30 This is for each of you, please.

31 MR. HWANG: I think habitat impacts and decline are a
32 risk, a threat, that is cumulative and if current
33 trends persist there's going to be an ongoing
34 decline, and I think it's significant. I think
35 the habitat impacts are difficult to retrieve or
36 recover from, but they do, at least in my opinion,
37 transmit to things like Fraser River sockeye in an
38 incremental way over time. So they're not
39 something, at least as we see them currently, that
40 are creating catastrophic adjustments season in,
41 season out. But over time I would say the trend
42 is negative and it will have an effect, because
43 the habitat productivity has some direct bearing
44 on the ability of the ecosystem to produce fish.

45 Q Mr. LeBlanc and Ms. Reid?

46 MS. REID: Well, I would agree that, clearly, habitat
47 is an extremely important feature for the survival

1 of fish, and so from that perspective, it's
2 critically important. As far as the contribution
3 of habitat lost to the impact on Fraser sockeye,
4 clearly we need to maintain the habitat, but from
5 a perspective of all the other features out there,
6 I wouldn't say it's the most important concern at
7 this point.

8 MR. LeBLANC: All I can say, from a general
9 perspective, is habitat is critical to, and
10 important to, fish production, and if we continue
11 any decline of the quality and quantity of
12 habitat, it will eventually have some impacts on
13 the production of fish. How much? That is very
14 difficult to say.

15 Q Okay. Mr. Hwang, yesterday I was asking you, just
16 generally, about the changes in your job that
17 you've seen over the last 15 to 20 years. I would
18 like to ask you, we've constantly heard about
19 increasing complexity and multi-layered policies
20 and directions, but my question for you is: In
21 your opinion, is discretion, creativity and
22 innovation a key component of habitat management,
23 and are these increasingly being limited by
24 complexities as a result of policies and
25 directions?

26 MR. HWANG: Well, the short answer would be, yes, the
27 discretion and creativity is important, and to
28 some degree over the number of years there has
29 been increased oversight and, I guess, management
30 applied to operational level decisions that has
31 added process and work to those kind of decisions
32 and outcomes.

33 Q Do either Ms. Reid or Mr. LeBlanc have any
34 comment?

35 MS. REID: Yeah, I think I would have a slightly
36 different take on the question. I think what
37 you're asking is do I - and I want to confirm - do
38 I see that with the increased essential
39 codification of the habitat program, a reduction
40 in innovation and creativity; is that what you're
41 asking?

42 Q I don't think I was getting as specific as that.
43 Just generally, I was wondering if -- that staff,
44 today, has less discretion and more direction from
45 national headquarters than they did 15 to 20 years
46 ago.

47 MS. REID: Well, I would say that under EPMP that was

1 one of the strategies was to essentially support
2 the idea of program coherence; that is to say,
3 that there are standard operating procedures and
4 practices that need to be followed. But I don't
5 think that necessarily takes away from innovation
6 and creativity, and that's the point I wanted to
7 get back to, that you can see examples of how
8 staff work within the accepted practices and
9 procedures and yet still deliver an area-specific
10 and relevant program, and to me that speaks to the
11 idea around innovation and creativity.

12 MR. LeBLANC: Yeah, I'll follow up on that, that, yes,
13 we have developed a series of policy, frameworks
14 and tools from headquarters to be used across the
15 country, to address coherence, predictability and
16 transparency. However, there is sufficient
17 flexibility in there to allow for discretion and
18 also for innovation and creativity in terms of how
19 they apply those policies.

20 Q Okay, thank you. At various times, yesterday, we
21 touched on whether No Net Loss was being achieved.
22 Mr. Hwang, am I correct to say that you would
23 support the view that we are seeing a slow net
24 loss? And I won't put words in your mouth, but I
25 would like to ask that question again: Are we
26 achieving No Net Loss, today, in the province?

27 MR. HWANG: Well, I think I spoke to that, yesterday,
28 fairly directly, and in my opinion, no.

29 Q Yes.

30 MR. HWANG: And it's reflective of the findings of
31 previous audits that have made that part of the
32 outcomes or determinations that indicate that
33 there is a net loss occurring. Rate has not
34 necessarily been well defined, and it's been
35 repeated as findings from the audits, and I would
36 say that reflects current conditions, in my
37 observation.

38 Q Thank you. I'd like to ask the same question to
39 Ms. Reid, please.

40 MS. REID: Yes, so from a technical perspective around
41 the loss, I think we talked, yesterday, about our
42 ability to measure that loss, and we have some
43 ways, but I don't think that we have a
44 comprehensive program in place, now, to show the
45 loss over time, so I would generally agree with
46 Jason's views and perspectives on that.

47 But I also want to add that I think it's

1 important to take into account what's happening,
2 overall, from an economic perspective in the
3 province, that it's not surprising that as we see
4 increases in economic development there is going
5 to be pressure on habitat, and that's something
6 that I spoke to yesterday, about the need to
7 ensure that balance and make sure that we get it
8 right, and that continues to be a challenge as the
9 rate of development continues on.

10 Q So is it fair to say, then, in your opinion we are
11 probably achieving No Net Loss -- I mean, we're
12 probably not achieving No Net Loss, but there's
13 insufficient information to clarify that for
14 certain?

15 MS. REID: I would agree with that, Yes.

16 Q Mr. LeBlanc?

17 MR. LeBLANC: Yes, I would agree that we're not
18 achieving No Net Loss. I think a lot of the
19 audits that have been done and previous reports
20 have shown that is the case. As people have
21 mentioned, it is not well defined how much we're
22 losing. There is an inability to measure in a
23 comprehensive way what losses are occurring across
24 Canada. And as Rebecca was mentioning, there is
25 an increasing amount of economic development that
26 is also increasing the threats to fish and fish
27 habitat across Canada. So we're going to continue
28 if we don't take some actions to arrest the
29 impacts.

30 Q Okay. Thank you. I heard you just say that we
31 have an inability to measure whether habitat loss
32 is occurring or not; is that right?

33 MR. LeBLANC: Yeah, I don't think we have the tools
34 right now. The indicators and the measurements
35 and the monitoring programs out there to allow us
36 to effectively monitor whether we are gaining,
37 losing, or achieving a balance.

38 Q So we have the technical capabilities but not the
39 programs in place to ensure that -- to get that
40 information; is that correct?

41 MR. LeBLANC: Yes.

42 Q I just wanted to reiterate or get Mr. Hwang to
43 reiterate something that was talked about
44 yesterday, and that is a snapshot of the state of
45 the habitat. From where I sit, the first thing
46 that I would do to determine whether there's a No
47 Net Loss is to figure out what's already there.

1 Has there ever been a snapshot of the state
2 of the habitat and, you know, do we know what
3 we're trying to achieve No Net Loss from? Has
4 that study ever been done since the policy was
5 implemented in 1986?

6 MR. HWANG: Well, I'll speak to what I can recall, and
7 I don't want to reflect this as necessarily a
8 comprehensive knowledge of all that might have
9 been done in the past, but there have been a few
10 exercises to provide some degree of benchmarking.
11 There was an exercise undertaken when one of your
12 clients, Mr. Langer, was with our program,
13 establishing habitat management area, I guess
14 definitions, with a little bit of an oversight as
15 to what were the habitat values in that area, what
16 were the development activities within those
17 areas, and what was the forecast for what was
18 likely to be happening, the pressures, the
19 priorities in those watersheds.

20 So there have been some efforts to benchmark
21 and document, but nothing that I would frame as
22 sort of a comprehensive benchmark that you could
23 go back to, now, and say with some degree of
24 certainty, are we the same, plus or minus from
25 that point.

26 Q Thank you. Yesterday, you agreed, but would you
27 agree, again, that that's an integral key thing
28 that must be done in order to probably determine
29 whether we're meeting No Net Loss?

30 MR. HWANG: In my opinion, it would be very important
31 and very helpful in terms of being able to
32 understand how well and effectively the habitat's
33 being managed, what the trends are, and whether
34 there is cause for concern and where that is and
35 what the point source of that would be. So yes,
36 I'd agree that it's important.

37 Q Okay. And I'd just like to follow up on you were
38 talking about various studies and you mentioned my
39 client, Mr. Langer. Among the documents that we
40 gave notice of is number 6 on my list. It's a
41 briefing that Mr. Otto Langer made for the
42 Attorney General, and within that, Mr. Langer
43 lists numerous studies. It's actually Appendix 1
44 to this. Well, perhaps your version does not have
45 the appendix, so I apologize for this, but I'll
46 just go back to my question.

47 My question is: Given the number of studies,

1 there's a couple that I can reference, including
2 the Harper and Quigley studies of the early 2000s,
3 Quadra and Dovetail Consulting studies in the late
4 1990s. There's a study by Kistritz in 1996.
5 There's been a lot of aerial photos about parts of
6 habitat. Would you agree that a comprehensive
7 assessment or determination of the state of
8 habitat is a result of a lack of political will
9 more than anything else?

10 MR. HWANG: I'm not sure I'm in a position to comment
11 on political will. My observation is that we, and
12 I think Patrice spoke to that right at the outset
13 today, it would be possible to undertake that kind
14 of exercise and generate that product or that
15 information, and we haven't done it. The reasons
16 and the causes for that I would be speculating
17 from a government perspective.

18 At our level, where I work, we've got a fixed
19 number of resources, we've got work plans and
20 priorities that we have to deliver on, and there
21 isn't room in that to undertake this at our level,
22 and beyond that I don't think I can really
23 comment.

24 Q Mr. LeBlanc, would you say that the primary
25 hindrance to obtaining a state of the habitat as
26 it is today is a lack of political will or
27 political direction to do so?

28 MR. LeBLANC: I can't comment on that. I wouldn't want
29 to make a comment on that, whether it's a
30 political will or not. But what I can say is that
31 when we dedicate our resources that are allocated
32 to us by parliament, we use them for a certain
33 function. A large amount of it, as you know, is
34 dedicated to the review of project by project
35 referrals that we receive.

36 We are in the midst of trying to change the
37 direction of the program to be one that looks at
38 these kind of things and does some different
39 things, such as standard monitoring and reporting
40 on the status of habitat. We have a new direction
41 that we're trying to go into. It's being
42 explored, now, internal to the department, and our
43 policy framework will have to guide us and move us
44 into that direction and reinvesting some of our
45 money to do that rather than doing project by
46 project reviews.

47 Q Ms. Reid?

1 MS. REID: Well, my view is that the Strategy 2 work
2 under the Wild Salmon Policy is a step in the
3 right direction to do that, and so we have the
4 methodology established. The reason we haven't
5 made more progress, as we discussed yesterday, is
6 primarily a funding issue. And so to do the type
7 of work you're proposing would be very expensive.
8 It would require a reallocation of funds or a
9 source of funds. And there is an intent to
10 implement the Wild Salmon Policy Strategy 2 work
11 completely and we're doing it now in an
12 incremental way.

13 So in order to, I think, get to where you
14 want to go, that would be a methodology of
15 cranking up that work.

16 Q And feel free to not put particulars to that, but
17 "very expensive", if you can give any sense, in
18 your mind, of what something of this nature would
19 cost?

20 MS. REID: We haven't done the analysis on the Fraser
21 Watershed. We'd have to go back and look at that,
22 but it would be multiple millions of dollars,
23 certainly.

24 Q Thank you. The last question I wanted to ask
25 about this baseline, or an assessment of habitat
26 as it exists, would be a question for all of you.
27 I guess I'll start with Mr. Hwang.

28 Would you agree with me that an assessment of
29 the state of habitat must look at habitat as it
30 existed in 1986, when the policy was drafted? In
31 other words, would you agree that if we did an
32 assessment of habitat today and No Net Loss and
33 tried to achieve No Net Loss from today, it would
34 be far different than trying to achieve No Net
35 Loss from 1986 and the habitat that existed at
36 that time?

37 MR. HWANG: Certainly, whatever benchmark you use to
38 start from is going to vary over time. We have,
39 in our area, been considering the idea of doing a
40 little snapshot, a very kind of localized overview
41 of Shuswap Lake area as an interesting exercise,
42 and even going back before 1986 we've been looking
43 at something like, say, well, what kind of data
44 can we gather from the early 1920s, or something
45 like that, because there were some air photos
46 done, I'm not sure exactly when, but, you know,
47 early on, and looking at that over time.

1 So I suppose it would depend on the purpose
2 of your exercise, but if you start from today as a
3 benchmark, then you're going to be going to be
4 going from a point where there's been the degree
5 of impact that already exists on the landscape,
6 and I could see utility in back-casting that to
7 certain time periods, depending on what kind of
8 reference you want to make.

9 Q Ms. Reid, Mr. LeBlanc, would you agree that No Net
10 Loss, as the policy exists currently today, means
11 No Net Loss from the state of habitat as it
12 existed in 1986?

13 MS. REID: No, I wouldn't agree with that. I think
14 that as we try and implement that principle of No
15 Net Loss we need to work with what we have on an
16 ongoing basis. And going back to 1986 may be an
17 interesting academic exercise, but the purpose of
18 the Habitat Management Program is to work with our
19 current environment in the existing context, and
20 so I would suggest a snapshot like that would
21 likely be based on the current situation.

22 However, I'm not a scientist, and so, you
23 know, there may be other perspectives on that
24 question.

25 MR. LeBLANC: The Habitat Policy didn't provide a
26 baseline date at which we would start in terms of
27 No Net Loss, so I can't comment on the date for
28 that. But I think what we need to do is to
29 establish the objectives we have for watersheds in
30 terms of the fisheries and are able to then decide
31 what is needed in terms of producing those fish in
32 terms of habitat, so what are the priorities in
33 terms of conservation protection and what are the
34 priorities in terms of restoration, because there
35 could be some bottlenecks in the system that need
36 to be addressed. So I think we need to treat
37 these on a watershed by watershed basis.

38 MR. HARRISON: Mr. Commissioner, Mr. Martland, I'm
39 unsure about the extent to which I have to mark
40 the document I brought up as an exhibit. The
41 purpose of me bringing it up was there's a list in
42 the Appendix 1 that I saw was put up that has a
43 list of studies that looked at the assessment of
44 whether No Net Loss was being achieved.

45 MR. MARTLAND: My suggestion, Mr. Commissioner, would
46 be I think we've taken the approach that where the
47 document's used for the purpose, and is needed for

1 the purpose, of questions put to a witness, in a
2 general level that would often be marked as an
3 exhibit in the absence of an objection. I don't
4 know that it's been used for the purpose of a
5 question that I've heard answered by these
6 witnesses. So I'm open to other views on it.
7 I think, equally, Mr. Commissioner, if you
8 have a view one way or the other, that would
9 assist us as well.

10 MR. TAYLOR: Is this a document we've seen? I can't
11 find it.

12 MR. HARRISON: Yeah, sorry, it's number 7 on my list
13 that I provided -- 6, thank you, that I provided.

14 MR. TAYLOR: I don't seem to have the appendix to it.
15 I don't know if we didn't get it or we didn't copy
16 it.

17 MR. HARRISON: Yeah, I noticed that the document that
18 he brought up (indiscernible - overlapping
19 speakers) --

20 MR. MARTLAND: We have an issue, a separate issue apart
21 from whether the document was used or not in terms
22 of who has what. I wonder if we could simply set
23 this aside and have a conversation with counsel at
24 the break, and if it's appropriate, then, to have
25 it marked as an exhibit, we can do that after the
26 break, if that's agreeable?

27 MR. HARRISON: Can we mark it as an exhibit for
28 identification, then?

29 MR. MARTLAND: The same difficulty arises, which is
30 it's not clear what is being marked for
31 identification and whether everyone has it. If
32 Mr. Harrison's in a position to express exactly
33 what is being put in as an exhibit --

34 MR. HARRISON: Sure.

35 MR. MARTLAND: -- for identification, that would be of
36 assistance.

37 MR. HARRISON: What I would like to put in as an
38 exhibit is the brief to the Auditor General signed
39 by -- or written by Otto Langer, including the
40 appendices, which may be listed as separate
41 documents under the ringtail system, but they are
42 clearly marked within the document and have all
43 been disclosed.

44 MR. TAYLOR: Mr. Spiegelman points out that in your
45 letter to us we have been given CAN -- CON, sorry,
46 your organization, 121, and what's on the screen
47 is apparently 122.

1 MR. HARRISON: I don't want to waste time on this, so
2 I'll just move on and discuss it at the break, so
3 I apologize for that. And I'm going to pick up
4 the pace. If you could bring up Exhibit 651,
5 please?

6 Q And this is a document that was discussed
7 yesterday and referenced as the *diagnostic* or the
8 diagnostic, and I'd like to ask some questions
9 with respect to this document. First of all, do
10 you know who authored this document, and if you
11 can give us a sense of who the author was?

12 MS. REID: Yes, so that was Bonnie Antcliffe.

13 Q Okay. And I'd like to go through a couple of
14 specifics within this document for the simple
15 question of, is the EPMP effectively protecting
16 fish habitat? And I would say that this document
17 shows quite clearly that it's not, and I will ask
18 that question again after taking you to some
19 portions of this document.

20 Am I correct that this document identified a
21 number of various opportunities and losses that
22 staff felt were being -- opportunities and losses
23 as a result of the EPMP were referenced in this
24 document. Ms. Reid?

25 MS. REID: Yes.

26 Q And on page 8 of this document, would you agree
27 that the number one identified loss spoken about
28 by staff was, as a result of this program, was
29 habitat?

30 MS. REID: Yes, so Table 2 were the results of a focus
31 group survey done with Habitat staff and that's
32 what they identified, yes.

33 Q So the number one loss that Habitat staff has
34 identified as a result of the EPMP is loss to
35 habitat?

36 MS. REID: That was their identified concern, yes.

37 Q And if I could, I would just like to point out
38 number 4 on that list is credibility and trust; is
39 that correct?

40 MS. REID: Yes.

41 MR. HWANG: Excuse me, Mr. Harrison, could you just
42 refer us to which tab in which binder this is just
43 so we can reference it from the desk?

44 Q Oh, sorry about that.

45 MR. HWANG: Thank you.

46 Q I was looking and asking the question.

47 MR. MARTLAND: I think it will be Tab 35 of the

1 Commission's binder of documents that were
2 provided.

3 MR. HARRISON: And then, Mr. Registrar, at page 11,
4 Table 4, there is described as identified barriers
5 to acceptance and action of the EPMP.

6 Q Ms. Reid, would you agree with me that the first
7 five identified barriers to acceptance were,
8 number 1 being a lack of success indicators, i.e.
9 not seeing the benefits or value of EPMP; number 2
10 being personal beliefs or value conflicts with
11 EPMP; number 3 being EPMP perceived as lowering
12 the bar on habitat protection; number 4, staff
13 don't buy into the rationale or understand the
14 need for change; and number 5, staff don't see the
15 link from EPMP to National Habitat Management
16 Policy?

17 MS. REID: Yes, that was the outcome of the discussions
18 with staff. And as I explained yesterday, I think
19 it's important to reiterate that the
20 implementation of EPMP in the Pacific Region was
21 difficult, and certainly there was issues around
22 implementing a change. And so what this document,
23 this diagnosis, was intended to do was to identify
24 the concerns to work towards affecting that
25 change.

26 Q I'd just like to actually go to one more portion
27 of this document. On page 14, there's two parts
28 I'd like to read out. This is the top, the
29 beginning of that first paragraph, it says:

30
31 The EPMP model was supported by several
32 habitat practitioners, with the caveat that
33 the tools are too primitive to permit
34 effective and efficient fish habitat
35 protection.
36

37 In other words, it received support from some with
38 the express acknowledgment that it did not
39 effectively protect habitat; is that correct?

40 MS. REID: So there was concerns around, you said, the
41 operating statements. I think that's what they
42 were talking about there.

43 Q And we focus a lot on problems, and I think, for
44 the Commissioner's benefit and for everybody's
45 benefit, it would be great to, every once in a
46 while, focus on some solutions.

47 The second paragraph of this references a

1 potential solution and it says that:
2

3 Some staff...were not convinced that the EPMP
4 model has it right. They reported that the
5 model was backwards in that more time should
6 be spent working with the middle and smaller
7 class operators, who have less resources
8 available to hire professional help, and less
9 time should be spent on referrals with the
10 larger industry groups who have more
11 resources available.
12

13 I would like to ask each of you if you agree with
14 that notion.

15 MS. REID: Okay, well, I'll start. It speaks to what
16 we were talking about yesterday, around the values
17 of stewardship and working with what we call low
18 risk projects and smaller proponents. And so
19 that's the reason, I think, why it's important to
20 have a balanced program so that you can focus your
21 time energy on high-risk projects while still
22 allowing some of that low risk work to occur.

23 So I think that it's not one or the other,
24 it's a balance, and I think that's the trick,
25 having adequate resources in place to allow both
26 activities to happen. And I don't think that
27 anyone would agree that what we should do is
28 ignore those major mind developments, those
29 massive projects because we're busy working on
30 small stream projects. And so the question is, is
31 how do we balance those resources? How do we have
32 the most effective program? And that's the
33 debate. That's the conversation that staff are
34 having.

35 MR. HWANG: Yeah, I'll just add to that to say that I
36 don't think any staff in our area would
37 necessarily say that larger projects should not
38 get any time from the Fisheries and Oceans Habitat
39 Program. But I think the concern that stems from
40 this was that the smaller projects, some of the
41 projects that were framed as low risk were
42 perceived, understood, perhaps, to regularly
43 result in small but cumulatively significant
44 potentially habitat problems, and the concern was
45 if we were going to take those out of the realm of
46 DFO review and input we would have less
47 opportunity to influence them hopefully in a way

1 that would be positive for fish and fish habitat.

2 So the framing of this wasn't that it should
3 be one over the other, necessarily, it was more of
4 a concern about if we're not going to do these
5 smaller things that they may not result in the
6 best possible results for the fisheries resource.

