

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



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

**Public Hearings**

**Audience publique**

**Commissioner**

L'Honorable juge /  
The Honourable Justice  
Bruce Cohen

**Commissaire**

**Held at:**

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

Wednesday, June 8, 2011

**Tenue à :**

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

le mercredi 8 juin 2011

## **APPEARANCES / COMPARUTIONS**

Wendy Baker, Q.C. Maia Tsurumi	Associate Commission Counsel Junior Commission Counsel
Charles Fugère Hugh MacAulay	Government of Canada ("CAN")
Clifton Prowse, Q.C.	Province of British Columbia ("BCPROV")
No appearance	Pacific Salmon Commission ("PSC")
No appearance	B.C. Public Service Alliance of Canada Union of Environment Workers B.C. ("BCPSAC")
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")
Judah Harrison	Conservation Coalition: Coastal Alliance for Aquaculture Reform Fraser Riverkeeper Society; Georgia Strait Alliance; Raincoast Conservation Foundation; Watershed Watch Salmon Society; Mr. Otto Langer; David Suzuki Foundation ("CONSERV")
No appearance	Area D Salmon Gillnet Association; Area B Harvest Committee (Seine) ("GILLFSC")

**APPEARANCES / COMPARUTIONS, cont'd.**

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

**TABLE OF CONTENTS / TABLE DES MATIERES**

	PAGE
PANEL NO. 42	
MICHAEL CROWE (Recalled)	
In chief by Ms. Baker (cont'd)	1/3/12/13/16/19/21/22/23/ 31/35/43/46/51/57/60
Cross-exam by Mr. Fugère	69/71/75
Cross-exam by Mr. Prowse	76
Cross-exam by Mr. Harrison	78/79/80/82
Cross-exam by Ms. Reeves	85/88/91/96
CORINO SALOMI (Recalled)	
In chief by Ms. Baker (cont'd)	3/9/12/14/18/20/21/22/28/ 32/47/52/55/56/60
Cross-exam by Mr. Fugère	67/70/73
Cross-exam by Mr. Harrison	78/80
Cross-exam by Ms. Reeves	86/95
STACEY WILKERSON (Recalled)	
In chief by Ms. Baker (cont'd)	29/31/32/38/43/48/55/56/57/65
Cross-exam by Mr. Fugère	74
Cross-exam by Mr. Prowse	76
Cross-exam by Mr. Harrison	79/81
Cross-exam by Ms. Reeves	90/95

**EXHIBITS / PIECES**

<u>No.</u>	<u>Description</u>	<u>Page</u>
1002	Standards and Best Practices for Instream Works, March 2002	10
1003	BCI Mid-Fraser/Thompson/Okanagan Habitat Management Section Program Review, January 2007	24
1004	The Riparian Areas Regulation	29
1005	The technical basis of zone of sensitivity determinations under the detailed assessment procedure of the Riparian Areas Regulation	31
1006	Riparian Areas Regulation Assessment Methods	32
1007	Riparian Areas Regulation Implementation Guidebook	34
1008	Protocol for Management of Riparian Area Regulation Variances Between the Department of Fisheries & Oceans and the Ministry of Environment	37
1009	Compliance with the Riparian Areas Regulation (RAR) Report on Monitoring Activities for Assessments Submitted in 2007	42
1010	Annual Report on the Implementation of the Riparian Areas Regulation (RAR) 2008-09	50
1011	Area E Gillnetters and B.C. Fisheries Survival Coalition redacted questions to Karl English, dated April 20, 2011	50
1011A	Karl English's answers to Area E. Gillnetters and B.C. Fisheries Survival Coalition redacted questions of April 20, 2011, provided June 3, 2011	51
1012	Commission Counsel re-examination questions to Karl English, dated May 27, 2011	51
1012A	Karl English's answers to Commission Counsel's re-examination questions of May 27, 2011, provided June 3, 2011	51
1013	Stormwater Source Control Design Guidelines 2005	54
1014	Shuswap lake Integrated Planning Process, Strategic Plan for Shuswap and Mara Lakes	61
1015	Lakeshore Development Compliance Project - Defining the Issue Across B.C. 2008-09, Phase 1, April 2010	67

**EXHIBITS / PIECES**

<u>No.</u>	<u>Description</u>	<u>Page</u>
1016	Letter dated March 23, 2006, from Kerr Wood Leidl, to GVRD, Regional Utility Planning, Policy and Planning Department, and attached Template for Integrated Stormwater Management Planning 2005, Submission of Draft Report	68
1017	DFO, Memo to Greg Savard, A Director, OHEB (Draft)	82
1018	DFO, Email from Michael Crowe re Water Act Notifications, October 6, 2009	85
1019	Final Work Draft-Shuswap Lake, Mara Lake, Little Shuswap Lake and Little River foreshore inventory and mapping, June 2009	85
1020	Document titled "High and Dry, An Investigation of Salmon Habitat Destruction in British Columbia, July 11, 2007	94

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PANEL NO. 42  
In chief by Ms. Baker (cont'd)

1 Vancouver, B.C./Vancouver  
2 (C.-B.)  
3 June 8, 2011/le 8 juin 2011  
4

5 THE REGISTRAR: The hearing is now resumed.  
6

7 MICHAEL CROWE, recalled.  
8

9 CORINO SALOMI, recalled.  
10

11 STACEY WILKERSON, recalled.  
12

13 EXAMINATION IN CHIEF BY MS. BAKER, continuing:  
14

15 Q Thank you. When we left off yesterday, we were  
16 talking about changes in the 2000s between, I  
17 guess, with respect to the province's role in  
18 habitat management and the riparian areas, and I  
19 wanted to also ask if there was any, at that time  
20 - particularly you, Mr. Crowe - was there any  
21 increase in development activities in the province  
22 in that period, in the 2000s?

23 MR. CROWE: Yes, there was. Starting in the late 1990s  
24 and definitely picking up through the early 2000s,  
25 right into essentially 2008/'09, it was a very  
26 intensive pace of development through many sectors  
27 and within B.C. Resource extraction sectors,  
28 recreational development, infrastructure  
29 expansion, railways, highways, pipelines, new  
30 pipelines, as well as what's called looping, which  
31 means one pipeline does not have sufficient  
32 capacity, so a pipeline company will twin it,  
33 they'll put a second pipeline in. So the  
34 population was growing, you know, had been growing  
35 within B.C. quite steadily, and there was  
36 expansion in all elements of urban and commercial  
37 industries, sufficient, you know, and equivalently  
38 to that general population growth.

39 Q And did you have at that time any changes in  
40 staffing in your OHEB offices?

41 MR. CROWE: In the early 2000s, or through the 2000s?

42 Q Sort of 2003 and onward.

43 MR. CROWE: Well, first, to help for context in my  
44 answer, I need to explain that prior to the 2000s  
45 that the Department of Fisheries and Oceans had  
46 been developing a number of different programs, we  
47 called them B-base or sunset programs, I think

June 8, 2011

1           you've heard of them spoken of before, such as the  
2           Green Plan. It was a sort of -- and that was  
3           followed by other programs called, as well, often  
4           named them after Ministers, the Mifflin Plan and  
5           the Anderson Plan.

6           There was components to those, these larger  
7           plans, that delivered specific projects. Examples  
8           would be the Habitat Restoration Salmonid  
9           Enhancement Program. And one that was particular  
10          to that, that management program was called HCSP  
11          or the Habitat Conservation Stewardship Program.  
12          This was essentially resources provided to us to  
13          develop and expand upon components of our Habitat  
14          Program to deliver a wider spectrum of strategies  
15          from the Habitat Policy.

16          This one, a critical part of this was to try  
17          to expand or create partnerships and essentially  
18          understanding capacity and cooperation amongst  
19          different sectors, and we've provided resources to  
20          industry, to First Nations, and to local  
21          government to understand DFO's interest in terms  
22          of habitat conservation and protection, and bring  
23          them on as partners.

24          So through these sequence of programs, one  
25          that usually followed after another, there was a  
26          general increase in the Habitat Management  
27          Program's capacity, while sunsetting, individuals  
28          were brought on and when they were actually made  
29          indeterminate, they became part of our core  
30          staffing contingent. Added to that there was a  
31          number of decisions that affected mostly Central  
32          and Arctic, but there was a decision of Pacific  
33          Region to join that, where we in the -- it was  
34          called the Blueprint Initiative, but there was new  
35          resources that came to mostly Central and Arctic  
36          Region, but also to the B.C. Interior specifically  
37          to increase our role in freshwater habitat  
38          management.

39          So over the 1990s into the early 2000s we  
40          were in a growth phase in terms of our resources  
41          and program delivery and expansion of, you know,  
42          many elements of the Habitat Policy, again  
43          speaking to trying to deliver a broader spectrum  
44          of strategies within the Habitat Policy.

45          In 2004 that essentially came to an end.  
46          There was a number of decisions that reprioritized  
47          federal funding and these B-base programs were,

1           once the last one ran out, there was no  
2           continuation, and we went through an economic  
3           review period. It was an acronym, ERC - Economic  
4           Review, I cannot remember the "C", I apologize -  
5           which determined that we were going to be  
6           realigning resources to other governmental  
7           priorities. This resulted in a change in staffing  
8           levels, as well.

9           So with all that background and context, and  
10          I apologize if it was too long, we -- and I'll  
11          speak specifically about the B.C. Interior, but it  
12          does expand to the larger regional Habitat  
13          Management Program, did go through a period of  
14          downsizing. Would you like me to get into  
15          specific numbers, or...

16        Q     I've got some documents on that I'll get to in a  
17              minute. I just wanted to get a general sense that  
18              there was a downsizing. And was this, when you  
19              were talking about the economic review, was it the  
20              Expenditure Review Committee?

21        MR. CROWE: Yes. Thank you.

22        Q     Is that what it was? Okay.

23        MR. CROWE: Yes. Thank you.

24        Q     All right. And was that a similar experience that  
25              you had in the Lower Mainland, Mr. Salomi?

26        MR. SALOMI: Well, as Michael said, there was a bit  
27              more of an expansion through that period in the  
28              B.C. Interior. So the Lower Fraser office didn't  
29              really expand, but we were involved on the  
30              downside, to some extent.

31        Q     Okay. And so that left you, I take it, with fewer  
32              staff to do some of the programs that you had,  
33              your just general programs that you needed to  
34              maintain; is that right?

35        MR. CROWE: That's correct. We had to determine what  
36              our priorities were, relative to our capacity to  
37              be as effective and efficient as we could with the  
38              resources we did have.

39        Q     Okay. And so how did you address this, how did  
40              you resolve some of these capacity issues?

41        MR. CROWE: Essentially we, the managers in the B.C.  
42              Interior initiated a process called Developing  
43              Operational Principles. Later you'll hear us, I  
44              expect we'll be talking about operational  
45              statements, but this was pre-EPMP where the B.C.  
46              Interior went through essentially a detailed  
47              review process of all our programs and assigned

1 priorities to each of those program elements,  
2 relative to what we assess as the managers to be  
3 the relative risk in terms of potential harm to  
4 habitat, and therefore the fish. And then  
5 essentially determine how many resources does it  
6 take to deliver on each of those program  
7 priorities, and essentially determine based on  
8 essentially a triage system, what we could and  
9 could not support, continue to support as a  
10 program, what elements of our program were going  
11 to essentially receive a different service level,  
12 be delivered in a different manner, or we were  
13 just not going to be able to attend at all.

14 Q As some of the -- you mentioned that you developed  
15 different ways of delivering services. Were some  
16 of those ways described as streamlining processes?

17 MR. CROWE: Yes, definitely. We developed a number of  
18 streamlining processes, essentially that would be  
19 reliance on guidance documents created by either  
20 the Department or other agencies, such as best  
21 management practices.

22 Q Are those the same thing as the fact sheets we  
23 talked about yesterday?

24 MR. CROWE: Essentially, yes, I'd say best management  
25 practices, operational statements, fact sheets,  
26 are all a form of guidance document that provide  
27 guidance to the proponents on how to undertake  
28 their development activities, or activities in  
29 general, in the manner that was least likely to  
30 harm fish and fish habitat.

31 Q Okay. Well, let's talk a little bit about the  
32 best management practices or fact sheets. First  
33 of all, what kinds of things did they address and  
34 how were they created?

35 MR. CROWE: Well, essentially, they're created by  
36 bringing together experts on a subject and asking  
37 them to use their judgments and expertise to  
38 create a document that provides guidance on how  
39 best to conduct an activity in a manner that meets  
40 our program objectives, and that usually  
41 essentially means measures that an individual  
42 should take to avoid or mitigate harm. They cover  
43 a wide spectrum of issues, how to construct  
44 bridges, how to stabilize shorelines, place water  
45 intakes into water bodies, bridge cleaning and  
46 maintenance, wide range of different activities.

47 Q Was the province involved in developing any of the

1 fact sheets or the best management practice  
2 documents?

3 MR. CROWE: Many of them were provincially written  
4 documents. Some of them are co-authored. We  
5 would sometimes borrow from other jurisdictions,  
6 as well in the creation of these.

7 Q And how would Fisheries and Oceans use those  
8 documents?

9 MR. CROWE: Essentially we would try to -- if someone  
10 approached us to conduct a development activity  
11 that we felt could be managed through one of these  
12 best management practices, we would essentially,  
13 instead of responding through a letter of advice  
14 or direct engagement, we would provide them the  
15 fact sheet or best management practice, and  
16 essentially tell them to please follow this  
17 document and then re-contact us if we they could  
18 not meet the measures of standards within the  
19 document. We would often try to deliver them  
20 through other agencies, make them available  
21 through Front Desk kiosk at different government  
22 offices, place them on websites and other manners  
23 of...

24 Q There's one best management practice that relates  
25 to danger trees; is that right?

26 MR. CROWE: That's correct, yes.

27 Q And what is the danger tree best management  
28 practice?

29 MR. CROWE: This BMP relates to -- a common challenge  
30 for us is that large, very large or, you know,  
31 mature trees on property that has reached an age  
32 or as to be susceptible to disease has a chance of  
33 falling. From a biological perspective, that's  
34 great. We actually want those trees falling into  
35 stream bodies. They're a great source of cover  
36 and nutrients and benefit stream configuration.  
37 However, for a property owner, they compose a  
38 danger to themselves or family and their property.  
39 So the idea is that this is a best management  
40 practice on essentially recognizing that human  
41 safety is critical, that we cannot -- we will not  
42 stop someone from removing a danger tree.

43 The challenge is often an individual wants to  
44 remove trees for aesthetic or landscaping reasons,  
45 and people were commonly removing trees under the  
46 pretext of a danger tree, where in fact it was a  
47 perfectly fine, healthy tree, and therefore we had

1 to set standards as to when and how an individual  
2 was to remove it, and that essentially was the --  
3 the best management practice was they were to get  
4 an arborist to certify that the tree was a hazard,  
5 and then the measures to remove it after they have  
6 such certification.

7 Q And has that process worked satisfactorily to your  
8 view?

9 MR. CROWE: It's an improvement. It seems like a small  
10 issue, but habitat management is about managing in  
11 many ways the small issues. The cumulative  
12 impacts of many property owners removing many, you  
13 know, trees, when put together over time, has an  
14 effect. You add that small development or that  
15 small activity to many others, and you start  
16 seeing over time that the cumulative incremental  
17 loss of riparian function and therefore  
18 contribution to fish and fish habitat.

19 So I'd say it's better. I think that there's  
20 still a tendency for individuals to take the  
21 initiative to remove trees when they're not  
22 necessarily still a hazard, but it does provide  
23 more guidance.

24 Q And you said a certified arborist needs to make an  
25 assessment of the state of the tree before it's  
26 removed. Has that process worked out  
27 consistently?

28 MR. CROWE: The challenge is that there's a whole  
29 spectrum of certifications for arborists, and that  
30 some of them I would say are more interested in  
31 meeting the property owners' objectives than  
32 fulfilling a professional obligation.

33 Q And is there a requirement to report the use of a  
34 BMP to DFO, or does DFO do any compliance  
35 monitoring with respect to the use of the BMPs  
36 after they have been applied?

37 MR. CROWE: I can't remember the details. I believe  
38 there is an expectation to notify us under that  
39 BMP, but I can't say that clearly. I can't quite  
40 recollect. There is a -- some local jurisdictions  
41 do have a bylaw for danger trees, as well, and  
42 that there would be some reporting to the city in  
43 those circumstances.

44 Q Okay. And what about monitoring for compliance by  
45 DFO?

46 MR. CROWE: It's deemed to be relatively low risk  
47 activity in light of all the many other monitoring

1 priorities for the Department. I am not aware of  
2 any monitoring that we have, as a Department, have  
3 done, but that could be possible in other areas of  
4 the Pacific Region.

5 Q Okay. And then another BMP is the Shoreline  
6 Erosion Protection Guideline, which I take it  
7 refers to retaining walls, in --

8 MR. CROWE: Yes.

9 Q -- common language. Can you tell us about that  
10 one?

11 MR. CROWE: This actually is one that's very  
12 problematic for the Department, in that - I'm just  
13 not quite sure where to start - but, essentially,  
14 many property owners purchase very nice lakeshore  
15 or stream-shore properties for the purposes of  
16 enjoying the aesthetic values of the waterfront,  
17 and they want to modify their property in such a  
18 way to maximize the recreational benefit. And it  
19 is a very common for individuals to want to do  
20 some major foreshore modifications, including  
21 replacement of retaining walls, docks, sand  
22 importation, filling in the foreshore, and under  
23 the pretext of some small amount of erosion,  
24 they'll go in and completely modify the foreshore  
25 and say they've done it under a best management  
26 practice. And it's something that is very  
27 problematic for the Department, and we have to  
28 take a -- we need to take a far different approach  
29 in managing these types of massive foreshore  
30 developments.

31 Q And so what has been done in that respect?

32 MR. CROWE: Sorry, I'm trying not to -- it's for a  
33 specific issue, I don't want to make my answer too  
34 long. But essentially, we need to engage with the  
35 province and change some of the province's **Water**  
36 **Act Regulation** management practices on these  
37 foreshore areas, and actually get the BMP changed.  
38 I think it was a good idea. It was worth trying,  
39 using this BMP to manage this kind of development  
40 activity, but in my opinion it has not succeeded.  
41 And that government, between the Department of  
42 Fisheries and Oceans and the province, have to  
43 reassess the risk of this type of development  
44 activity and no longer allow it to be conducted  
45 under BMP. This is a thing that it's always good  
46 to try, but when you have information that  
47 something is not working, that this is an example

1 where you change your review processes.

2 Q And is there a **Water Act**, a B.C. **Water Act**  
3 approval required for changes to these retaining  
4 walls?

5 MR. CROWE: This is actually where it gets to be a real  
6 challenge, that under the **Water Act** of the  
7 Province of British Columbia, they control works  
8 in and around a stream. So the definition of "in  
9 and around" is really what the problem is with  
10 this particular issue, in that works below the  
11 high water mark essentially fall clearly within  
12 the jurisdiction of the **Water Act**. Retaining  
13 walls actually occur at the water, high water mark  
14 and above, along the shoreline. And the province  
15 actually deems this not to be within the  
16 parameters of works in and around a stream, and  
17 therefore they do not actually feel they have a  
18 regulatory jurisdiction over this type of  
19 activity, and that's why we manage it through a  
20 BMP.

21 So we believe, based on a series of  
22 Environmental Appeal decisions, that actually the  
23 province does have the jurisdiction, and we need  
24 to engage with the province at senior levels to  
25 get them to revisit their directions and opinion  
26 on where their authorities lie in this matter, so  
27 that they can manage this type of development  
28 activity under the **Water Act**.

29 This actually leads into, I think, to explain  
30 why we're relying on the province in this matter  
31 needs a bit of an explanation. The Department of  
32 Fisheries and Oceans has its authorities under the  
33 **Fisheries Act** and we can prosecute. Prosecutions  
34 are very time consuming and very uncertain as to  
35 outcomes. It's often our attempt to work with  
36 partner agencies that have similar interests and  
37 try to determine which statutory or regulatory  
38 tool is the most appropriate to deal with the type  
39 of development activity. In many situations it  
40 will be a local government through their bylaws  
41 and building codes. In other circumstances it  
42 will be through a provincial statute, such as the  
43 **Lands Act** or the **Water Act**. And our opinion is  
44 rather than pursuing some of these consistently  
45 problematic problems through **Fisheries Act**  
46 prosecution, that a permitting review by the  
47 province would be a better approach.

1 Q And we're going to talk quite a bit later, or  
2 quite a bit, comma, later about the **Riparian Areas**  
3 **Regulation**, so I don't want to get into a lot of  
4 detail about that now. But I just want to  
5 understand, is there a gap between how that  
6 regulation would be applied and some of the issues  
7 that you're talking about here with respect to  
8 these -- with these erosion guidelines?

9 MR. CROWE: Sort of there's two gaps. The one is that  
10 the **Water Act** as presently applied by the province  
11 is below the natural boundary, or, sorry, the mean  
12 annual water mark, which is sort of the -- that  
13 means the average water elevation, and the  
14 **Riparian Areas Regulation**, that applies above the  
15 one-in-five-year flood elevation. So there's  
16 actually vertical distance between those two  
17 elevations that my understanding that neither the  
18 provincial **Water Act** or the **Riparian Areas**  
19 **Regulation** applies to.

20 The other gap would be that the **Riparian**  
21 **Areas Regulation** does not apply throughout all of  
22 B.C., and even with the areas of B.C. it applies,  
23 it's not applied consistently, or -- and so  
24 there's that gap, as well.

25 Q All right. And when you talk about a gap of  
26 vertical distance, that may not sound like very  
27 much when you're looking at it straight up and  
28 down, but that could actually be on -- a low grade  
29 end could extend for quite a period of space; is  
30 that right?

31 MR. CROWE: Absolutely. As an example in Shuswap Lake,  
32 it's a 40-centimetre difference in elevation.  
33 When you look at lower gradient foreshore areas,  
34 actually which are often the most important for  
35 fish and fish habitat, it can extend for tens of  
36 metres. A gradient of one to two percent on a  
37 delta area will run for many, many metres.

38 Q Another, I don't know if you would consider it as  
39 a BMP or another guidance document, is the 2004  
40 Instream Works document. I wanted to ask Mr.  
41 Salomi about that. That's in Canada's documents  
42 at Tab 18.

43 MR. SALOMI: okay.

44 Q Is that also a BMP that's in use by DFO? Sorry,  
45 it's Tab 18 on Canada's list.

46 MR. SALOMI: So as Michael described, we actually  
47 worked with our provincial colleagues through the

1 2000 to 2004 period to produce things like fact  
2 sheets or guidance documents, and my feeling is  
3 this is a bit of a culmination of those documents.  
4 The staff in the Surrey office of Ministry of  
5 Environment at that time were quite involved in  
6 pulling this together, and it describes a number  
7 of common activities that occur in and around  
8 streams, and what the best practices are for those  
9 activities. It gives a little bit of direction to  
10 a proponent or a developer or a contractor that  
11 might be doing work, that if they follow certain  
12 practices here, they aren't likely to need, for  
13 example, formal permits or authorizations, but in  
14 other cases, they might.

15 It talks about things like beaver dams and  
16 identifies that beaver dams actually create  
17 habitat by flooding the areas that fish can then  
18 use. And so when one goes in to remove a beaver  
19 dam to prevent flooding, they've got to be careful  
20 about how they do it, and provide direction around  
21 that.

22 MS. BAKER: I'll have that marked, please, as the next  
23 exhibit.

24 THE REGISTRAR: Exhibit 1002.

25  
26 EXHIBIT 1002: Standards and Best Practices  
27 for Instream Works, March 2004  
28

29 MS. BAKER:

30 Q Are there any other of these streamlining tools  
31 that were developed prior to the Environmental  
32 Protection -- the EPMP, I'm probably going to  
33 misname it if I try and go through that acronym.

34 MR. SALOMI: I'd like to give a couple of other  
35 examples.

36 Q Yes.

37 MR. SALOMI: We talked a little bit yesterday about the  
38 Land Development Guidelines and the Stream  
39 Stewardship Series. One of the big things we  
40 tried to do was encourage local governments to  
41 adopt a similar standard within their own  
42 government bylaws, and a number of municipalities  
43 did do that. They had either a tree protection or  
44 a riparian bylaw that would help protect riparian  
45 areas. Some of them began to hire arborists and  
46 implement their own tree management bylaws, and  
47 really took on a lot of the day-to-day management

1 of those issues in their local municipalities.

