

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.

Wednesday, March 16, 2011

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

le mercredi 16 mars 2011

APPEARANCES / COMPARUTIONS

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Mitch Taylor, Q.C. Hugh MacAulay	Government of Canada ("CAN")
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No appearance	Pacific Salmon Commission ("PSC")
No appearance	B.C. Public Service Alliance of Canada Union of Environment Workers B.C. ("BCPSAC")
No appearance	Rio Tinto Alcan Inc. ("RTAI")
No appearance	B.C. Salmon Farmers Association ("BCSFA")
No appearance	Seafood Producers Association of B.C. ("SPABC")
No appearance	Aquaculture Coalition: Alexandra Morton; Raincoast Research Society; Pacific Coast Wild Salmon Society ("AQUA")
Tim Leadem, Q.C.	Conservation Coalition: Coastal Alliance for Aquaculture Reform Fraser Riverkeeper Society; Georgia Strait Alliance; Raincoast Conservation Foundation; Watershed Watch Salmon Society; Mr. Otto Langer; David Suzuki Foundation ("CONSERV")
Don Rosenbloom	Area D Salmon Gillnet Association; Area B Harvest Committee (Seine) ("GILLFSC")

APPEARANCES / COMPARUTIONS, cont'd.

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

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5 THE REGISTRAR: The hearing is now resumed.

6 MS. BAKER: Thank you, Mr. Commissioner. Today, we are
7 returning to harvest management and we have Mr.
8 Paul Ryall back to complete his evidence on two
9 topics, escapement and FRSSI, and on the decision-
10 making process with stakeholder groups. And I've
11 already warned Mr. Ryall that we're under some
12 time pressures so I'm just going to be moving
13 fairly quickly through those questions.

14 THE REGISTRAR: I'd just like to remind Mr. Ryall,
15 you're still under oath.
16

17 PAUL RYALL, recalled.
18

19 MS. BAKER: Thank you. So I'd like to begin, Mr.
20 Ryall, and I'm going to ask questions on both of
21 these topics back to back and then I'll open you
22 up to questions for the other participants.
23

24 EXAMINATION IN CHIEF BY MS. BAKER:
25

26 Q So I'll start with questions on escapement. And I
27 just wanted to confirm that in, approximately,
28 2004, you were part of the formation of the FRSSII
29 working group?

30 A That's correct.

31 Q Okay. And what was that group formed to address?

32 A Well, two things. One was to undertake a review
33 of what we called the rebuilding program that had
34 been in place since 1989, approximately, and also
35 to look forward to see about making changes.

36 Q And is that --

37 A That would be more consistent with the Wild Salmon
38 Policy that was under development in 2004 and
39 completed in 2005.

40 Q And does that group still exist?

41 A The group still does exist. The membership has
42 changed over the years, but the actual working
43 group still exists, yes.

44 Q Okay. And that group, did it have a relationship
45 with an external steering committee that was put
46 together to work on the development of the FRSSI
47 model?

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1 A There was a steering committee at the start of the
2 process. Currently, there is not, but at the time
3 when we first started the whole process, yes,
4 there was a steering committee, a working group,
5 and we also had held a series of workshops that
6 had a number of participants from First Nations,
7 recreational, commercial, environmental that
8 attended, as well.

9 Q All right. And how many people attended the
10 steering committee?

11 A Well, in addition to DFO representatives, there
12 was representatives from the commercial, I believe
13 it was Murray Chatwin at the time, Ken Wilson from
14 Environmental, Arnie Narcisse, First Nations, and
15 Tom Bird, Recreational.

16 Q Okay. And what was the purpose of this external
17 steering committee?

18 A Well, as we got underway in this process, we
19 thought that we really needed to bring in some
20 outside advice to how we would structure a
21 process, and what sort of thoughts we were having
22 as we'd undertake the review of the rebuilding
23 program, and then start to develop a process that
24 would be more consistent with the Wild Salmon
25 Policy.

26 Q Was the FRSSI model presented to the steering
27 committee, or did they have any involvement in the
28 development of that model?

29 A As far as providing thoughts on the model, yes, as
30 far as -- and we would make presentations to the
31 steering committee around the model, but, really,
32 it wasn't down in the technical details, as what
33 we're not really looking for from the steering
34 committee, it's more, really, I think, on, you
35 know, thoughts on process, how we would gather
36 advice, how we would see what sort of topics that
37 should be discussed, was really the issue, and not
38 so much on this model and what sort of technical
39 pieces might be in it.

40 Q When the IFMP is being developed, there's four
41 different options that are presented to
42 stakeholders, and those options are generated
43 through the FRSSI model, but as we understand it,
44 the FRSSI model can produce any number of
45 different options. So how does DFO determine
46 which four options will be included in the IFMP
47 drafts that are available for consideration?

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1 A Well, now, as you mentioned, I mean, we started
2 this -- actually, the process started a bit
3 earlier than 2004 so, you know, it's been going on
4 for at least eight years, approximately. And over
5 that time, there's been a whole host of different
6 options explored that have narrowed it down to a
7 range. And so the -- you know, there was -- when
8 we first started the process, we looked at fixed
9 escapements, we looked at fixed exploitation
10 rates, we looked at shapes that we now call the
11 TAM rules that are very similar to those, and all
12 those sort of ranges of options have been
13 documented over the history of undertaking this
14 FRSSI process.

15 Q All right. And how did DFO settle on the four
16 that do now show up in the IMFP each year?

17 A Well, in a couple of ways. One is as we were
18 going through this process, if we go back to the
19 actual start of the FRSSI process, there was a
20 model that had an objective value in the actual
21 model process, and I think everyone found that
22 objective function confusing. And as a result, we
23 had to search for a new way of providing this
24 information and so there was quite a switch from
25 this objective function that tried to wrap up
26 valuations into this algorithm, mathematical
27 algorithm, and everyone kind of wondered, well,
28 what does it mean if I start changing those
29 numbers, and they didn't have a really good
30 concept of it, and so we didn't find that that was
31 a useful way of transmitting information to
32 people. And rather than rely on those black boxes
33 that just spit out some analysis, we thought it
34 would be better to actually map out what we call
35 performance measurements. And we explored a whole
36 range of those performance measures and the ones
37 that you see in the options right now really are
38 down to two, and we could add others for sure, but
39 the two that are on there are ones that look at
40 how well we have, as far as staying away from
41 lower benchmarks, the probability of being above a
42 lower escapement benchmark, and another that looks
43 at catch performance over a range of those
44 options.

45 You know, this, as I said, went on over a
46 whole host of years. We explored a whole number
47 of these performance measures. If there's a

- 1 desire to look at others, we certainly could put
2 those forward, as well. So I guess, I mean, going
3 back to your question, how did we narrow it down
4 to those range? Over eight years, a lot of work
5 and analysis narrowed it down to an exploitation
6 rate approach that reacted to changes in
7 abundance. It had an upper maximum floor and
8 where it changed, as the run size got less, the
9 exploitation decreased down to a point where there
10 was no fishing. At a run size at some point,
11 there was no fishing.
- 12 Q And you talked about the one benchmark which is
13 staying away from the lower benchmarks, and this
14 is described as how many times you will drop below
15 a lower benchmark; is that right?
- 16 A Yeah, the probability. It was casting a
17 probability of it being below that benchmark.
- 18 Q And for the catch performance, how is that
19 indicator determined?
- 20 A Well, there's actually two on there, one is what
21 the total catch would be, and the other is a
22 probability of a catch being greater than another
23 benchmark as, roughly, a million fish harvested.
- 24 Q And where did that number come from?
- 25 A Input from the workshops.
- 26 Q Okay. So from stakeholders from the different
27 harvest groups, as well as First Nations and were
28 conservation people included in -- I guess you
29 indicated Ken Wilson was in those meetings; is
30 that right?
- 31 A They participated in the earlier years. More
32 recently, they felt that the work that was being
33 undertaken was something that they could not
34 support and they did withdraw from the actual
35 FRSSI workshops. Though they, you know, continue
36 to be members at the Integrated Harvest Planning
37 Committee, and there have been presentations at
38 the Integrated Harvest Planning Committee, both on
39 the actual options that are in the management plan
40 on an annual basis, and we've also made
41 presentations, or I have made presentations to the
42 IHPC on the Wild Salmon Policy.
- 43 Q One thing that was raised, we have earlier heard
44 from different panels on escapement and those
45 panels included people from different sectors, and
46 one of the comments that was raised was whether
47 there should be flexibility in-season with respect

1 to the implementation of the TAM rule. Should the
2 TAM ceiling, in particular, fluctuate depending on
3 circumstances in-season. What's your view on
4 whether there should be any changes to the ceiling
5 on the TAM rule depending on in-season
6 environments?

7 A Well, first, there's been a large amount of
8 consultation that goes into developing those TAM
9 rules and that is then incorporated into the
10 management plan that is approved by the Minister.
11 The reason I raise both those things is that
12 there's been a lot of thought and technical work
13 that goes into developing those TAM rules. And so
14 when you get into in-season, is it really the best
15 time to make changes to those types of TAM rules?
16 Over eight years, we've expended a lot of energy
17 and resources, thinking about how these rules
18 would be crafted, how they would react to changes
19 in run size, all the way from, you know, very low
20 run sizes to very large run sizes. The intent, as
21 well, was to have a review of these TAM rules that
22 have been in place now since 2007, after four
23 years. So to then start making changes in-
24 season, I guess my first thought on that is there
25 would have to be a really compelling reason to
26 make a change in-season. It doesn't mean that it
27 would not occur. I think, for example, in 2010,
28 when we had a very large run return, there was
29 consideration put forward about should the TAM
30 rule change, should there be an increase and allow
31 for harvest? And for example, in 2010, there was
32 that change made. However, I really do think that
33 that should be the anomaly, the rare occurrence,
34 and should not be the pattern.

35 I think that the whole process should be
36 developed in-season, should follow what's in the
37 management plans and it should not be a regular
38 occurrence to make adjustments in-season. Does
39 that address your question?

40 Q It does. Thank you. You also talked with the
41 other stakeholder witnesses about tradeoffs
42 between biodiversity and sustainable fisheries and
43 where that line should be drawn. What's your view
44 on where decision makers should be making those
45 tradeoffs, how should decision makers be going
46 through the process of making the tradeoffs
47 between things like biodiversity and

1 sustainability of the fishery?

2 A Well, that's a good question. I think that what
3 we've tried to do in crafting these TAM rules and
4 those performance measures that I talked about was
5 to provide an indication of what the tradeoffs
6 were. One was a performance measure that looked
7 at staying away from a benchmark, and the other
8 was what the implication was on harvest. And so
9 it really does come down to a choice and a choice
10 on risk and I think that some people are more risk
11 averse than others. We've tried to provide the
12 best information that we have based upon using a
13 really extensive database that goes back 50 years,
14 has the majority of Fraser sockeye stock
15 production in it. It would be greater than 90
16 percent. I think the last estimate I saw, we have
17 19. We call them 19 stocks. I've seen it called
18 19 stocks throughout, but within that FRSSI model,
19 of those 19 stocks, I think there's 10 that are
20 individual CUs and of the other nine, they
21 encompass anywhere from another 20 conservation
22 units. So out of the 36, 37 conservation units,
23 that model is looking at over 30 of the
24 conservation units and accounts for over 90
25 percent of the production.

26 The reason I raise all this is that we've
27 looked at a variety of models over the years and
28 boiled it down to a TAM rule that takes into
29 account changes in run size, takes into account
30 the en route mortalities the best we can when we
31 see those impacts inriver, and then we provided
32 performance measures that look at how well we
33 achieve and stay away from our conservation -- or
34 how well we achieve our conservation objectives
35 and what those impacts are in harvest.

36 Q Okay.

37 A I think, you know, more work could be done in that
38 area, providing a better improvement on what the
39 societal and economic impacts are.

40 Q Mm-hmm. That was going to be my next question to
41 you, is how are the social or the economic costs
42 addressed through the FRSSI rules and through
43 those performance measures?

44 A Well, I think both of the ones that I've talked
45 about are social and economic performance
46 measures. I mean, you could translate the catch
47 into -- you can translate that into an economic

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1 performance measure quite easily, as well, but it
2 is an indication of an economic impact, right?

3 Q But it's a very, very broad brush and it certainly
4 doesn't look at specific economic impacts on
5 communities or on specific parts of the fishery?

6 A No, it doesn't. Absolutely, I agree. Back in
7 2006, we did contract Gord Gislason to do two
8 reports for us. One was to look at performance
9 measures, actually, and indicators, and the second
10 report that Gord did was to provide a social and
11 economic analysis at the time.

12 I would say the first report provided us a
13 range of indicators that we did look when we were
14 going through the actual modelling process. The
15 other, on the social and economic analysis, I
16 think it's who has a start, meaning a start in
17 that more work would need to be done on that
18 aspect.

19 MS. BAKER: Could I have Exhibit 403 pulled up and I'd
20 like to ask you if this is one of the reports
21 you're talking about.

22 A No, this is a departmental report.

23 Q Mm-hmm?

24 A And the one I was speaking of is a report that we
25 contracted Gord Gislason, he does economic
26 analysis. He's done quite a number of reports for
27 the federal government, provincial government,
28 independents, people that wanted to have some
29 analysis done on economic impacts.

30 Q And has this document that is before you, Exhibit
31 403, entitled, "A Framework for Socio-Economic
32 Analysis to Inform Integrated Fisheries Management
33 Planning and Fish Harvest Decisions," has that
34 document been followed up and has it been
35 implemented by the Department?

36 A This document has, I guess, three different levels
37 of economic analysis, one I would call an
38 overview, with a second, more detail, and the
39 third, really, an economic social impact analysis
40 looking at various scenarios is what I recall was
41 in the document. I would say that for the first
42 part, looking at the economic aspects of various
43 fisheries are now incorporated to varying degrees
44 within the management plans, that part, so the
45 lowest level of analysis has been incorporated
46 into the management plans.

47 The other two that encompass much more detail

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1 have been done to various degrees, depending on
2 the circumstances. For example, I was involved in
3 one that was undertaken on Cultus and Sakinaw back
4 in about 2006. So that was a much more
5 comprehensive analysis that was undertaken at the
6 time.

7 Q Those more comprehensive analyses are not
8 currently part of the development of the IFMP; is
9 that right?

10 A Well, it really depends on what one is trying to
11 accomplish, and I think this framework outlines
12 that, why you would do one of three analyses. So
13 the one that does the most comprehensive analysis,
14 I don't think you'd want to be doing that on a
15 regular basis, and I think the rationale that's
16 put forward in this framework is that you're
17 looking at either making some significant policy
18 changes or some significant management changes to
19 a fishery to achieve some conservation objectives.
20 And so would you do that all the time? I would
21 argue not. I think what we were trying to do in
22 2006 with the reports that we contracted Gord
23 Gislason to undertake was trying to do much more
24 than just an overview of the economic, it was
25 trying to provide us with a more of a
26 comprehensive social and economic analysis.
27 Though I think in Gord's conclusions in his report
28 is that that was a -- more work needed to be done
29 and it was really a start, as I already said. So
30 I think, you know, to sum up and answer your
31 question, has this been adopted, I would say that
32 portions have been adopted. As a regular course
33 of business, the lowest level of analysis is now
34 incorporated into management plans.

35 Q Okay. Just before I leave this topic, I'm just
36 getting an exhibit reference from Mr. Lunn. You
37 understand that every year when the IFMP is in
38 development, there's a document prepared which is
39 called the Escapement Strategies for whatever the
40 year is, and it outlines the outputs from the
41 FRSSI model?

42 A Yes.

43 Q And shows the performance indicators with each of
44 the run-timing groups, looking at different
45 options?

46 A Yes, I do.

47 Q Okay. And here's an example of the one in front

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1 of you, which is Exhibit 322. If you turn to page
2 15 of this document, this is just an example.
3 This shows -- on the top graph, that shows the
4 performance indicators. The top line, as I
5 understand it, represents the catch, and the
6 bottom dotted line, horizontal dotted line
7 represents the biodiversity measure, or however
8 you describe it, but the one that says you're not
9 going to -- the probability of going below a
10 benchmark; is that right?
11 A Yeah, the dotted line, probability of a four-year
12 average spawner as being less than a benchmark.
13 Q Okay.
14 A And this one, the case where it says BM2, there
15 was a series of benchmarks that were looked at and
16 so this is benchmark 2.
17 Q Okay. And on this graph, as an example, that
18 benchmark stays constant no matter where you are,
19 no matter what option is being run so how is a
20 choice made as to where an option will be chosen
21 as the only measure that seems to be impacted is
22 the catch measure?
23 A Well, I think there's -- you know, why is it so
24 flat on this and not responsive is part of your
25 question, I think. If we looked at other -- over
26 the course of the years, we looked at quite a
27 range of different trajectories for these
28 escapement rules and so if we looked at, say, for
29 example, and plotted on here, a fixed harvest rate
30 or, for example, regardless of run size, you'd see
31 quite a different degree of sensitivity to that
32 indicator. So for example, if you put, say, a
33 fixed harvest rate of 60 percent, regardless of
34 run size, you'd see that probability become much
35 more sensitive and you would see that the
36 probability would change dramatically. So after
37 going through this whole process, we have narrowed
38 them down to a much smaller suite of options --
39 Q Mm-hmm.
40 A -- that's not particularly sensitive at this
41 benchmark.
42 Q So --
43 A This is for Early Stuart? Yeah.
44 Q Yeah, so I'm just asking --
45 A If you look at some of the other ones, you'll see
46 that it does become more sensitive.
47 Q But why would the choice be made for option 3 in

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1 this case, when option 4 would provide -- have a
2 different impact on catch? All of the options
3 have the same impact on --
4 A Yeah.
5 Q -- biodiversity?
6 A In this particular case, I agree it is, and so
7 you'd be looking more at the harvest. I would
8 say, though, you know, in 2009, one of the
9 recommendations that came forward from First
10 Nations, in the bilateral consultations that we
11 were having at that time, was that they wanted to
12 see an option that provided the most protection
13 for Early Stuart, and I think they were
14 recommending option -- actually, it was beyond
15 option 4. Their advice to us was to have another
16 TAM rule on here that did not allow any harvest
17 unless the run size was greater than 200,000, I
18 think, is what I recall.
19 Q That's correct.
20 A And I think at the end, while we didn't fully
21 adopt that piece of advice, we did adopt a rule,
22 and I think it might have been option 4. I wasn't
23 totally involved in the whole process of
24 consultation on salmon in 2009.
25 Q So I'm just asking you how are those decisions
26 made as to where you will impact catch when you're
27 in a situation where the performance measure for
28 biodiversity remains constant?
29 A Well, you only have one example here in this
30 particular example. You know, the advice was,
31 regardless of what the implications were on catch,
32 the advice was we want to get as many fish on the
33 spawning grounds as possible. I mean, so what I'm
34 saying, I guess, is that people were not just
35 focussed on the catch, they were saying, "Look,
36 our view is that regardless of these options on
37 here," we want to provide, as best we can, as many
38 fish on the spawning grounds to aid in the
39 rebuilding of Early Stuart. They were looking at
40 wanting to have a recovery of this Early Stuart as
41 quickly as possible, and the view being expressed
42 was that one way of doing this is to not have any
43 fishing at all regardless almost of the run size
44 because I would argue if you move it to 200,000,
45 given what we've seen in recent years, that would
46 translate into no fishing that year.
47 Q So just to try and understand, I mean, my question

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1 is really not -- and I put this one up as an
2 example, but my question is really how is the
3 decision-making done in these circumstances,
4 where, when I look at that, I don't see any
5 difference on the biodiversity measure so I'm just
6 asking how are decisions made when you have only
7 one line that is changing, essentially? And
8 you're giving me information on how the decision
9 was made for Early Stuart in this year so maybe
10 this isn't the best example to have up. Maybe if
11 we turn three pages over to the summary, you'd
12 give me a different answer, but are you saying
13 that the Department will just take the advice from
14 the stakeholders and implement that advice? So if
15 everybody wants to restrict catch, that's what the
16 Department will do, or is there another layer of
17 analysis that's done by the Department?

18 A Well, I mean, it's a little bit hard to, you know,
19 speculate in hypotheticals and that's why I was
20 using a real example. What I'm saying is, in
21 2009, we put these options out for consultation.
22 We got advice that we wanted to have a different
23 option on there, and we listened to that advice
24 and made changes. So was it all based upon what
25 these performances are on the graphs? No, I think
26 that the advice coming forward was we would like
27 to look at something different.

28 I mean, I look at these options as guides to
29 us to have discussion around consultation. Like,
30 it's not pick one of these. I mean, we could have
31 10 options on here. We could have 10 options on
32 here. We would like to narrow the range and
33 narrow the discussion, but it doesn't mean that
34 there's not going to be advice that's going to
35 come forward that beyond this scope and when we
36 hear that advice, well, we have to consider what
37 we would do.

38 Q All right. But you do --

39 A In this particular case, we made arguments that,
40 and my recollection is that we chose and adopted
41 option 4. I could be incorrect on that. We'd
42 have to go back and look at the record. But the
43 other piece of this was, really, what are you
44 even, you know, putting forward the recommendation
45 to have an option that said that there would be no
46 harvest at 200,000 or greater? Well, why is that?
47 Is it because of a conservation objective or is it

- 1 because you would like to see recovery factor?
2 And I see those things quite different. It's a
3 choice that you're making. You can still have
4 recovery, but it might not be as quick. And so
5 are you really -- is it a conservation? They're
6 kind of overlapping a little bit, but that's why
7 you have those discussions.
- 8 Q The Department ultimately will choose one of the
9 options that are presented in the drafts that are
10 presented to stakeholders?
- 11 A That has been our pattern, but I wouldn't narrow
12 it just to saying that it would just be one of
13 those options.
- 14 Q All right. But that has been the case up to now?
- 15 A I think that has been.
- 16 Q All right. And one last piece on the FRSSI model,
17 habitat was talked about with the other panels and
18 how habitat doesn't appear to be reflected in the
19 FRSSI model, itself. And as Mr. Morley pointed
20 out in evidence, the Wild Salmon Policy is
21 supposed to include a significant habitat
22 component so how can FRSSI be an implementation of
23 WSP, which is something that we've heard, without
24 a habitat component in the FRSSI model?
- 25 A Well, I mean, the Wild Salmon Policy has a series
26 of strategies to achieve three objectives in an
27 overall goal, habitat being one piece of that, but
28 to address your question, habitat is incorporated,
29 I would say implicitly, in the model as far as
30 productivity goes. So if you have changes to
31 habitat that are going to impact productivity, you
32 can undertake an analysis that way. I would say
33 that we've never argued that FRSSI is the whole
34 part of the Wild Salmon Policy either, but it is a
35 piece of it. I think it's an important piece of
36 Wild Salmon Policy, but it's not all of it.
37 There's other ways of looking at habitat and
38 incorporating what one is trying to protect around
39 habitat, and I wouldn't think that just relying on
40 the FRSSI model is going to do that, either.
- 41 Q Is there a way that escapement goals could be
42 brought together with habitat management?
- 43 A What was the question?
- 44 Q Is there a way that escapement goals could be
45 better linked with habitat management, you know,
46 in areas where habitat is having a negative impact
47 and that's been observed and there's being steps

1 being taken to mitigate the habitat loss or
2 impacts. How is that being -- how are those sort
3 of activities being brought into escapement
4 planning, for example?
5 A I don't know that you would need to bring them
6 into escapement planning. That's why I saying
7 that I think this is only really part of it, is
8 setting up an escapement strategy. I think that
9 you could look at protecting the habitat in quite
10 different ways and I think, also, it means that
11 there's going to be other partners involved in not
12 just setting up an escapement rule. I think that
13 there's a whole host of issues around habitat that
14 are broader than DFO's mandate, that incorporate
15 the province and others, as well, around water use
16 and what land use occurs.
17 Q All right. Other than the productivity measures
18 that are used in the FRSSI model, is there any
19 other explicit way that habitat, either
20 degradation or improvements, are being brought
21 into escapement planning at all right now?
22 A Into escapement planning?
23 Q If the habitat is being degraded, you may need to
24 change your goals for escaping a stock and vice
25 versa. Is there any relationship right now, or
26 are they kind of happening on two different
27 planes?
28 A I don't know that I could much more than to what
29 my earlier answers to your questions.
30 Q Okay.
31 A Like, I don't think they're necessarily -- you're
32 going to adjust escapement targets because of
33 changes in habitat.
34 Q Okay. And you've touched on this, perhaps,
35 already. There was supposed to be a review of the
36 implementation of the FRSSI model so I think there
37 was a four or five-year period of after FRSSI had
38 been used, that the model was to be reviewed. Has
39 that happened yet?
40 A The plan was to undertake that in 2011, I believe.
41 So no, that has not occurred at this point.
42 Q And is it currently scheduled to take place?
43 A I'm not sure whether it is, or not. I don't know
44 of the utility of undertaking that review right
45 now, given that that's my undertaking here in the
46 inquiry. I think that there still could be a
47 review of it undertaken.