7 Q Mr. LeBlanc?

8 MR. LeBLANC: No comment on it.

9 Q Okay, I will move on. Mr. LeBlanc, yesterday, I
10 apologize, I tried to review the transcripts
11 before, but yesterday you spoke about ENGO,
12 Environment Non Government Organization
13 consultations, and I realize I'm near my time, so
14 I will go really quick. But did you say anything
15 to the effect, in your view, does the ENGO
16 community support EPMP?

17 MR. LeBLANC: I'm going to assume that they were not
18 very supportive of it, if I recall some of the
19 inputs that were provided. I think some of the
20 elements of the EPMP, such as improving our
21 monitoring capacity, everyone was quite supportive
22 of that. The collaborative part of it, the
23 partnering, everybody was supportive of this
24 because it didn't engage non government
25 organizations and others, so they were all pretty
26 supportive of that, because it turned into some
27 agreements between the ENGO community and the
28 conservation groups as well. There may have been
29 some difference of opinion in terms of the risk
30 management framework that was established and our
31 focus on major projects, which you have alluded to
32 before.

33 MR. HARRISON: I wonder if I could introduce an exhibit
34 at this time. It's a study that has been both
35 referenced in a PPR and is document number 1 in my
36 book. It's called, "High and Dry: An
37 Investigation of Salmon-Habitat Destruction in
38 British Columbia" written by the David Suzuki
39 Foundation. And my purpose for introducing this
40 as an exhibit will be on page 14 -- in fact, I
41 apologize, there's no page numbers listed on this
42 document. But this document contains very clear
43 views of what at least one ENGO, one of my
44 clients, feels like towards EPMP.

45 MR. MARTLAND: Mr. Commissioner, Rule 27.1 indicates
46 that something that's referred to in the Policy
47 and Practice Report need not be marked as an

1 exhibit, and this is something that's referred to
2 in the Policy and Practice Report, to my
3 understanding.

4 If there's a question, certainly I'd invite
5 Mr. Harrison to put the question and it may then
6 be appropriate to mark it on that footing as well.

7 MR. HARRISON: Well, my reason, again, to include it
8 would be to support the view that the ENGO
9 community is generally against EPMP. And in the
10 interests of time, I don't want to go to the
11 document. I see Mr. Taylor is standing.

12 MR. TAYLOR: Well, for the reasons that Mr. Martland
13 has pointed out, I don't think it needs to be
14 introduced, but in any event, nothing's been done
15 here to get it as an exhibit. It's something by
16 some other organization who's not here as a
17 witness.

18 MR. HARRISON: So I would like to then read a portion
19 of this document into the record. This is written
20 by my client, among an organization that is my
21 client.

22 And at page 29 of this document - there's no
23 page numbers - but at the very bottom, starting
24 with "In summary," it says:

25
26 In summary, the David Suzuki Foundation
27 suggests that unless DFO modifies its new
28 habitat management plan and accepts a greater
29 and more active role regarding its
30 responsibility for salmon-habitat
31 conservation and protection, we will continue
32 to see more unique populations of salmon
33 slide into reduced levels of abundance and,
34 in the worst cases, go extinct. The clock is
35 ticking and more and more salmon habitat is
36 [being] degraded every year.

37
38 Would you agree with me, Mr. LeBlanc, that the
39 ENGO community is not supportive of this document
40 with respect to the EPMP? Would you agree with me
41 that the ENGO community does not support the EPMP?

42 MR. LeBLANC: Let me try to put a bit of context. The
43 EPMP was a three-year study as part of the
44 continuous improvement initiative for the program.
45 I think what they're criticizing is the overall
46 program, not the EPMP.

47 MR. HARRISON: Okay, thank you. I will move on.

1 MR. MARTLAND: Now, that, I think, illustrates the
2 difference of degree in my mind, if it's felt
3 appropriate, this document, having been used for
4 the question, might be marked as an exhibit, I
5 think?

6 THE COMMISSIONER: Very well.

7 MR. MARTLAND: To make that more clear, unless other
8 counsel raise an objection, I suggest it's
9 appropriate to have this document marked as an
10 exhibit.

11 MR. PROWSE: Mr. Commissioner, I rise because I have
12 some general concerns about the new rule and its
13 application, and this serves to illustrate it.
14 Apparently, this document is footnoted somewhere
15 in the PPR, although we're not told where, and we
16 don't know what proposition it's footnoted for.
17 So in my submission on this point, it comes down
18 to the fact that if the proper evidentiary
19 foundation has been made in the usual course, to
20 put this document in as an exhibit at this
21 hearing, it should be the consequence, I think, of
22 that will be that we got notice, apparently, of
23 this document from my friend in the ordinary
24 course. We were, therefore, alerted to the
25 specific document. If there's something in there
26 that some of us didn't like, and I suspect there's
27 stuff in there that I don't like, I at least had
28 an opportunity to deal with it. Whereas the fact
29 that it was footnoted in the PPR was of no
30 assistance to me, at least, in that regard, and I
31 don't think it can be to the parties.

32 So the risk of this new rule is that
33 documents like this are footnoted in the PPR for
34 some obscure reason and then the content of it
35 could be utilized in a final report and, in
36 effect, there wouldn't be any notice to the
37 document.

38 So I think my submission is that having got
39 it in the ordinary course as an exhibit in these
40 proceedings, then if any or all of us want to
41 utilize it, including the Commissioner, for
42 whatever purpose, at least we've had notice of it
43 and a chance to deal with it and, in my
44 submission, the fact that it's footnoted in the
45 PPR doesn't achieve that end.

46 MR. MARTLAND: I appreciate Mr. Prowse's point. I
47 think that's more of a comment or complaint about

1 a rule, as opposed to something dealing with this
2 particular question of whether this document is
3 marked as an exhibit. Perhaps we can simply set
4 aside that important question and have further
5 discussion about it, but not necessarily in the
6 context of hearing time. And I'm also mindful
7 we're running Mr. Harrison's clock, although
8 perhaps we add a few minutes, in fairness, given
9 that interruption.

10 THE COMMISSIONER: We'll mark this for identification
11 purposes, then, thank you.

12 MR. HARRISON: Okay, thank you. And I'm going to limit
13 my questions --

14 THE REGISTRAR: That will be marked for identification
15 as W for Identification.

16

17 MARKED W FOR IDENTIFICATION: High and Dry:
18 An Investigation of Salmon-Habitat
19 Destruction in British Columbia, written by
20 the David Suzuki Foundation

21

22 MR. HARRISON: I'm going to limit my questions, but I
23 do have one more document that I would like to
24 bring up. This is a document written by Mr.
25 LeBlanc, and we sent out notice of this document
26 later in the day, but I do note that this document
27 was document number 1 on the Aquaculture
28 Coalition's list. Number 2, excuse me.

29 This is a briefing note for the Director
30 General of Habitat Management, and it was Canada
31 document 0143324. Okay, it's up on the screen.

32 Q So Mr. LeBlanc, on page 4, would you agree that
33 you were among the authors of this document?

34 MR. LeBLANC: Yes, I was one of the reviewers and I
35 approved it.

36 Q Now, on page 1 of this document it discusses that
37 the Director General of Habitat Management will be
38 meeting with the Pacific Aquaculture Industry.
39 And then point number three in the summary says
40 that the purpose of this meeting is to improve
41 public confidence in aquaculture and to deliver on
42 the commitment the Department has undertaken to
43 raise public confidence in the context of
44 aquaculture.

45 My question for you is relatively simple: To
46 what extent does the director of Habitat
47 Management deal with communications and public

1 perceptions of industry, generally, and of
2 aquaculture in particular? What percentage of
3 your job, or not percentage but to what extent,
4 again, does the Director General of Habitat
5 Management involve him or herself in these issues?

6 MR. LeBLANC: Could you clarify that question? I'm
7 unsure what you really are driving at in terms of
8 what I do on a day-to-day basis.

9 Q No, what I'm driving at, I guess, is that this is
10 a meeting for the Director General to meet with an
11 industry association to deal with public
12 confidence in that industry, and then it states
13 quite clearly that the purpose is to change public
14 confidence and raise public confidence in a
15 particular industry.

16 So my question to you is: To what extent
17 does DFO management, generally, and the Director
18 General of Habitat Management, in particular, deal
19 with public perception of industry?

20 MR. LeBLANC: I would assume --

21 Q Is this a one-off? Is this something that comes
22 within the job description?

23 MR. LeBLANC: I think as part of the responsibilities
24 we have, we have to make sure that we can describe
25 our work in terms of protecting fish habitat for
26 whatever industry sector we're dealing with and
27 ensure that there is confidence that we're doing a
28 proper job in terms of the protection and the
29 conservation of the resource. And whether that's
30 five or 20 percent at a time, I'm not sure,
31 because we do meet quite often, on a regular
32 basis, with provincial agencies, NGOs, ENGOs,
33 industry, municipalities. We advise the minister
34 on, you know, on a regular basis in terms of
35 ensuring her that we are doing the best we can in
36 terms of protecting the resource.

37 Q But I guess point three says that:

38
39 DFO has explicitly committed to improving
40 public confidence in aquaculture.

41
42 Has DFO explicitly committed to improving public
43 confidence in respect of any other industries?

44 MR. LeBLANC: No, in the context of aquaculture, so
45 this is we were meeting with them in terms of the
46 requirements to protect fish and fish habitat from
47 harmful effects, so we needed to ensure that we

1 wanted to be confident that we were doing the job
2 in terms of protecting the resource.

3 Q Okay, I'll leave it there. I need to ask one more
4 question, and I apologize --

5 MR. TAYLOR: Well, I have the opposite objection, now.
6 This should be an exhibit, because he failed to
7 read parts of it and we can make submissions later
8 on that, but we need it as an exhibit to do it.

9 MR. HARRISON: I'd like to request that this document
10 be made an exhibit, please.

11 THE REGISTRAR: That's the briefing note to which
12 you're referring?

13 MR. HARRISON: Yes.

14 THE REGISTRAR: Yes, that will be marked as Exhibit
15 Number 661.

16

17 EXHIBIT 661: Briefing Note for Director
18 General of Habitat Management, Meeting With
19 the BC Salmon Farmers Association Regarding
20 Public Confidence and Aquaculture
21

22 MR. HARRISON: Thank you. And the final document I
23 wanted to get some comments to is a document
24 identified on Commission Counsel's list. It's
25 number 15 on their list, and it's a one-page
26 document that's entitled, OHEB Key Issues.

27 To be honest, I'm very near my time -- I'm
28 past my time estimate, so I had planned to ask
29 you, Mr. Hwang, to go through each one of these
30 criticisms or problems and offer a solution to
31 each and then to go to each other person. I do
32 not believe we'll have time to do that, but I do
33 want to --

34 MR. MARTLAND: Just to pick up on that concern, if I
35 might, Mr. Commissioner, there was, in, fairness,
36 an interruption and on my accounting there is
37 another five minutes, given the late start in the
38 estimate or allocation that Mr. Harrison has. And
39 given my understanding of the schedule, if he's in
40 the five to 10-minute window, at this point, I
41 don't think that presents a concern for the day.

42 MR. HARRISON: Thank you. I will definitely finish
43 within that time. This will be the last document
44 and line of questioning Thank you, Mr. Martland.

45 Q Mr. Hwang, is this a document that you've written?
46 Is this your document?

47 MR. HWANG: Yes, it is.

1 Q Can you give us a sense of when it was written?

2 MR. HWANG: I'm pretty sure, because when I saw it as
3 an item for the hearings, a potential item, I
4 started looking through my records and it's in my
5 electronic files from July of '07, so I assume
6 that's when I wrote it.

7 Q Now, would you agree that this document is a sort
8 of unguarded criticism of the problems that exist
9 with respect to habitat and would therefore be
10 fairly useful for consideration by both the
11 Commissioner and participants here?

12 MR. HWANG: Well, I definitely agree it's unguarded.
13 Certainly not my finest piece of work, I don't
14 think. But I was asked about this document in
15 preliminary interviews for the Commission
16 hearings, and in thinking about it and trying to
17 reflect on what it was -- I believe I wrote that
18 sort of for myself for some upcoming planning
19 meetings that we had, and it was just sort of a,
20 you know, probably five or 10-minute exercise as a
21 snapshot around what was going on at that moment,
22 what were some of the challenges we had, and
23 trying to reflect on key things that we were
24 grappling with, operationally.

25 Q So in three minutes or less, let's go through each
26 of these and to try to determine, and I would like
27 to hear from you if this is still a problem. Is
28 the referral backlogs still a problem?

29 MR. HWANG: It is, but it's better for two reasons.
30 One, is there is less stuff coming in, the
31 economic development climate has slowed down. And
32 number two, we have, fairly recently, put in place
33 a referral triage process that we touched on
34 briefly yesterday --

35 Q Yes.

36 MR. HWANG: -- that has helped to direct and filter
37 some of the referral load that we have.

38 Q And is there an additional practical solution that
39 would make it even better? Is there one thing
40 that you can come up with quickly?

41 MR. HWANG: Not quickly. I'd have to think about it.
42 There's probably lots.

43 Q Okay. Well, I'll give you -- think about it as we
44 go along, maybe. Within the second criticism you
45 say:

46
47 ...using the results-based approach -

1 -- that is, EPMP --
2

3 - means that we don't have a handle on what
4 is actually going on, and we often hear about
5 things after the fact, making a problematic
6 workload as investigations are costly, time
7 consuming and very confrontational.
8

9 Would you agree that's still a problem?

10 MR. HWANG: Yes.

11 Q Is there a solution that you can see to that?

12 MR. HWANG: Well, that's a fairly involved comment
13 there in that the work that we do exists in a very
14 complicated context that we spoke to yesterday,
15 but there is value in DFO engaging in a
16 development activity before the work is
17 undertaken. If we have the opportunity to do
18 that, either directly by way of another agency
19 representing something, that it prevents harm to
20 habitat or by way of guidelines or something else,
21 then the objective is to avoid impacts before they
22 occur by way of development.

23 So it is happening, it was happening before,
24 you know, it happened when I started my career,
25 it's happened during the course of my career, it
26 was happening when I wrote this memo, and it's
27 happening today. The degree changes, the source
28 changes, and it's really hard for me to kind of
29 give you a one-minute answer to that.

30 MR. HARRISON: That's fair. Why don't I stop there and
31 just stick with my comments that this is an
32 important document that we think should be
33 reflected upon more. Thank you.

34 MR. MARTLAND: I suggest --

35 MR. HARRISON: And we need to mark it as an exhibit.

36 MR. MARTLAND: Yes.

37 MR. HARRISON: I'm learning that process, so excuse me.

38 THE REGISTRAR: It will be marked as Exhibit Number
39 662.
40

41 EXHIBIT 662: OHEB Key Issues, Draft Memo,
42 dated July 2007
43

44 MR. MARTLAND: Mr. Commissioner, I note Ms. Glowacki's
45 next on the list. I note the time. I'm not sure
46 if the preference is to take the break now and
47 then reconvene, or to carry on?

1 THE COMMISSIONER: No, let's carry on.

2 MR. MARTLAND: Thank you. And I have her estimate as
3 under 30 minutes; it may be some ways under that.
4 Thank you.

5 MS. GLOWACKI: Lisa Glowacki for the Aquaculture
6 Coalition.

7

8 CROSS-EXAMINATION BY MS. GLOWACKI:

9

10 Q I wanted to ask a few questions that focus on how
11 the Department actually interprets its mandate to
12 protect fish habitat and, in particular, its
13 interpretation of what "habitat" means and what
14 the concept of "No Net Loss" means.

15 I think that the way to get into that would
16 be to go to the memo that was just marked as
17 Exhibit 661, or it's the briefing note for the
18 Director General of Habitat Management. It's at
19 Tab 2 of the Aquaculture Coalition documents.

20 Now, Mr. LeBlanc, you were asked briefly
21 about this. When I look at this document, as you
22 said, the purpose is to discuss how to raise
23 public confidence and how the Department is
24 applying, really, habitat management to
25 aquaculture. And there's two parts to what's
26 under discussion. One, is a set of initiatives
27 that are really, I would describe them as, public
28 relation initiatives, and you will find them on
29 page 2. There's Public Confidence, there's a
30 heading there, and the first paragraph,
31 initiatives include working with like-minded cold-
32 water aquaculture producing countries, redesigning
33 the online presence, and developing the long-term
34 practice strategy for raising public confidence.

35 Would you agree with me that those are
36 generally public relations? And by "public
37 relations", I don't mean an advertising campaign,
38 necessarily, but that they're directed at getting
39 information out about how the department considers
40 it to be regulating management; is that right?

41 MR. LeBLANC: Improving communications.

42 Q Right. Okay. Thank you. Now, the second part of
43 this, and there doesn't seem to be any specific
44 initiative there about changing regulation; is
45 that right?

46 MR. LeBLANC: Correct.

47 Q Okay. Now, the second part of the memo, so if we

1 go to page 3, that's where there's an outline, the
2 discussion around the actual regulation, and the
3 heading there is Regulatory Site Reviews. Now,
4 have you had an opportunity to look at this
5 before, Mr. LeBlanc, in preparation for this?

6 MR. LeBLANC: No.

7 Q Okay. Then I'll give you my general impression of
8 the section, is that generally you and your other
9 authors are saying that the Department is doing a
10 good job of regulating habitat management for
11 aquaculture, but there's a challenge that is the
12 renewal process for 97 sites that are operating.
13 And I understand that I think their tenures are
14 being renewed and there's a CEAA holdup. Is that
15 how you would interpret that section?

16 MR. LeBLANC: That was my understanding.

17 Q Okay. I would like to go to the first bullet,
18 under Regulatory Site Reviews, and the Department
19 has taken -- so in order to address what they
20 consider to be a public confidence crisis and how
21 they are regulating habitat management for
22 aquaculture, the Department's done focus group
23 studies and tried to assess what the general
24 public, leaving aside ENGOs, which the Department
25 considers to be perhaps unduly critical of the
26 Department's approach and supporters within the
27 Department, probably, they did a general
28 canvassing of what the public wants to happen.
29 And it says here, in the first bullet:

30
31 Focus group findings suggest that DFO's
32 regulatory approach to aquaculture must
33 provide for accountability and transparency
34 using scientifically-based and risk-based
35 decision making. This is largely how the
36 Habitat Management Program has sought to
37 regulate the aquaculture industry,
38

39 and it continues on. And that was the opinion of
40 yourself and the authors of this briefing note?

41 MR. LeBLANC: Yes, it was.

42 Q Okay. Now, I would just like to go to the 2004
43 Report of the Commissioner, the Environment and
44 Sustainable Development, which is Exhibit 88.
45 It's Tab 27 of the Commission's list.

46 Now, I'm bringing you to this because this
47 report of the Auditor General came out the year

1 before this memo, and it's a general report
2 that's, I think you would agree, quite critical of
3 how the Department is addressing habitat
4 management and, in particular, about how it is
5 managing in relation to aquaculture; would you
6 agree with me?

7 If you want to be brought to something
8 specific, I can do that. If we move to page 1,
9 which is page 11 of the document on the ringtail
10 number, that would be the -- I think that's a
11 Roman numeral one; I want the actual 1. Yeah, I'm
12 sorry, you're right.

13 Are you on that page, Mr. LeBlanc?

14 MR. LeBLANC: Yes, I think the main point, 5.1?

15 Q 5.1, right. And if we go to the third bullet
16 down:

17
18 There are weaknesses in regulatory approvals,
19 enforcement, and monitoring of salmon
20 aquaculture operations. This includes
21 approving aquaculture site applications,
22 assessing cumulative effects, and monitoring
23 salmon aquaculture operations to prevent
24 harmful destruction of habitat.
25

26 So that's an overall criticism. And then if you
27 go to page 15, please, and I will go specifically
28 to bullet 5.75, and that paragraph reads:

29
30 Our current audit found that while some
31 research has been undertaken or is ongoing,
32 significant gaps still exist with respect to
33 the needed research on the potential effects
34 of salmon aquaculture in aquatic ecosystems
35 and on wild salmon stocks. The Department,
36 through its state of knowledge initiative,
37 identified significant gaps in knowledge
38 about far-field environmental effects of
39 finfish aquaculture and the use of chemicals
40 on finfish aquaculture in Canada. We also
41 observed that sufficient knowledge of the
42 risks and potential effects of salmon
43 aquaculture on wild salmon does not exist in
44 several areas such as disease, sea lice, and
45 escapes of farmed salmon from aquaculture
46 sites.
47

1 So --

2 MR. MARTLAND: Mr. Commissioner, I'm going to raise a
3 concern that I think we're starting to stray, and
4 it may be an irresistible pull, but we're starting
5 to stray into the topic of aquaculture as distinct
6 from the overview management issues that this
7 panel, so far, has been addressing. Part of the
8 process in us achieving the work with this panel
9 and the time we have is not heading into specific
10 topics in as much as we can avoid doing that.

11 So I don't know, it may be that Ms. Glowacki
12 only has one or two questions further that are
13 topic-specific. We have separate hearings on
14 aquaculture, obviously, and so we're keen not to
15 try and head too far down that path at this point.

16 MS. GLOWACKI: I do have only a couple of questions.
17 One, is the divergence between the Department's
18 interpretation of how it applies its Habitat
19 Management Program and it's success, and the other
20 is about how it interprets the No Net Loss
21 principle, and I think that both of those have
22 general significance for hearing the habitat
23 management, generally.

24 MR. MARTLAND: And in that context, I think, if the
25 question is asked, and no doubt people will rise
26 if they object, but that's helpful to appreciate
27 it's a few questions, thank you.