2 Within the FREMP program, Fraser River  
3 Estuary Management Program, we started to look at  
4 what were common activities that were occurring in  
5 the Lower Fraser, and established a Track 1, Track  
6 2 and Track 3 process. The Track 1 process being  
7 one where the Port Authority could assess those  
8 projects, then use some standard BMPs to deal with  
9 those activities. There was a notification  
10 process where a representative on that committee  
11 would be aware of the project, but really the day-  
12 to-day work and paperwork was handled by the local  
13 Port Authority.

14 Q So the member, the person that would be on that  
15 committee was a DFO person, is that what you're  
16 saying?

17 MR. SALOMI: What we had was an Environmental Review  
18 Committee where member agencies would sit around  
19 and review projects on a bimonthly basis. What we  
20 did with this Track 1 process was let the Port  
21 Authority handle those instead.

22 Q But was there Fisheries and Oceans involvement at  
23 any level within that Port review?

24 MR. SALOMI: If through the notification process we had  
25 concern with, you know, the information provided,  
26 or the potential BMPs that would be applied, we  
27 could then notify the Port Authority and say,  
28 "Hey, we think this one needs a bit closer look."

29 Q Okay. And Track 2?

30 MR. SALOMI: Track 2 is the majority of the projects  
31 where there was a feeling that those works had a  
32 potential to have significant impacts, and that it  
33 would be worthy of a review and some kind of a  
34 formal response, or tailored response.

35 Q By DFO.

36 MR. SALOMI: We would coordinate the response with the  
37 FREMP program.

38 Q Okay. And the Track 3?

39 MR. SALOMI: Typically more of a major project type  
40 activity. Eventually the Track 3 project became  
41 almost entirely handled by the Major Projects  
42 Group at DFO and through the coordinated **B.C.**  
43 **Environmental Assessment Act/Canadian**  
44 **Environmental Assessment Act** process. So Track 3  
45 didn't really apply that much.

46 Q Okay. And then there was a new plan, which Ms.  
47 Tsurumi has helpfully given me the words and the

1           acronym, it's the Environmental Process  
2           Modernization Plan. Were there additional changes  
3           made as a result of that plan?  
4       MR. SALOMI: Yes. Now, the EPMP was a national  
5           initiative. It had five initially, and then six  
6           components, and I'll see if I can get them all.  
7           One of them was streamlining, looking at ways to  
8           streamline the review process. The other one was  
9           to improve consistency and coherence in DFO's  
10          response to developers and proponents, et cetera.  
11          Another one was improving the major projects  
12          review process. Another one was - Michael, maybe  
13          you could help me out here - it was working with  
14          partnerships, and the sixth element that was added  
15          was the Habitat Compliance Initiative.  
16       Q       Okay. Well, if we can focus on the streamlining  
17           tools that were developed under that, under the  
18           EPMP. What streamlining tools were developed?  
19       MR. SALOMI: One of the key ones was the operational  
20           statements.  
21       Q       Okay.  
22       MR. SALOMI: Basically somewhere around operational  
23           statements, they were called "national operating  
24           statements" for a while, and then were changed to  
25           "operating statements", were developed.  
26       Q       All right. And these were developed nationally,  
27           were they?  
28       MR. SALOMI: Yes.  
29       Q       Okay.  
30       MR. CROWE: Sorry, if I can just clarify, there was a  
31           national set, then each region was allowed to --  
32           essentially not allowed to, but was able to modify  
33           that set and add extras to make them appropriate  
34           for a specific region.  
35       Q       Okay.  
36       MR. CROWE: And just to clarify, an operational  
37           statement is essentially a best management  
38           practice.  
39       Q       But it's a national DFO-created document.  
40       MR. CROWE: That is correct.  
41       Q       All right. And what was the purpose of these  
42           operational statements?  
43       MR. SALOMI: Well, a key statement in most of the  
44           operational statements is that if you carry out  
45           the activity identified in the operational  
46           statement, consistent with the guidance in that  
47           statement, the Department deemed that you would

1 not be causing a harmful alteration, disruption or  
2 destruction of fish habitat. And that basically  
3 was the green light to tell people you didn't need  
4 to seek a formal authorization or any kind of  
5 review from the Department.

6 Q And again is this -- was there a notice required  
7 to DFO when those operational statements were used  
8 by people?

9 MR. SALOMI: Well, under the **Fisheries Act**, there isn't  
10 a specific section that says you must apply.  
11 There's a s. 35 says you cannot harmfully alter  
12 fish habitat, s. 35(2) says you can seek an  
13 authorization if desired, but there is not a  
14 specific requirement for notification or  
15 application. But within the operating statements  
16 there is a statement that does request that people  
17 notify the Department if they are utilizing the  
18 operational statement.

19 Q And have you found people to do that?

20 MR. SALOMI: Well, we know who applies, or notifies us.  
21 But, yes, I think it's a difficult one to assess.

22 Q And is there any kind of professional  
23 certification required that an operating statement  
24 has been complied with? Is there any kind of  
25 external review required?

26 MR. SALOMI: Not that I'm aware of.

27 Q Is there any --

28 MR. CROWE: Sorry, if I can interrupt.

29 Q Oh, yes.

30 MR. CROWE: A number of them do recommend that a  
31 proponent hire a qualified professional to help in  
32 the design and construction, but it's not -- it's  
33 not a requirement.

34 Q Okay. And what about monitoring for compliance.  
35 Does Fisheries and Oceans do any monitoring for  
36 compliance with operational statements?

37 MR. CROWE: Yes, they do. There is, as Corino said,  
38 there's a sixth element to EPMP, which is the  
39 Habitat Modernization Program, which is  
40 essentially our structured Monitoring Unit within  
41 the Habitat Management Program. And amongst other  
42 objectives of that Monitoring Program, monitoring  
43 for compliance of operational statements is a  
44 component.

45 I cannot tell you how much monitoring they've  
46 done. You know, essentially there is some  
47 monitoring of operational statements, but I don't

1 know what that is. The complicating factor is  
2 because notifications are voluntary, the only ones  
3 we can monitor are the people who issued  
4 notifications and the expectation is the ones that  
5 provide us with notifications are essentially  
6 probably the people who are going to be more  
7 cooperative and likely to have done them in the  
8 manner that they were intended. So you're going  
9 to be monitoring a component that probably has a  
10 higher likelihood of being cooperative in  
11 attempting to fulfill the obligations and  
12 intentions of these operational statements.

13 Q What about, I guess, notices given to Fisheries  
14 and Oceans by neighbours or other parties, or just  
15 things that personnel might see when they're out  
16 doing field reviews. Has there been much  
17 compliance initiated through those other  
18 alternative ways?

19 MR. CROWE: Notification from the general public and  
20 industry representatives is a very common way that  
21 we become aware if there's an activity that may be  
22 out of compliance or has not received any kind of  
23 governmental review. So we rely heavily on our  
24 federal as well as provincial reporting lines to  
25 report occurrences of possible activities that  
26 have not been reviewed or permitted, other than  
27 through ourselves or the province.

28 Q And are these operational statements designed for  
29 any particular level of risk? For example, are  
30 they designed for low risk projects, medium, high  
31 risk, is there any -- is that one of the factors  
32 that was determined as to what operational  
33 statements would be created?

34 MR. SALOMI: That was the intention, you know, part of  
35 the EPMP program was to establish, quote, pathways  
36 of effects to describe how effects or activities  
37 might impact fish habitat, to then categorize  
38 outcomes as low, medium or high risk, and then to  
39 apply things like operating statements to the low  
40 risk activities.

41 Q And do you, in your view, has that worked  
42 effectively, for example, do you -- is there a way  
43 to assess impacts on a cumulative basis, for  
44 example, if a subdivision was created and there  
45 was repeated compliance with operational  
46 statements, but there was a whole series of them  
47 done at the same time, has that been assessed?

1 MR. SALOMI: No. So, for some of the operating  
2 statements that are more maintenance-based, or  
3 really have limited impact on fish habitat, I  
4 think the assumption is okay. For other ones, and  
5 one that I have some concern with, or raised  
6 concern with in the past is, for example, the  
7 Bridge Operating Statement. I think low risk is  
8 even not the right way to put it. They are  
9 potentially low impact, if applied in an area  
10 with, say, minimal riparian habitat. But their  
11 impact is relatively certain, if you are going to  
12 place a bridge over top of the riparian zone,  
13 there will not be riparian vegetation growing  
14 under that bridge. If it's just one small bridge  
15 in the middle of nowhere where there's limited  
16 riparian impact, it's a reasonable approach. If  
17 it's an area with significant development, there's  
18 large riparian trees that are important components  
19 of that stream, and you start to apply that  
20 operating statement, I think that would not be  
21 categorized as low risk. That's starting to get  
22 into the higher cumulative impact category.

23 Q Okay. So the Bridge Operating Statement, are  
24 there any other concerns that you have with it,  
25 other than just the fact that you could have  
26 several bridges in sequence and that would have a  
27 significant effect, or it could -- bridges could  
28 be put in populated areas where there's other  
29 impacts ongoing?

30 MR. SALOMI: Well, I think one of the items that people  
31 have picked up on is it says explicitly, if you  
32 follow this guideline, you will not be creating a  
33 harmful alteration. And it kind of sets an  
34 indication of what might be or might not be a  
35 harmful alteration. Some people have said, well,  
36 typical two-lane bridge and right-of-way is about,  
37 you know, 20 metres. So we can put in a two-lane  
38 bridge, have 20 metres of footprint over a creek  
39 and that's not really a HADD, and they pointed  
40 that out as an example. And I think that's a  
41 dangerous statement to make and a dangerous  
42 interpretation for individuals to make. For  
43 example, many city lots aren't much wider than 20  
44 metres. The suggestion is you can maybe not have  
45 20 metres of riparian in your backyard anymore,  
46 and it's not a HADD. So there's dangerous  
47 interpretations or assumptions that come out of

1 that document.

2 Q What about clearing zones associated with the  
3 operating statements, is that -- with the  
4 operating statements for bridge construction, is  
5 that a problem?

6 MR. SALOMI: Well, you know, if a bridge is put in  
7 initially with compliance with the operating  
8 statement, it might have minimal impact if there's  
9 minimal trees, but you then start getting into  
10 things like operational phases of that bridge,  
11 where the local government or highways department  
12 that's operating that bridge would say, "Well, the  
13 trees beside it are leaning towards the bridge,  
14 now they're hazards," or "We need to clear it a  
15 little bit wider for sight lines." So I think  
16 there's a tendency to underestimate the potential  
17 impact from even something as small as a two-lane  
18 bridge.

19 Q And what about planning. How does the planning  
20 process work in with the use of these operational  
21 statements?

22 MR. SALOMI: Well, that's another challenge with that  
23 particular operating statement. In many urban  
24 areas, there's potentially significant road  
25 networks that are established, and without some  
26 encouragement or regulatory role, there's a  
27 potential for abuse of using that operating  
28 statement to avoid proper planning.

29 The other thing is historically, at least in  
30 the Lower Fraser area, local governments were  
31 aware that if they were going to be putting in a  
32 bridge, they would need an authorization from DFO.  
33 It would encourage them to plan around that, or we  
34 could use it as a way to say to a local  
35 government, "Look, we know you're going to have to  
36 put bridges in there, that will require an  
37 authorization." We're not going to be inclined to  
38 issue an authorization if the works associated  
39 with that bridge aren't up to standard. So it  
40 kind of got us out of, I will say, a regulatory  
41 hook or tool.

42 Q And, Mr. Crowe, can you talk to us a little bit  
43 about small boat moorage, the Dock Operating  
44 Statement that I guess would have a little bit  
45 more use in your area of the province.

46 MR. CROWE: This is an example of an operational  
47 statement, yeah, that has been problematic in the

1 B.C. Interior. Essentially, the problem is that  
2 our lakeshores are very important for fish rearing  
3 and spawning, and therefore it's important to  
4 maintain them in a very healthy, productive  
5 condition. But there's a directly competing  
6 interest, which is using these same areas for  
7 recreational values, where individuals want to  
8 derive personal benefit and enjoyment of their  
9 property, and, you know, respect and understand  
10 that. And quite common with recreational  
11 properties is a desire to have a dock.

12 So we determined that we could not keep up  
13 with the considerable number of referrals for  
14 docks and using an operational statement to try to  
15 streamline that referral process was initiated.  
16 The result was that we set some standards around  
17 the size of docks and some general guidance on  
18 locations, but the challenge is that they can be  
19 placed on spawning grounds, and as well in close  
20 proximity to fish rearing, and we don't have the  
21 ability to, because we're not looking at them, we  
22 cannot actually direct a dock's location, relative  
23 to known spawning areas. We encourage an  
24 individual to do some research, to find out if  
25 their dock may be in proximity to spawning  
26 habitat, and but it's not -- they're not compelled  
27 to do so.

28 Additionally, that there is a high likelihood  
29 that that dock could be in proximity to important  
30 rearing habitat, and but that's not actually,  
31 avoidance of important rearing habitat is not a  
32 condition.

33 Added to that, that same operational  
34 statement actually says that you can build a  
35 boathouse on the foreshore and including the  
36 removal of trees and making modifications to  
37 construct such a boathouse. So we've -- that also  
38 is contrary to many of our objectives in terms of  
39 protecting the foreshore and the in-water habitat.

40 So it's an operational statement that is  
41 problematic and, I mean, we're realistic here, and  
42 that's that there is more work than the Department  
43 can manage as a Habitat Management Program, and we  
44 need to find ways to manage the elements of the  
45 lower risks spectrum of our business in an  
46 efficient and effective manner. But, yes, there's  
47 some operational statements we believe are

1 continuing to contribute to the ongoing cumulative  
2 incremental harm to habitat.

3 Q And does the Pacific Region have the ability to  
4 modify these operational statements for the  
5 Pacific Region, or would you simply be able to add  
6 additional ones in the Pacific Region?

7 MR. CROWE: No, if we -- we can have these operational  
8 statements modified or deemed to not apply in our  
9 region. But, yeah, it's a -- there is an  
10 administrative process within the Department that  
11 we go through to have those changes made.

12 Q All right. And have any attempts been made to  
13 change either the Bridge Operating Statement or  
14 the Dock Operating Statement?

15 MR. CROWE: They -- some changes to the Dock  
16 Operational Statement were already made. There  
17 was actually not -- there were no limitations on  
18 how close these docks were to -- could be to each  
19 other. So, for example, a strata development with  
20 20 properties could have -- each property could  
21 have its own dock, and there's now a minimum  
22 distance requirement between docks. So we've had  
23 that change made. These other changes have not  
24 been made yet.

25 Q And on the Bridge OS?

26 MR. SALOMI: Yeah, there's been some modifications to  
27 the regional OS.

28 Q But the problems that you talked about today are  
29 still not addressed in the existing OS?

30 MR. SALOMI: No, those -- those fundamental problems, I  
31 think, are hard to address.

32 Q Okay.

33 THE COMMISSIONER: Ms. Baker, you may be coming to  
34 this, or your learned friends may be covering it,  
35 but just so I understand the context in which  
36 these answers are being given this morning, the  
37 document on the screen at the moment I think has  
38 been marked as Exhibit 1002.

39 MS. BAKER: Yes.

40 THE COMMISSIONER: And it is dated 2004, which the  
41 evidence I heard this morning I understand is  
42 about the time that changes are starting to happen  
43 in terms of downsizing and other --

44 MS. BAKER: Right.

45 THE COMMISSIONER: -- adjustments being made. In this  
46 particular document there is reference to both the  
47 requirements for the province, as well as for DFO.

1           And the steps that have to be taken with respect  
2           to both the province and DFO are set out  
3           thoroughly in this document. Do I take it from  
4           these recent answers that the content of this  
5           document you've had marked as an exhibit, and the  
6           steps that persons are supposed to be taking, as  
7           outlined in here, are no longer relevant?

8   MS. BAKER: The document that's on the screen is a  
9           provincial and DFO BMP document, not an  
10           operational statement document, which is what  
11           we've been talking about just now.

12   THE COMMISSIONER: No, but what I was trying to  
13           understand is that, for example, in this document  
14           on page 26 - I'm not sure if it will be the same  
15           page 26 - yes, just at the bottom there, it  
16           explains how DFO is involved in what persons are  
17           supposed to be doing and the steps they're  
18           supposed to take. Do I take it that this has been  
19           all changed, altered, modified?

20   MS. BAKER: I'll let the witnesses answer that.

21   MR. SALOMI: If we can just have a moment to review  
22           this.

23           So, yes, this, leading up to 2004 and for the  
24           time around 2004, this would be an accurate  
25           description of the approach taken. And then  
26           sometime after 2005 and EPMP, there was a number  
27           of national and regional operating statements that  
28           were put in place, which were essentially an  
29           alternate to following this approach. It's not  
30           inconsistent, necessarily, with this approach, but  
31           they were standalone documents. And you pulled up  
32           that operating statement, read it, designed your  
33           project to meet it, you were in theory good to go  
34           without being in conflict with the **Fisheries Act**.

35   THE COMMISSIONER: So if I'm a member of the public,  
36           and I want to understand the jurisdictional  
37           differences between the province and the federal  
38           government requirements, I wouldn't be using this  
39           document. I'd have to go to something else.

40   MR. SALOMI: I think this document is still relevant to  
41           how DFO might approach proposed works. The  
42           operating statements are an alternate. They're  
43           not identified in here. And we have updated our  
44           website recently to provide a bit more of a  
45           detailed approach to that question.

46   MR. CROWE: Mr. Commissioner, what I would offer is  
47           that this is still a relevant statement and

1 approach. What we have done is we have taken  
2 specific work activities and said that there is  
3 now a new stream for how those will be managed.  
4 So if your work falls within these 19 operational  
5 statements, you do not need to go through this  
6 process. You can just apply that --

7 THE COMMISSIONER: Oh, I see.

8 MR. CROWE: -- that operational statement. So  
9 determine your project type, and then determine if  
10 you can use, you have to go through the  
11 traditional review process, or you can just apply  
12 this operational statement.

13 THE COMMISSIONER: I see.

14 MS. BAKER:

15 Q Yesterday we talked about environmental review  
16 committees within local governments, and also  
17 reviews of official community plans that DFO would  
18 become involved in. Did that change around this  
19 time when there were reductions and changes, and  
20 the EPMP was brought in, the other issues we've  
21 discussed this morning came into play?

22 MR. SALOMI: Yes. So through the '90s and into early  
23 2000, virtually any significant work in or about a  
24 stream was referred to the province, either as a  
25 notification or formal application under the **Water**  
26 **Act**. And so the province basically was in a  
27 position to touch all those, or respond to all of  
28 those. We worked with the province at DFO to  
29 share that workload, in that Fisheries and Oceans  
30 staff would often deal with the more significant  
31 proposals, or ones that would most likely require  
32 a formal **Fisheries Act** authorization.

33 There's still a significant workload and  
34 there was recognition that local government had a  
35 big part to play in a lot of that workload. And  
36 so what we did was to form environmental review  
37 committees where the province, DFO, the municipal  
38 planning, engineering and approvals groups would  
39 get together and review packages of maintenance  
40 activities, development proposals, et cetera. And  
41 it was a much more streamlined approach. It was  
42 also useful because it gave us a working  
43 relationship with individual in local government.  
44 We could educate each other about our objectives.  
45 We could identify innovative ways to deal with  
46 things. It gave us a window into local government  
47 planning. We would often discuss broader scale

1 plans at that table. It was quite efficient.

2 When at some point, that was around 2002,  
3 that the province decided they were no longer  
4 going to be reviewing all those notifications in  
5 detail, they also decided that they would not  
6 provide that review role at an ERC. And so the  
7 ERC foundation fell apart to some extent, and it  
8 was often just DFO and the local government that  
9 would meet, if the local government still felt the  
10 need.

11 Q So in your area, you described how you had been  
12 involved in many environmental review committees  
13 in the Lower Fraser. Have they all, have you  
14 stopped participating in those entirely, or do you  
15 still participate in some?

16 MR. SALOMI: We still participate in some. Some are  
17 fairly active. Others are a lot less regular and  
18 some have discontinued.

19 Q And do you continue to work with the province on  
20 developing best management practices as we  
21 discussed earlier?

22 MR. SALOMI: I can't think of any significant efforts  
23 around that over the last five years at least.

24 Q Could I have Exhibit 662 brought up. This is a  
25 memo that was drafted by Jason Hwang, he  
26 identified this earlier in April 5th in this  
27 inquiry. Are you familiar with this memo, either  
28 of you?

29 MR. CROWE: Yes, I am.

30 Q Okay. And, Mr. Salomi?

31 MR. SALOMI: I have read it at some point, yes.

32 Q All right. Does this, Mr. Crowe, does this  
33 reflect your views at the time?

34 MR. CROWE: Yes, it does. I am in agreement with it.

35 Q And, Mr. Salomi?

36 MR. SALOMI: Yes, for the most part.

37 Q Okay. There's one line in this document I just  
38 wanted to ask you about. In the second paragraph,  
39 it says that:

40  
41 EPMP and staff reductions have reduced our  
42 ability to engage with proponents. Meeting  
43 the regulatory minimum is not as favourable  
44 for fish habitat as what we used to be able  
45 to which was to get the lowest viable impact.

46  
47 Can you explain what that means? I guess, Mr.

1 Crowe, you might be best able to explain what that  
2 means.

3 MR. CROWE: Essentially what it means is when we engage  
4 directly with proponents, we are able to  
5 understand the details of the development plans,  
6 assess what the likely impacts are to the project,  
7 to fish and fish habitat, and set expectations,  
8 usually through some form of written guidance on  
9 what we expect of them to avoid harm, or mitigate,  
10 or compensate for effects to habitat. So getting  
11 the lowest viable impact is that engagement in  
12 negotiation to minimize the overall effect.

13 Streamlining tools that draw us out of that  
14 direct engagement, essentially is that -- and  
15 provide a guidance document to essentially act as  
16 a surrogate for that detailed review and comment,  
17 is what is meant by the regulatory minimum. And  
18 that the opinion is that if we are relying on a  
19 tool to deliver regulatory minimum, we will not  
20 get the same effects as previously when we had  
21 more staff and more direct engagement.

22 Q And, Mr. Salomi, is this, when you were talking  
23 about the Bridge Operating Statement and the lack  
24 of ability now to get engaged in planning, is that  
25 a reflection of the same concern?

26 MR. SALOMI: That would be a good example of my  
27 interpretation of what is written in the  
28 paragraph.

29 THE COMMISSIONER: Can you just remind me, Ms. Baker,  
30 of what **RAR** is?

31 MS. BAKER: That's the **Riparian Area Regulation**, which  
32 we're going to get into in quite a lot of detail  
33 soon.

34 THE COMMISSIONER: Can I just ask the panel this  
35 question. Mr. Crowe, you mentioned, and I think  
36 it would not be a secret to say that the growth  
37 that we've experienced in the Lower Mainland, as  
38 well as in the Interior, appears to continue with  
39 regard to population growth and activity. And you  
40 both mentioned the provincial government's  
41 involvement, and this document mentions local  
42 governments, and says "not meeting the spirit and  
43 intent", et cetera. I am going to assume that the  
44 challenges faced by DFO regarding, I think, using  
45 your words, "We have more than we can manage." I  
46 think that probably would apply to the provincial  
47 government counterparts that you have, as well as

1 local government. Is the cooperation between  
2 local, provincial and federal agencies, who are  
3 doing the work they're doing, essential to be able  
4 to manage the challenges that are being faced by  
5 the growth and population and greater activity  
6 around streams, and so on? Or can you each do it  
7 on your own? I have a sense that you were  
8 cooperating at one point, but that seems, at least  
9 in the last five years, to not be as strong.

10 MR. CROWE: The landscape we're trying to manage is,  
11 you know, for our direct interest to protect fish  
12 and fish habitat, overlaps with many other  
13 agencies, jurisdictions and responsibilities and  
14 objectives between agencies, as well as levels of  
15 government. And no one can work in a stovepipe in  
16 this field, where it's essential for the purposes  
17 of good governance and expectations of the public  
18 that government cooperate and try to, wherever  
19 possible, ensure that we act in a coordinated and  
20 cooperative manner. And it also -- so therefore,  
21 it's incumbent on when we're dealing in an area  
22 where jurisdictions overlap and objectives often  
23 are somewhat similar, or even diametrically  
24 opposed, that we do our utmost within government  
25 to try to cooperate. So essentially wherever  
26 possible, it is we do try to work together.