1 Q All right. The work that's been done so far in
2 terms of peer review for FRSSI has been looking at
3 the model, itself, from a scientific perspective,
4 is it a workable model and is it working from a
5 mathematical or scientific point of view.

6 As I understand it, there's not been a review
7 of whether the FRSSI model is an appropriate tool
8 for management decision-making; is that right?

9 A I think the -- no, I would not agree. The review
10 that was undertaken last year explicitly came to
11 that conclusion, that it did provide useful advice
12 for management. I mean, there's been three
13 reviews. Well, two explicit reviews of the FRSSI
14 model back in 2004, I think, was the first one,
15 but the model had changed significantly since then
16 and so there was the one that was done in 2010,
17 and in between, there was a scientific workshop
18 that was done, as well, that provided advice on
19 what sort of models should be incorporated into
20 the FRSSI analysis. And coming out of the 2010
21 review is that the model does provide useful
22 advice for management and that it also had other
23 recommendations of what the FRSSI model should
24 look at going into the future.

25 Q All right. Before we leave the FRSSI topic, or
26 escapement planning topic, do you have any
27 recommendations for the Cohen Commission? Is
28 there any things that stand out for you as to how
29 planning could be done differently, or better?

30 A Well, I think a number of your questions have
31 really touched on that. Are these current
32 performance indicators or measures that we have on
33 here, are they the best ones? Should we be
34 looking at others? I did indicate that the social
35 and economic analysis that was undertaken by Gord
36 Gislason back in 2006 really was a start, and I do
37 think that that work could be done or should be
38 done, I would say should be done to get a better
39 appreciation of what the impacts are of these
40 different options.

41 And then that, to me, would be if you would
42 go back and look at the framework that you were
43 showing earlier on the social and economic
44 analysis, to have the three options, that kind of
45 analysis is, you know, kind of the much more
46 higher-level analysis, it's not the overview, it's
47 more along the lines of what's being proposed in

- 1 their level 2 and 3 type analysis, and probably
2 the third because you're really looking at
3 options.
- 4 Q Thank you. Now, I'd like to move on to the
5 decision-making or the advisory processes that are
6 used by the Department in developing the IFMP, in
7 particular. One of the concerns that was raised,
8 again, with this topic, we had some panels of
9 witnesses from different sectors reflecting on
10 their experience in the advisory process, and one
11 of the issues that was raised by many of the
12 witnesses was the role of First Nations at the
13 IHPC. And so I'm going to ask you what, in your
14 view, is the role of First Nations at the IHPC?
- 15 A Well, I think the terms of reference, if we have a
16 copy of those, will clearly lay out what we did
17 see or do see as the First Nations participation
18 at the IHPC. But it's not there to have
19 discussions in a tier 3 type environment around
20 First Nations access. Those are bilateral
21 discussions.
- 22 Q By First Nations access, do you mean FSC
23 fisheries?
- 24 A I mean FSC, yeah. Thanks for that. And those
25 discussions around FSC are done bilateral between
26 the Department and First Nations.
- 27 Q Do those bilateral decisions, are they informed in
28 any way by the discussions that take place at the
29 IHPC?
- 30 A I think they -- you mean "informed," meaning that
31 there's modifications to them?
- 32 Q Yeah. I'm not sure exactly if you would still be
33 finalizing those discussions while the IHPC
34 process was ongoing, but is information received
35 at the IHPC brought forward by DFO to those
36 bilateral discussions with First Nations and do
37 the issues that are raised at the IHPC form part
38 of the discussions with First Nations when
39 reaching the FSC arrangements?
- 40 A Well, I think what we'd see at the IHPC is that
41 first is if there is a First Nations FSC plan for
42 someone that is sitting at the IHPC, that they
43 could bring that forward and have a discussion
44 around it, if they wanted to. Would they be --
45 would First Nations FSC fisheries be informed?
46 Potentially, but that's not the goal of having
47 those discussions, it's rather to, I think, as

- 1 having a dialogue between First Nations and other
2 representatives at the IHPC about First Nations
3 fisheries, but I don't see it as the goal to
4 inform the development of those management plans
5 around FSC fisheries.
- 6 Q Okay. What about economic fisheries with First
7 Nations people, are those decisions made on those
8 economic fisheries made taking into account input
9 received at the IHPC?
- 10 A I would say yes, but you know, I think in my
11 recollection of how much discussion there has been
12 around those details, I can't really recall that
13 there has been a lot at the IHPC meetings, when I
14 say that particular statement.
- 15 Q There was concern raised by many different
16 witnesses that the First Nations were not
17 adequately represented at the IHPC. What do you
18 say to that?
- 19 A I think that it is an ongoing challenge as far as
20 representation of the IHPC, and exploring ways to
21 improve upon that with First Nations.
- 22 Q And in your view, is the IHPC process negatively
23 impacted if First Nations are not adequately
24 represented at the table?
- 25 A Well, I guess maybe I'd flip it around. I think
26 there are a number of First Nations at the table
27 and I think their participation at the IHPC
28 enhances the discussion at the IHPC. I think if
29 that representation was broader, that that would
30 improve it.
- 31 Q Do you understand the First Nation members that do
32 attend at the IHPC are there representing a broad
33 range of interests, or they're representing their
34 own First Nation?
- 35 A You'd better ask them that question, in
36 particular.
- 37 Q Well, I'm asking how you, from the Department,
38 understand their role?
- 39 A I understand, from one particular -- it depends on
40 who you're asking about the different
41 representations. Some are representing a broader
42 group, and others view that they're representing
43 only themselves or a band.
- 44 Q All right. So would you agree that it's not --
- 45 A So it's quite a spectrum, and that's why I was
46 recommending you might want to ask them, too.
- 47 Q Yeah, I'm interested in how it's perceived by the

1 Department.

2 A Okay.

3 Q And we have heard from the First Nation witnesses
4 as to their perspective. Would you agree with me
5 that not all of the First Nations on the Fraser
6 River who are participating in the sockeye fishery
7 are at the table at the IHPC, whether through
8 representation on a bigger basis, or through their
9 individual representation of their nation?

10 A Would I agree with you they're not all represented
11 there? I would agree with you with that. I would
12 expand my answer, though, as well as looking at
13 ways to improve upon those type of discussions,
14 and some of the ones that were undertaken have to
15 do with what is currently called a Conservation
16 and Fisheries Forum and, also, developing a
17 roadmap and also along the lines of looking at co-
18 management, as well, as part of that package.

19 Q One of the other issues that we heard from
20 witnesses coming from the commercial and the
21 sports fishing sectors, from the CSAB and SFAB,
22 was that there was diminishing financial support
23 from the Department for meetings of those
24 organizations. Do you agree that that is an
25 issue?

26 A You reference specifically the CSAB, I think?

27 Q And the SFAB.

28 A Well, for the SFAB, I would say that the financial
29 contributions by the Department have been
30 relatively constant over, I would say, at least
31 the last five years and probably longer. With
32 respect to the CSAB, we were clear at the start
33 that we were not looking to provide funding to the
34 CSAB. In the first number of years, though, when
35 the CSAB did start up, we thought that a good way
36 to make sure that that CSAB process got underway,
37 we did provide funding in a number of ways. One
38 was to get the Commercial Salmon Advisory Board
39 operational. And it really depended on the task
40 at hand. For example, in the first couple of
41 years, there was quite an issue and discussion
42 around commercial shares and we provided funding,
43 both technical and facilitation, so the CSAB could
44 undertake those discussions.

45 More recently, though, that we have no been
46 providing funding directly to the CSAB and where
47 we do pay for meeting rooms, but we don't pay for

- 1 attendance or travel at those meetings.
- 2 Q And having heard from members of the CSAB that
3 that's a concern of theirs?
- 4 A I've heard it raised a number of times by the CSAB
5 that they're concerned about that, yes.
- 6 Q And do you agree that those funding concerns may
7 become an impediment to full participation by the
8 CSAB and the different processes?
- 9 A Well, the participation at the Integrated Harvest
10 Planning Committee, which we see as the process
11 that the Department supports, at this time,
12 anyhow, we do provide support for all members to
13 attend those meetings, Commercial, Recreational,
14 Environmental, and First Nations.
- 15 Q But you would agree that in addition to those
16 joint meetings, the different groups do need to
17 meet separately and talk about the issues and
18 develop positions or responses to issues that may
19 be coming up at the IHPC, correct?
- 20 A I think they do need to have those types of
21 discussion and one of the ways that we have helped
22 to support that, there has been meetings of the
23 CSAB the day immediately before the IHPC occurs so
24 that they can have those discussions.
- 25 Q And you've indicated that there have been
26 concerns raised by the CSAB notwithstanding that
27 meeting that could happen the day before the IHPC.
28 Is the Department looking at providing any
29 additional funds to the CSAB to address their
30 concerns?
- 31 A I'm not aware that we're looking at that.
- 32 Q All right. There was concerns raised by different
33 witnesses about the sector's ability to understand
34 the different outputs that are generated by the
35 FRSSI model and other technical models and a
36 difficulty in their being able to apply those
37 outputs to their own sectors and their own
38 sector's interest to sort of make that
39 relationship. And do you think that is a problem?
40 Do you think, in terms of the work that you've
41 done, working with the different sectors and in
42 the development of the IHPC, that they have been
43 able to sufficiently understand the models and
44 provide appropriate responses to it?
- 45 A Well, I've heard concerns, as you've identified in
46 your questions, about the ability to understand
47 the output. I think I'd bore it down a little bit

1 more. I think it's not so much understanding the
2 output, it's more concerns and understanding of
3 what's creating that output. So if you, you know,
4 went back to those graphs that you were showing me
5 in the memo that we put out in 2009, the
6 implications of those graphs, I think, are
7 understood, but, you know, if you get down into,
8 "Well, how did you even create those graphs and
9 those performance indicators," and, "How do you
10 create those probabilities," I think there's a
11 challenge there. And I think that it comes down
12 to more of, maybe I should use the word, a matter
13 of trust. And I heard some of the previous
14 testimony, where I sat in on a couple of the
15 previous discussions around this, and it's kind of
16 along the lines of, well, do you need to know,
17 understand how an MRI machine works to think that
18 you were getting useful information out of that
19 analysis, you know? So if you have the trust and
20 the faith in your doctor who's providing you the
21 output on that analysis, then you're going to
22 accept that, whether you understand how that MRI
23 machine works, or not.

24 So I don't think that's a perfect analogy,
25 but I do think that what I also heard in one of
26 your final questions, when you asked the same
27 panel members here, is whether there's utility in
28 the process the Department's undertaken within
29 FRSSI in the development of these TAM rules, and
30 what I heard from the respondents of the panel was
31 that there is utility in this. Could it be
32 improved as far as the process? I think the
33 answer to that is yes. I do think there's been a
34 lot of changes over the eight years we have been
35 involved in this. And actually, I'm, frankly,
36 pleased to see that we've stuck with a process for
37 eight years within a Department and dedicated
38 these types of resources to Fraser sockeye.

39 I think it's been a real challenge to have
40 that focus over eight years and there's been a lot
41 of dedicated time invested by the Department, but
42 also by external participants at these workshops
43 that we've had over these various years.

44 I've always seen this as a process that's
45 going to change over time. I never did really see
46 that one model was going to address everything,
47 either. I always did see things like a FRSSI

1 model as a guide to making decisions, and the same
2 with those performance indicators, as well. And
3 then what you need to do is go out and talk to
4 people about what their societal views are and
5 what their views are around risk. In people that
6 we've talked to, there's a whole range of views
7 around that risk acceptability of how far are you
8 willing to ensure that you're going to achieve
9 conservation and how far one would like to see
10 harvest. To me, that's the real challenge.
11 Q And when you say you go out and talk to people
12 about those risks that you've identified and the
13 values of how far people are willing to risk
14 certain things, ultimately, I take it you agree
15 it's the Department that finally evaluates those
16 risks and decides on what the route is going to
17 be?
18 A Ultimately, yes, that's our mandate around
19 conservation, but, you know, it's not a -- to me,
20 it's not like a black or white thing either, and
21 that's why I think it's informative to cast these
22 things on probabilities, as well.
23 Q Is it your view that there's any obligation on the
24 Department to implement a consensus decision
25 that's reached at the IHPC?
26 A Pardon me?
27 Q Is there any obligation on the Department to
28 implement a consensus decision reached at the
29 IHPC?
30 A No, I don't think there is an obligation. The
31 terms of reference are set up as an advisory
32 process. I do think that when a consensus
33 decision is arrived at, that that needs to be very
34 carefully considered. There has been quite a
35 number of, over the years, and actually, looking
36 back at the record, I see more in recent years, I
37 think the first consensus decision that I'm aware
38 of probably was in 2008. I could be wrong about
39 that, but that's the first I recall, and that was
40 one around a consensus decision of licence fee
41 relief and that request was considered and not
42 accepted, but just to say it wasn't accepted, we
43 did set up a teleconference to provide the
44 rationale of why it was not accepted and how we
45 were looking at licensees overall on a national
46 review.
47 Q And who was in attendance at that phone call?

1 A All the parties, I don't know. We'd have to go
2 back and look at the record.

3 Q Sorry, I don't mean everybody's names, I mean what
4 sectors were --

5 A Who from DFO?

6 Q -- were part of that call?

7 A Pardon me?

8 Q What sectors were part of that call?

9 A I don't know. We're going back three years. But
10 what I do recall is that Robert Elliott, who's DG
11 in Policy in Ottawa was brought onto the
12 teleconference to explain what we were doing.

13 Q All right. I had understood from your comment
14 that it was a conference call with the sectors.

15 A That's right.

16 Q Is that right?

17 A Yeah.

18 Q Okay.

19 A Yeah.

20 Q All right. There were concerns raised by various
21 witnesses that there wasn't a clear description of
22 the decision-making process following all the
23 different consultations so there was -- everybody
24 agreed that consultation took place, that meetings
25 were held with different sectors, that they had
26 access to the Department, but where there was a
27 bit of a wall was once all that information was
28 given to the Department and then a decision was
29 made on the final IFMP and it went up to the
30 Minister, there appeared to be a lack of
31 transparency at that point. So what is done now
32 to inform the participants in these different
33 consultative processes as to how their input was
34 considered and why it was either accepted or
35 rejected?

36 A Well, we do put together a table that hears what
37 we heard and hears what we did, and if we didn't
38 do it, why. I think there's room for improvement
39 in that process as far as providing that
40 transparency.

41 Q I'm sorry, I don't have the exhibit reference for
42 that, but I recall us taking Mr. Grout to a table
43 that sounds like what you're describing. My
44 understanding what was that a table was prepared
45 that summarized the different advice received, but
46 what I didn't see on that table was explicit
47 analysis of how that information was reviewed, how

- 1 it was weighed, and how the ultimate
2 considerations were given to the IFMP.
- 3 A Mm-hmm. And that's why I think there can be room
4 for improvement there. I think that, you know,
5 it's not just a matter of that one table. It's
6 not just one way of communicating the outcome,
7 either. So we have an IFMP that's the end result.
8 There's often, depending on the issue, that there
9 will be press releases put out, as well, or
10 statements from the Minister on a decision on a
11 particular issue that may have come up in one year
12 about what the outcome was, for example, on a
13 particular issue. So there's a variety of ways
14 that, you know, the results of what we've heard on
15 advice and what the final decision of the
16 Department is on a particular item, it really
17 depends, I would say, on the topic. The table
18 that I was referring to first is a table that's
19 very down to specific pieces of advice of the
20 IHPC. But it's broader than that and we hear
21 consultation around a whole range of forums and
22 that's why these other vehicles of getting
23 information out on the decisions are important, as
24 well.
- 25 Q All right. Do you agree, though, with the comment
26 that there's not a clear explanation given as to
27 why the ultimate decisions were made, or do you --
28 in your view, do you think it is clear?
- 29 A Well, you know, I mean, you're answering me a very
30 general question and so I'm going to say,
31 generally, no, I don't, but it really depends on
32 the issue.
- 33 Q All right. You agree, generally, it's not that
34 clear, but there may be a particular issue where
35 there's enough focus on it that there is a full
36 explanation given?
- 37 A I guess I would answer generally. I don't like
38 answering hypothetical questions on such a broad
39 nature about yes or no kind of answers. I think
40 it really depends. Like, I think that the bottom
41 line for me is that there could be room for
42 improvement on the way that we transmit decisions.
43 Are we always perfect? I don't think so. I think
44 we put out a lot of information on decisions and
45 how we arrive at them. Is it always clearly
46 understood? Maybe not. But to me, the bottom
47 line is can we make room for improvement there? I

1 would say yes.
2 Q And we're just going to put up the exhibit that we
3 wonder if this might be what you're talking about.
4 Is that the table that you're referring to, it's
5 Exhibit 324?
6 A Yeah, that was the one I was referring to.
7 Q All right. And where is that table communicated?
8 Is that sent out to all the participants?
9 A At the IHPC, it would be, yes. I mean, the other
10 part of this, too, it's not just this table,
11 there's also the minutes of the meetings that are
12 posted on our Internet, as well. And that's why I
13 say, I mean, there's a range of vehicles for using
14 to getting information out. So if we go to the
15 consultation website, we'll see the agendas, and
16 the meeting minutes, and the discussion that
17 ensued.
18 Q All right. Well, those certainly identify the
19 issues that were raised, but they don't identify
20 how, ultimately, DFO assesses those inputs and
21 turns them into the ultimate IFMP.
22 A No, probably not.
23 Q Okay.
24 A But in this table, this is a -- I would say, a
25 start at providing the response to what happened
26 to the concerns that have been raised.
27 Q Okay. In front of you is Exhibit 14, and I've
28 taken a number of different people to this exhibit
29 at times. I think I've taken you to it at times.
30 If you turn to page 164 --
31 A Which one are we looking at?
32 Q Well, it's on the screen.
33 A Okay.
34 Q It's a binder, there, but 164 is the page. And I
35 just wanted to highlight the recommendations here.
36 So the first one is number 6, which is to
37 establish a Policy Advisory Committee and a public
38 Policy Forum for discussion of key policy issues
39 amongst all sectors, First Nations and the
40 different levels of government. That was a
41 recommendation made by the 2001 Institute for
42 Dispute Resolution.
43 And then in the 2003 report -- sorry, I'm
44 just going to get the page number for you --
45 there's a similar recommendation made by Chamut,
46 in 2003, which is page 210, and it's
47 recommendation number 2.

1 So I want to ask you to hold those thoughts
2 and just to finish the piece, if you could have --
3 MS. BAKER: Mr. Lunn, if you could pull up CAN114061?
4 Q This an email chain which you're copied on. It's
5 between Diana Trager and Allison Webb. And if
6 you'll see, at the bottom half of the page, you'll
7 see original email from Diana Trager to Allison
8 Webb, and she sets out, here, in the second
9 paragraph, that:

10
11 Currently, the Department does not have a
12 formal process for receiving advise and
13 recommendations on policy issues in the
14 Pacific Region. The IHPC for salmon and
15 herring provide formal advice and make
16 recommendations on operational decisions
17 related to harvest planning.

18
19 And that email was written in 2008. So I just
20 wanted to identify that that remains the case,
21 that the Department still doesn't have a policy
22 forum developed to address these different policy
23 concerns of the sectors; is that right?

24 A Yes, that's right.

25 Q And there has been a suggestion made that the IHPC
26 is possibly a place for policy decisions to be
27 made, although the email we just looked at
28 confirms it's really an operational decision-
29 making forum. Do you think that the IHPC would be
30 an appropriate place for policy decision-making?

31 A Well, so changing the mandate to include the
32 development, or input, or advice on policy pieces,
33 along with operational, is what you're suggesting?

34 Q Yeah, I'm asking if the IHPC would be an
35 appropriate body to review policy decisions.

36 A I think that, well, presently, as I've already
37 said, there's not a standing policy forum. I
38 wonder if one is really required. I think that
39 depending on the policy issue of the day, and I'll
40 use the Wild Salmon Policy as a working example,
41 that there was a host of consultation around the
42 development of that policy and so just having one
43 single standing vehicle for -- and I don't know
44 that's really what you're proposing, but having
45 one standing committee to provide policy advice, I
46 don't think, would be a good process. And I think
47 the amount of consultation that went around the

1 Wild Salmon Policy, if it was just -- let me
2 rephrase that, if it was just the IHPC that had
3 provided us advise on the Wild Salmon Policy, I
4 don't think that would be a good process. And I
5 think that we've already talked about
6 representation, or lack of representation on the
7 IHPC so, you know, we're looking at making changes
8 to the mandate, making sure there's adequate
9 representation, or the right representation. I
10 think there's a lot of questions to really ask
11 about whether the IHPC is the right vehicle, even
12 assuming that the mandate was changed. And I
13 don't think, necessarily, that having a standing
14 committee is the best way to approach developing
15 policy. I see them quite different things. As
16 you've already indicated, the IHPC was set up as
17 an operational advisory process and that really,
18 to me, takes direction from a policy. And the
19 type of work that the IHPC currently does is
20 around procedures and protocols that are informed
21 by policy.

22 Q All right. If you continue down that email that
23 you have in front of you, and you'll see the last
24 paragraph says:

25
26 Some participants (Kathy Scarfo, Gerry
27 Kristianson) of the salmon IHPC process
28 continue to raise the need for a policy forum
29 and have criticized the department for not
30 fully implementing the recommendations
31 outlined in the Improved Decision Making
32 recommendations.
33

34 So that's what I've said here today, as well. And
35 turn the page, we'll go to the next page, here,
36 and then you'll see a suggestion for a paper
37 outlining possible options for a Policy Forum, and
38 it sets out the different features that would be
39 potentially part of such a paper. Has that work
40 been done?

41 A As far as setting out this type of paper, no, I
42 don't think so.

43 Q All right. Is it contemplated?

44 A Not that I'm aware of.

45 MS. BAKER: Could I have this email chain marked as the
46 next exhibit, please?

47 THE REGISTRAR: Exhibit number 593.

1 EXHIBIT 593: Email chain between D. Trager
2 and A. Webb re Policy Advisory Committee,
3 April 2008
4

5 A Just to expand on my answer of not being aware of
6 it, I think it would be a good question that some
7 others in our Department might have a more
8 informed answer, as well.

9 MS. BAKER:

10 Q Another forum has been raised by various witnesses
11 here, which is the Integrated Salmon Dialogue
12 Forum. Is that a place for intersectoral policy
13 discussions?

14 A No, I don't think that. The Salmon Dialogue Forum
15 was, similarly, not set up -- so you know, you'd
16 be changing significantly the mandate, I would
17 say. At least what I understand is what you're
18 asking me is is that a good place for a policy
19 forum and getting advice? So I don't think that's
20 really why that forum was set up so I don't see
21 that as another place.

22 Q And my last questions on this, I think, before the
23 break will be relating to the Fraser River Panel.
24 I'm trying to not take up time, but I think I have
25 to, Exhibit 14 in front of you, page 72 is the
26 Fraser Review, and it recommended that the
27 Department and the Salmon Commission give First
28 Nations greater and more meaningful access to and
29 involvement in management. That's recommendation
30 number 7. And then at page 282 of Exhibit 14, we
31 have the Williams 2005 report, and recommendation
32 44 of that also recommended that First Nations
33 become fully engaged in the Fraser River Panel and
34 DFO management.

35 It's our understanding that there have been
36 no changes to the First Nations representation on
37 the Fraser River Panel from the time of the
38 Williams Commission to today; is that right?

39 A Yes, I think that is correct. I think the last
40 change as far as representations from First
41 Nations was 2003.

42 Q Okay. And we've also heard that there are --
43 while there are three members on the Fraser River
44 Panel who are, themselves, First Nations, only two
45 of them appear in the role of First Nations
46 representatives, and those would be Ken Malloway
47 and Marcel Shepert?

- 1 A Yes.
- 2 Q Marcel Shepert, sorry.
- 3 A Yeah, Shepert, yeah.
- 4 Q You agree that there's no representation for
5 marine First Nations on the Fraser River Panel?
- 6 A Well, you're referring, I think, to Brian Assu,
7 and Brian was on the panel as a commercial Area B
8 seine representative, originally.
- 9 Q That's --
- 10 A So I would agree with you, yes.
- 11 Q Okay. And do you think that the current makeup of
12 First Nations on the Fraser River Panel, given
13 that there is no spot for a marine First Nation
14 and we have different people from the Fraser
15 River, itself, but not, as I understand it,
16 representing collectives beyond their own First
17 Nation, do you think that the makeup on the Fraser
18 River Panel is sufficient to fully engage First
19 Nations in the Fraser River Panel process?
- 20 A Well, I think that we are limited by the total
21 number of representatives under the Treaty as to
22 12. I think that does that mean that that has to
23 be the model that carries on into the future as
24 far as getting representation into the Fraser
25 Panel process, maybe not.
- 26 I don't think that is making -- and what I'm
27 saying here is not making changes to the
28 representative of numbers of 12, but actually,
29 there's two choices. One is, you know, get --
30 should there be increased representation by First
31 Nations on the Panel beyond two, and is there
32 other ways of changing that model to have input
33 into the Fraser Panel as well as maybe a Canadian
34 caucus that would support the Fraser Panel. I
35 think both of those things should be considered,
36 or could be considered.
- 37 Q And have they been considered yet?
- 38 A Well, I think that some of the discussion that is
39 underway -- not explicitly, I guess, is -- I'll be
40 short in my answer on that. Not explicitly, that
41 I'm aware of.
- 42 Q All right. The U.S. side of the Fraser River
43 Panel has a very explicit role for First Nations
44 representation at the Fraser River Panel and in
45 decision-making on their side. Has that model
46 been looked at by Canada?
- 47 A Well, that's what I was referring to as far as you

28
Paul Ryall
Cross-exam by Mr. Taylor (CAN)

1 could have a caucus that's broader than 12
2 representatives that sit as Fraser Panel members
3 that communicate with the counterparts on the U.S.
4 side.

