

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



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

**Public Hearings**

**Audience publique**

**Commissioner**

L'Honorable juge /  
The Honourable Justice  
Bruce Cohen

**Commissaire**

**Held at:**

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

Tuesday, September 27, 2011

**Tenue à :**

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

le mardi 27 septembre 2011

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No appearance	Seafood Producers Association of B.C. ("SPABC")
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No appearance	Musgamagw Tsawataineuk Tribal Council ("MTTC")
No appearance	Heiltsuk Tribal Council ("HTC")

**TABLE OF CONTENTS / TABLE DES MATIERES**

	PAGE
PANEL NO. 65:	
LAURA RICHARDS (recalled)	
Cross-exam by Mr. Leadem (cont'd)	1
Cross-exam by Mr. Rosenbloom	21/30/32
Cross-exam by Mr. Eidsvik	54/63
Cross-exam by Mr. Harvey	79
Cross-exam by Mr. Lowes	86/97
DAVID BEVAN (recalled)	
Cross-exam by Mr. Leadem (cont'd)	2/3/4/5/6
Cross-exam by Mr. Rosenbloom	10/14/27/28/29
Cross-exam by Mr. Eidsvik	34/50
Cross-exam by Mr. Harvey	73
Cross-exam by Mr. Lowes	90/94/97
CLAIRE DANSEREAU (recalled)	
Cross-exam by Mr. Leadem (cont'd)	2/3/4/7/8
Cross-exam by Mr. Rosenbloom	10/11/12/13/14/15/16/18/19/27
Cross-exam by Mr. Eidsvik	53
Cross-exam by Mr. Lowes	97
Cross-exam by Mr. Gailus	99
SUSAN FARLINGER (recalled)	
Cross-exam by Mr. Leadem (cont'd)	2/5/8
Cross-exam by Mr. Rosenbloom	15/20/21/22/23/24/25/26 27/29/30/31/32/33/34
Cross-exam by Mr. Eidsvik	35/55/63
Cross-exam by Mr. Harvey	64/83
Cross-exam by Mr. Lowes	91/94/97
Cross-exam by Mr. Gailus	98

**EXHIBITS / PIECES**

<u>No.</u>	<u>Description</u>	<u>Page</u>
1941	Treasury Board of Canada Secretariat, Fisheries and Oceans Canada Report - Minister's Message for 2011-2012 Plans and Priorities for Fisheries and Oceans Canada	3
1942	E-mail from David Bevan to Claire Dansereau, et al, Subject: Meeting with Marine Harvest Canada, dated March 30, 2010	3
1943	Briefing Note for the Assistant Deputy Minister, re: Meeting with BC Salmon Farmers Association (BCSFA) Monday, October 27, 2003	5
1944	E-mail thread between Al Castledine and Y. Bastien, et al, Subject: announcement confidential, between January 11, 2006, and January 11, 2006	7
1945	Excerpt from Fifty-Ninth Annual Report of the Fisheries Branch for the Year 1925-26, pages 53-4 72-3	38
1946	Excerpt from Knight, Indians at Work - An Informal History of Native Labour in British Columbia, 1848-1930, Preface and Chapters 1, 9, 15	39
1947	Levy, BC Sockeye Salmon Population Declines: Probable Causes and Recommended Response Strategies, Feb 2006 [Sierra Club]	42
1948	Lower Fraser Area Fishing Times, Openings Ending Between Jan 1 2010 and Dec 31 2010 [DFO website as of Feb 14 2011] 3 pages	56
1949	Lower Fraser Area Fishing Times, Openings Ending Between Jan 1 2010 and Dec 31 2010 [DFO website as of Feb 14 2011], 21 pages	56
1950	Lower Fraser Area Fishing Times, Openings Ending Between Jan 1 2010 and Dec 31 2010 [DFO website as of Feb 14 2011], 5 pages	57

**EXHIBITS / PIECES**

<u>No.</u>	<u>Description</u>	<u>Page</u>
1951	Coulthard et al, Poverty, Sustainability and Human Wellbeing: A Social Wellbeing Approach to the Global Fisheries Crisis, 2011	73
1952	United Nations Fisheries Agreement	74
1953	Hume et al, Preliminary Report on Sockeye Fry in Quesnel and Shuswap Lakes in 2003	81

**EXHIBITS FOR IDENTIFICATION / PIECES POUR IDENTIFICATION**

LLL	Memorandum from Mr. J.B. Hache, Assistant Deputy Minister, to Director General, Pacific Region re Sale of Native Food Fish - Somass River	54
MMM	Church email and photos	63

1 Vancouver, B.C. /Vancouver (C.-B.)  
2 September 27, 2011/le 27 septembre  
3 2011  
4

5 THE REGISTRAR: The hearing is now resumed.  
6

7 LAURA RICHARDS, recalled.  
8

9 DAVID BEVAN, recalled.  
10

11 CLAIRE DANSEREAU, recalled.  
12

13 SUSAN FARLINGER, recalled.  
14

15 THE COMMISSIONER: Mr. Leadem.

16 MR. LEADEM: Good morning, Mr. Commissioner. Good  
17 morning, panel members. I am advised I have 18  
18 minutes left with you, so for me, I'm in the home  
19 stretch. I think you have a little bit more time  
20 ahead of you.  
21

22 CROSS-EXAMINATION BY MR. LEADEM, continuing:  
23

24 Q I want to come back to the Wild Salmon Policy and  
25 begin with you, Dr. Richards. I'm advised that  
26 there's a paper that Dr. Holtby, of your science  
27 group, has produced in conjunction with the Wild  
28 Salmon Policy, entitled, A Synoptic Approach for  
29 Assessing the Conservation Status of Pacific  
30 Salmon on a Regional Basis; is that correct?

31 DR. RICHARDS: I know Dr. Holtby has produced a number  
32 of papers, and I'm not -- what -- I'm not sure  
33 that that is specifically linked to the Wild  
34 Salmon Policy. Depending on which paper, Dr.  
35 Holtby was very engaged in the techniques we used  
36 to identify conservation units, if that's the --  
37

38 Q Yes.

39 DR. RICHARDS: If that's the paper that you're  
40 referring to?

41 Q And this is the one for regionalization and  
42 aggradations of conservation units on a regional  
43 basis in which he examines, specifically, Fraser  
44 River sockeye salmon and Chinook salmon. Is that  
45 ringing a bell with you?

46 DR. RICHARDS: I didn't review that specific paper, but  
47 I know that he has been the main person in the  
science staff who has worked on identifying the

1 conservation units. I also know that he was  
2 working more recently with Sue Grant and her  
3 colleagues, and his most recent analysis of the  
4 conservation units is included in the paper which  
5 we have already identified for these hearings.

6 Q Okay. The one question I wanted to come back to  
7 in terms of the Wild Salmon Policy as a general  
8 question was whether or not the Wild Salmon Policy  
9 applies to aquaculture operations, finfish  
10 aquaculture operations in British Columbia. Can  
11 you address that, Associate Deputy Minister?

12 MR. BEVAN: It was originally -- it's the Wild Salmon  
13 Policy, so it didn't -- I don't believe there was  
14 a design with that in mind. I'd turn it to Sue  
15 Farlinger to confirm that.

16 MS. FARLINGER: The Wild Salmon Policy speaks to a  
17 number of things not directly addressed under  
18 harvest and habitat under the ecosystem component  
19 of the policy, and so also under the habitat for  
20 the question of aquaculture. Now, at the time the  
21 policy was written, of course, we were not the  
22 primary regulators of aquaculture, but it is  
23 certainly considered with respect to the Wild  
24 Salmon Policy in terms of whether we have put  
25 mitigative measures in place for either habitat or  
26 potential ecosystem impacts.

27 Q So you're describing that there is some linkage  
28 between aquaculture operations and the Wild Salmon  
29 Policy, in terms of --

30 MS. FARLINGER: As there would be of --

31 Q -- ecosystem approach?

32 MS. FARLINGER: -- in any activity that goes on in  
33 around -- in or around the habitat or the  
34 ecosystem for wild salmon, yeah.

35 Q All right. Could I go to Conservation document  
36 number 29, please. What you should have before  
37 you is a website, the Minister's Message for  
38 Fisheries and Oceans Report on Plans and  
39 Priorities 2011 to 2012. No doubt you recognize  
40 this, do you now, Deputy?

41 MS. DANSEREAU: Yes.

42 MR. LEADEM: Could this be marked as the next exhibit,  
43 please.

44 THE REGISTRAR: 1941.

45

46 EXHIBIT 1941: Treasury Board of Canada  
47 Secretariat, Fisheries and Oceans Canada

1 Report - Minister's Message for 2011-2012  
2 Plans and Priorities for Fisheries and Oceans  
3 Canada  
4

5 MR. LEADEM: Could I now go to Conservation document  
6 number 13, please.

7 Q This question is for you, Associate Deputy  
8 Minister, then to the Deputy Minister. This is a  
9 note about a meeting with Marine Harvest Canada  
10 that took place on March 30th, 2010, with the  
11 Minister of Department of Fisheries and Oceans; is  
12 that correct?

13 MR. BEVAN: That's correct.

14 Q And you summarize that meeting in the note that  
15 follows in your briefing to the Deputy Ministers,  
16 and that's a fair and accurate summary of what  
17 transpired at that meeting?

18 MR. BEVAN: Yes, it is.

19 Q So concern was expressed by certainly Marine  
20 Harvest Canada, whom you note to be one of the  
21 major operators of finfish aquaculture in B.C.,  
22 about what was going to take place in terms of  
23 this particular inquiry; is that fair to say?

24 MR. BEVAN: Yes, they expressed concerns during the  
25 meeting.

26 MR. LEADEM: Could we have that marked as the next  
27 exhibit, please.

28 THE REGISTRAR: 1942.  
29

30 EXHIBIT 1942: E-mail from David Bevan to  
31 Claire Dansereau, et al, Subject: Meeting  
32 with Marine Harvest Canada, dated March 30,  
33 2010  
34

35 MR. LEADEM:

36 Q Now, the next question is to you, Deputy. Did you  
37 also meet with representatives from Marine Harvest  
38 Canada at this time, or were you simply in the  
39 loop by virtue of your associate deputy minister's  
40 note?

41 MS. DANSEREAU: I was in the loop.

42 Q And I suppose a general question to you is: If  
43 you're trying to promote transparency so that  
44 decision-making is above board, why is it that the  
45 minister is meeting behind closed doors with  
46 members of industry like this?

47 MS. DANSEREAU: The minister meets with -- and this is

- 1 very standard practice for ministers; ministers  
2 are ministers for all Canadians and they meet with  
3 any number of groups. They will have met with  
4 anyone -- almost anyone who will write to the  
5 minister and suggest a meeting, particularly  
6 people that we work with on a regular basis, so  
7 that is part of our transparency, and we can't  
8 have multi-stakeholder meetings at every meeting.  
9 It's important to sometimes hear from individual  
10 groups to hear what their concerns are.
- 11 Q Now, certainly to your knowledge, Associate Deputy  
12 Minister, there wasn't such a meeting prior to the  
13 inception of the technical hearings in this  
14 inquiry with ENGO community or with First Nations  
15 communities, were there?
- 16 MR. BEVAN: We met with Tides Canada on this issue.  
17 The Minister met with Tides Canada.
- 18 Q Did the Minister meet with any First Nations groups  
19 on this issue?
- 20 MR. BEVAN: The Minister has had meetings with First  
21 Nations. I can't -- I wasn't involved, directly,  
22 in those, so I couldn't tell you what the subject  
23 matters were.
- 24 MS. DANSEREAU: If I may, I can - and Sue will jump in  
25 - the Minister has met with many First Nations  
26 groups over the years and does so regularly on any  
27 number of issues.
- 28 Q But the specific topic that was being discussed at  
29 this time was the position of the Department of  
30 Fisheries and Oceans were to take with respect to  
31 these particular hearings; is that fair to say?
- 32 MR. BEVAN: They expressed their views, their concerns.  
33 They had information regarding what they're doing  
34 with respect to sea lice. They also suggested  
35 some changes to siting of their farm locations, et  
36 cetera. So it was an information flow from them  
37 to the Department. There was no suggestion that  
38 the Department or the Minister should adopt any  
39 particular position at these hearings, but,  
40 rather, that they were expressing their concerns  
41 that there could be some impacts on their  
42 companies and they did look at trying to provide  
43 information to the Department regarding what  
44 they're doing to manage sea lice and other such  
45 things.
- 46 Q There was an acknowledgment by MHC, Marine Harvest  
47 Canada, that they wanted to move their siting

1 closer to the open sea to reduce potential  
2 environmental impacts and controversy, according  
3 to this note; is that right?

4 MR. BEVAN: That's correct, yes.

5 Q Could we have number 19, please, in the  
6 Conservation list. This also references a meeting  
7 with the B.C. Salmon Farmers Association back in,  
8 it looks like, October 27th of 2003. I'm not sure  
9 if any of you were around then. The Deputy is  
10 shaking her head, "No," with a look of gratitude,  
11 I can imagine. Ms. Farlinger, you're aware of  
12 this, right, because I think I saw your name on  
13 this briefing note at the end.

14 MS. FARLINGER: Yes.

15 Q And the concern being expressed in this particular  
16 meeting was the delay in getting approvals through  
17 the **CEAA** process, was it not?

18 MS. FARLINGER: It appears to be that, yes, and that  
19 wouldn't surprise me that that would be.

20 MR. LEADEM: Could we have that marked as the next  
21 exhibit, please.

22 THE REGISTRAR: Exhibit 1943.

23  
24 EXHIBIT 1943: Briefing Note for the  
25 Assistant Deputy Minister, re: Meeting with  
26 BC Salmon Farmers Association (BCSFA) Monday,  
27 October 27, 2003  
28

29 MR. LEADEM: And finally, could we have Conservation  
30 document number 16, please.

31 Q This is another e-mail exchange. I think if we go  
32 to pdf 2, I saw Mr. Bevan's name on it somewhere.  
33 And I find your name here, Mr. Bevan, and then if  
34 we can scroll down I'll give you the gist of what  
35 is actually happening. If we go to the original  
36 e-mail, which is the e-mail from Al Castledine  
37 from the Province. And there's a reference to an  
38 announcement that's going to take place shortly  
39 after the date of this sending, and the  
40 announcement is one by Marine Harvest Canada and  
41 the Coastal Alliance for Aquaculture Reform, about  
42 a framework for dialogue. Do you recall this  
43 issue?

44 MR. BEVAN: Vaguely. Unfortunately, I don't recall a  
45 lot of the details on this issue.

46 Q Could we just scroll down just a couple more  
47 paragraphs, please, Mr. Lunn. There's a reference

1           there to the "Framework for Dialogue":

2  
3           ...the culmination of a year and a half of  
4           discussion between the two parties.