28 MS. GLOWACKI: Okay.

29 Q So then the first question that I suggested that I
30 would ask, I'm asking you, now. Ms. Reid, you
31 may, as well, have an answer to this, because I
32 know that you've been involved in habitat
33 management for both fisheries and aquaculture.
34 But it seems to me, reading the 2004 report and
35 reading this briefing note, there's a real
36 divergence between how the Department understands
37 its success in regulating habitat management and
38 the gaps in its scientific basis versus what the
39 Auditor General, in his review, found. And I'm
40 curious about your opinion about that.

41 MR. LeBLANC: I can't comment on that section. I do
42 realize that we have science gaps in many things
43 that we do, many of the activities that we
44 regulate. It is an ongoing challenge in terms of
45 having scientifically sound information and
46 knowledge to be able to support our decision, and
47 this is just one of the examples of the lack of

1 knowledge and information we may have about the
2 interaction of aquaculture or an industry sector
3 with fish and fish habitat.

4 Q Okay. But the year after this Auditor General
5 report came out, the Department was proceeding on
6 the basis that it was, in fact, doing a good job,
7 despite those gaps, and didn't bring to the
8 attention of the Director General that there were
9 those gaps that had been identified?

10 MS. REID: Well, I think that, in a sense, comparing
11 that briefing note to the Auditor General's report
12 is sort of comparing apples and oranges, because
13 the purposes of the two documents were quite
14 different, and so on the one it was a
15 communication piece talking about the aquaculture
16 industry; on the other, it talks about some
17 specific concerns around how the program is being
18 regulated.

19 I think that the Department understands those
20 concerns and has put into place measures to try
21 and improve our practices the way that we evaluate
22 aquaculture sites, and I think that that's likely
23 something you'll want to get into some depth in
24 the aquaculture session.

25 Q Right.

26 MS. REID: But to me, you're kind of comparing two
27 things that don't really match up particularly
28 well, because they're addressing different points.

29 Q Yes, I recognize they're addressing different
30 points. One is a criticism of how the
31 Department's regulating, and the other is the
32 Department's view on how it's regulating. I
33 recognize they had different purposes, but that's
34 the angle I was getting at.

35 In terms of how --

36 MS. REID: Can I just add one point --

37 Q Sure.

38 MS. REID: -- just to explain kind of briefing notes
39 very briefly? So briefing notes, we're very
40 constrained by how much information we can
41 provide. We've got three pages to make our point
42 and, trust me, it's really hard to do that, and so
43 we tend to kind of really narrow in on the main
44 point. So there may be a whole bunch of other
45 peripheral pieces of information we simply don't
46 have the space to raise. So where we can, we
47 provide background, but where we really want to

1 focus in on, "Here's the key message, now let's do
2 this," that's why, when you read briefing notes
3 you'll only get a snapshot of the particular
4 objective of that particular note, and it's not
5 intended to provide broad context on a whole suite
6 of issues.

7 Q Yes, I can appreciate that. Okay, I'm not going
8 to argue about it.

9 So Ms. Reid, you were talking about the
10 Department taking initiatives to address the
11 information gaps. So that leads me into the
12 Department's interpretation of habitat and No Net
13 Loss of habitat, and I specifically have in mind,
14 and would like you to keep in mind, the criticism
15 that the Department lacks information about
16 cumulative effect of aquaculture, disease, and sea
17 lice, and various other impacts, which were
18 brought up in the Auditor General report, and you
19 were just mentioning that the Department's taking
20 initiatives to look at.

21 And also I have in mind that you've all
22 expressed a similar opinion that you doubt that
23 the Department is achieving the goal of No Net
24 Loss, but you don't have a measure to know the
25 rate at which you're losing habitat. So at Tab 7
26 of the Commission's list, and I'm not sure that
27 you need to go there, it's Exhibit 260, and it's
28 the Habitat Management Policy, I read the
29 definition of fish habitat in there and it is, on
30 page 6, it will be familiar to you, no doubt.
31 It's parts of the environment on which fish depend
32 directly or indirectly in order to carry out their
33 life processes.

34 And when you go to the **Fisheries Act**, and
35 this is cited in the PPR at paragraph 10 - again,
36 I don't think anyone needs to go there - is
37 described similarly as:

38
39 ...spawning grounds and nursery, rearing,
40 food supply and migration areas on which fish
41 depend -

42
43 -- and then it continues on --

44
45 - directly or indirectly in order to carry
46 out their life processes.
47

1 And then the Habitat Management Policy carries on
2 to say a loss of fish habitat would be -- to
3 determine if there's a loss of fish habitat you
4 would determine whether there's been an impact on
5 the ability of the habitat, or on fish habitat
6 that would reduce the capability of that habitat
7 to sustained fisheries resources.

8 Now, when I read that and I think about there
9 being somewhere between 150 and 200 fish farms on
10 the coast of B.C., over 100 of them on the Fraser
11 migration route, and each of those between 10 and
12 20 hectares, I think to myself that it's a pretty
13 easy calculation, that there's been several
14 thousand hectares of habitat lost.

15 But that doesn't seem to be how the
16 Department assesses fish habitat for aquaculture;
17 is that right?

18 MS. REID: Well, I think that when we look at a
19 referral, in this case a request for an
20 aquaculture site, we consider the question of
21 whether a HADD has been created or not, and
22 there's a certain methodology that's used which,
23 you know, others would be best placed to explain,
24 which essentially go through and determine whether
25 the HADD has been created or not.

26 In cases where there is a HADD calculated,
27 the Habitat Policy provides provisions around
28 compensation and the like to help it achieve that
29 No Net Loss.

30 So to do a calculation of all the fish farms
31 in British Columbia and assume that that's lost
32 habitat is not in keeping with how we actually
33 deliver the Habitat Policy.

34 Q Right. And is that a difference of interpretation
35 that I'm trying to get at? I just read those
36 definitions, and as a lay person I think, Well, if
37 you're taking that amount of area, that's water
38 that's penned in, it's on the migration route,
39 it's feeding grounds, and that wild salmon can no
40 longer access that area.

41 So that's just a lay person's interpretation.
42 I understand, and Ms. Reid, you might be able to
43 address this, and so on that basis I would think
44 that ever fish farm would need a habitat
45 alteration authorization, but that's not, in fact,
46 the case, is it? In fact, most of them don't get
47 one?

1 MS. REID: That's correct. So that's not the
2 methodology that's been used.

3 Q Right. Okay. So the method of the Department is
4 to look, I understand it, to look at benthic
5 impacts, and by benthic you mean deposit on the
6 sea floor of a certain amount of chemical or
7 biological deposit; is that right?

8 MS. REID: So yeah, the model that's used, called Depot
9 Mod, it's a modelling methodology to determine,
10 based on benthic impacts, whether it has been
11 created or not.

12 Q Right. Okay, so each time that there is a fish
13 farm that is being considered for a HADD, it's
14 determined whether or not it will deposit above a
15 certain level, and if not, then no HADD will be
16 issued and it can carry on and get whatever
17 licence or permit it requires; is that right?

18 MS. REID: So each of those, in those situations, there
19 would likely still be a letter of advice
20 provided --

21 Q Right.

22 MS. REID: -- around certain mitigations measures that
23 are required to be put in place to avoid a HADD.

24 Q Mm-hmm.

25 MS. REID: Yeah.

26 Q Okay. Now, that approach precludes consideration
27 of what the effects of the farm and the existence
28 of 500,000-plus fish on passing wild salmon is,
29 other than what gets deposited on the ground, so
30 it can't look at the cumulative effect of all of
31 the farms on the route, it can't consider disease
32 and whether there can be transfer, nor can it look
33 at sea lice and whether that effects wild salmon;
34 is that right?

35 MS. REID: Well, I think if you want to talk about the
36 methodology, I would suggest you wait for the
37 right panel for that, because they can get into as
38 much detail as you want. I mean, I can tell you
39 overall, generally, how we --

40 Q Yeah.

41 MS. REID: -- authorize HADDs.

42 Q That's what I'm asking, just on a general level,
43 if that approach looks at benthic impacts can
44 consider those other effects that the Auditor
45 General raised concerns over?

46 MS. REID: Well, what the model does, as we've already
47 talked about, is talk about those benthic impacts.

1 Q Right.

2 MS. REID: That's correct.

3 Q Okay, thank you. I have some questions about the
4 renewals, but I think that I'm out of time, so
5 I'll leave it for another participant.

6 MR. MARTLAND: I don't know why we're more generous on
7 time today and we usually haven't been for sure.
8 My math is that there is another five minutes
9 remaining for Ms. Glowacki's time, if she wished
10 to use that, or whether we go to break and she
11 then uses it?

12 MS. GLOWACKI: I'd be happy to use it, if I'm -- yeah?
13 Okay, thank you.

14 Q Okay, I will go, then, back to the memo on page 3,
15 and Ms Reid, you joined the Department in 2007; is
16 that right? So you're after the time of this memo
17 in 2005, right?

18 MS. REID: I joined the Department in --

19 Q Not the Department, sorry, but the Habitat
20 Management part of it?

21 MS. REID: That's right.

22 Q Okay. Thank you. So Mr. LeBlanc, I'm going to
23 draw your attention to page 3 of the memo again.
24 And we briefly touched on this, but if you go to
25 the second bullet, it says:

26
27 The largest problem in BC with respect to
28 site reviews --

29
30 -- pardon me, the second bullet of the Regulatory
31 Site Reviews section:

32
33 The largest problems in BC with respect to
34 site reviews have been related to the
35 processing of renewal sites. DFO transferred
36 all 97 renewal assessments with completed
37 screening reports for each to TC for review
38 and decisions on January 7, 2005. There
39 remains no progress in finalizing these
40 assessments or moving forward with First
41 Nations consultations as TC plans. In the
42 absence of any explanation from TC or
43 proposed timelines, industry's discomfort
44 with these delays is growing.

45
46 Then if you skip down to two bullets below that:

47

1 There has been some issues with processing of
2 reviews for new site applications related to
3 TC challenges top DFO screenings and
4 conclusions on fisheries issues. This
5 problem seems to have been resolved at the
6 regional level.
7

8 I just wanted to generally get, I'm not sure how
9 much you recall about the renewals, I know that
10 was several years ago, but can you explain to me
11 what those 97 renewals were, to the best of your
12 memory, and why they're being transferred to
13 Transport Canada?

14 MR. MARTLAND: Mr. Commissioner, I think we are getting
15 too detailed on the topic of aquaculture. I
16 appreciate that Mr. LeBlanc is a co-author and
17 won't be returning, in our expectation, and so if
18 it is something that's vital to have put in
19 through this witness as opposed to addressed
20 otherwise, but otherwise I raise the concern that
21 we're delving into too great detail on a topic
22 that this panel wasn't led for the purpose of
23 addressing.

24 MS. GLOWACKI: It actually might be a question better
25 for Ms. Reid, then. Any details about it I will
26 save.

27 Q But generally it might be helpful to know why -
28 and you probably know this, because I understand
29 those renewals are still outstanding - why they're
30 being dealt with by Transport Canada versus the
31 Department?

32 MS. REID: Sure. I don't believe those renewals are
33 outstanding, though.

34 Q Oh.

35 MS. REID: I believe they were completed. But the
36 issue was that a number of farm licences came up
37 for renewal and there was a question about whether
38 -- yeah, for renewal. So there was a question
39 about whether the licence or the farm would create
40 a HADD or not, and so if there was a HADD it would
41 trigger the **Canadian Environmental Assessment Act**.

42 Q Mm-hmm.

43 MS. REID: And so using the Depot Mod approach, the
44 methodology, there was a determination in those
45 cases that there was no HADD subject to mitigation
46 measures as outlined in the letters that were sent
47 and that you provided in your list of documents.

1 But CEAA was still triggered because of the
2 ***Navigable Waters Protection Act***, and for that
3 reason the files were transferred to Transport
4 Canada, with letters of advice from us about what
5 steps would be required to avoid the HADD and to
6 mitigate the impacts.

7 MS. GLOWACKI: Okay. I'm fine with that. I could call
8 up the letters to which the witness referred. I'm
9 in the Commissioner's hand on that. I don't need
10 to, at this time, either. And it would only be
11 for the purpose that she's referred to them and
12 it's the 97 letters that are recommendations on
13 those referrals.

14 Q That's what you were talking about, right, Ms.
15 Reid?

16 MS. REID: Yes.

17 MR. MARTLAND: Maybe I can suggest that we have those
18 letters put on screen and Ms. Glowacki, I believe,
19 identified the letters, which I think are a series
20 of nearly identical --

21 MS. GLOWACKI: Yes.

22 MR. MARTLAND: -- letters. And just to be clear what
23 we're referring to, if those could be put on
24 screen, and perhaps Ms. Reid could be asked if
25 those are, indeed, the letters that were just
26 mentioned in her answer. If that's the case,
27 barring objections, that they be marked as an
28 exhibit?

29 MS. GLOWACKI: It's Tab 4 of my list of documents.

30 MS. REID: Yes.

31 MS. GLOWACKI: Thank you. Could I have those marked as
32 an exhibit, please?

33 THE REGISTRAR: Exhibit Number 663.

34
35 EXHIBIT 663: Series of 97 referral letters
36 from Department of Fisheries and Oceans to
37 Transport Canada, dated July 19, 2005
38

39 MS. GLOWACKI: Those are my questions, thank you.

40 THE COMMISSIONER: Thank you. We'll take the morning
41 break, Mr. Registrar.

42 THE REGISTRAR: The hearing will now recess for 15
43 minutes.
44

45 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)
46
47

1 (PROCEEDINGS RECONVENED)

2
3 THE REGISTRAR: Hearing is now resumed.

4 MR. ROSENBLUM: Thank you very much, Mr. Commissioner.
5 My name is Don Rosenbloom. I appear on behalf of
6 Area D Gillnet, Area B Seiner.

7 Mr. Commissioner, I indicated to commission
8 counsel some time ago that I would be
9 approximately 50 minutes in connection with this
10 panel; however, there has been a controversy - let
11 me put it that way - over the issue that counsel,
12 commission counsel, has chosen not to file the
13 will-says in respect to this panel. As a way of
14 resolving that issue, because I wanted to expedite
15 this process by simply filing those will-says as
16 we have done with certain of the other sectors
17 within this inquiry, as the modus operandi of this
18 particular counsel is not to file it, he has
19 afforded me the additional time of approximately
20 20 minutes to put certain paragraphs of the will-
21 say to these witnesses so that they might adopt
22 those paragraphs and it becomes part of the
23 evidentiary base of these proceedings.

24 So, in short, I have 50 minutes plus I will
25 tag on additional minutes with the agreement of
26 commission counsel so that the evidence on will-
27 says is put before the commission. But if you,
28 Mr. Commissioner, are of the opinion that the
29 will-says should be filed, I would strongly
30 obviously support that direction, because it
31 speeds up this process.

32 MR. MARTLAND: Mr. Commissioner, the reason I had
33 suggested Mr. Rosenbloom take the conventional
34 approach of asking witnesses questions instead of
35 relying on a document that they didn't prepare is
36 that I actually viewed that, although it takes 20
37 more minutes, as being more efficient than having
38 what I'm aware of is a dispute or some other issue
39 that will involve Canada and perhaps other
40 participants on the question of these will-says.
41 I'm not actually convinced that is a more
42 efficient course to have them filed as such.
43 That's the reason for taking the position on that
44 particular question.

45 THE COMMISSIONER: All right. I just have two brief
46 comments, Mr. Rosenbloom. One is I don't want to
47 interfere in this particular issue because I'm not

1 familiar with why, in this particular circumstance
2 the will-says were not filed, so I won't go there.
3 And the other thing is I just want to be sure, I'm
4 taking the confidence of the commission counsel.
5 We have the breathing room to allow an extra 20
6 minutes.

7 MR. MARTLAND: Yes. I forgot to say that, but that's
8 quite right. In my calculation of today's time,
9 we do have that where that extra time I wouldn't
10 offer it otherwise, so that even with the 20
11 minutes, I think we're on track to conclude this
12 evidence today.

13 THE COMMISSIONER: All right.

14 MR. ROSENBLOOM: Thank you very much. It is ten
15 minutes to noon as I commence this cross-
16 examination.

17
18 CROSS-EXAMINATION BY MR. ROSENBLOOM:

19
20 Q Firstly, Panel, I want to solicit from all three
21 of you response to a certain paragraph within the
22 PPR, that of course being PPR No. 8. Mr. Harrison
23 delivered a question to you early on this morning
24 in his examination similar to what I'm asking, but
25 not framed quite the way that I wish it for the
26 record in these proceedings.

27 I want to draw to your attention in the PPR
28 paragraph number 6 and if it could be put on the
29 screen. And I'm going to read this paragraph to
30 you and seek your comment on it. It reads:

31
32 Loss of fish habitat has been identified as a
33 leading factor in the decline of Canada's
34 fisheries resources, and salmon in
35 particular.

36
37 And what's footnoted there is the Pearse report.
38 Do you, each of you, adopt that statement from the
39 PPR or, more to the point, from Dr. Pearse's
40 report?

41 Maybe I'll start with Mr. Hwang.

42 MR. PROWSE: I object to that question. It's unclear
43 to me what's being asked, Mr. Commissioner.

44 MR. ROSENBLOOM: I have trouble understanding why my
45 learned friend is confused about what I'm asking.

46 I'm asking whether or not --

47 MR. PROWSE: Well, I don't know whether he's asking

1 about what's in the Pearse document that's
2 footnoted --

3 MR. ROSENBLOOM: No.

4 MR. PROWSE: -- there, and I don't know whether that
5 Pearse document is an exhibit or whether it should
6 be, or whether he's asking a different question.
7 I don't understand his question.

8 MR. ROSENBLOOM: Well, forgive me. I'm not asking for
9 adoption of the Pearse report in total.

10 Q I'm asking simply whether you agree with the
11 statement as found in the PPR paragraph 6:

12
13 Loss of fish habitat has been identified as a
14 leading factor in the decline of Canada's
15 fisheries resources, and salmon in
16 particular.

17
18 If I may go from my left to right in the panel,
19 Mr. Hwang?

20 MR. HWANG: Well, I guess my short answer to that would
21 be I would agree in general with that point. I'm
22 not really in a position to comment with authority
23 on the particular effect that the habitat changes
24 and declines is having on the productivity of
25 salmon, so to what extent habitat changes have
26 contributed to salmon population declines, I don't
27 know.

28 I can say that habitat is changing for the
29 negative. I would presume that because habitat
30 has a notable bearing on the ability of the
31 ecosystem-produced fish, that it is having some
32 effect, but how that interplays with things like
33 ocean survival, changes in the way fisheries are
34 managed and things like that as they relate to
35 salmon productivity, I don't really know how that
36 all plays together.

37 Q Thank you. Ms. Reid?

38 MS. REID: Yes, I don't have any particular comment. I
39 accept that that's what Dr. Pearse said and I
40 don't object to it.

41 Q Thank you. And Monsieur LeBlanc?

42 MR. LeBLANC: Same comment here.

43 Q Thank you. Going on with that paragraph from the
44 PPR:

45
46 In the lower Fraser River watershed,
47 approximately 90% of the fish habitat was

1 lost during the 20th century.
2

3 Again, in the same order, do you have any reason
4 to dispute what is stated in that PPR?

5 MR. HWANG: Could you just scroll down so I can see the
6 footnote reference number 7 there?

7 Q Thank you.

8 MR. HWANG: I have no particular reason to dispute
9 that. That's -- it's not something that I'm
10 personally aware of in terms of these studies.

11 Q Thank you.

12 MR. HWANG: I have no reason to dispute it.

13 Q Thank you. Ms. Reid?

14 MS. REID: Yeah, I accept it as the technical document
15 that it is.

16 Q Sorry, I'm --

17 MR. LeBLANC: Same here.

18 Q Excuse me. I'm not asking you whether you accept
19 it as a technical document. I'm asking you from
20 your knowledge in your position with DFO, you
21 generally accept that statement that approximately
22 90 percent of the fish habitat was lost during the
23 20th Century?

24 MS. REID: I guess what I'm saying is that from my
25 position, I take scientific advice and I recognize
26 that the footnote as a scientifically technical
27 document that's been peer reviewed, and I accept
28 the findings of that document.

29 Q Thank you. Monsieur LeBlanc?

30 MR. LeBLANC: Same here. I accept the findings of that
31 document, given Dr. Colin Levings.

32 Q Lastly in that sentence from the PPR, I quote:
33

34 The people of British Columbia are
35 increasingly concerned about the rate of
36 habitat degradation and loss.
37

38 MR. PROWSE: Mr. Commissioner, I guess I've got a
39 broader objection to this question, because I
40 object to the sentence -- really, my objection is
41 to the PPR itself. It doesn't seem to me that the
42 PPR is the proper place for a sentence like that.
43 I suppose if the witnesses want to get into what
44 the people of British Columbia are concerned about
45 maybe they can do that and that will create an
46 evidentiary foundation, but I was surprised to see
47 this sentence and it doesn't seem to me to be an

1 appropriate one for PPR.

2 MR. TAYLOR: I also object to the PPR. This is -- and
3 I know it's an exhibit. This is an example of
4 where the PPRs are stated to be statements of fact
5 that are not controversial, and I'm not speaking
6 to this particular statement as such, but that
7 sentence is a value-laden judgment that someone
8 may conclude, but it's certainly not a non-
9 controversial statement of fact.

10 The citation that's given for that are the
11 submissions that were made before yourself, Mr.
12 Commissioner, which I don't know the number, but
13 it would be, you know, tens or so or maybe a
14 hundred or so people that would have said that. I
15 think that sentence is probably something that in
16 the first go is best left for you to deal with
17 eventually when it comes to report writing, but
18 it's not -- shouldn't be in a PPR, I don't think.

19 With that, and moving to Mr. Rosenbloom's
20 questions, it certainly seems that this panel is
21 not in a position to be giving an assessment of
22 what the people of British Columbia do or don't
23 think. They probably have their own views and
24 they probably know what their neighbours and
25 colleagues and so forth think, but they're not
26 pollsters that can speak to the population's view.