5 MS. BAKER: Mr. Commissioner, those are my questions
6 for Mr. Ryall. I wonder if we could take a
7 shorter break this morning because we got started
8 a little bit late, and it's a very tight day for
9 timing of the participants. Could we come back at
10 11:30?

11 THE COMMISSIONER: No, I prefer to take a 15-minute
12 break.

13 MS. BAKER: Okay. Thank you.

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

16
17 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)
18 (PROCEEDINGS RECONVENED)

19
20 THE REGISTRAR: The hearing is now resumed.

21 THE COMMISSIONER: Mr. Taylor.

22 MR. TAYLOR: Thank you. Mitchell Taylor for the
23 participant Government of Canada, Mr.
24 Commissioner; with me is Hugh MacAulay.

25 Just before I ask questions of Mr. Ryall,
26 there was reference this morning by the witness,
27 Mr. Commissioner, to Integrated Harvest Management
28 Planning Committee Terms of Reference, which, as I
29 understand it, is Exhibit 342 for your reference.
30

31 CROSS-EXAMINATION BY MR. TAYLOR:
32

33 Q Mr. Ryall, in your evidence answering questions
34 from Ms. Baker there was questions and then
35 evidence about the consideration of socioeconomic
36 factors that were given some regard to in the
37 development of the FRSSI model, and you referred
38 to the Gordon Gislason, I may mispronounce that,
39 but Gordon Gislason report of 2006. What did that
40 report tell Fisheries that was of assistance in
41 considering socioeconomic factors in either
42 developing the FRSSI model, or the amendments to
43 it, or escapement generally.

44 THE COMMISSIONER: Can I ask, I believe that report is
45 in evidence. If it's not, I just want to make
46 sure that we're talking about the same report.

47 MR. TAYLOR: Yes.

March 16, 2011

1 THE COMMISSIONER: Is it possible to give me an exhibit
2 reference number for that report?
3 MR. TAYLOR: It's not possible from me.
4 THE COMMISSIONER: No.
5 MR. TAYLOR: Because I wondered that same question,
6 although I thought it wasn't an exhibit. If it
7 is, I'm not alive to it.
8 MR. TYZUK: It's Boris Tyzuk, for the record.
9 I know the one that we put in was a different
10 one, and the one that was referred to by Mr. Lowes
11 in the recreational fishery was a different
12 Gislason report. He's done a fair number of
13 reports. So I'm not aware of this one, Mr.
14 Commissioner.
15 THE COMMISSIONER: I want to make sure we're talking
16 about the same report.
17 MR. TAYLOR: Yes.
18 Q Maybe before we proceed, Mr. Ryall, can you
19 remember the name of the report that apparently
20 was done in 2006 by Mr. Gislason that you were
21 referring to?
22 A The actual title, no. I do happen to have a copy
23 here with me.
24 Q Excellent.
25 A No particular reason, besides to refresh my memory
26 what it said, but...
27 Q Do you mind just having a look at it, then, and
28 reading the title.
29 A Yes.
30 MR. TAYLOR: And then what I would propose, Mr.
31 Commissioner, once we've got the title, we'll
32 leave it with Mr. Lunn for a few minutes to see
33 what he comes up with and then that no doubt will
34 answer if it is or isn't an exhibit already, and
35 we'll go from there.
36 A The title is "Fraser River Sockeye Management:
37 Socio-Economic Implications", June 8th, 2006.
38 MR. TAYLOR: All right. Would it be okay, then, Mr.
39 Commissioner, if we come back to that once we get
40 a handle on whether it is or isn't an exhibit?
41 THE COMMISSIONER: Yes, of course.
42 MR. TAYLOR: Thank you.
43 Q With that, Mr. Ryall, what did that report give to
44 the Department, or what benefit did the Department
45 get in terms of information or ideas, or things of
46 that nature, as to developing or amending FRSSI,
47 or on escapement generally?

- 1 A Well, so in 2006 we had looked at three options,
2 and they were driven, my recollection is, by this
3 objective function that people did not
4 particularly like. So I think what it showed us
5 is as far as Mr. Gislason's report was first off
6 that we needed to look at some other performance
7 indicators. And I've talked about a couple here
8 today. We did look at a whole range of
9 performance indicators, but we ended up choosing
10 the three or four that we plot on the graphs
11 typically.
- 12 Q And is that based on what Mr. Gislason was
13 recommending or suggesting?
- 14 A He didn't make explicit recommendations along
15 those lines, you know. It was more he had quite a
16 number of performance indicators within his
17 report, and I guess it really started us thinking
18 about, well, what information are we trying to
19 convey to people.
- 20 Q All right.
- 21 A He also did in his recommendation, and I did speak
22 about it in my answer earlier, is that in his
23 report Mr. Gislason did point out that this
24 report, well, has come to some conclusions, also
25 one of his conclusions was that additional work
26 needed to be done, particularly on an economic
27 analysis, and that he had to make quite a series
28 of assumptions to come up with his economic
29 analysis.
- 30 Q Well, in that regard and generally, has there been
31 other work done or steps taken by Fisheries to get
32 a handle or understanding of socioeconomic
33 factors, and then using that other work, if any,
34 to inform the work in amending FRSSI or on
35 escapement generally?
- 36 A No, not at this time. I do think that it is a
37 gap. I think that if we were to make additional
38 changes, and this was not reviewed through the
39 science process that I talked about. Really,
40 that's not their purview to get into the economic
41 analysis. But I do think that it is a gap that we
42 could incorporate an economic analysis, taking the
43 output from the FRSSI and adding that on as
44 another component or module, if you will, to the
45 actual model itself.
- 46 MR. TAYLOR: All right. Mr. Lunn, is there any word on
47 whether that is an exhibit?

1 MR. LUNN: It is not an exhibit.

2 MR. TAYLOR: All right, thank you. It's undoubtedly
3 not subject of notice so far. I think it probably
4 should be an exhibit. In the interests of time,
5 and there's one copy there, I will see what I can
6 do with other counsel at the noon hour to see if
7 we can bring it back and put it in as an exhibit,
8 Mr. Commissioner.

9 THE COMMISSIONER: May I respectfully suggest, Mr.
10 Taylor, we mark it for identification purposes
11 first, let counsel see it.

12 MR. TAYLOR: All right.

13 THE COMMISSIONER: And then if they have any
14 submissions they wish to make on it, you could
15 hear those submissions and address them
16 accordingly. So that way we know what the
17 document is that he has been addressing. Counsel
18 will have a chance to appropriately consider it,
19 and then we can hear any concerns or submissions
20 they might want to make.

21 MR. TAYLOR: All right.

22 THE COMMISSIONER: Perhaps you could just get the
23 hardcopy and for now just mark that for
24 identification purposes.

25 MR. TAYLOR:

26 Q May we take your copy, Mr. Ryall, and then we'll
27 get you another one?

28 A Yes.

29 Q Is it a clean copy, Mr. Ryall?

30 A I think so. I was just going to check, but I'm
31 pretty sure it is.

32 THE REGISTRAR: That will be marked for identification,
33 letter V.

34

35 EXHIBIT V FOR IDENTIFICATION: Gislason,
36 Fraser River Sockeye Management: Socio-
37 Economic Implications, June 8, 2006
38

39

39 MR. TAYLOR: I'm just intrigued on that now that
40 there's apparently quite a number of exhibits for
41 identification before "V", so I'll have to have a
42 look at that.

43 THE COMMISSIONER: You're going to have to come every
44 day, Mr. Taylor.

45 MR. TAYLOR: Apparently. I mentioned to someone we
46 should have the lettered exhibits as well as the
47 numbered ones.

1 Q Moving along, Mr. Ryall, do you see alternatives
2 to FRSSI in terms of arriving at escapement
3 targets? FRSSI is what's used, but is there
4 anything else that is realistic or has been
5 contemplated to be used other than FRSSI?

6 A I don't see that in the near future. You know, I
7 think a number of times I've made presentations.
8 I mentioned the IHPC. And I remember Mr. Wilson
9 being, and I think Mr. Wilson remains concerned
10 about the FRSSI model. I asked Mr. Wilson if he
11 had any alternatives, and none were forthcoming.
12 And as I mentioned in my earlier comments on this,
13 I do see that, you know, things evolve, and I've
14 worked on constructing models earlier in my
15 career, and those ones are no longer used. Why is
16 that? Well, better ones come along. And so I do
17 see that probably somewhere down the road there
18 will be improvements made to this one. But as far
19 as the overall concepts go, I think more
20 importantly do I see changes in that? I don't
21 think significantly. Maybe better ways of doing
22 the analysis, is what I'm really saying, and not
23 so much do I see different ways of thinking about
24 these concepts.

25 Q Okay, thank you. Now, this set of part of the
26 evidentiary hearings is on decision-making and
27 consultation. And a number of witnesses have
28 given evidence about decision-making processes.
29 But I wonder if you could briefly roll up and give
30 the Commissioner a quick Coles Notes kind of
31 statement as to an overview of the DFO decision-
32 making process, setting out how DFO's priorities
33 and decisions are made, starting, if you like,
34 from the beginning or high level, and then
35 bringing it through to the on-the-ground decisions
36 that occur.

37 A I certainly could do that. I also wonder, I've
38 heard it from looking at past records of what's
39 been talked about at the Commission already by
40 previous witnesses, about whether it would be
41 helpful actually to have the Department putting
42 something forward about decision-making and how
43 it's undertaken within the Department. And I
44 think I heard one of the earlier witnesses speak
45 about concerns about how decision-making is
46 arrived at within the Department. And I can see
47 from someone from sitting outside that they might

1 wonder, "Well, we've told you all these things,
2 but how did you actually consider them?"

3 But to address your question, to me it really
4 does start right back from the Speech from the
5 Throne that's going to provide direction to all
6 the Departments, and taking that direction and
7 incorporating that into the Department's
8 activities. In addition, each minister does
9 receive a letter from the Privy Council Office
10 about what the priorities of the day are. Those
11 priorities are incorporated into a plan, a plan
12 for the Department as a whole, and within the
13 Pacific region, to have filtered down into the
14 next layer what the Pacific region's role is going
15 to be on delivering on those priorities and
16 initiatives. And they change over time, depending
17 on what direction one gets right directly from
18 that Speech from the Throne.

19 And then as far as decision-making goes, it
20 really depends on, you know, the hierarchy of
21 what's being decided and when I say the hierarchy,
22 I guess I'm really meaning the impact. So if it's
23 a very large impact and many people, or major
24 implications on potentially changes in directions,
25 you're going to be looking at senior management
26 that are going to making those decisions that will
27 be informed from technical advice. And it could
28 be doing an analysis of conservation and economics
29 on a decision around Cultus Lake sockeye, for
30 example. And it will be, I would think, that that
31 type of decision will be taken at the high level
32 within the Department and up to including the
33 Minister. Similarly, the Integrated Fisheries
34 Management Plan is a ministerial decision at the
35 end.

36 But then you start to filter these down, you
37 now have a management plan that's been agreed to
38 by the Minister, and you start filtering that down
39 into decisions that are going to make that into an
40 operational plan, and people within the Department
41 are delegated the authority to make those
42 decisions.

43 So another example would be chair of the
44 Fraser Panel, one of the roles I played in the
45 past. I would have authority to make decisions
46 around fisheries that are consistent with that
47 management plan the Minister has approved.

1 So you know, there's this whole nested layer
2 of hierarchies of who has decisions and who needs
3 to be involved. And I think looking from the
4 outside it could be a matter of a bit of a black
5 box sometimes, like who is making those decisions.

6 Q I understand there's something prepared in the
7 Pacific region that is an implementation plan.
8 You're familiar with that?

9 A Yes. We were just actually working on one for the
10 next year.

11 Q What time horizon does it cover, and how does it
12 fit into the decision-making process that you have
13 outlined at a very broad level?

14 A Well, there's one, you know, that looks five years
15 out. There's also others that you'll do on an
16 annual basis. And on those annual basis you'll
17 have one for the Pacific region that matches up
18 with the overall departmental direction. And then
19 you'd take that down a layer, and currently I am
20 responsible for developing management plans for
21 other species. And so I'll have people that are
22 tasked, and for each of those they'll have work
23 plans. So I'll have my staff develop work plans,
24 and they'll roll up into meeting what we need for
25 resource management and meeting those objectives.
26 So you could kind of reverse it back. Because,
27 like, what are the priorities, and how are you
28 going to meet them, and what are you going to do
29 with those resources that you've been provided to
30 meet those objectives and initiatives.

31 Q Is an implementation plan prepared each year or
32 only every so many years in the region.

33 A Well, the one that's going to look out over five
34 years, and then each year what I'm referring to is
35 what sort of changes have occurred, what sort of
36 direction does one get from the Speech from the
37 Throne, and that could modify where the
38 direction's going. But some of those things don't
39 change very much, you know.

40 But it could be a particular initiative
41 that's undertaken that's identified. One major
42 one recently within the Pacific region is Pacific
43 Integrated Fisheries Initiative, PICFI and so
44 those get added on to the list, and then how are
45 you going to incorporate those into your business.
46 And that was over a number of years, and so you
47 need to incorporate that into your activities.

1 Q All right. You have been with the Department
2 quite a number of years. Have you seen decision-
3 making become more complex over the years that
4 you've been with DFO?

5 A I would answer yes, I think it has become more
6 complex I think for two reasons. One is that
7 there's more parties involved, and more parties
8 have more views, and so that's added a layer of
9 complexity. I also think that the way that we've
10 thought, and I'm going to answer primarily around
11 salmon but I think it cuts across other species.
12 The way that we think about how we make decisions
13 on harvesting, in the past when I first started in
14 the Department, I think was much more of a narrow
15 focus around single species and the considerations
16 for others. But those now we're, you know,
17 looking at more of an ecosystem approach and how
18 to incorporate that into the decision-making. And
19 so I think both those things have added a layer of
20 complexity into the overall decision-making
21 process.

22 Q Has the case law decisions that have come down
23 over the last 15, 20 years mainly to do with the
24 First Nation fishing, has that added a level of
25 complexity to things?

26 A I would say that's added a significant layer of
27 complexity. Even thinking about crafting
28 management plans, for sure.

29 Q And partly as a result of that, and generally, is
30 there more of the same or less consultation now
31 than a decade or more ago?

32 A Hmm, significantly more than, well, than a decade
33 ago? I would say there's more. I started with
34 the Department in 1989. Consultation was
35 undertaken back in those years, as well, but not
36 to the extent that it is now in 2011, by any
37 stretch. I think that if I look around my staff
38 and ask them to add up how much time is spent on
39 consultation, it would be a significant amount of
40 time that we spend.

41 I also started to think about, you know,
42 going into the future are there ways that we can
43 make improvements to the processes that we have
44 underway as around consultation, and is the
45 current model the best one that we have. I start
46 to think about are there other models around that
47 we should be considering for consultation

1 processes.

2 I did touch on a little bit in my answer
3 about, you know, thinking about co-management.
4 We've had discussions with First Nations around
5 this issue, and there's a whole spectrum of what
6 co-management means to one party or another, and
7 there's so much one can do with existing
8 legislation, as well. But so, you know, you start
9 to think about what sort of efficiencies, and not
10 just efficiencies, but more effective consultation
11 that one can do, as well.

12 Q Is consultation seen as beneficial for the
13 Department in its decision-making?

14 A I would say absolutely it is beneficial. I do
15 think that the consultation ends up in resulting
16 in improved management plans. I'm not going to
17 say that everyone agrees with the outcome. That
18 would just not be a correct statement. But I do
19 think that the management, the consultation advice
20 that we receive, ends up in a better product.

21 Q All right, thank you. There's been evidence
22 already, and you've given some of it, about
23 financial support that DFO provides to various
24 participants in the Integrated Harvest Management
25 Planning Committee process and otherwise. Can you
26 say what is the Department's view on providing
27 financial support to commercial for-profit fishers
28 to attend meetings with DFO?

29 A Well, I guess, you know, we look in within our
30 existing budgets and what our priorities are. And
31 currently within the commercial sector, as I
32 indicated earlier, we do provide financial support
33 to attend the Integrated Harvest Planning
34 Committee to all representatives that attend. And
35 I'm speaking here of salmon. And we do not
36 provide that support for commercial
37 representatives for the Commercial Salmon Advisory
38 Board, as far as their travel expenses. The
39 Department's commitment within the Commercial
40 Salmon Advisory Board is to provide expenses for
41 the meeting, the location, room rentals, and also
42 providing some technical support by having DFO
43 staff attend and provide information and
44 discussion.

45 Q You mentioned earlier that the financial support
46 for the SFAB has been stable over the years, as I
47 heard your evidence. What can you say about

1 financial participation for First Nation fishers,
2 both communities and umbrella organizations. Has
3 it changed over the years up or down, or remained
4 about the same?

5 A More of a challenging question to answer. I would
6 think it has been quite stable. And I'm thinking
7 here in the last five years when I provide that
8 answer, I would think that it has increased. If
9 we go back into the early '90s, it probably
10 increased greatly, and then more recent times it's
11 been quite stable. But it's hard to, you know, to
12 tease out, as well there's a host of arrangements
13 with First Nations on a variety of topics. And so
14 if we're just talking about consultation, it's a
15 little bit challenging sometimes to tease that out
16 of all the different agreements that we have with
17 First Nations in the Pacific region. I mean,
18 there's light items in there, I'm just saying it
19 would be a challenge to go back and review that;
20 take some effort.

21 Q Turning to, or coming back to the Integrated
22 Harvest Management or Harvest Planning Committee,
23 do you see that as an effective means for DFO
24 obtaining input and advice from stakeholder
25 groups? You've touched on this before, but I ask
26 you again, and ask you if you see it as an
27 effective means. And then my next question will
28 be what changes or improvements might be made.

29 A Well, I think my involvement in having the
30 Integrated Harvest Planning Committee set up which
31 started, I believe it was in either late 2003 or
32 2004, and prior to having the Integrated Harvest
33 Planning Committee, we really did not have a
34 really -- first off, we didn't have it in
35 integrated form. We had a, I'm going to say, ad
36 hoc, and there was a discussion paper put out that
37 made a round of approved decision-making, and it
38 gave a summary of the pre-existing bodies, both
39 within areas and region. And some of those bodies
40 have been in existence for quite a while. The
41 Sport Fishing Advisory Board, for example, and
42 they had a whole process at the setup and provided
43 advice to the Department. There was not an
44 existing environmental marine conservation caucus.
45 The commercial advisory process had a host of
46 advisory bodies that we consulted on, but there
47 was no one cohesive organization. And so there

1 was a desire to make improvements on that.

2 And so we set up the Integrated Harvest
3 Planning Committee. I think the first meeting was
4 2005. And I was involved on a regular day-to-day
5 basis with the IHPC up until about 2009. And I
6 did see significant improvements over those five
7 years, four years, with the IHPC, from people
8 first starting getting into a room, thinking about
9 like why we're here, and this is a little bit
10 uncomfortable to now providing, I think, and
11 having constructive dialogue around the management
12 plans.

13 I think that representation from First
14 Nations at these meetings is still not as what
15 we'd like to see. From our viewpoint within
16 Department of Fisheries we've had quite a number
17 of discussions with First Nations and I'd talked
18 about some of the other forums where we're trying
19 to see how we can make some improvements, and
20 maybe that will lead to representation in the
21 IHPC.

22 Q All right. Is there anything specific that you
23 want to relate to the Commissioner as to what has
24 been done to try and increase First Nation
25 participation?

26 A Well, I think in two fronts. One specifically
27 around Fraser sockeye, but and Fraser salmon in
28 general there's a forum, a Conservation and
29 Fisheries forum that is on looking at more
30 operational details, and I think their next one is
31 planned for May. And so that's dealing with the
32 current existing arrangements.

33 And then looking further down the road,
34 there's an organization or a process called
35 Roadmap, and initially they were joint and we
36 found that that was not really working and have
37 now separated. There's overlap between the
38 membership. But this Roadmap process is trying to
39 see if there ways that one could improve upon the
40 consultation and I think really so far focus more
41 upon the bilateral arrangements between First
42 Nations and DFO.

43 And the other to me is looking at the First
44 Nation Fishery Council as another potential
45 vehicle for this, as well. It's relatively new,
46 but I do and am encouraged from the last annual
47 meeting that I attended in November of last year

1 of how that organization is also structured and
2 making gains on how they view moving ahead, as
3 well.

4 So those are two examples, and there are
5 others that I could talk about that we're trying,
6 and the other part of it, too, is around co-
7 management and what does that mean. There's quite
8 a whole range of co-management views, and so we're
9 having those discussions, as well.

10 Q All right. Now, I'd like to --

11 THE COMMISSIONER: I wonder if I could just quickly add
12 or ask, rather, the witness. You didn't mention
13 in that long list treaty negotiations. Can you
14 tell me to the extent that treaty negotiations
15 include discussions around fisheries, how that
16 works in terms of all these other layers of
17 consultations that are taking place.

18 A Well, it's definitely a significant part.
19 However, you know, not all First Nations are
20 involved in those treaty negotiations, and so I
21 guess one of our challenges within the Department
22 -- certainly treaties are a key component. If we
23 had treaties throughout and agreements upon that,
24 I think that would be ideal. But I'm not sure, I
25 don't think that that is the situations in
26 agreements with First Nations, and a number of
27 them are not involved in treaty discussions. So I
28 think to me that's a reality, and so you need to
29 deal with the reality as well, that what sort of
30 organizations does one need to get the input
31 currently from First Nations that are not
32 interested in pursuing treaties. They're
33 definitely still interested and do have rights
34 identified as far as food and social and
35 ceremonial, and maybe others. And so one needs to
36 take that into consideration, as well.

37 THE COMMISSIONER: And how is that taken into
38 consideration?

39 A In addition to the treaties, you mean?

40 THE COMMISSIONER: Well, no, if there are discussions
41 - I'm sorry, I apologize, Mr. Taylor - if there
42 are discussions taking place at treaty tables.

43 A Yes.

44 THE COMMISSIONER: Around issues regarding fisheries.

45 A Yes.

46 THE COMMISSIONER: How is that meshed with all of the
47 other discussions that are taking place, or is it

1 meshed at all with the other discussions that are
2 taking place around the other organizations or
3 forums that you just mentioned?

4 A Mm-hmm. Well, right now, you know, there's a
5 treaty as you will know with the Nisga'a, another
6 with Tsawwassen, and so those arrangements and how
7 they would mesh with the overall consultative
8 process I still -- especially right now with
9 Tsawwassen needs to be incorporated into the
10 overall process, too, and that's not totally clear
11 at this point.

12 THE COMMISSIONER: I see, okay.

13 MR. TAYLOR: Maa-nulth Treaty, Mr. Commissioner, as I
14 understand it, comes into force April 1st, for
15 your information, so there will be as of then
16 another treaty in British Columbia, that's on the
17 West Coast of Vancouver Island, not directly
18 bearing on the Fraser sockeye, I expect.

19 Q Part of Mr. Commissioner's question, Mr. Ryall,
20 and I'll stand corrected by the Commissioner, of
21 course, but as I heard the Commissioner, he's
22 asking how do discussions and consultation in the
23 various processes you've described fit and/or are
24 taken into account with any discussions in the
25 treaty process at the tables where there are some,
26 if any, ongoing discussions, and vice-versa back.
27 That's what I took to be what the Commissioner
28 might be getting at when he was asking about
29 meshing. How does one inform and relate to the
30 other so we're at the -- we don't yet have a
31 treaty but we might have a treaty if discussions
32 went down a good path.

33 A Well, if we're still in -- maybe I misunderstood
34 the question but, I mean, if we're still in
35 discussions around treaties with a First Nation,
36 or a group of First Nations, then with the people
37 that are doing the negotiations and with our
38 Resource Management staff, we would be providing
39 advice that would be incorporated into those
40 negotiations.