5  
6           And a reference to:

7  
8           It is to foster collaborative efforts towards  
9           solving challenges surrounding net-cage  
10          salmon farming.

11  
12          If we can go to the next page, please.

13  
14          The Framework promotes collaborative research  
15          on sea lice, an exploration of the viability  
16          of closed tank systems and exploring  
17          establishing migratory corridors for wild  
18          salmon.

19  
20          And then, as part of this, it appears as though  
21          Marine Harvest moved salmon:

22  
23          ...from its Glacier Falls site to the  
24          MidSummer Island site, a site more removed  
25          from what is considered by some to be a major  
26          migratory route for juvenile salmon.

27  
28          So that's something that Marine Harvest certainly  
29          was willing to engage in at that time. You were  
30          aware of that?

31       MR. BEVAN: This is -- not with respect to the specific  
32       e-mail chain, but certainly I was aware of the  
33       fact that Marine Harvest was concerned about the  
34       social licence of their operations in terms of  
35       being socially acceptable and not being  
36       challenged. They were looking for ways to resolve  
37       that limit on their potential for growth. They  
38       couldn't -- they weren't able to continue to  
39       expand as they would have wished to, because there  
40       was lots of pressure on the Government of B.C. at  
41       the time to stop the expansion of the industry and  
42       to hold the number of sites constant. So they  
43       were looking for ways to deal with the concerns  
44       and to find a way to see if they could get the  
45       approvals to expand their operations.

46       MR. LEADEM: Could we have that marked as the next  
47       exhibit, please.

1 THE REGISTRAR: Exhibit 1944.

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MR. LEADEM:

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Q That leads me to my final area of questions, which is what we have been calling in this inquiry the grandfathering or the rolling over of the existing aquaculture licences when the Federal Government took authority, legislative and regulatory authority, over aquaculture facilities. And I understand that that decision was made by the Minister and I further understand that we don't have a written decision note of that; am I correct in that view?

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MS. DANSEREAU: Yeah, we're not -- we've been working our way through the history of this, and I'm fairly sure the decision was made by me and it was made through a series of other meetings. We were having regular briefings with David and his staff and others on a weekly basis with me to walk through implementation because, as you know - I think you know - the timeframe we were given to make the big regulatory change was very short, and we needed to make sure that we not miss a beat, basically, as we moved forward. And the decision was that we had no evidence on which to make a -- to not grandfather any of the licenses, and we knew that we would be spending a lot of time working to ensure that the conditions of licence would be well-established by us through consultation in the future, and that's where the greater part of the regulation would come in.

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Q And the licences, as I understand it, were rolled over for a period of one year, which is probably going to be coming up fairly shortly. Can you advise me whether it's the intent of Canada to renew it for a further period of one year, or have you made that determination yet?

37

38

39

40

41

42

MS. DANSEREAU: We're still working our way through this.

43

44

Q In terms of the consultations that you had, I assume that you had consultations with the industry representatives, in terms of what you

45

46

47

1           were going to do to their licenses; is that fair  
2           to say?

3 MS. DANSEREAU: We certainly had consultations through  
4           the regulatory phase --

5 Q       Yes.

6 MS. DANSEREAU: -- as we were developing the reg and  
7           the conditions of licence, and we had some  
8           consultation before that. In fact, we had quite  
9           an extensive consultation right around the  
10          province, which Sue can certainly speak to.

11 Q       Right. I imagine that you would have had  
12          extensive consultations with the Province, who was  
13          handing over authority to you so that you would  
14          understand the regulatory framework under which  
15          they operated?

16 MS. DANSEREAU: Certainly we did, yes. We worked very  
17          closely with them, yes.

18 Q       And what about possible impact upon other  
19          stakeholders? Did you have consultations with  
20          commercial fishermen? Did you have consultations  
21          with First Nations? Did you have consultations  
22          with ENGOs about this rollover?

23 MS. FARLINGER: There were a number of stages to the  
24          consultation, first of all, prior to the  
25          Gazetting, I would say, Gazette I, formal  
26          consultation process that occurs between the  
27          period of Gazette I and Gazette II, which is a  
28          specific national process which has -- provides  
29          for citizen input or group input. And then,  
30          specifically before the licenses were provided on  
31          December 18th, the conditions of the licence were  
32          released to a variety of groups. They were  
33          reduced to the aquaculture -- or produced to the  
34          aquaculture industry, they were provided to First  
35          Nations and -- to individual First Nations, and  
36          there were presentations made during this period  
37          of consultation to other interested groups. One I  
38          can recall in particular was a presentation to the  
39          Sports Fish Advisory Board.

40                 There may have been a presentation to the  
41          Integrated Harvest Planning Committee or other  
42          commercial groups, but I would have to look back  
43          and see what those were. But the one I remember  
44          specifically was a presentation to the Sport Fish  
45          Advisory Board, as well as the release of the  
46          conditions of licence and the format of licence to  
47          First Nations.

1 MR. LEADEM: Thank you, panel members, those are my  
2 questions. Thank you, Mr. Commissioner.

3 THE COMMISSIONER: Thank you, Mr. Leadem.

4 MR. ROSENBLOOM: Thank you very much. It is now  
5 approximately 20 minutes after 10:00. I have been  
6 provided with one hour in cross-examination.

7

8 CROSS-EXAMINATION BY MR. ROSENBLOOM:

9

10 Q Let me commence by making this observation, having  
11 sat in this hearing room for 10 months, hearing  
12 evidence that I do very much respect the, what I  
13 consider an overwhelming responsibility that all  
14 four of you have in trying to discharge your  
15 responsibilities, your statutory responsibilities  
16 to the citizens of Canada. It really is  
17 overwhelming to see what rests on your shoulders,  
18 and I compliment you for your courage. However,  
19 that really ends my compliments in respect to  
20 where I go with this cross-examination.

21 I have responsibilities, and I should  
22 indicate, as all of you know, that I represent  
23 Area D Gillnet and Area B Seiner. I have a  
24 responsibility to my clients to bring to this  
25 Commission a reality check in respect to your  
26 perception of whether or not you are discharging  
27 your responsibilities in terms of the statutes to  
28 a degree that the citizens of Canada should feel  
29 comfortable that this very valuable resource is  
30 being properly managed. And all of my cross-  
31 examination is in the context of that reality  
32 check.

33 I first want to deal with budget issues, and  
34 we heard your evidence in respect to budgets  
35 issues both last year, Ms. Dansereau, and indeed  
36 in the two days last week, and then Mr. Tyzuk and  
37 Mr. Buchanan, yesterday, and I still have a little  
38 bit of confusion and I want to make sure that it  
39 is clear on record what I understand. Let me  
40 summarize what I understand and please respond,  
41 and these questions are really directed to Ms.  
42 Dansereau, and unless I, throughout my cross-  
43 examination, ask for anyone else's response, I  
44 will be asking you, Deputy, for your response.

45 Firstly, in respect to the fiscal year we're  
46 currently in, 2011 to 12, you have indicated that  
47 the reduction in budget is approximately -- is

1 approximately three percent; is that correct?

2 MS. DANSEREAU: Three percent over the course of the  
3 next four years is the reduction as a result of  
4 the strategic review process. There will be other  
5 reductions in future years for other processes as  
6 well.

7 Q But I thought the strategic review process that  
8 you have spoken about that leads to a five to 10  
9 percent reduction, triggers off in the beginning  
10 of the 2012 fiscal year; is that not correct?

11 MS. DANSEREAU: There are two processes. There was a  
12 process started, I guess, five years ago now,  
13 called strategic review, which all departments  
14 went through, but in a different way than the  
15 current process, and that was, a portion of all  
16 departments went every year. We, unfortunately,  
17 the Department of Fisheries and Oceans, were in  
18 the last year of that four-year process, so we  
19 underwent strategic review last year and we --  
20 which resulted in us having to start cutting three  
21 percent over the next three years as a result of  
22 strategic review.

23 We are now in the process, as the Government  
24 announced in the budget last spring, of -- we are  
25 preparing proposals for what was then called  
26 strategic and operating reviews.

27 Q Yes.

28 MS. DANSEREAU: So there are two expenditure reduction  
29 programs in the Federal Government, one of which  
30 starts being implemented for us in this fiscal  
31 year.

32 Q And the bottomline is, in respect to this fiscal  
33 year that we're currently in, your department is  
34 facing down a reduction of how much from the  
35 previous year, in percentage?

36 MS. DANSEREAU: I can't remember what the actual  
37 percentage is - maybe David can remember the exact  
38 percent - because it's spread over a period of  
39 three years and we've been moving the numbers  
40 around.

41 MR. BEVAN: I don't have the calculation of the  
42 percent, but the cuts that are starting this year  
43 amount to approximately nine million dollars, and  
44 that will be added to, over the course of the next  
45 three years, to achieve a total cut of 56.8  
46 million as a result of the strategic review that  
47 starts this fiscal year.

1 Q All right. And then we learn, as of April 1st of  
2 2012, the continuing reduction in budget leading  
3 up to 2015, correct?

4 MS. DANSEREAU: Leading up to three years after 2012,  
5 so yes, 2015.

6 Q Yes, thank you. That being the case, I also  
7 learned through Mr. Buchanan's cross-examination  
8 with you yesterday, he representing Public Service  
9 Alliance, that there is more at play than just  
10 these reductions we've talked about, and he  
11 referred us all to an exhibit, which is Exhibit  
12 1922, if Mr. Lunn can have it up. And as I  
13 understood, and if Mr. Lunn can go to page 17 of  
14 this document, which shows a graph, and I think we  
15 were dealing with it yesterday.

16 Am I correct in saying that this adds a  
17 further component in terms of reduction of budget?  
18 In other words, before you went through the  
19 strategic and operating review analysis that you  
20 had to do as part of the Deficit Reduction Plan of  
21 the Federal Government, that you, as a department,  
22 were, in fact, downsizing your budget for  
23 estimates, separate and apart from this strategic  
24 review process and that this graph that's now  
25 before us indeed speaks to that; is that not what  
26 you were saying to Mr. Buchanan?

27 MS. DANSEREAU: Yes and no. And unfortunately, it's a  
28 complicated system. Yes and no in the sense that  
29 these numbers reflect what is approved in the  
30 system for future expenditures. And that changes  
31 over time, because new monies can be added to the  
32 budget through the budget process, new monies  
33 could be added through renewal of the sunseting  
34 programs, because this would presume that  
35 everything that is sunseting comes to an end.

36 So there are assumptions in here that really  
37 show a moment in time and make it hard to do full  
38 and final predictions, because the numbers do  
39 fluctuate within a certain margin.

40 Q But assuming that no new monies are added to the  
41 pot, is it correct that you testified yesterday  
42 that you are really facing down around  
43 approximately 25 percent reduction in your budget  
44 over these next three, four years?

45 MS. DANSEREAU: If we look back to 2008-2009, the  
46 numbers are closer to the numbers that we have now  
47 and, in part, the bulge that you saw was the

- 1 Economic Action Plan, which was two years of extra  
2 spending which all departments received in order  
3 to address the economic situation that Canada was  
4 in. So that makes all departments look like  
5 they're receiving a fairly significant cut, but it  
6 was only because we were given a fairly  
7 significant, temporary, very clear that the intent  
8 was only ever for it to be a temporary increase.
- 9 Q Okay. Whether temporary or not, are you -- are we  
10 not, as citizens of the country, facing down a  
11 reduction from those years, 2009-10 or 2010-11, to  
12 -- for the next four years, approximately 25  
13 percent reduction? Isn't that what you said  
14 yesterday?
- 15 MS. DANSEREAU: No. Well, I may have, and then I would  
16 have misspoken, because we didn't talk about the  
17 Economic Action Plan, and the bulges that went --  
18 that happened in those two years was a temporary  
19 and intended to be temporary bulge. So the  
20 reduction is -- we should remove that bulge of the  
21 Economic Action Plan in which we received, I  
22 think, 275 million. I can't remember the -- yeah,  
23 however we defined that. And so that money was  
24 only ever intended to be temporary and shouldn't  
25 be factored into what our general base was.
- 26 Q Well, even removing those bulges, would you not  
27 agree with me, between 2008 and what you project  
28 for 2012-13, 2013-14, there is a reduction there?
- 29 MS. DANSEREAU: There is a small reduction, and that is  
30 a natural fluctuation.
- 31 Q And there is that reduction coupled with the  
32 reductions that you are forced to make in response  
33 to the strategic deficit analysis that you have to  
34 do for the Treasury Board, correct?
- 35 MS. DANSEREAU: There will be definitely some  
36 reductions. We don't know what they are, yet, and  
37 we don't know what they mean. We're working  
38 through -- our intent, obviously, is to minimize  
39 any impacts to Canadians and to maximize our  
40 efficiencies.
- 41 Q But --
- 42 MS. DANSEREAU: We really will be looking for more  
43 efficient ways of doing the same amount and the  
44 same quality of work.
- 45 Q And you would agree with me further, would you  
46 not, that embedded within your fiscal  
47 responsibilities for the Department is obviously

1 to meet the terms of the collective agreement with  
2 the Public Service Alliance year to year?

3 MS. DANSEREAU: Yes.

4 Q And you would agree with me, further, that the  
5 Public Service Alliance current collective  
6 agreement, which goes from this year, 2011, to  
7 2013, imposes upon your department salary  
8 increases of 1.75 percent for this year, 1.5  
9 percent next year, and two percent for 2013. That  
10 all, obviously, has to be met within budget?

11 MS. DANSEREAU: Yes.

12 Q Yes. And that being the case, is it not correct,  
13 as Dr. Riddell has testified at this inquiry, that  
14 when one looks at the budgetary -- when one looks  
15 at the reduction in budget that you are facing  
16 into the future, one has to recognize that most of  
17 the pain and suffering will be suffered by the  
18 operational side of your department, because  
19 salaries are obviously contractually causing you  
20 to be bound by their terms?

21 MS. DANSEREAU: I'm not sure I understand the link  
22 between -- and I wouldn't necessarily call it pain  
23 and suffering. Obviously, we're working -- we  
24 have, as you know, we're at a point in our history  
25 where we have a significant number of retirements  
26 coming up, and so we're working through attrition  
27 and other means to make sure that the services  
28 that we need to provide Canadians continue to be  
29 met, even though we're facing some economic  
30 pressures.

31 Q Well, I appreciate that, but other than full time  
32 equivalent analysis that you can do to reduce your  
33 staffing, all the money obviously must come from  
34 the operational side, because those that are still  
35 within your staff are obviously protected by the  
36 collective agreement?