27 MR. ROSENBLOOM: I'm in your hands, Mr. Commissioner.
28 I think it's a trite proposition in any event. In
29 final submission, one can refer to the submissions
30 that were made to you at the public hearing
31 process and make that argument, so I don't want to
32 waste a lot of time. Thank you.

33 Q I now want to go to the issue of stewardship, and
34 I want to try to get from you - and if you are not
35 in a position to give me this evidence, I'm going
36 to be asking commission where this evidence can be
37 obtained - I am informed that there was a major
38 stewardship program initiated by DFO between 1998
39 and 2003 called the Habitat and Conservation and
40 Stewardship Program. Let's stop there for a
41 moment. Are all three of you familiar with that
42 program?

43 First of all, Monsieur LeBlanc?

44 MR. LeBLANC: Yes.

45 Q Yes. Ms. Reid?

46 MS. REID: Yes.

47 Q Yes. Mr. Hwang?

1 MR. HWANG: Yes.

2 Q Yes. Now, I am informed, and forgive me for being
3 so simplistic about this, but this is a program or
4 was a program where DFO would fund various non-
5 profits, NGOs, to participate or carry out various
6 habitat initiatives within their local watersheds;
7 am I correct in my general summary of the program?

8 MR. HWANG: That's a reasonable general summary. It
9 was a little bit broader-reaching than that, but
10 that's reasonable.

11 Q All right. And I am informed that there was
12 significant federal money that was pumped into
13 this program maybe to the tune of approximately
14 \$100 million; is that correct, give or take?

15 MS. REID: So just for clarification, the whole program
16 value was \$400 million and that was broken into a
17 number of different programs, partly a licence
18 retirement program, there was the -- the
19 stewardship component, there were some other
20 elements. I don't -- I would have to look up how
21 much money was actually put into this particular
22 program, but I don't think it was \$100 million.

23 Q All right. Let us say, at least over \$50 million?

24 MS. REID: Is it possible to get back to you on that?

25 Q Yes. Very much so.

26 MS. REID: Okay.

27 Q Very much so. So it forms part of the record.
28 And as I understand it, this program between 1998
29 and 2003 was terminated by the federal government,
30 by DFO.

31 MS. REID: So that was -- it was a sunset program. It
32 was intended to have a certain time period and
33 that time period ended, yes.

34 Q All right. And let's help the commission by
35 putting that program in the context of something
36 else I'm informed about, and that is that there
37 was a previous program on stewardship initiated by
38 DFO with community groups called the Green
39 Stewardship Program; are you all familiar with
40 that?

41 MR. HWANG: Are you referring to --

42 Q Let me put years to it, 1991 to '97.

43 MR. HWANG: Is that the Fraser River Green Plan? I
44 think that --

45 Q Yes.

46 MR. HWANG: -- would be how I know it.

47 Q Yes.

1 MR. HWANG: I'm familiar with it to some degree.
2 Q All right. And appreciate some of you came on the
3 scene subsequent to that. Ms. Reid?
4 MS. REID: Not particularly. I mean, I'm aware that
5 there was a Green Plan but not the particulars of
6 it.
7 Q Fair enough. And Monsieur LeBlanc?
8 MR. LeBLANC: Same here. I was aware there was a Green
9 Plan but not --
10 MR. HWANG: All right.
11 MR. LeBLANC: -- the specifics.
12 Q So -- and I'm further informed there's a third
13 stewardship plan that was ongoing during this
14 period called the Habitat Action Plan between '96
15 and '97 just for -- but just for the Fraser basin;
16 is that not correct?
17 MR. HWANG: I'm not sure.
18 Q All right. Any of you sure?
19 MS. REID: I'm not aware of that --
20 Q All right.
21 MS. REID: -- program.
22 Q And you are not either, Mr. LeBlanc, correct?
23 MR. LeBLANC: Correct.
24 Q All right. Now, so is it fair to say that the
25 commission is left with evidence now that there
26 was a stewardship program at least one program in
27 existence from approximately 1991 to 2003?
28 MR. MARTLAND: I'm going to simply raise a technical
29 objection, which is asking a question about what
30 the commission has evidence on isn't appropriate.
31 Asking the question is fine.
32 MR. ROSENBLOOM: Indeed. Quite correct.
33 Q My question is: is it your evidence, to the best
34 of your knowledge, that there was -- there were
35 DFO programs of stewardship from approximately
36 1991 to 2003?
37 MR. TAYLOR: Well, the witnesses, as I heard them, knew
38 about the first of the three that Mr. Rosenbloom
39 referred to and Mr. Hwang knew something about the
40 Fraser Green Plan and the other two didn't and
41 none of them knew about the one in the middle
42 there. I think their evidence speaks for itself.
43 I don't know why he needs to ask if it's fair to
44 say "X" and "Y", but when he does say "X" and "Y",
45 it doesn't seem to be a reflection of what their
46 evidence is.
47 MR. ROSENBLOOM: Well, I don't agree with my friend,

- 1 but I can move on because their evidence is stated
2 as to their level of knowledge of these programs.
- 3 Q Would you also agree with me that during the
4 period of the Habitat Conservation Stewardship
5 Program that all three of you are familiar with,
6 the province also had a complementary program,
7 including one on urban development, urban
8 stewardship and also forestry and watershed?
9 There was significant provincial money also pumped
10 in to stewardship initiatives. Any of you want to
11 answer that?
- 12 MR. HWANG: I do recall there were provincial programs.
13 The one that -- off the top of my head is the
14 Watershed Restoration Program and I think there
15 was an urban one, but I can't remember the name of
16 it right now.
- 17 Q Yes. And are you aware whether significant
18 provincial money was pumped into these programs -
19 I will tender evidence in due course about this -
20 but that it was in the vicinity of \$200 million?
- 21 MR. HWANG: I couldn't comment specifically on the
22 number, but I would frame it as significant as I
23 recall it.
- 24 Q That it was or wasn't?
- 25 MR. HWANG: Yes, it was.
- 26 Q Yes, it was. And would you also agree with me
27 that that program was also terminated by the
28 province around 2003?
- 29 MR. HWANG: It was, and I think the -- as I understand
30 it, but I would defer to somebody from the
31 province to explain the mechanics behind it. My
32 -- what I understand happened is there was a bit
33 of a transformation in terms of how they used that
34 money and they started something new that turned
35 into what I think is currently called a forest
36 investment account or something like that. So
37 there are other mechanisms in place to achieve
38 some of those objectives, but I'm sort of on the
39 fringe of my --
- 40 Q Yes.
- 41 MR. HWANG: -- knowledge here.
- 42 Q And I appreciate you don't speak for the province.
43 Let me carry on. You therefore agree that since
44 2003 there has been no DFO stewardship program; is
45 that fair to say?
- 46 MS. REID: I don't agree with that.
- 47 Q Yes?

1 MS. REID: We have a continuing program under the
2 Salmonid Enhancement Program, so that's a \$27
3 million program funded -- annual funding and a
4 portion of that is directed towards stewardship
5 type activities and providing funds to community
6 groups.

7 Q What portion of that 27 million, approximately?

8 MS. REID: It's around two to \$3 million.

9 Q Two to three million?

10 MS. REID: Yes.

11 Q And so is it your evidence that since 2003 only
12 two to \$3 million for that entire period or per
13 annum have been allocated for stewardship?

14 MS. REID: Per annum. That's just one program. There
15 are a number of smaller community or stewardship
16 type programs that occur in the different
17 programs, and similarly under the Species at Risk
18 Program which is led by Environment Canada but DFO
19 also has a component of that, there is a
20 stewardship program that goes with that, as well.
21 So there's a number of smaller stewardship type
22 initiatives that have gone on since 2003.

23 Q But you would agree with me, Ms. Reid, that the
24 monies allocated for stewardship since 2003 is
25 minimal compared to the program that was in place
26 between 1997, 1998 and 2003?

27 MS. REID: I mean, I would agree that with the
28 sunseting of the Green Plan and the HCSP, the
29 amount of money available for stewardship has gone
30 down significantly, yes.

31 Q Yes. And to that very issue, I want to refer you
32 to a document that we have given notice about that
33 we wanted to tender in these proceedings, which is
34 -- has a CAN number 035811, it's number 3 on our
35 list called Reality Stewardship - Survival of the
36 Fittest for Community Salmon Groups. It is
37 authored by Brian Harvey and David Greer. It is a
38 report to the Vancouver Foundation and the Pacific
39 Fisheries Resource Council, and we have it in .pdf
40 and I believe it is now before you.

41 I want to try to get through this quickly.
42 This document is -- excuse me, this document was,
43 as I say, a 2004 document and I want to go to the
44 Executive Summary and I want your comments,
45 whether you agree with the authors as they say the
46 following. Under -- at page 1, Executive Summary,
47 that's before you now, the top paragraph, and I

1 quote --

2 MR. HWANG: Sorry, we're just looking for it on paper
3 here.

4 Q Yes. Tell me when you're ready. Are you ready?
5 Thank you. You are or you're not?

6 MS. REID: Too many books around.

7 Q No problem.

8 MS. REID: Okay.

9 Q Okay. It's also on your screen, for whatever
10 that's worth. It reads under Executive Summary:

11
12 Over the past decade, governments at the
13 federal and provincial levels have encouraged
14 B.C. communities to get involved in salmon
15 habitat stewardship. Until very recently
16 governments provided many funding and
17 technical support programs. But, as this
18 report is written --

19
20 Which is 2004.

21
22 -- that funding has largely dried up, the
23 salmon are little better off than they were a
24 decade ago, and many community groups can be
25 excused for feeling the rug has been pulled
26 out from under them. The disappearance of
27 HRSEP, HCSP, Forest Renewal and Fisheries
28 Renewal represent a loss of approximately \$66
29 million in annual funding for salmon
30 stewardship, almost overnight. If the
31 budgets of the habitat biologists and
32 engineers in DFO continue to decrease, what
33 has devolution really achieved beyond a
34 short-term frenzy of activity, the rise and
35 fall of some local organizations, and the
36 gutting of DFO's own programs and funding?

37
38 Your comments to that paragraph, do you generally
39 agree with the authors and their perception of
40 what has unfolded with respect to the Stewardship
41 Program or programs?

42 I'll go from Mr. Hwang first.

43 MR. HWANG: Well, I think similar to what Rebecca said
44 and what has been explained, there's no question
45 there's been a reduction in resources available
46 for stewardship groups in the province. I'm not
47 sure I understand in this piece of evidence here

1 the word "devolution" and I think the impression
2 here is that there's been some transformation with
3 an expectation that something that was changed has
4 been lost, and I'm not trying to say it's wrong.
5 I just don't understand the rest of the context,
6 where the authors are coming from here, so it
7 probably warrants some further discussion to
8 understand that point.

9 Q Ms. Reid?

10 MS. REID: I don't disagree that there has been a
11 significant loss of funding for stewardship type
12 programs, but I don't agree with the overall
13 perspective of that paragraph in that it's --
14 you've gone from something to nothing. I think
15 that there were some legacy benefits from those
16 stewardship programs which continue on today,
17 albeit at a much lower level.

18 Q Thank you. Monsieur LeBlanc?

19 MR. LeBLANC: No comment on it.

20 Q Thank you. Ms. Reid, following up with your
21 response just now, I am instructed that in terms
22 of the projects that were initiated during this
23 program from two thousand -- excuse me, from '98
24 until 2003, only approximately 25 programs have
25 sustained themselves beyond the government
26 funding. Do you have any information that you can
27 bring to this inquiry as to the extent to which
28 there really is a legacy and where groups that
29 were funded during the program are maintaining
30 themselves through exterior funding?

31 MS. REID: So are you -- you're talking specifically
32 about stewardship groups or some -- 'cause when I
33 talk about legacy, I'm talking about other
34 benefits so there is, you know, mapping work that
35 was done, there was capacity building that was --

36 Q I see. No, I'm speaking of legacies in terms of
37 groups that were formed and receive their lifeline
38 of funding from these -- this program that then
39 were able to secure outside funding to continue to
40 the point that the public in British Columbia are
41 benefiting from their initiatives to this very
42 day, albeit without government funding.

43 MS. REID: So I don't have a specific number for you.
44 I would agree though that with -- when the funding
45 was removed, it had a significant impact on a
46 large number of stewardship type groups that had
47 sprung up, had been formed. There are some

1 remaining but not many and I would say likely the
2 ones that were, you know, already in place or have
3 other sources of funds so, yeah, as far as the
4 number goes, we may have that type of information
5 at the department, but I don't have it at my
6 fingertips.

7 Q Yes. Do you mind attempting to secure that
8 information and providing it to your counsel so
9 that it could be brought before the inquiry?

10 MS. REID: So is the specific question how many
11 stewardship groups which were created as a part of
12 HCSP continue today?

13 Q That is correct.

14 MS. REID: Okay.

15 Q The next question I have a feeling is self-
16 evident, but I think it should go on the record.
17 Why has the Government of Canada through DFO
18 failed to fund a stewardship program subsequent to
19 2003? Again, Mr. Hwang, why don't we just go left
20 to right, my left to right? And you may not be
21 the best to answer this because you're on a local
22 region and you may want to deflect, and if so,
23 maybe I should, in fact, if you don't mind, start
24 with Monsieur LeBlanc from Headquarters.

25 MR. LeBLANC: It's very difficult to answer. This was
26 a -- these were B-based funding and they do sunset
27 and I --

28 Q Sorry? They do what? I didn't hear you.

29 MR. LeBLANC: They sunset, that is they close --

30 Q Yes.

31 MR. LeBLANC: -- off.

32 Q Yes, yes, yes.

33 MR. LeBLANC: And from a broad perspective in terms of
34 a national habitat program, these are very unique
35 in this region. There are no such programs in any
36 other parts of the country, in Atlantic Canada,
37 Central Canada or elsewhere.

38 Q Well, that's interesting, and just before going on
39 to Ms. Reid, was it the opinion of Headquarters in
40 its post-mortem, in its review of this program,
41 that it had been beneficial to the public
42 interest?

43 MR. LeBLANC: I would say that these programs here that
44 are listed have been beneficial in terms of
45 increasing awareness, understanding, as well in
46 terms of the value of habitat, as well as engaging
47 Canadians in the stewardship of fish habitat.

1 Q Right. If, indeed, it was perceived by the
2 federal government and by DFO that it was
3 beneficial in the public interest, again my
4 question why were these programs not renewed from
5 '03 until the present?

6 MR. LeBLANC: You would have to ask someone other than
7 myself, probably cabinet, because the cabinet
8 makes decisions on these programs going forward.
9 Treasury board, and what have you, are the ones
10 that are the gatekeepers for any future extension
11 of any B-based programs.

12 Q All right. Well, I don't know the protocol about
13 this - maybe you're not able to speak to it - has
14 DFO been seeking funds from treasury board for a
15 program to replace the program up till 2003?

16 MR. LeBLANC: Not that I'm aware of.

17 Q And you would be aware of that, would you not, in
18 light of your position?

19 MR. LeBLANC: I should be.

20 Q Yes. Ms. Reid, turning to you on the same
21 question, if you would respond to the question,
22 was this program deemed beneficial and if it was,
23 why was it never renewed since '03?

24 MS. REID: Yes, I think that the program was deemed
25 beneficial. The submission to cabinet to get the
26 funding was set out over a specific time period
27 with intended objectives. It was never intended
28 to be ongoing increase in our A-based funding. I
29 think it was intended as an infusion of funds to
30 build some capacity, get some work done, and then
31 we need to reabsorb the activities into the
32 business of the department. So the question is,
33 you know, why doesn't DFO get that extra bump of
34 money in perpetuity is really a question, as
35 Patrice has said, around cabinet decisions and
36 priorities and where we spend our money as a
37 government.

38 Q Well, you being in the position you are at the
39 region, has region been lobbying headquarters for
40 a budgetary item to support a stewardship program
41 much -- similar to what we know about from up to
42 2003?

43 MS. REID: We haven't specifically written -- you
44 wouldn't find a document specifically requesting,
45 you know, a new big B-based program per se, but
46 certainly we do speak about the benefits of
47 stewardship and try different ways to encourage

1 and support funding of those types of activities
2 on an ongoing basis.

3 Q But you're short of money.

4 MS. REID: But we're short of money.

5 Q Yes. I'll come back to the shortage of money. I
6 want to move on.

7 Monsieur LeBlanc, you testified yesterday
8 about the strategies 1 to 8 within the Habitat
9 Policy Program and you stated that the
10 concentration has been on the first of the
11 strategies and in a will-say which was provided to
12 all counsel that is not in evidence, I want to put
13 one sentence to you. If you can go to your will-
14 say, if it is -- yes, thank you. And to page 2,
15 you -- last bullet under Habitat Policy [as read]:
16

17 He will say that the habitat policy contains
18 eight implementation strategies and that DFO
19 is primarily focused in efforts and resources
20 on implementing the protection and compliance
21 strategy which is the foundation of the HMP's
22 referral review process and practice with
23 limited efforts and resources directed at
24 implementing the other seven strategies.
25

26 You adopt that, do you not?

27 MR. LeBLANC: Yes.

28 Q Yes. And so what we are left with there is that
29 there has been, "limited effort and resources
30 directed" at, for example, monitoring which is the
31 eighth of the strategies, correct?

32 MR. LeBLANC: That's correct.

33 Q Okay. Well, again, this may be a self-evident
34 answer, but can you tell me why that is the case?
35 Is it a funding situation again that has led to
36 this weak initiative on the monitoring side of the
37 habitat portfolio?

38 MR. LeBLANC: Our efforts over the years have been to
39 deal with the workload in terms of regulatory
40 reviews under the **Fisheries Act** and that's the
41 referral process which we manage, as well as other
42 workload related to, as we talked about, processes
43 such as environmental assessment requirements,
44 duty to consult with aboriginal groups and to deal
45 with requirements under the **Species at Risk Act**.
46 We have dedicated most of our resources to that
47 effort, in many cases across Canada. I'm looking

1 across Canada here. In the regions, each region
2 is a little bit unique. There has been some
3 limited effort as I've mentioned there and
4 resources that were directed at some of the other
5 and it's more in some areas. For example, in B.C.
6 you see a significant injection of funding on
7 community-based stewardship, which would get into
8 habitat improvement, public education and
9 awareness and some of the other strategies, but
10 less so in other parts of the country.

11 Q Yes. And if I may go back to the document which I
12 neglected to put in as an exhibit, this being the
13 Reality Stewardship - Survival of the Fittest for
14 Community Salmon Groups, and if you go back to
15 that same page that's right before your screen,
16 there is a sentence in the third paragraph I want
17 to read to you in the context of monitoring and
18 it's mid-paragraph and the sentence starts:

19
20 The most important kind of evaluation...

21
22 I hope you are able to find that sentence, midway
23 through the third paragraph.

24
25 The most important kind of evaluation,
26 monitoring for effects on the ecosystems
27 utilized by salmon, is almost non-existent.

28
29 Would you agree, Monsieur LeBlanc, that that is
30 indeed an accurate statement as of 2004 and as of
31 now, for that matter?

32 MR. LeBLANC: There is -- I would agree that there is
33 limited monitoring at the ecosystem base -- at the
34 ecosystem level for the status of fish habitat.

35 Q Thank you.

36 MR. HWANG: Could I add something to that? My
37 impression, and I've only read this piece quickly,
38 is that it's suggesting that habitat restoration
39 efforts that are undertaken are unevaluated *ad hoc*
40 and perhaps low value and I think that while the
41 structure is somewhat limited in terms of what can
42 be sort of produced as an evaluative document,
43 that there is a fair amount of professional
44 capacity in the background which does inform these
45 kinds of things and, you know, we have restoration
46 biologists within the department, some of whom
47 have spent careers doing this and I would not

1 undervalue their professional guidance and utility
2 in terms of trying to direct restoration projects
3 of things that are very likely to have biological
4 value.

5 Q Yes. On restoration, let's go right to that for a
6 moment --

7 THE COMMISSIONER: Did you want to mark that as an
8 exhibit?

9 MR. ROSENBLUM: Yes. And I do, indeed.

10 THE REGISTRAR: It will be marked as Exhibit number
11 664.

12

13 EXHIBIT 664: Reality Stewardship - Survival
14 of the Fittest for Community Salmon Groups

15

16 MR. ROSENBLUM:

17 Q On the issue of restoration, I've sat in this
18 inquiry for months now. I'm not familiar with
19 whether the federal government, let's say over the
20 last five years has actually initiated restoration
21 programs on its own as opposed to contracting out
22 to other groups, NGOs, whatever. Is there a
23 history - and I don't want to go into great detail
24 - but is there a history of federal restoration
25 programs within the Fraser watershed?

26 MS. REID: If I could just answer over -- give an
27 overall answer and then Jason can get to the
28 specifics about the Fraser.

29 Q Yes.

30 MS. REID: So as part of the Salmonid Enhancement
31 Program \$5 million a year is dedicated towards
32 restoration. Now, for the most part, we have
33 engineers and biologists who work in that program
34 distributed across the region. For the most part
35 what those engineers and biologists try and do is
36 lever resources, so they take the money that they
37 have and they work with partners to try and
38 increase the amount of bang for the buck, so to
39 speak. And so through those -- through that
40 technique, they estimate they lever about one in
41 five, so for every dollar they spend, they get
42 about \$5 back in restoration benefits.

43 Now, to speak to the specifics of the Fraser,
44 Jason can talk about that.

45 Q Just before going to Mr. Hwang then, this history
46 of restoration by the federal government, would
47 you say over the last five years it has had

1 diminished impact or it has been increased as a
2 program?

3 MS. REID: Over the past five years it has stabilized.
4 Now, under the HCSP there is -- I think there was
5 probably additional money put into restoration
6 type activities, so under that B-based program,
7 there was more, but SEP has stabilized that amount
8 at about five million a year.