41 Q All right, thank you. Now, I want to take you to
42 a number of documents that bear on consultation
43 and ask if you can identify them, and if you can,
44 then I'm going to ask that they be marked as an
45 exhibit. I don't need to take you into the
46 documents, in part because of time constraints.

47 And I alert you, Mr. Lunn, as we head into

1 this, that I've got a slightly longer list than
2 the one I passed you. But if we go to Tab 5 and
3 bring it up on the screen, of Canada's list of
4 documents that were handed in for this session
5 there's a document entitled "Consultation
6 Framework - For", it says "For Fisheries", but I
7 guess that means "by Fisheries", and I think it's
8 going to come up on the screen, the title page,
9 anyhow.

10 MR. LUNN: Do you have a CAN ID for that?

11 MR. TAYLOR: Oh, sorry, yes, let me do that.
12 CAN056910.

13 MR. LUNN: Thank you.

14 MR. TAYLOR: Is that better than giving you a tab
15 number?

16 MR. LUNN: Tab is okay. I just wasn't quite sure of
17 that one.

18 MR. TAYLOR:

19 Q That's the document I'm thinking of. And maybe
20 you could just show Mr. Ryall the very next page,
21 just to give him a date, and then back to this
22 page. So that's March 2004. And you've got a
23 binder there, as well. Do you recognize that
24 document, Mr. Ryall?

25 A Yes, I do.

26 Q What is it?

27 A Well, it's a document that was put together by
28 Fisheries and Oceans and to provide some guidance
29 around consultation processes and why one would
30 undertake them and how to undertake them.

31 MR. TAYLOR: Okay. I'm going to ask that that be an
32 exhibit, please.

33 THE REGISTRAR: Exhibit number 594.

34

35 EXHIBIT 594: Consultation Framework - For
36 Fisheries and Oceans Canada, March 2004

37

38 MR. TAYLOR:

39 Q I'd like to take you next to CAN022784, which is
40 also Tab 6. And you would have that in front of
41 you again, Mr. Ryall, which appears to be March
42 2004, as well. Do you recognize that document?

43 A Yes, I do.

44 Q And what is that, and does it relate in some way
45 to the document we just looked at?

46 A Well, it relates to the former. I would say the
47 former, well, this one in particular is more down

1 into operational details, like how one would go
2 out and start setting up a consultation process,
3 and gets into these details around who would
4 participate, what you're actually trying to go out
5 and consult on, identify those participants, set
6 out a timeline. So more into the operational
7 details of how it's to go out. Once you've
8 decided what you're going to consult on, here are
9 some of the things that one could consider and
10 should consider in preparation for that
11 consultation and design.

12 Q So, if you like, it's a document that's underneath
13 the document we just looked at, is it?

14 A Well, that's the way I would view it. Yes.

15 MR. TAYLOR: May this document CAN022784 be an exhibit,
16 please.

17 THE REGISTRAR: That's number 595.

18
19 EXHIBIT 595: Consultation Toolbox - A Guide
20 to undertaking consultations, March 2004
21

22 MR. TAYLOR:

23 Q Then if we turn to CAN063627, which is Tab 7, yes,
24 Tab 7, Mr. Lunn, there's a document that you can
25 see there, "Consultation with First Nations: Best
26 Practices", June of 2006. Do you recognize that
27 document?

28 A Yes, I do.

29 Q I think the title tells us something about what it
30 is, but what is this document?

31 A Well, it has a number, it has overlap with the
32 previous ones, but this one also has some examples
33 of best practices in it of what has been
34 undertaken as examples of best practices.

35 Q This is specific to consultation with First
36 Nations, I gather?

37 A That's correct.

38 Q And is this incorporating the principles from the
39 cases known as *Haida* and *Taku*?

40 A They're included in here, as well, yes.

41 MR. TAYLOR: May this be an exhibit, please.

42 THE REGISTRAR: This will be number 596.

43
44 EXHIBIT 596: Consultation with First
45 Nations: Best Practices - A Living Document
46 - June 2006
47

1 MR. TAYLOR:

2 Q One more document in this series. If we turn to a
3 document that I think has not got a CAN number,
4 but it's at Tab 8, Mr. Lunn, if you have that.
5 Yes, that's the one. Do you recognize that
6 document, Mr. Ryall?

7 A Yes, I do.

8 Q And what is this?

9 A Well, it has some similarity to the previous that
10 we've just discussed around aboriginal
11 consultation and interim guidelines to fulfill the
12 legal duty to consult. So it has some overlap in
13 providing some guidance, and then also in some
14 details how to undertake consultation to meet
15 those obligations.

16 Q Is this document we're looking at now a Canada or
17 government-wide document, Government of Canada-
18 wide document, as distinct from Fisheries only?

19 A That's my understanding, yes.

20 MR. TAYLOR: May this be the next exhibit, please.

21 THE REGISTRAR: Exhibit 597.

22

23 EXHIBIT 597: Aboriginal Consultation and
24 Accommodation, Interim Guidelines for Federal
25 Officials to Fulfill the Legal Duty to
26 Consult, February 2008

27

28 MR. TAYLOR:

29 Q Now, just while we're in documents, and I think
30 quickly, Mr. Ryall --

31 MS. BAKER: I'm sorry to interrupt, Mr. Taylor. Mr.
32 Commissioner, we have very serious time
33 constraints today, and I proposed some limits on
34 people's time overnight to try and make sure
35 everybody got an opportunity to ask questions of
36 this witness. The proposal I made for Canada was
37 30 minutes, which has now been exceeded by five.
38 B.C. has 20 minutes, which I was hoping could be
39 completed before the lunch break. So I'm
40 wondering how much longer Mr. Taylor intends to be
41 with this witness, and how that works with the
42 time available today.

43 MR. TAYLOR: Well, I'm trying to move things along as
44 quickly as I can. Thirty minutes wasn't my time
45 estimate. That was what Ms. Baker gave me. My
46 time estimate was an hour. Ultimately I came back
47 at 45. I'm 35 at the moment apparently, and I'm

1 aiming for 45. That's my best target right now.
2 MS. BAKER: Of course I know it doesn't sound like very
3 much, ten minutes, but that means those ten
4 minutes come off somebody else's time, so...
5 MR. TAYLOR: Ms. Gaertner's giving me some, but she can
6 explain.
7 MS. GAERTNER: I'm quite worried about the day as it is
8 already, Mr. Commissioner, and the nature of the
9 content of it. I am going to consider over lunch
10 whether or not it's best to even try to do my
11 cross-examination today, and whether there is
12 other options, and I am going to speak to Ms.
13 Baker about that.
14 MR. TAYLOR: Thank you, I'll proceed, and I'll try to
15 be as efficient with time as possible.
16 Q I've got three documents that I want to have you
17 look at, Mr. Ryall, and then I will ask that they
18 be exhibits, if you identify them. And why I want
19 to do that is that on February 11th, Mr. Leadem,
20 who is counsel for the Conservation Coalition,
21 entered certain letters from environmental groups
22 to DFO regarding fisheries management plans, and
23 those exhibits are now 424, 425, and 427.
24 Obviously there's a 426 in the middle there, which
25 I will come back to.
26 Now, Mr. Lunn, if this is technically
27 possible, are we able to bring up 424 and Tab 9,
28 which is CAN056345, on the screen together.
29 MR. LUNN: Yes.
30 MR. TAYLOR: Okay, that's one version of on the screen
31 together, I guess.
32 MR. LUNN: What would you like to do?
33 MR. TAYLOR:
34 Q My question, Mr. Ryall, is whether the top of the
35 screen is a DFO response to the bottom of the
36 screen. Now, for Mr. Ryall to properly assess
37 that, I suppose he should be able to see -- oh,
38 that's a better way of doing it. Thank you. So
39 the right, which was there, the right-hand side,
40 Mr. Ryall, is a letter coming in to DFO and more
41 specifically you, it looks like, and the left side
42 of the screen is seemingly a letter back. If you
43 just have a moment to look at those. The right
44 side of the screen is Exhibit 424, and my question
45 of you is whether you can identify the left side,
46 and whether it is a response to 424, the right
47 side.

45
Paul Ryall
Cross-exam by Mr. Taylor (CAN)

1 A Well, it certainly looks to be, just looking at
2 the response back, August the 31st, 2009. It
3 references the March 4th, 2009 letter that came in
4 and I don't think there would have been two on the
5 same day, and they look like they're covering the
6 topics. My reply of August 31st, 2009 --

7 Q All right.

8 A -- looks like it's covering off what was submitted
9 on March the 4th.

10 MR. TAYLOR: Thank you. May the, I'm going to call it
11 the left side of the screen, the August 31st, 2009
12 letter be the next exhibit, please.

13 THE REGISTRAR: Exhibit 598.

14
15 EXHIBIT 598: Letter from P. Ryall to the
16 Marine Conservation Caucus re Recommendations
17 from MCC on the South Coast Salmon IFMP dated
18 August 31, 2009
19

20 MR. TAYLOR:

21 Q Now, I'd like to do the same with Exhibit 425 and
22 Tab 10, and Tab 10 is CAN055783. So this is a
23 letter coming in to Fisheries on June 25th, 2007
24 and -- sorry, Mr. Lunn's testing me. The incoming
25 is on the left side now and the outgoing is on the
26 right side.

27 A Right.

28 Q The incoming is May 23, 2007 and the outgoing is
29 June 25, 2007. The left side is Exhibit 425. Can
30 you recognize the right side as a response to the
31 left side?

32 A Yes. The right side, the June 25th, 2007
33 references that this is a reply to the letter of
34 May the 23rd, 2007 around management plans.

35 MR. TAYLOR: All right, thank you. May the right side,
36 June 25, 2007 be the next exhibit, please.

37 THE REGISTRAR: Exhibit 599.

38
39 EXHIBIT 599: Letter from P. Sprout to C. Orr
40 et al, Pacific Marine Conservation Caucus,
41 Salmon Committee, re IFMP, dated June 25,
42 2007
43

44 MR. TAYLOR:

45 Q And then next the same thing with Exhibit 427 and
46 Tab 11, and I'm going to watch my right and left
47 sides this time. And Tab 11 is CAN042500. Thank

March 16, 2011

1 you, Mr. Lunn.

2 So the left side is a letter that is Exhibit
3 427, the right side is a letter from the Minister,
4 and you may not be able to say too much more than
5 what's obvious there, Mr. Ryall, as to whether the
6 right side is a response to the left side.

7 A Yes, it is. I mean, it's referencing the June --
8 the reply from the Minister is referencing two
9 letters, June 17th and the 28th, and the one up on
10 the left side is June 28th incoming.

11 MR. TAYLOR: All right. So I'd ask that the right
12 side, September 7, 2005 be marked as the next
13 exhibit, please.

14 THE REGISTRAR: Exhibit number 600.

15

16 EXHIBIT 600: Letter from G. Regan to V.
17 Husband, Pacific Marine Conservation Caucus,
18 Salmon Committee, dated September 7, 2005

19

20 MR. TAYLOR: Thank you. We've reached another
21 milestone I guess in terms of exhibit numbers, 600
22 now.

23 THE REGISTRAR: No prizes.

24 MR. TAYLOR:

25 Q One final document, Mr Lunn. I'm sorry, I didn't
26 alert you to this, but it's in the series, Exhibit
27 426. That's another letter that was sent to
28 Fisheries, Mr. Ryall. You may not be able to
29 answer this question, but do you have any
30 knowledge whether that letter was answered?

31 A I don't have any knowledge, but when letters come
32 in, our practice would be to provide replies back
33 to letters.

34 Q All right.

35 A I'd have to go look in the records.

36 Q This appears to be a letter that would have been
37 to the committee; is that your understanding?

38 A It is.

39 Q Which would include Fisheries.

40 A Well, I'll just refresh my memory around this. I
41 guess the other part of, you know, a letter may
42 come in, but if there's no particular question,
43 then I don't think we're going to answer it,
44 either, and if this is to a committee and not
45 addressed to DFO, I'm not sure that we would have
46 answered it.

47 MR. TAYLOR: All right, thank you.

1 THE COMMISSIONER: is there a signature page, Mr.
2 Taylor, on that one?

3 MR. TAYLOR: Mr. Lunn?

4 THE COMMISSIONER: Okay.

5 MR. TAYLOR: So this is from a number of conservation
6 organizations.

7 THE COMMISSIONER: Right.

8 MR. TAYLOR:

9 Q Mr. Ryall, very quickly, can you describe what is
10 the Consultation Secretariat within the DFO
11 Pacific Region and what does it do?

12 A Well, it performs a number of functions. I think
13 really it came out of the improved decision-making
14 document, with one of the end results is that we
15 needed to have a Consultation Secretariat and,
16 well, why did we need that. It provides a
17 resource. It helps staff develop consultation
18 plans, put them together and ask the questions
19 around those documents you were showing me
20 earlier, like who do you need to consult with,
21 what are you really asking, how are you going to
22 do it, what sort of budget do you need to do these
23 sort of consultations. That's one role they fill.
24 And so they're a resource that helps staff develop
25 consultations and address questions.

26 The other role that they fill, there's a
27 website, Consultation Secretariat website and on
28 that website there's a record of meetings,
29 minutes, agendas, times. I also post on there up
30 and coming consultation items from across the
31 Department and so that it covers everything, and
32 it's not just salmon, but all species. And so
33 it's a valuable resource of tracking consultations
34 and what's going on and helping staff undertake
35 consultations.

36 Q All right, thank you. Earlier in these
37 proceedings, specifically February 10th, Dr. Carl
38 Walters gave some evidence, and am I right that
39 you know who Dr. Carl Walters is?

40 A Yes, I know Dr. Walters quite well.

41 Q And in the February 10th transcript - and is that
42 available, Mr. Lunn - at page 61, at line 26,
43 you'll see the evidence there where Dr. Walters
44 speaks to:

45
46 ...a need to return to simpler overriding
47 objectives, clear priorities, a hierarchical

1 objective and decision-making with regard to
2 allocation among user groups, always with
3 conservation first. There are a lot of ways
4 to improve the decision process, simply and
5 improve the decision process to make it look
6 -- work more like the Salmon Commission's
7 process did.
8

9 Do you have a comment or response to what Dr.
10 Walters is saying there?

11 A Well, I mostly agree with what he's saying there.
12 I think, you know, we do have overriding
13 objectives and clear priorities and those
14 objectives are laid out in various policies, you
15 know, the Salmon Allocation Policy being one, lays
16 out the principles of allocation, conservation
17 being first, First Nations FSC second, and has
18 those listed in a hierarchical fashion. And so I
19 could go on about other policy. But a summary is
20 to me is that we do lay those out, I think, in a
21 clear fashion.

22 And I think maybe the only quibble I have
23 with it is about the simpler part and the
24 simplifying. I think we talked earlier this
25 morning about some of the things that have changed
26 over the course of time, and thinking that we're
27 going to return to some simpler view may not be
28 available to us just because of the complexity of
29 what has changed, and that would be a challenge.

30 But to me I do agree with overall of what Dr.
31 Walters has put forward here. And we need to have
32 those types of objectives, and need to be clear
33 about and make sure that they're put out and
34 people understand, well, what are you managing to,
35 and what are your objectives, and how do you set
36 priorities, and how do you follow those.

37 Q Dr. Walters in that same area of evidence, I don't
38 have the line reference or page, for that matter,
39 but he referred to DFO's decision-making processes
40 as "pathological". Do you have a response or
41 comment on that?

42 A Well, maybe two. I'm not sure that "pathological"
43 is the right adjective in this particular case.
44 But, you know, setting aside that, as well, I do
45 think what he was making a point was that his view
46 is that the decision-making within the Department
47 is not always clear, and but when I see and I

1 followed up with the section that we just talked
2 about, you know, really are we saying anything
3 different. I'm not sure that we are.

4 And my comments earlier is that if you're
5 outside the Department, I do think it's probably
6 true that people would say, "Well, how do you
7 arrive at that decision?" And it could be viewed
8 as a black box, and the last thing that we see is
9 maybe a release that here's our decision without
10 how you arrive there. So from Dr. Walter's point
11 of view, is that maybe that's why he chose to use
12 the word "pathological", I don't know.

13 Q It's up on your screen now, it's page 59. And
14 just for the record, Mr. Lowes is suggesting that
15 there might have been another angle to what Dr.
16 Walters was speaking about. I don't want to take
17 my time arguing about it, though.

18 MR. LOWES: Well, I just noticed that the top of the
19 paragraph - not this, the previous one - was
20 referring to -- Dr. Walters was referring to the
21 decision-making process under the Wild Salmon
22 Policy, and that was the context of his statement.

23 MR. TAYLOR: Well, that's fine. We can leave it there.
24 It was a comment he made in the escapement
25 decision-making as a general point part of these
26 proceedings. But the witness has given his answer
27 to it.

28 Q My final question, Mr. Ryall, which has two parts
29 to it, is we've heard about structured decision-
30 making. Can you briefly describe what is
31 structured decision-making, which is, as I
32 understand it, a term of art, and how is that used
33 by the Department of Fisheries and Oceans in the
34 escapement and FRSSI modelling?

35 A Well, you know, I think it's just a name for a
36 process. And so what do you do in a structured
37 decision-making? I think a number of steps. One
38 is you need to identify what the problem is first,
39 and what the issue is. That's the first step, I
40 think. And then if once you're in agreement on
41 what your problem is you're trying solve, and then
42 what are the objectives you're trying to achieve.
43 And then you get into starting to think about how
44 you're going to assess those, and coming up with
45 some analysis process. And that would include
46 some indicators to see how well different
47 scenarios match up against solving your problem.

1 And quite often that's an iterative process
2 because when you first come up with the scenarios
3 you might not think of the one you end up as the
4 outcome. So it can often be a reiterative process
5 to end up with ideally a consensus or an agreed-
6 upon scenario. Sometimes you might only end up
7 with a narrowing range of ten options down to
8 three, but you've made improvement of about what
9 sort of outcomes one could then look at
10 implementing.

11 I think we've tried within the FRSSI process
12 to do that in a couple of ways. I would argue
13 that within the Wild Salmon Policy there's an
14 Appendix 2 that has a five-step process that to me
15 is a structured decision-making. You can take it
16 into a next step and start developing analytical
17 tools to take a look at these different options
18 and rank them, or categorize them, if you will, of
19 preferred, least preferred, okay, that kind of
20 categorization. And we did do that with the
21 Cultus example, and looked at a range of options
22 in how we could recover Cultus with applying
23 enhancement and habitat changes. And that was
24 used in an analytical tool to help that process.

25 We also did it within the FRSSI process, and
26 I think that also assisted us when we used that
27 analytical tool, but we never provided enough time
28 to use it fully. And if I had to go back and do
29 it again, I'd probably look at a different way of
30 applying that, and with not such a large number of
31 people. There was probably 40 people in the room
32 and that's a challenge, I think, and probably
33 different ways of undertaking that kind of
34 process.

35 MR. TAYLOR: All right, thank you, Mr. Ryall.

36 MS. BAKER: Mr. Commissioner, the Gislason document
37 that was referred to by Mr. Ryall, we've found the
38 CAN number for that. It's CAN007899 for my
39 friends to think about over the break.

40 I do note that we are now behind schedule.
41 We have got over two hours of time estimates left
42 on my reduced schedule, which, you know, may or
43 may not be adhered by my friends. So we do
44 probably have a problem this afternoon on
45 completing with Mr. Ryall. I don't know if you
46 want to address that now, we have a full minute
47 left before the break to talk about that, but we

1 either, people do need to either share or reduce
2 their time estimates, or we have to ask Mr. Ryall
3 to come back and make some more time for him in
4 the schedule, which I don't think is likely, where
5 we stand today and where we're moving forward, or
6 we have to do it writing, or we sit later today.
7 Those are our options, as I see them.

8 THE COMMISSIONER: Right, thank you, Ms. Baker.

9 Well, we won't be sitting beyond 4:00 today.
10 The next option is for counsel to attempt to
11 reduce their time estimates. If that can't be
12 done, my suggestion is that those with the
13 shortest time estimates complete this afternoon.
14 Those who have much longer ones, they might get
15 started this afternoon, or even complete this
16 afternoon if they can reduce them. But it would
17 be to consider, as Mr. Rosenbloom did with a
18 different panel, putting questions in writing to a
19 witness. It might be possible to bring the
20 witness back for a short stint, an hour or so,
21 just to address any points that come out of the
22 written answers that the witness would provide.
23 It could be by way of affidavit or, in Mr.
24 Rosenbloom's case, it was by way of a written set
25 of answers that were adopted by the witness when
26 he returned under oath, to do it in that fashion.

27 But the reality check is when we leave this
28 room, each and every one of us has got meetings to
29 go to, preparation to do and reading to
30 accomplish, so it's a constant workload problem.
31 And it's also a constant challenge for Commission
32 counsel to keep the hearings within the timeframe
33 that we have available for the *viva voce*
34 testimony. So up to this point, all counsel have
35 been extremely gracious and helpful in addressing
36 our time crunch concerns and have been for the
37 most part able to accommodate the need to complete
38 these panels as we go through them.

39 So I think that's the first step, can people
40 reduce their time estimate. If not, then there's
41 either put the questions in writing, or a
42 combination thereof, and try to accommodate those
43 with shorter time estimates so that they can get
44 completed this afternoon, if at all possible.

45 Thank you.

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

1 (PROCEEDINGS ADJOURNED FOR NOON RECESS)
2 (PROCEEDINGS RECONVENED AT 2:00 P.M.)
3

4 THE REGISTRAR: The hearing is now resumed.

5 MR. TAYLOR: Ms. Baker gave me a few seconds. No one
6 is opposed to Exhibit for ID V becoming the next
7 numbered exhibit, so may it be the next numbered
8 exhibit, please?

9 THE COMMISSIONER: Thank you.

10 THE REGISTRAR: Yes, it will be Exhibit 601.
11

12 EXHIBIT 601: Fraser River Sockeye Management
13 Socio-Economic Implications, by G.S. Gislason
14 & Associates Ltd., June 8, 2006
15

16 MR. TAYLOR: Ms. Gaertner reserves her right to ask
17 written questions of Mr. Ryall on that document,
18 and so she'll advise us further. Finally, the
19 witness, Mr. Ryall, did refer to a second Gislason
20 - and I mispronounce the name, I regret - report.
21 It's March of '06. We'll look into that further
22 and speak with all counsel on it when I get more
23 information on it. Thank you.

24 THE COMMISSIONER: Thank you.

25 MS. BAKER: Thank you. And Mr. Commissioner, we've
26 resolved to deal with our time problem this way.
27 I've talked to my friends about the suggested time
28 that they can take and they've pretty much agreed
29 that they'll take the time that's been talked
30 about and if they can't finish, they'll finish in
31 writing, or else they'll finish on the time that
32 we've agreed on.

33 And I do note that I had asked and Ms.
34 Gaertner will be doing her questions, as noted, in
35 writing. She was hoping she might be able to get
36 five minutes to ask a couple of oral questions,
37 and I can advise the room, now I've totalled
38 everything up, we are at an hour and 55 minutes,
39 without any time for Ms. Gaertner to ask
40 questions, so if everybody can just be conscious
41 of that and maybe shave a minute or two off, we
42 will free up enough time that we can get five
43 minutes, perhaps, for Ms. Gaertner, and maybe even
44 get an afternoon break.

45 THE COMMISSIONER: It's in your hands, sir.

46 MR. TYZUK: Well, after that, my name is Boris Tyzuk,
47 here for the Province.

1 CROSS-EXAMINATION BY MR. TYZUK:

2
3 Q Mr. Ryall, I'm counsel for the Province, and my
4 questions, today, are directed specifically on MSC
5 certification. The reason for that is we aren't
6 sure if you're going to be coming back before this
7 commission. We understand, from Mr. Grout, in his
8 testimony in January of this year, that you are
9 the DFO lead on MSC certification. Is that the
10 case?

11 A For salmon, that's the case.

12 Q Yes.

13 A Yeah.

14 MR. TYZUK: In regard to that, Mr. Lunn, would you pull
15 up Exhibit 159, please?

16 MR. LUNN: Certainly.

17 MR. TYZUK:

18 Q We advised your counsel yesterday of this. Are
19 you familiar with this document?

20 A Yes, I am familiar. I helped draft this document.

21 Q You helped draft the document. And as the first
22 paragraph says:

23
24 This action plan provides a detailed response
25 outlining our commitment --

26
27 - that is, DFO's commitment -

28
29 -- to meeting the 36 Marine Stewardship
30 Certification (MSC) conditions within a
31 5-year period.

32
33 Is that the case?

34 A That is the case.

35 Q If we could go down to the bottom of the first
36 page --

37 A I'd add there's one other caveat to that that
38 maybe would have been better placed in that
39 paragraph, but, you know...