37 MS. DANSEREAU: The salary amount is -- there's a cap  
38 that was put. We simply were not given the  
39 increases as we might otherwise have been in the  
40 past, but it's left to us to manage and to move  
41 the budgets around in the way that best suit --  
42 providing the program needs, so I'm not sure what  
43 you mean by it's the operational side that will  
44 suffer.

45 Q What it mean is that obviously there are  
46 components of your budget where you lack any  
47 flexibility, and that's because of collective

1 agreement provisions, obviously?

2 MS. DANSEREAU: That would be the entire budget, I  
3 would say. In the sense that -- or the collective  
4 agreement establishes the rates that people are  
5 paid when we are -- we're not given those  
6 increases in our yearly budget, and so it's left  
7 up to us to manage that and make sure that we  
8 continue to provide the services.

9 Q The point is that salaries, whether under a  
10 collective agreement or otherwise, you have less  
11 flexibility than you do in trying to meet these  
12 reductions by cutting back in your operational  
13 side? You're not prepared to admit that?

14 MS. DANSEREAU: No, because I'm not -- I'm -- I guess  
15 I'm having -- maybe we're having a difficulty in  
16 the words, so maybe David --

17 Q Mr. Bevan?

18 MS. DANSEREAU: Yeah.

19 MR. BEVAN: I think what I, if I understand the  
20 questioning correctly, your concern is that  
21 because our contracts are increasing salaries,  
22 we're going to take it out of our operating budget  
23 that pays the bills or gas, et cetera. And that  
24 would be the case if we weren't going to manage it  
25 properly, but that's not what we're going to do.  
26 We're going to manage it properly. And that means  
27 we'll use attrition to keep the balance between  
28 our salary obligations and our operating  
29 flexibility such that we get the best juice out of  
30 our staff. It's no good having a bunch of people  
31 paid a salary but not having operating money to go  
32 out into the fields. So that's not what we're  
33 going to do. We are going to keep the balance  
34 between salaries and operating monies in  
35 equilibrium in our years.

36 Q Thank you. If I had more time, I'd lead you to  
37 Dr. Riddell's evidence on this very question, but  
38 that's got to be left for my final submission.

39 Again still on fiscal, is it not correct that  
40 certain programs that have currently been  
41 functioning, and I speak of the test fishery, I'm  
42 speaking of the -- not only the test fishery --  
43 well, the test fishery was financed by **Larocque**  
44 money, which is sunsetted in April of '12; is that  
45 not correct?

46 MS. DANSEREAU: Yes.

47 Q And then the ITQ program has been funded over

1 recent time by the PICFI money; is that not  
2 correct?

3 MS. FARLINGER: Partially, yes.

4 Q I'm sorry?

5 MS. FARLINGER: Partially, yes.

6 Q Yes. And that, too, is sunsetted as of April 1st  
7 of next year, correct?

8 MS. FARLINGER: That's true.

9 Q Have any DFO salaries also been paid out of the  
10 PICFI money?

11 MS. DANSEREAU: Yes, there have been salaries -- term  
12 salaries or non permanent salaries paid out of  
13 that money.

14 Q All right. Now, that money being sunsetted in  
15 April of next year, where does that put us in  
16 terms of funding those two programs and other  
17 programs that you've been -- where you've been  
18 using that pot?

19 MS. DANSEREAU: Well, as we've said, we are currently  
20 evaluating those programs and we haven't decided  
21 yet, because the evaluation's not complete, if, in  
22 fact, all of the elements of the program should be  
23 renewed and if they should be renewed, then we  
24 will do our best to ensure that there are funds  
25 available to renew them. But we are in a  
26 fiscally-tight environment and we don't know, yet,  
27 what the answer to that question is, because we're  
28 not through the process, yet.

29 Q Well, Ms. Dansereau, are you not willing to at  
30 least say here that test fisheries are a primary  
31 in-season management tool?

32 MS. DANSEREAU: I can say, certainly because of the  
33 advice that I've been given, that test fisheries  
34 are very important to the work that we do, yes.

35 Q But you're not prepared to indicate, or you're not  
36 in a position to indicate what happens to these  
37 programs that are sunsetted at this moment in time  
38 as of April of next year?

39 MS. DANSEREAU: No, I'm not, because we don't have the  
40 answers yet, so I can't invent an answer. We  
41 will, as the evidence comes forward to tell us  
42 whether or not these truly are high priority, at  
43 that point we start developing plans to either  
44 find alternative sources within the Department and  
45 receive approval to fund them through that, or to  
46 go back and seek extra funds to continue them.

47 Q Now, when we all met together in November of last

1 year, I had an exchange with you, Ms. Dansereau,  
2 in the course of cross-examination, and I would  
3 like Mr. Lunn to please bring up transcript for  
4 November the 2nd of last year, and to go to page  
5 63. And there was an exchange, and I want to read  
6 it to you, and then I have a few questions to ask.

7 Can I assume, Ms. Dansereau, that throughout  
8 the life of this inquiry you've got a lot of  
9 things to do on your plate in Ottawa, but you have  
10 been receiving briefings as to the nature of the  
11 evidence that has been tendered at this inquiry?

12 MS. DANSEREAU: Yes.

13 Q And that being the case, I want to draw to your  
14 attention the exchange that takes place at page  
15 (sic) 20 of that page, wherein I said the  
16 following, I asked the following:

17  
18 Well, this is an awfully general question to  
19 you, Ms. Dansereau, but would you agree with  
20 me, or let me ask you this, are all science  
21 programs, departments, projects, stock  
22 assessment, stream enumerations, et cetera,  
23 adequately funded up till now, in your  
24 opinion, during the time of your tenure?

25  
26 And you said, answer:

27  
28 I would say yes, but it --

29  
30 and then you went on to say others will have other  
31 perceptions, nobody's ever happy with the money,  
32 and I'm just basically summarizing your testimony.  
33 But you said, "Yes," to that.

34 Having been briefed on the evidence that has  
35 been tendered at this inquiry throughout the past  
36 10 months, are you still standing before us to say  
37 that you believe that your programs have been  
38 adequately funded?

39 MS. DANSEREAU: (Inaudible - off microphone)

40 ...position, because we weren't able to keep the  
41 -- we don't have any way to read what you've just  
42 read to us, so I'm going to have to go from memory  
43 in terms of the list of things that you have just  
44 -- you've just stated.

45 I do believe that based on the advice that I  
46 get from our scientists, we are adequately funded  
47 now. As I've said, and I said last year, there

1 will always -- there's always room to do more and  
2 there will always be room to do more. So would we  
3 accept more money? Yes, of course we would.  
4 Could we do more science with it? Yes, we could.  
5 But, for the moment, I would say we are  
6 sufficiently funded.

7 Q Okay. And I'm going to lead you through evidence  
8 that has been given at this inquiry, in the very  
9 brief time I have, to ask or invite you to respond  
10 to whether or not the people that have testified  
11 here their opinion or their perception should be  
12 accepted as being a valuable evidentiary base for  
13 this Commissioner when he writes his report.

14 Firstly, I want to lead you to Dr. Riddell's  
15 response to the very quote I have just read into  
16 the record of our exchange back in November.

17 MR. LUNN: Mr. Rosenbloom, I'm having trouble finding  
18 the first reference you gave me. I never found  
19 it, so that would be of assistance if we could  
20 just --

21 MR. ROSENBLROOM:

22 Q If you want, Ms. Dansereau, I'm happy to show you  
23 the exchange I just read, but if it's not  
24 necessary --

25 MR. MCGOWAN: No, I just see Mr. Taylor has risen to  
26 your left.

27 MR. TAYLOR: Firstly, the evidence was on the screen  
28 briefly, but then disappeared again. Secondly,  
29 I'm objecting in advance. Mr. Rosenbloom says  
30 he's going to ask a question which, as I heard  
31 him, was effectively, "Deputy Minster, will you  
32 please consider the evidence I'm going to put to  
33 you and tell me if you think that the evidence is  
34 good and the Commissioner should accept it as,"  
35 whatever it is. Well, that's for you, Mr.  
36 Commissioner, to make those kind of decisions.  
37 Partly, it's a matter of how he frames the  
38 question, which is why I rise now. I think Mr.  
39 Rosenbloom can ask for comment, is what he can do.

40 MR. ROSENBLROOM: I'm happy to ask for comment. If I  
41 may go, Mr. Lunn, to February the 10th, page 42.

42 Q I put that exchange that I just read out to you,  
43 Ms. Dansereau, about your feelings of whether  
44 things have been adequately -- adequately funded,  
45 and then, at line -- at line forty -- at line 34,  
46 I asked Dr. Riddell:  
47

1                   Maybe start with you, Dr. Riddell. This  
2                   appears to be the thinking of the senior  
3                   people within DFO in the context of facing  
4                   down a 5 percent reduction in the upcoming  
5                   year and obviously having experienced  
6                   previous reductions, as you spoke about them.  
7                   What is your response to the mindset of the  
8                   senior people within DFO that they believe  
9                   that the budget, as currently before them and  
10                  currently about to be cut, is adequate to  
11                  meet the very critical matters that have  
12                  previously testified to in terms of research?  
13

14                  Dr. Riddell responded:

15  
16                  Well, thank you for that loaded question.  
17                  Well, I don't think there's any question that  
18                  I disagree. I am not surprised at all at her  
19                  reply because, of course, these people are  
20                  under significant pressure for national  
21                  priorities and I'm sure there's a very  
22                  substantial debate in Ottawa where the money  
23                  goes to the various departments. But I don't  
24                  think there's any question that you would get  
25                  a very common response on the west coast with  
26                  respect to salmon stock assessment, I have  
27                  said publicly here, I believe, that it's  
28                  definitely at a marginal responsible level  
29                  that sort of what we would define as a core  
30                  stock assessment responsibility is barely  
31                  being met now.  
32

33                  Your response, Deputy? Dr. Riddell you'd have a  
34                  lot of respect for, wouldn't you?

35                  MS. DANSEREAU: I have not actually worked with Dr.  
36                  Riddell, personally, but I have respect for all of  
37                  our scientists and all the scientists, so that's  
38                  -- that's his opinion --

39                  Q     All right.

40                  MS. DANSEREAU: -- and he has a right to this opinion  
41                  and I --

42                  Q     And you disagree with that?

43                  MS. DANSEREAU: -- assume that that's his opinion. I'm  
44                  not disagreeing with his opinion; it's his  
45                  opinion. I'm not -- so he can say what he wants.  
46                  He's right when he says that there are many other  
47                  pressures and we do what we can with what we have.

1 Q Now, I want to discuss with you the impacts that  
2 you face down in respect to the financial  
3 situation that we discussed at the beginning of my  
4 cross-examination. I want to start with the Wild  
5 Salmon Policy. We all know that it was imposed  
6 upon your department with the restriction that it  
7 would be implemented with the existing funds, and  
8 that's embedded within the Policy, itself.

9 I've heard you testify, and Ms. Farlinger  
10 also testified the last few days, that the essence  
11 of this document is being implemented, if I  
12 understood it correctly. And then you said this  
13 in testimony, you basically said that there were  
14 pockets of insufficient knowledge and -- in the  
15 context of the implementation of the WSP. Did I  
16 understand you correctly?

17 MS. DANSEREAU: Certainly that's my understanding of  
18 the situation, yes.

19 Q Yes. So as I understand that turn of phrase,  
20 "pockets of insufficient information," you're  
21 suggesting, are you, that for the most part the  
22 WSP has been implemented, that you know much of  
23 what you were expected to know five years into the  
24 implementation of the WSP; is that the way I'm not  
25 interpret the word that only "pockets" of  
26 insufficient information remain?

27 MS. DANSEREAU: I think -- well, hopefully the way my  
28 words are interpreted is that the WSP informs the  
29 way we make decisions, and as you've heard all of  
30 us say, I think, over the past three days, as  
31 information becomes available, we can -- first of  
32 all, we continue to look for the appropriate level  
33 of information, and as it becomes available, we  
34 have an appropriate framework within which we can  
35 use it to make decisions, so that's what I mean by  
36 it's being implemented. It's not sitting on a  
37 shelf, waiting for all of the information to be  
38 gathered before we change our approach and before  
39 we -- or at least finalize our approach and before  
40 we work at an integrated way.

41 And so it's a live document, is what I'm  
42 saying, is that it's useful to us, it's being --  
43 we're continuing to use it as a basis for research  
44 and we're continuing to use it as a basis for  
45 decision-making. But others -- it would be  
46 better, also, if others who are actually using the  
47 document -- my relation with the WSP is that when

1 the fish plans come forward for the minister's  
2 decisions, I make sure that what we have said in  
3 the WSP is actually reflected in the plans as they  
4 come forward to the minister. But others can give  
5 you much more -- much more information.

6 Q Well, I'm going to suggest to you that, in fact,  
7 the WSP has only been implemented in the most  
8 piecemeal form and in a most limited form up to  
9 this moment in time; do you agree with that?

10 MS. FARLINGER: I think what I would say is we have  
11 moved ahead on some of the specific actions in the  
12 WSP. We have learned that the science will not  
13 come to us and be complete, it's not an off-the-  
14 shelf product that we'll get within the originally  
15 envisioned timeframe, that there will be continued  
16 uncertainty, and that the WSP allows us some way  
17 to apply the precautionary principle to the  
18 management of Pacific salmon.

19 And so is every step on the -- in the  
20 framework that is set out in the Wild Salmon  
21 Policy taken? Do we have all the information for  
22 each conservation unit? Do we even know what the  
23 total number of conservation units are? Do we  
24 have all the other things that are set out in  
25 those steps? No. But we are on the road to  
26 dedicating -- well, we are dedicating our  
27 resources to provide that information, albeit at a  
28 much slower pace. But the bottom line is we will  
29 never know it all, as is envisioned by the Policy,  
30 and we have to make those decisions in the face of  
31 continuing uncertainty, and in continuing on  
32 uncertainty we continue to exercise the  
33 precautionary approach as set out in the Policy.

34 Q You say you're on the road and you also say you'll  
35 never know it all, and no one would disagree with  
36 either of that, but I'm going to suggest to you  
37 you're right at the start line. You, in fact,  
38 know very, very little in terms of at the CU level  
39 with -- in respect to the Fraser Watershed; is  
40 that not fair to say, at this point in time? Not  
41 to be critical, but it is reality, isn't it?

42 MS. FARLINGER: I'm going to ask Laura to say more  
43 about the science we know, but we certainly do  
44 know a lot about the stocks or conservation units  
45 and how we define them and describe them continues  
46 to be an evolving science in the Fraser Watershed.  
47 We know a great deal about them. And what it is,

1 is translating it into the terms set out in the  
2 Wild Salmon Policy around limit reference points  
3 and how we -- what -- how we make management  
4 decisions or provide advice for management  
5 decisions around those reference points.