9 Q And would you agree with me, five million is a
10 drop in the bucket in terms of the needs for
11 restoration of watershed within the Fraser basin
12 over the last five years?

13 MS. REID: Well, I would agree that \$5 million,
14 certainly we could spend a lot more money than
15 that.

16 Q Thank you. Mr. Hwang, did you want to say
17 something?

18 MR. HWANG: I think Rebecca covered it pretty well.

19 Q Thank you.

20 MR. HWANG: There's been a restoration program around
21 and -- for awhile. We have staff that do that.
22 They work very much in collaboration with external
23 partners, get most of the project dollars from
24 what I would generalize as third-party funding
25 sources and over the course of a number of years,
26 a fair amount of activity is undertaken that I
27 think has some positive benefit for salmon.

28 Q Thank you. I have a major topic to go into, but I
29 don't want to break it up, so let me go to another
30 issue. We're going to be dealing with enforcement
31 later this week and -- but you would agree with
32 me, enforcement is very relevant to the management
33 side of habitat because it puts teeth into the
34 habitat program and hopefully is a deterrent in
35 terms of individuals who might otherwise violate
36 s. 25/36 of the **Fisheries Act**; would you agree
37 with me, Mr. Hwang?

38 MR. HWANG: Yes.

39 Q Yes. And being that being the situation and
40 appreciating enforcement goes hand in hand with
41 management in terms of your effectiveness as
42 managers, I am informed, and I'll put this
43 obviously more specifically to the panel on
44 enforcement, that from the reports to Parliament
45 by DFO, the number of convictions in 1997/98 were
46 24 convictions for s. 25, 24 convictions for s.
47 36. In fairness, you probably don't have those

1 figures right before you, do you? And in terms of
2 '98 to '99, 22 convictions for habitat, 13
3 convictions for pollution.

4 Accepting for a moment that this is proven
5 out when I cross-examine the panel Friday and
6 Monday, I am further informed that 2008/2009 there
7 was only one conviction. Do you know that to be
8 generally correct?

9 MR. HWANG: I don't know. I am not sure, are you --
10 well, I don't have the date in front of me that
11 you're speaking to and I'm not sure if you're
12 talking about within the Fraser River, the Pacific
13 Region, the country, so I'm sure that we can
14 gather the data in whatever frame you're looking
15 for, but I don't have it before me.

16 MR. ROSENBLOOM: All right. Rather than belabouring
17 the issue, could I also put that on my wish list
18 of information, unless it is going to come out in
19 any event from the other panel?

20 MR. MARTLAND: I'm going to discourage --

21 MR. TAYLOR: I'm going to make a wish list.

22 THE COMMISSIONER: I'm sorry?

23 MR. TAYLOR: Well, I have a wish list. It sounds like
24 Mr. Rosenbloom's got the data so he can give it to
25 me.

26 MR. ROSENBLOOM: Well, I don't have it in document
27 form. But I can get it in document form. I don't
28 see why I should be the one putting it out, but...

29 MR. MARTLAND: This issue can properly be deferred,
30 I'll suggest, to the panel Thursday.

31 MR. ROSENBLOOM: Thank you. It's the hour. Thank you.

32 THE REGISTRAR: Hearing is now adjourned until 2:00
33 p.m.

34

35 (PROCEEDINGS ADJOURNED FOR NOON RECESS)

36 (PROCEEDINGS RECONVENED)

37

38 THE REGISTRAR: The hearing is now resumed.

39 MR. MARTLAND: Mr. Commissioner, we continue to analyze
40 where we stand on timing, and I may just alert you
41 to this in advance. After perhaps two or so
42 counsel's questions this afternoon, I may canvass
43 whether we might be in a position to proceed
44 without an afternoon break to conclude by four
45 o'clock as we must today. I'll just alert you to
46 that and we'll raise it in the course of the
47 afternoon. Thank you.

1 MR. ROSENBLOOM: Thank you. Mr. Commissioner, I have
2 approximately half an hour left in terms of what I
3 indicated I would take. To be quite blunt about
4 it, Mr. Commissioner, I could take two days of
5 cross-examination in this area, and we are all
6 pressed to compress things into the realistic
7 timetable that the government has provided to you.
8

9 CROSS-EXAMINATION BY MR. ROSENBLOOM, continuing:
10

11 Q Firstly, I want to correct for the record that in
12 the course of this morning's cross-examination, I
13 was speaking to the stewardship program, and I was
14 speaking to the number of programs, stewardship
15 programs that were initiated during the 1998 to
16 2003 period. I said that 25 -- I was instructed
17 that 25 of those programs existed. I have been
18 corrected during the break. It's 25 percent of
19 those stewardship programs that were initiated
20 during that time exist today.

21 So of what I'm told is approximately 50
22 programs that were initiated during that program,
23 25 percent of those 50 carry on. I understand,
24 Ms. Reid, that you undertook that you were going
25 to try to provide information to the inquiry in
26 this regard, correct?

27 MS. REID: That's correct.

28 Q Thank you. Secondly, just before the lunch break,
29 we spoke of the prosecutions in British Columbia,
30 and when we get to enforcement, I will put this
31 document in. I have before me the annual report
32 to Parliament of your Department, and in this
33 document it shows one conviction in the Pacific
34 Region for the year 2008, 2009. You don't have
35 that in front of you.

36 Assuming for a moment that you have no reason
37 to disbelieve that, my question is this: What
38 affect on compliance - which is your area - is
39 there when there is the cumulative effect of only
40 one conviction in 2008/2009, and also when it is
41 in the public record that your Department is not
42 doing much in the way of monitoring? What is the
43 cumulative effect of that in terms of managing and
44 seeking compliance of the public in respect to the
45 **Fisheries Act** and, in particular, sections 35 and
46 36. I'm happy to go either direction, from my
47 right or my left. Mr. LeBlanc?

1 MR. LeBLANC: I think when you look at these numbers,
2 you have to remember there could be a number of
3 other actions, enforcement actions that are taken
4 but didn't end as a conviction in that fiscal
5 year. So I'm not familiar with all the data that
6 comes in, so that may -- there may be a lot more
7 actions that have been taken, and it takes --
8 sometimes it takes many years before it gets to
9 the court and gets ironed out.

10 When you're looking at - and I'll step back a
11 bit - when you're looking at compliance, part of
12 policy is to use a continuum in terms of
13 compliance, a balance between education, advice
14 and assistance, and compelling the proponents to
15 take action in cases of non-compliance or non-
16 conformity with the requirements of the **Act**. You
17 do need a balance of all three. You need to have
18 compelling ways of -- or have ways of compelling
19 people through enforcement action, yes, that is a
20 -- there are many different forms of that. It
21 could be an order, could be a direction from an
22 inspector's direction, or it can be laying of a
23 charge.

24 So there are different ways to enforce the
25 law other than just bringing people to court.

26 Q Thank you. Any reason for either of the other two
27 panellists to speak to this? Yes, Mr. --

28 MR. HWANG: I would just add the point that, from an
29 operational perspective, the number of convictions
30 isn't really the substantive issue. The value of
31 enforcement is around the deterrence factor. It's
32 demonstrating where the bar is in terms of
33 threshold of tolerable effect, and the government
34 being in a position to take a regulatory action
35 when those kinds of conditions warrant.

36 So some years there may be a fair number of
37 convictions, other years there may not be, and
38 it's not necessarily the annual total that is
39 reflective of the value of that part of the
40 program.

41 Q But, Mr. Hwang, isn't there a message to the
42 public when there is only one conviction in the
43 Pacific Region for a given year, and when evidence
44 becomes known as - and this is a matter of public
45 record - that you really aren't doing a great deal
46 in the field of monitoring? What is the message
47 to the public when that information is received?

1 Doesn't that invite violation of the **Act**?

2 MR. HWANG: Well, again, I would come back -- I would
3 agree with, I think, the underlying point that
4 you're making, that enforcement is important to
5 habitat protection. But, again, the point, to me,
6 is that it's not about the quantity of
7 convictions. There may be a year where
8 circumstances are such that either, as Patrice
9 said, cases are in progress so they haven't
10 resulted in a conviction yet, or maybe a number of
11 things are still in the course of proceeding
12 through the respective measures.

13 There may be other years where we get a
14 number of them all coming to term at the end of
15 the day. It may be useful, if I'm understanding
16 your point, to explore the relative type of issue
17 that we're able to investigate operationally, and
18 the number of those things and how we attend to
19 them. But the story isn't singularly demonstrated
20 by the number of convictions.

21 Q Well, I'm going to tender evidence to the other
22 panel in terms of enforcement that, as I said
23 previously, there've been 24 convictions under s.
24 35, 24 convictions under s. 36, for example, 1997,
25 1998. In other words, 25 times what we were
26 dealing with in 2008/2009.

27 All I'm saying is when word gets out of that
28 situation, doesn't that make it difficult for you
29 in terms of seeking compliance of the public?

30 MR. HWANG: Well, again, I think what the issue that
31 would be significant in terms of compliance would
32 be that DFO is not going to pursue a regulatory
33 action on this kind of issue anymore. So it's the
34 threshold of tolerance that is the issue that I
35 think sends the message to the public, rather than
36 the quantity of convictions. So I think I
37 understand the point, and I don't think I disagree
38 with it, but it's not the sum total of numbers
39 that is the question that's at hand. It's more
40 about what is happening on the land base, what
41 kind of capacity has DFO got to undertake its
42 regulatory and enforcement action, and then how
43 does that transmit a signal or a message publicly?

44 Q All right. And one of the foundations of your
45 entire schematic is that there is a voluntary
46 program where a proponent, as we understand it,
47 voluntarily submits for a referral; is that

1 correct? You're shaking your head in the
2 affirmative.

3 The fact that it becomes known that there is
4 no monitoring or follow-up on applications or
5 referrals, doesn't that also invite non-compliance
6 by parties, or invite parties to not even submit
7 for referral?

8 MR. HWANG: I can say, using some examples, that we
9 have seen that trend. I've spoken earlier in this
10 part of the proceedings about Shuswap Lake as an
11 example. We have seen recently, in things that I
12 would describe as routine patrols, a re-emergence
13 of practices around foreshore development that had
14 previously been done in a much more sustainable
15 way, and they were starting to show up again on
16 the landscape in a way that we had previously had
17 under some degree of control.

18 Q Thank you for your candidcy (sic) to that.

19 I want to come to budget. You have alluded
20 to the shortfalls in funding to do the kind of
21 programs necessary. Is it correct that over the
22 last - and I'll direct this question to Ms. Reid -
23 over the last five to ten years, your budget for
24 habitat regionally has been stabilized? It hasn't
25 increased, but you haven't lost a great deal of
26 money on the budget; is that correct?

27 MS. REID: Well, I think you have to take the sunset
28 money out of that when you ask that question. So
29 the sunset money was a big bump. When that went
30 away, though, the budget did go back to kind of
31 previous levels. It has essentially stabilized
32 with some adjustments.

33 Q Yes. And when you say "stabilized", the fact is
34 over those same years there has been an increase
35 in salaries, has there not?

36 MS. REID: Yes, but salaries are -- you do get an
37 increase for salary increments. Within a
38 stabilized budget, you'd still get your salary
39 increments with the exception of right now when
40 there's been a budget freeze for three years.

41 Q Yes. And in terms of that budget freeze, that is
42 consequential, obviously, to budgeting for habitat
43 in the region.

44 MS. REID: It impacts on budgeting?

45 Q Yes.

46 MS. REID: Yes.

47 Q And we have heard from your Deputy Minister, Ms.

1 Dansereau, in testimony here last October, that as
2 of this fiscal year, a few days ago, you're facing
3 down a five percent cut nationally on the DFO
4 budget. You understand that to be correct?

5 MS. REID: With regard to the budget freeze? Is that
6 what you're referring to?

7 Q Yes, I guess budget freeze, but if my memory is
8 right, she didn't describe it as budget freeze.
9 She spoke of a five percent reduction of budget
10 for the upcoming fiscal year -- well, upcoming
11 meaning now.

12 MS. REID: Yes. So there's a couple of impacts on our
13 budget this year. The first one is this three-
14 year budget freeze which, because of salary
15 increments, translates over that time to about 4.5
16 percent.

17 Q Yes.

18 MS. REID: In addition to that, the Department went
19 through a strategic review which resulted in
20 approximately five percent reallocation of the
21 Department's funding.

22 Q Okay. And I have so little time here, but Dr.
23 Riddell testified - obviously a former DFO
24 employee - that a five percent reduction in
25 overall budget really speaks to a 15 to 20 percent
26 reduction in the operational side of budget
27 because you can't tamper with salary levels, and
28 therefore -- and I'm happy to show you the
29 reference in the testimony, but I think most
30 counsel will recall him saying that, 15 to 20
31 percent reduction in operational expenses.

32 Do you agree that five percent reduction or
33 4.5 percent reduction in overall budget hits very,
34 very hard on the operational side?

35 MS. REID: In the case of strategic review, we're not
36 focusing the cuts simply on operating money.
37 We're focusing it overall, so there could be
38 salary and operating impacts. So it's not
39 concentrating, per se. It's spread across the
40 board.

41 And I would say that there's two things.
42 There's the 4.5 percent which is the budget freeze
43 over three years, and then there's the strat
44 review element. So you've got to kind of keep
45 those two pieces separate when you're looking at
46 impacts. But --

47 Q Okay, but --

1 MS. REID: I'm sorry, but no, it's not correct that we
2 were going to focus all the impacts on what we
3 call operating money. It's going to be spread
4 across the board.

5 Q Spread across the board in the sense that you can
6 tamper with PSA salary levels?

7 MS. REID: No, but you can impact on the number of what
8 we call full-time equivalents, the number of
9 people that you have.

10 Q Oh, so the way you might deal with it is to reduce
11 staff to make good on the operational reduction of
12 4.5 or five percent; is that what you're saying?

13 MS. REID: So in the case of strategic review, it's an
14 overall reallocation. You can look at operating
15 and full-time equivalent salary dollars to come up
16 with a package of how you're going to effect your
17 five percent reduction.

18 The budget freeze, which is separate, it's --
19 so the budget's frozen. The salary increments
20 continue to go up and so you'll end up with a
21 salary shortfall which you can deal with either
22 through reducing the number of FTEs, your full-
23 time equivalents, or by reducing your operating
24 dollars, your operating program.

25 Q Thank you. Ms. Reid, let's get down to bare
26 bones. The fact that there is this five percent,
27 or 4.5 percent reduction in budget is going to
28 have a detrimental effect on habitat management in
29 the region, do you agree?

30 MS. REID: I agree that there will be an impact on the
31 budget. That is, there'll be less money for sure,
32 yes.

33 Q Yes. The Auditor General has done reports in
34 respect to habitat initiatives by your Department
35 and you're familiar with them. Again, because I
36 don't have the time, I simply want to refer to the
37 PPR, paragraph 8. I think this is the fastest way
38 of getting through this. Between paragraphs 8 --
39 excuse me, I apologize. Paragraph 47 to 54, and
40 it deals not only with the Auditor General's
41 reports but the CESD reports. Had I had more
42 time, I wanted to go into those recommendations
43 and to the obligations that you, as a Department,
44 have committed to, and probably Mr. LeBlanc is the
45 best to deal with this area.

46 Mr. LeBlanc, because of the shortage of time,
47 would you agree with me that where these two

1 reports, or these number of reports, have been
2 critical of habitat management, that the DFO did
3 commit itself to meeting certain deadlines. Would
4 you agree with me that you have not been meeting
5 those deadlines up until now?

6 MR. LeBLANC: In terms of the response to the CESD
7 report?

8 Q Yes.

9 MR. LeBLANC: We have provided an update to the Auditor
10 General, the CESD did. Commission on Environment
11 Sustainable Development reports to the Auditor
12 General, so it's the same office. We have
13 provided an update and we're on track with most of
14 the work that we were committed to do. Some is
15 still ongoing, work on the MOU on s. 36 with
16 Environment Canada. We have put a quality
17 assurance program in place. We've responded to
18 most of the recommendations. Some is still
19 ongoing, I should say, 'cause some of them are for
20 2011, 2012 and beyond.

21 Q So are you saying that where, in your responses to
22 these reports, you indicated that you would
23 accomplish certain things by a deadline, that you
24 have met those deadlines?

25 MR. LeBLANC: In most cases, we have.

26 Q Can you give examples of where you haven't and
27 what one can expect in terms of when you will
28 accomplish it?

29 MR. LeBLANC: I'd have to look at the map and I don't
30 have access to it right now 'cause I don't know
31 where it is.

32 Q Is it fair to ask of you, through Commission
33 counsel to speed this up, that you simply provide
34 to us in due course, to this Commission, where
35 there are outstanding obligations where you had
36 not met deadline and when you anticipate meeting
37 deadline?

38 MR. LeBLANC: There is a report to go to the CESD in a
39 relatively short period of time. I think it's
40 been submitted to the Deputy Minister for her
41 approval.

42 Q Right.

43 MR. LeBLANC: And that will give you an update on all
44 aspects of the CESD response.

45 Q And will we receive that report?

46 MR. MARTLAND: I believe that indeed is number 34 on
47 our list of documents which we circulated notice

1 of some weeks ago.

2 MR. ROSENBLOOM: Okay. But that was in draft form, Mr.
3 Martland? I hear from the witness this is a
4 document before the Deputy Minister at this
5 moment.

6 MR. MARTLAND: No, I appreciate in fact that does bring
7 to mind that the document we gave notice of was
8 the map that was the earlier version. Number 34
9 on our list should be the one recently received.

10 MR. ROSENBLOOM:

11 Q So, Mr. LeBlanc, is that the document that you
12 speak of?

13 MR. LeBLANC: Yes.

14 MR. ROSENBLOOM: I would like to have it entered as an
15 exhibit. I'm told by counsel it is already
16 entered.

17 THE REGISTRAR: That will be marked as Exhibit 665.

18 MR. ROSENBLOOM: Thank you very much.

19
20 EXHIBIT 665: DFO and EC Response to May 2009
21 CESO Audit Report and Progress Made - Final
22 Version
23

24 MR. ROSENBLOOM:

25 Q I move to the next area which is Wild Salmon
26 Policy and Ms. Reid in particular. We've talked
27 about habitat status reports at this inquiry and
28 today in testimony, you said, if I understand this
29 and I hope I'm in context, you said we're
30 beginning to do that work, which was habitat
31 assessment on a CU basis. These weren't your very
32 words.

33 And if I have understood your testimony
34 correctly this morning, can you give examples
35 within the Fraser watershed where you have
36 completed any habitat status report?

37 MS. REID: Okay. I would ask, actually, if you don't
38 mind asking Jason that question with --

39 Q I have no problems, thank you.

40 MR. HWANG: I'm not sure I can help, actually. To my
41 knowledge, I don't think we've done a full one, as
42 a habitat status report. I'm reaching a bit here,
43 but I believe there was one that was done on one
44 of the sockeye watersheds up in the Stuart-Takla,
45 but it was a fairly early pilot, I'll call it, and
46 I don't believe it was done to the full extent of
47 the recommendations that came in the fairly

1 recently published paper that provides for the
2 habitat indicator context, I guess, with some
3 recommendations. So I don't think we've done any
4 but -- in the interior, there may be -- I think
5 there might be one from the Lower Fraser area, but
6 I'm not familiar with those details.

7 Q Okay. And I want to be charitable here. We're
8 not here to blame anyone for anything, but can you
9 explain to us why five, six years now, after the
10 implementation of the WSP, there has not been even
11 one completed habitat status report within the
12 Fraser watershed. Ms. Reid?

13 MS. REID: Yes, so I can speak to that. So it took us
14 a considerable amount of time and investment in
15 order to develop the methodology for the work.
16 That was completed fairly recently with the
17 publication of a science paper by Heather Stalberg
18 and Ray Losier, and I expect it's in ringtail
19 someplace, that document.

20 Subsequent to that, the amount of funding
21 that we had set aside to do the actual work went
22 down quite considerably, so we only had a small
23 amount of money left to start the habitat status
24 indicator work, the nature of about \$50,000 a
25 year. Previous to that, we were spending over
26 \$300,000 a year. So we picked the few watersheds
27 where we thought we could work with partners most
28 effectively, where we could leave our resources,
29 and we started -- I think we did one in the
30 Skeena, we did in Barclay.

31 The intention is to do them all, but it's a
32 considerable amount of time and effort and we
33 simply haven't the resources to --

34 Q Right, and if you --

35 MS. REID: -- have them done yet.

36 Q -- haven't had the resources to do that of recent
37 day, you have no reason to be optimistic of having
38 the resources over the next couple of years from
39 what you've already spoken about with the shortage
40 of money, correct?

41 MS. REID: Unless there's a reallocation towards this
42 activity, that's correct.

43 Q Thank you. Now, Monsieur LeBlanc, you yesterday
44 spoke about the U.S. experience with habitat and
45 you made reference to certain federal initiatives
46 with habitat and, if I understood you correctly,
47 you gained some inspiration from the American

1 experience and, if I understood you correctly,
2 thought that we could learn something from that
3 U.S. experience. Do I generally characterize your
4 evidence satisfactorily?

5 MR. LeBLANC: Yes, you do.

6 Q Where would this Commission gain more background,
7 because I obviously don't have five hours to go
8 back and forth with you to learn more about the
9 American experience? Where would we learn more
10 about that experience so that the Commission would
11 be educated about at least how they're handling
12 things?