40 Q Is that the one at the top of page 2?

41 A Yes, it is.

42 Q That's the one I'm going to get to next

43 A Well, there you go.

44 Q We're on the same wavelength. The bottom of page
45 1 indicates that:

46
47 The action plan contains significant

1 commitments for Fisheries and Oceans Canada
2 to implement over the next five years. All
3 of these actions are consistent with plans
4 already underway within the Department.
5

6 Is this the sentence you were going to refer to:
7

8 It is important to note that the
9 implementation of the following action plan
10 assumes there will be no requirement for
11 additional departmental resources. However,
12 as we initiate implementation of the action
13 plan we may discover that this assumption was
14 flawed and a re-evaluation of the original
15 assumption is required.
16

17 A Yes, that is what I was going to refer to.

18 Q All right. And where is DFO in that process? Has
19 there been a re-evaluation, at this point?

20 A Well, let me -- this deals with sockeye and
21 there's action plans being developed for pink and
22 chum salmon. The pink one is pretty much
23 complete, I would say 90 percent.

24 The next step in completing that will be
25 within the month of April this year, I would
26 think, and the chum one, not too much further down
27 the road. And so each one of these plans have a
28 lot of similarities, both in the conditions and
29 how we respond to them, and also there's a lot of
30 the same personnel within the department that are
31 going to be tasked with delivering on these tasks
32 within the five-year commitment.

33 And so one of our thoughts, as we were
34 drafting these up, we knew that these were coming
35 up, and so that was why we put in that "however"
36 statement. But also, on top of that, it's a
37 little uncertain, there's a lot of commitments in
38 here and we have to re-evaluate and see where
39 we're at.

40 The other piece I would add is that there is
41 an annual audit that is undertaken, and sockeye
42 was certified by the MSC, I think it was July of
43 2010, and the first audit is going to be
44 undertaken in the week of May the 9th, and we're
45 scheduling that for over three days; May 10th,
46 11th and 12th, to cover off sockeye, and at that
47 point we'll have an evaluation of the progress on

1 meeting the commitments that are outlined in this
2 action plan.

3 Q So this is an audit that will be done in
4 conjunction with the MSC certifiers?

5 A That's correct.

6 Q Thank you. Most of the questions that I have will
7 actually relate to the status of where things are,
8 and it may be pre-empted by your saying there's
9 this audit in May, but nonetheless, there's
10 certain conditions that I would like to go over
11 with you.

12 On pages 2 and 3 there's a table that
13 outlines what the various deliverables are, and
14 then the paper goes on to outline various
15 conditions and put them under certain headings.
16 From pages 4 through about 12 matters deal with
17 the Wild Salmon Policy, and one of the other
18 counsel will be asking you questions on the status
19 of those.

20 If you could turn to page 13 of the action
21 plan, what I'm going to do is go through these
22 conditions. You'll see, in some cases, there's a
23 deliverable. I'm going to ask you, has that
24 happened; is there a copy of the report; what the
25 status is; and, whether you've had any feedback.

26 So if we could go to the first one on page
27 13, under Fraser River Sockeye Condition 1:

28
29 Certification is conditional until a review
30 of the run timing and harvest rates for
31 Sakinaw sockeye have been completed and the
32 fisheries management plan is consistent with
33 the goal of minimizing the harvest rate on
34 Sakinaw sockeye.

35
36 And in the third paragraph there, it says:

37
38 A report summarizing this information will be
39 made available to the appropriate MSC
40 certifying body for their review by September
41 2010.

42
43 Has that report been filed with the MSC?

44 A No, it has not. And as we go through these, we
45 can go through the individually, but I could
46 provide a summary and then see where you want to
47 go with your questions?

1 Q Sure, that would be fine.

2 A I'm in the process of putting together a status
3 report and that won't be completed, I would say,
4 until mid April, of each one -- all the conditions
5 here that are in this document. So my answers
6 might not be fully complete, but that's what we're
7 in the process of doing, is where are we on each
8 one of these conditions.

9 The other piece I would add, when this action
10 plan was developed, it took longer than
11 anticipated to actually achieve certification, and
12 in hindsight we probably should have moved these
13 timeframes back from where it's identified here of
14 September 2010, meaning that certification did not
15 occur until July 2010, and we drafted the action
16 plan. It was completed in December 2009. And
17 probably we should have put a correction out and
18 moved those timeframes back.

19 Q All right.

20 A We did not. But to answer your question on the
21 report, we have, at this point, not provided any
22 reports to the MSC, and one of the reasons for
23 moving up the audit is an annual audit's going to
24 occur. We agreed to have this take place in May,
25 because we wanted and agreed with the MSC to get
26 underway with what the status of each one of these
27 conditions are.

28 My anticipation of that audit will be that
29 we'll find out that some are advanced and some are
30 behind.

31 Q In that regard, you may have answered most of the
32 questions in a general sense, I was wondering
33 whether it would be possible to get a copy of the
34 report that you indicate you'll have done in mid
35 April, which will give us an indication of where
36 DFO is with respect to all of these conditions?

37 A I'm just pausing to think about the process, too.
38 I mean, we're drafting up -- I don't see a
39 challenge in doing that. I'm just thinking that
40 we were drafting this in preparation for the May
41 10th audit. So I'm not seeing a problem with
42 that. It's a status report, but I'd like to
43 reserve.

44 MR. TAYLOR: I don't know anything about that, but I'll
45 put a caution on it that we'll have to check
46 whether giving out the report before MSC sees it
47 is a problem or not, and I'll advise counsel what

1 our position is. I think that's what Mr. Ryall
2 might be alluding to right now.

3 A That's right, that's all, I...

4 MR. TYZUK: Well, I think we could go with that. My
5 next question would be:

6 Q Notwithstanding the status report, would that
7 status report also indicate the work that has been
8 done or you're proposing to do over the course of
9 the next while in order to fulfil some of these
10 conditions?

11 A My intention would be to have both, meaning that,
12 here is what the status is of the deliverables and
13 also what we intend to do into the future, is what
14 my intent is with that. So when we go and have
15 the meeting with the MSC in the week of May the
16 9th, that we be prepared to address, okay, if
17 we're behind on this condition, what are we doing
18 to meet it?

19 You know, when we were -- so the overall
20 approach on MSC certification, is one has five
21 years to remove these conditions, and we agreed to
22 this timeline. We actually didn't need to put
23 this timeline in. It was our commitment because,
24 (a) I didn't want us to have these all delivered
25 at the end of five years. I wanted to have a work
26 plan that was deliverable and also -- and
27 considering, as I mentioned, what we'd be doing
28 with pink and chum salmon as well. And so we need
29 to stagger that workload out over those five years
30 so that we can deliver on those. So it's a
31 forecast into the future over five years, and
32 things do change.

33 As I mentioned, I think -- I know that some
34 are ahead of schedule, and I think some are behind
35 schedule. And so, you know, overall, to me it's a
36 guide, and our commitment is to meet these within
37 those five years.

38 Q Okay. And following up on the audit meeting,
39 would it be possible to get a report on the audit
40 meeting after it's done? Would you get something
41 formal coming from the MSC certifying body at that
42 time?

43 A Yes. They would give us a report. Now, I'm not,
44 you know, actually, I haven't looked into the next
45 step of this process. I would think that that
46 report is posted on their website as a public
47 document, but I'd have to check on that.

1 I mean, yes, they would give us a report.
2 Their whole process has been a pretty open and
3 public process, meaning that any documents that we
4 give them they post on their website, and same
5 with the reports that they generate.
6 Q That's something that we could expect, but in any
7 event, if there's some concern there, then I think
8 what we would be requesting is a copy of their
9 report. I've checked the website and they seem to
10 be pretty transparent --
11 A Yes.
12 Q -- in what they're doing. But if we could have
13 that commitment again, subject to what your
14 counsel may say, so that we will then have sort of
15 the up-to-date view of what MSC --
16 A Yes.
17 Q -- the view, overall, really is?
18 MR. TAYLOR: That's fine. We'll keep on top of that
19 and liaise with counsel on any confidentiality
20 issues that arise. I simply don't know what the
21 terms of contract are between MSC and anyone else.
22 A I should mention that the Federal Government's not
23 the client here, as well. We are supporting the
24 application, but we're not the so-called client;
25 that's actually the commercial industry through
26 the Seafood Alliance.
27 THE COMMISSIONER: I just wanted, just for my
28 understanding, what you mean by a "status report"?
29 I mean that in the sense that I've seen status
30 reports that have all different kinds of
31 frameworks, so if you could just tell me what you
32 mean by that?
33 A Well, I was thinking it's going to be a pretty
34 simple status report; here are the conditions,
35 here's who's been responsible, accountable, and
36 what the status is on the delivery, and if it's
37 complete, if the MSC accepted that and removed
38 that condition. So, to me, it would be that kind
39 of table. That would be what I meant by a status
40 report.
41 THE COMMISSIONER: Right. Do I understand, then, that
42 if something is not complete that you'd be
43 indicating what the next steps are going to be?
44 A Yes, I think that, to me, would make sense. You
45 know, if we've not completed it, what has changed,
46 or have we not been able to complete it because of
47 some resource issue. You know, I mean, things

Paul Ryall

Cross-exam by Mr. Tyzuk (BCPROV)

Cross-exam by Mr. Leadem (CONSERV)

1 have, for example, we weren't really anticipating
2 an inquiry of this nature, and some of the people
3 that would have been working on some of the items
4 on this table have been doing work on this, for
5 example, I being one of them. I was working on
6 this for the Department for seven months, full
7 time, and if I hadn't been doing that, I might
8 have been doing this.

9 So those sort of things come up and that's
10 what you really can't anticipate.

11 THE COMMISSIONER: Mr. Tyzuk.

12 MR. TYZUK: Given the state of play, those are my
13 questions, Mr. Commissioner.

14 THE COMMISSIONER: Thank you very much, sir.

15 MS. BAKER: Thank you. And Mr. Leadem is next.

16 MR. LEADEM: I'm coming over here so I can see you, Mr.
17 Ryall. I have a tendency to not see beyond our
18 Registrar here. For the record, Leadem, initial
19 T., appearing as counsel for the Conservation
20 Coalition, otherwise known as the Marine
21 Conservation Caucus, which you are probably a lot
22 more familiar with that terminology.

23

24 CROSS-EXAMINATION BY MR. LEADEM:

25

26 Q I was the other counsel that was going to ask you
27 questions about the MSC certification process, so
28 this is actually going very smoothly, Mr.
29 Commissioner. But I just wanted to make sure that
30 in that status report that Mr. Tyzuk, for the
31 Province, discussed with you, that there would
32 also be an opportunity to look at the deliverables
33 on the Wild Salmon Policy and the deliverables
34 with respect to First Nations, because I noticed
35 in Exhibit 159 that there were also deliverables
36 around those two issues, or those two major issues
37 as well.

38 A Deliverables around First Nations and...

39 Q And Wild Salmon Policy.

40 A Yes.

41 Q The implementation of the Wild Salmon Policy.

42 A Right, yes.

43 Q And just so that I have it clear, if, for example,
44 if we can have 159, Mr. Lunn, if I can ask you to
45 turn to page, for example, page 11, which under
46 the heading Observes legal and customary First
47 Nation rights, and there's a condition 29 that

1 applies specifically to Fraser. And then onto the
2 page 12 at the bottom of the page. After a
3 lengthy discussion about Canada's duty to consult
4 with Aboriginal groups, the very last paragraph
5 says:
6

7 In order to meet this condition DFO will
8 provide a report summarizing how the
9 management system addresses issues regarding
10 aboriginal and treaty rights related to the
11 sockeye salmon fisheries. This report will
12 be provided by December 2010.
13

14 So that status report that you've been discussing
15 with Mr. Tyzuk would also have that component in
16 it as well?

17 A Yes, it would.

18 Q Okay.

19 THE COMMISSIONER: What page is that, Mr. Leadem, I'm
20 sorry?

21 MR. LEADEM: Sorry, Mr. Commissioner?

22 THE COMMISSIONER: What page is on the screen right
23 now?

24 MR. LEADEM: What I just read to him is at page 12, at
25 the bottom of page 12 Mr. Commissioner, of 159,
26 following very lengthy -- well, a somewhat lengthy
27 discussion about "Observes legal and customary
28 First Nation rights".

29 THE COMMISSIONER: Thank you very much.

30 MR. LEADEM: And the preceding aspects that they did
31 not refer to also have a number of tables which I
32 call deliverables. And maybe I'll just take you
33 to one of those, Mr. Commissioner, so you can see
34 what I'm talking about.

35 If we can have, Mr. Lunn, page 5, the bottom
36 of page 5, and just highlight the paragraph above
37 the table as well as the table.

38 Q So we will see in your status report that will be
39 filed sometime in April or May of this year, how
40 these issues of identification of conservation
41 units, standardized assessment criteria, define
42 limit reference points for each target stock of
43 CU, how that is coming into play or how it's going
44 to come into being; is that correct?

45 A Yes, that is correct. You know, for example,
46 identifying conservation units, you'll see that
47 that paper was published in 2008 and is available.

1 Q Yes, we heard a lot about that.

2 A Right. And there's also another paper that was
3 done and scientifically reviewed this past year as
4 well that's not noted on this table that was also
5 looking at developing benchmarks for Fraser River
6 sockeye.

7 Q Right. That's the Sue Grant paper?

8 A Pardon me?

9 Q That's the Sue Grant Paper?

10 A That's correct. So that paper is not noted on
11 here, and actually I think the commitment to that
12 deliverable was something like 2013. So that's
13 what I was meaning earlier, that some of these
14 things are ahead of target and others are behind.
15 So yes, I mean, this would be updated as well.

16 Q And the reason, and this is more for the
17 edification of everyone rather than your specific
18 edification or question, is that I had asked
19 questions of some of the other people that
20 preceded you from DFO to the panel, most notably
21 the RDGs, and I wanted to get some timeframes for
22 when various components of the Wild Salmon Policy
23 were going to be implemented, and I wasn't able to
24 get a satisfactory response.

25 So that's why I think that I'm honing in on
26 your response to MSC, because it does provide a
27 convenient timetable linkage to the Wild Salmon
28 Policy and when we can expect things to start
29 rolling out. Do I have that right, or am I
30 completely off base there?

31 A I don't think you're off base. I think that when
32 we put these action plans together with these
33 timelines it was as -- also for us to think of --
34 and "us" I'm meaning the Department, to think
35 about work plans and how people's plans would be
36 tasked, you know, so it serves a couple of
37 purposes. And as mentioned in -- not mentioned,
38 but right on the front page, that talked about how
39 these deliverables are consistent with the
40 direction the Department is going, and I mentioned
41 that sockeye and pink and chum are not that -- and
42 pink and chum are not that far behind.

43 And so you have these, I would say over five
44 years, and I would expect that you will -- we will
45 see, and we've already seen in the draft pink MSC
46 report, that there are conditions attached and
47 they number about 40 as well.

- 1 Q All right.
- 2 A And I think that the chum one will be in the same
3 ballpark and they'll look very similar. It's not
4 a small body of work that we're committing to, and
5 one can't forecast, I would say, accurately, how
6 everything will unfold but, you know, to the best
7 of our ability and this is what we put forward.
- 8 Q No, I appreciate that. The universe will unfold
9 as it should --
- 10 A I hope so, yeah.
- 11 Q -- in terms of an evolutionary perspective. But
12 the DFO universe, hopefully, will walk in tandem
13 with how events will unfold.
- 14 A Yeah, I'm not going to comment on that, either.
- 15 Q Well, I'm almost tempted to sit down after that
16 admission, Mr. Commissioner, but I will press on.
17 I want to change topics with you, if I may,
18 and I'm going to cover this very cursorily with
19 you, because of time limitations. In your
20 evidence that you gave to your counsel, Mr.
21 Taylor, you mentioned about Mr. Wilson, who is one
22 of my clients, or represents one of my clients,
23 being critical of the FRSSI model.
- 24 And I just want to pull up just very quickly,
25 Exhibit 413, Mr. Lunn. This was a criticism that
26 Mr. Wilson made of the Fraser River Integrated
27 Sockeye Spawning Initiative. Are you familiar
28 with this paper?
- 29 A Yes. I forget what year this was, but it was a
30 couple years ago that Ken -- oh, there's a date up
31 here, 2009. My recollection is that Ken presented
32 this up in Prince George.
- 33 Q That's correct.
- 34 A And I was in attendance at that meeting and I had
35 a presentation as well. And we spent probably at
36 least a good part of the day talking escapement
37 targets and how one derives those and how one
38 could do this, and Ken made this presentation.
- 39 Q Right. I think, at the time, Mr. Wilson was
40 wearing a different hat; he wasn't wearing his MCC
41 hat, because by then I think the Marine
42 Conservation Caucus had withdrawn from the FRSSI
43 process and FRSSI workshop process, and I think he
44 was wearing the hat of the Upper Fraser First
45 Nations Coalition at that time.
- 46 A Mm-hmm. Yeah.
- 47 Q Was there ever a formal response that you are

1 aware of, to Exhibit 413, by the Department of
2 Fisheries and Oceans?

3 A I don't think in, you know, directly replying to
4 this, no. This was directed as a presentation to
5 the Upper Fraser Fisheries Conservation Alliance.
6 I guess, you know, a formal response probably was
7 the presentation I made the same day to that
8 group.

9 Q Right.

10 A But, I mean, I respect Ken's views that he's put
11 forward, and my question to Ken at that meeting
12 and other subsequent meetings is, "You've made
13 some concerns, brought the concerns to light,"
14 and one of his main ones around lack of
15 stationarity (sic) to, you know, I think that word
16 has been discussed here before --

17 Q That's right.

18 A -- about that issue. And one way of trying to
19 solve and look at the implications of that is you
20 could use the FRSSI model to take a look at that,
21 but, you know, forecasting the future and looking
22 at what the change in productivities are, and I
23 don't think is -- is a challenge. But one can use
24 the model and do that.

25 And the only question I've had in the past,
26 and like how -- what's the alternative? If you
27 don't like what's in front of you and they have a
28 viable alternative, then I am, by all means, very
29 interested in knowing it. And I don't mean just
30 from Ken, you know, as I said, I respect Ken's
31 views on this. He has a long history of providing
32 assessments of biological and science integration.
33 But I think the model, as well, has most recently
34 been reviewed in 2010 and results of that review
35 is that it does provide, the model does provide
36 useful information for management.

37 Q All right. I want to move on, in the interests of
38 brevity as well, and talk to you about some
39 general questions around decision-making, because
40 I really want to focus in upon decision-making and
41 how it's conducted by the Department of Fisheries
42 and Oceans.

43 And I want to approach it this way, by asking
44 you to put yourself in the shoes of my clients,
45 more or less. Letters are usually sent from some
46 of the participants to the IHPC. And we heard
47 this from Mr. Grout, there's usually meetings that

1 are held between various parts of the Integrated
2 Harvest Planning Committee and Mr. Grout, or
3 someone from DFO, and then one of the witnesses on
4 one of the panels described this as the letter-
5 writing campaign starts. And so letters are then
6 sent in to inform DFO with respect to the IFMP,
7 and somehow or other, at the end of the day, the
8 IFMP is then given and handed up to the Minister.

9 And the concern of my clients is basically
10 they participate in this process, they give what
11 you've described as valuable input, and other
12 people have described as valuable input, and yet
13 they can't see how that translates into the final
14 decision or the final draft of the IFMP.

15 And what comfort can you give them, other
16 than saying that you've taken their views into
17 consideration, what comfort can you give them
18 about the whole process, about the decision-making
19 process? With all due respect, Mr. Ryall, it does
20 not appear to me to be very transparent. We don't
21 understand how the actual decision is made at the
22 end of the day. Is that just the nature of the
23 beast, that we can't simply wrestle it down?

24 A No, I think there was an evaluation done of the
25 IHPC in 2007, and coming out of that evaluation
26 was the idea of - and maybe it was a bit later
27 that the idea came out - but it was to have a
28 meeting in March of the IHPC. Previously, the
29 cycle had been, a meeting in November of the full
30 committee to set the agenda for the coming year,
31 and then there would be a south coast and a north
32 coast separate meeting to do a post-season review,
33 and then there would be also, probably, at that
34 meeting, generally discussion about upcoming
35 events.

36 Q Yes.

37 A And then there was not a meeting of the IHPC until
38 May the -- until early in May, and in the interim
39 there was meetings with Marine Conservation
40 Caucus, First Nations, commercial, as well, but
41 they were separate, they were not integrated. And
42 so one of the recommendations was, well, you know,
43 when the draft IFMP comes out we think it would be
44 beneficial to have a meeting in March.

45 And so that's the process we've had for at
46 least the last three years. So that provides
47 another step in the process of the Integrated

1 Committee getting together and having a first look
2 at that draft as well. Could there be other
3 improvements made to the transparency of the
4 decision-making? I think that's something that
5 could be considered in how to improve upon that
6 transmission of that detail.

7 Q All right. I thank you for that. I want to move
8 on to talk about the FRP and the FRP Technical
9 Committee. And there was some discussion with Ms.
10 Baker and with your counsel about this process.
11 And particularly with respect to greater
12 involvement of First Nations interests. And I
13 want to remind you that we were in the back of the
14 room, at least my clients are in the back of the
15 room as well, raising their hands, and saying,
16 "We'd like to have more involvement in this
17 process as well." So my question to you, then,
18 would be: If you're going to actually take a look
19 at re-examination of the inclusivity of that
20 process, would you then also want to incorporate
21 more of an NGO presence?

22 A Within the Fraser River Panel process?

23 Q Yes.

24 A Right. I'm not sure what year that was, though,
25 but as you mentioned, there is a member that was
26 termed observer status, but a member of the
27 Canadian Caucus I think is a better way to
28 preserve that.

29 Q Yes.

30 A And it was talked about as having one member, at
31 that time it was going to be Mr. Wilson, and I
32 think some of the concerns that were put forward
33 is that Mr. Wilson not be able to attend all
34 meetings, and so some flexibility was also
35 provided where quite often Mr. Young is present as
36 well.

37 So the other part, to me, is taking a look.
38 Does one need to make some other changes? Maybe
39 so. We are, as I mentioned this morning, limited
40 by the current treaty that limits to 12 members of
41 each party.

42 Q Yes.

43 A Does that mean that the Canadian Caucus would have
44 to be that size? Maybe not. Maybe there's a way
45 of making some changes to the caucus. Which is a
46 model that the U.S. have actually applied within
47 their caucus, meaning that they would have a

1 larger U.S. caucus, but they still have 12 members
2 that represent that caucus.

3 Q All right. I'll take that answer, and those are
4 my questions, thank you.

5 MR. ROSENBLUM: I assume Ms. Baker wishes me to
6 proceed. My name is Don Rosenbloom, and Mr.
7 Ryall, I appear representing Area D Gillnet, Area
8 B Seiner. I am trying to pare my questions down
9 so that I'm very brief with you.

10

11 CROSS-EXAMINATION BY MR. ROSENBLUM:

12

13 Q Firstly, I want to focus for a moment on the
14 matter of the funding of the CSAB, and I
15 appreciate that all of us at this commission have
16 bigger fish to fry than the funding of the CSAB by
17 the Federal Government, but there are a few points
18 that you made that I'd be remiss if I didn't raise
19 them with you and ask for your response.

20 You recall in the exchange today you were
21 speaking about the justification the DFO had for
22 not funding the CSAB, and if my memory of your
23 testimony is correct, you spoke about the fact
24 that my clients were of the commercial nature and
25 therefore, presumably, could afford to participate
26 in their own right without the assistance of the
27 government. Excuse me one moment.

28 To that end, firstly, let's deal with basics.
29 You would agree with me, sir, that the IHPC did
30 unanimously make a recommendation that there be
31 funding from the Federal Government -- excuse me,
32 from DFO to the CSAB, correct?

33 A I would agree that that was a consensus of the
34 IHPC, yes.

35 Q Right. And you would agree with me further, as I
36 understand it from the record, that DFO does fund
37 the SFAB, in other words, the sports fishery
38 group, the equivalent body at that end?

39 A When you say "funding", you mean -- I mean, there
40 are limitations to all of these. I mean, the
41 funding is not open-ended and it's funding for
42 attendance at meetings, yes.