6 So I think we know a great deal about salmon  
7 stocks, and I think in the last 10 months you've  
8 heard some of the other things that we do know.  
9 But perhaps Laura can tell us more definitively  
10 about the science aspect.

11 DR. RICHARDS: Yeah, thank you. And I think the paper  
12 of Sue Grant that we've already discussed and had  
13 into evidence --

14 Q Yes.

15 DR. RICHARDS: -- goes a long way into addressing some  
16 of the fundamental pieces of the Wild Salmon  
17 Policy in Strategy 1, and so I think we have, in  
18 fact, made a lot of progress. Within that paper  
19 there are a lot of details about exactly the  
20 status and description of the data availability  
21 and discussion around limit -- around reference  
22 points for --

23 Q Yes, Dr. --

24 DR. RICHARDS: -- each of the CUs --

25 Q -- Richards, I hate to interrupt, but I appreciate  
26 that, and that document is before this tribunal,  
27 and so it's a matter of record, and I very much  
28 appreciate you drawing that to our attention. But  
29 let me be more direct in terms of the  
30 implementation of the WSP.

31 There's evidence before this tribunal, before  
32 this Commission, that there's no -- there's never  
33 been an implementation plan for the WSP. You  
34 don't deny that, do you?

35 MS. FARLINGER: There certainly was an implementation  
36 plan at the start that specifically focused on the  
37 production of the science elements, and as we've  
38 pointed out, those deadlines were somewhat naive.  
39 But as Laura's just pointed out, limit reference  
40 points for major stocks, like Skeena and Fraser  
41 sockeye, are on the current timetable. So I guess  
42 I'll just leave it at that.

43 Q Okay. The Commissioner in the hearing on  
44 September 23rd, which would have been Friday, had  
45 an exchange with you and asked a question about  
46 whether it was realistic that -- in fact, his  
47 question, in part, read, and I'm at page 81 of the

1 transcript of the 23rd of September, line 47,  
2 right at the bottom of the page.

3 MR. LUNN: Sorry, that was just a little too many  
4 numbers there. Can you start again with the date,  
5 please?

6 MR. ROSENBLOOM: It is September the 23rd transcript,  
7 which was last week. It is page 81. The  
8 commissioner asked, "Now" -- have you got it, I'm  
9 sorry? Yes, thank you, right at the bottom of the  
10 page.

11 Q The Commissioner asks:

12

13 Now that we're in 2011, we have about six  
14 years under our belt. First of all, how  
15 realistic is that statement, that  
16 implementation must be accomplished within  
17 DFO's existing resource capability?  
18

19

20 And then the Commissioner went on with his  
21 question. And you, Ms. Farlinger, were blunt and  
22 honest by saying you felt that they were naive,  
23 your department was naive in thinking that you  
24 could really pull this off within a short  
25 timeframe, and I respect your bluntness about  
26 that. However, my question to you is: You did  
27 not really answer a secondary question that flows  
28 from the Commissioner's question, which is, do you  
29 continue to be naive in believing without  
30 resources, financial resources, being provided to  
31 you by budget that, indeed, you will be able to  
32 pull implementation off within any foreseeable  
33 future time period?

34 MS. FARLINGER: I think my answer to that is based on  
35 some of the things we've learned overall and,  
36 specifically, in the five years around the Wild  
37 Salmon Policy, which is it will take us a very  
38 long time to collect all of the information  
39 envisioned under the Wild Salmon Policy. And I  
40 think that it would be very difficult to put a  
41 date or a time or, in fact, any kind of end point  
42 on the gathering of even the first tranche of that  
43 information.

44

45 I think what we have learned and, quite  
46 frankly, we knew this before, we're managing a  
47 very complex resource in the faceoff uncertainty,  
and so we need to take what it is we know to put  
it in a policy context in which I would call the

1 Wild Salmon Policy, and therefore use that  
2 framework to make the decisions that we can,  
3 recognizing, as I think you may be pointing out,  
4 that we may be dealing with systems and stocks and  
5 resources in which there's a great deal of  
6 uncertainty. And with that uncertainty,  
7 therefore, there is a policy that says we will  
8 measure the ability to harvest from abundant  
9 stocks while balancing that against the protection  
10 of weaker, less productive stocks. So I think  
11 that is realistic.

12 The collection of the data envisioned in the  
13 Policy I think will take a much longer time than  
14 any of us envisioned.

15 Q Yes. And you have been asked repeatedly in your  
16 appearances before this Commission about whether  
17 there will be a full implementation, or at least a  
18 significant implementation within two years,  
19 you've been asked even five years, and you haven't  
20 been prepared to give your prognosis, and I assume  
21 you're not, today, obviously, for the very reasons  
22 you just gave, correct?

23 MS. FARLINGER: That's true with respect to the steps  
24 and the data that's envisioned in the very  
25 detailed parts of the policy. And I think I  
26 explained yesterday, and have several times, that  
27 I think the implementation of the Policy and the  
28 precautionary approach, which is modern fisheries  
29 management and modern science, is something that  
30 we are implementing. So it's very much, whether  
31 you're talking about the details of will we have  
32 piece of data X, Y, or Z, or are we implementing  
33 the policy which says we are going to protect weak  
34 stocks while providing harvest for more productive  
35 stocks, and what is the best way in which we can  
36 do that.

37 Q Isn't it naive to anticipate even a significant  
38 implementations program in 10 years without  
39 funding? Don't you continue in your state of  
40 naivety that you spoke about in response to the  
41 Commissioner's question?

42 MS. FARLINGER: We spend at least 64 million, was the  
43 last estimate for the last year, dollars a year in  
44 the -- people who are dedicated, people and  
45 operating dollars that are dedicated specifically  
46 to the management of Pacific salmon. And  
47 somewhere between 18 and 23 of that for Fraser

1 sockeye salmon. How you use that money and the  
2 decisions you make with it and the data you  
3 collect to support it is a powerful in  
4 implementing that. So it's not nothing. It is  
5 taking a look at continual improvement, adding  
6 data and information as we get it and making  
7 decisions that are consistent with that policy.

8 Can we collect the information that is  
9 envisioned in Strategies 1 to 3 in that Policy? I  
10 can't put a timeline on that.

11 Q Thank you. Now, I spoke about the lack of  
12 implementation plan. I'm going to suggest to you  
13 that there's also evidence before this  
14 Commissioner, and I can cite the evidence and get  
15 it on the screen, if you want to challenge me in  
16 the slightest about it, but there's been no  
17 costing out of the implementation of the plan;  
18 you'll agree with that? Just a yes or no.

19 MS. FARLINGER: Yes, there has been.

20 Q Yes, there what?

21 MS. FARLINGER: Yes, there has been costing out.

22 Q I see. And even though Mr. Sprout, in December  
23 the 9th, said to the best of his knowledge there  
24 hasn't been costing out, you're saying there has  
25 been costing out?

26 MS. FARLINGER: There have been costing out of  
27 particular elements of the plan in each year in  
28 terms of the work that we've done to move the plan  
29 forward, so there has been work planning, there  
30 have been costs assigned to the activities within  
31 those work plans, and there have been expenditures  
32 against that work plan. I would agree with you  
33 that there -- and I am assuming that Mr. Sprout's  
34 comments were related to that, for the costs of  
35 the entire implementation in all its details of  
36 the Wild Salmon Policy, no, there has not been a  
37 plan for that.

38  
39 (CELL PHONE RINGING)

40  
41 Q I'm sorry. And you would agree with Mr. Sprout  
42 that in respect to the comprehensive cost  
43 analysis, that has not been done; is that correct?

44 MS. FARLINGER: I agree with that, yes.

45 Q Thank you. Then, Mr. Rosenberger has said that  
46 the -- from his perception, that the Department  
47 needs more resources to implement faster, and

1 obviously you'd agree with that, financial  
2 resources?

3 MS. FARLINGER: Financial resources are always helpful,  
4 but as you've heard, many of the problems go well  
5 beyond financial issues and go into social and  
6 economic issues. So I would not argue that  
7 financial issues of and by themselves would move  
8 the policy forward. Financial resources would  
9 help to collect some of that detailed information,  
10 but then the question is, is how much of the  
11 uncertainty does that reduce and how many more of  
12 the social and economic issues that are raised by  
13 the policy will be dealt with by it?

14 So while money always helps, the question is,  
15 is it -- it's not just a money problem.

16 Q All right. Now, the fact is, going on with a  
17 checklist of what has been accomplished within the  
18 WSP implementation, we have evidence before this  
19 tribunal there has not been one habitat status  
20 report completed, certainly for the Fraser, and  
21 there's a suggestion that somewhere outside of the  
22 Fraser Watershed there's work being done on a  
23 habitat status report; you would agree that that  
24 is, to the best of your knowledge, accurate  
25 information before this inquiry?

26 MS. FARLINGER: I had understood that there was a  
27 habitat status report for the Harrison stock, I  
28 think, but I do agree with your general premise,  
29 that there are very few of the habitat status  
30 reports that have been completed, and I think,  
31 although we have completed a framework for those  
32 status reports for habitat, the focus of our  
33 efforts has been around the definition of  
34 conservation units and limit reference points.

35 Q And do you not agree with me, Ms. Farlinger, that  
36 the habitat component of WSP is a critical  
37 component that makes part of the entire program  
38 functional; do you not agree with that?

39 MS. FARLINGER: I certainly think that the management  
40 of habitat for Pacific salmon or sockeye -- Fraser  
41 sockeye here is a critical component of managing  
42 that stock, yeah.

43 Q Mr. Lunn, if you would put the WSP before the  
44 hearing, and go to page 20 under Strategy Two  
45 Assessment of Habitat Status. Reading from  
46 Strategy Two, at the top of the left side column:  
47

1 The maintenance of sound, productive salmon  
2 habitat in both fresh water and the marine  
3 environment depends on good scientific  
4 information, timely measures to prevent  
5 habitat disruption, and compliance with  
6 regulatory directives. Habitat management and  
7 protection require identification of the  
8 habitats necessary for the conservation of  
9 wild salmon and assessment of changes in  
10 their status over time.

11  
12 Then, below the photograph at the bottom of the  
13 column:

14  
15 An overview of important habitat and habitat  
16 issues within CUs will be developed and  
17 habitat status will be assessed using  
18 indicators that combine scientific and local  
19 knowledge and recognize sensitive life stages  
20 and habitats.

21  
22 Ms. Farlinger, you haven't done any of that, have  
23 you?

24 MS. FARLINGER: I wouldn't say we "haven't done any of  
25 that," I would say that we've developed the  
26 framework, I would say that this has -- the work  
27 has been focused on Strategy 1, and as several  
28 people have said several times, the challenges in  
29 and the timetable set out in the original policy  
30 was ambitious, at best.

31 I think that the -- part of the other work  
32 that we're doing in the Department, which is the  
33 review of the habitat program, itself, and how it  
34 is implemented and the habitat policy, is very  
35 much taking into consideration the things that are  
36 -- the details that are set out in the Wild Salmon  
37 Policy, and thinking about how we can implement  
38 them. And I think there is a recognition that the  
39 kind of things we set out here really was not the  
40 way or is not the way we discharge the habitat  
41 program today on a project by project basis. And  
42 so that work is underway.

43 Do we have these habitat indicators? We have  
44 them in a variety of situations. They're  
45 certainly not gathered together and set out as  
46 envisioned in the habitat -- in Strategy 2 of the  
47 habitat policy.

1 Q It's not what one would have expected in the way  
2 of implementation when the stakeholders bought  
3 into this program about six years ago; is that not  
4 fair to say? There are no habitat status reports.

5 MS. FARLINGER: I think there are some, but there are  
6 relatively few.

7 Q Yes. Now, I want to go to C&P for a few minutes.  
8 We've all heard the evidence of Mr. Nelson, and  
9 it's been the subject of some of the cross-  
10 examination by Commission Counsel to this inquiry.  
11 And basically, Mr. Nelson said in part, and Mr.  
12 Lunn if you can go to April the 8th of this year,  
13 2011, page 58. He said, in part, about line 5,  
14 "I'll call new schematics" -- I'm just reading  
15 from the middle of a quote, and I'm at line 7:

16  
17 ...that unless there is an infusion of  
18 capital into the Department for purposes of  
19 discharging your statutory responsibilities,  
20 we aren't going very far in terms of  
21 improving the situation.

22  
23 This is my cross-examination, my question to him.  
24 He answered:

25  
26 I would say that's a fair statement.

27  
28 Now, having said that, and there was also evidence  
29 by Mr. Steele, who holds a senior position at  
30 National Office of DFO; is that correct?

31 MS. DANSEREAU: He did.

32 Q Yes. And he spoke of budgetary restrictions and  
33 paring the effectiveness of monitoring and  
34 enforcement, and I can lead you to that evidence,  
35 but I'm not going to really have the time.

36 My question to you, Mr. Bevan, because you're  
37 the one that spoke to this in your evidence, is  
38 you say there's going to be a new day and that  
39 maybe Mr. Nelson wasn't aware of what is your  
40 department's future direction in doing this more  
41 effectively; is that a fair summary of your  
42 evidence?

43 MR. BEVAN: I would say that what Mr. Nelson's basing  
44 his comments on is the same methodologies that  
45 have been employed for some time, looking at the  
46 same kind of approaches, and also -- I would also  
47 indicate that he's had some comments relevant to

1 his understanding of what's going to happen with  
2 PICFI and **Larocque**, and there's no absolute  
3 conclusions that those are going to, in fact,  
4 sunset. They are going to sunset, but whether we  
5 renew them has not yet been finalized. So his  
6 comments are based on a context, and I think what  
7 we need to do is not have C&P work in isolation,  
8 they've got to work within the broader context in  
9 an integrated way and draw upon realizing the  
10 outcomes that they're looking for through working  
11 collaboratively with the other elements in the  
12 Department.

13 Q But would --

14 MR. BEVAN: If he wants -- if you want to do it the  
15 same old way in isolation, you need to have people  
16 on the ground. And I said that. But I'm also  
17 saying it's the obligation of the management in  
18 C&P to look at how they work within the context of  
19 the Department and how they can work  
20 collaboratively within that context to get the  
21 information they need to do their job better.

22 Q Thank you. Are you aware that Mr. Nelson  
23 testified that over one million dollars in fines  
24 that were imposed by violation s. 35 and 36 of the  
25 **Fisheries Act** have not been collected, in part  
26 because they didn't have the resources to do it?

27 MR. BEVAN: That's not his responsibility to get those.  
28 It's not the responsibility of C&P to obtain -- or  
29 to get those fines. That's the responsibility of  
30 the -- of another portion of the operation.  
31 Therefore, giving him money to collect fines is  
32 not -- doesn't make a lot of sense.