27 It also speaks to the fact that where our  
28 outcomes are somewhat similar, our objectives are  
29 quite similar, it can be beneficial to every  
30 agency to cooperate and try to figure out what the  
31 best way to get it in an outcome is. Sometimes it  
32 may be using the **Fisheries Act**, and it may be  
33 sometimes other times using a local government  
34 objective.

35 With downsizing, through the early to mid-  
36 2000s, I'd say the province, as well as ourselves,  
37 had to retrench and focus on what our core  
38 objectives was, with the realization that that did  
39 create some dysfunction for everyone, and that we  
40 have been building back some of those cooperative  
41 relationships, since the mid to later 2000s.

42 But with regards to local government, I'd say  
43 the province and DFO have very similar objectives,  
44 and we find it relatively easy to cooperate and do  
45 so as much as possible. Local governments, and  
46 I'll speak to the Interior, it's a bit more of a  
47 challenge, because in my opinion, local

1 governments often have an objective that is quite  
2 contrary to at least my agency's objectives.  
3 They're interested in community development,  
4 servicing the desires and wishes of their  
5 constituents, and that often means expanding  
6 development activities in close proximity to water  
7 to meet recreational or private landowner or  
8 commercial objectives. And with pressures from  
9 those groups on local governments, they don't  
10 always necessarily, they're not always able to  
11 work as easily with ourselves as we are with the  
12 province. Where possible, we definitely try to  
13 formulate those arrangements, such as ERCs, but in  
14 the Interior we have not had the same degree of  
15 success.

16 THE COMMISSIONER: Thank you.

17 MS. BAKER: Thank you.

18 Q If I can ask for document 6 on the Commission's  
19 list to be brought up. This is a review paper  
20 that was prepared, I understand, by you, Mr.  
21 Crowe, in 2007. Do you recognize that document?

22 MR. CROWE: Yes, I do.

23 Q Okay. And this sets out the staffing changes  
24 between 2003 and 2007, and it shows, just looking  
25 at the column on the first page, a reduction of 20  
26 FTEs, full time equivalents, down to eight; that's  
27 correct?

28 MR. CROWE: That's correct.

29 MS. BAKER: Could I have this marked, please.

30 THE REGISTRAR: Exhibit 1003.

31

32 EXHIBIT 1003: BCI Mid-Fraser/Thompson/  
33 Okanagan Habitat Management Section Program  
34 Review, January 2007  
35

36 MS. BAKER:

37 Q All right. And --

38 MR. CROWE: And sorry, I'll just add, and we have  
39 actually gone down further since then.

40 Q Okay. What is your current staffing?

41 MR. CROWE: Seven.

42 Q And this was a result of what? Maybe you can just  
43 explain why the staffing reduced so much. I know  
44 you've already explained in a general way, so if  
45 that's the answer, we can move on. But if there's  
46 some more detail you want to give...

47 MR. CROWE: No, it was the discontinuation of some B-

- 1 based funding, longstanding B-based funding  
2 programs, ERC and, yeah, the general  
3 redistribution of resources within Pacific Region  
4 and, you know, larger financial decisions in DFO.
- 5 Q All right. At page 9 of this memo -- well, so,  
6 first of all I'll just explain, this memo sets  
7 out, leading up to page 9, the different staff  
8 positions and outlines the workload that they have  
9 after the reductions in staffing, correct?
- 10 MR. CROWE: Yes.
- 11 Q It doesn't set out your particular workload, and  
12 you're one of the people that's been left in that  
13 group, so I take it you had to pick up a lot of  
14 the work that was being done by some of the people  
15 who left?
- 16 MR. CROWE: That's correct. Though in my role, it's  
17 more about trying to balance and manage and apply  
18 judgment and how we're going to direct our day-to-  
19 day resources and make long-term planning  
20 decisions with my manager and counterparts.
- 21 Q Okay. Page 9 of this document sets out an  
22 overview of program changes over the past year,  
23 and I take it that these -- has there been any  
24 substantive change to what's set out in this  
25 document since 2007?
- 26 MR. CROWE: I wouldn't say substantive. I should also  
27 explain that this is a time where it was sort of a  
28 perfect storm of converging challenges. We were  
29 -- the province was going through changes and  
30 downsizing, we were going through changes and  
31 downsizing. We were developing new program  
32 delivery tools, such as through EPMP, and we were  
33 putting a lot of our direction in trying to  
34 actually create new tools, risk management  
35 frameworks, triaging systems, the operational  
36 statements. At the same time, the development  
37 sector was escalating, so declining re capacity  
38 and increasing workload was a real problem for us.  
39 So this is sort of an over, you know, a one-page  
40 summary of the things that we were essentially  
41 having to change in our program, was a one-page  
42 synthesis of everything we were doing to try to  
43 manage those compounding challenges.
- 44 Q Just you said there hasn't been any significant  
45 changes. I just want to go to a couple of them.  
46 A number of bullets down, I'm not going to try and  
47 count them, you say that:

1                   We no longer participate in local government  
2                   foreshore planning initiatives; [such as]  
3                   CSRD, Chase, Kamloops and Sicamous.

4  
5                   Now, not all of those areas are relevant for  
6                   Fraser sockeye, but --

7                   MR. CROWE: Yes.

8                   Q       -- CSRD is certainly, and Kamloops may be as well.  
9                   Has that changed?

10                  MR. CROWE: Yeah, actually, I'm glad you brought that  
11                  one up, because that is one change, and that a  
12                  little while after this document was written, the  
13                  primarily provincial leadership, the Shuswap Lake  
14                  Integrated Planning Process was initiated amongst  
15                  all levels of government and other groups to try  
16                  to deal with the very substantial problems with  
17                  development and the rate of development and nature  
18                  of development within the Shuswap area. So  
19                  understanding just how what I would describe as a  
20                  mess it was in terms of the character and nature  
21                  of development in the Shuswap, it was essential  
22                  that we get on board with the provincial  
23                  initiative to try to deal with this in a more  
24                  coordinated manner between governments.

25                  Q       Okay, that's great. And I will come back and talk  
26                  about that program in a bit more detail. But  
27                  another bullet here which I wanted to ask you  
28                  about, it says:

29  
30                               [Ministry of Environment] provides almost no  
31                               assistance to DFO in the management of HADDs  
32                               in resident water. There are even examples  
33                               of [Ministry of Environment] causing delays  
34                               by trying to keep them engaged to provide  
35                               advice.

36  
37                               What does that actually mean? That's not clear to  
38                               me.

39                  MR. CROWE: Sorry, I appreciate I wrote this document,  
40                  but I can't -- could you point me to the bullet?

41                  Q       Oh, it's just we were looking at the CSRD bullet,  
42                  it's just three below that.

43                  MR. CROWE: Oh, thank you.

44                               This related to some of the provincial  
45                               changes where they were not performing the same  
46                               role that they had done historically with regards  
47                               to giving advice or direction to the Department of

1 Fisheries and Oceans in -- when I say "management  
2 of HADDs", there's essentially an arrangement  
3 where the Department of Fisheries and Oceans is a  
4 lead regulator for development activities in  
5 salmon-bearing waters, and the province is a lead  
6 agency in resident fish-bearing waters. But only  
7 the Department of Fisheries and Oceans can  
8 authorize a HADD, harmful alteration disruption or  
9 destruction of fish habitat.

10 So essentially in resident fish-bearing  
11 waters, if a development is proposing one of the  
12 -- a HADD, the province would take the lead in the  
13 management up until the point it would actually --  
14 and the authorization would be issued, and then  
15 the Department of Fisheries and Oceans would issue  
16 the authorization. With provincial changes, the  
17 province was no longer providing that same role,  
18 and expecting DFO to engage far more greatly in  
19 the review and management of those HADDs in  
20 resident fresh water. So essentially we were  
21 stepping into the province's traditional role in  
22 those resident freshwater situations.

23 That has somewhat adjusted again in  
24 negotiations with the province, and I think the  
25 understanding by the province is that was actually  
26 problematic for meeting their fisheries  
27 objectives. They have in, I can't say everywhere,  
28 but in large parts of the area that I'm  
29 responsible for, the province has stepped back  
30 into that role.

31 Q All right. And when they were out of that role,  
32 it sounds like it's just dealing with non-salmon-  
33 bearing waters, but did that have any impact on  
34 your ability to manage the salmon-bearing waters?

35 MR. CROWE: The consequence of having to step into  
36 resident fish habitat project reviews was that it  
37 left us less resources to apply to salmon-bearing  
38 waters. So essentially it was a dilution of our  
39 -- further dilution of our effectiveness.

40 Q All right. And then the last couple of bullets  
41 talks about the fact that there are fewer  
42 stewardship programs resulting in a lack of public  
43 awareness, knowledge, and voluntary protection.  
44 Then you also refer to the fact that you're not  
45 considered a partner with ENGOs any more. And if  
46 we just flip the page, there's one more that's  
47 sort of a related concept where you talk about a

1 reduced field role which is resulting in more  
2 infractions. So maybe you can talk to us a little  
3 about that. What's the impact of sort of dropping  
4 back in the field and dropping back in terms of  
5 stewardship and partnering with the ENGOs. How  
6 does that have an impact?

7 MR. CROWE: When you have a field presence and you're  
8 engaged with industry sectors and the public,  
9 there is an awareness of us and our objectives,  
10 and the need to protect fish and fish habitat, you  
11 know, essentially familiarity breeds knowledge.  
12 When you are no longer engaging with individuals  
13 in the same manner as frequently, and people don't  
14 see you as much, there is a tendency to forget  
15 about your objectives and a fall-back towards  
16 practices that would, you know, we had thought  
17 were managed, and the people, we were finding that  
18 there was tendencies towards increased rates of  
19 development, or actions that were resulting in  
20 increased harm to habitat. So essentially not  
21 being in the field, not maintaining a presence,  
22 resulted in an increase in reports of occurrences  
23 of harm or of potential violations of the  
24 **Fisheries Act.**

25 Q All right. And, Mr. Salomi, is there anything you  
26 wanted to add to these comments?

27 MR. SALOMI: The B.C. Interior office had a more  
28 significant increase in staff and then drop in  
29 staff. The change in the Lower Fraser was not  
30 quite as dramatic, but we face similar challenges.

31 MS. BAKER: Mr. Commissioner, I'm going to move next to  
32 **RAR, the Riparian Areas Regulation,** so this would  
33 be a good time to take the break, if you would  
34 like.

35 THE COMMISSIONER: Has this been marked, Ms. Baker?

36 MS. BAKER: Yes, it was marked as Exhibit 1003.

37 THE COMMISSIONER: 1003.

38 MS. BAKER: Wasn't it? Yes.

39 THE COMMISSIONER: And that's Tab 6 of Commission  
40 counsel's...

41 MS. BAKER: Right.

42 THE COMMISSIONER: Thank you very much.

43 MS. BAKER: Thank you.

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

46

47 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)

(PROCEEDINGS RECONVENED)

1  
2  
3 THE REGISTRAR: Order. The hearing is now resumed.  
4 MS. BAKER: Thank you. Mr. Commissioner, I'm finally  
5 going to have some questions of Stacey Wilkerson,  
6 who's been sitting here patiently for the last two  
7 days.

8  
9 EXAMINATION IN CHIEF BY MS. BAKER, continuing:

10  
11 Q Ms. Wilkerson, we're going to be dealing now with  
12 the Riparian Areas Regulation and you are the  
13 coordinator for the province since 2007?

14 MS. WILKERSON: Yes, I am.

15 Q First of all, I'm just going to ask you to  
16 identify the regulation because I think it might  
17 be useful to have that before us.

18 MS. BAKER: That's in Tab 3.

19 Q And this is just to identify, this is the  
20 regulation that you are coordinating the  
21 implementation of?

22 MS. WILKERSON: Yes, it is.

23 MS. BAKER: I'll have that marked, please.

24 THE REGISTRAR: Exhibit 1004.

25  
26 EXHIBIT 1004: The Riparian Areas Regulation

27  
28 MS. BAKER:

29 Q All right. Now, when exactly was the Riparian  
30 Areas Regulation brought into force? I understand  
31 it was originally planned for 2005 but did that  
32 happen?

33 MS. WILKERSON: It was planned for March 31st, 2005,  
34 and then a decision was made to give local  
35 governments an extra year to get the appropriate  
36 bylaws into place to implement. So it actually  
37 came into force March 31st, 2006.

38 Q Okay. And it replaced the Streamside Protection  
39 Regulation that had been place previously?

40 MS. WILKERSON: Yes.

41 MS. BAKER: Okay. A couple of corrections that need to  
42 be made in the PPR, which I think I'll just do  
43 now. If you could bring that up, it's PPR14. And  
44 if we can go to page 21 of that document?

45 Q All right. Paragraph 42 talks about the  
46 application of this regulation and it says:

47

1                   The RAR applies to municipalities and  
2                   regional districts in the Lower Mainland, on  
3                   much of Vancouver Island, in the Islands  
4                   Trust area and in parts of the Southern  
5                   Interior; adoption is voluntary for local  
6                   governments.  
7

8                   And that would be local governments which are not  
9                   otherwise subject to the regulation; is that  
10                  right?

11 MS. WILKERSON: That's right.

12 Q               All right. And the regulation itself sets out  
13                which municipalities and districts are subject to  
14                the regulation expressly. And that can be found  
15                in section 3(1) of the regulation itself. Right?

16 MS. WILKERSON: Yes, that's right.

17 MS. BAKER: Thank you. And then, sorry to jump around  
18               like this, if you could pull the PPR back up on  
19               the screen?

20 Q               Paragraph 42, talking about where the regulation  
21                does apply in a physical sense. And the last  
22                sentence of paragraph 42 sets out all the physical  
23                areas that it does apply in. States, the very  
24                last clause that it does not apply to estuarine  
25                areas. But it also doesn't apply to marine areas;  
26                is that correct?

27 MS. WILKERSON: That's correct.

28 MS. BAKER: Thank you. And one last correction. On  
29               paragraph 44 of the PPR. Actually, the part of  
30               that paragraph that's on page 23. If you could  
31               keep moving to the next page. Oh, sorry,  
32               paragraph 45. So move to the next page.

33 Q               Okay. Sub (b) that you see on the screen there  
34                says, "that its bylaws and permits under Part 267  
35                of the Local Government Act." It's actually  
36                supposed to be "Part 26"; is that right?

37 MS. WILKERSON: That's correct.

38 Q               Okay. Thank you. Now, I'll just ask Mr. Crowe  
39                and Mr. Salomi, was Canada involved in the  
40                development of -- you know what? Before I go  
41                there, I'm just going to ask Ms. Wilkerson to just  
42                explain what the purpose of RAR is just in a  
43                general overview sense to set the stage for these  
44                questions.

45 MS. WILKERSON: The main purpose of RAR is to provide  
46                directives to local governments to protect  
47                riparian areas in accordance with the regulation.

1 Q Okay. And that would include developing setbacks  
2 to protect lakes and streams and things like that?

3 MS. WILKERSON: That's right.

4 Q All right. And so Mr. Crowe and Mr. Salomi, was  
5 Canada involved in the development of setbacks  
6 under RAR?

7 MR. CROWE: The determination of where the setbacks  
8 should be was sort of based upon a science paper  
9 that was crafted or written by both provincial and  
10 DFO scientists. And so yes, therefore, DFO was  
11 engaged.

12 Q All right. And is that Science paper at Tab 15 of  
13 the Commission's documents? It's titled, "The  
14 technical basis of zone of sensitivity  
15 determinations under the detailed assessment  
16 procedure of the Riparian Areas Regulation".

17 MR. CROWE: Yes.

18 Q And that's, as you see at the bottom, it's  
19 authored by the Ministry of Environment, Fisheries  
20 and Oceans Canada and it's dated September 2007?

21 MR. CROWE: Yes.

22 MS. BAKER: Okay. And I'll have that marked, please.

23 THE REGISTRAR: Exhibit 1005.

24

25 EXHIBIT 1005: The technical basis of zone of  
26 sensitivity determinations under the detailed  
27 assessment procedure of the Riparian Areas  
28 Regulation

29

30 MS. BAKER:

31 Q So once DFO was involved in that paper, was it  
32 involved any further in developing the standards  
33 under the regulation or was that left to the  
34 province?

35 MR. CROWE: No, my understanding is that DFO was  
36 actively engaged with the province in development  
37 of the regulations. I would say I would be happy  
38 to have Ms. Wilkerson give her opinion but the way  
39 I would describe was that the province was the  
40 lead in the development of the regulation and DFO  
41 provided a support role.

42 Q All right. Is that your understanding?

43 MS. WILKERSON: Yeah, I wasn't part of the process. My  
44 understanding is that a staff member from DFO or  
45 regional headquarters was quite involved in the  
46 development in the early stages.

47 Q All right. Mr. Salomi, we talked about the 1992

1 development guidelines earlier and those  
2 guidelines are marked as Exhibit 1001 now. Are  
3 you content with the setbacks in the Riparian  
4 Areas Regulation as compared with the 1992  
5 development guidelines?

6 MR. SALOMI: It depends on the type of stream. The  
7 Land Development Guidelines proscribe 15-metre  
8 from top-of-bank protection zones for most streams  
9 and 30 metres in the case of higher density  
10 development. The Riparian Areas Regulation  
11 applies different standards to different types of  
12 streams. And in many cases, for example, the  
13 smaller streams, the Riparian Areas Regulation  
14 suggests at least an initial riparian zone that's  
15 smaller than that proscribed in the Land  
16 Development Guidelines. And so your comment about  
17 am I content with it? I would say I'm not content  
18 with it in a significant portion of the smaller  
19 stream classes.

20 Q And why not? What's the concern that you have?

21 MR. SALOMI: In short, I think the width proscribed in  
22 the Riparian Areas Regulation are inadequate to  
23 protect the stream and the stream functions in the  
24 riparian zone.

25 Q Primarily with small streams?

26 MR. SALOMI: Yes, and some of the steeper streams.

27 Q Okay. Ms. Wilkerson, back to the operation of the  
28 regulation itself, there is a Schedule of  
29 Assessment Methods that's referenced in the  
30 Regulation. And that is in Tab 11 of the  
31 Commission's documents. So this is a companion to  
32 the Regulation itself; is that right?

33 MS. WILKERSON: That's right.

34 MS. BAKER: All right. And I'll have that marked,  
35 please.

36 THE REGISTRAR: Exhibit 1006.

37  
38 EXHIBIT 1006: Riparian Areas Regulation  
39 Assessment Methods  
40

41 MS. BAKER:

42 Q What is the Assessment Method Schedule used for?  
43 How does that work?

44 MS. WILKERSON: This is the methodology that a  
45 qualified environmental professional must follow  
46 when carrying out a Riparian Areas Regulation  
47 assessment. So it describes or proscribes how a

- 1 qualified environmental professional, we call them  
2 QEPs, how they would establish the setback and  
3 then it provides a set of mitigative measures that  
4 must be used to maintain the integrity of that  
5 setback. So these measures include assessments  
6 around danger trees, wind throw, slope stability,  
7 encroachment prevention, storm water management,  
8 floodplain concerns and sediment and erosion  
9 control.
- 10 Q Okay. Perhaps you can explain how the QEP works  
11 within the Riparian Areas Regulation. What is the  
12 theory of this Regulation?
- 13 MS. WILKERSON: Well, it's a professional reliance  
14 model. And that means that before a proponent is  
15 able to develop, they need to hire an independent  
16 qualified professional to undertake an assessment  
17 according to this methodology and then that  
18 assessment comes to the province, DFO and the  
19 local government before they can get their  
20 development approval.
- 21 Q Okay. And is the Riparian Areas Regulation  
22 implemented consistently across all regional  
23 districts?
- 24 MS. WILKERSON: No, it's not.
- 25 Q Why is that?
- 26 MS. WILKERSON: There's several approaches that local  
27 governments can take. We have some requirements.  
28 They need to have a means of triggering an  
29 assessment or of attaining assessment. They need  
30 to have a means of basically triggering the  
31 assessment when the development is proposed. But  
32 they can do this in several different ways. So  
33 local governments have chosen different ways to do  
34 this. They can also choose the tools that they  
35 want to use to implement so they can use  
36 development permits. They can use zoning bylaws,  
37 as an example.
- 38 Q Okay. And has the province developed a guideline  
39 to assist local governments in implementing this  
40 Regulation?
- 41 MS. WILKERSON: Yes.
- 42 Q Okay. And that's at Tab 4 of the materials?
- 43 MS. WILKERSON: That's correct.
- 44 MS. BAKER: All right. I'll have that marked, please.
- 45 THE REGISTRAR: Exhibit 1007.
- 46
- 47

1 EXHIBIT 1007: Riparian Areas Regulation  
2 Implementation Guidebook  
3

4 MS. BAKER:

5 Q And this document sets out the roles and  
6 responsibilities of the different parties,  
7 including DFO, and the province and local  
8 governments; is that right?

9 MS. WILKERSON: That's correct.

10 Q Okay. I'd like to look at the different  
11 assessment methods that are contained in the  
12 schedule to the Regulation.

13 MS. BAKER: So if we can turn to Exhibit 1006 again.

14 Q Page 6 of that document identifies at the top  
15 there that there's two assessment methods, a  
16 "Simple Assessment" and a "Detailed Assessment".  
17 Can you explain, what is the Simple Assessment  
18 method?

19 MS. WILKERSON: The Simple Assessment is the assessment  
20 that was used originally under the Streamside  
21 Protection Regulation. And because it had already  
22 been adopted by some local governments, it was  
23 kept for the RAR as well. So the Simple  
24 Assessment looks at whether the stream is fish-  
25 bearing or not.

26 It looks at whether it's a permanent flow or  
27 not and how much vegetation or potential  
28 vegetation the area would be capable of supporting  
29 based on permanent structures that are already  
30 there. The Detailed Assessment was designed  
31 specifically for the Riparian Areas Regulation and  
32 it's a little more site-specific based on stream  
33 characteristics. And it provides a setback and  
34 then the measures that I had described earlier.  
35 So those are the main two differences.

36 Q Okay. And who decides whether a Simple Assessment  
37 will be used or a Detailed Assessment?

38 MS. WILKERSON: If a local government's already adopted  
39 the Simple Assessment in their bylaw then that's  
40 the one that will be used. Otherwise, the QEP,  
41 the Qualified Environmental Professional, will be  
42 the one that decides what's more appropriate for  
43 the site.

44 Q All right. And will a Detailed Assessment always  
45 result in smaller setbacks than you would get  
46 using the Simple Assessment method?

47 MS. WILKERSON: Not always, no.

1 Q Okay. And are there any other benefits to using  
2 the Detailed Assessment? Like is that where we  
3 hear about the mitigative measures, for example,  
4 that you referred to earlier?

5 MS. WILKERSON: That's right.

6 Q Okay. And I take it just reflecting the comments  
7 that Mr. Salomi had earlier, that a small stream  
8 will typically have a smaller setback using the  
9 Detailed Assessment than under the Simple  
10 Assessment?

11 MS. WILKERSON: That's right.

12 Q Okay. For the witnesses, Mr. Crowe and Mr.  
13 Salomi, if a proponent of a project is compliant  
14 with this Regulation, I take it that means that  
15 there's an acceptance by DFO that there will be no  
16 HADD; is that right?

17 MR. CROWE: That's what's described in the Department's  
18 "sign off or support of the Regulation".

19 Q Okay. So does Canada have any involvement then in  
20 the permitting stage, or I guess the application  
21 of this Regulation? Does Canada get involved at  
22 all?

23 MR. CROWE: Our primary role will be in the  
24 circumstances where a proponent is looking for a  
25 variance to the setbacks proscribed once doing a  
26 simpler Detailed Assessment. Yeah, DFO is the  
27 agency responsible for granting of variances.  
28 Local governments have some limited ability but  
29 our primary role is as it relates to consideration  
30 and granting of variances.

31 Q Okay. So if we can just understand how this  
32 works. If a development applicant wants to do a  
33 project, they look to the Riparian Areas  
34 Regulation, they have a QEP who will come in and  
35 either use a Simple or Detailed Assessment to  
36 determine if there will be any HADD. And if it  
37 looks like there's going to be a HADD, they need  
38 to go to DFO for a variance on this project to  
39 allow it to be built in compliance with the  
40 **Fisheries Act**; is that right?

41 MR. CROWE: Well, if they can comply with the SPEA,  
42 essentially --

43 Q The SPEA is what?

44 MR. CROWE: Streamside Protection Enhancement Area. So  
45 once a Simple or Detailed Assessment is completed,  
46 it'll determine essentially the line that the  
47 development should be set back from, from the

1 water body. And that zone between the water and  
2 the setback is defined as the SPEA, streamside  
3 protection and enhancement area. So DFO has  
4 agreed that if an assessment methodology is  
5 completed appropriately and development can stay  
6 outside the SPEA, there will, therefore, not be a  
7 HADD. So it's a surrogate for our review and  
8 approval process.