43 Q Yes. And for secretarial assistance for the
44 record, and things of that sort?

45 A That's correct. The Department does cover that.

46 Q All right. And thirdly, would you agree with me
47 that in terms of the CFAB that is funded to the

- 1 extent you've just testified to, that this is made
2 up of owners and operators or employees of for
3 profit recreational lodges or guides, and that by
4 their own economic analysis, these commercial
5 enterprises purport themselves to be highly
6 profitable; you'd agree with that, wouldn't you?
- 7 A Well, I can't speak to their profitability one way
8 or the other.
- 9 Q No, but I said, "they purport to be profitable".
- 10 A Well, the other part I would mention, too, is that
11 in the terms of reference, that they are not in
12 the majority on that SFAB Board. So if we go back
13 and look at the terms of reference, those groups
14 are in the minority.
- 15 Q You would agree they're a significant number on
16 that board?
- 17 A I would agree that there is a number that are on
18 that board, yes.
- 19 Q And appreciating that fact and appreciating that
20 for the past 12 years, other than last year, 2010,
21 that the commercial fishery obviously was a
22 economic basket case for obvious reasons we all
23 know about or we wouldn't be here today, how do
24 you rationalize, you as DFO, rationalize denying
25 funding to the beleaguered CFAB -- CSAB when, in
26 fact, you are funding the other group?
- 27 A Well, I wouldn't say that for the folks that are
28 just on the CSAB, are they all just salmon
29 fishermen? And what's the obligation of the
30 Federal Government to provide, you know,
31 attendance and funding at these meetings. You
32 know, as far as the recommendation and consensus
33 that came forward from the IHPC, we did carry that
34 forward. It really is a policy choice, and the
35 answer was that we would not be funding the CSAB.
- 36 Our view is that we provide funding for
37 certain organizations, yes, we do, as we've gone
38 through them here, today, and we also do provide
39 funding, at this point in time, to the Integrated
40 Harvest Planning Committee, that also includes
41 membership for the Commercial Salmon Advisory
42 Board to attend the integrated process.
- 43 Q I appreciate that, and I don't want to take up any
44 more time other than to invite you to agree
45 there's an inconsistency in funding the SFAB and
46 not funding the CSAB; do you agree with that?
- 47 A I would agree that they are not funded, yes.

1 Q No, it's not what I said. Do you agree there is
2 an inconsistency in funding one group and not the
3 other?

4 A Well, I don't view them as necessarily
5 inconsistent, and that's why I didn't specifically
6 say I agreed with you.

7 Q Okay. I want to come to the second and last area
8 of my examination of you. I want to discuss
9 harvest management and your area of interest, with
10 an overview, as I always describe it, 30,000 feet
11 up, and I want to invite you to agree with me that
12 for a robust and effective harvest management
13 model, it's predicated, in part, on two points.
14 In part on two points.

15 One, is that there is, within the model, an
16 integrated, comprehensive, socioeconomic analysis
17 component for analyzing trade-off considerations;
18 and secondly, in part, that it integrates a
19 comprehensive habitat analysis linked to taking
20 remedial habitat restoration steps where
21 necessary.

22 I want to ask the question again, now that
23 you appreciate the whole of the question. Do you
24 agree with me that to have an effective and robust
25 harvest management model applied that, in part,
26 two components are necessary, and let's talk about
27 each of them separately; firstly, that there is an
28 integrated, comprehensive, socioeconomic analysis
29 component so that you can analyze the trade-offs;
30 do you agree with that principle?

31 A I agree that having those components would be an
32 improvement and --

33 Q Let's talk about component one and then component
34 two so that we don't mix up the record.

35 A Sure.

36 Q So the socioeconomic side. You agree?

37 A I would agree that it would be an improvement to
38 the analysis. Does it need it all the time? I
39 don't think I would agree with that. But I would
40 agree that improvements could be made to the
41 social and economic analysis that we've done to
42 date, which is what I did say this morning.

43 Q Well, you took my question one step further by
44 saying "there could be improvement". I'm simply,
45 first, asking you, as first principle, do you
46 agree that that component should be clearly
47 integrated -- should be effectively integrated

1 into the model?

2 MR. TAYLOR: The witness said, "No."

3 MR. ROSENBLOOM: I didn't hear the witness say, "No,"
4 but obviously --

5 MR. TAYLOR: He said he didn't think it wasn't needed.

6 MR. ROSENBLOOM:

7 Q I'm sorry, is that what you said? I did miss
8 that. Did you?

9 A I said it would be an improvement if it was
10 included, and I think that does it necessarily
11 need to be there? Not necessarily.

12 Q All right. But you say - sorry - but you say it
13 would be an improvement if it was there. What
14 quite do you mean by that? Are you then saying
15 that there is a shortcoming in the modelling up to
16 this point in time in terms of integrating
17 socioeconomic analysis into the model?

18 A Well, I mean, going back to what I said this
19 morning, I said we did an analysis in 2006 that
20 had some shortcomings to it, which was identified
21 by Mr. Gislason in the report back to us. I said
22 that I think that it's a shortcoming and that we
23 can improve upon the analysis by having that
24 included. The only difference I'm making is that
25 you're saying it has to be there and I'm saying
26 it's an improvement.

27 Q It would be an improvement if it's there?

28 A Yes.

29 Q All right. And we talked about -- or you talked
30 about Mr. Gislason's recommendations, and there
31 was another document, an exhibit, put forward on
32 same score. Can you inform this commission what
33 you envisage would be an infect -- an effective
34 socioeconomic component -- economic analysis
35 component to the model? In other words, how do we
36 make this better than it is today? How do we
37 incorporate that component so that it is
38 effectively part of the consideration in making
39 harvest management decisions?

40 A Well, you know, when we started on this process in
41 developing the TAM Rules, and I think everyone is
42 familiar with that expression, that we developed
43 in FRSSI, I wanted to separate the social and
44 economic from the biological as -- in the
45 allocation part. First off, if we agree upon what
46 the TAM Rules are, the allocation becomes a
47 different discussion. So who actually harvested

1 the fish is a separate piece. Do you follow?

2 Q Yes.

3 A And so the focus, when we first started these was
4 to focus on setting up TAM rules around achieving,
5 which is the conservation objectives, the priority
6 that I think everyone agrees upon, and then the
7 discussion, then, would move onto the social and
8 economic. Now, that's why we undertook, in 2006,
9 that study that I talked about that had some
10 issues that was pointed out by the author.

11 How would I see, you know, in an ideal world,
12 the next step, to me, in the evolution, would be
13 to link that analysis within the model, itself,
14 that takes the output from -- if we agree upon the
15 TAM Rules and then move onto the actual how those
16 fish are harvested and the social and economic
17 impacts, that could be another module that could
18 be added to that model.

19 Q And that's doable, isn't it?

20 A Is it doable? I think the economic part is doable
21 to some extent. I'm not an economist. I mean, I
22 can already see challenges which have been
23 outlined in various economic reports on this in
24 the past about how you value the recreational
25 fish, how you value the commercial, and all those
26 sorts of things. I see, also, big challenges on
27 the value for - and when I say "value", there's
28 many different ways of valuing for First Nations,
29 for food, social and ceremonial - I see big
30 challenges there.

31 Q You'd agree with me, would you not, sir, that up
32 to this time little effort has been made by DFO to
33 integrate the socioeconomic analysis into the
34 modelling, would you agree?

35 A With the exception of what I've talked about here,
36 today, that's the work that we've done today.

37 Q Yes. And from my perspective, and maybe it is
38 only my perspective, and at the end of the day
39 it's the Commissioner's perspective that will
40 carry the day and no one else's, but from my
41 perspective listening in, month to month, at this
42 inquiry, I have not heard of DFO indeed applying
43 socioeconomic analysis to any of the harvest
44 management decisions that we have heard about in
45 contemporary times. Do you believe I'm off base
46 in my perspective?

47 A I do think you are somewhat off base, yes.

- 1 Q Okay.
- 2 A And I say that because of not just the work I've
3 referenced here. I've seen others that have
4 looked at other fisheries, crab fisheries, for
5 example, recently there was analysis done as well.
- 6 Q Well, I'd like to explore that a little bit and
7 during my precious half hour of time I'd like to
8 explore that, and I'm not being argumentative with
9 you.
- 10 A No.
- 11 Q But I want to hear out from you where you believe
12 that the Department has effectively applied a
13 socioeconomic analysis to their harvest management
14 decisions? We had Mr. Morley, having testified
15 earlier in this inquiry, in fact, last year, about
16 the lack of economists within DFO's ranks and the
17 lack of them considering socioeconomic analysis.
18 I'm interested in you providing the commission,
19 briefly, with examples of where the Department did
20 an analysis on the socioeconomic level before
21 making harvest management decisions.
- 22 A Well, I referenced one this morning around Cultus.
- 23 Q Yes, and I -- I recall that. Any others that come
24 to your mind?
- 25 A That I've been involved in? No.
- 26 Q Well, that you're aware of?
- 27 A Well, I mentioned, just now, the crab as well.
- 28 Q Yes. Anything else?
- 29 A So I think, I mean, the point you raise is, how
30 many are there; should there be more? I mean, the
31 DFO mandate is already quite broad. Should we be
32 undertaking social and economic analysis across
33 the board as part of our regular business of
34 operation is really not a question best directed
35 to me, I don't think.
- 36 Q All right. But from your perspective, you
37 obviously believe that it would be favourable to
38 do more socioeconomic analysis in the course of
39 applying the models for harvest management?
- 40 A I think that it would be an asset to undertake
41 that type of analysis to better appreciate the
42 implications.
- 43 Q Yes. And do you believe that DFO currently has
44 the capacity, financially, to carry out such
45 analysis, or is that one of the shortcomings to
46 the process?
- 47 A The current capacity to do that, once again, I

1 don't really think that's my area of expertise to
2 answer your question on that.

3 Q All right. So I come back to my 30,000-foot
4 question which, to put it back into context, I was
5 asking you, in the course of applying a robust and
6 effective harvest management model, what it was
7 predicated on, and I went to two components. One,
8 was integrating a comprehensive, socioeconomic
9 analysis to the -- to the decision-making, and the
10 second component was integrating a comprehensive
11 habitat analysis that would be linked to taking
12 remedial restoration steps where necessary. Would
13 you agree that also should be, in part,
14 incorporated into any harvest management model?

15 A You're going to have to explain. I mean, that's a
16 very broad, open question. What do you mean by
17 "an integrated habitat"?

18 Q What -- what -- I didn't mean "integrated". I
19 said, "integrating a comprehensive habitat
20 analysis component," and if you want me to clarify
21 that I'm very happy to. The issue, sir, is it
22 not, in part, when making harvest management
23 decisions, whether or not habitat is playing a
24 role in the -- in the -- of the state of the fish
25 abundance, and the question being, then, if
26 habitat is a factor that is causing a fish under
27 the Wild Salmon Policy to be within the red zone,
28 to take remedial steps to improve that habitat as
29 part of the response to the fact that it has gone
30 into the red zone?

31 A Well, yes, I would agree, I think, with what you
32 just said. I say, "I think." You know, you were
33 saying, "integrated into the harvest management
34 decisions," and so I was having a hard time seeing
35 how we'd exactly do that. I think, as well, some
36 of my comments this morning, like the mandate of
37 the department is, as I mentioned here, this
38 afternoon, is quite broad, and now, you know, the
39 mandate only does go so far as far as habitat.
40 Other jurisdictions do have a responsibility in
41 this area and they would have to be as part of
42 this equation as well into what I think you're
43 talking about as far as protecting habitat and
44 those choices of whether it's water removal or the
45 use of the land that's near those streams. Those
46 choices all have an impact on fish production.
47 And just to say that by the Department taking

- 1 those into account we would have, you know, the
2 sole ability to do that, I think would be
3 misleading the inquiry.
- 4 Q But would you not agree with me that the current
5 FRSSI model does not, when applied, does not
6 trigger off any motivation to deal with habitat
7 restoration? Rather, the FRSSI model, when
8 applied, simply leads to a closure of the
9 commercial fishery -- can lead to the closure of a
10 commercial fishery?
- 11 A Well, I mean, it was not developed as a habitat
12 tool, right? It was developed as a decision tool
13 to identify control over fisheries, right? And so
14 if I was to look at a habitat model, I would be
15 approaching this in a quite different manner than
16 what the intent of the FRSSI model undertook.
- 17 Q Well, let me --
- 18 A So I don't know, you know, I don't think just
19 saying, "Are we going to add another module to
20 habitat on the FRSSI?" I don't think, really,
21 that's the issue at hand, and I don't think that's
22 what you're asking me, either. I think you're
23 asking me, "How do you provide protection for
24 habitat and how do you ensure that there's habitat
25 there for fish production?"
- 26 Implicitly, the model takes production
27 changes into account if you lose habitat, whether
28 it be water or changes to that habitat, there will
29 be changes in the productivity of the fish, but is
30 that the best way to deal with habitat? And my
31 argument would be is it's not, and I would think
32 that that's why I raised that there are other
33 jurisdictions that have a responsibility here as
34 well than just to say that DFO will take those on
35 is not only within its mandate.
- 36 Q No, I appreciate that, and it's maybe
37 multijurisdictional and so one has to be creative
38 in how one puts together the plan, but my last
39 questions, because I am running out of town -- out
40 of time, excuse me. I am running out of town,
41 too, believe me, with this all --
- 42 A I might run out of town.
- 43 Q At least wait till you've finished answering my
44 questions, if you don't mind. The question is:
45 Can you propose how the *modus operandi* of the
46 harvest managers within DFO can be motivated when
47 responding to a stock that's imperilled, be

Paul Ryall

Cross-exam by Mr. Rosenbloom (GILLFSC)

Cross-exam by Mr. Eidsvik (SGAHC)

- 1 motivated to deal with the habitat side of the
2 problem, as opposed to simply responding by simple
3 reflex by closing the commercial harvest?
- 4 A Well, that's a very interesting question to ask,
5 you know, not just on Fraser sockeye, on salmon in
6 general. So, you know, one tool is the control
7 over fisheries that the Department has, and
8 licences and conditions of licence and opening and
9 closing, right? And that's what these TAM Rules
10 were pretty much set up to do as far as protecting
11 the amount of fish, identifying how many would
12 like to have for a conservation unit on the
13 spawning grounds, but the question you asked is a
14 lot broader, and so it's not just changing that
15 TAM Rule, that's a whole different issue, and
16 we're talking about modifications and improvements
17 to habitat. I think the other piece of the
18 equation, as well, to me, is where does
19 enhancement fit in as a tool as well?
- 20 Q Yes. And you would agree with me that the current
21 modelling does not tie down or force DFO to be
22 motivated to take those remedial steps where
23 necessary?
- 24 A No, I don't agree with that.
- 25 Q You don't?
- 26 A No.
- 27 MR. ROSENBLOOM: I have no further questions, thank
28 you.
- 29 MS. BAKER: Thank you, Mr. Commissioner. It's five to
30 5:00 (sic). Our next questioner is Mr. Eidsvik.
31 We could have him stop and start.
- 32 MR. EIDSVIK: Good afternoon, Commissioner, good
33 afternoon, Mr. Ryall. Philip Eidsvik for the Area
34 E and the Coalition.
- 35
- 36 CROSS-EXAMINATION BY MR. EIDSVIK:
- 37
- 38 Q And what I wanted to start off with, Mr. Ryall, is
39 a question that I've been asking everybody. The
40 build-up of the fishery, the Fraser River sockeye
41 fishery, from the early 1960s to the early 1990s,
42 late '80s; pretty remarkable achievement?
- 43 A And that's the question, is it a remarkable
44 achievement?
- 45 Q Yes.
- 46 A I think it was a remarkable achievement and
47 probably many causes to that, not all just

- 1 management, but also actual productivity as well
2 that changed --
- 3 Q We're going to get into --
- 4 A -- over that period of time.
- 5 Q We're going to get into those other factors, and
6 I'm always conscious of my time limit here, so
7 sorry to cut you off there.
- 8 So then we come along, 1992, when we see this
9 drop in productivity start. We have the Pearse-
10 McRae report into the missing fish in 1992; do you
11 remember that?
- 12 A I do.
- 13 Q 1993, we put a fair amount of fish in the river to
14 ensure -- so coastal seine fishery courses is
15 affected; do you remember that?
- 16 A Do I remember...?
- 17 Q The impact on the coastal seine fishery in '93, a
18 lot of fish in the river, less fishing outside?
19 That shift, do you remember that?
- 20 A Not the way you're casting it, no.
- 21 Q That's okay. And then along came 1994, more
22 missing fish, a problem in the coastal fishery
23 where too many fish on the Adams run were taken,
24 initially, a report that concluded DFO was in a
25 state of denial; do you remember that?
- 26 A State of denial about...?
- 27 Q The existence of a problem, I think the word --
28 and let alone something to do about it. There's
29 the 1994 report by John Fraser.
- 30 A Well, there was many things in John Fraser's
31 report, and he made recommendations to changes,
32 and many of those were adopted, and you'll find
33 the answers to that in the response.
- 34 Q I guess what I'm getting at, you do remember the
35 report and the controversy. And then, in 1995, do
36 you remember gillnet fishermen from the Fraser
37 River taking over, ripping the doors off the
38 Department of Fisheries and occupying the building
39 for a day so they could get the fishery in the
40 river closed down; do you remember that? Were you
41 around then?
- 42 A I don't remember that exact instance, no.
- 43 Q And then, in 1996, the coastal fisheries slowed
44 down again because of the impacts in 1992; do you
45 remember that?
- 46 A I'm not sure where you're going or what you're
47 asking me about remembering, and so like for me to

1 keep saying, "Yes," or, "No," I don't know what
2 you're asking me, I guess, and so it would be
3 helpful, like over the years, when you started in
4 1960 and talked about the increase in the runs,
5 and what I did say is to me it's not all just
6 about management and it's about what actually
7 happened and if we looked at what happened as far
8 as productivity of fish and how that's changed
9 over time as well --
10 Q Maybe we can --
11 A -- and so we can look at --
12 Q Sorry, to cut you off again, Mr. Ryall.
13 A But do you want me to answer?
14 Q Productivity's fine, but I just want to quickly go
15 through and then ask a couple of questions in
16 conclusion. I see Ms. Baker getting up.
17 MS. BAKER: Maybe you can let the witness answer, even
18 if it means you have to wait to ask your next
19 question.
20 MR. EIDSVIK:
21 Q Do you have more comments on productivity, Mr.
22 Ryall?
23 A Well, I think it's informative to look at a host
24 of things, and there's been reports done recently
25 that take a look at changes in productivity over
26 time that I think are informative, and those
27 changes are not to do with anything to do with
28 changes by management or the application of that
29 management, and so the reason I hesitate to answer
30 your questions about do I agree or disagree is
31 that I don't have enough information one way or
32 the other to agree or disagree.
33 Q So then we come along to 1997, a pretty successful
34 fishery, by all measures, and you were involved in
35 fisheries management at this time, you were a
36 biologist?
37 A In which years?
38 Q In '97.
39 A Yes.
40 Q And 1998, small commercial harvest on a 10 million
41 run, too specific for you?
42 A I mean, there's so many details in your question
43 about depending on which year, and I suppose all
44 your questions are referring to Fraser sockeye
45 return. Some of them are quite large and some are
46 quite small, and the amount of harvest does go up
47 and down, and as it has in going all the way

- 1 through the whole history of Fraser sockeye.
- 2 Q Now we go to 1999 and the Fraser River fishery is
3 closed; do you remember that? The public
4 commercial fishery virtually closed in 1999, first
5 time in 30, 40, 50 years; do you remember that?
- 6 A Well, we'd have to look at what the reasons were
7 for that.
- 8 Q I'm not asking about reasons, I'm just asking
9 whether it was closed or not. Do you remember
10 that?
- 11 A Which fisheries are you referring to?
- 12 Q 1999 public commercial salmon fishery on the
13 coast.
- 14 A Which fisheries are you --
- 15 Q Fraser River sockeye.
- 16 A All fisheries?
- 17 Q All my questions are about Fraser River sockeye.
18 Yes.
- 19 A I don't think all fisheries were closed in 1999.
- 20 Q 2000, you were getting more involved in management
21 then. Again, a fairly decent run size small
22 commercial fishery that year, about 18 percent of
23 the total run, the public commercial fishery;
24 don't remember that?
- 25 A Which fisheries are you referring to?
- 26 Q I'm referring, all through these series of
27 questions, I'm referring to the public commercial
28 fishery on the coast, what we call the Canadian
29 commercial fishery.
- 30 A You're referring to recreational and commercial,
31 is that the --
- 32 Q No; commercial
- 33 A Commercial, okay.
- 34 Q So then we go to 2001, and I think you were quite
35 involved then, and we had quite a large one, and
36 that's at tab -- if Mr. Lunn can pull up Tab 7 of
37 my book.
- 38 MR. LUNN: Thank you.
- 39 MR. EIDSVIK: And if we could go to page 24. Yeah, 24
40 of the actual document.
- 41 Q So we can see, at the bottom of this table, and
42 you're familiar with this document, the Fraser
43 River Panel Report?
- 44 A Yes, I am.
- 45 Q Okay. So if you look at the bottom, we see a run
46 of 7.2 million, and at the top we can see Canadian
47 -- what they label as Canadian commercial catch of

- 1 247,000 (sic). So pretty small Canadian
2 commercial harvest on a run that small; is that
3 correct?
- 4 A 297,000 that was harvested that year, yes.
- 5 Q On a run of 7.2 million traditionally, quite a
6 small harvest, if you were to look at it
7 historically?
- 8 A I think we need to look at the total harvest and
9 see what that amounts to, as well, overall, and
10 what the reasons are for what happened in two
11 thousand --
- 12 Q Again, I'm not asking for reasons, I'm just
13 asking, is that a big number or a small number?
14 Is that a big harvest or a small harvest compared
15 to pre-1990?
- 16 A Pre-1990?
- 17 Q Yeah.
- 18 A What's the relevance of pre-1990? I mean, there's
19 a whole bunch of reasons --
- 20 Q I think the relevance is for me to determine. If
21 you could just answer the question, I'd be happy.
- 22 A Okay, but the reason I'm asking that is what were
23 the escapement targets; what were the fisheries;
24 what were the conservation efforts, which would
25 all then lead into what -- the fisheries that
26 transpired in 2001.
- 27 Q I understand your point on that, and there may be
28 very good reasons that only -- the commercial
29 fleet only harvested 297,000. I'm just asking:
30 Is that a large number compared to historical
31 harvest, or a small percentage compared to
32 historical harvest?
- 33 A Overall, I think it's best to look at these things
34 across the board and not just pick off one year
35 and ask me if it's a small number or a large
36 number, and so is 300,000 a large number or not?
37 I would say that it's not a particularly large
38 number of harvest.
- 39 Q So in 2001, the Parliamentary Standing Committee
40 did an investigation into the 2001 fishery? I
41 think you actually appeared before it.
- 42 A May have, yes.
- 43 MR. EIDSVIK: Perhaps we can have Exhibit 70 up, Mr.
44 Lunn, and we're going to go to page 21, please.
- 45 Q Maybe this one should be easy for you, Mr. Ryall.
46 Here we have a total run of 15.1 million, and we
47 have a Canadian commercial harvest of 1.3 million.

1 Is that a large commercial harvest on a run that
2 size compared to historical times?

3 A Historical being pre-1990?

4 Q Pre-1990.

5 A I'm having a hard time answering your questions
6 because one has to look at a whole suite of things
7 here and not just whether these numbers are large
8 or small. One, to me, needs to look at whether --
9 what's the reason for what the harvest amounts are
10 and not just to say, well, is the amount of
11 harvest by First Nation catch, for example, of
12 13,000, is that a small number or a large number?
13 Like there needs to be some linkage back to what
14 the objectives are and not just pull a number out
15 of a table and say, "Is that a large one or a
16 small one?"

17 I could look at this table here and the
18 United States commercial catch and there's an
19 Alaska net catch of 1,000. Is that a large number
20 or a small number? It looks like a pretty small
21 number to me.

22 So the reason for that would be is that there
23 are not targeted fisheries up there and that would
24 be an incidental bycatch and there was very little
25 migration of fish through that area in that year.
26 So each one of these numbers I could go through
27 and look into the details of it and what the
28 reason was. We have a total return of 15 million,
29 we have a spawning escapement number of 10
30 million. There was a reason for that, I mean,
31 that spawning escapement of 10 million, and there
32 was a lot of disagreement around that which then
33 resulted in why there was so little harvest, and
34 it had to do with a conservation concern around
35 Late Runs, is my memory of this, and en route
36 mortality that resulted in fisheries stopping and
37 there was lots of fish that were put on spawning
38 grounds that not everyone agreed with.

39 Q So 1990, or sorry, in 2002, there was the Chamut
40 -- Mr. Chamut did a review, an external review,
41 into the management of the fishery that year?

42 A Yes.

43 Q So Pearse, Fraser, Chamut, couple standing
44 committee reports, and then in 2004 - at Tab 9,
45 Mr. Lunn - and I'm just going to ask you to
46 identify that this is a Fraser River Panel Report?