33 Q But you acknowledge that there are over a million  
34 dollars in outstanding fines that never got  
35 collected?

36 MR. BEVAN: That would appear to be the evidence, yes.

37 Q Yes. And we come to evidence that was given  
38 before this tribunal that organized crime has been  
39 involved in the illegal fishery in British  
40 Columbia. Are you familiar with the fact this  
41 evidence was given at this tribunal?

42 MR. BEVAN: I'm familiar with the fact that evidence  
43 was given, but again, dealing with organized crime  
44 and that kind of activity, insofar as it is partly  
45 to do with fish, yes, that's a responsibility of  
46 conservation and protection, and we do have a  
47 major investigations unit, or role in that regard.

1 But if it's -- the allegations we're talking about  
2 fish and drugs, then that is a police matter, not  
3 a C&P matter when it gets into **Criminal Code**  
4 infractions relative to organized crime.

5 Q And Mr. Bevan, in the context of fiscal financial  
6 -- budget deficits, or budgets reductions, are you  
7 in a position to inform the public of Canada that  
8 your new C&P initiatives will be effective in  
9 speaking to this form of criminality?

10 MR. BEVAN: That form of criminality, again, the  
11 accusations were that there was more than just a  
12 fish issue to it, that it was, in fact, **Criminal**  
13 **Code**, and our people are not peace officers under  
14 the **Criminal Code**, they are peace officers under  
15 the **Fisheries Act**, and their enforcement has to be  
16 restricted to that area.

17 If they had evidence of organized crime, then  
18 I would expect that their responsibility is to  
19 take that to the RCMP and appropriate policing  
20 authorities.

21 Q Thank you. Would you agree with me that, in  
22 terms, again, of the checklist of what has been  
23 accomplished, what hasn't, that not one CU has yet  
24 been taken as a pilot program from Strategy 1  
25 through to Strategy 5? There's evidence to that  
26 effect; do you agree with that, just yes or no?

27 MS. FARLINGER: In terms of the annual fishing plan, I  
28 would argue that the Wild Salmon Policy has, in  
29 fact, been taken through to Strategy 5, based on  
30 the information that was available at the time.

31 Q Which CU? Name the CU, please.

32 MS. FARLINGER: The Cultus River CU, the Kitwanga River  
33 and wild stock CUs on the Skeena River. There's a  
34 variety of -- the Early Stuart stock -- excuse me  
35 for a moment.

36 Q And you're saying all five strategies were  
37 implemented?

38 MS. FARLINGER: I'm saying that the intention of the  
39 Wild Salmon Policy was incorporated into the  
40 management decisions based on the information that  
41 was available for each of those strategies. In  
42 some of those strategies, there wasn't much  
43 information available.

44 Q Right. And then we come to nursery lake  
45 assessment. Mr. Whitehorse (sic) testifies at  
46 this proceeding that that program has tailed off  
47 since the early 1990s, that only three lakes have

1           any form of nursery lake assessment. You don't  
2           dispute his evidence, do you?  
3   DR. RICHARDS: I think you're talking about Mr.  
4           Whitehouse?  
5   Q    yes, Whitehouse, I'm sorry, yes.  
6   DR. RICHARDS: Yes, I agree that we have somewhat  
7           limited information on the nursery lakes.  
8   Q    Thank you. I come to the telemetry work.  
9           Evidence has been given before this tribunal that  
10          the work is now unfunded; would you agree with  
11          that? I'm speaking of the Fraser River.  
12   DR. RICHARDS: Okay, I'm not specifically sure which  
13          project you're referring to, and some of this work  
14          was not, in fact, funded through Fisheries and  
15          Oceans. Quite a lot of the work was, in fact,  
16          funded through university sources, National --  
17          NSERC, National Science and Engineering Research  
18          Council.  
19   Q    Are you aware that Karl -- are you aware whether  
20          Karl English's telemetry work is terminated  
21          because it's unfunded?  
22   DR. RICHARDS: I'm not aware of the specifics. I mean,  
23          he is working -- would be working under a  
24          contract. And I know that we have done some of  
25          that work at some times to address certain  
26          specifics, but it was always under -- not intended  
27          as a long-term monitoring program. It would have  
28          been intended as, Mr. Commissioner, as a shorter-  
29          term research project.  
30   Q    Thank you. I come to selective fishing. Evidence  
31          before this tribunal that the program that DFO had  
32          to promote a selective fishing program was stalled  
33          after 2003, because CFAR funding ended; do you  
34          agree with that?  
35   MS. FARLINGER: The funding under CFAR was intended to  
36          be for five years, and to be transformational to  
37          provide the industry and others, in fact, how  
38          harvest salmon to test out methods of selectivity.  
39          But as I've commented on earlier, we continue to  
40          implement opportunities for selective fishing and  
41          implement that, actually, in a practical way,  
42          although there is not additional funding to do it.  
43          And this harkens back to the idea of whether we  
44          can move in the direction of the policy using the  
45          funds, the people and the regulatory  
46          responsibilities we have as opposed to additional  
47          money to give people an opportunity to be funded

1 to do something different.

2 Q Well, Dr. Hargreaves testified before these  
3 proceedings and you would acknowledge that he  
4 would be very knowledgeable about the state of  
5 progress in terms of implementing selective  
6 fishing programs of DFO? You'd be comfortable  
7 relying on his opinions, wouldn't you?

8 MS. FARLINGER: I know that Dr. Hargreaves was very  
9 involved during the period of the CFAR program in  
10 projects to look at opportunities for selective  
11 fishing. He has not necessarily been involved in  
12 the day to day management and the practical  
13 implementation, for example, of demonstration  
14 fisheries and other things --

15 Q Thank you.

16 MS. FARLINGER: -- since that time.

17 Q With stock assessment another area or another  
18 component of your responsibility, Dr. Riddell has  
19 testified that even when he was division manager  
20 of science, it was already at a marginal level.  
21 He then testified about budget cuts and the -- the  
22 implications of budget cuts. Would you agree that  
23 it is at a critical state in terms of the lack of  
24 proper funding for proper stock assessment?

25 MS. FARLINGER: Stock assessment continues to evolve.  
26 We moved in -- 15 years ago, and Laura may be able  
27 to provide some more specific evidence on this, to  
28 looking at key stocks, rather than the kind of  
29 monitoring that had people on the ground  
30 monitoring each and every stock. We use  
31 information that's gathered by stewards. Carrie  
32 Holt's recent paper takes a look at, how do we set  
33 standards for people who do not work for DFO to  
34 gather information for us.

35 So my point here is, we are continually  
36 refining how it is we assess the status of salmon  
37 stocks both in-season, in the fisheries with DNA  
38 in the Mission test fisheries and up the river,  
39 and as well as just how much we do to get the best  
40 possible estimates. There are -- if we were -- we  
41 currently have about 160 or so, and it ranges from  
42 year to year, 160 to 180 people who do nothing but  
43 count fish in-season. They count them in the  
44 fisheries, they count them at the Mission  
45 operation, and they count them in the -- in the  
46 streams.

47 So the real question is, there, is, how can

- 1           you do this in the best possible way? And I would  
2           argue that we make continual changes in the way we  
3           assess salmon in order to make the best use of the  
4           people we have. And do we need 2,000 people to do  
5           that? I don't know the answer to that question.
- 6           Q     All right. In respect to the consultation side of  
7           your responsibilities, Mr. Sato testified, here,  
8           of diminished resources for consultation. Yes or  
9           no, you agree with that?
- 10          MS. FARLINGER: I wouldn't necessarily agree with that.  
11           I think we have continued to put considerable  
12           resources, including half of our staff time --
- 13          Q     Fair enough, I'll --
- 14          MS. FARLINGER: -- resource manager time to  
15           consultation --
- 16          Q     -- put his evidence before the tribunal in final  
17           submissions.
- 18           Genomic signature research. Dr. Hinch  
19           testified of seeing a deterioration of funding in  
20           that area; do you agree?
- 21          DR. RICHARDS: Again, some of that funding was not  
22           funding that was directly given to the Department.  
23           I think we have continued to fund the areas that  
24           we think are the highest priority.
- 25          Q     Dr. Kristi Miller testified here and said she --  
26           her funding had run out or was running out and  
27           didn't know that she would be receiving more  
28           money. Is that still an accurate situation in  
29           terms of her work?
- 30          MR. TAYLOR: Well, before we ask for agreement on  
31           evidence, that's not quite the evidence. It might  
32           be better to put that proposition, but I don't  
33           recall that as -- in fact, I know that's not  
34           exactly what Dr. Miller said.
- 35          MR. ROSENBLOOM: Well, that is my memory of what she  
36           said. But in any event, Dr. Miller testified  
37           about a funding problem. I distinctly remember  
38           even my cross-examination. But without getting in  
39           a slug match with my friend about it:
- 40          Q     Is Dr. Miller's funding secure for the next year  
41           or two?
- 42          DR. RICHARDS: We have provided Dr. Miller the funding  
43           that she needs to do -- that she needs to do her  
44           highest priority work.
- 45          Q     So you are committed to giving her funds for the  
46           next couple of years for her continuing work?
- 47          DR. RICHARDS: Well, I can't speak beyond the current

- 1 fiscal year, because we don't have budgets for the  
2 next year at this point, but we recognize that the  
3 work she's doing is very critical and we have done  
4 the utmost to ensure that she has the funds that  
5 she needs to continue that high priority work.
- 6 Q I've got three minutes left. Socioeconomic  
7 analysis, you would agree that embodied within the  
8 WSP is a responsibility to carry out socioeconomic  
9 work? We have had a lot of evidence given that  
10 that work isn't being done and isn't being done in  
11 the course of your partial implementation of WSP;  
12 do you agree with that?
- 13 MS. FARLINGER: No, I don't.
- 14 Q Are you suggesting that where you have curtailed  
15 harvest in respect to the weak stock issues, that  
16 you have carried out socioeconomic analysis before  
17 making that decision?
- 18 MS. FARLINGER: In some of those instances, the answer  
19 is, "Yes." In the generation of each integrated  
20 fishery management plan, including salmon, there  
21 is a requirement for us to provide an economic  
22 analysis of the fishery. We have done some  
23 economic analyses in situations where we have  
24 curtailed harvest as it relates to the Wild Salmon  
25 Policy. With respect to Cultus sockeye, I think  
26 the economic analysis was done prior to the  
27 decision to curtail that fishery. And David Bevan  
28 may know more about that.
- 29 Q Well, I don't really have time for it. I've got  
30 about two minutes left. All I'm asking is: Do  
31 you believe that within the body of evidence at  
32 this inquiry, there is any document showing an  
33 economic -- socioeconomic analysis of your  
34 decisions?
- 35 MS. FARLINGER: There are documents showing economic  
36 analyses and I don't know whether they're in  
37 evidence.
- 38 Q Thank you. And terminal fisheries with  
39 socioeconomic analysis, there was an exchange  
40 between this panel and some of my colleagues, I  
41 think late last week. You have never done a  
42 socioeconomic analysis of the direction you're  
43 taking towards a greater terminal fishery; is that  
44 not correct? Was that not the evidence?
- 45 MS. FARLINGER: As far as I know, there is not a  
46 socioeconomic analysis of the terminal fisheries  
47 currently -- demonstration fisheries on the Fraser

1 River.

2 Q And would you not agree that that one would have  
3 expected as a condition precedent before your  
4 department made such a critical initiative to move  
5 to terminal fishery?

6 MS. FARLINGER: And indeed, that's why those fisheries  
7 are demonstration fisheries, because that analysis  
8 is not yet done.

9 Q Having completed my cross-examination, other than  
10 to ask this of -- back to you, Ms. Dansereau, I  
11 opened this cross-examination by asking you if you  
12 still stood by the comments that you made in early  
13 exchange with me in November of last year. Having  
14 heard my review of some of the evidence that we've  
15 heard at this inquiry, and the Commissioner's  
16 going to have to grapple with, are you prepared to  
17 now say that, in fact, DFO has not been capable,  
18 because of financial reasons or whatever, but it  
19 has not had the capacity to truly discharge its  
20 statutory responsibilities to the public of  
21 Canada?

22 MS. DANSEREAU: No, I'm not willing to say that.

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

24 MR. MCGOWAN: I'm going to suggest we take the morning  
25 adjournment.

26 THE COMMISSIONER: Thank you.

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

29

30 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)

31 (PROCEEDINGS RECONVENED)

32

33 MR. EIDSVIK: Good morning, Mr. Commissioner, Philip  
34 Eidsvik for Area E in the BCFSC. It's now about  
35 20 to 12:00 and I'll take the rest of the morning  
36 and a few minutes after lunch.

37

38 CROSS-EXAMINATION BY MR. EIDSVIK:

39

40 Q Mr. Bevan, can you tell the Commissioner what the  
41 approximate pay range for a fishery officer is?

42 MR. BEVAN: I confess that I haven't looked at that  
43 recently, but it's in the range of 50 to 60,000  
44 for base pay.

45 Q Okay. And average overtime and O&M annual?

46 MR. BEVAN: That varies, and I can't say that with any  
47 degree of accuracy for the Pacific Region at this

1 time.

2 Q Could you give me an O&M average?

3 MR. BEVAN: Generally, we like to have in the --  
4 between 10 to 20,000, depending on the location,  
5 and what the geographical restrictions are.

6 Q Okay.

7 MR. BEVAN: It varies specifically depending on where  
8 they're located and what the duties are.

9 Q Okay. And about how many officers in B.C.?

10 MR. BEVAN: About 175, thereabouts. It's always  
11 difficult to give you an exact number because of  
12 retirements and our recruiting process being what  
13 it is. There's a gap between retirements and  
14 filling the positions.

15 Q Thank you. Ms. Farlinger, I want to go back to  
16 1992 for a minute because a lot of the problems we  
17 seen in the fisheries started in 1992. In terms  
18 of fish biology and fishery management, did it  
19 make sense to expand commercial fishing into the  
20 Fraser Canyon and double the commercial fishing  
21 area in the Lower Fraser?

22 MS. FARLINGER: In 1992 and prior to 1992, there had  
23 been, for about 10 years, and certainly  
24 intensifying over that period, incredible  
25 conflict, including violent and civil problems in  
26 the management of the fishery on the lower Fraser  
27 River. At that point, in 1992, a policy decision  
28 was made by the government to provide for economic  
29 fisheries, called pilot fisheries, as part of the  
30 Aboriginal Fisheries Program which, in its  
31 entirety, was a response to court decisions.

32 Q Are you telling me that the commercial side was in  
33 response to a court decision? You don't mean  
34 that, do you?

35 MS. FARLINGER: I mean the program was in response to  
36 court decisions that required the Government of  
37 Canada to respect existing and potential rights.  
38 They were focussed, at the time, on the food,  
39 social and ceremonial fishery.