13 MR. LeBLANC: There's a Fish Habitat -- National Fish
14 Habitat Action Plan in the U.S. that you could --
15 the website has a lot of information about that.
16 There's also a bill before Congress called the
17 **National Fish Habitat Conservation Act** which is
18 the Bill to enable the whole plan to be
19 implemented. It's been implemented, but it's been
20 implemented on a small amount of money through a
21 whole bunch of partners. However, they're trying
22 to obtain some further funding from Congress and
23 some collaboration among all the federal
24 government departments, including the U.S.
25 Geological Service, U.S. Fish and Wildlife, the
26 National Oceans Administration, the National
27 Oceans and Atmospheric Administration, to come
28 together to provide support for this National Fish
29 Habitat Action Plan, which is really driven by a
30 number of industry - and I mean industry, here,
31 the recreational fishing industry and other
32 states, and other interested parties that want to
33 see conservation and protection of fish habitat.

34 So it is an intensive amount of work that's
35 been done. Just recently, the USGS, Geological
36 Service, has put a map of all of the U.S. and you
37 can get down to sub-sub watershed to show the
38 pressures that are being placed by various kinds
39 of development on the watershed. That's the first
40 tranche of defining some of the priority
41 watersheds where they will be investing money.

42 They spent \$1 million just to collect the
43 data. This is not research; this is collecting
44 data and putting it on maps. It took about a year
45 just to do that.

46 Q You consult with your American colleagues from
47 time to time?

1 MR. LeBLANC: Yes, we do. We had Dr. Beard from the
2 U.S. Geological Service come to Ottawa just about
3 two or three months ago to give us a presentation
4 on the work that they've been doing on the U.S.
5 National Fish Habitat Action Plan.

6 Q Do you have any summary documents of those
7 meetings that you could make public and provide to
8 this Commission that would assist the
9 Commissioner?

10 MR. LeBLANC: Yes, I have the documents that I can make
11 available.

12 MR. ROSENBLOOM: I would make such a request through
13 your counsel for purposes of edifying this
14 Commission.

15 MR. MARTLAND: I think the request has been made. I'm
16 reluctant to invite any sort of a process that has
17 these witnesses with questions and homework as
18 opposed to answering questions today. It may be
19 that we can follow up and try to assist and
20 identify things that are ringtail or otherwise. I
21 take it that's not a request for follow-up answers
22 so much as identifying documents.

23 MR. ROSENBLOOM: Absolutely. It's not asking questions
24 to you, Mr. LeBlanc. It's to provide this
25 Commission with more background information about
26 the American experience.

27 MR. TAYLOR: I'll just jump in for a moment if I may.
28 I've taken that request, and the way it came up,
29 it seemed a perfectly logical thing to dig out and
30 we will do that.

31 But just as a flag on the play, if you like,
32 this is not an examination for discovery, so I
33 certainly don't want to see a creeping practice of
34 many outstandings coming out of evidence. The
35 witnesses, in the main, are here to give evidence
36 and not collect a bunch of outstandings. If there
37 are things - and this came up for the first time
38 to Mr. Rosenbloom's knowledge - but counsel
39 thinking ahead, if they can ask us things before
40 the witnesses get on the stand, then we'll,
41 through the Commission, accommodate that as best
42 we can.

43 MR. ROSENBLOOM: Obviously on this American experience,
44 that came out only yesterday in testimony. I'll
45 carry on. I have two or three other areas and I
46 want to get through them.

47 Q In respect to the interjurisdictional issues

1 between B.C. and Canada, Mr. Hwang, you said in
2 testimony this morning, and I wrote these words
3 down. In fact, sorry, you didn't say it. It's
4 referred to in this Exhibit 662 which is the
5 document that was written without imagining that
6 it would ever end up before a Royal Commission.

7 And so if we can go to 662, there is a
8 reference there to -- and if you go down to five
9 paragraphs from the bottom:

10
11 The relationship between province and DFO is
12 in a state of disfunction (sic). We don't
13 coordinate on referrals in any consistent way
14 and there is no guidance or leadership from
15 Vancouver-Victoria on this.

16
17 Okay. Firstly, you still believe that to be the
18 case?

19 MR. HWANG: In the general, yes, but I things have
20 improved somewhat since I wrote this.

21 Q Yes. And you wrote this again what year?

22 MR. HWANG: I believe it was July 2007.

23 Q Yes. And as I'm informed - and again you're not
24 speaking for the province - there's been a very
25 diminished budget of the provincial side on
26 environment and fisheries; is that not correct? A
27 reduction.

28 MR. HWANG: I can't really speak to the budget. I
29 could say that we have seen less interaction.
30 There are fewer people in different agencies for
31 us to interact with. That may be a signal that
32 there's been a budget change, but I'm not really
33 familiar with their operational details.

34 Q And obviously that has a fallout in terms of the
35 public interest of the sustainability of this
36 resource.

37 MR. HWANG: Well, certainly it has affected our ability
38 to work with certain provincial agencies in a way
39 that's collaborative towards trying to get the
40 best outcomes for fish.

41 Q Yes. Now, describing the relationship, albeit at
42 the time you authored this document, as
43 dysfunctional is very strong language. Now, my
44 question is we're here to try to resolve problems.
45 What recommendation do you have to the Commission,
46 if you can be brief about it, that might improve
47 the interjurisdictional relationship to the point

1 that it is more functional and in the public
2 interest?

3 MR. HWANG: Well, it's a difficult response to give in
4 a short and concise way. The issue in general
5 goes to what I spoke to yesterday, which is
6 Fisheries and Oceans has a mandate for fish
7 habitat, whereas the Province of British Columbia
8 and local governments have authority over land use
9 and water use. The conundrum lies in coordinating
10 those functions, and this has been presented in
11 previous audits as an issue of challenge. I would
12 say it remains substantially today.

13 Notwithstanding that, there have been
14 examples where locally we've cooperated reasonably
15 effectively, but they are generally reliant upon
16 local individuals or relationships, and the issue
17 more broadly still stands.

18 I don't know there's a simple answer in terms
19 of me saying if the Commissioner could wave a
20 magic wand and just do this, it would be done.
21 Because the issue is very complex, and I think the
22 fact that it hasn't been resolved, despite it
23 being noted through numerous consecutive audits,
24 is an indication that it's not an easy thing to
25 come to terms with.

26 Q All right.

27 MR. MARTLAND: I'm just going to interrupt for this
28 purpose, Mr. Commissioner, which is my timekeeper
29 function. Mr. Harvey has asked to be added for
30 ten minutes of questions, Ms. Brown had requested
31 an hour, Ms. Robertson, ten at a minimum, asking
32 for further (sic). You may have questions, I
33 might have three or four minutes of questions in
34 re-examination on a few points. For us to do all
35 of that before 4:00, I think we'll all need to
36 speed up, if you will. I'm alerting Mr.
37 Rosenbloom to that.

38 MR. ROSENBLOOM: I'm still trying to comply with my
39 allotted time. I have five minutes left. I
40 started at ten minutes to 12:00, I went to 12:30.
41 I said -- I initially said 50 minutes to you,
42 counsel. I then asked, you agreed to give me
43 another 20 minutes because the will-says are not
44 going in.

45 MR. MARTLAND: I'm not going to spend five minutes
46 fighting about the five minutes. We'll have the
47 further five, and then we'll move on. Thank you.

1 MR. ROSENBLOOM: Thank you.

2 Q Panel, I've heard testimony that there is a --
3 you're putting together a new habitat policy, if
4 I've heard that correctly; is that right? That's
5 the direction?

6 MR. LeBLANC: We're reviewing the current policy.
7 We've been reviewing it for quite a while, and we
8 have a proposal to put in place a process that
9 would allow us to renew the policy and the
10 program.

11 Q Yes. And my question is: In light of the
12 financial restrictions as we've heard about them
13 today, what makes one believe that a new habitat
14 policy is likely to bring any better results in
15 habitat management than what we're dealing with
16 today?

17 MR. LeBLANC: Through our dialogue and our
18 consultations with various sectors in society,
19 we'll find out whether that is the case. When we
20 launched this, we have no intent, at the end of
21 the day -- we may modify the policy. We'll decide
22 after we have a dialogue with Canadians. There's
23 a process that's been laid in place. I think I
24 mentioned to you it would take approximately six
25 months of dialogue with Canadians, and then we'd
26 decide whether, and to what extent, we would
27 modify the policy.

28 It may just be including some of the newer
29 things that we have now. We don't have any
30 mention of the **Canadian Environmental Assessment**
31 **Act, Species at Risk Act**. Some of the
32 documentation is inaccurate; for example, the
33 arrangements we have with inland provinces is not
34 the same as it was in 1986. In 1999, we expanded
35 the program into the inland provinces so there's a
36 lot of things that have changed since that policy.
37 Just look at the pictures of the policy. You
38 might want to reflect on that. We might want to
39 modernize the pictures.

40 Q But would you not agree that financial -- the
41 financial side, an increase in budget is
42 absolutely critical to any confidence that there
43 will be an improved habitat management scheme in
44 Canada?

45 MR. LeBLANC: I think we could all agree that any
46 program in the Department or in the federal
47 government could use more money. It would make it

1 much better.

2 Q Thank you. My last area of cross-examination, I
3 have maybe two minutes left, three minutes left,
4 is I have requested from the Commission, and from
5 the Commission they requested DFO, information
6 about bonuses and salaries to directors
7 regionally, and to Regional Directors -- excuse
8 me, and to Director Generals in Ottawa. I have
9 not yet received reply. It's been two months that
10 my request has been made to the Commission, and
11 indeed the Commission to your counsel.

12 My question to you, Ms. Reid, is you are a
13 Regional Director. Do you receive a bonus for
14 performance in respect to your area of work?
15 MR. TAYLOR: I object. This is a request that has been
16 made, as has been said, and it has been dealt
17 with. I don't see why we have to or should
18 advance the answering of that on an ad hoc basis
19 with one witness. There will be an answer given.
20 I've told the Commission that. The Commission has
21 told the participants' counsel, and it remains
22 outstanding.

23 MR. ROSENBLOOM: Mr. Commissioner, I don't want to
24 belabour this, but I've waited two months for this
25 information. This panel is before us. Why would
26 it take two months for the Government of Canada to
27 respond to a question that is pretty simple. I'm
28 prejudiced if I cannot ask this witness the simple
29 question which is:

30 Q One, are there bonuses as incorporated within your
31 salary structure, and as Director of Habitat for
32 the region, have you received a bonus over the
33 last few years for your work? That is my
34 question.

35 MR. ROSENBLOOM: How can I get that evidence if indeed,
36 two months, there's been an outstanding request
37 for this information from the government.

38 THE COMMISSIONER: Quite apart from the outstanding
39 request of Mr. Rosenbloom, I think if the witness
40 is in a position to answer the question that you
41 have asked, I will ask her to do so, if you are
42 directing it to Ms. Reid. If she's not, she will
43 say so and her counsel will have to address
44 whatever she says about why she can't answer the
45 question and act accordingly.

46 So I'm going to allow you to ask the
47 question. It's a matter of whether she's in a

65

PANEL NO. 27

Cross-exam by Mr. Rosenbloom (GILLFSC)

Cross-exam by Mr. Harvey (TWCTUFA)

1 position today to answer it for you and, if not,
2 she can explain why.

3 MR. ROSENBLOOM: Mr. Commissioner, forgive me, but why
4 would anyone not remember whether they received a
5 bonus?

6 THE COMMISSIONER: We're going to find out.

7 MR. ROSENBLOOM: Thank you.

8 Q Ms. Reid?

9 MS. REID: Yeah, I can answer the question.

10 Q Thank you.

11 MS. REID: So, as an executive, part of my pay is based
12 on performance. There's a performance element to
13 it, so every year I write a Performance Management
14 Agreement, and based on the specific results of
15 that agreement, I receive a bonus or I don't. So,
16 yes, I have received a bonus for the work that
17 I've done.

18 Q And that has been each year since you've taking
19 over that regional directorship?

20 MS. REID: That's right, yes.

21 MR. ROSENBLOOM: Thank you. No further questions.

22 MR. MARTLAND: Mr. Commissioner, next on the list, Mr.
23 Harvey, ten minutes.

24 THE COMMISSIONER: Yes.

25

26 CROSS-EXAMINATION BY MR. HARVEY:

27

28 Q So I have a question for the panel generally, and
29 it has a bit of a preamble to it. Basically,
30 you've given us a lot of important details about
31 habitat loss and I, for one, am struggling to put
32 it into perspective in terms of the contribution
33 it has, if any, to the -- the contribution that
34 habitat loss has to the decline of the Fraser
35 River sockeye. So that's where I'm coming from.

36 I first want to ask if I'm correct, that
37 habitat loss is relevant and perhaps critical if
38 it reduces the carrying capacity of either the
39 spawning grounds or the rearing lakes. Is that a
40 correct starting point?

41 MR. HWANG: So your question is the second part of what
42 you just laid out?

43 Q Yes.

44 MR. HWANG: Well, certainly that's a useful general
45 summary. I would say biologically it's a bit more
46 detailed than that, but I don't think we want to
47 get into a biology lesson --

April 5, 2011

1 Q No.

2 MR. HWANG: -- at this juncture, so I'll leave it at
3 that.

4 Q All right. Now, and the rearing lakes, it's been
5 described in previous evidence, have a certain
6 carrying capacity depending on the size of the
7 lakes and the food supply in the lakes. We've had
8 a lot of evidence on the importance of maintaining
9 the delicate balance between the number of fry in
10 the rearing lakes resulting from the number of
11 spawners, and the nutrient capacity in those
12 rearing lakes.

13 For example, there was a discussion in
14 February from a panel, a very interesting
15 discussion about the effects of the very large
16 escapement levels that we've had in the last
17 decade or so, and that panel, on February 9th and
18 10th, expressed the opinion that the carrying
19 capacity of the large lakes, Chilko, Shuswap and
20 Quesnel, had been exceeded such that the number of
21 fry that resulted were reduced in growth and in
22 their survival rates. I'll just read you a very
23 short passage. This is from Dr. Woodey on
24 February 10th at page 22. He was discussing, as I
25 say, these very large escapements, escapements at
26 the level above optimal escapements.

27 MR. HWANG: Is this something we have before us to look
28 at or are you just reading it?

29 Q Well, if it's a problem, I can have it put up.
30 It's February 10th, page 22, line 16 or 17 is
31 about where I'm coming in. He says:

32
33 ... they've shown decreased productivity
34 principally because of juvenile survival and
35 growth in the lakes that are causing the
36 survival rates in the ocean to go down in
37 those individual years.

38
39 And that's just a small snippet of a large
40 extensive discussion on that subject.

41 That leads me to my question. The question
42 is: That discussion, that important discussion
43 appeared to proceed on the assumption that the
44 carrying capacity of our rearing lakes has been
45 constant over the past 50 years or so. But it
46 strikes me, having heard your evidence, that they
47 may have overlooked something very important, and

1 that is that habitat changes have reduced the
2 carrying capacity of our rearing lakes. So that
3 is my question. Are you inviting the Commission
4 to take from your evidence a conclusion that the
5 carrying capacity of our rearing lakes have been
6 reduced by habitat changes?

7 MR. HWANG: I think it was earlier today I spoke to the
8 difficulty in knowing for sure how much the change
9 in habitat in the lakes and streams and the
10 freshwater environment for sockeye affects the
11 carrying capacity or the population response.
12 What we have observed over time is that cumulative
13 change -- so it's been an incremental change and
14 it's been cumulative. So every year's change is
15 stacked on top of the change from all previous
16 years, and very few of those changes are things
17 that we would characterize as positive for sockeye
18 or the fish habitat in general.

19 So I think what we could say is, compared to
20 background natural conditions, human activity has
21 resulted in changes that are almost certainly not
22 favourable for sockeye or freshwater fish, but the
23 degree to which that affects the overall carrying
24 capacity and productivity, I don't think we're in
25 a position to really conclude on that at this
26 point.

27 Q But if it's done anything, it would have reduced
28 the carrying capacity. It wouldn't have increased
29 the carrying capacity; is that correct?

30 MR. HWANG: It's most likely that it would have reduced
31 the carrying capacity in my opinion.

32 Q Have you seen, in any way, that this opinion has
33 been taken into account by the fishery managers in
34 charge of determining how much escapement there is
35 capable of being carried in the rearing lakes?

36 MR. HWANG: Not particularly. I think you'd have to
37 ask the fishery managers that more specifically.
38 But we are generally not providing information on
39 background carrying capacity to support fishery
40 management decisions. That's not something that
41 has been part of our normal programming.

42 MR. HARVEY: I see. All right, thank you. Those are
43 my questions.

44 MR. MARTLAND: Mr. Commissioner, next I have Ms. Brown
45 for the First Nations Coalition.

46 I wonder if I might canvass the point I made
47 earlier. I think in light of the ground we have

1 yet to cover, we'll be pushing to complete by
2 4:00. I wonder if it may be possible either to do
3 a short or no break through the afternoon session?
4 THE COMMISSIONER: I don't know, Commission counsel. I
5 heard you say this morning we were very
6 comfortable in handing out more time to folks, so
7 I'm going to take a ten-minute break, because I
8 think that's needed for staff and at least for me.
9 We'll just have to have counsel divide up what
10 time is available amongst them fairly as best they
11 can.
12 MR. MARTLAND: Thank you.
13 THE COMMISSIONER: Thank you.
14 MR. MARTLAND: Thank you. And do you wish -- we can
15 move to that break now, is that --
16 THE COMMISSIONER: No, I think we should carry on.
17 MR. MARTLAND: Or to continue on? Thank you. I'll
18 make that point at 3:15. Thank you.
19 MS. BROWN: Thank you, Mr. Commissioner. Anya Brown,
20 appearing for the First Nations Coalition, and
21 with me is Leah Pence. For the benefit of the
22 panellists, the First Nations Coalition represents
23 First Nations up and down the Fraser River, as
24 well as the Council of the Haida Nation. We also
25 represent a number of aboriginal organizations
26 with interests in respect of the Fraser River.
27
28 CROSS-EXAMINATION BY MS. BROWN:
29
30 Q I'm going to start out by asking some questions
31 about the 1986 Habitat Policy which recognizes, in
32 part, that First Nations could assume a greater
33 role in local fisheries management and
34 environmental protection in the future. My
35 question is - and I suppose I'll start by
36 directing it to Ms. Reid - can you say whether, in
37 the past 25 years that the policy's been in place,
38 whether this has happened?
39 MS. REID: Well, I can say that over the past 25 years,
40 how the Department has worked with First Nations
41 has changed significantly. There's been a number
42 of programs put into place. The Aboriginal
43 Fisheries Strategy, AAROM Program, PICFI, some
44 others, all of which are intended to support First
45 Nations' involvement in fisheries management and
46 habitat management type activities.
47 So under the Aboriginal Fisheries Strategy,

1 for example, there's funding provided which allows
2 for First Nations' involvement in habitat-type
3 projects. There's capacity under the AAROM
4 program which allows First Nations to build
5 technical capability in order to become
6 meaningfully involved in processes.

7 There's certainly a recognition and
8 understanding of the importance of Canada's
9 fiduciary responsibility towards First Nations and
10 our need to, you know, consult in a meaningful way
11 in cases where First Nations' access could be
12 impacted by projects, those sorts of things. So
13 there's a number of ways through planning
14 processes, through strategies and initiatives
15 that, over the past 25 years, I'd say that First
16 Nations have become a lot more involved in
17 management and habitat-type activities.

18 Q Now, Mr. LeBlanc, you spoke yesterday about the
19 process that will take place to update or
20 modernize the Habitat Policy, and are you able to
21 give us any indication of how you anticipate
22 changes to the policy that incorporate what's now
23 known as the "duty to consult"?

24 MR. LeBLANC: Yes, I think one of the changes that
25 could be made to the policy would be a recognition
26 of the rights of aboriginal peoples across Canada
27 and, to be more explicit, on the duty to consult
28 aboriginal peoples.

29 Q And we've heard you give evidence today and
30 yesterday about how much of the Department's focus
31 is in respect of the referral process, and I'm
32 wondering if you can give us a sense of what the
33 current mechanism is in place in terms of DFO's
34 consultation with affected First Nations.

35 MR. LeBLANC: As part of the regulatory review process,
36 prior to making any regulatory decisions, that is,
37 issuance of authorizations under s. 35(2) and 32,
38 we have a duty to consult aboriginal peoples in
39 terms of the impacts that that may have on their
40 rights.

41 The other part of it is that prior to making
42 those regulatory decisions, we have another
43 process, the application of an environmental
44 assessment process, ensuring that that process is
45 followed. As part of that, there is a requirement
46 to consult with aboriginal peoples on the impact
47 that the project may have on their traditional use

1 of land and resources.

2 We've developed training programs, we've
3 developed guidelines, guidance for staff to make
4 sure that they undertake those requirements to
5 consult with aboriginals during the EA process,
6 the environmental assessment process, and as part
7 of the regulatory decision-making.

8 Q All right. And you gave some evidence yesterday
9 about the review process that will take place in
10 respect of the Habitat Policy and you told us that
11 it's currently undergoing an internal review, and
12 you spoke about an external process that will take
13 place which will include engagement and
14 consultation with partners and stakeholders. Will
15 that include First Nations as well?

16 MR. LeBLANC: Yes, it will include all aboriginal
17 peoples. The major organizations will be working
18 through national and regional organizations to get
19 input from aboriginal peoples across Canada.

20 Q All right. And has a timeframe for that been
21 established yet?

22 MR. LeBLANC: No, because it was before the Minister.
23 No approval has been made to launch an engagement
24 strategy or plan that we had put in place, which
25 was, as I mentioned before, a dialogue with
26 Canadians, but all Canadians including aboriginal
27 peoples, and a consultation following any decision
28 to modify the policy.

29 Q Now, one of the things that you said yesterday
30 about this new policy and what you expected we
31 might see in there was that it would apply -- if I
32 understood your evidence correctly, that it would
33 apply a more ecosystem-based approach which would
34 include identifying what you called priority
35 habitats. Have I got that right?