47 A Yes, it is.

- 1 Q Okay. And in 2004, we had the Williams
2 investigation into the fish that went missing and
3 the very low escapement that got on the spawning
4 grounds; do you remember that?
- 5 A There was a review by Mr. Williams of the 2004
6 season, that is correct.
- 7 Q And another Parliamentary Standing Committee
8 investigation?
- 9 A There was, and so it looked at a whole range of
10 things, and once again, it looked at what the
11 actual conditions were and what the choices that
12 were made at that time for fisheries. One of the
13 concerns in 2004, as well, is about environmental
14 conditions, and in recent years those have been a
15 concern for Fraser sockeye as well.
- 16 Q I think we'll get to that in just a second. So
17 along comes 2006, we had a fishery for the public
18 commercial fleet. In 2007, the fishery was
19 closed?
- 20 A Yes.
- 21 Q 2008, the fishery was closed?
- 22 A Yes.
- 23 Q 2009, the fishery was closed?
- 24 A 2009, the fishery was closed, yes. It had one of
25 the lowest returns, if maybe not the lowest
26 return, in 2009, of about 1.3 million, so --
- 27 Q I guess this brings me to where I was heading, and
28 I'm sorry for the long introduction to a couple of
29 questions at the end. Fairly good success. What
30 do you think -- I mean, has DFO figured out what
31 they're doing wrong in the past 20 years? I mean,
32 most managers haven't had the chance to answer
33 this question in here, so far. I want to put it
34 to you straight. What's happened since 1992 that
35 has led to at least five investigations, fisheries
36 closed like they've never been before; what's the
37 main things that have happened in terms of
38 management?
- 39 A Well, I think a number of things have changed, and
40 as we've gone through the years here and you've
41 asked me questions, environmental conditions have
42 changed within the Fraser River, I think from --
43 if you wanted to pick '92 as the year, for
44 whatever reason. As well as we've seen changes
45 not just within the Fraser but also in the marine
46 environment as well. I think those things are
47 real. I think 2009, for example, we had a return

1 of, I think it was, about 1.3 million, probably
2 the lowest return in a long time, if not
3 historical. No fisheries occurred. Why is that?

4 On the flip side of that, 2010 we had a very
5 large return, lots of fish returning. Why is
6 that, again?

7 Q I guess that's why I'm asking you. Has the
8 Department figured this out? I mean, the
9 inquiry's here, commercial fishermen have come in
10 and said what the reasons are, we've heard some
11 scientists say. You, as a senior DFO manager,
12 what are the top three reasons for the chaos in
13 the fishery in the last 20 years?

14 A I think that a number of reasons have been put
15 forward, and one of the ones I've already
16 mentioned, I do think, is that there have been
17 climatic changes that have influenced the amount
18 of fish that are produced and also had an impact
19 on those fish that returned, I think, that en
20 route mortality has occurred in a number of years
21 as far as fish that swim up the Fraser River, and
22 have caused challenges in the actual estimation of
23 the total returns, as well, not just because those
24 fish had died. It's a challenge to estimate how
25 many died between counting those fish at Mission
26 and how many end up on the spawning grounds.

27 I do think that, as well, we've seen quite
28 large swings in marine survival and they're being
29 quite variable. Is that the whole answer?
30 Probably not.

31 Q Okay, those are helpful. I have about six minutes
32 left, I gather. I'm getting the look from Wendy,
33 here. Perhaps we could go to Tab 2, Mr. Lunn, and
34 we're going to go to page 15 in that document, and
35 it's the top paragraph on the page.

36 And we've talked a lot about various DFO
37 management issues and structure decision-making
38 and independent reviews, and I always thought this
39 was an interesting example of how management
40 decisions made that can have a big impact on
41 commercial fishermen.

42 And starting about the third sentence down,
43 we talk about the Late Run, and then they conclude
44 that the Area E fleet lost a five million dollar
45 fishery to put an extra 300 fish in the spawning
46 grounds, when total spawning was 105,000 fish
47 already. So we went from 104,700 to 105,000.

- 1 Now, in your view, is that good management of
2 the fishery?
- 3 A Well, I have to read this over before I'd answer
4 that question. So what actually transpired here,
5 would you like me to take a minute to read it,
6 or...?
- 7 Q No, I think we'll move on, because we have so much
8 time (sic). I just wanted to put that question,
9 if you're a fishery manager and a fishery over
10 here would deliver five million bucks and you were
11 going to put 300 more up the grounds, when you had
12 104,700, would that be a good decision or not. So
13 we'll just move on.
- 14 A But I don't think that's really the question. The
15 question, here, is, Late Run fish are experiencing
16 a high en route mortality and we are trying to
17 meet conservation objectives, and so, to me, it's
18 not a matter of the way you've cast this question
19 of whether it's a choice of five million dollars
20 or to save 300 fish, and so I don't think that's
21 the appropriate question. And so I haven't read
22 this whole thing, but just scanning it that's what
23 I come up with, my conclusions of looking at the
24 question you posed as not accurate.
- 25 Q So the Parliamentary Standing Committee considered
26 it an unjustifiable decision and you say you need
27 more time to decide whether they're right or not?
- 28 A No, I'm not saying that. I just said the way you
29 posed the question to me was not an accurate
30 reflection of what the issue was.
- 31 Q Okay.
- 32 A You asked if we were going to save 300 fish was
33 worth five million dollars; is that right?
- 34 Q No, I'm saying save 300 fish when your escapement
35 was already 104,700. To save the additional 300
36 fish was it worth five million dollars?
- 37 A And once again, I'd say what the question is, is
38 around what we're trying to achieve on
39 conservation, and in our view, at that time, it
40 was justifiable.
- 41 Q Okay. Could I go to Tab 3, Mr. Lunn?
- 42 A Now, I haven't read this in detail, so that's what
43 I'm saying here based upon looking at this here
44 for a couple of minutes.
- 45 Q And I'm going to go quickly to page 32. And this
46 is another Parliamentary Standing Committee
47 Report. I hope I'm at Tab 3, and we're going to

1 page 32. And you can see at the very last
2 sentence on that page, it says:

3
4 The issue of net entanglement and its
5 impact --

6
7 - and it continues down to the next page -

8
9 -- was raised by Mr. Bob Gould who performed
10 independent research in this field for
11 several years. Mr. Gould's research shows
12 that because of a "drop-out" phenomenon, a
13 set net left unattended in the water for 24
14 hours will land only one sixth of what would
15 have been landed if the net had checked every
16 two hours.

17
18 So this issue of a drop-out rate and set gillnets
19 in the canyon, did you hear about that before the
20 Standing Committee raised it? Were you familiar
21 with the issue around that?

22 A Well, I am aware of the issue that you've raised
23 here, yes.

24 Q And can you tell me if anything's been done?

25 A As far as...?

26 Q Well, let's say the harvest in the canyon is
27 250,000 fish in one year, and Mr. Gould is right,
28 we're talking about, you know, maybe a million and
29 a quarter fish going missing. So it seems like an
30 important issue. Can you tell me, has there been
31 studies to determine what the drop-out rate is?

32 A No.

33 Q And what they can do to effect it?

34 A I'm not aware of whether studies have been done.

35 MR. EIDSVIK: Thank you.

36 THE COMMISSIONER: Are these documents, Mr. Eidsvik,
37 that you've just been referring to, are they now
38 exhibits, or do you wish them marked as exhibits?

39 MR. EIDSVIK: I'm sorry, Mr. Commissioner. I've been
40 meaning to enter them as exhibits as I've been
41 going along.

42 THE COMMISSIONER: If we could perhaps do that, then?

43 MS. BAKER: Yes. I wonder if, when that's done, if you
44 could refer to tab and then the title and then
45 give it an exhibit number, because you often
46 referred to them just as tabs without identifying
47 the document.

1 MR. EIDSVIK: Okay. When I refer to a tab it's not an
2 exhibit yet. I'm sorry.
3 THE COMMISSIONER: So Tab 2 is where you started?
4 MS. BAKER: Just for the record, I think if we could
5 identify the tabs he went to, and you could say,
6 "Tab," whatever the title is, and give it the
7 exhibit number, because the record will refer to a
8 tab, so we need to make it clear.
9 MR. EIDSVIK: So a tab I want to go to, the next one is
10 Tab Number 10.
11 THE COMMISSIONER: Before you go there --
12 MR. LUNN: Can we mark them before we go there?
13 MR. EIDSVIK: I'm sorry.
14 MR. LUNN: Thank you.
15 MR. EIDSVIK: Let's mark the exhibits.
16 THE COMMISSIONER: We want to go back, first.
17 MS. BAKER: I can help. We started at Tab 7, which was
18 a PSC Report dated 2005.
19 THE REGISTRAR: 602.
20
21 EXHIBIT 602: Report of the Fraser River
22 Panel to the Pacific Salmon Commission on the
23 2001 Fraser River Sockeye and Pink Salmon
24 Fishing Season, prepared by the Pacific
25 Salmon Commission, March 2005
26
27 THE REGISTRAR: The next one we're going to?
28 MS. BAKER: Tab 8 it was referred to.
29 MR. LUNN: That was 2001.
30 MS. BAKER: Excuse me, 2001 was Tab 7. Tab 8 was 2002,
31 PSC Report.
32 THE REGISTRAR: Tab 9 --
33 MR. TAYLOR: I'm already confused. There's more than
34 one person speaking at once and I can't figure out
35 what's an exhibit.
36 THE COMMISSIONER: Yes.
37 MR. EIDSVIK: Tab 9 is the 2004 Report of the Fraser
38 River Panel to the Pacific Salmon Commission.
39 THE REGISTRAR: Tab 9 will be 603.
40
41 EXHIBIT 603: Report of the Fraser River
42 Panel to the Pacific Salmon Commission on the
43 2004 Fraser River Sockeye Salmon Fishing
44 Season, prepared by the Pacific Salmon
45 Commission, May 2008
46
47 MR. EIDSVIK: Tab 2 is the 2001 Fraser River Salmon

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1 Fishery Report of the Standing Committee on
2 Fisheries and Oceans.
3 THE REGISTRAR: Tab 2 will be 604.

4
5 EXHIBIT 604: 2001 Fraser River Salmon
6 Fishery Report of the Standing Committee on
7 Fisheries and Oceans, Tom Wappel, M.P.,
8 Chair, June 2003
9

10 MR. EIDSVIK: Tab 3 is, "Here We Go Again...Or The 2004
11 Fraser River Salmon Fishery".

12 THE REGISTRAR: 605.

13
14 EXHIBIT 605: Here We Go Again...Or The 2004
15 Fraser River Salmon Fishery Report of the
16 Standing Committee on Fisheries and Oceans,
17 Tom Wappel, M.P., Chairman, March 2005
18

19 THE REGISTRAR: And the one you want to go to, now, is
20 Tab 2?

21 MR. EIDSVIK: Sorry, Tab 4 I just want to mark for
22 identification.

23 THE REGISTRAR: Tab 4.

24 MR. EIDSVIK: It's the 2004 Salmon Fishery Post-Season
25 Review.

26 THE REGISTRAR: For identification, you said?

27 MR. EIDSVIK: No, as an exhibit.

28 THE REGISTRAR: As an exhibit, okay.

29 MR. EIDSVIK: I'm just asking Mr. Ryall to recognize it
30 and identify it.

31 THE REGISTRAR: 606.

32
33 EXHIBIT 606: 2004 Southern Salmon Fishery
34 Post-Season Review, Part One, Fraser River
35 Sockeye Report, March 2005
36

37 MR. EIDSVIK: And Tab 10 we haven't looked at, yet, if
38 you could pull that up, Mr. -- and this is the
39 Area E Gillnetters Association Fisheries
40 Management Plan, Area E Commercial Salmon Fishery
41 2002.

42 THE REGISTRAR: That's Tab 10 and will be 607.

43
44 EXHIBIT 607: Area E Gillnetters Association
45 Fisheries Management Plan, Area E Commercial
46 Salmon Fishery 2002
47

March 16, 2011

Paul Ryall

Cross-exam by Mr. Eidsvik (SGAHC)

Cross-exam by Mr. Harvey (TWCTUFA)

1 MR. EIDSVIK:

2 Q Mr. Ryall, are you familiar with this document?

3 A With this document?

4 Q The Area E Plan?

5 A I am familiar with it.

6 Q Okay. I'm not going to ask questions on it,
7 because we're almost out of time. And I wanted to
8 add one last document, Tab 5. It's the
9 International Pacific Salmon Fisheries Commission
10 Annual Report 1961.

11 THE REGISTRAR: Tab 5 will be marked as Exhibit 608.

12

13 EXHIBIT 608: International Pacific Salmon
14 Fisheries Commission Annual Report 1961

15

16 MR. EIDSVIK: And I'd love to ask more questions, but
17 I'm out of time. Thank you, Mr. Ryall, for your
18 assistance, today. Thank you, Mr. Commissioner.

19 MS. BAKER: Thank you. Mr Commissioner, I don't know
20 if you did want to have a break this afternoon,
21 but we have 15 minutes with Mr. Harvey, 10 minutes
22 with Mr. Lowes, and then I think there will be a
23 little bit of time for Ms. Gaertner as well, so
24 even if we do take a break --

25 THE COMMISSIONER: Let's take a 10-minute break.

26 THE REGISTRAR: The hearing will now recess for 10
27 minutes.

28

29 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)

30 (PROCEEDINGS RECONVENED)

31

32 THE REGISTRAR: Hearing is now resumed.

33 MR. HARVEY: Mr. Ryall, it's Chris Harvey. I'm over
34 here in the far right field, representing the Area
35 G - I don't often make that admission - Area G
36 Trollers and the United Fishermen and Allied
37 Workers' Union.

38

39 CROSS-EXAMINATION BY MR. HARVEY:

40

41 Q I want to focus on the changes that occurred in
42 the Salmon Commission period up to '85 and the DFO
43 period from the early '90s on to date. Basically,
44 the Salmon Commission style was to -- was based on
45 the -- I think it's called the harvest rate
46 approach. They would allow some cropping of the
47 runs, whether they're large or small, cropping, I

1 mean some harvesting of the runs, whether large or
2 small, thereby preserving the commercial fishing
3 industry; does that kind of summarize their
4 approach?
5 A Well, I think their approach was they had fixed
6 escapement goals.
7 Q They had worked out optimum escapements, but they
8 -- even on the low runs they allowed some fishing.
9 A Yes, they did.
10 Q Yeah. All right. And -- and in spite of that,
11 the runs rebuilt, as we know over that period.
12 Now --
13 A Well, I don't know if it was in spite of it.
14 Q All right. Well, there it is. The record will --
15 the record is the record. The -- now, I want to
16 turn to the DFO period. The -- and to look at PPR
17 number 5, Mr. Lunn could bring it up, page 30. I
18 think summarizes things, paragraph 66, the overall
19 average Fraser sockeye harvest rate in the '80s
20 was 78 percent and then the next page, paragraph
21 67:
22
23 In '87 DFO initiated a management and
24 enhancement plan to increase sockeye salmon
25 production in the Fraser River through
26 incremental increases in escapement.
27
28 So it's in this period that DFO takes over and the
29 escapement is increased deliberately, correct?
30 A Well, under the rebuilding strategy there -- it
31 was that there would be increases in escapement
32 and over the brood year levels.
33 Q Yes. And it didn't work, did it?
34 A Didn't work, meaning didn't rebuild?
35 Q Yes.
36 A Well --
37 Q The stocks did not respond as predicted.
38 A They did not ultimately respond as predicted, but
39 if you look at the first number of years, there
40 was increases in stocks up until the mid-'90s.
41 Q All right. Now, the FRSSI model, FRSSI model, I'd
42 like to ask you how that works and there's a graph
43 at page 44 of this document, which gives an
44 illustration in Figure 2 and the -- you've
45 described how there's a no fishing segment of the
46 run and that's the portion on the left and then
47 there's a fixed escapement range after that when

- 1 some harvesting is allowed. The fixed escapement
2 is in this graph, the fixed escapement -- well,
3 first of all, this graph doesn't show what the
4 fixed escapement is in the -- that applies when
5 this sample run is between 0.25 million and one
6 million run size; is that interpreted right?
- 7 A Yes, that's interpreted --
- 8 Q Okay.
- 9 A -- correctly. This graph is showing what the
10 total allowable mortality rate would be with a
11 maximum of 60 percent.
- 12 Q Yes. And on this example, is the fixed escapement
13 then 0.25 million? It seems to be, 'cause that's
14 when -- or harvesting starts.
- 15 A Well, the other piece of this equation is is the
16 total allowable mortality and what is also taken
17 off this is what we expect could be as a result of
18 a loss of fish en route and --
- 19 Q Oh, yes.
- 20 A -- that would also reduce what the total allowable
21 mortality is and then the harvest rate would be
22 what would be for harvest by fisheries.
- 23 Q Yes. All right. Yes, of course. Because total
24 allowable mortality includes en route mortality
25 and fishing mortality?
- 26 A That's correct. I should actually call it -- use
27 it as it's notated in paragraph 106 as the
28 management adjustment.
- 29 Q Yes, all right. But --
- 30 A And I think there's actually a calculation that
31 walks us through in that paragraph.
- 32 Q All right. What I'm trying to determine because
33 it's not shown in the graph, is what the fixed
34 escapement in this particular example is?
- 35 A Well, that would partially depend on what the
36 management adjustment is. I mean, we -- there
37 are, if -- each year we put out a memo that has
38 the graph that does show what the fixed escapement
39 is as it applies to this total allowable mortality
40 type curve.
- 41 Q Is the fixed escapement number, is that synonymous
42 with optimum escapement?
- 43 A Here, no. It's not.
- 44 Q Is --
- 45 A I would say it's not in these types of graphs, no.
- 46 Q What's the difference between fixed escapement and
47 optimum escapement?

1 A Well, you know, depends on what your objective
2 one's trying to achieve and if you're trying to
3 achieve, you know, the maximum harvest, you might
4 run these type of stock recruit models and you
5 could estimate what would -- what level of
6 spawning escapement could maximize the harvest
7 levels.

8 Q All right. Now, Mr. Ryall, it's been arranged
9 that I've got a very short time for my oral
10 questions. I'm going to be submitting some other
11 questions to you in writing. But if I were to ask
12 you for the -- to produce for the benefit of this
13 commission the fixed escapement numbers for the
14 Shuswap, Quesnel and Chilko runs, would you be
15 able to do that?

16 A For the Shuswap, Chilko and Quesnel, well, the way
17 that these are constructed, they're -- incorporate
18 the management groups and there's not a fixed
19 escapement number for Chilko and Quesnel that
20 would come out of these graphs. They make up the
21 total. There would be components of the total.

22 Q What I'm trying to determine is what inputs go
23 into the model because, of course, the inputs are
24 very important. If you've got a run size, let's
25 say, of -- predicted of two million, just to take
26 the run size that's used in this graph, you would
27 put into the model a fixed escapement input,
28 correct? Into the --

29 A I'm not sure I'm totally following you, but this
30 schematic here was put together to -- as a working
31 example and there has been typically for these
32 types of graphs generated for each one of the
33 management groups and within each one of those
34 management groups, there's going to be various
35 components of the number of -- let's take Early
36 Summers. There's going to be quite a large number
37 of individual conservation units that would be co-
38 migrating or harvested or -- based upon that TAM
39 rule. Similarly with Summers and the Late Runs.

40 Q But this model as you've described it, if I -- as
41 I understand it, and correct me if I'm wrong, is
42 something that is used to determine these
43 benchmarks when the benchmarks which are shown in
44 the vertical dotted lines in this graph.

45 A I hate to put out more terminology, but the points
46 here of no fishing points, I would call them
47 reference points and the benchmarks that we've

- 1 been calling interim benchmarks, they're really --
2 what's the best way to put this? What we would
3 like to see and not go below as far as fish on the
4 grounds, it's more around a status indication.
5 And the difference of a no fishing point to me is
6 a reference point meaning that we'll actually do
7 some action, whereas a benchmark doesn't
8 necessarily apply a management action, but a
9 reference point does.
- 10 Q All right. Well --
- 11 A And so in this case, the no fishing point, while
12 that's a management action, there's no fishing
13 that's going to occur below that. And I would
14 call the other reference point where we called the
15 cutback point to me is another management
16 reference point, meaning that we'll move from
17 sixty percent and decrease the total allowable
18 mortality as the run size decreases.
- 19 Q All right. Well, let's call them reference points
20 then. But this whole FRSSI model is a computer
21 model that is meant to assist managers to
22 determine these reference points, is it not?
- 23 A Yes, it is.
- 24 Q All right. And I -- going back to the difference
25 between the Salmon Commission and what this model
26 produces, the Salmon Commission might well have
27 allowed fishing towards the left of the graph at a
28 lesser run size, correct?
- 29 A Well, we'd have to, you know, take a look and to
30 compare apples to apples here and so --
- 31 Q All right.
- 32 A -- you know, could they have? They may have.
33 But, you know, what's this graph depicting? Let's
34 take an example.
- 35 Q All right. Well, let me ask you the other side
36 then. What we know for certain is the DFO cuts
37 off fishing at the 60 percent level, whereas the
38 Salmon Commission used to let it run as the size
39 increased.
- 40 A Well, I guess there's really three phases here.
41 If we went back to the rebuilding program, there
42 was a maximum level of 65 to 70 and even that
43 changed over time to a lower number of 65, as
44 occurred over the rebuilding program. In looking
45 at -- going back to the record pre-1985 there
46 definitely were higher exploitation rates, but I
47 guess -- I mean, what has changed over that period

1 of time is not just whether one management agency
2 was managing this or not. A lot of things have
3 changed. Our thinking around what we're
4 protecting as far as conservation has changed, I
5 would put forward, and we've identified in the
6 Fraser River 37 conservation units and --
7 Q Mr. --
8 A -- if you went back to the '70s --
9 Q Mr. Ryall, sorry, I don't --
10 A -- that was not the case, so...
11 Q I don't like to cut you off, but we've heard all
12 the justification already, so --
13 A But it's not a --
14 Q -- we don't have to go over that again.
15 A But it's not a justification.
16 Q I just want --
17 A You're asking me what has changed and I do think
18 it's important to put out what has changed.
19 Q Well, this graph, though, is what I'm asking you
20 about. As the run size increases, the fishing
21 doesn't increase as it increases past the
22 reference point.
23 A Past the one million marker?
24 Q Yes.
25 A Well, this is in percent, right? So let's just --
26 Q Yes.
27 A -- say there was no management adjustment, just to
28 make this simpler, and everything's great and
29 there's no management adjustments for argument's
30 sake.
31 Q Yes.
32 A That would imply that we would harvest at 60
33 percent, 40 percent for escapement. So as the run
34 size went up, the actual amount of harvest would
35 increase too, right? So if there was one million
36 fish, you would harvest 600,000 and 400 to
37 escapement. If there were two million fish, it
38 would be twice that amount that would be
39 harvested, but it would still be 60 percent.
40 Q Yes. So what is increasing in percentage terms is
41 the escapement.
42 A The actual amount of fish on the spawning grounds
43 would increase, that's correct.
44 Q Yes. So this is a deliberate over-escapement
45 model; is it not?
46 A No, it's not.
47 Q You determined the fixed escapement, but after you

- 1 pass the reference point in percentage terms, the
2 escapement keeps running up to a higher number?
- 3 A In this particular case, the escapement would keep
4 increasing.
- 5 Q All right.
- 6 A There's stocks that are co-migrating and goes back
7 to my discussion around our 37 conservation
8 units --
- 9 Q Yes.
- 10 A -- there's a lot of overlap between these and some
11 can stand more harvest versus others, and so if --
12 to make protection for these stocks, we've capped
13 it at 60 percent at this point.
- 14 Q Yes. All right. Mr. Ryall, I'm going to have to
15 sit down now, but I want to ask you this. In 1958
16 in the Shuswap system, electric fences were put up
17 to attempt to stop the number of spawners going
18 into the spawning grounds; you're aware of that?
19 It's --
- 20 A I'm familiar with that, yes.
- 21 Q Yes. Nevertheless, 3.5 million got to the
22 spawning grounds and there was a sharp drop in
23 productivity after that showing up in the 1962
24 returns, correct?
- 25 A I believe that's -- yes.
- 26 Q Yes. And we've heard --
- 27 A But --
- 28 Q -- we've heard through other evidence that the
29 optimum carrying capacity - and I don't want to go
30 into this with you - but the optimum carrying
31 capacity is 1.85 in that system. But this is the
32 question I want to ask you. In 2010 I'm told that
33 the escapement into that system was 8,636,220
34 spawners. Would you --
- 35 A I don't think we know accurately what the optimum
36 spawning escapement number is, so I don't agree
37 with the 1.8 million number.
- 38 Q All right. Well --
- 39 A And I do think, you know, that's one of the whole
40 challenges here and why there has been a change
41 from saying that we know accurately how many
42 exactly fish that one wants to put on the spawning
43 grounds to the approach that is put in front of us
44 today, which has gone through a number of
45 scientific reviews and the conclusion of those
46 scientific reviews that it would be a better
47 approach not to have a fixed escapement approach

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Cross-exam by Mr. Lowes (WFFDF)

1 but to have an exploitation rate approach and not
2 a fixed exploitation rate because you need to take
3 into account that stocks are co-migrating, some
4 have higher productivity than others and at some
5 point you want to provide protection for those
6 stocks and have no fishing. And really, you know,
7 the debate I think has been in more recent years
8 is at what point are you going to say that there's
9 no fishing going to occur? And when I say no
10 fishing, I mean by all parties and beyond that one
11 starts making choices around priorities that are
12 outlined in an allocation policy.