40 Q Okay. So did it make sense, in terms of fish  
41 biology, to add 700 nets in the Fraser Canyon,  
42 lower Fraser during intensive sockeye fisheries?  
43 Wasn't the aim of the Department at the time to  
44 try and reduce fishing pressure?

45 MS. FARLINGER: It certainly was post that time, and  
46 I'm thinking of the Mifflin Plan and the Canadian  
47 Fisheries Adjustment and Restructuring Plan, an

1 overall response of the Department to  
2 international and domestic pressures to reduce the  
3 size of the salmon fleet by approximately half.  
4 This was reducing, rather than increasing the size  
5 of the fishing power, this was transferring  
6 allocation to another user.

7 Q But actually, we added, depending on the count,  
8 and the day and the intensity of the fishery, 500  
9 to 700 new commercial fishing nets in an area  
10 where, for 100 years, there'd been no commercial  
11 fishing, legal commercial fishing; is that  
12 correct?

13 MS. FARLINGER: At that time, the commercial fishing  
14 area was expanded, but there was no additional  
15 allocation for that. That was a transfer of  
16 allocation from existing commercial fishery to  
17 other users.

18 Q I think the evidence will deal with that so I'm  
19 not going to go into that. Now, prior to 1992, we  
20 had one day of commercial fishing on the Fraser  
21 River sockeye run, an average rate. Area 29 would  
22 open, roughly, on a Monday, one day a week and now  
23 we have commercial fishing on Monday, often on  
24 Thursday, Friday, Saturday, and Sunday; is that  
25 correct?

26 MS. FARLINGER: I can't speak to the number of days of  
27 the week it was open in Area 29 as I was not  
28 directly involved in salmon management at the  
29 time, but I do know from my experience since then,  
30 that there is a challenge working in the number of  
31 fisheries that need to occur in the fishing area  
32 in the lower Fraser River, yes.

33 Q Yeah, and in fact, where we used to have a  
34 sanctuary in time from commercial fishing of six  
35 days a week, and where we had a sanctuary above  
36 Mission all the way up to the spawning grounds, a  
37 big sanctuary, free passage for fish, other than  
38 the FSC fishery, that's been completely changed  
39 since 1992?

40 MS. FARLINGER: There has been a portion of the  
41 fishery, of an allocation that has moved further  
42 up the Fraser River, yes, into the area around  
43 Mission Stó:lō area and up to the canyon, the Yale  
44 canyon.

45 Q In terms of net days, that's now the biggest  
46 commercial fishery on Fraser sockeye; isn't it?

47 MS. FARLINGER: I don't know the answer to that

1 question, but I think we measure the size of  
2 fisheries based on the fishing power and the  
3 effort, and the catch. So it's an output-based  
4 measurement.

5 Q Well, maybe I can rephrase the question. In terms  
6 of fishing effort, this is the biggest commercial  
7 fishery on the Fraser sockeye?

8 MS. FARLINGER: I'm not sure that I can confirm that.

9 Q Thank you.

10 MR. EIDSVIK: If you could bring up Tab 5 of my  
11 documents, please, Mr. Lunn?

12 Q I'm just going to go through a couple of things to  
13 deal with average participation in the fishery to  
14 clean up some of the issues that arose out of  
15 another testimony. This is the Fisheries  
16 Commission Report from 1925, and I don't want to  
17 bring you to it, but perhaps I could have that  
18 entered as an exhibit, please, Mr. Commissioner?

19 MR. DICKSON: Mr. Commissioner, Tim Dickson for the  
20 Stó:lō Tribal Council. We haven't heard any  
21 identification of this document so far. The only  
22 thing we've heard is that it's from 1925. I think  
23 Mr. Eidsvik would have to take it a little bit  
24 further to show the relevance of it, Mr.  
25 Commissioner, before it becomes an exhibit.

26 MR. EIDSVIK: Perhaps you could flick the page, Mr.  
27 Lunn, go to the first page, and at the bottom, the  
28 bottom paragraph, I'm referring to the reduction  
29 in Orientals policy:

30  
31 The department's policy of eliminating the  
32 Oriental from the fisheries of the province  
33 with a view to placing the entire industry in  
34 the hands of white British subjects and  
35 Canadian Indians appears to be working out  
36 well as shown by statement No. 10 ...

37  
38 And then it goes further to say that:

39  
40 ... Orientals during the year 1925 held only  
41 24 percent ...

42  
43 And so on. It deals with aboriginal participation  
44 in the fishery and discrimination in the  
45 commercial fishery. It's obviously a government  
46 document. I don't think there should be any  
47 controversy over whether this is appropriate for

1           this Commission, or not. Could I have that marked  
2           as an exhibit, please, Mr. Commissioner?  
3   MR. MCGOWAN: Mr. Commissioner, if the document is  
4           simply being entered to inform the examination of  
5           the witnesses, then their answers will be on the  
6           record and I suppose there's not much harm in  
7           that. If it's being entered for some further  
8           purpose, then perhaps Mr. Eidsvik should  
9           articulate what further purpose he wants it  
10          entered for.  
11   MR. EIDSVIK: Well, this is the summary hearings in all  
12          the DFO policies. It was the Commissioner who  
13          brought Professor Harris to the Commissioner, made  
14          a long, detailed, we think inaccurate argument  
15          about the level of aboriginal participation in the  
16          fishery, and the history of aboriginal  
17          participation. This document helps me complete,  
18          along with a couple more documents, the history of  
19          aboriginal people in the commercial fishery, which  
20          is something we can all be very proud of.  
21   MR. MCGOWAN: With respect, Mr. Commissioner, I don't  
22          believe the document was put to Dr. Harris.  
23   MR. EIDSVIK: I'm sorry, I misheard you, Mr. McGowan.  
24   MR. MCGOWAN: I don't believe that the document was put  
25          to Dr. Harris. If it's in some way designed to  
26          rebut the evidence that he provided to the  
27          Commission, in my submission, it ought to have  
28          been put to him.  
29   MR. EIDSVIK: No, the document wasn't put to Mr. Harris  
30          due to severe time limits on my time, Mr.  
31          Commissioner.  
32   THE COMMISSIONER: I think the document should be  
33          marked as an exhibit, not for the proof of the  
34          truth of its contents, but as a document which  
35          might be used in argument at a later date.  
36   MR. EIDSVIK: Yes, that's all I'm after it for. Thank  
37          you, Mr. Commissioner.  
38   THE REGISTRAR: The document can be marked as 1945.  
39  
40                   EXHIBIT 1945: Excerpt from Fifty-Ninth  
41                   Annual Report of the Fisheries Branch for the  
42                   Year 1925-26, pages 53-4 72-3  
43  
44   MR. EIDSVIK: And if we go to Tab 4 of my documents,  
45           please, Mr. Lunn? And if you can flick about six  
46           pages in, and you'll see one that comes up and  
47           it's the chapter 1. Keep going. Stop.

1 Q And the first paragraph says:

2  
3 Native Indian workers and producers have been  
4 important in some industries in British  
5 Columbia for well over a century.  
6

7 Would you agree that's especially the case in the  
8 commercial fishery, Ms. Farlinger? I think you've  
9 got the longstanding knowledge about the fishery  
10 here.

11 MS. FARLINGER: It's certainly true that aboriginal  
12 people in B.C. have a long history in the fishery,  
13 yes.

14 MR. EIDSVIK: And again, if I could have this marked as  
15 an exhibit, please, Mr. Commissioner, for the same  
16 purpose.

17 THE REGISTRAR: 1946.

18  
19 EXHIBIT 1946: Excerpt from Knight, Indians  
20 at Work - An Informal History of Native  
21 Labour in British Columbia, 1848-1930,  
22 Preface and Chapters 1, 9, 15  
23

24 THE COMMISSIONER: Well, again, Mr. Eidsvik, I'll  
25 permit it to be marked, but not for the proof of  
26 the truth of its contents.

27 MR. EIDSVIK: I think you can decide what weight's  
28 appropriate to give it in our final submissions,  
29 and we're happy to go by your judgment on that.  
30 If we could go to Tab 1, Mr. Lunn?

31 Q Now, are you familiar with this document, Ms.  
32 Farlinger?

33 MS. FARLINGER: I'm just taking a look at it, here.

34 Q Maybe I can help you with some of the points in  
35 the document. And what this does, it explains the  
36 various types of affirmative action programs in  
37 the commercial -- public commercial fishery since  
38 1968. And you're familiar, for example, at  
39 paragraph vi, where they talk about special  
40 provisions for aboriginals for spawn-on-kelp  
41 licences?

42 THE COMMISSIONER: I'm sorry, where are you at, Mr.  
43 Eidsvik?

44 MR. EIDSVIK: I'm at page 68, it's in the top left,  
45 it's a bit hard to read, at paragraph vi. And  
46 then it details some of the additional licensing  
47 issues concerning aboriginal fisherman.

1 Q And there's a number of licence provisions there  
2 that are helpful. And one of the programs that  
3 you did, you're probably aware of it because I  
4 think you spent some time up north, was when the  
5 Department funded the buyout of the Cassiar  
6 Cannery and B.C. Packers commercial fishing fleet;  
7 is that correct?

8 MS. FARLINGER: Yes.

9 Q And a lot of the people that fished those boats  
10 were Gitksan Wet'suwet'en; is that correct?

11 MS. FARLINGER: There are a number of First Nations  
12 communities that fished those boats, and some of  
13 them are Gitksan Wet'suwet'en, yeah.

14 Q And they would come 300 miles inland to fish those  
15 boats and were quite successful at it?

16 MS. FARLINGER: Since the purchase of the licences in  
17 some years, they were successful. In recent  
18 years, almost half of those licences have remained  
19 unfished.

20 Q Thank you.

21 MR. EIDSVIK: Perhaps we could go to Tab 6, Mr. Lunn?

22 MR. DICKSON: Yes, Commissioner, Tim Dickson again for  
23 the Stó:lō Tribal Council, and I object  
24 vociferously to the admission of this document, if  
25 this is indeed an email chain. As I review it,  
26 it's one that started off with Terry Glavin, who  
27 was a witness before this inquiry. This email  
28 chain should have been put to him so that he could  
29 comment on it. It is in relation, as I understand  
30 it from the email chain, to an underlying *National*  
31 *Post* article that is not with the email chain.  
32 It's all simply hearsay. It's all simply opinion.  
33 None of these witnesses can speak to this document  
34 and it's entirely inappropriate to be put to them.

35 MR. EIDSVIK: Mr. Commissioner, we've had dozens, and  
36 dozens, and dozens of documents, email chains come  
37 before the witnesses and quite often the  
38 individual witnesses weren't involved in the email  
39 chain, but the email was entered as an exhibit and  
40 was used for the purpose of cross-examination. I  
41 hate to break that policy now for a document that  
42 sheds some light on --

43 THE COMMISSIONER: Well, I think, Mr. Eidsvik, what you  
44 should be doing is indicating to me in what area  
45 you plan to examine the witnesses upon with  
46 respect to this particular document and why it's  
47 relevant to your questions.

1 MR. EIDSVIK: Thank you, Mr. Commissioner. It's  
2 relevant because it explains the position and the  
3 debate around weak stock management and the Wild  
4 Salmon Policy. There's some discussion with Mr.  
5 Walters. Mr. Glavin was a witness before the  
6 Commission, appears to have a severe problem with  
7 the public commercial fishery. I think it's  
8 helpful to establish where people are coming from  
9 in their testimony.

10 THE COMMISSIONER: My preference would be if Mr. Glavin  
11 gave evidence about these matters, or other  
12 witnesses gave evidence that you would like to put  
13 to these witnesses, that you do so.

14 MR. EIDSVIK: I'll move on, Mr. Commissioner, to  
15 Tab 10. If we go to page 26, please, Mr. Lunn?

16 Q Now, I've brought you to the recommendations of  
17 this particular report and if you look at the  
18 second paragraph, it talks about:

19  
20 The best opportunity for restructuring the  
21 fishery lies in the development of terminal  
22 fisheries ... There will be a reduction in  
23 the value of the fishery due to reduced fish  
24 quality. Nevertheless, a cannery grade  
25 product can usually be obtained ...

26  
27 Now, the policy explained in this paper is  
28 encapsulated in the policy we've heard you all  
29 explain, all the witnesses explain a number of  
30 times about the desire to move to terminal  
31 fisheries; is that correct? This is one of the  
32 justifications to protect biodiversity?

33 MS. FARLINGER: With respect to this particular report,  
34 which I can't say I have read for, probably, four  
35 or five years, there are arguments made in here  
36 about the usefulness of a terminal fishery, but as  
37 I've mentioned on several occasions, there's a  
38 variety of strategies and directional tests in  
39 place in terms of how to make the fishery more  
40 selective and, therefore, deal with weak stocks in  
41 a variety of ways. Inland fisheries is one of  
42 those ways.

43 Q So would you agree with that statement, then?

44 MS. FARLINGER: With what statement, sorry?

45 Q The statement in the second paragraph, under  
46 "Restructuring of the Commercial Fishery"?

47 MS. FARLINGER: No, I would say it is one of many

1 strategies for taking a look at how the fishery is  
2 prosecuted in order to avoid the weak stocks.

3 MR. EIDSVIK: If we could have this entered as an  
4 exhibit, please, Mr. Commissioner?

5 THE COURT: 1947.

6 THE REGISTRAR: 1947.

7

8 EXHIBIT 1947: Levy, BC Sockeye Salmon  
9 Population Declines: Probable Causes and  
10 Recommended Response Strategies, Feb 2006  
11 [Sierra Club]  
12

13 MR. EIDSVIK: And if we could go to Exhibit 75, please,  
14 Mr. Lunn, and page 208? Yes, it's a bit of a ways  
15 in. And I'm sorry, Mr. Lunn. This is an exhibit  
16 already filed, Mr. Commissioner.

17 Q If you look at the map, perhaps Ms. Farlinger can  
18 answer this question for me again. We've tried to  
19 rebuild the upper Adams sockeye for many, many  
20 years and had some success, but haven't reached  
21 anywhere near the capacity of its spawning  
22 grounds, have we? Upper Adams sockeye.

23 MS. FARLINGER: I would certainly agree with you that  
24 we've been working on rebuilding various stocks in  
25 the Fraser River, including Shuswap sockeye at  
26 some point. I'm not sure whether we may have  
27 reached capacity on spawning grounds in any  
28 particular year, including last year. So I can't  
29 comment directly on whether we've reached the  
30 capacity.

31 Q And could you point out to the Commissioner where  
32 the terminal fishery in Shuswap Lake occurred in  
33 2010? Would you like the pointer, or perhaps you  
34 could just say?