36 MR. LeBLANC: That could be part of the policy, yes.

37 Q All right. And what I'm wondering is whether the
38 definition or the Department's definition of
39 priority habitats would include habitats
40 identified by First Nations as being of particular
41 importance to them?

42 MR. LeBLANC: If I was looking at trying to identify
43 priorities for habitat priority areas, I would
44 make sure that -- or we would, as a Department,
45 and I would support this, is that we would consult
46 with local communities to ensure that we have all
47 the available information available from everyone

1 to identify those priority areas.

2 MS. BROWN: Mr. Bisset, if we could please have Tab 7,
3 and in the interest of time, I'll skip over the
4 first document I indicated to you, and if we could
5 have number 7 from our list of documents.

6 Q This is a letter that was written by one of our
7 clients, the First Nations Fisheries Council to
8 Greg Savard, the Director of OHEB on September
9 22nd, 2010. At the bottom of the page, the
10 purpose of the letter is really set out, and I'll
11 read it there.

12
13 ...the Council has become a conduit for
14 questions from communities on hydroelectric
15 mitigation and the process the Crown proposes
16 to fulfil their obligation to consult and
17 accommodate First Nations' Title and rights.

18
19 Then I'll skip down to the last sentence of that
20 page:

21
22 We are particularly interested in how the
23 Crown plans to fulfill its obligations to
24 First Nations, and how DFO plans to engage
25 First Nations in all decisions and processes
26 which infringe or have the potential to
27 infringe, on asserted, claimed and proven
28 title and rights.

29
30 So I'm not asking you to comment on this
31 specific project. What I'm asking for is whether
32 you're able to advise of what mechanism or process
33 would be in place or would the Department engage
34 in to respond to questions such as this? Perhaps
35 Mr. Hwang would be able to answer that.

36 So what I'm looking for is really an on-the-
37 ground sense of what happens to inquiries such as
38 this where First Nations become aware of a
39 particular project that may have implications on
40 habitat in their territory.

41 MR. HWANG: Hydro is a difficult example for that
42 question because what you're dealing with most of
43 the time with a hydro operation is something
44 that's already there. The regulatory trigger that
45 Fisheries and Oceans has under our statutory
46 authority comes when we go to issue an
47 authorization for something.

1 So the hydro example in the context of, say,
2 B.C. Hydro, which is what most people's sort of
3 first thought is in that regard, is it's a very
4 complex environment where we're dealing, in some
5 regard, to try to reconcile not only the historic
6 effects of the hydro facilities, but also the
7 ongoing operational effects. The processes to
8 deal with these things are largely being led by
9 either B.C. Hydro itself or through the provincial
10 government under the Water Comptroller who permits
11 the water allocation and use.

12 DFO is aligned with those processes and, for
13 example, for the operational effects over the
14 last, I think, ten or 12 years or so, there's been
15 a process called Water Use Planning, and the Water
16 Use Planning was, in essence, trying to look at
17 all the operational considerations and trade-offs
18 that went along with having these hydro facilities
19 in place, looking at not only fisheries issues,
20 but also other environmental issues, other
21 socioeconomic issues, as well as, very
22 significantly, First Nations issues within the
23 areas of operation for these facilities.

24 I would say the DFO participated actively in
25 those processes. We were certainly not the lead,
26 but there was a mechanism and opportunity for
27 First Nation interests to be tabled through that
28 process. So that would be the example, I suppose,
29 tying to the hydro question.

30 Q All right. And in a more general sense, what I'm
31 trying to understand is at what point is the duty
32 to consult triggered? Is it at some point after a
33 referral application is received, or when does it
34 typically happen?

35 MR. HWANG: Well, I can speak operationally. I'm
36 certainly not a constitutional expert or anything
37 like that.

38 Q Absolutely not. I'm just simply asking for what
39 happens on the ground as you know it.

40 MR. HWANG: Our trigger comes when we are in a
41 situation where we have a statutory decision to
42 exercise. So when we get a project, we have a
43 look at it. If it's a project that falls within
44 our authority to say, yes, this may require an
45 authorization and it looks like it's heading that
46 way -- because some projects that come in that may
47 require an authorization end up not proceeding or

1 taking a different path. But if it looks like
2 it's going to head down that road, then that
3 indication, when we come to that realization is
4 our signal or trigger to initiate a consultative
5 process.

6 MS. BROWN: All right. I'd like to enter that document
7 as an exhibit, please.

8 THE REGISTRAR: Exhibit number 666.

9 MS. BROWN: Thank you.

10

11 EXHIBIT 666: Letter from John Henderson and
12 Ken Malloway, Co-Chairs of FNFC to Greg
13 Savard, Direction of OHEB at DFO dated
14 September 22, 2010 re concerns about
15 mitigation measures for hydroelectric
16 operations in B.C.

17

18 MS. BROWN:

19

Q When the time does come for consultation, Mr.
20 Hwang, does that typically take place with an
21 individual First Nation or would it happen at a
22 more regional level?

23

MR. HWANG: Well, I would say from our experience in
24 the Interior area, there is no typical. It's
25 quite dependent upon the interests of the First
26 Nations in the area where the work is occurring.
27 There are times when it's relatively well defined
28 and singular. There are other times when there's
29 a bit of a plurality where there are overlapping
30 traditional areas or areas of claim, and we will
31 consult quite broadly with different layers or
32 entities within the First Nations communities.

33

Q And would the type of consultation that you engage
34 in also depend on the nature of the referral
35 itself and how specific or broad, small or large
36 it might be?

37

MR. HWANG: Yes, that's accurate.

38

Q Now, we've heard that the referral process
39 examines impacts to fish and fish habitat. Would
40 you agree that, as part of the referral process,
41 that one of the things that the Department also
42 must consider is how those impacts to fish and
43 fish habitat, assuming that, in the course of your
44 work you determine that there are potential
45 impacts, is part of the consideration the way that
46 those impacts will, in turn, affect First Nations'
47 right to fish?

1 MR. HWANG: Certainly. Operationally, we generally
2 refer to it as the need to consider right, title
3 and traditional use. So traditional use can
4 include not only fishing, but even things like
5 collecting medicinal plants, or plants for food
6 and things like that. There's certainly no limit
7 to the kinds of issues a First Nation may wish to
8 bring to the Department for consideration as a
9 potential impact or concern associated with our
10 consideration with regard to rendering our
11 decision on a project.

12 Q Now, how does - and this is a question I'd really
13 direct to any one of the three of you - how does
14 the No Net Loss principle and the exchange of
15 units, the compensation principle, I suppose, of
16 habitat, take into account aboriginal priority
17 fishing which takes place on a site-specific
18 basis, or in a site-specific way?

19 MR. HWANG: I'll lead with that, and maybe Patrice or
20 Rebecca can add if they like. But when we look at
21 these things at the operational level, we look at
22 them, first, very specifically on what is the
23 potential impact to the fisheries resource from
24 that activity. In considering that, if we are
25 contemplating permitting it, we look at the
26 compensation side which is the offset piece to
27 achieve the No Net Loss in a way that most
28 generally falls within the hierarchy of
29 preferences that we have established in the
30 policy.

31 So the first thing we try to do is get a
32 similar habitat function in a similar location, or
33 as we work down the hierarchy, other things that
34 will have benefits to the stocks that are
35 affected.

36 So while I wouldn't say that we go
37 specifically to considering how would a particular
38 First Nation fishery potentially be affected, I
39 think that consideration is captured in the way we
40 approach it more from the ecological basis, which
41 is we're trying to reflect a neutral or even
42 positive outcome for the fish and the fish stocks
43 that are going to be potentially affected by that
44 project.

45 Q I think we've seen in some of the Quigley and
46 Harper reports that there's certainly some debate
47 or critique about the exchange of one area of

1 habitat for another, and whether that's something
2 that's ecologically sustainable. Do you agree
3 that there's ongoing debate about the
4 appropriateness of that?

5 MR. HWANG: Certainly compensating for an impacted
6 habitat is difficult. It is hard for humans to go
7 out and replicate something created by nature that
8 all the creatures and everything out there has
9 adapted to. So I think it's possible, and there
10 are examples where habitat compensation has been
11 successful, but there's plenty where it hasn't
12 been, and there's still a lot to learn. It's not
13 something that we take lightly in terms of
14 considering whether to issue an authorization.

15 The first thing that we always try to do is
16 to avoid that impact by having the proponent
17 redesign their project. So it's only when there
18 are no other feasible options that the Department
19 contemplates allowing the harmful impact.

20 By way of our authorizations, we try to build
21 in factors that are -- I call them in favour of
22 fish, where we will ask for perhaps two to one or
23 three to one in terms of a footprint of
24 compensation area over and above the impacted
25 area, recognizing that some of this stuff doesn't
26 work as well as humans will think about when they
27 design their planning.

28 Q Right. And looking at it from the perspective of
29 aboriginal people fishing, would you agree that an
30 exchange of one salmon-bearing stream for another
31 may not be an appropriate outcome if that
32 substituted stream is perhaps in a neighbouring
33 First Nations territory, or perhaps simply a
34 stream that's not a preferred fishing site, let's
35 put it that way.

36 MR. HWANG: Well, I would agree with your example, but
37 we don't really do that. I won't say never, but
38 for the most part, any compensation the DFO asks
39 for has a direct benefit to the stock that is
40 potentially being impacted. It's not always right
41 beside the impacted area, but it is something that
42 our staff put our minds to, because we're trying
43 essentially to maintain the ecological values and
44 integrity within that watershed.

45 So if we were allowing impacts in the Fraser
46 and doing compensation in the Skeena, that, what
47 you lay out, would be a valid consideration. But

1 generally the Department doesn't do that.

2 Q But would a First Nation's concern be considered
3 by DFO, and I'm not talking about a situation as
4 far removed as the Skeena, but if we were talking
5 about streams fairly close to each other within
6 the Fraser, if there was a concern from a First
7 Nation about the substituted piece, is that
8 something that would be considered.

9 MR. HWANG: Certainly.

10 Q Mr. Hwang, again, in your experience, have there
11 been opportunities for First Nations to work with
12 your Department on habitat compensation plans or
13 proposing mitigation measures, working
14 cooperatively in some sense?

15 MR. HWANG: Yes. There's been many, and they're
16 ongoing.

17 Q And do those at any time incorporate First
18 Nations' traditional knowledge?

19 MR. HWANG: As much as they care to bring them forward,
20 yes.

21 Q Are there also any examples that you're aware of -
22 and I welcome or invite Ms. Reid to speak to this
23 as well - do either of you know of any specific
24 instances where First Nations are actively
25 involved in monitoring habitat in conjunction with
26 the Department?

27 MR. HWANG: I could say I'm aware of very narrowly
28 specific circumstances where there has been some
29 monitoring perhaps involving First Nations related
30 to a particular compensation project, say, or
31 something like that. But more generally, on, say,
32 a strategic basis or something, not that I'm aware
33 of.

34 MS. REID: I think one example that you could draw on
35 is the B.C. Hydro example in that B.C. Hydro has
36 what they call compensation projects. We don't
37 use the term in quite the same way, but their
38 compensation projects do certainly involve local
39 First Nations and there is quite a bit of work
40 with those groups.

41 Q Mr. Hwang, at the end of the day yesterday you
42 spoke of how the referral process might change in
43 the face of an emergency situation. I'm wondering
44 if you're able to tell us at all how the duty to
45 consult or the engagement process that your
46 Department enters into with First Nations would
47 change if the Department was responding to an

1 emergency situation.

2 MR. HWANG: Well, the nature and I guess the urgency of
3 the emergency has some bearings on how much that
4 may change. But at the end of the day, the
5 guidance that we have as we interpret it
6 operationally is do as much as you can and
7 incorporate as many of the considerations or
8 concerns as you can, but it's also to keep in mind
9 that if the issue at hand is a legitimate high-
10 risk situation, that we may not have the ability
11 to take the time and, prior to issuing our
12 authorization, address all of the concerns that
13 may come forward as we would normally when you
14 don't have that kind of time constraint.

15 So we do our best, and it's certainly a high
16 priority. We've had many projects that we pushed
17 quite far beyond the project owner's ideal
18 starting time to provide for more time to consult
19 and engage with First Nations, and we have pushed
20 many proponents quite hard to adjust their plans
21 to incorporate concerns that First Nations have
22 brought forward.

23 Q Now, you spoke a little bit earlier this afternoon
24 about the complexity of sorting out the
25 interjurisdictional relationship between the
26 Province of British Columbia and the Department in
27 terms of habitat management. Would you agree that
28 First Nations' jurisdiction and sorting that out
29 and addressing First Nations' concerns adds a
30 further layer of complexity for the Department in
31 the work that it does?

32 MR. HWANG: It most certainly does on the habitat
33 front.

34 Q Now, Mr. Hwang again, we heard yesterday, and
35 we've heard today as well, that the referral
36 process is a voluntary one, and really, the only
37 way for a project, large or small, to come to
38 DFO's attention is if the proponent self-refers.

39 You noted yesterday the cumulative impact of
40 those projects where a proponent chooses to not
41 bring -- you noted yesterday the cumulative impact
42 of those projects that the proponent chooses to
43 not bring to DFO's attention, I'm wondering
44 whether the Department has any sense of the
45 percentage of projects that take place that may
46 cause degradation to the habitat that don't engage
47 in the voluntary referral process.

1 MR. HWANG: I'll put a bit of a qualifier on that, that
2 the cumulative impacts are not necessarily just
3 from things that project proponents don't bring to
4 us.

5 Q Right.

6 MR. HWANG: Sometimes they come from things that we do
7 review. We don't really have a good sense of what
8 proportion are coming from things we don't see.
9 We have undertaken, through our relatively new
10 monitoring program, a little bit of work trying to
11 have a look at that where we did an audit of what
12 -- we were mentioning yesterday of things called
13 operational statements which set out a pre-
14 existing set of recommendations for certain
15 activities that were classified as low risk, that
16 if the proponent were to undertake them that way,
17 the Department is pretty sure they would not cause
18 harm to habitat.

19 So what our staff tried to do was have a look
20 at a sample of those kinds of activities and say
21 how many of these do we get notification on, and
22 let's find some that we didn't, and let's see how
23 they compare to each other.

24 I don't have a really clear recollection of
25 the details, but I could say that we didn't see
26 anything alarming because I know that would have
27 registered with me, so the signal back is that it
28 doesn't necessarily - at least with that very
29 small snapshot - it doesn't stand out that it's
30 easy to put your finger on that as a major culprit
31 or not. But I have to emphasize that that was a
32 really small window into a much bigger piece of
33 work.

34 MS. BROWN: All right. Mr. Bisset, could you please
35 turn up number 9 from the Commission's list,
36 please?

37 Q Mr. LeBlanc, you'll recognize this as one of the
38 Quigley and Harper studies. This is from 2005,
39 and it's one where I noted in the acknowledgements
40 that you were one of the people that did the
41 technical review of that. I think you noted
42 yesterday that one of the conclusions made was
43 that the study, as have other Quigley and Harper
44 studies, they've revealed that there's a weakness
45 in NNL compliance, and we've heard about that.

46 I'll just note that the study, at page 353 -
47 and I'll just refer to it, I won't take you to it

1 - but what the authors there said that one of the
2 most alarming findings of the study was that out
3 of the 124 authorizations that they examined, they
4 were able to make determinations about No Net Loss
5 in only 17 of those and they identified, as I
6 think we've heard, that one of the primary reasons
7 was because of poor proponent compliance.

8 Now, I noted with interest that out of those
9 124 authorizations that were looked at, actually
10 105 came from B.C., so according to my
11 calculations, 85 percent. Out of those 105, 83
12 actually came from the Fraser River Basin.

13 Now, I'm just going to quickly take you to
14 the conclusions of this study at page 354, and
15 I'll just quickly paraphrase them. It's in the
16 last part of the text immediately above the
17 acknowledgements. So the findings there indicate
18 - and most of this we've heard - DFO should
19 improve record-keeping, have better management,
20 address poor proponent compliance through
21 increased compliance and enforcement, and
22 incorporate a standardized science-based approach
23 into monitoring to assess the effectiveness of
24 fish habitat compensation projects in achieving
25 NNL.

26 My question simply is whether any specific
27 tests, steps have been taken by the Department to
28 address poor proponent compliance in the time
29 period since this report was written?

30 MR. LeBLANC: One of the efforts was out of the
31 Environmental Process Modernization Plan,
32 increasing capacity and focus on compliance
33 monitoring or monitoring the conformity with the
34 requirements of authorization, so that has
35 started. We staff people across Canada in the
36 habitat program to focus their attention on
37 monitoring and auditing compliance.

38 The other one is that we are working with our
39 Science colleagues to develop a standard
40 scientifically-sound methodology for what we call
41 follow-up monitoring; that is, to evaluate or to
42 verify the accuracy of the predicted impact or
43 harmful alteration, disruption or destruction of
44 habitat, and to verify the effectiveness of the
45 compensation measures. So both of those are
46 underway.

47 One, the compliance, has been in place now

1 since I believe 2006 or '07 when we started to
2 roll out that compliance regime, new compliance
3 regime, compliance monitoring regime. If I
4 recall, we've been talking with our Science
5 colleagues, just had several workshops to engage
6 them in developing that standardized methodology
7 that we could apply across Canada.

8 MS. BROWN: All right, thank you. If I could enter
9 that document as an exhibit, please.

10 THE REGISTRAR: Exhibit number 667.

11
12 EXHIBIT 667: No Not Less of Fish Habitat - A
13 Review and Analysis of Habitat Compensation
14 in Canada

15
16 MS. BROWN: Mr. Commissioner, I note the time and I'm
17 wondering if this might be a convenient time for
18 the afternoon break.

19 THE COMMISSIONER: It would be, Ms. Brown. I think
20 when we come back it'll be 3:30, so whoever is
21 left has to divide up that time available. Thank
22 you very much.

23 MS. BROWN: Yes, I'll speak with my friends that
24 haven't yet made their submissions.

25 THE COMMISSIONER: Thank you.

26 THE REGISTRAR: The hearing will now recess for ten
27 minutes.

28
29 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)
30 (PROCEEDINGS RECONVENED)

31
32 THE REGISTRAR: Hearing is resumed.

33 MR. MARTLAND: Ms. Brown?

34 MS. BROWN: Thank you.

35
36 CROSS-EXAMINATION BY MS. BROWN, continuing:

37
38 Q Ms. Reid, I actually have a few questions --

39 THE REGISTRAR: Speaker, please.

40 MS. BROWN:

41 Q Ms. Reid, I have a few questions for you now.
42 Yesterday one of the things that you discussed was
43 the need to develop and strengthen partnerships
44 and to engage in watershed-level planning. And
45 I'd like to ask you a little more about that and
46 draw your attention to a specific example that you
47 might be aware of.

1 MS. BROWN: So, Mr. Bisset, if you could please bring
2 up Tab 1 from our list and this is a newsletter
3 from the year 2000 from the Fraser Basin Panel --
4 or Fraser Basin Council, rather. It's a special
5 report from the Spring of 2000 on aboriginal and
6 non-aboriginal partnerships.

7 Q Now, Ms. Reid, I'm assuming that you're aware of
8 the work of the Fraser Basin Council because we
9 note that it's listed as one of the cooperative
10 processes that were on your inventory; do you
11 recognize, are you aware of the work of the
12 council?

13 MS. REID: Yes.

14 Q Now, if we could just turn to page 4 of that
15 document, please, and at the top of the page it
16 says Nicola Valley Watershed Stewardship and
17 Fisheries Authority. Have you -- first of all,
18 I'll ask you are you aware of this authority?

19 MS. REID: Yes, I am.

20 Q And what's stated here in the report is that this
21 organization or this authority, I'll call it, is
22 described as one of the leading partnerships for
23 fisheries management in the Fraser basin. It goes
24 on to say that they're funded by Fisheries and
25 Oceans through ASF -- AFS. They undertake stock
26 assessment, stock enhancement, habitat restoration
27 and that they've built and now maintained records
28 of what they describe as unprecedented detail on
29 watershed health.

30 Going down to the bottom of the page where we
31 see the five bullets, I'll just refer you to the
32 bottom two bullets, which say that the work of the
33 authority include:

34
35 - developing policy (e.g., recommending and
36 implementing precautionary checks and
37 balances for fisheries management based on
38 traditional knowledge of the watershed);
39

40 And also:

41
42 - establishing protocols...
43

44 And the examples they give are:

45
46 (communicating ways to utilize traditional
47 knowledge alongside other science in analysis

1 and decision making);

2

3 So first of all, I'd like to ask you, Ms. Reid,
4 what your knowledge or involvement of the
5 authority is?

6 MS. REID: My involvement was when I worked for the --
7 under the Aboriginal Fisheries Strategy Program as
8 a program officer, facilitating funding of this
9 authority, but I didn't have direct involvement
10 with them on an operational level.

11 Q All right. And they make note there of something
12 that I touched on with Mr. Hwang, as well, which
13 was the incorporation of aboriginal traditional
14 knowledge. And do you agree that First Nations
15 traditional knowledge can have an important role
16 to play in fisheries management?

17 MS. REID: Yes, I do.

18 Q And have you ever been directly involved in the
19 work that you've done with any particular First
20 Nation on incorporating traditional knowledge into
21 habitat issues?

22 MS. REID: Yes, I have.

23 Q Can you elaborate on that, please?

24 MS. REID: When I worked as the area director in the
25 Central Coast, I worked with the Rivers and Smiths
26 -- it was essentially a watershed planning group
27 involving the local First Nations Oweekeno and the
28 Gwa'Sala-Nakwaxda'xw, those two groups
29 specifically, and maybe some others. And
30 essentially the intent of that group was to come
31 up with a watershed fish sustainability plan for
32 the two inlets, Rivers and Smiths Inlets and
33 certainly the incorporation of traditional
34 ecological aboriginal knowledge was very important
35 into the development of that plan. That's just
36 one of -- one example of many.