9 Q Okay. And how does DFO assess variance  
10 applications? Is there some guidelines in place?

11 MR. CROWE: Yes, there's a range of circumstance. One  
12 is an individual has a development intention which  
13 whereby they want to be closer to the water than  
14 the SPEA allows and they can come forward and ask  
15 for a variance and we can make a determination if  
16 we're going to grant it or not. There is a second  
17 category whereby after identifying the SPEA, the  
18 remaining parcel of property is so small because  
19 of the parcel size or configuration that it's  
20 literally not possible to put any kind of building  
21 or use that property in any essentially manner.

22 And we have agreed to this principle of  
23 sterilization by which an individual has a right  
24 to use their property. And if the SPEA  
25 essentially sterilizes their property, they have  
26 the right to be considered for a variance so they  
27 can put something on their own land. So in those  
28 situations, we agree to that principle and,  
29 therefore, will likely grant a variance. But then  
30 it gets quite complicated, which is how far back,  
31 what is the location, size and configuration of  
32 that development? And if there's a HADD, then  
33 there's likely going to be an authorization with  
34 some form of compensation.

35 Q Okay. And there's a protocol that's a draft  
36 protocol, I take it, for assessing variance  
37 applications that DFO uses; is that right?

38 MR. CROWE: Yes, so there is --

39 Q If you can just confirm that then I'll have it  
40 brought up on the screen.

41 MR. CROWE: Yes, there is a draft variance protocol.

42 MS. BAKER: Okay. And that's in Tab 14 of Canada's  
43 documents.

44 Q Is that the document that you're referring to?

45 MR. CROWE: That's correct, yes.

46 Q So I'll have that marked first and then maybe you  
47 can explain a bit about it.

1 MS. BAKER: Could you mark that, please?

2 THE REGISTRAR: Exhibit 1008.

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MS. BAKER:

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Q Go ahead.

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MR. CROWE: Within understanding the principles and objectives of RAR and agreeing that in certain circumstances where there was a potential or likely sterilization of the property and, therefore, a person would have what we'd deem to be an undue hardship, we would agree to granting them a variance. When the Regulation was first passed, it was very confusing as to when a variance should be granted and there was a great deal of negotiation and discussion with proponents as to if they had the right to a variance, well, what does that mean in terms of the use of their property? And often an individual would be trying to build a building too close to the water, too large and essentially the effect would be substantial. As well as individuals were proposing and being supported by their local governments that they had an undue hardship and we'd deem them clearly not to have an undue hardship and, therefore, they did not have a right to a variance.

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I'll use, as an example, an individual wanted a pool in front of their very nice home and the local government agreed that it was an undue hardship, that they did not have the right to have a pool. Another individual had a local government agree that if their building was set back further than their neighbours, who had developed historically and were closer to the water, that it was an undue hardship, that they did not have the same nice view that the other property owners would have by having their house set further back. And I could give more examples but clearly there was too much uncertainty as to what was meant by undue hardship and where properties were to be located, as well as size. So we essentially realized that we had to create an administrative

1 tool to help provide guidance, consistency and  
2 coherence to when variances were to be granted, as  
3 well as the location, size and configuration of  
4 developments. And essentially this is what this  
5 document does is it was a tool we created between  
6 DFO and the Ministry of Environment to provide  
7 essentially methodology within the methodology to  
8 provide that direction on how variances were to be  
9 managed.

10 Q All right. And just in the interests of time, I'm  
11 not going to take you to the PPR, but I'll note  
12 that at paragraph 52 of the PPR, we made reference  
13 to this document but we don't identify it as a  
14 draft. And I just want you to confirm that this  
15 is still a draft document?

16 MR. CROWE: Yes, as the RAR is essentially agreed to by  
17 Ministry of Environment, DFO and the Union of B.C.  
18 Municipalities, we still have not received  
19 agreement by the Union of B.C. Municipalities with  
20 regards to this variance protocol so essentially  
21 we're using it operationally as a guidance tool  
22 but it has not yet become protocol within RAR.

23 Q And in the circumstances that you described where  
24 the local government was in favour of some of the  
25 variances that you described like pools or better  
26 views and that sort of thing, what was DFO's role?  
27 Did DFO have to agree with the local government or  
28 could DFO make its own decision on whether a  
29 variance should be granted?

30 MR. CROWE: Essentially, we make our own decisions.  
31 Our decisions are not fettered but at the same  
32 time we do take others' opinions into  
33 consideration in our decisions and essentially  
34 have two different levels of government. We're  
35 coming out to two different positions. We felt  
36 that that was confusing for the public, for agency  
37 personnel, and, therefore, it was incumbent upon  
38 us to come up with a system, a tool to provide  
39 that coherence and consistency for all parties  
40 within RAR.

41 Q Okay. The model under RAR is, as you said, a  
42 reliance on professional certification. Ms.  
43 Wilkerson, does the province have any power to  
44 reject a QEP's assessment or to prevent  
45 development, if the province is not satisfied with  
46 the QEP's assessment?

47 MS. WILKERSON: Well, it usually depends on the stage

1 that we receive it. For instance, as reports are  
2 submitted to us, if we see that the assessment  
3 methodology has not been followed or if the report  
4 is incorrect or incomplete, then we notify the  
5 local government that they're not in position to  
6 approve or allow the development based on this  
7 assessment. If the QEP has not followed the  
8 assessment methodology and they certified that  
9 they have, then they've made an incorrect  
10 certification and so the report basically can't be  
11 accepted. So at that point, if we inform the  
12 local government, then generally we have that sort  
13 of power in that sense. But otherwise, once a  
14 report has come in and the local government has  
15 carried on with the development approvals, then  
16 no.

17 Q Okay. And the role of the province in trying to  
18 talk to local governments about whether they  
19 should accept a QEP assessment report, that's more  
20 of a persuasive role, I take it. The province  
21 doesn't actually have the power to say to a local  
22 government you cannot accept this report if it's  
23 been certified?

24 MS. WILKERSON: Unless there are significant errors,  
25 but no.

26 Q And as I understand it, the Riparian Areas  
27 Regulation, what it does is it prohibits a local  
28 government from allowing development unless the  
29 local government has received that certified QEP  
30 assessment report for the development, right?

31 MS. WILKERSON: That's right.

32 Q Okay. And then that report sets out the setbacks  
33 or the SPEAs --

34 MS. WILKERSON: Yes.

35 Q -- that are to be applied to protect riparian  
36 areas, right?

37 MS. WILKERSON: That's right.

38 Q And that report also sets out the assessment and  
39 methods that were used by the QEP in doing its  
40 assessment?

41 MS. WILKERSON: That's right.

42 Q Okay. Other than that, the Riparian Areas  
43 Regulation doesn't actually proscribe how the  
44 riparian areas protection should be implemented;  
45 is that fair?

46 MS. WILKERSON: That's fair.

47 Q Okay. So it doesn't say that the local government

- 1           must ensure that the SPEAs are protected in the  
2           manner set out in the QEP assessment report?  
3   MS. WILKERSON: Well, in the Regulation --  
4   Q    It's in the binder at Tab 3.  
5   MS. WILKERSON: -- section 6 of the Regulation directs  
6           local governments here to protect riparian areas  
7           in accordance with the Regulation.  
8   Q    And the Regulation simply requires them to get a  
9           QEP assessment report?  
10  MS. WILKERSON: That's followed the methodology.  
11  Q    Okay. But it doesn't provide any requirement that  
12           the local government monitor to ensure that the  
13           QEP assessment report has been correctly  
14           implemented --  
15  MS. WILKERSON: No.  
16  Q    -- or anything like that?  
17  MS. WILKERSON: No.  
18  Q    Okay. And so to address that, I take it the  
19           province in its guidebook, its implementation  
20           guidebook, which is Exhibit 1007, has tried to  
21           provide local governments with some guidance in  
22           how they can actually implement and ensure that  
23           these SPEAs are actually put in place and  
24           protected?  
25  MS. WILKERSON: That's right. It sets out a number of  
26           tools and approaches that the local government can  
27           use. And they're just directed to use the powers  
28           available to them under Part 26 of the **Local**  
29           **Government Act**. So it's limited to that.  
30  MS. BAKER: All right. And I'll just identify where  
31           that is in the exhibit, which is page 38 and  
32           following sets out the implementation tools.  
33           That's at Tab 4.  
34  Q    Is that right?  
35  MS. WILKERSON: That's correct.  
36  Q    Okay. And the enforcement tools are set out at  
37           page 52?  
38  MS. WILKERSON: Correct.  
39  Q    Sorry. Actually, it begins at page 51. Sets out  
40           all the compliance monitoring. And then the part  
41           we're just looking at is the enforcement tools.  
42           Okay. So the RAR itself doesn't require a local  
43           government to use any of these enforcement tools;  
44           it's simply the guidebook tells them that these  
45           are available to them and encourages them to use  
46           them?  
47  MS. WILKERSON: That's correct.

1 Q Okay. Has there been more involvement with  
2 Fisheries and Oceans and the implementation of RAR  
3 in the B.C. Interior than in the lower Fraser?

4 MS. WILKERSON: Yes, I would say that's true.

5 Q And do you know why that is?

6 MS. WILKERSON: I would suspect it's because of the  
7 nature of the development in the two areas. As  
8 Mr. Crowe has described, the B.C. Interior has a  
9 number of large lakes and these lakes are very  
10 popular places for people to live and these lakes  
11 typically have very small lots that have been  
12 created. So these lots then often require  
13 variances and that's when DFO needs to get  
14 involved.

15 Q Okay. I'd like to turn to the subject of  
16 monitoring the effectiveness of the Regulation.  
17 So has there been an evaluation of compliance and  
18 effectiveness of the Riparian Areas Regulation?

19 MS. WILKERSON: I'm sorry. Can you repeat that?

20 Q Has there been any evaluation of compliance with  
21 the Regulation and an evaluation of the  
22 effectiveness of the Regulation in protecting  
23 riparian areas?

24 MS. WILKERSON: Yes, we've started with compliance  
25 monitoring and we're currently developing an  
26 effectiveness monitoring plan.

27 Q Okay. And are those monitoring strategies for  
28 both compliance and effectiveness within your job  
29 description?

30 MS. WILKERSON: Yes.

31 Q Is that where you work?

32 MS. WILKERSON: Yes, the oversight of them.

33 Q Okay. So starting with compliance, in the first  
34 years after RAR was implemented, what kind of  
35 compliance monitoring did B.C. do?

36 MS. WILKERSON: Well, in 2007, we monitored every  
37 report that had been submitted to date so we hired  
38 a crew to go out and look at every assessment that  
39 had been submitted. In the years following that,  
40 we used the data we collected to help inform our  
41 monitoring strategy and then we then monitored  
42 within this compliance monitoring framework that  
43 we had developed from that.

44 Q And you said you went out to the sites. Did you  
45 also look at the QEP reports?

46 MS. WILKERSON: Yes. So for the first three years of  
47 implementation of the RAR, we looked at every

1 report that was submitted as a paper audit. So we  
2 were checking essentially for correctness and  
3 completeness of the reports. After three years,  
4 we moved to just an audit function where we looked  
5 at 20 percent of the reports because we were  
6 comfortable that we'd gotten to the level of  
7 compliance with reports that we felt comfortable  
8 with.

9 Q And the QEP report reviews and the site visits,  
10 was that done in both the lower Fraser and the  
11 south coast generally? Like was it done in all  
12 areas?

13 MS. WILKERSON: Yes.

14 Q Okay. And for the site visits, does a property  
15 owner have to give the Ministry staff that are  
16 doing the site visit inspections access to their  
17 site to see whether they complied with the  
18 assessments?

19 MS. WILKERSON: Well, we would approach it, we would  
20 explain why we wanted access to their property.  
21 And generally, people are cooperative. If they  
22 had concerns or decided that, no, they didn't want  
23 us on their property, then we would work with the  
24 local government who has the authority to go on-  
25 site to check with bylaw compliance. However, if  
26 we felt that there was concerns because there was  
27 an infraction with the **Fisheries Act** or **Water Act**,  
28 then we could send conservation officers.  
29 However, this didn't become much of an issue. The  
30 first summer when we looked at every report, I  
31 can't recall one where somebody's flat-out refused  
32 us.

33 Q Okay. We have in the materials a document which  
34 is at Tab 13 and it's titled "Compliance with the  
35 Riparian Areas Regulation Report on Monitoring  
36 Activities for Assessments Submitted in 2007".  
37 And it's dated May 2009. Are you familiar with  
38 that document?

39 MS. WILKERSON: Yes.

40 MS. BAKER: Okay. Can I have that marked, please?

41 THE REGISTRAR: Exhibit 1009.

42  
43 EXHIBIT 1009: Compliance with the Riparian  
44 Areas Regulation (RAR) Report on Monitoring  
45 Activities for Assessments Submitted in 2007  
46  
47

1 MS. BAKER:

2 Q And what's this document?

3 MS. WILKERSON: These are the results of our monitoring  
4 that we did in 2008. So we're always monitoring  
5 the reports that were submitted the year before.  
6 So this is all based on site visits. It's not  
7 just the reports. On paper, it's the site visits.  
8 And we looked at both developer and qualified  
9 environmental professional compliance.

10 Q All right. And it's got "Draft" written across  
11 this document. Is there further changes expected  
12 to it?

13 MS. WILKERSON: No, not too many. It's something that  
14 just needs to be put through our Ministry  
15 executive, our new Ministry executive.

16 Q All right. And was a compliance monitoring plan  
17 developed as a result of this review?

18 MS. WILKERSON: This uses our monitoring plan that we  
19 developed based on the monitoring we did the year  
20 previously. So this report describes the  
21 methodology that we use.

22 Q All right. And was Canada involved in monitoring  
23 compliance or effectiveness of the Regulation?

24 MS. WILKERSON: Not formally. Well, we have no formal  
25 arrangements in place. However, I understand that  
26 last year, DFO did contribute funds for our  
27 compliance monitoring and there may have been  
28 staff that have come to some of the site visits.

29 Q Okay. And Mr. Crowe or Mr. Salomi, do you have  
30 anything to add on that, Canada's involvement in  
31 monitoring compliance or effectiveness of RAR?

32 MR. CROWE: No, nothing really to add. We relied on  
33 the province to lead the monitoring of the  
34 regulation. I do believe Ms. Wilkerson's correct  
35 in stating that there was some DFO staff that had  
36 participated but I think it was definitely on an  
37 opportunistic basis.

38 Q Is the compliance data that is made available to  
39 the province compiled and then made available to  
40 the public?

41 MS. WILKERSON: Yes, once we removed the "draft" title,  
42 it will be made available to the public.

43 Q Okay. So as of today, there has been no --  
44 there's been no compliance data made public?

45 MS. WILKERSON: Not yet, no.

46 Q Okay. And just looking at -- or talking about the  
47 work that was done to understand compliance, did

1           you assess that there was satisfactory compliance  
2           in 2007?

3       MS. WILKERSON: No, we set our benchmark at receiving  
4           90 percent compliance and we did not achieve that,  
5           no.

6       Q     Let's break it down then into components for local  
7           governments. Were local governments compliant in  
8           2007 with the Regulation?

9       MS. WILKERSON: If I recall, they were about 60 percent  
10          compliant.

11      Q     Okay. So what kinds of non-compliance did you  
12          find with local governments?

13      MS. WILKERSON: So local government compliance, if  
14          they're not compliant, it means that they don't  
15          have the appropriate bylaws in place to trigger  
16          regulatory action and trigger the QEP assessment  
17          report. So there are a variety of ways they can  
18          implement at that point. The 60 percent means  
19          that 60 percent of the local governments did have  
20          something in place to implement RAR. The other 40  
21          percent, how they were non-compliant varied so  
22          there's a variety of ways they might not be on a  
23          notification system. In other words, they  
24          wouldn't be able to receive the reports. Others  
25          just had absolutely nothing in place for riparian  
26          protection and others just hadn't brought in a  
27          bylaw that we felt was effective in meeting their  
28          RAR objectives.

29      Q     So what was done to address that state of non-  
30          compliance for local governments?

31      MS. WILKERSON: Again, it would depend on the nature of  
32          the non-compliance so we tried to sort of stratify  
33          them. It also depended on how concerned we were  
34          with that particular local government. Some local  
35          governments didn't have anything in place but  
36          there's one municipality that might have had one  
37          fish-bearing ditch compared to an entire regional  
38          district, like the Columbia Shuswap that has very  
39          important fish habitat. And I know that Mr. Crowe  
40          will be speaking later to an important initiative  
41          in that regional district, the SLIPP process.

42          But generally, depending on the local  
43          government, we would send advisory letters,  
44          warning letters, reminding of their obligations to  
45          implement. And a lot of it was staff working with  
46          staff in the local government to help them to  
47          provide support. We recognize that it takes a lot

1 of time and effort to bring in new official  
2 community plans and development permits. So we  
3 were, you know, fairly patient but also tried to  
4 encourage them to implement as quickly as  
5 possible.

6 Q And have you seen improvements since 2007?

7 MS. WILKERSON: Yes.

8 Q Okay. And then moving to QEPs, which, of course,  
9 stands qualified environmental professionals.

10 MS. WILKERSON: Environmental professionals, yes.

11 Q What was their compliance in 2007 when you did the  
12 review?

13 MS. WILKERSON: Well, it shows in the report a pie  
14 chart that says 48 percent of the non-compliance  
15 was attributable to QEPs. That doesn't mean that  
16 48 percent of the QEPs were non-compliant; it  
17 means that when we looked at the reports, 48  
18 percent of the non-compliant situations that we  
19 saw were due to QEP errors. And these ranged from  
20 small errors that weren't as big of a concern as  
21 larger errors, such as omitting a watercourse that  
22 was on the property that they didn't notice.

23 Q All right. And what was done to address the non-  
24 compliance that you observed with QEPs in 2007?

25 MS. WILKERSON: So once we do these audits, we provide  
26 feedback. The specific feedback from the site to  
27 the QEP to ensure that they're aware of where the  
28 error occurred. So it's an education for the QEP.  
29 If it was a serious concern then we would have  
30 more serious discussions with them and with the  
31 association that they would belong to. So to be a  
32 qualified environmental professional, you must  
33 belong to an association that's governed under an  
34 Act in British Columbia. So there is that  
35 recourse through the association. We've used some  
36 of the information we've collected while  
37 compliance monitoring to improve the course we  
38 provide for QEPs.

39 So there's a training course offered through  
40 Vancouver Island University and it's offered  
41 throughout the province and it essentially teaches  
42 QEPs the methodology on how they're supposed to  
43 submit these assessments. So we've made  
44 modifications to the course to reflect some of  
45 these issues. And then we, from time to time,  
46 offer workshops for QEPs. We sort of tell them  
47 the top ten things that we've found in the field

1           that have been an issue.

2       Q     The course that you described at Vancouver Island  
3           University, is that a mandatory course for QEPs?

4       MS. WILKERSON: It's not mandatory, no.

5       Q     Okay. Has there been any improvement in the QEP  
6           reports or however you described that, 40 percent  
7           non-compliance, has that improved the issues,  
8           improved since 2007?

9       MS. WILKERSON: Some of the issues have improved and  
10           with report quality, I would say it's improved  
11           since I started looking at them. I think in  
12           general there's a greater understanding of what  
13           RAR is and what it's trying to achieve. However,  
14           we're still seeing some significant non-compliance  
15           on the ground with respect to the measures that I  
16           talked about earlier.

17           And one of the reasons for this might be that  
18           the setbacks are based on really proscriptive  
19           methodology and they're almost always done  
20           correctly. With the measures, it's a little bit  
21           more subjective and it might require different  
22           expertise. So you know, we really rely on the  
23           QEPs expertise in that sense and we find that  
24           those are the areas that we're finding the most  
25           issues.

26       Q     All right. And Mr. Crowe and Mr. Salomi, what has  
27           been Canada's experience with the QEP reports? Do  
28           you have anything to add to the observations that  
29           Ms. Wilkerson has made?

30       MR. CROWE: I think the one piece I would add is that I  
31           understand the concepts and ideas of professional  
32           reliance models and we apply them regularly in  
33           DFO. I think some classifications of QEPs are not  
34           necessarily appropriate for being engaged in  
35           assessment of riparian areas. And therefore,  
36           there is a number of QEPs that are, I think, not  
37           appropriate to be engaged in these assessments,  
38           particularly as it relates to I don't believe  
39           they're bringing the right values into their  
40           judgments.

41           And we would like to engage with the province  
42           in reviewing the types of professional  
43           classifications that could be participating in  
44           these assessments as QEPs. We have recently  
45           engaged with the province in identifying a number  
46           of QEPs that have been regularly creating problems  
47           in terms of quality reports and I think bringing

1 the wrong values to their positions. And we're  
2 hoping to remedy those situations through their  
3 colleges. That was recent conversations between  
4 Ms. Wilkerson, myself and others. I think the  
5 professional reliance model is -- I understand it  
6 but I think that some of the systems within RAR  
7 that maybe allow a little bit more too much  
8 discretional amongst some individuals has been a  
9 problem for us.

10 Q Is the concern that the QEPs you're discussing are  
11 not having a professional objectivity and they're  
12 advocating for the developer or what's the problem  
13 that you're describing?

14 MR. CROWE: That's a very good way to put it. I would  
15 say that they do not understand the nature of  
16 habitat management in terms of cumulative  
17 incremental harms. They're clearly acting as  
18 advocates for their clients to achieve a  
19 development objective that's completely contrary  
20 to the intention of RAR and our agency's mandates.

21 Q And what about follow-up with the QEP reports?  
22 Are you satisfied with the ability that any of the  
23 regulatory agencies have to ensure that those  
24 reports are actually implemented appropriately on  
25 the sites?

26 MR. CROWE: It's my experience that there is not  
27 sufficient strength within the regulation to  
28 require follow-up by the property owners and their  
29 QEPs to ensure that the measures that are required  
30 within these RAR reports are completed as they  
31 were intended and that it is an area that the  
32 Regulation -- and I would be happy to speak to the  
33 strengths of the Regulation but this is one area  
34 that definitely would need to be bolstered.

35 MR. SALOMI: I'd like to add that the intention of the  
36 Regulation is not to have DFO or agency staff  
37 review the reports. And so your question about do  
38 we have issues with the reports, I would say we're  
39 not reviewing them for the vast majority of the  
40 ones that occur. My responsibility, they are  
41 submitted to the online system and we don't see  
42 the report. We don't get involved. So I think  
43 that's important to keep in mind when you say do  
44 we have issues with the reports. That being said,  
45 we do get involved in reports where there's a  
46 variance being requested.

47 In some municipalities or jurisdictions where

1 they might have a higher standard than the  
2 Riparian Areas Regulation, a QEP and a proponent  
3 might bring forward an RAR-detailed assessment, as  
4 rationale why they might be allowed to go closer  
5 to the stream. In those situations, we often do  
6 see problems with QEP reports. One of the big  
7 things, as was touched on by Stacey, the measures  
8 aren't well-describe in the guide or the  
9 assessment methodologies yet the measures are one  
10 of the key things to ensure that we have a long-  
11 term functional riparian area.

12 Other problems are QEPs perhaps missing  
13 watercourses, in ravine scenarios perhaps missing  
14 the seepage areas or the important contributing  
15 areas around the watercourse, those kinds of  
16 things.

17 Q Moving on to developers. In your report, you  
18 talked about how 48 percent of the non-compliance  
19 issues could be attributed to the QEPs but you  
20 also said in that report that 52 percent could be  
21 attributed to developer issues. So can you  
22 explain what that's about and what's been done to  
23 address those non-compliance issues?

24 MS. WILKERSON: Right. So by developer we're talking  
25 about either the landowner, which is generally the  
26 case, or it could be a larger developer. It's a  
27 little more difficult to address with developers  
28 because it sort of is a one-time deal for them.  
29 You know, if this is the landowner, this is the  
30 only time they're going to do a Riparian Areas  
31 Regulation assessment and so with a QEP, you know,  
32 if they continue to do them, we can sort of  
33 provide an education that way. With developers  
34 it's a little more difficult.