35 MS. FARLINGER: I'm not even exactly sure that I can  
36 point to you exactly where that was.

37 Q It occurred in Shuswap Lake, though; is that  
38 correct?

39 MS. FARLINGER: Yes.

40 Q Now, when it occurs in Shuswap Lake, you're also  
41 catching Upper Adams River sockeye, aren't you?  
42 There's no separation, no protection for Upper  
43 Adams sockeye?

44 MS. FARLINGER: There are still some potential mixed  
45 stock issues there, and as I talked about earlier,  
46 there's a variety of ways to deal with that.  
47 Sometimes it's run timing, sometimes it's gear,

1 and sometimes it's not fishing in the area.

2 Q Thank you.

3 MS. FARLINGER: So I don't know exactly what the  
4 conservation units are in this area so I can't  
5 speak to whether there are co-migration of  
6 separate conservation stocks, conservation units.  
7 Sorry, I don't know that level of detail.

8 Q Yeah. Thank you. So we've heard quite a bit  
9 about the economic cost of moving into terminal  
10 fisheries, and I gather there hasn't been a good  
11 study done. Have we looked at the biological cost  
12 of moving into terminal fisheries? Has there been  
13 an analysis looking at specific proposed terminal  
14 fishing sites and whether or not they will protect  
15 stocks that are weak?

16 MS. FARLINGER: There has been a measure in terms of  
17 where demonstration fisheries take place, and a  
18 consideration of a reduction in the number of  
19 stocks that are fished. And the potential  
20 management tools like timing and other elements  
21 that are available further up the river as opposed  
22 to in a fishery where there are more stocks and  
23 more uncertainty with respect to the other fishery  
24 management elements.

25 Q Now, in terms of selling fish caught in the  
26 terminal fishery, say, in Shuswap Lake, did you  
27 ask Canadian Fish, or Ocean Fish, or Bella Coola,  
28 any of the well-established processors who have a  
29 century of experience selling fish in  
30 international markets, have you asked them what  
31 they think about terminal fisheries and whether  
32 they can do it profitably?

33 MS. FARLINGER: I know, over the years, there have been  
34 a number of discussions with people operating fish  
35 processing plants. There have been a variety of  
36 views expressed and I know there's been a  
37 considerable amount of work and, funnily, a very  
38 great deal of activity looking at changing  
39 markets. I think historically, the processors  
40 would say you can't take fish up river because  
41 they're in poorer quality. I know that part of  
42 these experiments are taking a look at what  
43 markets are available other than traditional  
44 markets and whether the quality will be sufficient  
45 to sell into those markets and have a viable  
46 fishery. And that's part of what we're testing.

47 Q So does anybody in DFO got the several hundred

1           years of experience of marketing salmon that our  
2           major processors do?

3   MS. FARLINGER: I don't believe we have anyone in DFO  
4           with marketing experience. I would say that we  
5           meet regularly with processors, as well as with  
6           all of the other stakeholders. We meet regularly  
7           with the B.C.C. Food Processing group.

8   Q       Yeah. Now, the Adams River return is dominant  
9           every fourth year. Can you tell the Commissioner  
10          what type of fishing industry you're going to  
11          build in Shuswap Lake in the other three years?

12   MS. FARLINGER: No, I can't tell you that, and I can't  
13          tell you that and it's one of the reasons this is  
14          a pilot fishery, is taking a look at how it would  
15          operate and whether, in fact, it's both  
16          conservation-based, meets our conservation  
17          requirements, and secondly, whether it's  
18          financially viable.

19   Q       All right. But the Department is buying millions  
20          and millions of dollars worth of licences for  
21          transfer to these fisheries to somewhat compensate  
22          for the allocation; is that correct, and already  
23          has bought many millions?

24   MS. FARLINGER: The Department has put considerable  
25          resources both to reducing the size of the  
26          commercial fishery in the marine area by 50  
27          percent, and also continues to retire access at  
28          the moment through the Allocation Transfer Program  
29          and the PICFI program to provide access to First  
30          Nations, to salmon fisheries, both marine  
31          fisheries and some of these test fisheries up the  
32          river, yes.

33   Q       Now, I notice when we looked at the PICFI evidence  
34          that many aboriginal groups were not preferring  
35          salmon licences, but were preferring geoduck,  
36          sablefish, halibut. Can you tell us why?

37   MS. FARLINGER: Well, I'm speculating on someone else's  
38          preferences, but I think if you look at the landed  
39          value of salmon versus the landed value of, in  
40          particular, fisheries that are share-based, they  
41          tend to be higher value and, not surprisingly,  
42          some First Nations groups prefer to have access to  
43          higher-value licences. They also consider what  
44          species are in their area and a variety of other  
45          considerations that I can't speak to, but I do  
46          know we work with them when we're building a  
47          business plan to take a look at what species it is

1           that they would like to have access to, and how  
2           they build those species licences, that is regular  
3           commercial fishery licences, into their economic  
4           plan.

5           Q     Is there any limit on the number of salmon  
6           licences you're going to buy and transfer to  
7           aboriginal interests in-river?

8           MS. FARLINGER: For practical purposes, we have  
9           focussed around, in the PICFI program, somewhere  
10          around 15 percent of the commercial salmon  
11          licences, and that's simply a practical measure as  
12          opposed to a policy. And this is simply the  
13          proportion of salmon licences relevant to value  
14          and number of licences that are in the fishery,  
15          relative to other marine species licences that are  
16          in the fishery.

17          Q     Thank you for that. Now, has the Department heard  
18          complaints from aboriginals about legal and  
19          illegal sales of food fish, limiting their  
20          opportunities to get food fish to eat? Has the  
21          Department heard complaints about that over the  
22          years?

23          MS. FARLINGER: From time to time, we have heard  
24          complaints about that.

25          MR. EIDSVIK: Perhaps if I could have Tab 7 up, Mr.  
26          Lunn?

27          MR. DICKSON: Mr. Commissioner, before Tab 7 is brought  
28          up on the screen, I want to object again to this  
29          document. It appears to be comprised of two *Globe*  
30          and *Mail* articles, the first of which is Mr.  
31          Hume's article reporting on evidence in this  
32          inquiry, and I'd just say that a news article  
33          about evidence in these hearings is not evidence  
34          in these hearings. It's also comprised of out-of-  
35          court statements. They're simply hearsay. In the  
36          second -- and none of those statements are made by  
37          any of these witnesses, Mr. Commissioner.

38                 The second article is just a report on a  
39          conversation that Mr. Hume had with a member of  
40          the Musqueam Indian Band and it's utterly hearsay.  
41          It cannot be admitted, certainly for the truth of  
42          its contents, whatsoever. And I suggest to you  
43          it's not helpful in having it as an exhibit for  
44          identification or referred to in any respect.

45          MR. EIDSVIK: Mr. Commissioner --

46          MR. MCGOWAN: I'll perhaps just add to Mr. Dickson's  
47          objection one observation, and that is some of the

1 statements in at least one of these articles are  
2 attributed to Mr. Grey who was here as a witness  
3 after this article was published and, to my  
4 recollection, the articles were not put to Mr.  
5 Grey.

6 MR. EIDSVIK: Mr. Commissioner, it's the second tab in  
7 the document. I'm not entering the first tab. I  
8 sent out a PDF with only the first tab attached --  
9 or the second tab attached so it would stop  
10 confusion over the first two pages in that tab,  
11 and I'm sorry if I got that process wrong. I  
12 think the *Globe and Mail's* article is interesting  
13 because it arose out of the testimony in the  
14 Commission and Ms. Farlinger's admitted that there  
15 has been some discussion of complaints and I'm  
16 just trying to establish the level of the degree  
17 of complaints. And perhaps --

18 THE COMMISSIONER: I was just going to say, again, Mr.  
19 Eidsvik, I think you can ask those questions of  
20 her without reverting to this newspaper article,  
21 which seems to be causing some issue of conflict  
22 between you and some of the participants' counsel,  
23 but is it possible for you to put questions to  
24 these witnesses about the very complaint you've  
25 already asked Ms. Farlinger about?

26 MR. EIDSVIK: Sure.

27 Q Following that article in the *Globe and Mail*, did  
28 you call Ms. Sparrow and ask her --

29 MR. TAYLOR: Maybe, for the witness, we can actually  
30 have the article up. I think it's not up because  
31 Mr. Dickson objected to that, but now the witness  
32 is going to be confused unless she can see what's  
33 being spoken of.

34 MR. MCGOWAN: To the extent Mr. Eidsvik is asking about  
35 any potential response to complaints that they  
36 were alerted to through the newspaper article,  
37 that question may well be fair and perhaps we  
38 should have the article up and hear the question.

39 MR. EIDSVIK: Mr. Commissioner, if it helps at all,  
40 when I was debating whether to enter these  
41 newspaper articles, I reviewed the Supreme Court  
42 of Canada decision in *United States v. Burns*, and  
43 the court relied upon articles by the *Chicago*  
44 *Tribune* and the *New York Times*. And given the  
45 little bit looser rules in this Commission on  
46 evidence, it seems appropriate to have it in  
47 there.

1 MR. DICKSON: Well, Mr. Commissioner, that is such a  
2 different context and that's not helpful  
3 whatsoever. The practices of the Supreme Court of  
4 Canada, which often allows for Brandeis Briefs is  
5 entirely different than here.  
6 MR. EIDSVIK: I think we can dispose of that article.  
7 I can get around it.  
8 Q Ms. Farlinger, did you read the article in  
9 question?  
10 MS. FARLINGER: I do believe that at the time it came  
11 out, I read the article.  
12 Q Did you contact Ms. Sparrow?  
13 MS. FARLINGER: I did not.  
14 Q Did anybody in your Department?  
15 MS. FARLINGER: Not to my knowledge, but they may have.  
16 Q Now, isn't DFO's prime duty in terms of allocating  
17 sockeye to ensure that food, social and ceremonial  
18 needs are met?  
19 MS. FARLINGER: Consistent with the allocation policy,  
20 the first priority for access after conservation  
21 is food, social and ceremonial fisheries, yes.  
22 Q Now, the public commercial fishery, or what I call  
23 the all citizens' commercial fishery is often  
24 closed to ensure that FSC needs are satisfied.  
25 Why isn't this commercial fishery closed to ensure  
26 that they're satisfied?  
27 MS. FARLINGER: It is. It's a requirement of the  
28 agreement that sets up the conditions of the  
29 fishery.  
30 Q Well, we've just heard Ms. Sparrow say that that  
31 fishery is interfering with her ability to get  
32 fish?  
33 MR. DICKSON: We heard no such thing, Mr. Commissioner.  
34 We did not hear Ms. Sparrow say anything. The  
35 article is not in evidence and it ought not to be.  
36 I don't mind if Ms. Farlinger is asked about her  
37 reaction to reading the article, there's nothing  
38 wrong with that, but Mr. Eidsvik, of course, wants  
39 to put in statements from the article as if they  
40 were true, and he has not proven that, and that  
41 ought not to be done here on such a hearsay basis.  
42 MR. EIDSVIK: I have a second --  
43 Q Were you aware of the complaint by the Stó:lō  
44 grandmother, that she wasn't getting food fish and  
45 she took an ad out in a newspaper to say, "I'll  
46 buy sports fish"?  
47 MS. FARLINGER: I was not specifically aware of that

1 complaint, but we do have, as I've pointed out,  
2 some 50 fishery managers who consult with First  
3 Nations on a regular basis and, specifically, for  
4 any economic opportunity agreements that are  
5 negotiated with First Nations, there is a  
6 requirement in that agreement to ensure that the  
7 food, social and ceremonial fishery allocations  
8 will be met prior to agreement to an economic  
9 fishery.

10 Q So that's a nice clause and a piece of paper that  
11 somebody signs in an office. What do you do,  
12 actually, to ensure, on the river and in the  
13 communities that people who need food fish are  
14 getting it?

15 MS. FARLINGER: We do a number of things, certainly in  
16 terms of the way we prosecute the order of the  
17 fisheries. We negotiate the agreements and get  
18 the agreement and the signatures of the First  
19 Nations leaders who will be prosecuting those  
20 fisheries that they will ensure that that happens.  
21 There are various other management measures that  
22 are put in place to ensure that fisheries happen  
23 in the time and space that they are intended to  
24 happen, and then also on the enforcement side, not  
25 on the management side specifically, but on the  
26 enforcement side, looking at those conditions of  
27 the agreements that have been negotiated and  
28 ensuring through one method, enforcement method or  
29 another that the fisheries are being enacted in  
30 compliance with those agreements.

31 Q So I gather through all of that long answer that  
32 you don't actually go in the communities and just  
33 see, ask people, "Have you got your food fish?"

34 MS. FARLINGER: We indeed do go to aboriginal  
35 communities. We spend a good deal of time talking  
36 with the communities. Occasionally, we're only  
37 talking with the leaders. Sometimes we're talking  
38 with the entire communities. There's a variety of  
39 situations in which we hear from aboriginal  
40 communities and have staff who are specifically  
41 dedicated to doing that in terms of negotiating  
42 the fishing arrangements for FSC and any fishing  
43 arrangements that may pertain with respect to an  
44 economic opportunity.

45 Q So the fundamental change in the fishery, when you  
46 change from a fishery that's for food versus I  
47 catch 100 fish and I want to give 10 to my

1           grandmother, versus a fishery in which I get  
2           money, you don't see that that fishery is  
3           fundamentally different from a food fishery and  
4           chains all the dynamics in the community?

5       MS. FARLINGER: In fact, we do see that it's a  
6           different fishery and we do have dramatically  
7           different management requirements for a fishery  
8           where there is an economic incentive and therefore  
9           fishing power changes. It's a very basic premise  
10          of fishery management where you're looking at, I'm  
11          going to use a generic term, which might be  
12          subsistence-type fisheries, where there is, as one  
13          might say in a theoretical term, a natural limit  
14          versus an economic fishery that they require  
15          completely different management structures. And  
16          we do have those in place.

17       Q       Yeah. I have one more question on the grandmother  
18           with her placing the ad in the newspaper regarding  
19           her inability to get food fish. Given there was  
20           an ad in the newspaper, and the seriousness with  
21           which we should deal with FSC allocations, isn't  
22           that something that should have been brought to  
23           your attention and dealt with as RDG? Isn't that  
24           your job, to make sure that these FSC allocations  
25           are met?

26       MS. FARLINGER: It's certainly my job to put the  
27           systems and processes and tools in place so that  
28           the managers on the ground can deliver the  
29           departmental programs in accordance with the  
30           policies that are set out. So that does mean  
31           occasionally individual matters are brought to my  
32           attention, and often those matters are handled at  
33           the operational level, and I will hear only  
34           generally about them, rather than specifically.