37 MS. BROWN: Right. Could I enter that as an exhibit,
38 please?

39 THE REGISTRAR: Exhibit 668.

40

41 EXHIBIT 668: Aboriginal/Non-Aboriginal
42 Partnerships FBC Special Report, Sustaining
43 the Basin Spring 2000
44

45

46 MS. BROWN: I'm now on to my final topic area and if
47 Mr. Bisset could please bring up Tab 8 from our
list of documents.

1 Q And I have a few last questions now and these will
2 be directed at you, Mr. LeBlanc. These are
3 minutes from a meeting that took place with the
4 Assembly of First Nations and various other
5 individuals, including yourself, in December 2007.
6 It was called an AFN National Policy Analysis
7 Group meeting. Do you remember attending that
8 meeting, Mr. LeBlanc?

9 MR. LeBLANC: Yes, I do.

10 Q And I understand that the purpose of that meeting
11 was to meet with First Nations from across the
12 country and discuss policies and programs and
13 tools that the department's Habitat Branch uses
14 and to discuss issues of First Nations engagement
15 and consultation and issues such as that; is that
16 -- do you generally agree with that?

17 MR. LeBLANC: Partly correct. This was done under the
18 auspices of what's called the Aboriginal Inland
19 Habitat Program that was funding the AFN to help
20 us have a dialogue with aboriginal peoples in the
21 inland provinces, although they invited other
22 people because they had their national policy
23 group there.

24 Q All right. And as we can see, the document goes
25 on for many pages, but in the interests of time,
26 what we've done is summarized what we've seen in
27 our read of it as some of the key concerns that
28 were identified by the participants that engaged
29 with you and others. So one of the concerns that
30 we identified in the notes was that there was an
31 expressed desire for consultation with First
32 Nations to occur soon or sooner as opposed to
33 later in the process of regulatory approvals. And
34 Mr. LeBlanc, are you able to indicate whether DFO
35 has responded at all to this particular concern
36 about early consultation?

37 MR. LeBLANC: Yes, I do believe we have both in terms
38 of regulatory decision-making in an environmental
39 assessment, there is a tremendous amount of
40 guidance for staff and I think you've heard that
41 many of the aboriginal groups that are near
42 projects are -- and may be impacted by development
43 projects which we review are engaged in the -- and
44 consulted with. We've also undertaken to continue
45 to have a dialogue with DFN and other aboriginal
46 groups across Canada on any policy development
47 that we do, so that's part -- also an expansion

1 beyond the regulatory process.

2 Q Another concern that was expressed by the First
3 Nations participants was what they perceived as a
4 lack of clarity from the department about the
5 process that's used to address First Nations
6 concerns and the process for meaningful
7 consultation, and I'm wondering if you can advise
8 what, if any, steps DFO has taken to reach out to
9 First Nations communities to explain when and how
10 consultation is engaged and takes place and how
11 that fits within habitat practices and priorities.
12 And this may be something that Mr. Hwang can
13 answer, but I'll ask Mr. LeBlanc first.

14 MR. LeBLANC: Well, I can give you the start. I
15 think --

16 Q Thank you.

17 MR. LeBLANC: -- just recently we've been working
18 through an intergovernmental group and the various
19 departments of federal governments and with INAC
20 and other departments to develop an interim
21 guideline for -- duty to consult. We've also
22 integrated a lot of these things. This is a draft
23 document that we've just released a month or two
24 ago, but it's been ongoing for quite awhile.
25 We've incorporated a lot of that practice in our
26 own guidance documents to staff and in our
27 training and we have our various aboriginal
28 advisors in our Legal Department or Legal Services
29 providing guidance and advice to us in terms of
30 aboriginal consultation.

31 So I'm not sure if, Jason, you have anything
32 to add or others.

33 MR. HWANG: Just briefly, there -- within the operating
34 area, we have some -- what would you call them,
35 partnership-type arrangements where we do sit down
36 on a scheduled and regular basis at tables that
37 include First Nations to explain processes or
38 things that are coming down the pipe project-wise
39 or other relevant things. There's certainly
40 probably more wishes or demands from the First
41 Nation communities within the Interior than we
42 have capacity to fully engage with and service and
43 there's certainly a very broad range of capacity
44 and types of interest the different First Nation
45 communities have throughout the Fraser and, in
46 fact, throughout the B.C. Interior that we deal
47 with, so it's something that the department places

1 a very high priority on.

2 We do our best to address it operationally,
3 but I would also have to acknowledge that I'd be
4 quite certain we're not meeting everybody's
5 expectations in that regard.

6 Q All right. And I have one last question. The
7 other concern that we noted arising from the
8 minutes was that there was an expressed desire for
9 First Nations views on the importance of different
10 habitats to be considered. And my question, and
11 Ms. Reid answered this and Mr. Hwang to a certain
12 extent, but the question is how does the
13 department consider First Nations points of view,
14 especially in relation to traditional knowledge in
15 respect of the importance of one habitat over
16 another?

17 Is there anything that I -- any of you would
18 like to add to what's already been said?

19 MS. REID: Well, what I'd like to add, perhaps from a
20 slightly different angle, is through some of the
21 integrated planning processes that we have or that
22 we are involved in, First Nations involvement and
23 perspectives in those planning processes are
24 extremely important because they bring to the
25 table their interests on a watershed-level basis
26 or an ecosystem-based level and I think that
27 that's also very helpful to inform us for future
28 planning processes as we go about doing our
29 regulatory work.

30 MR. LeBLANC: What I can add is that under the --
31 what's called the Aboriginal Inland Habitat
32 Program, which doesn't cover B.C., mind you,
33 'cause there's an AAROM program, another one, in
34 that one we've provided funding to a number of
35 aboriginal groups to build their capacity to bring
36 relevant information, traditional ecological
37 knowledge and other information into any planning
38 and decision-making process.

39 MS. BROWN: Thank you. And in closing, if I could have
40 that document marked as an exhibit, please. And
41 those are my questions.

42 THE REGISTRAR: Exhibit 669.

43

44 EXHIBIT 669: Minutes from Assembly of First
45 Nations National Policy Analysis Group
46 Meeting, Habitat Management Session -
47 December 2007

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MR. MARTLAND: Mr. Commissioner, Ms. Robertson has questions, following which if there's any re-examination, I understand Mr. Taylor has questions, I have a few, you may have questions, as well.

MS. ROBERTSON: Krista Robertson for the Musgagmagw Twasataineuk Tribal Council.

I just have a very few questions for the panel in the application of habitat policy to salmon aquaculture sites that the Fraser River sockeye migrate near. Mr. Bisset if you could pull up Tab 1 of the Aquaculture Coalition documents? So this is the interim guide to the application of s. 35 of the **Fisheries Act** to marine salmonid cage aquaculture.

CROSS-EXAMINATION BY MS. ROBERTSON:

Q Mr. LeBlanc, is this policy housed in the Habitat Branch?

MR. LeBLANC: Yes, it is. It's -- sorry, it's a national guide.

Q Thank you. If we could just go to page 1 of the -- not Roman numeral, but page 1 of the guide, the second paragraph there. If you could highlight that, please? I'm just going to paraphrase, just in the interests of time, that the purpose of this document is to aid DFO habitat management assessors in assessing whether or not a HADD could occur as a result of a salmon farm. And you confirmed that's the purpose generally of the policy?

MR. LeBLANC: Yes, it is. Yes.

MS. ROBERTSON: Thank you. If we could please go to page 17 of this guide. Sorry, it's probably going to be a few other pages. It's -- okay. Actually, thanks, if you could back up and go to page 16 there.

Q Ms. Reid, this is a question for you. So this is a sample letter of advice that you had referred to in your earlier testimony. You mentioned with respect to 97 aquaculture sites where there was a CEAA assessment, that DFO made a determination that there was no HADDs for those sites, but that a letter of advice was provided to Transport Canada. Would -- and this template, is that an

1 example of that kind of letter you're referring
2 to? It's a two-page if you want to look at the
3 second page.

4 MS. REID: Well, the letter we sent to Environment --
5 or, sorry, to Transport Canada, this letter is
6 intended to go to the proponent, I think, so I
7 think it's probably a little bit different, but
8 I'd have to compare the two.

9 Q Okay. And we'll turn to the actual letters in a
10 moment, but I guess I'm just asking you to
11 indicate that this letter is included in the
12 policy as a template, as a sample letter to guide
13 DFO assessors --

14 MS. REID: Yes.

15 Q -- as to what content would be in that letter of
16 advice. And over the page, on the second page of
17 that letter, on page 17, you can see that the
18 signatory of the letter would be a fish habitat
19 biologist from the fish habitat -- the Habitat
20 Branch?

21 MS. REID: Yes.

22 MS. ROBERTSON: May I mark this document as the next
23 exhibit, please?

24 THE REGISTRAR: Number 670.

25
26 EXHIBIT 670: Interim Guide to the
27 Application of Section 35 of the **Fisheries**
28 **Act** to Marine Salmonid Cage Aquaculture
29

30 MS. ROBERTSON: Thank you. And now if we could pull up
31 Exhibit 663.

32 Q So Ms. Reid, these are the actual letters that you
33 identified earlier as being the letters that were
34 provided to Transport Canada and this is DFO's
35 letter of advice.

36 MS. REID: Yes.

37 Q Now, this -- we haven't looked at it fully, but
38 this document actually contains 97 letters and
39 they're almost identical in form except that they
40 pertain to different sites; is that correct?

41 MS. REID: Yes.

42 Q So on the second page of this letter, if we could
43 please go there, actually the third page then, I
44 note that the signatory to this letter is Andrew
45 Thomson, who's director of the Aquaculture
46 Division. Could you please explain why the
47 Aquaculture Division and not the habitat -- not a

1 habitat biologist or the Habitat Branch is
2 providing these letters of advice to Transport
3 Canada in respect to the environmental
4 assessments?

5 MS. REID: I believe at the time aquaculture was still
6 part of OHEB so there was an organizational change
7 and I can't exactly remember when it was, but it
8 might have been right around that time, so
9 aquaculture went off to a different branch, to
10 fisheries management at that point, but previous
11 to that, it was part of OHEB, so the director of
12 the aquaculture program signed off on the
13 document.

14 We do have protocols essentially laying out
15 who signs what and those protocols have changed
16 over time, so what was put in the original
17 document may have evolved. I'd have to check the
18 actual signing protocol.

19 Q Okay. And are you comfortable with that practice
20 then? I mean, do you think that's appropriate
21 that --

22 MS. REID: Yes.

23 Q -- someone from the Aquaculture Branch is
24 providing these letters of advice?

25 MS. REID: Well, this letter would have been certainly
26 supported by a habitat biologist, someone with the
27 expertise necessary. So whether Andy signed it or
28 the habitat biologist signed it, the work would
29 have been conducted by a habitat biologist.

30 Q Okay. And is it a usual practice that 97 letters
31 like this of the same date for 97 sites would be
32 issued simultaneously?

33 MS. REID: I believe this is the only example of a
34 situation like that.

35 Q Okay. Thank you. My last question then is
36 looking ahead now, after the **Morton** case you're
37 aware, well aware, I'm sure, that DFO is now
38 taking over the licensing of aquaculture.

39 MS. REID: Yes.

40 Q Would you expect that these letters would now have
41 to be revised or re-issued?

42 MS. REID: In fact, the process has changed. Because
43 now aquaculture is considered a fishery, the way
44 that we manage the fishery is different. And so
45 now we have a licence that's issued which covers
46 off all provisions of that fishery of that
47 activity and it also includes -- it identifies the

1 types of measures needed to be in compliance with
2 the habitat provisions. So if you look at a
3 template of a letter which is available on the
4 website, you'll see how it's been set out in
5 generalities.

6 Q So you're not expecting that DFO is going to be
7 providing letters of advice, new letters of advice
8 to Transport Canada in respect of the CEAA's that
9 are triggered under the **Navigable Waters**
10 **Protection Act**?

11 MS. REID: Not in the same way as we've done before, so
12 essentially the activity, aquaculture activity is
13 not going to -- this part of it's not going to
14 trigger CEAA. The **NWPA** part may still and as far
15 as whether we offer advice to Transport Canada, I
16 would suggest that you -- we can clarify that
17 during the aquaculture session, but I do know that
18 aquaculture is not triggering CEAA per se in this
19 situation, no.

20 MS. ROBERTSON: Okay. Thank you. Mr. Bisset, if we
21 could pull up Exhibit 663, please? Is that the 97
22 letters? Do you know I -- that's fine, I'll leave
23 it at that. Those are my questions, then.

24 MS. REID: Actually, can I add something just to
25 clarify what -- I think one of the questions
26 you're asking, so it's -- while it's true that we
27 will no longer trigger CEAA under this situation,
28 where there's an **NWPA** trigger, we would still
29 offer advice to Transport Canada in that
30 situation.

31 Q And in that situation, who then would you expect
32 to be signing off on those letters of advice? Who
33 do you...?

34 MS. REID: Well, I wouldn't characterize them as
35 letters of advice in the way that we use them now
36 under the habitat program. I would expect -- to
37 tell you the truth, I'm not sure, but likely
38 either the Director of Aquaculture currently or it
39 could be one level down. I'm unsure who would
40 sign them.

41 Q And the Habitat Branch has no concerns about the
42 Aquaculture Branch, who is mandated to promote
43 aquaculture as providing that advice. You don't
44 consider that there should be some separation
45 between the two branches in terms of providing
46 that advice?

47 MS. REID: The aquaculture -- from an organizational

1 perspective aquaculture is within the fisheries
2 management program, so they still have -- we still
3 have responsibilities under the **Fisheries Act**.
4 It's been done in a different way, so there's
5 qualified people able to conduct those assessments
6 within that aquaculture program presently, so I
7 would say no, we don't have concerns like that.

8 Q Okay. And would the assessments then, as you were
9 testifying earlier in Ms. Glowacki's cross, would
10 it be still based on the 2002 policy, meaning that
11 only the benthic impacts would be considered in
12 assessing a HADD?

13 MS. REID: The licence is far more comprehensive than
14 that and so if you look at a copy of a licence or
15 a template licence, it has habitat pieces, but it
16 has all the other types of questions that she was
17 asking about, you know, how do you consider all
18 these other factors. Those are incorporated into
19 the new licences, licence conditions.

20 MS. ROBERTSON: All right. Thank you. Those are my
21 questions then.

22 MR. MARTLAND: Mr. Commissioner, I have three quick
23 questions on -- I hope they're quick on re-
24 examination, if I might proceed through those.

25
26 RE-EXAMINATION BY MR. MARTLAND:

27
28 Q The first, and I'll refer to Exhibit 658 and then
29 alongside that a new document that Mr. Bisset has
30 up, I think we've circulated in paper format to
31 counsel this afternoon. And the question for Ms.
32 Reid, when Exhibit 658 or indeed the new document
33 appears, Ms. Reid, I'll just look to see if I'm
34 correct and if you can confirm for me that this
35 document that Mr. Taylor took you to yesterday
36 dates to July of 2009. And now, Mr. Bisset, if
37 you could please bring up the document that was
38 sent to you midday today and our understanding is
39 that that is the more current and the current
40 version there from July 2010; is that correct?

41 MS. REID: That looks to be the case, yes.

42 MR. MARTLAND: And I'd ask, to be complete, that this
43 be marked as an exhibit, please.

44 THE REGISTRAR: Exhibit number 671.

45
46 EXHIBIT 671: Regional Habitat Regulatory
47 Decision Framework - July 2010

1 MR. MARTLAND:

2 Q Ms. Reid, my next question deals with a point made
3 yesterday by Mr. LeBlanc describing the HCM
4 initiative and as I took notes of his evidence,
5 that that resulted in the gain of 23 or 24 staff.
6 I'm wondering if you can expand on or clarify in
7 the context of the Pacific Region first, is it
8 correct to say that the gain for the Pacific
9 Region was 12?

10 MS. REID: I wouldn't characterize it as a gain. I
11 would characterize it as a reallocation of staff.

12 Q Mm-hmm. And maybe you can just help me then to
13 understand, of the reallocation of staff, did that
14 involve staff redirected or habitat resources
15 directed outside of habitat or away from habitat,
16 as well as people coming in? And what was the
17 net, I dare say, net loss or gain?

18 MS. REID: No, the -- when we -- when the decision was
19 taken to introduce HCM, at the same time there was
20 expenditure review committee reductions and so
21 there was a bit of a shuffle in FTEs but
22 essentially the habitat numbers, the HCM portion
23 was taken out of those broader habitat numbers and
24 so it was an internal reallocation as far as I
25 recall.

26 Q And do you know offhand the numbers that that
27 resulted in for the Pacific Region?

28 MS. REID: So there was 12 HCM positions created.

29 Q Okay. And was there a number of positions or
30 resources that moved outside of habitat in that
31 context?

32 MS. REID: No. I mean, I think that what happened at
33 the same time was we were experiencing a number of
34 B-based reductions and so all at the same time, we
35 were sort of dealing with the B-based reductions
36 and trying to live within the available FTEs,
37 doing this reallocation so there was definitely a
38 shuffle of people and FTEs but there wasn't
39 habitat staff sent out per se except in order to
40 come to our ultimate numbers, because at the time,
41 we were overstaffed.

42 MR. MARTLAND: Okay. Thank you. My last point deals
43 with Exhibit 665 and I think in our haste to try
44 and assist Mr. Rosenbloom on the documentary
45 front, we may have put forward the wrong document
46 under Exhibit 665. So, Mr. Bisset, could you
47 bring up that? That's the document which was

1 marked as Exhibit 665 and we had evidence with
2 respect to, I think, Mr. LeBlanc you were
3 describing a written response to the 2009 CESD and
4 I'm going to see if I can have another document
5 put forward, which Mr. Bisset, I hope, has at
6 hand.

7 Q Is that -- the new one, is that the right one?

8 MR. LeBLANC: That is correct.

9 MR. MARTLAND: And I wonder in this situation, Mr.

10 Commissioner, I would suggest it makes some sense
11 to have this instead just to clarify it, this
12 should be Exhibit 665 from what Mr. LeBlanc has
13 said, I think. I would suggest this replace 665.

14 THE COMMISSIONER: I'm not -- unless Mr. Rosenbloom has
15 some objection to that.

16 MR. ROSENBLOOM: No objection.

17 THE COMMISSIONER: All right. Very well.

18 MR. MARTLAND: Thank you.

19

20 EXHIBIT 665: New document replaces document
21 previously marked

22

23 THE REGISTRAR: That amendment will be made.

24 MR. MARTLAND: Thank you. Mr. Commissioner, I have no
25 additional questions. Mr. Taylor indicated he had
26 a few.

27 MR. TAYLOR: I have three questions.

28

29 CROSS-EXAMINATION BY MR. TAYLOR continuing:

30

31 Q The first one relates to Exhibit 661, which is the
32 briefing note that has come up and this is a
33 question of you, Mr. LeBlanc. If you go to the
34 first sentence under Background, does that
35 succinctly explain the purpose of why you were
36 bringing this briefing note before the Director
37 General, in other words, that you were seeking to
38 address raising public confidence in food safety
39 and environmental protection in the context of
40 aquaculture development?

41 MR. LeBLANC: That is correct, yes.

42 Q My next question has to do with 651, which is the
43 diagnostic and it's a question of Ms. Reid. You
44 were asked questions and gave evidence about the
45 concerns that had been expressed to do with the
46 implementation that was being done of the
47 modernization plan, EPMP. Can you say in brief

1 what was done as a result of the concerns
2 expressed and where things stand now?

3 MS. REID: Yes. So I think that the end result of the
4 *diagnostic* and the follow-up work that occurred,
5 for the most part, I would say that the various
6 elements of EPMP are successfully implemented in
7 the region and the level of concerns have gone
8 down significantly.

9 Q Thank you. And my last question is of Mr.
10 LeBlanc. There's been quite a bit of evidence
11 about No Net Loss, of course, and in particular
12 that measuring whether it has or hasn't been met
13 generally or in specific instances is a very hard
14 thing to do. My question is whether No Net Loss
15 is a performance measure or is it something else?

16 MR. LeBLANC: It was never intended to be a performance
17 measure. It was intended to be a guiding
18 principle that would allow us to make decisions in
19 terms of harmful alteration, disruption or
20 destruction of fish habitat.

21 MR. TAYLOR: All right. Thank you.

22 THE COMMISSIONER: Thank you, Mr. Martland. I would
23 like to take this opportunity to thank all three
24 of you for making yourselves available yesterday
25 and today again and for your willingness to answer
26 the questions of counsel and for your cooperation
27 with commission counsel. Thank you very, very
28 much.

29 We're adjourned until 10:00 tomorrow morning;
30 is that correct, Mr. Martland?

31 MR. MARTLAND: Yes, Mr. Commissioner, that's right.

32 THE COMMISSIONER: Thank you very much.

33 MR. MARTLAND: Thank you.

34 THE REGISTRAR: Hearing is now adjourned till ten
35 o'clock tomorrow morning.

36
37 (PROCEEDINGS ADJOURNED TO APRIL 6, 2011 AT
38 10:00 A.M.)
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1 I HEREBY CERTIFY the foregoing to be a
2 true and accurate transcript of the
3 evidence recorded on a sound recording
4 apparatus, transcribed to the best of my
5 skill and ability, and in accordance
6 with applicable standards.
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10 _____
11 Karen Hefferland
12

13 I HEREBY CERTIFY the foregoing to be a
14 true and accurate transcript of the
15 evidence recorded on a sound recording
16 apparatus, transcribed to the best of my
17 skill and ability, and in accordance
18 with applicable standards.
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22 _____
23 Susan Osborne
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25 I HEREBY CERTIFY the foregoing to be a
26 true and accurate transcript of the
27 evidence recorded on a sound recording
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29 skill and ability, and in accordance
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35 Diane Rochfort
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