35 So some of the strategies we've used through  
36 our compliance monitoring it's an opportunity to  
37 talk to the developer and sort of explain this  
38 amenity that's on their property and how they can  
39 take care of it. So it's a stewardship approach.  
40 A lot of times with a developer, if they haven't  
41 implemented the RAR, you know, they've missed  
42 something in the assessment report that's really  
43 key and they don't really understand it. So we  
44 try to get QEPs when they're going out and doing  
45 these assessments to actually talk to the  
46 developers. We found that QEPs had done reports  
47 and never spoken with a landowner, which was, you

1 know, fairly shocking to us. So that's something  
2 that we've really focused on in the QEP course;  
3 make sure you talk to the developer and let them  
4 know, you know, why this is important.

5 If they're having significant issues when we  
6 go out with compliance monitoring, then that's  
7 when we would look at enforcement, I guess, under  
8 local government bylaw or the **Water Act** or the  
9 **Fisheries Act**. However, with compliance  
10 monitoring, there's the odd situation that we have  
11 come across that we've been quite concerned about  
12 but for the most part, as was discussed earlier,  
13 the really big issues we tend to find through  
14 complaints. So if something fairly egregious has  
15 happened, we tend to hear about it before we  
16 monitor.

17 Q Okay. Then we've been talking about compliance  
18 monitoring. Has the province done anything to  
19 understand the effectiveness of the regulation?  
20 Has there been any effectiveness monitoring or  
21 assessment?

22 MS. WILKERSON: We are currently developing the  
23 effectiveness monitoring plan as part of the  
24 overall provincial effectiveness monitoring  
25 strategy so we're fitting the RAR monitoring sort  
26 of within that methodology. We've currently got a  
27 contractor who's looking at ways that we could  
28 develop an effectiveness monitoring plan for the  
29 RAR.

30 Q And what's the timeframe for that being completed  
31 or implemented, I guess?

32 MS. WILKERSON: I can't say how long it will take to  
33 implement it. The timeframe to develop it, I'm  
34 hoping that it won't be too much longer. Once  
35 this is developed, of course, it's going to have  
36 to be something that we'll probably have to work  
37 through a little bit more. We'll want to get  
38 DFO's support to make sure that they're in  
39 agreement with how we're tackling this.

40 Q Okay. And you have an annual report on the  
41 implementation of RAR, which is at Tab 13 of the  
42 materials. It's dated May 5, 2009. It's also  
43 still in draft.

44 MS. BAKER: It'll just be on the screen in a second.  
45 Tab 12. Is that right? Sorry.

46 THE REGISTRAR: Well, you've already marked Tab 13.

47 MS. BAKER: Tab 12.

50  
PANEL NO. 42  
In chief by Ms. Baker (cont'd)

1 MS. WILKERSON: It's 12.  
2 THE REGISTRAR: That'll be marked as 1010.  
3 MS. BAKER: Okay. Well, let me ask the witness if she  
4 knows what it is first.  
5 Q Is this a report you're familiar with?  
6 MS. WILKERSON: Yes, I am.  
7 MS. BAKER: Okay. Now, let's get it marked.  
8 THE COMMISSIONER: Then we'll take a break.  
9 THE REGISTRAR: It'll be marked as Exhibit 1010.

10  
11 EXHIBIT 1010: Annual Report on the  
12 Implementation of the Riparian Areas  
13 Regulation (RAR) 2008-09  
14

15 THE REGISTRAR: The hearing is now adjourned until 2:00  
16 p.m.  
17

18 (PROCEEDINGS ADJOURNED FOR NOON RECESS)  
19 (PROCEEDINGS RECONVENED)  
20

21 THE REGISTRAR: Order. The hearing is now resumed.  
22 MS. BAKER: Thank you, Mr. Commissioner. There was a  
23 couple of housekeeping matters, you remember from  
24 yesterday. I indicated that we would be marking  
25 the questions that were posed in writing to Karl  
26 English and the answers that were provided today,  
27 so I'll just take care of that quickly.  
28 The first document is dated April 20, 2011.  
29 These are the questions posed by the Area E  
30 Gillnetters and B.C. Fisheries Survival Coalition,  
31 questions posed to Karl English. So we'd like  
32 that marked as the first exhibit. And just for  
33 the record, those questions were redacted as per  
34 the Commissioner's ruling.

35 And then the --

36 THE REGISTRAR: That will be marked as 1011.  
37

38 EXHIBIT 1011: Area E Gillnetters and B.C.  
39 Fisheries Survival Coalition redacted  
40 questions to Karl English, dated April 20,  
41 2011  
42

43 MS. BAKER: All right. And then the next document  
44 would be the answers that were provided by Karl  
45 English. They still maintain the date of April  
46 20, 2011, although they were provided on June 3rd.  
47 So that will be an A, so --

June 8, 2011

51  
PANEL NO. 42  
In chief by Ms. Baker (cont'd)

1 THE REGISTRAR: Yes, that will be marked as 1011A.

2  
3 EXHIBIT 1011A: Karl English's answers to  
4 Area E. Gillnetters and B.C. Fisheries  
5 Survival Coalition redacted questions of  
6 April 20, 2011, provided June 3, 2011  
7

8 MS. BAKER: Thank you. And then the next set of  
9 questions and answers are re-examination questions  
10 directed to Karl English from Commission Counsel,  
11 dated May 27, 2011. That should be the next  
12 exhibit.

13 THE REGISTRAR: 1012.

14  
15 EXHIBIT 1012: Commission Counsel re-  
16 examination questions to Karl English, dated  
17 May 27, 2011  
18

19 MS. BAKER: And then the answers to those questions,  
20 also dated on May 27, although provided on June  
21 3rd, would be --

22 THE REGISTRAR: 1012A.

23  
24 EXHIBIT 1012A: Karl English's answers to  
25 Commission Counsel's re-examination questions  
26 of May 27, 2011, provided June 3, 2011  
27

28 MS. BAKER: Thank you.

29  
30 EXAMINATION IN CHIEF BY MS. BAKER, continuing:  
31

32 Q All right, to move back to the witnesses we have  
33 here, today. Mr. Crowe, I'd like to just talk to  
34 you about areas where **RAR** is not in effect. We've  
35 heard, today, that it's in -- **RAR** is in effect in  
36 certain areas, since they're indicated in the  
37 regulation. In areas where **RAR** is not in effect,  
38 what is the role of Canada in assessing riparian  
39 area impacts?

40 MR. CROWE: Essentially, we perform our traditional  
41 role of reviewing development activities in  
42 riparian zones through the **Fisheries Act** lens,  
43 meaning we review a project to ensure compliance  
44 with the **Fisheries Act** and ensure that there is no  
45 net loss of habitat through, yeah, project  
46 reviews.

47 Q And would the 1992 land development guidelines

June 8, 2011

1 that we reviewed earlier apply?

2 MR. CROWE: Yes, that would be the foundational  
3 document. As we spoke yesterday, there's  
4 additional documents that have complimented it,  
5 but that is still foundational and still provides  
6 the primary guidance and direction with regards to  
7 what kind of standards we expect in terms of  
8 setbacks and activities in that riparian area,  
9 near shore area.

10 Q Okay. And the streamlining processes that we  
11 talked about earlier today, those would also be in  
12 effect in the other areas of the province where  
13 **RAR** is not in effect?

14 MR. CROWE: That's correct.

15 Q Okay. And Mr. Salomi, earlier in your testimony  
16 you referred to a number of municipalities where  
17 DFO was engaged in planning processes in your  
18 area, and I understand that some of those  
19 municipalities had streamside protection bylaws or  
20 policies or guidelines prior to **RAR** coming in; is  
21 that right?

22 MR. SALOMI: That's correct.

23 Q Okay. And what has happened in those  
24 municipalities since the introduction of **RAR**?

25 MR. SALOMI: A large number of the municipalities  
26 recognize the benefits of the **SPR** and the  
27 additional protection they might provide to --

28 Q Sorry, just to -- the "**SPR**" meaning what?

29 MR. SALOMI: Sorry. Between the ISO land development  
30 guidelines and the implementation of the **RAR**,  
31 there was a short period where a **Streamside**  
32 **Protection Regulation** was adopted by the  
33 provincial government. Some municipalities  
34 adopted that **Streamside Protection Regulation**  
35 before it was replaced by the **Riparian Areas**  
36 **Regulation**. It's more consistent with the simple  
37 assessment that is now in the **Riparian Areas**  
38 **Regulation**. A fair number of municipalities in  
39 the Lower Mainland adopted or implemented that.  
40 They still maintain that type of approach.

41 A few municipalities notably, you know, City  
42 of Coquitlam, went from the **Streamside Protection**  
43 **Regulation** to the **RAR**, that largely applies  
44 detailed assessment, for example. In some  
45 municipalities they're still applying the **SPR**-type  
46 approach, or a land development guideline  
47 approach. But it's a challenging situation for

1           them, because there's this detailed assessment out  
2           there that may offer a substantially smaller  
3           riparian width and so they're having, I think, at  
4           times a challenge and probably had a challenge  
5           rationalizing the wider riparian buffers that they  
6           would otherwise apply.

7           Q     Okay. And we've been talking today and yesterday  
8           about physical intrusions into the riparian areas,  
9           primarily. What about hydrological intrusions, is  
10          that also a concern?

11         MR. SALOMI: In urban areas, typical of the ones around  
12          the Lower Mainland where there's significant  
13          development, I would say the two primary items  
14          that are activities that are causing decreases in  
15          watershed health and productivity are (a)  
16          intrusions into the riparian zone, and (b) changes  
17          in the hydrology. So when you cut down all the  
18          significant portion of the forest in a watershed,  
19          that changes the rainfall interception and  
20          delivery of water to the ground and to the  
21          streams. When you replace soil and trees with  
22          rooftops and roadways, again, when that rain falls  
23          instead of it being soaked into the treetops or  
24          the ground, it gets funnelled quite rapidly to the  
25          stream. The volume of water that gets delivered  
26          increases, and this causes a massive erosion and  
27          destabilization of streams.

28                 Similarly, because that rainfall is being  
29                 intercepted, there's often less groundwater  
30                 recharge, so during summer periods there's less  
31                 base flow.

32                 So, you know, when we're talking about urban  
33                 development here it's important to keep in mind  
34                 that both riparian integrity and the nature of the  
35                 watershed and how swim water is managed is very  
36                 important.

37         Q     Now, prior to the **Riparian Areas Regulation** being  
38          brought in, was DFO working with Metro Vancouver  
39          on an integrated stormwater management plan?

40         MR. SALOMI: Yes.

41         Q     And how was that -- what are the important  
42          features of that plan that we should be knowing  
43          about here, today?

44         MR. SALOMI: In recognition of the situation I just  
45          described, there was some effort to put together a  
46          way to describe watershed health in relation to  
47          riparian areas and hydrological changes, and the

1 Integrated Stormwater Management Planning  
2 document, pages 2-3, has a chart that shows the  
3 relationship between riparian areas and hydrology.  
4 And it basically laid out a way that local  
5 governments could protect riparian zones and put  
6 in stormwater management features to maintain the  
7 watershed integrity.

8 So it's based on one measuring and planning  
9 for sustainable riparian buffers, it's a 30-metre  
10 buffer width, and implementing land use patterns  
11 that minimize hydrological changes in the  
12 watershed, minimize development footprint, and  
13 then incorporating things like rainwater  
14 filtration features. So instead of the rainwater  
15 going down a catch basin in a pipe at the creek,  
16 it might first pass through a vegetative roadside  
17 swale, have the opportunity to have pollutants  
18 filtered out, have the opportunity to recharge the  
19 groundwater, and then if it must be released, be  
20 released in a slow way that tries to mimic natural  
21 conditions.

22 So that was an approach that the Metro  
23 Vancouver/GVRD municipalities worked on.

24 Q And just maybe to make the record complete, at Tab  
25 19 of Canada's documents is the Stormwater Source  
26 Control Design Guidelines 2005. Is that the  
27 document you're referring to?

28 MR. SALOMI: That document describes best management  
29 practices or rainwater infiltration features to  
30 help try and minimize the impacts of impervious  
31 services in a watershed, and it compliments the  
32 Integrated Stormwater Planning document.

33 MS. BAKER: Okay. I'll have that marked, please, as  
34 the next exhibit.

35 THE REGISTRAR: Exhibit 1013.

36  
37 EXHIBIT 1013: Stormwater Source Control  
38 Design Guidelines 2005  
39

40 MS. BAKER: Thank you.

41 Q And the planning that you were doing with -- that  
42 DFO was doing with Metro Vancouver with respect to  
43 stormwater impacts, has that been impacted at all  
44 by the introduction of the **Riparian Areas**  
45 **Regulation?**

46 MR. SALOMI: Well, as I mentioned, the watershed health  
47 tracking approach that Metro Vancouver was

1 utilizing in that document had one of the axis's  
2 based on riparian forest integrity, and the width  
3 that they utilized was a 30-metre buffer width.  
4 The challenge is the **Riparian Areas Regulation**  
5 often specifies 10 to 15 metre setbacks for  
6 smaller streams, say five metres and less, which  
7 represents a large portion of stream length in  
8 mini watersheds.

9 So right off the bat, if one was to default  
10 to the detailed assessment approach, you might  
11 find yourself in a 50 percent riparian forest  
12 integrity situation. Then you take, on top of  
13 that, you know, road crossings, power line  
14 crossings and other unavoidable intrusions, it  
15 puts riparian forcing integrity into a challenging  
16 scenario.

17 Fortunately, some of the local governments  
18 have realized their commitment to this integrated  
19 stormwater management planning approach and have  
20 maintained the larger buffer zones.

21 Q Under **RAR** there is an exemption given to  
22 institutions. Can you explain how that works and  
23 if that gives rise to any concerns? Well, first  
24 of all, I'll ask Ms. Wilkerson, how does the  
25 institutional exemption work?

26 MS. WILKERSON: Well, there's not a specific exemption  
27 in **RAR** for institutions, it's just that it doesn't  
28 -- the institutions aren't caught in the  
29 description of "development" so the **RAR** applies  
30 only to residential, commercial and industrial  
31 development.

32 Q Okay. Does that give rise to any concerns from  
33 the provincial perspective?

34 MS. WILKERSON: Well, they would still be -- they would  
35 still have to be compliant with the **Fisheries Act**.

36 Q Okay. And Mr. Salomi, do you have any concerns  
37 with, well, I called it an exemption, but I guess  
38 it's not an express exemption it's just it does  
39 not include it in the --

40 MS. WILKERSON: Yeah.

41 Q -- works that are covered. Do you have any  
42 concern with the way institutions are treated or  
43 not treated under the **RAR**?

44 MR. SALOMI: It does give rise to some challenges, for  
45 example, the question is: Well then what standard  
46 should be used? Should we default to the land  
47 development guidelines that were in place prior to

1 the **Streamside Protection Regulation**? Should we  
2 apply the **Streamside Protection Regulation** or  
3 detailed assessment approach that's in the **RAR**?  
4 What if the local government is not keen on  
5 supporting riparian protection? How do we  
6 encourage or require it? So it does cause some  
7 challenges.

8 Q Okay. And what about agriculture lands? Ms.  
9 Wilkerson, are agricultural lands exempt under  
10 **RAR**?

11 MS. WILKERSON: Again, it's the activity that's caught  
12 under **RAR**, not the land. So on agricultural lands  
13 or in the **ALR** a residential activity, for example,  
14 would be subject to the **RAR**, but any agricultural  
15 activities would not be subject to the **RAR**.

16 Q And does that cause any concerns with the  
17 province? Is there an intention to do anything  
18 about that?

19 MS. WILKERSON: There are standards being set at the  
20 Minister of Environment with the Ministry of  
21 Agriculture for farm building setbacks and the  
22 similar agricultural development guidelines that  
23 are consistent with **RAR**, so that's in development  
24 right now.

25 Q And how are those lands treated by Fisheries and  
26 Oceans right now, Mr. Salomi?

27 MR. SALOMI: Well, one of the challenges with  
28 agricultural land is much of it's already  
29 developed, so it's not as if there's wide treed  
30 buffer zones or riparian areas on a lot of  
31 agricultural land, so we're often not involved.  
32 Local governments have limited roles on  
33 agricultural lands; the **Right to Farm Act**  
34 supersedes local government authority in a lot of  
35 cases. So we don't often get referrals for that  
36 kind of thing.

37 Where there is trees, where it's clear  
38 there's fish habitat, we would apply appropriate  
39 standards, such as land development guidelines or  
40 the **Riparian Areas Regulation**. Where there isn't  
41 vegetation there's this new guideline which Stacey  
42 has referred to. I believe it was finalized in  
43 February and it's starting to be rolled out now.

44 Q Can you use s. 35 of the **Fisheries Act** with  
45 respect to agricultural lands?

46 MR. SALOMI: You can where there's riparian vegetation.  
47 It's a bit more challenging when farmers are

1 regularly ploughing and cropping a field adjacent  
2 to a creek that the argument that there's a  
3 harmful alteration becomes a lot more difficult.

4 Q All right. Ms. Wilkerson, from your perspective,  
5 has **RAR** provided any benefits to salmon habitat  
6 protection over previous legislation and  
7 regulation?

8 MS. WILKERSON: Well, I guess the main benefit would be  
9 that it's a requirement for local governments,  
10 now, in the areas where **RAR** applies to have  
11 riparian protection within their bylaws, where  
12 before it wasn't a requirement. And from a  
13 practical perspective, I think, you know, in  
14 respect to the lakeshore development that we've  
15 seen over the past few years, there are a lot more  
16 developments, I think, that would have been in  
17 much closer proximity to the lake if something  
18 like **RAR** had not been implemented.

19 Q And what about deficiencies with **RAR**? Where would  
20 you like to see improvements made in that  
21 regulation?

22 MS. WILKERSON: Well, I think from a practical  
23 perspective we've been challenged mostly with  
24 enforcing infractions. **RAR**, itself, isn't  
25 enforceable. It was not designed to be. It was  
26 designed to be so if somebody is in violation of  
27 the **RAR** they're either going to be in violation of  
28 a local government bylaw, the **Fisheries Act** or the  
29 **Water Act**. But as been discussed earlier, the  
30 **Fisheries Act**, you know, becomes difficult because  
31 of prosecution. With the local government bylaw,  
32 it has been effective in some cases. Some local  
33 governments have been quite good about enforcing  
34 their bylaws, but if they won't then that becomes  
35 a challenge.

36 Q All right. And Mr. Crowe, what is your view of  
37 this regulation? Has it been a benefit to  
38 protecting riparian area habitats in B.C., or in  
39 BCI, where you work?

40 MR. CROWE: I have two opinions of the **Riparian Areas**  
41 **Regulation**. One, is that it has definitely  
42 provided some benefits. I like that riparian  
43 setbacks are now under regulation to compliment  
44 the **Fisheries Act**. I think it has -- that has  
45 been a substantial improvement. Before, we went  
46 from a guideline land development, guidelines were  
47 just that, guidelines. Now, there's actually a

1 regulation for standards.

2 And the other piece actually that's very  
3 important is the **Riparian Areas Regulation**  
4 actually also applies to Brownfield sites. A  
5 Brownfield site is a previously disturbed area.  
6 And where there's been, previously, a historical  
7 high degree of development and essentially the  
8 habitat features and functions have been  
9 eliminated because of historic practices, the  
10 **Fisheries Act** is essentially not easily applied to  
11 new development, because we're not protecting  
12 habitat; it's already missing.

13 The **Riparian Areas Regulation's** strength is  
14 that it identifies streamside protection and  
15 enhancement areas, and the enhancement is the key  
16 piece here in that it does not necessarily  
17 recognize just habitat features, but also  
18 potential for habitat, so that it protects an area  
19 for the purposes of trying to promote the  
20 restoration or recovery of that area.

21 So in terms of the primary objective of the  
22 habitat policy, which is for the net gain -- the  
23 national policy for habitat management, which is  
24 the net gain of habitat, this enhancement  
25 component to the **RAR** is definitely complimentary  
26 and something that I strongly support and endorse  
27 as an improvement in our ability to regulate  
28 foreshore areas.

29 Q All right. And do you have similar concerns that  
30 Ms. Wilkerson identified with respect to  
31 enforceability?

32 MR. CROWE: Yes, I share her concerns. I think that  
33 the delivery through local governments creates a  
34 very complicated environment for senior  
35 governments, the province and DFO to try to  
36 deliver a standard and level playing field  
37 essentially being -- the regulations subjected to  
38 the variances between local governments actually  
39 results in a, yeah, a somewhat very disjointed and  
40 I'd describe sort of Balkanized regulatory  
41 environment for us to work within.

42 I will use an example like the Columbia  
43 Shuswap Regional District, where the setback  
44 standards actually vary between electoral  
45 districts within one regional district. The  
46 reliance essentially on local governments to  
47 deliver administrative penalties I think is a

1 shortcoming and does not give the Department of  
2 Fisheries and Oceans or the Minister of  
3 Environment a lot of the compelling tools to get a  
4 higher degree of compliance by local governments,  
5 proponents and QEPs.

6 I think the professional reliance model has  
7 its place. I'm not sure it's necessarily the most  
8 appropriately delivered in this situation. Yeah,  
9 so essentially I share many of the same concerns  
10 as Ms. Wilkerson. I think that it has some great  
11 strengths, but there's clearly areas where  
12 regulation could be far more effective in meeting  
13 our mutual objectives, program objectives.

14 Q Are there any other improvements that you would  
15 like to see to the regulation, other than what  
16 you've just touched on now?

17 MR. CROWE: I think a more standardized approach, a  
18 more compelling system of -- to ensure compliance  
19 and, yeah, I think those are my two primary  
20 concerns.

21 Q All right. And DFO's role under **RAR** is, in terms  
22 of operational involvement, is limited to the  
23 issuance of variances. Do you understand that to  
24 be consistent with DFO's s. 35 responsibilities?

25 MR. CROWE: This actually is a very interesting point.  
26 It's actually in front of the B.C. Court of Appeal  
27 right now, which is that the Department of  
28 Fisheries and Oceans Habitat Management staff, we  
29 get our authority through the habitat provisions  
30 of the **Fisheries Act**, and that is essentially to  
31 protect habitat.

32 Now, under the **Riparian Areas Regulation**, we  
33 are responsible for the adjudication of all  
34 variances, regardless of whether or not it's a  
35 Greenfield site where any variance will likely  
36 result in a HADD, or a Brownfield, which is a  
37 previously disturbed site, where the habitat  
38 values may be highly degraded, and, therefore,  
39 we're asked to adjudicate development plans that  
40 don't necessarily have a HADD and a -- right now,  
41 in front of the B.C. Court of Appeal we are being  
42 -- the regulation is being challenged as that the  
43 feeling -- the opinion is that DFO does not  
44 actually have the authority to adjudicate those  
45 variances where there's not going to be a HADD.

46 So I think it's important to get that legal  
47 issue resolved to confirm whether and how

1 variances are to be managed particularly in  
2 Brownfield circumstances.

3 Q Mr. Salomi, would you like to address anything on  
4 these two issues?

5 MR. SALOMI: I'd like to support what Michael and  
6 Stacey have said about some of the positives of  
7 the **Riparian Areas Regulation**. For example, it  
8 requires local government, through regulation, to  
9 address riparian areas. That's good for local  
10 governments that weren't doing that. Some of the  
11 other shortcomings, I feel, with the **RAR** are,  
12 first of all, it's a fairly complicated process,  
13 the whole QEP assessment is, in my mind, overly  
14 complicated. There's a lot of work to come up  
15 with either a 10-metre or a 15-metre setback, and  
16 I'm not sure that the parsing out of 10, 10.5, 11,  
17 12, 13, whatever metre setbacks is really that  
18 relevant. At the end of the day what we want is a  
19 functional riparian zones that is going to be  
20 sustained in an urban environment, and to do that  
21 I think it's more important to focus on what is  
22 the sustainable width and what are the measures  
23 that will sustain it, and that part of the  
24 regulation or the assessment methodology is weak.

25 The other thing is I think it's a poor  
26 planning tool, and it makes it difficult for local  
27 governments to plan in a sustainable way. What's  
28 nice is if a local government says, "Here's the  
29 vision we have for this watershed. Here's what  
30 we'd like to see in terms of sustaining fish  
31 habitat into the future. What do we need to do to  
32 make that happen?" and I think the **Riparian Areas**  
33 **Regulation** takes that away, to some extent,  
34 because it simply says on a site by site basis you  
35 can do a detailed assessment and come up with a  
36 riparian zone with it.

37 You could apply the **Riparian Areas Regulation**  
38 at a subdivision phase or land planning phase when  
39 you don't really know what the adjacent  
40 development's going to be, and so you can't  
41 prescribe the measures and right then come up with  
42 a minimum width that would not be adequate in the  
43 future plans. So it's not an ideal planning tool.