13 Q Value judgments, are they not, as to such as Mr.
14 Eidsvik -- the example Mr. Eidsvik gave you as --
15 I've forgotten the numbers but are 100 fish worth
16 foregoing 500 million in harvest, something along
17 those lines. Those judgments have to be made by
18 someone, don't they?

19 A Well, in that particular case, that value judgment
20 would be made about conservation being the first
21 priority, yes.

22 MR. HARVEY: Thank you. I'll have to reserve the rest
23 of my questions for writing.

24 MR. LOWES: Yes, J.K. Lowes for the B.C. Wildlife
25 Federation and B.C. Federation of Drift Fishers.
26 And in order to balance out Mr. Harvey, I'll come
27 out of left field.

28

29 CROSS-EXAMINATION BY MR. LOWES:

30

31 Q Mr. Ryall, you're trained as a biologist?

32 A My background is biology, that's correct.

33 Q Yes. And I understand that you were the chair of
34 the Fraser Panel from, what, 2002?

35 A I was a member of the Fraser Panel as one of the
36 government. I was not the chair at that time. I
37 think from 2002 to 2005 and -- or '04 and then
38 chair of the Fraser Panel from 2005 to 2009.

39 Q Yes. And --

40 A Something like that.

41 Q Yes. And you're familiar with Dr. Woodey?

42 A I am familiar with Dr. Woodey, yes, I am.

43 Q Very respected fisheries biologist?

44 A I would say the answer to that is yes.

45 Q Yes. And I take it from your answers to some of
46 the questions that were asked by Mr. Eidsvik and
47 Mr. Harvey that you're aware of a decision that

- 1 was made in -- with respect to the sockeye fishery
2 in 2001?
- 3 A Which one are you referring to?
- 4 Q Well, have you kept up with the evidence of Drs.
5 Walters and Woodey in these proceedings?
- 6 A As much as I could. I have read a number of the
7 summaries along the way. I would have liked to
8 have participated more, so --
- 9 Q Yes.
- 10 A -- but not totally.
- 11 Q Are you aware that Dr. Woodey indicated that in
12 2001 he recommended to the Fraser Panel that a
13 fishery take place on the summer stocks and the
14 mixed early migrating late run stocks until August
15 the 25th?
- 16 A I don't recall exactly, but I don't disagree with
17 you. I mean, that's what it --
- 18 Q Do you understand the underlying issue that Dr.
19 Woodey called the early migrating late run stocks
20 as the elephant in the room?
- 21 A I understand the issue at the time.
- 22 Q All right.
- 23 A I mean, Jim was the chief biologist at the Pacific
24 Salmon Commission at the time. His responsibility
25 was to make recommendations to the panel on
26 fishery management actions.
- 27 Q Yes. And he gave evidence in these proceedings
28 that he did make a recommendation in 2001 and that
29 recommendation was, in fact, rejected. My
30 question for you is do you know why?
- 31 A It would be good to go back and take a look at the
32 record. My recollection would be in that year
33 that the choice was to put more fish on the
34 spawning grounds and not until agreement was his
35 recommendation. I would say, you know, that it's
36 not an isolated incident from the point of view of
37 the chief biologist, whether it's Jim Woodey or
38 Mike Lapointe today making recommendations to the
39 panel that they're not always accepted either by
40 the panel, which is --
- 41 Q No, I understand that. And those reasons for not
42 accepting it may be very proper. What I'm asking
43 you is if you know now why his recommendation
44 wasn't accepted in 2001 and why it in substance
45 hasn't been accepted right to this day.
- 46 A The view that the early migrants of late runs are
47 not going to survive and may --

- 1 Q Yes.
- 2 A -- die en route and so we should harvest those
3 regardless?
- 4 Q Yes.
- 5 A Well, I think it comes down to a choice on do we
6 know that absolutely? Jim's view was that we do.
7 I guess that was not shared and the choice was
8 that we were not going to make that choice and
9 move and agree to that.
- 10 Q Yes. But I want to go a little past the "I
11 guess". Who in your recommendation disagreed with
12 Mr. Woodey, and I want grounds?
- 13 A Well --
- 14 Q And perhaps I can follow up with this question, do
15 you agree today with that kind of a device and, if
16 so, on what grounds?
- 17 A Well, I think the best way to answer your question
18 is we go back to the records and the minutes of
19 2001 and look at what the discussion was around
20 those events in 2001 and what the choices were in
21 front of the panel at the time.
- 22 Q Okay. Do you not remember?
- 23 A I remember the discussion, but you're asking
24 something --
- 25 Q Okay. What was the discussion as you remember it?
- 26 A You're asking something about nine years ago.
- 27 Q Yes, I am.
- 28 A And the choice at the time was that we were not
29 going to undertake to have those fisheries.
- 30 Q Why not?
- 31 A There was not agreement with the views that were
32 put forward by Mr. Woodey, that that was --
- 33 Q All right.
- 34 A -- the agreement that was going to go.
- 35 Q Did you agree with the views put forward by Mr.
36 Woodey?
- 37 A Did I personally agree at that time?
- 38 Q Yes.
- 39 A No. I did not.
- 40 Q Why not?
- 41 A For the same reason I've expressed here, is that
42 at that point in time we thought that the better
43 choice was to err on the side of the conservation
44 and put -- move those fish upriver.
- 45 Q All right. And are you still of that view?
- 46 A Well, I think we'd go back and take a look at
47 what's collected to date and what the

- 1 circumstances are at the time. Overall, I would
2 say that my view would be consistent with that
3 approach in 2001. I would say, as well, that that
4 view was shared by the other panel members too.
- 5 Q All right. So perhaps just so that we can nail
6 this down, I'm taking it from your answer that the
7 reason that Dr. Woodey's advice was not taken had
8 something to do with a disagreement of the biology
9 or of the premises. It wasn't that there were
10 other counterbalancing factors that overrode his
11 biological assumptions?
- 12 A No, I don't think I'm saying that either. I don't
13 think at that time it was known -- you know, the
14 view that Mr. Woodey was putting forward was also
15 that all those fish were going to die. Is that
16 correct?
- 17 Q That's right.
- 18 A And that was not shared.
- 19 Q Well, 95 percent of them is his opinion.
- 20 A Yeah. And I don't think that was known exactly
21 and the choice was made not to do that.
- 22 Q All right. And you agreed with that choice?
- 23 A At that time I did.
- 24 Q And today you still agree with that choice?
- 25 A If I had the same facts in front of me, I would
26 make the same decision.
- 27 Q All right. One more question, and that was -- and
28 this follows from a question from the commissioner
29 who asked you about how and whether or -- whether
30 or how the bilateral discussions with First
31 Nations, between First Nations and DFO,
32 particularly in the treaty negotiation process,
33 how they mesh with the broader discussion with the
34 stakeholder groups and the public in the
35 preparation of the IMFP? And I'm not quite
36 certain that you gave a full answer there.
- 37 You said that -- I think you said that DFO
38 informs the treaty negotiations. Does the
39 communication work the other way, as well? Is it
40 a two-way communication? And is it formal and
41 informal? Is it within DFO? Is it between DFO
42 and DIAND?
- 43 A That topic's going to be explored a lot in
44 upcoming discussions.
- 45 Q All right.
- 46 A Is that correct?
- 47 MR. LOWES: I have no idea. And I know I'm out of time

1 and perhaps I can follow that question up with
2 those questions in writing.

3 MS. BAKER: Thank you, Mr. Commissioner. I think we
4 might have a few minutes for Ms. Gaertner and then
5 we'll just review how we're going to deal with the
6 written questions that are outstanding.

7 MS. GAERTNER: Thank you, Mr. Commissioner. Brenda
8 Gaertner and with me Leah Pence for the First
9 Nations Coalition.

10
11 CROSS-EXAMINATION BY MS. GAERTNER:

12
13 Q Good afternoon, Mr. Ryall. Pleasure to have a few
14 minutes of the day with you. And I regret that
15 most of my questions will be in writing, but I
16 take it you'll make great efforts to respond
17 fulsomely to them.

18 We've heard a lot about delayed density
19 dependence in these hearings and the whole role of
20 how that's incorporated into various components of
21 the decision-making. And I noted that you were
22 co-author of what's Exhibit 398 which is the
23 Pestal Ryall Cass article of 2008 which was an
24 article on collaborative development of escapement
25 strategies for Fraser River sockeye salmon. And
26 then you're also familiar, I'm assuming, with the
27 Pestal -- I think it's Huang, Cass article that
28 came after that which is now Exhibit 399; is that
29 correct?

30 A Yes. Pestal, Huang and Cass, yeah.

31 Q And I'll ask more detailed questions of you, but I
32 think it would be very useful for the commissioner
33 to hear from you. It was my take of reading these
34 articles carefully that the whole issue of delayed
35 density dependence and cyclic dominance and all of
36 those things are definitely embedded within the
37 FRSSI model and are considered on a stock-by-stock
38 basis; would you agree with that?

39 A That's the intent and there was a change in model
40 approach to move to a Larkin model over a Ricker
41 and take density dependence -- or those impacts
42 into account in the work that's underway, yeah.

43 Q And similarly at Exhibit 73, which is the
44 synthesis of evidence from a workshop on the
45 decline of Fraser River sockeye that occurred in
46 June of 2010, which is a Peterman et al, it's a
47 group of scientists who did some work, are you

1 familiar with this report?

2 A I am. I haven't looked at this report for a
3 little while.

4 Q I'll just -- I'll just ask one question and again,
5 it's more to see how it's being implemented on the
6 ground or if it is yet, I appreciate that this is
7 -- at page 86 of that report and on February 10th
8 in this hearing I put the recommendations of that
9 work to the panel of Dr. Riddell, Dr. Woodey, Mr.
10 Wilson and Dr. Walters, and particularly on page
11 86 and 87 they have four areas in which they make
12 recommendations around the adjustments of the
13 FRSSI model and the ongoing research and if you
14 could just take a look quickly at that and if you
15 could just advise us if there's any difficulty in
16 implementing those kinds of recommendations as you
17 continued to work with the FRSSI model, 'cause
18 that's primarily what they're recommending is
19 there be continued engagement with these issues at
20 the FRSSI model level to make sure that science is
21 staying on top of this issue more or less as it
22 considers escapement models.

23 A That's what we're trying to do. I haven't -- I
24 don't have an answer. Each one of these five
25 points under 476 --

26 Q I can do this by writing, if you want, if you
27 prefer it. I just wanted to make sure the
28 commissioner heard from you if you have any
29 concerns regarding implementing this.

30 A Each one of these five?

31 Q Yeah.

32 A I don't know. I think -- I would rely -- a good
33 part of these 1 through 5 are really into the
34 technical details that would be better addressed,
35 I think, by Ann-Marie and Sue Grant at this stage.

36 Q All right.

37 A Al Cass is now retired. I believe that number 1
38 has already been looked at. As far as the other
39 four that are identified here, we -- I suppose
40 number 6, contrasting management strategy be
41 applied to different stocks over enough time to
42 observe a response, I mean, this is a
43 recommendation that you shouldn't just have
44 something in place for a time and - like a small
45 number of years - and then modify it, which has
46 been a concern of mine, as well, which I would
47 share. I would probably agree with number 5. If

1 you keep changing how are you going to assess?

2 And the intent of having a review of FRSSI
3 after four years wasn't necessarily, at least in
4 my mind, and maybe it hasn't been totally been
5 communicated was not to review and make a decision
6 if we're going to change to something else, some
7 alternative model, but was to undertake a review
8 of what's working and what's not working and see
9 if other changes needed to be made. I think one
10 of the things I've heard over the course of years
11 I'm working on FRSSI is the challenges of
12 communicating information and making sure that
13 there is an effective dialogue about those choices
14 that people have all that information to make
15 informed choices.

16 Q Perhaps I could just pick up on that issue
17 precisely, which is we've heard evidence from Pat
18 Matthews and others about the challenges of
19 understanding the FRSSI model and its implications
20 not only in the immediate season but in the
21 seasons in the future, given if you adopt a model
22 and apply it for a number of years it may have
23 different implications in different years. And
24 we've heard evidence about the challenges
25 associated that Mike Staley also raised this
26 concern, and you're familiar with Mike Staley,
27 that's correct?

28 A Yes, I am.

29 Q What steps could -- put funding aside for a
30 moment. What steps could DFO be taking now to
31 help better present the FRSSI model to those First
32 Nations whose interests will be directly affected
33 by the models that are chosen or potentially
34 affected? You've had a lot of experience working
35 with First Nations on the river. I'd be really
36 interested, and I know the commissioner will have
37 to turn his mind to these types of issues. Could
38 you give us some ideas on how to better
39 communicate the implications of these models?

40 A That's a challenging question, one that probably
41 deserves a more fulsome response. You know,
42 thinking about some of the changes that we've made
43 over time is the memo that we put out. I was
44 hopeful that -- and the memo that I'm speaking of
45 that we put out on an annual basis explaining what
46 the model is and what the implications are and I
47 guess -- I would be looking at making changes to

1 that type of format, that memo, explaining -- or
2 there are other -- I guess the question I would
3 ask is are there other performance indicators that
4 would help people to make those choices. We have
5 made some choices on those currently. Maybe
6 there's not enough. Maybe there's other ones we
7 should look at.

8 Q Well, just on that, there -- it's my understanding
9 that First Nations, when the FRSSI model was first
10 being presented, asked for geographical
11 distribution to fish as being one of the
12 performance measures; is that something you
13 remember?

14 A I don't recall that one. Geographical...?

15 Q Distribution --

16 A Yes.

17 Q -- of the fish. You don't remember that?

18 A No, not per se. You're meaning so -- I'm just --

19 Q The information I have is that when the model was
20 being produced and the benchmarks or the
21 performance measures were looked at, First Nations
22 asked to see whether or not the geographical
23 distribution of the fish could be considered a
24 performance measure.

25 A Well, I think it's one of the performance measures
26 within the Wild Salmon Policy too, when you look
27 at benchmarks, so sounds like there's overlap or
28 agreement there.

29 Q Well, you'll understand why many First Nations on
30 the Fraser would want --

31 A Yeah.

32 Q -- geographic distribution.

33 A I do.

34 Q Yes. And so is there any particular reason why
35 geographical distribution could not be a
36 performance measure under the FRSSI model?

37 A Probably not. I think, you know, one could take
38 the output and, you know, track that over the
39 course of the rejections.

40 MS. GAERTNER: I had one more question I was going to
41 ask. Am I done?

42 THE COMMISSIONER: I think so. We've got a time crunch
43 here. But that's a question you can include with
44 your written questions, is it?

45 MS. GAERTNER: I can try. It is a question about
46 previous evidence that was being -- that was given
47 and so I wanted to give him an opportunity to

1 respond to it, so --
2 THE COMMISSIONER: Well, if it's a quick question, I
3 have another commitment, so I just would
4 appreciate -- if it's one that can be answered
5 within the next few minutes, that's fine.
6 MS. GAERTNER: I'll give it a try. If it's not a quick
7 question, we'll let it go and I'll put it in
8 writing.
9 Q Mr. Ryall, you gave some evidence around the
10 participating of First Nations and the Fraser
11 River Panel. Mr. Sprout on March 4th, 2011 and
12 Sue Farlinger on the same day responded to
13 questions with respect to First Nations
14 participation on the Fraser River Panel. Mr.
15 Sprout strongly recommended a 50 percent
16 representation and Sue Farlinger confirmed that
17 that was also something she was being discussed --
18 discussing with First Nations. Is that
19 inconsistent with the evidence you gave today?
20 A I don't think it's inconsistent.
21 Q So when you said that you were looking at
22 different options, including caucuses,
23 participation in the caucus, that's quite
24 different than participation directly on the
25 panel.
26 A That is quite different. What I mean is that for
27 the last probably year I've not been involved in
28 those types of discussions because of other job
29 duties, so my information may not be totally up-
30 to-date. So I don't think that's inconsistent.
31 Q All right. So if they're pursuing that, you
32 wouldn't have any concerns around that?
33 A No.
34 MS. GAERTNER: Thanks, Mr. Commissioner, I'll --
35 THE COMMISSIONER: Thank you.
36 MS. GAERTNER: -- put the rest of it in writing.
37 THE COMMISSIONER: Thank you very much, Ms. Gaertner.
38 I appreciate that.
39 MS. BAKER: Mr. Commissioner, so we have Ms. Gaertner
40 obviously and Mr. Harvey are both going to be
41 following up with written questions. Mr. Leadem
42 has indicated he would like the opportunity to
43 consider whether he could put more questions in
44 writing, although he's not sure, and Mr. Lowes is
45 going to speak with us about whether he needs to
46 put a question in writing. So we've got four sets
47 and I'm wondering if we should set a deadline for

1 that.

2 I suggest that we should and my proposal
3 would be in two weeks, that's basically over the
4 break that we have from the hearings, if the
5 people could provide their questions at the end of
6 that period and I could send an email out to
7 confirm the exact date, but at the end of that two
8 weeks, if the written questions could be provided
9 and then I don't know what a reasonable timeframe
10 is to get a response back, but maybe another
11 couple of weeks or three, I don't know.

12 MR. TAYLOR: Well, I don't know Mr. Ryall's schedule,
13 so he could speak to that part of it. But with
14 and apart from that, depends in part what the
15 questions are. It' might be reasonable to do it
16 in two or three weeks, schedules aside, or it
17 might not, depending on how complex they are.

18 MR. HARVEY: I wonder if I can --

19 MR. TAYLOR: But I suggest that you fix dates that are
20 not unreasonable dates and liberty to apply, so to
21 speak.

22 MR. HARVEY: I mean, I agree with the concept, but I
23 should say that I have one or two questions that I
24 can keep short, but I need an answer within about
25 a week, because it relates to a panel that's
26 coming up. So if I could do mine in instalments,
27 as it were, and if it's possible for Mr. Ryall to
28 answer within a week, I'd appreciate that. I'll
29 send that request in and those questions I'll get
30 over tomorrow.

31 MS. BAKER: Okay. I guess if there's a problem with
32 that, Mr. Taylor will advise.

33 THE COMMISSIONER: Ms. Gaertner?

34 MR. TAYLOR: Well, it can't be a panel -- or it can't
35 be next witnesses sooner than two weeks, but we'll
36 see what the questions are and we'll answer. I
37 think we should hear from Mr. Ryall as to whether
38 he's got any scheduling issues.

39 A Tomorrow is my last day until April the 4th. I'm
40 taking some leave.

41 MS. BAKER: That helps us on our scheduling somewhat.
42 So two weeks will put us pretty much at the end of
43 the month, I think, and then how much time do you
44 think you'll need -- and I know you don't know how
45 many there will be or anything like that, but do
46 you think two weeks is a reasonable sort of
47 goalpost and you can tell us if that's not enough

1 time?

2 A Two weeks from April the 4th?

3 MS. BAKER: Yes.

4 A Yeah, really depends on the volume of the
5 questions and so...

6 THE COMMISSIONER: That's what I was going to suggest,
7 Ms. Baker. I think in fairness to the witness,
8 once the questions are in, the witness should
9 advise through counsel whether two weeks is
10 reasonable, as Mr. Taylor said. If it's totally
11 unreasonable in terms of his capacity to address
12 those questions, then Mr. Taylor can say so and
13 counsel can work out between them a revised
14 schedule. But I think the witness has to have at
15 least the questions first to be able to determine
16 how much time will be needed.

17 MS. BAKER: Fair enough. I was just trying to set some
18 parameters.

19 THE COMMISSIONER: I would also suggest that if Mr.
20 Harvey gets his questions to you tomorrow morning
21 before Mr. Ryall takes his leave, it may be
22 possible, subject to what the questions are, for
23 him to respond to those two questions, I think Mr.
24 Harvey said, before he takes leave. It may not be
25 possible, but I'm just suggesting that that be
26 attempted and -- but, again, if Mr. Ryall sees the
27 questions and feels that he can't accommodate
28 that, then Mr. Taylor can advise you or advise Mr.
29 Harvey accordingly.

30 MS. GAERTNER: Mr. Commissioner, with your patience,
31 there is a document Mr. Ryall referred to today.
32 It's going to come up in the interrogatories. I'd
33 like everybody else to have an opportunity to see
34 it. It's at Tab 1 of our January 20th list of
35 documents. It's the evaluation done by Pam Cooley
36 that you were referring to earlier today, dated
37 March 2007. If you could just identify that
38 document, and it be marked an exhibit, I think
39 it'll be easier for the purposes of the
40 interrogatories.

41 THE COMMISSIONER: All right. What exhibit number
42 would that get?

43 THE REGISTRAR: That would be Exhibit 609.

44

45 EXHIBIT 609: Cooley, IHPC Evaluation, March
46 2007

47

1 THE COMMISSIONER: All right.

2 MS. GAERTNER:

3 Q Is that the document you were referring to
4 earlier?

5 A That was the document I was referring to.

6 MS. GAERTNER: Thank you, Mr. Ryall.

7 MS. BAKER: And so I guess subject to the conclusion of
8 the written answers and questions, Mr. Ryall will
9 not be coming back. If something -- if counsel
10 require him to come back, we can address that
11 offline and see what we can do about that.

12 THE COMMISSIONER: I would suggest if it's convenient,
13 Ms. Baker, that his answers be provided by way of
14 affidavit which would be consistent with him being
15 under oath and giving his answers under oath. If,
16 for some reason a participant's counsel felt that
17 something needed to be addressed in terms of his
18 affidavit answers, then that could be brought to
19 my attention and we can deal with that
20 accordingly.

21 MR. TAYLOR: That sounds fine as a process. Mr. Ryall
22 will remain under cross-examination, of course,
23 while he's giving these answers and in particular
24 I and other counsel are not able to speak with him
25 except to provide the questions and ask for the
26 answers and that will be followed as it has been
27 with some other witnesses.

28 Just on that logistically, because in part I
29 can't talk to Mr. Ryall, I'm here tomorrow. So is
30 Mr. MacAulay. If we get Mr. Harvey's questions
31 tomorrow, there's not much I can do about them
32 until -- we can get them over, but through someone
33 else, but there's not much I can do about getting
34 them back and doing anything tomorrow before Mr.
35 Ryall goes. So we'll just see how that unfolds.
36 But I can't, I suppose, at this point offer
37 assurance to Mr. Harvey 'cause I don't know what
38 I'm going to get when I leave here at this time
39 tomorrow.

40 THE COMMISSIONER: I think -- I believe I've said this
41 to counsel before, Mr. Taylor, perhaps not to you,
42 but to the extent that this witness, who's under
43 cross-examination, is under the request of the
44 hearing not to speak about his evidence until his
45 cross-examination is concluded, to the extent that
46 you need to answer for him a process question, in
47 other words, he wants to know how he should deal

1 with a particular question in terms of where to
2 find the information or how to find the
3 information or whatever it happens to me, I trust
4 your judgment completely as to whether you can
5 speak with him about that.

6 If for some reason you feel what he's asking
7 you is beyond that, then you and Ms. Baker can
8 discuss that and if it needs to be brought to my
9 attention, it can be. But I certainly trust your
10 judgment completely as to whether what he asked
11 you something, whether you're able to address it
12 with him in the context of his agreement not to
13 discuss his evidence until he's completed his
14 cross-examination.

15 MR. TAYLOR: All right. Thank you, Mr. Commissioner.
16 You're speaking of process and getting an answer.

17 THE COMMISSIONER: Exactly.

18 MR. TAYLOR: Okay.

19 THE COMMISSIONER: Any concerns he may have about gee,
20 if I get this today, then I could answer it, but
21 how do I get that, that sort of thing.

22 MR. TAYLOR: Yes.

23 THE COMMISSIONER: I think that's completely within the
24 realm of reasonableness for you to discuss with
25 him.

26 MR. TAYLOR: All right. Thank you. That's helpful.

27 THE COMMISSIONER: Again, my thanks to counsel and to
28 Mr. Ryall. Thank you, sir.

29 THE REGISTRAR: The hearing is now adjourned for the
30 day and will resume at ten o'clock tomorrow
31 morning.

32
33 (PROCEEDINGS ADJOURNED AT 4:11 P.M. TO MARCH
34 17, 2011 AT 10:00 A.M.)
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1 I HEREBY CERTIFY the foregoing to be a true
2 and accurate transcript of the evidence
3 recorded on a sound recording apparatus,
4 transcribed to the best of my skill and
5 ability, and in accordance with applicable
6 standards.

7
8
9
10 _____
11 Irene Lim

12
13 I HEREBY CERTIFY the foregoing to be a true
14 and accurate transcript of the evidence
15 recorded on a sound recording apparatus,
16 transcribed to the best of my skill and
17 ability, and in accordance with applicable
18 standards.

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22 _____
23 Pat Neumann

24
25 I HEREBY CERTIFY the foregoing to be a true
26 and accurate transcript of the evidence
27 recorded on a sound recording apparatus,
28 transcribed to the best of my skill and
29 ability, and in accordance with applicable
30 standards.

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34 _____
35 Karen Hefferland

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

43
44
45
46 _____
47 Susan Osborne