44 Q Okay. Thank you.

45 MR. CROWE: Sorry, can I just offer one more?

46 Q Yeah.

47 MR. CROWE: I'll keep it very short. But in any

1 process where we're trying to coordinate and  
2 cooperate with the other bodies, it's important  
3 that everyone essentially is in agreement with the  
4 overall objective. And where a local government  
5 is in agreement with the objectives of **RAR** and is  
6 essentially a willing partner to deliver a  
7 mutually agreed upon objective, I think **RAR** can be  
8 very effective. The challenge is that - and I  
9 come back to the statement of Balkanization - I  
10 will speak to my area, there's still many local  
11 governments who don't actually necessarily feel  
12 it's their responsibility and obligation to  
13 deliver **RAR**, that that's the responsibility of the  
14 Province and DFO, and essentially resent and  
15 disagree with their responsibilities and work, I  
16 would say, against the objectives of **RAR**.

17 So it has to do with ensuring that you're  
18 working with partners. You cannot compel a  
19 partner to work with you cooperatively. I think  
20 partnerships have to be done and when people come  
21 to you willingly.

22 Q Thank you. And on that note, I'd like to move to  
23 the last two issues I wanted to cover today. One,  
24 is the Columbia -- sorry, the Shuswap Lake  
25 Integrated Planning Process, which has been called  
26 SLIPP. And then I wanted to talk to Ms. Wilkerson  
27 about a project that she's worked on as well,  
28 which is the Lakeshore Development Compliance  
29 Project.

30 So I'll start with SLIPP, and most of these  
31 questions are directed to you, Mr. Crowe. I'll  
32 first start by calling up the document at Tab 17,  
33 which is the SLIPP Strategic Plan. Are you  
34 familiar with this?

35 MR. CROWE: Yes, I am.

36 Q All right. Well, I'll get that marked, please,  
37 off the bat.

38 THE REGISTRAR: Exhibit 1014.

39  
40 EXHIBIT 1014: Shuswap lake Integrated  
41 Planning Process, Strategic Plan for Shuswap  
42 and Mara Lakes  
43

44 MS. BAKER:

45 Q Okay, and can you tell us what SLIPP is and why it  
46 was created?

47 MR. CROWE: I'll try to keep this short, but to explain

1 SLIPP you have to understand the development  
2 context of Shuswap Lake. Essentially, for the  
3 longest time Shuswap Lake was a -- which is in  
4 southern B.C. interior, a fairly slow-growing,  
5 quiet lake, some recreational development, but a  
6 lot of people had chosen to live around this lake  
7 for lifestyles and they liked how quiet it was,  
8 and actually there was an active desire by the  
9 constituents not to have much in the way of local  
10 government control and authority. So therefore,  
11 for much of this lake system, it does have some  
12 communities, like Sicamous and Salmon Arm on it,  
13 but much of it does not have standard local  
14 government controls, such as official community  
15 plans, bylaws, building inspections, and so on,  
16 and essentially the community liked it that way.

17 About 10 years ago council chose to vote in  
18 some increased governance and they were actually  
19 voted out at the next government elections and all  
20 those systems that were put in place were  
21 rescinded.

22 Approximately 10 years ago, 10 to 15 years  
23 ago, as I spoke of earlier, the rate of  
24 developments, particularly of an intensive  
25 recreational character, expanded substantially and  
26 essentially the community and the lake was  
27 changing. There was a great number of very large  
28 resort developments, very large marinas, more  
29 houseboats, larger homes, bigger boats and, in  
30 actual fact, the people of the lake did not feel  
31 that they -- the values that they had -- that had  
32 drawn them to the lake and kept them there were  
33 being maintained, and there was actually, starting  
34 in the mid-2000s, actually, a desire to have more  
35 government control activities in Shuswap Lake  
36 system.

37 The problem was that, as I explained, there  
38 was no local government control that are normally  
39 standard for determining where development  
40 occurred, the character, and nature development.  
41 There was no zoning and bylaws, building  
42 inspection and so on, so it was -- and, therefore,  
43 resorts were popping up all over the place.

44 In the absence of local government controls,  
45 plus at a time when the Provincial and Federal  
46 Governments were downsizing and redirecting their  
47 priorities, there was really no overall governance

1 or management of Shuswap Lake in a fairly  
2 effective or coherent manner. And in this sort of  
3 atmosphere of, I'd say it was a bit chaotic, a  
4 Provincial colleague felt that it was time to  
5 actually implement, in the absence of strong,  
6 local or Provincial and Federal engagement and  
7 control, that we really needed to look at another  
8 way of governing Shuswap Lake. Therefore, he  
9 coordinated with representatives of the three  
10 levels of government, the Fraser Basin Council,  
11 approaches to First Nations, and tried to  
12 basically create an integrated management planning  
13 process that would step in and fill the vacuum  
14 created by the, you know, the absence of the  
15 governance.

16 So that essentially was the background to the  
17 Shuswap Lake integrated planning process. It was  
18 essentially an attempt at the local level to try  
19 to get those agencies that had some effect or  
20 authority to coordinate and be more effective in  
21 how they did their business, to try to stem the  
22 rate and location and character of much of the  
23 development of Shuswap Lake and try to, yeah, just  
24 fill basically a governance or regulatory gap.

25 Q And what was the Department of Fisheries and  
26 Oceans role in this project?

27 MR. CROWE: Well, the SLIPP process had a number of key  
28 objectives. There was an attempt to manage for  
29 water quality, an attempt to direct and manage  
30 recreation, and an attempt to manage foreshore  
31 development, with some overarching strategies or  
32 objectives with regards to improved education,  
33 better enforcement, coordinated enforcement on the  
34 lake, and a few other strategies. I can't quite  
35 remember them, though, they're in the document.

36 The Department of Fisheries and Oceans joined  
37 the Steering Committee, became a member of the  
38 Foreshore Development Technical Review Committee,  
39 became a member of the Compliance and Enforcement  
40 Coordinated Enforcement -- Compliance and  
41 Enforcement Group, and took a role with regards to  
42 helping basically hold a number of public meetings  
43 and so on to try to determine if there was public  
44 interest and if we could garner support for this  
45 type of initiative.

46 Another piece that was quite important for  
47 the Department of Fisheries and Oceans was

- 1 developing a foreshore mapping tool, because we  
2 understood that to manage this lake system we had  
3 to have a good inventory of all the development  
4 initiatives on the lake, and that actually, then,  
5 has led to a -- so foreshore management product,  
6 which then led into a habitat index analysis, and  
7 that has led, now, to guidance tools to try to  
8 give more specific direction to how development  
9 activity should occur on the lake.
- 10 Q And Shuswap Lake, obviously, is an important lake  
11 for Fraser River sockeye?
- 12 MR. CROWE: Yes. Shuswap Lake is essentially the  
13 rearing lake for the Adams River run. Actually,  
14 in this picture here, you can see the Adams River  
15 in the bottom, right-hand corner, running into  
16 Shuswap Lake at the western end of the lake.
- 17 Q And this lake system was one of the lake systems  
18 where there was incomplete coverage with -- once  
19 **RAR** was brought in, right? It had -- some areas  
20 were not covered by **RAR**, some were covered by **RAR**  
21 but wasn't properly implemented initially, and so  
22 there was a mixed riparian protection regime for  
23 this lake system; is that fair?
- 24 MR. CROWE: Yes. In '07 there was virtually no  
25 Official Community Plans, which are foundational  
26 to developing zoning and bylaws. We now have an  
27 OCP for the North Shore, but large other portions  
28 of the lake don't even have OCPs yet.
- 29 Q All right. Do you think that the SLIPP project is  
30 a good project? Has it been successful in  
31 bringing some planning coherence to this lake and  
32 protecting riparian areas in the lake?
- 33 MR. CROWE: I think it's been a very good process. I  
34 think it has refocused agencies on the importance  
35 of the management of Shuswap Lake. I think it has  
36 done a good job of bringing agencies with possibly  
37 divergent interests to the table to figure out  
38 ways to coordinate and cooperate, reach mutual  
39 objectives, and I think it has brought a degree of  
40 understanding amongst all sectors, including the  
41 development sector, to help development should it  
42 occur on Shuswap Lake. And I think it has been a  
43 motivation to the Columbia Shuswap Regional  
44 District to continue moving forward with the  
45 development of bylaws and other local governance  
46 tools to control Shuswap Lake into the future.  
47 You know, I think the Provincial staff

1           deserve full credit for coming up with this idea  
2           and having driven it from its inception.

3           Q     And is there funding provided by the Federal  
4           Government or the Province to the SLIPP process?

5           MR. CROWE: Yes, but nothing secure. We apply to our  
6           own funding sources to contribute to specific  
7           projects with regards to SLIPP. The Province,  
8           it's my understanding, does essentially the same.  
9           But there's no secure body of funding for Shuswap  
10          Lake Integrated Planning Process.

11          Right now, actually, the Steering Committee,  
12          which has evolved and is now delivered primarily  
13          through local government representatives, is  
14          actually trying to come up with a taxation system  
15          to provide secure, long term funding for SLIPP.

16          Q     Thank you. I just want to identify a document  
17          that was marked Monday or Tuesday this week, which  
18          is Exhibit 983, and I just want you to ask you to  
19          identify whether this document reflects the Water  
20          Quality Monitoring Plan that has been brought in  
21          through this -- or for that lake system, which has  
22          been brought in through the SLIPP process; is that  
23          what this is?

24          MR. CROWE: That's right. That was one Water Quality  
25          Monitoring Plan project that was conceived of and  
26          implemented for the purposes of supporting  
27          particularly the water quality management  
28          objective of SLIPP.

29          Q     Okay. Thank you. And now, the last questions  
30          relate to the Lakeshore Development Compliance  
31          Project. These questions are for Ms. Wilkerson.  
32          At Tab 14 of our materials has a document which is  
33          the Lakeshore Development Compliance Project  
34          document, Phase 1, Defining the Issues Across B.C.  
35          What is this project and is it related at all to  
36          **RAR?**

37          MS. WILKERSON: Well, this project came about -- the  
38          compliance division of the Ministry of Environment  
39          said to the ecosystems branch, "We will fund a  
40          compliance project for you, so what is your  
41          biggest compliance concern, provincially?" and  
42          almost every region came back and said that  
43          lakeshore development was one of the biggest  
44          issues that we had, or that we thought we had with  
45          compliance in the province.

46          So we started this project to really look at  
47          the scope of the problem to see whether this

1 really was a problem; we suspected it was. And so  
2 we chose 32 lakes across the province where we did  
3 a baseline inventory and compliance assessments.  
4 So baseline inventory, we essentially videotaped  
5 the shoreline to give us a benchmark of where the  
6 state of development was right now.

7 Sometimes prosecutions can be difficult  
8 because we don't have sort of a historical look at  
9 what the lakeshore might have looked like the year  
10 before, and so when development occurs that's not  
11 compliant, then we felt like this would give us a  
12 tool to show sort of a before and after picture,  
13 essentially. It also gave us the state of the  
14 foreshore. We looked at, you know, we measured  
15 the amount of riparian vegetation, foreshore  
16 modifications, just things that would give us a  
17 picture of where we were at, and then we did a  
18 compliance assessment on selected areas of the  
19 lakes to see what compliance levels were.

20 We originally thought we would look at all  
21 sorts of different statutes. We thought we -- and  
22 this was a multi-agency project. We brought  
23 members in from stewardship groups, from other  
24 ministries within the Provincial Government, and  
25 we had a DFO rep on the project as well. So we  
26 thought we'd look at **Fisheries Act** compliance,  
27 **Water Act** compliance, **RAR**, and then we realized  
28 what a huge project that was and that just looking  
29 at the **Water Act** alone would be very informative.  
30 So we kept it to the **Water Act**.

31 Q And how do you anticipate this information will be  
32 used by the Province, now?

33 MS. WILKERSON: Well, it's been used in different  
34 regions and, I mean, the headquarters-driven part  
35 of the project is completed, now, but regionally  
36 it's been used to start collaborative planning  
37 processes between the different levels of  
38 government and stewardship groups. Several  
39 regions have used it to develop shoreline  
40 management guidelines. And some regions have told  
41 me that they're starting to use it now to look at  
42 compliance -- taking compliance actions.

43 Q And do you expect that this work will be continued  
44 into the future?

45 MS. WILKERSON: Like I said, it will be continued  
46 regionally. We now have -- with this project we  
47 developed a pretty extensive methodology, and so

1 now that methodology is now available, and we have  
2 the equipment, a lot of equipment was involved  
3 with this, so we have that available for regions.  
4 We also have shared this with other groups that  
5 want to do some more work.

6 Q And this is related to the SLIPP work we just  
7 heard about through Mr. Crowe?

8 MS. WILKERSON: Well, it's similar in the -- in that  
9 the issue is very similar, but we specifically  
10 didn't look at Shuswap Lake because SLIPP was  
11 going on at the same time. We had a member on our  
12 project from DFO that was also, I believe,  
13 involved with the SLIPP process at the time. So  
14 there were some similarities, but they were sort  
15 of being developed at the same time.

16 MS. BAKER: And I should have this marked, please, as  
17 the next exhibit.

18 THE REGISTRAR: Exhibit 1015.

19  
20 EXHIBIT 1015: Lakeshore Development  
21 Compliance Project - Defining the Issue  
22 Across B.C. 2008-09, Phase 1, April 2010  
23

24 MS. BAKER: Thank you. Those are the questions, thank  
25 you very much. I know it was a long day with me,  
26 but thank you very much. Our next person to ask  
27 you questions will be Mr. Fugère, from Canada.

28 MR. FUGÈRE: Thank you, Ms. Baker. My name is Charles  
29 Fugère, F-u-g-e-r-e, counsel for the Government of  
30 Canada. I'm here with my colleague, Mr. Hugh  
31 MacAulay. I was initially allocated 30 minutes  
32 and then told to try to keep it as short as  
33 possible, so I'll do my very best to be done in  
34 less than 30 minutes.  
35

36 CROSS-EXAMINATION BY MR. FUGÈRE:  
37

38 Q Basically, Ms. Baker has covered very thoroughly  
39 the details of this topic, and my questions will  
40 try to focus on the bigger picture. Before I  
41 begin, however, I wonder if we could have Document  
42 17 on Canada's list of documents brought up.  
43 Could we go to the next page, please. Third page.

44 Okay, so Mr. Salomi, is this the Integrated  
45 Stormwater Management Planning that you were  
46 discussing with Ms. Baker earlier today?  
47 MR. SALOMI: Yes, I was referring to diagrams on page

1 2-3 and 2-4 of this document.

2 MR. FUGÈRE: Could we have this marked as the next  
3 exhibit, please.

4 THE REGISTRAR: 1016.

5

6 EXHIBIT 1016: Letter dated March 23, 2006,  
7 from Kerr Wood Leidl, to GVRD, Regional  
8 Utility Planning, Policy and Planning  
9 Department, and attached Template for  
10 Integrated Stormwater Management Planning  
11 2005, Submission of Draft Report  
12

13 MR. FUGÈRE:

14 Q And can we go to page 2-3 and 2-4, I know it's a  
15 weird numbering system.

16 MR. SALOMI: I'd suggest 2-4 --

17 Q 2-4.

18 MR. SALOMI: -- if we have limited time.

19 Q Is this the graph that you had in mind?

20 MR. SALOMI: Yes.

21 Q Can you please comment on how you interpret this  
22 graph?

23 MR. SALOMI: Well, I believe there was some discussion  
24 of the CABIN process earlier. This health  
25 tracking process is based on a similar process;  
26 that is, you can look at the diversity and numbers  
27 of benthic organisms, or organisms which are  
28 growing in the stream, the bugs of the stream, and  
29 if you go to a stream and you sample a number of  
30 the bugs and you lay out the different numbers and  
31 types, you can get an idea of the health of that  
32 stream.

33 If there's pollution, you have one type of  
34 worm that's abundant, for example; if it's  
35 unpolluted, you have a good diversity of bugs.

36 So using that as a basis, Metro Vancouver  
37 correlated bug scores or stream health with  
38 riparian forest integrity and total impervious  
39 area. And, you know, with all things science, the  
40 exact correlation is sometimes, you know, hard to  
41 pin down, but looking at a significant number of  
42 streams in the Lower Mainland and the Pacific  
43 Northwest, this graph makes a lot of sense, and it  
44 basically says the better the forest integrity and  
45 the lower the impervious or effective impervious  
46 area in the watershed, the healthier your stream  
47 is going to be.

1 Q Thank you. So I'll be moving onto my bigger  
2 picture theme, and I'll start with a question  
3 which is following up on a question raised by Mr.  
4 Commissioner yesterday. So I will be addressing  
5 that question to you, Mr. Crowe, since you  
6 answered yesterday's question. And it has to do  
7 with the importance and the situation of riparian  
8 habitat within the bigger concept of fish habitat.  
9 Is it your understanding that the definition  
10 of fish habitat, under the **Fisheries Act** in the  
11 fish habitat protection provisions, includes and  
12 covers riparian habitat?

13 MR. CROWE: Yes, it does. The definition of fish  
14 habitat in the **Fisheries Act** includes those  
15 elements that effect fish directly and indirectly.  
16 So you have things that are quite clear, like  
17 spawning sub-strait that clearly effect fish, but  
18 it also does include and encompass things like  
19 trees because of everything they do to control the  
20 conditions within the streams. And as an example,  
21 bugs are also fish habitat, because of the fish --  
22 the fish's dependence on them. And those  
23 processes that support the bugs, essentially it  
24 would be an indirect form of fish habitat.

25 Q Thank you. And if we take any given stream or  
26 lake that is considered sockeye habitat and we  
27 completely destroy the natural riparian habitat by  
28 developing without compensation projects, how is  
29 this likely to affect sockeye survival and  
30 productivity in that stream or lake? In other  
31 words, in the water portion of the habitat  
32 sufficient if we lose the riparian portion of the  
33 habitat?

34 MR. CROWE: It is not possible to maintain a healthy  
35 stream without a healthy riparian zone. There's  
36 just too many components of a stream that are  
37 directly dependent on the health of the riparian  
38 area. And I can provide you with quite a number  
39 of examples where historical development  
40 activities have degraded entirely the riparian  
41 area and effectively the stream has lost its --  
42 all of its capacity to support fish. The channels  
43 change shape, they've gone wider and shallower,  
44 the sub-straits fill in with sediment that washes  
45 out the banks, they become highly mobile, shifting  
46 back and forth. All the cover features of the  
47 juvenile fish are absolutely dependent upon to

1 survive disappear. There is no way to have a  
2 healthy stream without healthy riparian areas.  
3 And there's a very quick collapse in fish  
4 utilization of streams once they are -- once the  
5 riparian areas disappear.

6 We have seen that very frequently in  
7 situations where you have a healthy riparian zone,  
8 you have good functioning stream systems in terms  
9 of how they're supposed to behave hydraulically  
10 and physically, and they have good fish  
11 populations. Where that habitat basically is  
12 lost, fish do not -- the salmon and trout species  
13 cannot survive in those fish -- those areas,  
14 unlike, you know, some species, such as perch and  
15 bass, which are not particularly dependent on  
16 riparian areas and they can essentially be quite  
17 successful with -- in very poor habitat  
18 conditions. Sockeye, other salmon and trout are  
19 very dependent on healthy aquatic ecosystems. You  
20 cannot have healthy fish populations without  
21 healthy streams, and that's completely dependent  
22 on healthy riparian areas.

23 Q And you referred to there being several examples  
24 of a situation where the fish population suffered.  
25 Can you give us one quick example?

26 MR. CROWE: Well, the one that would come to mind  
27 immediately would be the Salmon River near Salmon  
28 Arm, where, after decades of agricultural  
29 development, transportation corridors,  
30 transmission lines, rural and developments, the  
31 stream became exceedingly unhealthy. It once had  
32 a sockeye population of half a million and there's  
33 just a remnant number of, you know, a few dozen to  
34 a hundred on the dominant Adams years. Most years  
35 there's no sockeye in that stream. Chinook and  
36 coho populations have also collapsed and are only  
37 surviving due to our intensive hatchery  
38 productions support programs.

39 Q Than you. Next question, for Mr. Salomi. Is the  
40 concept of cumulative impacts something that is  
41 relevant in evaluating the risk posed by  
42 urbanization and development on sockeye salmon?

43 MR. SALOMI: I think it's one of the key items that  
44 impact fish habitat. It's no one thing, in most  
45 cases, that can be pointed to as causing declines  
46 of fish or impacts of fish. It's often the  
47 cumulative impacts. It's not just having no

1 riparian standard; it's the road crossings that  
2 eliminate the riparian areas; it's the residential  
3 properties where individuals have removed some of  
4 the trees and the temperature of the stream has  
5 increased because of that; it's pollution that  
6 comes from run-off, or sediment that comes from  
7 run-off that enters the stream; it's intrusions  
8 into the riparian zone by various activities that  
9 might occur in an urban area; it's the often  
10 constant pressure that fish habitat and riparian  
11 zones receive from recreational activity, from  
12 development, from maintenance activities for  
13 things flooding. It's all these things that,  
14 together, begin to degrade the overall health and  
15 then the quality of a stream and a fish habitat.

16 Q Thank you. Now, back to Mr. Crowe. I take it  
17 that you're generally familiar with DFO's Wild  
18 Salmon Policy?

19 MR. CROWE: Yes, I am.

20 Q So I don't need to go to the document, in the  
21 interest of time. But could you tell me, is the  
22 protection of healthy riparian habitat a necessary  
23 condition to the success of the Wild Salmon Policy  
24 in sustaining Fraser River sockeye?

25 MR. CROWE: It's an essential part. It's under  
26 Strategy 2, which is sort of essentially the  
27 inventory and understanding of our watershed  
28 health, ecosystem health. We need -- you cannot  
29 have, as I said, healthy systems without healthy  
30 riparian zones. Therefore, to be able to deliver  
31 on the Wild Salmon Policy to protect wild stocks'  
32 conservation units, it's essential that you have  
33 healthy riparian areas.

34 Q Thank you. Continuing with you, Mr. Crowe, the  
35 Commissioner has heard during this Commission that  
36 urbanization and development booms in the past  
37 have had very negative impacts on sockeye habitat,  
38 and yesterday I think you gave evidence that in  
39 your area in the last 10 years there was a marked  
40 increase in waterfront development. And you also  
41 indicated, I think, today, that your area was  
42 likely to undergo a population growth, and same  
43 thing for the Lower Fraser area.

44 And in that context, my question to you is:  
45 Do we have any knowledge, now, that we did not  
46 have before, to allow us to manage development in  
47 a sockeye-friendly way, or is development directly

1 incompatible with protecting fish habitat?

2 MR. CROWE: When you look at salmon populations in  
3 North America, where have they collapsed? They've  
4 collapsed on the east coast and to the south of us  
5 through the western states. And we can point to  
6 factors such as fishing as a component of those  
7 collapses, but clearly it is development impacting  
8 habitat that has resulted in, in large part, to  
9 those populations, conservation units, being  
10 essentially eliminated. And now the United States  
11 is spending a substantial amount of money trying  
12 to restore salmon populations, viable populations,  
13 in many of the western states, and there's quite a  
14 number that are listed under the **Endangered**  
15 **Species Act**, and it's a next to impossible task to  
16 recover those types of populations once the  
17 habitat has been destroyed.

18 We have a situation, now, where we can  
19 reflect on what has happened before. I know that  
20 science papers 3 and 12 for this Commission were  
21 not able to make a strong -- any correlation  
22 between population effects and any type of the  
23 indicators that were chosen for those studies.  
24 I'm not necessarily in agreement with the methods  
25 within those studies, and I feel that there was  
26 actually some mistakes made. So I don't agree  
27 with the findings. I think habitat clearly has an  
28 effect on the health of salmon populations. You  
29 look particularly at species like chinook and coho  
30 and how they have preceded sockeye in terms of  
31 population level effect changes in large part to  
32 freshwater changes. You can only predict that  
33 unless we change our management of habitat, that  
34 sockeye will continue down to -- will have  
35 continuing problems.

36 I suggest that the habitat management program  
37 with the Department of Fisheries and Oceans is  
38 here to try to protect what remains, to prevent  
39 another Cultus Lake circumstance which is, of  
40 course, devastating for that CU, but also has such  
41 substantial effects to fishing communities and  
42 fishermen and the economy.

43 So my answer is, yes, we understand how  
44 development can occur -- proceed in such a way to  
45 protect and conserve fish populations and stocks,  
46 but I do believe that means collectively we have  
47 to figure out better ways to manage the habitat

1 that remains and restore some that's lost. But it  
2 really is about managing the cumulative,  
3 incremental harms that occur over time, the  
4 thousands of little cuts that appear not to be a  
5 big deal but effectively, over time, do have a  
6 substantial effect.

7 Q Thank you. That's actually a very nice transition  
8 into my next question for Mr. Salomi. One of the  
9 things that we've heard from this panel, today, is  
10 the importance of partnerships and that DFO and  
11 the Province can't do it alone. Can you please  
12 tell us, who are the key partners that you need  
13 around the table to get the fish protection --  
14 habitat protection work done? Could you list the  
15 partners and explain what you would ideally want  
16 from them?

17 MR. SALOMI: Well, I guess, in short, the easy answer  
18 is us and everyone else. It starts with  
19 individuals in the community that raised the  
20 importance of salmon with their elected officials,  
21 and encouraged the steps required to protect  
22 salmon habitat. I think one of the key players in  
23 -- key partners is the local land use authority,  
24 be it the regional district, be it the local First  
25 Nation, be it the local municipality or the port  
26 authority. The land use authority that dictates  
27 the future plans and the OCP and how we develop  
28 are really the ones that are going to be dictating  
29 the nature of the cumulative impacts. You know, I  
30 showed you the graph with the impervious area in a  
31 watershed and how that effects hydrology and  
32 stream health.

33 DFO has, or the Province, has limited ability  
34 to push a local government to design a development  
35 so that the houses are more compact and there's  
36 less impervious area. We have limited ability to  
37 go to a local government and tell them to  
38 implement green infrastructure or those  
39 infiltrating features everywhere. That's the kind  
40 of thing that the local government has to plan for  
41 and implement themselves. But for local  
42 government to do that, they need elected officials  
43 that have the support from their community to do  
44 that. So we need community groups and citizens to  
45 ensure that they speak their voice about what they  
46 see as important in their community.

47 We need user groups like First Nations and

1 fishermen to make sure they speak their -- or  
2 represent their values for salmon and ensure that  
3 they say, "Look, we recognize the importance of  
4 habitat and good planning if we want to have  
5 salmon into the future."

6 So I think it's everyone, but ultimately I  
7 think vision and leadership from provincial,  
8 federal and local land use authorities is key.

9 Q Thank you. I will direct my next question to Ms.  
10 Wilkerson. We've heard about the issue of  
11 compliance with **RAR** at the local government level,  
12 and this was covered by Ms. Baker. I was  
13 wondering if you could tell us, as someone who has  
14 very good knowledge and familiarity with the **RAR**  
15 regime, what should be the next step in terms of  
16 -- next changes or next steps in terms of  
17 improving local government compliance with **RAR**?  
18 Is it a matter of integrating harsh enforcement  
19 provisions in **RAR**? Is it a matter of educating  
20 local governments on the importance of riparian  
21 habitat? What input would you offer?

22 MS. WILKERSON: Well, as far as improving local  
23 government compliance, that's something that --  
24 we're at the point, now, we've been sort of  
25 reluctant, I guess, to -- our role has been to  
26 support them, encourage them, to comply and, you  
27 know, we're seeing improvements in compliance with  
28 local governments that we didn't think we'd ever  
29 get. So we are feeling positive about that.

30 However, we're probably getting to the point  
31 soon where if local governments refuse to comply  
32 then we have to look at what we can do under the  
33 regulation to either -- to do some sort of  
34 regulatory change that would allow us to have more  
35 -- to include enforcement provisions for local  
36 governments, or to actually look at -- yeah,  
37 actually, I'll leave it at that.

38 Q Thank you. And in terms of the relationship  
39 between DFO and B.C. on the implementation of **RAR**  
40 and the collaboration between the Province and  
41 Canada, what do you think could be improved? How  
42 could DFO and B.C. work better together at  
43 implementing **RAR**?

44 MS. WILKERSON: Well, I think -- my experience has been  
45 a fairly positive one since I started on the **RAR**.  
46 We have a coordination committee that meets  
47 monthly and it's DFO, the Province, and a

1 representative from the Union of British Columbia  
2 Municipalities, and I always find that those are  
3 -- we have really open and frank discussions about  
4 where we're at and what we need to move forward  
5 with.

6 I think having consistent contacts for us. I  
7 think the biggest challenge for me is that  
8 people's roles within DFO change fairly regularly,  
9 as do in the Province, and to keep -- always keep  
10 somebody as a contact, either in regional  
11 headquarters, to communicate with me, so somebody  
12 in my equivalent position, would be very helpful.

13 Q Perhaps I'll finish by inviting Mr. Salomi and Mr.  
14 Crowe to comment, if you have anything to add to  
15 the sense of improving B.C. and DFO work on **RAR**?

16 MR. CROWE: I would agree with Ms. Wilkerson that, yes,  
17 DFO's struggles to maintain a somewhat consistent  
18 representation has been problematic. I would say  
19 that in light of many pressures on the program  
20 from different sources, it has been hard to keep  
21 senior management focused on this issue and some  
22 of the challenges that have to be resolved between  
23 the two senior -- between the governments at a  
24 more senior level. So I would concur with her  
25 comment.

26 The other piece is I -- yeah, I'm sorry, I  
27 think that I'll leave it there.

28 Q Thank you. Mr. Salomi?

29 MR. SALOMI: I reinforce the comments from my  
30 colleagues here. As well, I think something that  
31 would help is some effort around efficacy. Some  
32 of the challenges that we face is, you know,  
33 questions about the efficacy of **RAR** from not only  
34 colleagues but users, and it's been in place for  
35 some time, now. It would be nice to do some  
36 efficacy assessment to see if there are areas for  
37 adjustment or improvement, some true science that  
38 could help support the application and, therefore,  
39 promote the application of the regulation.

40 MR. FUGÈRE: Thank you. Thank you, Mr. Commissioner.  
41 Those are my questions.

42 THE COMMISSIONER: Thank you very much.

43 MS. BAKER: Mr. Commissioner, Mr. Prowse, for the  
44 Province, would be next and he said he's got less  
45 than five minutes, if we could do that, then maybe  
46 we can split the afternoon between the other two  
47 parties?

1 MR. PROWSE: Yes, thank you.

2

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CROSS-EXAMINATION BY MR. PROWSE:

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Q Ms. Wilkerson, I just wanted to ask if you had anything that you wanted to add to anything that you've had to say today?

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MS. WILKERSON: Not at the moment.

9

10

Q That will make Ms. Baker very happy. And my second question may be a bit of a commentary, is to Mr. Crowe. Mr. Crowe, first of all, thank you very much for your compliments to the Province on the SLIPP process, which I think will be much appreciated. By the same token, the role of DFO that you explained in that process was obviously very critical to the process, would you not agree?

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MR. CROWE: I would agree.

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Q And likewise, one of the good parts of what I think is a very good news story, is that the CSRD over the years has had a somewhat miraculous transformation as well, has become quite vigilant on these issues; is that not correct as something you've observed over the last few years, particularly with respect to the SLIPP process, they've firmly endorsed it?

21

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MR. CROWE: Yes, I -- as I said, I think that the SLIPP process has helped motivate the Columbia Shuswap Regional Directors to become far more supportive and engaged in moving towards coordinating and cooperating with SLIPP as well as starting to make the changes within the CSRD with regards to their authorities to, I think, make -- set the Columbia Shuswap Regional District up for a more sustainable future in terms of conservation protection of foreshore values, habitat and meeting water quality and other recreational and societal objectives.

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Q And finally, Mr. Crowe, your colleague referred to work in the riparian area as being everybody's job, and my understanding, and I may be wrong, is that that's reflected that the process document itself, Exhibit 1014, is a document that doesn't have an author simply because it was the document that was the result of work by everybody who was involved in that process, which I think is a model for collaboration; would you not agree?

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1 MR. CROWE: I would, yes.

2 MR. PROWSE: Thank you.

3 MS. BAKER: We have two questioners left so if we were  
4 to take a break, this would be the time to do it,  
5 I think.

6 THE COMMISSIONER: Okay.

7 THE REGISTRAR: The hearing will now recess for 10  
8 minutes.

9

10 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)

11 (PROCEEDINGS RECONVENED)

12

13 THE REGISTRAR: The hearing is now resumed.

14 MR. HARRISON: Good afternoon, Mr. Commissioner. It's  
15 Judah Harrison for the Conservation Coalition,  
16 which is a group of non-governmental organizations  
17 and individuals focused on the conservation of the  
18 resource. I note that we have about 45 minutes  
19 left and there's two more participants, so I've  
20 been asked to split the time equally with the  
21 First Nations Coalition. I will endeavour to go  
22 as fast as I can. I will be going a little faster  
23 than I had intended.

24 If we could start please at -- it was just  
25 marked as Exhibit 1007, please. This is the  
26 "Riparian Areas Regulation Implementation  
27 Guidebook." If you could turn to page four of  
28 this document, and I believe it might be ringtail  
29 5, but it'll say four in the bottom right corner.  
30 Back one.

31

32 CROSS-EXAMINATION BY MR. HARRISON:

33

34 Q In the second paragraph in the middle - thank you  
35 - it says:

36

37 The integrity of a riparian area depends on,  
38 and is influenced by, the upland area as well  
39 as the upstream environment. British  
40 Columbia has lost hundreds of kilometres of  
41 riparian habitat in the past decades in the  
42 Lower Mainland alone.

43

44 My question, and I'll ask just Mr. Palomi (sic)  
45 and Mr. Crowe, is do you agree with this statement  
46 that we have lost hundreds of kilometres of  
47 riparian vegetation, and secondly, is this

1 continuing today as we speak?

2 MR. SALOMI: That's probably a fairly accurate  
3 statement.

4 Q And would you agree that we are continuing, as we  
5 speak today, to continue to lose riparian habitat  
6 in the Fraser River?

7 MR. SALOMI: Yes.

8 Q Thank you. Mr. Crowe?

9 MR. CROWE: Yes, I would agree we're continuing to lose  
10 stream habitat, including riparian.

11 Q Thank you. There has been some discussion, some  
12 very helpful discussion on what riparian habitat  
13 is. Mr. Fugère noted that the definition of  
14 habitat contains riparian habitat, but I want to  
15 go to page 12 of this document as well, please.

16 MR. HARRISON: Again it will be 12 on the bottom right  
17 corner. Thank you.

18 Q The part that's conveniently highlighted in blue  
19 says:

20

21 The importance of streamside/riparian  
22 vegetation as fish habitat has been  
23 successfully brought before the courts, and  
24 legal judgments have identified riparian  
25 vegetation as fish habitat.

26

27 Would you agree with this statement that riparian  
28 vegetation is fish habitat?

29 MR. CROWE: Absolutely.

30 Q And just taking a small step back, just really  
31 simplistically, when I think about habitat, I  
32 think about water, riparian vegetation and maybe  
33 rocks and inorganic materials without the stream  
34 -- in and about the stream.

35 My question is, is riparian habitat a core  
36 element of habitat? When you think of habitat,  
37 does that not -- a core element of that include  
38 riparian habitat?

39 MR. CROWE: Absolutely. As I answered Mr. Fugère's  
40 question, without healthy riparian habitat,  
41 streams change substantially and are unable to  
42 support salmon and trout species.

43 Q Thank you. And you have already said this twice,  
44 Mr. Crowe, but I just wanted to emphasize it. You  
45 said that riparian vegetation is particularly  
46 important for sockeye species as opposed to other  
47 fish.

- 1 MR. CROWE: I wouldn't say sockeye any more than any  
2 other salmon and trout. I give them -- riparian  
3 vegetation is critical to all of them.
- 4 Q Thank you. So -- sorry, salmonoids, then, require  
5 intact riparian vegetation more so than other  
6 species of fish; is that fair?
- 7 MR. CROWE: Yes. We generally refer to the salmonids.
- 8 Q Okay. Thank you.
- 9 MR. CROWE: Is to capture salmon and trout. They're  
10 essentially much the same family. That can also  
11 include lake char.
- 12 Q Thank you. And if we can turn to page 24 of this  
13 document, 2.1 and 2.2 set out the roles of the  
14 various governments. The first one says the role  
15 of DFO, and 2.2 is the role of the Ministry of  
16 Environment, the provincial ministry.
- 17 I note that the provincial definition --  
18 these are really short, but the provincial role  
19 includes monitoring compliance where the DFO does  
20 not include monitoring compliance. I'd like to  
21 ask is that your understanding of DFO's role in  
22 the Riparian Areas Regulation that it does not  
23 include monitoring compliance? Ms. Wilkerson,  
24 would you agree that B.C.'s role does include  
25 monitoring compliance?
- 26 MS. WILKERSON: I would agree that one of the  
27 province's roles is to monitor compliance, yes.
- 28 Q thank you. And, Mr. Crowe, would you agree that  
29 it's not among DFO's role to monitor compliance?
- 30 MR. CROWE: What I would say is explicitly in this  
31 document, it doesn't identify it as such. In the  
32 riparian -- there's an operational committee  
33 consisting of the Union of B.C. Municipalities,  
34 DFO and the province. One of its roles is to help  
35 coordinate monitoring. DFO could be a participant  
36 in monitoring if it so chooses, but as I said a  
37 bit earlier, we do leave it to the province to  
38 lead the monitoring. We have engaged  
39 opportunistically at times.
- 40 MR. HARRISON: Thank you. Mr. Bisset, can you bring up  
41 document 5 from Commission counsel's list of  
42 documents, please, or list of exhibits.
- 43 Q Now, this is a draft memo. The subject matter is  
44 entitled "B.C. Interior, RAR Update". It is dated  
45 May 19th, 2006. Mr. Crowe or Mr. Salomi, are  
46 either of you familiar with this draft memoranda?
- 47 MR. CROWE: Yes, I am.

1 Q Thank you. On the second page of this memoranda,  
2 about halfway down, there's a list of what is  
3 dubbed "RAR Weaknesses", or weaknesses with the  
4 Riparian Areas Regulation. There's some  
5 particular ones. This is halfway down page 2 and  
6 then it continues on the next page.

7 MR. HARRISON: But if you go to the next page, Mr.  
8 Bisset, the bottom two bullets of this part are  
9 what I'm focused on.

10 Q I would like as the two of you to read those last  
11 two bullets and then give your opinion whether  
12 these are -- this continues to be an issue.

13 To break the uncomfortable silence,  
14 potentially, I'll just say that these two  
15 reference the limitations of using qualified  
16 environmental professionals to do habitat  
17 assessments. So specifically, I guess I'll ask --  
18 this says:

19  
20 There are notable risks from reduced  
21 government oversight, in particular endorsing  
22 that HADD determination be made by the  
23 proponent's consultant.

24  
25 Mr. Crowe, would you agree with that?

26 MR. CROWE: I would, yes.

27 Q Mr. Palomi (sic)?

28 MR. SALOMI: It's Salomi, sorry.

29 Q Sorry, thank you.

30 MR. SALOMI: Not that I'm sensitive to that with a name  
31 like that. I would agree there are risks.

32 Q Thank you. And then the next bullet asks a  
33 question, says:

34  
35 What happens if a qualified environmental  
36 professional makes a HADD determination DFO  
37 doesn't agree with?

38  
39 Would you agree that that is also a problem? Mr.  
40 Crowe?

41 MR. CROWE: Yes. Back in 2006 when this was written,  
42 this was a substantial concern. As I testified  
43 earlier, we still are concerned about the  
44 judgments of some QEPs, and while I think we have  
45 put in place systems to help ensure quality of  
46 HADD determinations and an ongoing DFO role,  
47 particularly as it relates to these variances, it

1 is still, yes, a concern to us.

2 Q Would you agree with me that there's an incentive  
3 for qualified environmental professionals to  
4 determine that no HADD occurs? In other words, is  
5 it fair to say that a third-party consultant will  
6 find, you know, that no HADD has occurred more  
7 readily than a government biologist simply because  
8 they are being paid to do so?

9 MR. CROWE: Yes, I spoke to this earlier, but my  
10 concern is that some of the individuals performing  
11 as QEPs have indicated by their track record and  
12 decisions that they are not an unbiased  
13 professional providing the same advice to their  
14 clients or to government as I think that they  
15 should be

16 Q Okay. Thank you.

17 MR. CROWE: I should qualify that by saying there are a  
18 good group of professionals out there, but there  
19 is a component, a contingent, that is a problem  
20 for us.

21 Q Thank you. And what about monitoring, follow-up  
22 monitoring. It is my -- if you read these  
23 documents of the RAR, it's my understanding that  
24 follow-up monitoring is often -- it is cited that  
25 the qualified environmental professional will do  
26 follow-up monitoring. Is that fair?

27 MR. CROWE: They're expected to do follow-up  
28 monitoring. I would ask Ms. Wilkerson to comment  
29 on this after me, but there is nothing to -- you  
30 are supposed to have a follow-up monitoring  
31 report, but there's actually nothing that compels  
32 the property owner, once they've got their  
33 development, to ensure that that is conducted and  
34 that report is submitted. There is often no  
35 follow-up monitoring as I understand it. Again,  
36 I'd ask Ms. Wilkerson to provide her opinion on  
37 that.

38 Q Ms. Wilkerson?

39 MS. WILKERSON: I agree with what Mr. Crowe just said.  
40 We do require, in a report, for a QEP to state  
41 that a post-development report is required, and we  
42 have received them. But there are a large number  
43 of reports that have been submitted where we  
44 haven't seen post-development report.

45 Again, it's been a little bit dependent on  
46 the QEP. Some QEPs will go in and say, okay, I'm  
47 going to provide your assessment and then I'm

1 going to come back when you start and I'm going to  
2 monitor. Then I'm going to come back when you're  
3 finished. They charge them up front for this and  
4 they come back.

5 Other QEPs will just do the up-front  
6 assessment and tell the developer they need to  
7 hire someone when they're finished. In those  
8 cases, it doesn't usually happen in our  
9 experience.

10 MR. HARRISON: Thank you. I will skip over that. Can  
11 you bring up document 8 from Commission counsel's  
12 list, please?

13 MS. BAKER: Did you want to mark that?

14 THE REGISTRAR: Did you want to mark --

15 MR. HARRISON: Oh, thank you very much. The last  
16 document, can you please mark as exhibit?

17 THE REGISTRAR: That's Tab 5 of the Commission's list?

18 MR. HARRISON: That's correct.

19 THE REGISTRAR: That's 1017.

20

21 EXHIBIT 1017: DFO, Memo to Greg Savard, A  
22 Director, OHEB (Draft)

23

24 MR. HARRISON: Document 8.

25 Q Mr. Crowe, this is an email from you to various  
26 people including Mr. Jason Hwang, dated October  
27 6th, 2009. The subject is "Water Act  
28 Notifications". Do you recognize this email?

29 MR. CROWE: Yes, I do.

30 Q And is it fair that -- I mean, this email  
31 discusses the SLIPP process and talks about its  
32 successes. I would like to take you to a -- you  
33 actually touched on this earlier today, but I  
34 would like to just emphasize that you do say  
35 something here that I think I would like to  
36 emphasize again. You say:

37

38 We are having a chronic problem with a  
39 substantial regulatory gap.

40

41 And then further on down, at the very last  
42 sentence in fact, you say:

43

44 We are facing a problem of ongoing  
45 deregulation, [where] when everything we knew  
46 of the problems facing Shuswap and other  
47 lakes, is that there is a need to improve

1 management...direction.  
2

3 Now, my question to you, you actually, in the  
4 other part of this email, talk about how Shuswap  
5 worked and you talk about that necessitated  
6 political will. But I wanted to focus on that  
7 part of where there's not a political will, would  
8 you agree with me that RAR amounts to  
9 deregulation?

10 MR. CROWE: I don't know if I would say deregulation.  
11 As I said, before RAR, we relied on land  
12 development guidelines to provide guidance for  
13 development, and we had referral systems for  
14 trying to capture and comment on development  
15 projects.

16 One of the things I complimented RAR about  
17 was actually providing a regulatory standard for  
18 development and I do stand by that agreement --  
19 that statement that I think it is -- it's not  
20 deregulation, it's actually an increase in  
21 regulation. My problem with it is actually how  
22 it's implemented and some of the mechanisms within  
23 the regulation.

24 Sure, there's clearly elements that I  
25 disagree with, such as the transference of some  
26 authorities to QEPs to make these decisions, so I  
27 would say ultimately I would not call it a  
28 deregulation. I would say it has the potential to  
29 be a very powerful and effective tool to protect  
30 riparian areas. But what I would add to that is,  
31 though, I think it needs to be strengthened in  
32 some areas as we've spoken to earlier.

33 Q Okay. Well, thank you for that answer. I'd like  
34 to reframe my question actually. I think you're  
35 right. It may not amount to a deregulation, but  
36 then I'd like to ask, in your view is RAR a  
37 delegation, i.e. if we look at what we went to  
38 earlier, riparian habitat is habitat, and the DFO,  
39 as far as we understand, has a mandate to protect  
40 habitat. But RAR and all that we're talking about  
41 here seems to be a delegation for other people to  
42 do their job. Is that fair?

43 MR. CROWE: Riparian Areas Regulation I think is an  
44 experiment in a new way of delivering  
45 environmental protection. The idea is sound; it's  
46 that it's a responsibility of all levels of  
47 government. The federal government, provincial

1 government and local governments all have roles to  
2 play here.

3 The problem is that some of the people that  
4 you're delegating to don't want that delegation.  
5 I think that's the problem, is how to ensure that  
6 the local governments are fulfilling an  
7 obligation. I think we can point to local  
8 governments that want to take on that role and I  
9 will use an example like the City of Kelowna. We  
10 never have any problems essentially from that  
11 area. I think is a quite a sophisticated  
12 government. They have an objective for  
13 sustainable development and that works great, but  
14 they want to do it.

15 Then we have too many examples where others  
16 don't want to. They feel it is a delegation and I  
17 would say that, yes, in some fashions, it is a  
18 delegation of responsibility. A great idea but,  
19 yes, I guess the short conclusion to your question  
20 is that it is a delegation.

21 Q Thank you. You've talked about the willingness of  
22 various municipalities. I'd just like, briefly,  
23 would you also say there's a problem that many  
24 municipalities would not have the technical  
25 capabilities to do a proper assessment? Is that  
26 fair?

27 MR. CROWE: Well, first of all, local governments don't  
28 do the assessment. It's the QEP who does the  
29 assessment and submits a report. The local  
30 government's role is to make a determination  
31 within their authority based on that, the  
32 conclusions of that report.

33 But I think my answer to your question would  
34 be that some local governments who do not want to  
35 have that responsibility are not actively  
36 cooperating in the effective delivery of the  
37 regulation.

38 MR. HARRISON: Okay. Well, I note that time and I'm  
39 going to leave it there. Thank you very much.

40 MS. BAKER: Do you want to mark that last --

41 MR. HARRISON: Pardon? Five-one -- oh, thank you  
42 again. I forgot to mark the last document as an  
43 exhibit, and I would like to please do so.

44 THE REGISTRAR: Exhibit 1018.

45 THE COMMISSIONER: Thank you, Mr. Harrison.

46  
47

1 EXHIBIT 1018: DFO, Email from Michael Crowe  
2 re Water Act Notifications, October 6, 2009  
3

4 MS. REEVES: Good afternoon, Commissioner. Crystal  
5 Reeves for the First Nations Coalition, and I'll  
6 just jump right in, given the interests of time.  
7 If you could pull up our Tab 7?  
8

9 CROSS-EXAMINATION BY MS. REEVES:  
10

11 Q And my question is directed towards you, Mr.  
12 Crowe. Are you aware of this report on the  
13 foreshore inventory and mapping that was done for  
14 DFO and Regional District on Shuswap and Mara  
15 Lakes?

16 MR. CROWE: Yes, I am, and I did comment on it briefly  
17 and fairly early, but not as -- it wasn't an  
18 exhibit at that point, but I made reference to it  
19 in answer to SLIPP.

20 MS. REEVES: Okay. I'd like that marked as the next  
21 exhibit.

22 THE REGISTRAR: Exhibit 1019.  
23

24 EXHIBIT 1019: Final Work Draft-Shuswap Lake,  
25 Mara Lake, Little Shuswap Lake and Little  
26 River foreshore inventory and mapping, Jun  
27 2009  
28

29 MS. REEVES: Okay.

30 Q And what I'd like to do is head to page 39 of the  
31 document, and that's the start of the  
32 recommendations that were in the report. At page  
33 39 and 40 and 41, there's a number of  
34 recommendations made, including habitat  
35 restoration works on page 40, that there should be  
36 an identification of core habitat areas; on page  
37 41, that there should be a creation of an  
38 Environmental Advisory Committee to conduct a  
39 development review process and that SLIPP should  
40 pursue funding to complete a shoreline management  
41 guided document.

42 Have you had a chance to review these  
43 recommendations?

44 MR. CROWE: Yes, I have.

45 Q And do you support the majority or all of them  
46 that are in this report?

47 MR. CROWE: Yes, I support them. The Department of

1 Fisheries and Oceans has reviewed and actually was  
2 a key player in the development of this document  
3 and was party and familiar with all these  
4 recommendations and in agreement with them.  
5 Q Okay. Thank you for that. Also on page 43,  
6 number 17, maybe I'll just specifically point to.  
7 MS. REEVES: If you could go to recommendation 17 and  
8 blow that up, please?  
9 Q It talks about compensatory works resulting from  
10 projects or portions of projects that could not be  
11 avoided, must follow the DFO decision framework  
12 for HADD. I'm just wondering if there's been any  
13 thought given to how that could be done.  
14 MR. CROWE: I'm sorry, I must say it's been a while  
15 since I read this. If you can just -- I promise  
16 to read it very quickly --  
17 Q Sure, sure.  
18 MR. CROWE: -- in consideration of time.  
19 Essentially, we're -- this is a statement of  
20 how we feel all compensatory work should be  
21 conducted and related to any development activity  
22 that works that have to counterbalance an  
23 authorized harm, or to be done in such a way that  
24 the overall project will meet the "no net loss"  
25 guiding principle of our habitat policy.  
26 Q And would you like to see that implemented in the  
27 Shuswap Lake area, then, perhaps through the SLIPP  
28 process?  
29 MR. CROWE: I think the SLIPP process would be a very  
30 good process to help guide and direct how  
31 development activities result in a HADD in Shuswap  
32 Lake could best place and determine what type of  
33 compensatory work should be conducted.  
34 Q Okay. Thank you. I'm going to move on now to  
35 you, Mr. Salomi, in a bit of a different  
36 direction.  
37 I'm going to take us to Exhibit 746 which is  
38 "Saving the Heart of the Fraser" report. This was  
39 done by Dr. Rosenau and Mark Angelo for the  
40 Pacific Fisheries Resource Conservation Council.  
41 Are you familiar with this report?  
42 MR. SALOMI: I do recall looking at that document, but  
43 it was some time ago.  
44 Q Okay. Well, maybe I can just talk about some of  
45 the impacts they talk about, very quickly.  
46 Starting on page 79, they're discussing the  
47 impact from agriculture in the lower Fraser River

1 watershed. On the fourth paragraph down, it talks  
2 about the interplay between construction of dikes  
3 and the need for bank stabilization with  
4 armouring, or what's known as riprap. Are you  
5 aware of that impact and that sort of, I guess,  
6 correlation between those two?

7 MR. SALOMI: Yes.

8 Q And would you say that's quite a high impact in  
9 the lower Fraser River watershed?

10 MR. SALOMI: Yes. Historically, that resulted in  
11 significant losses of fish habitat.

12 Okay. And then I'd like to go to page 84.  
13 If you could just blow that up? It's, I guess,  
14 five -- the fourth paragraph down. It's the small  
15 paragraph there. It says:

16  
17 The era of dike building within the gravel  
18 reach is not yet completed...

19  
20 And then it talks about over the past ten years,  
21 in the paragraph above, there continue to be  
22 numerous upgrades to Fraser River dikes in the  
23 Chilliwack area subsequent to hydraulic modelling.

24 So I guess my question is, is would you agree  
25 that dike-building in some cases is not just an  
26 historic impact, but also an ongoing impact in the  
27 lower Fraser River?

28 MR. SALOMI: Well, without reading the full context  
29 here, I think what is suggested there is likely  
30 raising of existing dikes. So the actual  
31 footprint impact or new impact is often limited if  
32 it's just a matter of raising the dike.

33 If it's construction of new dikes or spurs or  
34 other features, then perhaps there's more of an  
35 impact. But if it's simply raising or upgrading  
36 through raising, the impact -- new impact is  
37 rather limited.

38 Q Okay. Thank you. I'd like to move on from that,  
39 then, and go back to you, Mr. Crowe, in regards to  
40 a SLIPP again.

41 MS. REEVES: And if we could pull up Exhibit 1014,  
42 please.

43 Q So, Mr. Crowe, is it your experience, being  
44 involved in the SLIPP process, that First Nations  
45 in that area share your concerns and the  
46 perspective of DFO on the importance of habitat  
47 and salmon populations and the protection of

1 those?

2 MR. CROWE: Generally, yes. But I will qualify that by  
3 also saying that we're engaged in discussions with  
4 bands at this time with regards to the desire to  
5 actually redevelop and create development  
6 opportunities on reserve lands as well, and that  
7 we're having discussions on what appropriate  
8 setbacks and development standards should be on  
9 reserves.

10 I'd say that generally, absolutely, with the  
11 very, very similar opinions. But you can't -- I  
12 don't want to generalize and say that all First  
13 Nations are in agreement. There are some,  
14 including representatives of First Nations  
15 government, who would like to see increased  
16 development standards and activity on reserve  
17 lands, and that we're having somewhat similar  
18 challenges as I've described elsewhere on those  
19 reserve areas.

20 But, for the most part, I would have to say  
21 First Nations are a very keen interest in the  
22 sustainability of the Shuswap Lake area.

23 Q Okay. And from my understanding, there are First  
24 Nations involvement on the Steering Committee for  
25 SLIPP; is that correct?

26 MR. CROWE: That's correct, yes.

27 Q Okay. I'd like to go to this report at page 15 of  
28 the pdf. At the bottom there, there's a chart of  
29 implementation steps, and can you give us just  
30 maybe a brief overview of where those are at in  
31 terms of the implementation of some of those steps  
32 that are outlined there in the chart?

33 MR. CROWE: Sorry, can I ask you to go back and define  
34 which -- like there's implementation steps for  
35 each of the components of SLIPP, and if -- I'm not  
36 sure which ones these ones refer to.

37 Q Well, I think it's the --

38 MR. CROWE: Or is this the implementation of SLIPP in  
39 general?

40 Q Yeah.

41 MR. CROWE: Within each of the objectives, and there's  
42 a separate implementation plan for each one of  
43 them. I wasn't sure this one referred to -- this  
44 is...

45 Q I guess if you could just comment, perhaps, on is  
46 an MOU being developed in regards to conflict  
47 resolution mechanism? Where is that at?

1 MS. BAKER: Sorry, I wonder if it would assist the  
2 witness in looking at the previous page which  
3 identifies this from the section entitled  
4 "Improved Development Application Review Process."

5 MR. CROWE: Okay, thank you, yes. So within the  
6 various streams or objectives of SLIPP, some being  
7 water quality, some recreational development, this  
8 one being foreshore development, there was a plan  
9 to create a memorandum of understanding between  
10 all the different agencies on how they were going  
11 to coordinate and interact in the review of  
12 development applications.

13 That was the original intention when this  
14 plan was made. It has somewhat changed, and the  
15 decision was to go with terms of reference for  
16 that inter-agency technical review committee, and  
17 we never actually created the MOU, but we do have  
18 a framework on how we will engage in a technical  
19 review committee as opposed to having an MOU.

20 Q And are First Nations on that committee that's  
21 been part of that?

22 MR. CROWE: I can't say conclusively. I believe that  
23 they were invited to be a member, but it might be  
24 *ex officio*. I have never seen a First Nations  
25 individual attend those meetings. It's really a  
26 -- this is a committee that's more specific to the  
27 regulatory agencies and how they coordinate the  
28 regulatory reviews and decisions, and I don't  
29 believe there's been a First Nations  
30 representation on that committee.

31 Q Okay.

32 MR. CROWE: There is on the steering committee, but I  
33 don't believe on this technical committee.

34 Q Okay. And I guess, then, onto page 27, it talks  
35 about the need to create a professional and  
36 scientific advisory group. Are you aware of that  
37 recommendation?

38 MR. CROWE: Yes, I am.

39 Q And how was it envisioned who would put the issues  
40 to the scientific committee? Would it be DFO or  
41 the province or individuals or local government?  
42 Who would be putting the issues to this committee?

43 MR. CROWE: The idea was that, as it was envisioned,  
44 was that the technical committees would - if they  
45 ran into an issue where they felt they needed  
46 science advice - would make a submission to the  
47 steering committee and the steering committee

1           would then refer that question to the panel of  
2           scientists, yeah.

3           Q     Okay. And is it envisioned that First Nations  
4           would be a part of the science committee in terms  
5           of including traditional ecological knowledge and  
6           how that might be incorporated?

7           MR. CROWE: Within governments, it's always understood  
8           that that's an objective. The actual Scientific  
9           Technical Committee never was formulated. It was  
10          an idea and the steering committee actually has  
11          taken on other priorities, and as far as I'm  
12          aware, that scientific committee was never  
13          established. I think it was definitely within the  
14          normal spectrum of discussions, that that would be  
15          considered in some fashion.

16          Q     Okay.

17          MR. CROWE: Because First Nations is so important to  
18          the Shuswap Lake area, and there was a desire to  
19          integrate them as much as possible. In the SLIPP  
20          process, it would only make sense that we would  
21          try to do it in all components --

22          Q     Okay, thank you.

23          MR. CROWE: -- of the process.

24          Q     My next questions are for you, Ms. Wilkerson.  
25          First question is were First Nations ever asked to  
26          participate in the development of the RAR?

27          MS. WILKERSON: I don't know. I wasn't involved in the  
28          development of the RAR.

29          Q     Okay. And then earlier today, under questioning  
30          from, I believe, it was the Commission, you talked  
31          about these monthly meetings between DFO, the  
32          Union of B.C. Municipalities and the Province to  
33          sort of coordinate and talk about RAR.

34                   Have the First Nations ever been invited to  
35          participate in those meetings as well?

36          MS. WILKERSON: No, this is a committee that came out  
37          of our intergovernmental cooperation agreement  
38          between the three parties. So those have been the  
39          only parties that have participated to date.

40          Q     Right. Do you think it would be useful to invite  
41          a First Nation representative from, say, perhaps  
42          the First Nations Fisheries Council to provide  
43          that perspective?

44          MS. WILKERSON: Possibly. I guess it hasn't been  
45          considered before because RAR doesn't apply on  
46          First Nations Lands, and so it's something that I  
47          don't think has been considered, but whether or

1 not it would be helpful, I'm not sure.  
2 Q Right. But given the habitat concerns of First  
3 Nations it ---  
4 MS. WILKERSON: Oh, from that --  
5 Q -- it might be --  
6 MS. WILKERSON: -- perspective? Oh, possibly, yes.  
7 Q Okay. And earlier today, also, you talked about  
8 how the 2007 audit report, or audit, which is now  
9 a draft report for 2009, is going to be made  
10 available to the public; is that right?  
11 MS. WILKERSON: That's right.  
12 Q And what about all the data about which  
13 developers, local governments and QEPs were non-  
14 compliant? Would that data be made available to  
15 the public?  
16 MS. WILKERSON: It wouldn't name specific developers or  
17 QEPs, no.  
18 Q And perhaps, then, would you agree that making  
19 perhaps this information public, you know, might  
20 encourage parties to be more compliant because  
21 they would be held to public account?  
22 MS. WILKERSON: I guess it's possible.  
23 Q And what about the possibility of giving this  
24 information to First Nations, given that some of  
25 the developments would be taking place on  
26 traditional territories, upon which that  
27 development is taking place.  
28 MS. WILKERSON: Yes, if there was an interest for the  
29 information, then that could be supplied.  
30 Q Thank you for that.  
31 Mr. Crowe, back to you. Given government  
32 downsizing, what remains a priority for an  
33 ecosystem-based management monitoring in your  
34 region?  
35 MR. CROWE: We have tried to align our monitoring with  
36 our primary statutory obligations and  
37 responsibilities and that is authorizations under  
38 the **Fisheries Act**, responsibilities under **CEA** and  
39 **Species at Risk Act**.  
40 Essentially, while we have plans for a  
41 monitoring program in the future to address a wide  
42 spectrum of development activities, right now we  
43 are focusing on confirming that the decisions we  
44 are making under our primary statutory obligations  
45 are being effective and doing essentially what  
46 they're intended to do.  
47 So right now most of our monitoring is

1 focused on the issues such as our authorizations.  
2 MS. REEVES: Okay. Thank you. If we could just go to  
3 Exhibit 1003, please, and to page 9. And if you  
4 could blow up, I guess, the last few bullets.  
5 That's fine.

6 Q So this was a list of challenges which we've  
7 already gone over, and just a few of them is --  
8 very few stewardship projects can go ahead.  
9 There's no longer support to fisheries management  
10 to develop First Nations capacity, and no longer  
11 able to participate in foreshore planning.

12 Is it accurate that, I guess, in 2007 - and  
13 this is two years after the Wild Salmon Policy has  
14 been adopted - that the B.C. Interior didn't have  
15 the capacity to proactively implement it, since  
16 each of these items are part of the Wild Salmon  
17 Policy?

18 MR. CROWE: Essentially, the Habitat Management Program  
19 objective is to protect and conserve fish and fish  
20 habitat, so essentially we are trying to deliver  
21 the key objective of the policy which is the  
22 conservation of wild salmon stocks or conservation  
23 units.

24 With regards to Wild Salmon Policy processes,  
25 the habitat component is really dependent on  
26 having, under Strategy 2, a very good inventory of  
27 habitat values based on assessment studies and  
28 understanding of indicators and overall habitat  
29 condition. We essentially don't have a lot of  
30 that basic information. So while we're working  
31 towards the spirit and intent of WSP, I would say  
32 we're not doing it directly within the manner that  
33 WSP envisions or intends.

34 Q And what about the SLIPP process? Do you see that  
35 as maybe being able to assist in the  
36 implementation of the Wild Salmon Policy, over  
37 time?

38 MR. CROWE: I mean, yes. Again it essentially is  
39 working towards many of the objectives of the Wild  
40 Salmon Policy. It's integrating different  
41 interests. It's coordinating, it's considering  
42 trade-off and values of different parties. We are  
43 working towards collecting all the inventory and  
44 assessment information necessary to improve our  
45 decisions and it's working within, I think, the  
46 sort of general spirit and intent of WSP.

47 Q Okay. Thank you. And moving just on to sort of a

1 related issue then to habitat, are you aware of a  
2 concern raised by First Nations in the Interior  
3 with respect to water licensing from agriculture  
4 and how that impacts salmon-bearing streams?

5 MR. CROWE: I would say that water management issues is  
6 one of the greatest challenges we face in the B.C.  
7 Interior in terms of ensuring conservation and  
8 protection of fish and fish habitat. There's the  
9 physical habitat piece as we've been discussing  
10 for the last day and a bit, but we haven't -- and  
11 I know that water use is going to be a later  
12 panel. But the extraction of water for  
13 agriculture and other land use issues is a  
14 substantial problem in the B.C. Interior,  
15 particularly in those areas that are very drought-  
16 prone where there's long extended summers with  
17 very little precipitation. Yes, we share with all  
18 others that water use is a very big problem for  
19 us.

20 Historically, water licenses were granted  
21 with no consideration of in-stream flows. Fish  
22 don't even have rights to water right now under  
23 the present **Water Act**. It is proposed for change  
24 through the provincial changes to the **Water Act**  
25 under a process called water modernization. We're  
26 very optimistic that will protect and ensure  
27 minimum-based flows into the future, but  
28 essentially water is a very big problem. I  
29 wouldn't say just from agriculture, but  
30 agriculture is a big part of that problem --

31 Q Right.

32 MR. CROWE: -- with regards to over-licensing of the  
33 past and present use.

34 Q And has DFO maybe done any mapping of those  
35 streams that are of highest concern? I understand  
36 from our clients that the Nicola River, obviously  
37 now an endangered river, is over-subscribed from  
38 water licenses, but has any work been done to  
39 identify other streams and rivers that would --

40 MR. CROWE: Yes. I mean, the last time that we did an  
41 intensive mapping project was actually under the  
42 provincial Sensitive Streams and Protection --  
43 Sensitive Stream Regulation. We worked with the  
44 province to identify streams that were  
45 particularly prone to drought problems. I would  
46 say that we have not really updated that.

47 In the Kootenays I can give you an example of

1 an intensive mapping project to identify streams  
2 based on sensitivity, based on low flows, but I  
3 would finish up by saying work in the southern  
4 interior should be updated.

5 Q Okay. Thank you. And I guess a final question  
6 for you, I'd like to pull up our document, Tab 2.  
7 This was a report done by the David Suzuki  
8 Foundation called "High and Dry, An Investigation  
9 of Salmon Habitat Destruction in British  
10 Columbia". Are you aware of this report?

11 MR. CROWE: Yes, I am. I did read it when it first  
12 came out. I have not refreshed my memory of it,  
13 but I generally remember it, yes.

14 A And, Mr. Salomi, are you familiar with this report  
15 as well?

16 MR. SALOMI: Yes.

17 MS. REEVES: I'd like that marked as an exhibit.

18 THE REGISTRAR: Exhibit 1020.

19  
20 EXHIBIT 1020: Document titled "High and Dry,  
21 An Investigation of Salmon Habitat  
22 Destruction in British Columbia, July 11,  
23 2007  
24

25 MS. REEVES:

26 Q I'd like to just go to page 19 on ringtail, and  
27 fourth paragraph down in the grey there, if we  
28 could just go to that paragraph. This was a  
29 conclusion raised by a case that was investigated  
30 on Millionaire Creek in Maple Ridge, and citizens  
31 had complained about habitat issues there coming  
32 from local development. I won't go through all  
33 the details given the time constraints, but it  
34 talks about the lack of basically DFO's response  
35 in the second paragraph, and then it talked about  
36 what the local government did to mitigate the  
37 damage that was being done.

38 I'd just like to have you look through that  
39 greyed paragraph there. Basically it talks about:

40  
41 The new Environmental Process Modernization  
42 Plan places the onus for fish-habitat  
43 protection squarely on the shoulders of  
44 project proponents and their consultants.  
45

46 By this, I think they're talking about:  
47

1           ...QEPs who are deemed "qualified  
2           professionals." Less emphasis placed on  
3           enforcement and more on education, but  
4           without the staff, or a plan, to actually get  
5           out in the field and monitor progress, this  
6           method of fish-habitat management is doomed  
7           to failure. A watched industry is a  
8           responsible industry.  
9

10           Would you agree with that conclusion or -- I guess  
11           mostly the last sentence where we're talking about  
12           if industry is watched and monitored, then perhaps  
13           they might become more responsible?

14       MR. CROWE: What I would say is - and I will try to  
15           keep this short - is that a professional reliance  
16           model can work. The challenge in an ecological  
17           context where we're dealing with such complicated  
18           environments, both from sort of an ecological  
19           prospective as well as regulatory, is there's a  
20           great deal of uncertainty. It's not impossible,  
21           if an individual is left to his own, to apply  
22           judgments or discretions that may not necessarily  
23           always result in the best outcome ultimately in  
24           terms of environmental protection.

25           My opinion is that the role of government is  
26           to provide a level playing field, ensure  
27           compliance, and that there is a role to ensure  
28           that standards are met by all elements of society.  
29           I clearly believe professional reliance has its  
30           place. I truly believe that government, one of  
31           its roles is to ensure that business is conducted  
32           in a fair and accurate manner.

33       Q     Mr. Salomi, do you have any comments, or would you  
34           agree with this statement?

35       MR. SALOMI: I don't think I have any further comments  
36           to add to that.

37       Q     Ms. Wilkerson, do you have anything you'd like to  
38           add about compliance in terms of being able to  
39           watch industry and hold them to account under the  
40           RAR regulation?

41       MS. WILKERSON: Well, I agree with what Mr. Crowe has  
42           said. From my experience with RAR is that many  
43           people are willing to comply and "do the right  
44           things" is often how they put it. But when it  
45           comes down to those individuals that basically  
46           require the hammer in order to comply with what  
47           they're supposed to do, there are going to be

1           those individuals, and we do run into that. So in  
2           those situations, we are a little bit more  
3           challenged.

4       Q     Right. And so do you think that perhaps -- I'm  
5           just trying to think of possible solutions or  
6           recommendations. Would you agree that perhaps  
7           maybe the QEP course should be made mandatory  
8           under the Regulations for instance?

9       MS. WILKERSON: I don't know if that -- I mean, most of  
10          the QEPs that I'm aware of have taken the course.  
11          It tells them how to do it. I guess we're talking  
12          about some ideological things that it's not going  
13          to teach.

14       Q     Right. So, then, perhaps something like spot  
15           checks or actual enforcement provisions through  
16           RAR would be a better option.

17       MS. WILKERSON: Yeah, and we do do a lot of spot checks  
18          and monitoring, but it is the enforcement piece  
19          that becomes an issue.

20       Q     And I guess my last question is are you aware of  
21           any, I guess, s. 35 or 36 had prosecutions or  
22           charges that have come out of the RAR process for  
23           either deleterious substances or HADDs? Are you  
24           aware of that, any of you, that have come out  
25           since RAR was implemented?

26       MR. CROWE: What I would say is use an example that Ms.  
27          Wilkerson is very familiar with. A large  
28          commercial development in the Salmon Arm area,  
29          there was an appeal mechanism within the  
30          Regulation that allows third parties who disagree  
31          with the outcome to ask for that review. That was  
32          used effectively to change substantially the  
33          footprint of that development.

34               I will then point to an example called Old  
35          Town Bay at the very east end of Shuswap Lake,  
36          very close to the town of Sicamous, where a  
37          proponent, a large development company, was aware  
38          of RAR, knew of their obligations. They had  
39          divided their development into different phases.  
40          They had actually applied RAR to one component and  
41          therefore obviously knew what was expected of  
42          them, and then went forward with development  
43          another part of it without conducting a RAR.

44               Because they had not conducted a RAR, after a  
45          thorough investigation that took two-and-a-half  
46          years, we took them to court and they pled guilty  
47          because they had no due diligence. They knew of

1 the standards and the regulations and because of  
2 RAR and their failure to comply with RAR, they  
3 pled guilty. We had a successful prosecution and  
4 the single greatest environmental fine in Canada  
5 under the **Fisheries Act**, a \$300,000 penalty. It  
6 was quite an important case for us and RAR  
7 contributed to that.

8 MS. REEVES: Okay, thank you. Those are all my  
9 questions.

10 THE COMMISSIONER: Thank you.

11 MS. BAKER: I have nothing arising. I hope my friends  
12 don't.

13 THE COMMISSIONER: Thank you very much. Thank you to  
14 all counsel. I also wanted to thank Mr. Crowe,  
15 Mr. Salomi and Ms. Wilkerson for attending and for  
16 providing the answers to counsel's questions and  
17 for providing us with your knowledge. Thank you  
18 very, very much.

19 We're adjourned then until Monday at 10:00  
20 a.m.?

21 MS. BAKER: Until Monday.

22 THE COMMISSIONER: Thank you.

23 THE REGISTRAR: The hearing is now adjourned until  
24 Monday at 10:00 a.m.

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(PROCEEDINGS ADJOURNED TO JUNE 13, 2011 AT  
10:00 A.M.)

1 I HEREBY CERTIFY the foregoing to be a  
2 true and accurate transcript of the  
3 evidence recorded on a sound recording  
4 apparatus, transcribed to the best of my  
5 skill and ability, and in accordance  
6 with applicable standards.  
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9  
10 \_\_\_\_\_  
11 Pat Neumann  
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13 I HEREBY CERTIFY the foregoing to be a  
14 true and accurate transcript of the  
15 evidence recorded on a sound recording  
16 apparatus, transcribed to the best of my  
17 skill and ability, and in accordance  
18 with applicable standards.  
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22 Karen Acaster  
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24 I HEREBY CERTIFY the foregoing to be a  
25 true and accurate transcript of the  
26 evidence recorded on a sound recording  
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28 skill and ability, and in accordance  
29 with applicable standards.  
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33 Karen Hefferland  
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35 I HEREBY CERTIFY the foregoing to be a  
36 true and accurate transcript of the  
37 evidence recorded on a sound recording  
38 apparatus, transcribed to the best of my  
39 skill and ability, and in accordance  
40 with applicable standards.  
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42 \_\_\_\_\_  
43 Diane Rochfort  
44  
45  
46  
47