35       Q       Thank you. Were you aware, in the late 1990s and  
36           kind of early 2000s, of a pretty serious mackerel  
37           predation problem on Vancouver Island, Barkley  
38           Sound? Do you remember that, the "big mack  
39           attack?"

40       MS. FARLINGER: I'm generally aware of that, yes.

41       Q       Yeah, it even caused some grief in the test  
42           fishery because there were so many test boats were  
43           catching so many mackerel? Are you that familiar  
44           with it?

45       MS. FARLINGER: I'm certainly familiar with the fact  
46           that it was a challenge. The specifics of it, I  
47           can't say. I'm not familiar with it.

- 1 Q Thank you. Now, we've heard a bit of talk about  
2 the **Fisheries Act** revision, and I don't know if  
3 you were involved in it, but it was quite  
4 controversial, the fight over the new **Fisheries**  
5 **Act**; is that fair to say?
- 6 MS. FARLINGER: I think I'm going to ask Mr. Bevan to  
7 respond to that because I'm not that familiar with  
8 it.
- 9 MR. BEVAN: There's a spectrum of views.
- 10 MR. EIDSVIK: Mr. Lunn, could you bring up -- sorry to  
11 interrupt, Mr. Bevan. Mr. Lunn, could you bring  
12 up Tab 16, as well, please? Go ahead, Mr. Bevan.  
13 Sorry.
- 14 MR. BEVAN: There's obviously a spectrum of views  
15 relevant to the **Fisheries Act**. What we attempted  
16 to do, in conjunction with the Minister of the  
17 day, was to find the middle ground in that  
18 spectrum of views. There are those who want the  
19 fishery to be based on something more akin to  
20 property rights, others that wish to have the  
21 issue of common property enshrined. There were  
22 different views on which of the considerations the  
23 Minister would have to take or have to consider in  
24 making a decision, which ones would take  
25 precedence versus which ones wouldn't.
- 26 Q Are you familiar with the document on the screen?
- 27 MR. BEVAN: I'm familiar with C45.
- 28 Q You're familiar with C45. You didn't actually see  
29 the criticism of C45 directed --
- 30 MR. BEVAN: There's a great deal of differing views.  
31 We had huge binders full of views from various  
32 stakeholders. This is obviously one.
- 33 Q Yeah. And the point I'm only trying to make is  
34 there was an area -- it was an issue of pretty  
35 serious controversy across the country, enough  
36 that the government dropped the Act?
- 37 MR. BEVAN: There was no consensus on the part of the  
38 stakeholders relevant to the various compromises  
39 that would be required and that's just the history  
40 of our current Act, actually, is very little  
41 compromise in many parts of the fishery because  
42 people know the Minister's going to make a  
43 decision and they brought that kind of approach to  
44 the Act and instead of working together to  
45 modernize it, there were people just putting the  
46 markers down.
- 47 Q Okay. Well, you said you were familiar with C45

1 and we've talked a lot about habitat here today.  
2 And I want to know if you -- one of the provisions  
3 in C45, it was a revision to the habitat  
4 protection clause and the existing act called --  
5 commonly referred to as HADD, or H-A-D-D. And the  
6 revision required that Crown counsel in a  
7 prosecution would have to prove that a disruption  
8 to fishery habitat was prohibited, but with the  
9 additional clause that it had to be proved  
10 harmful. So wasn't it enough, as it is in the Act  
11 today, that if you're disrupting fish habitat, you  
12 had to prove the disruption was harmful. Now,  
13 that would be a considerable burden to put on any  
14 Crown prosecutor, wouldn't it?

15 MR. BEVAN: I'm not sure that I would necessarily agree  
16 to that. Clearly, what we're trying to prevent is  
17 harm to the fish habitat and if the modification  
18 doesn't provide harm in the current context, there  
19 may not be a HADD. So the HADD is only harmful,  
20 alteration or destruction of fish habitat. We  
21 have to prove that in the current context, and I'm  
22 not sure that there's a great deal of additional  
23 onus of proof on prosecutors to demonstrate that  
24 harm.

25 Q Thank you, Mr. Bevan.

26 MR. EIDSVIK: If we could have Tab 3 up, Mr. Lunn? I  
27 don't know if you've had a chance to review the  
28 documents that I put in, but this is a memorandum  
29 from Pat Chamut to the Associate Deputy Minister  
30 re the illegal sale of Somass sockeye in 1991.

31 MR. DICKSON: Sorry, Mr. Eidsvik. Mr. Commissioner,  
32 Tim Dickson again. Again, I object to this  
33 document. Mr. Chamut is on the first page of this  
34 as the author, and then the briefing note that's  
35 attached after was written by Paul Sprout. Both  
36 of them have been witnesses in this inquiry. I  
37 don't see -- the document should have been put to  
38 them, if it was going to be put at all, but it has  
39 to do with Somass River fish. And my friend has  
40 said "sockeye," but as I look through it, I saw  
41 chinook. And I'm failing to see the relevance of  
42 this document and I suggest it ought not to be  
43 admitted.

44 MR. EIDSVIK: Mr. Commissioner, I note I'm getting a  
45 large number of objections of documents that deal  
46 with the exact context of what this Commission's  
47 dealing with. This particular document deals with

1 the evidence that was given by Randy Nelson  
2 concerning food fish being stored in commercial  
3 cold storage facilities. This document goes back  
4 some 15 years prior to Mr. Nelson's testimony, and  
5 what I'm trying to establish is the length and the  
6 time that this problem has existed in the  
7 Department without being fixed.

8 THE COMMISSIONER: Mr. McGowan, I'm going to allow him  
9 to ask the question. I'd like to know what the  
10 document is. I haven't seen it or been taken to  
11 it yet.

12 MR. MCGOWAN: Yes, Mr. Commissioner, as a point of  
13 order, I was simply rising to suggest that there  
14 are a number of submissions being made about  
15 relevance before the question's been heard. In my  
16 submission, it's difficult to assess the relevance  
17 of the potential answer until we've heard the  
18 question, and I think the appropriate way in which  
19 to handle the evidence and the examination that's  
20 taking place is for counsel to pose their question  
21 and then for counsel who may have objections, to  
22 object to the question once it's been asked.

23 MR. EIDSVIK:

24 Q If we go to the second page of the document and  
25 the last paragraph in it, and they're talking  
26 about large numbers of chinook being stored in  
27 cold storage plants in the Lower Mainland and  
28 Washington. And this particular document goes  
29 further to talk about that since there's been no  
30 actual sale of the fish, DFO can't seize the fish  
31 even though it's being stored in commercial  
32 facilities.

33 And then if we go into paragraph 2 of that  
34 memo, it talks about that the Ucluelet Band's been  
35 directed to -- or, sorry, chinook caught by the  
36 Ucluelet Band is in a number of plants in  
37 Vancouver and Washington, and fairly big values,  
38 and now the fish is no longer in the plant.

39 Now, if we go back to the very first page, at  
40 the bottom:

41  
42 I should point out, however, the difficulty  
43 of obtaining necessary evidence to sustain  
44 charges for the illegal sale of food fish.  
45 Once fish enters a commercial facility,  
46 ostensibly for storage, it is virtually  
47 impossible to control or to obtain evidence

1                   that the fish have entered commercial  
2                   markets.  
3

4                   Now, this memo was written October 21st, 1991.  
5                   Mr. Nelson gave almost identical evidence to this  
6                   problem in 2006, in their Project Ice Storm. Can  
7                   you tell me why, after 15 years, the Department  
8                   hasn't got a handle on this problem?

9                   MR. BEVAN: Well, I think, under the requirement for  
10                  evidence, we have to actually see the fish being  
11                  sold so that does create a fairly significant  
12                  challenge. I can't comment on the specifics of  
13                  this and I can't make a relationship tie-in  
14                  between this memo, which is about something that  
15                  I'm not familiar with, and Mr. Nelson's evidence,  
16                  but clearly, there's a requirement to have  
17                  evidence to take people before the court, and that  
18                  evidence must be based on a proof of sale, and  
19                  that creates a challenge.

20                 Q    No, but, sorry, isn't that the real problem in the  
21                     enforcement of the food fishery, is you can't  
22                     separate and you can't identify what's been caught  
23                     in the food fishery versus what's been caught in  
24                     an illegal commercial fishery? Isn't that the  
25                     real problem?

26                 MR. BEVAN: Well, actually, what we are doing now is  
27                     separating FSC from the commercial opportunities,  
28                     economic opportunities in order to make that a  
29                     much clearer separation so that we can have more  
30                     capacity to ensure that the FSC is used for its  
31                     intended purpose.

32                 Q    So when these fish caught on your FSC, a separate  
33                     fishery versus a commercial fishery, are put in a  
34                     cold storage plant, if I walk into the plant, pull  
35                     one fish out of one tote and one fish out of the  
36                     other tote, can you tell the difference between  
37                     the two fish?

38                 MR. BEVAN: No, exactly.

39                 Q    Thank you.

40                 MS. DANSEREAU: Excuse me if I may have been silent on  
41                     this, but that doesn't -- the reason we have  
42                     evidence is to prove that something has actually  
43                     happened. So the absence of having the evidence  
44                     doesn't also mean that we can make the assumption  
45                     that it has happened.

46                 MR. EIDSVIK: I appreciate your clarification, Deputy.

47                 Q    I'm going to move on to Science for a minute, and

1           have a few questions for Ms. Richards. Perhaps I  
2           can get it before the lunch break. Now, Ms.  
3           Richards, at Exhibit 1738, and we don't have to go  
4           there -- o  
5       MR. EIDSVIK: Oh, perhaps, Mr. Commissioner, it would  
6           be helpful to have -- now that you understand why  
7           I wanted that document in as evidence to have it  
8           marked as an exhibit?  
9       THE COMMISSIONER: Well, that will be marked for  
10          identification purposes, Mr. Eidsvik. Thank you  
11          very much.  
12       MR. EIDSVIK: Thank you.  
13       THE REGISTRAR: I'm unclear which one that is?  
14       MR. EIDSVIK: The sale of native food fish, Somass  
15          River.  
16       THE COMMISSIONER: October 21st --  
17       MR. MCGOWAN: Tab 3 of Mr. Eidsvik's documents.  
18       THE REGISTRAR: Tab 3?  
19       MR. EIDSVIK: Tab 3.  
20       THE REGISTRAR: Thank you. For identification, it will  
21          be marked as --  
22       MR. EIDSVIK:  
23       Q     Now, Mr. Richards, are you aware of the problem of  
24          dropouts and set nets, fishing and fast --  
25       THE COMMISSIONER: I don't think, Mr. Eidsvik --  
26       MR. EIDSVIK: Oh, I'm sorry, Mr. Commissioner.  
27       THE REGISTRAR: That will be marked LLL, triple L.  
28  
29                   LLL FOR IDENTIFICATION: Memorandum from  
30                   Mr. J.B. Hache, Assistant Deputy Minister, to  
31                   Director General, Pacific Region re Sale of  
32                   Native Food Fish - Somass River  
33  
34       MR. EIDSVIK:  
35       Q     Mr. Richards, thank you for your patience. Were  
36          you aware of the problem of dropouts and set nets  
37          fishing in fast water?  
38       DR. RICHARDS: I've heard a little about this, but I  
39          have to say that I'm not very familiar with this  
40          particular line of problem.  
41       Q     Were you aware of the research by Bob Gould, a  
42          Fisheries biologist from the Stikine into it?  
43       DR. RICHARDS: Not specifically, no.  
44       Q     Were you aware that PSAC recommended in 1994 that  
45          DFO conduct research into this issue?  
46       DR. RICHARDS: That's going back quite some significant  
47          time, and I can't say that -- I may have been, but

1 I can't recall that.  
2 Q Were you aware that the Parliamentary Standing  
3 Committee, in 2004, said, "Conduct research on  
4 this issue"?  
5 DR. RICHARDS: I certainly know that we were doing some  
6 work on selective fishing that was associated with  
7 the programs that we just discussed, but I can't  
8 recall any of those specifics from that timeframe.  
9 Q Were you aware that Mr. Gould thought that if you  
10 didn't pick a set net for a 24-hour period, you'd  
11 land one fish and five would drop out of the net,  
12 but be dead?  
13 DR. RICHARDS: I already told you that I am not  
14 personally familiar with the information at that  
15 level of detail.  
16 Q Okay.  
17 MR. EIDSVIK: If I could have Tab 12 brought up,  
18 please, Mr. Lunn? And I'll go through these  
19 quickly. These are easy, non-controversial  
20 documents, Mr. Commissioner.  
21 Q This is the Lower Fraser, taken from the DFO  
22 website, opening times. Now, you'll note that  
23 there is no specific title on the page, but given  
24 that the fishery starts January 31st, there would  
25 either be a ceremonial or a list of communal  
26 licences; is that correct, Ms. Farlinger? Because  
27 there's no commercial fishery in January 31st on  
28 salmon for aboriginal groups, is there?  
29 MS. FARLINGER: I'm assuming that that's correct. I'm  
30 assuming that the fisheries, on the dates listed,  
31 would be fisheries for food, social and ceremonial  
32 fish.  
33 Q Yeah, and that would either be ceremonial or FSC,  
34 and I don't understand the difference sometimes,  
35 but you know what I'm getting at? Because you  
36 list these licences separately, correct?  
37 MS. FARLINGER: I believe that's the case. I don't  
38 think I can confirm it absolutely --  
39 Q Thank you.  
40 MS. FARLINGER: -- but I certainly wouldn't expect to  
41 have a commercial salmon fishery during this  
42 period, and they would very likely be food, social  
43 and ceremonial licences.  
44 MR. EIDSVIK: Could we go to Tab 13, Mr. Lunn, please?  
45 Q And again, we have an opening on January 31st, a  
46 different list of documents. This one's quite  
47 long, 21 pages of openings. This would probably

1           be the communal licences for the Lower Fraser  
2           versus the ceremonial, given that it's 21 pages.  
3           You issue more communal licences than ceremonial  
4           licences in a year, don't you?  
5    MS. FARLINGER: We issue FSC communal licences, and  
6           ceremonial licences are issued on a specific basis  
7           for a specific occasion of one kind or another.  
8    Q       Yeah, thank you.  
9    MR. EIDSVIK: If we could go to Tab 14, please, Mr.  
10           Lunn?  
11    Q       And given this opening starts August 15th, these  
12           would be the economic opportunity openings; is  
13           that fair to say, Ms. Farlinger?  
14    MS. FARLINGER: There are both FSC fisheries and  
15           economic opportunity fisheries and unless it  
16           speaks here to which one those are, I would just  
17           be guessing.  
18    Q       This is five pages of openings, beginning on  
19           August the 15th, versus the openings that began on  
20           January 31st. Which would it be, would it be  
21           commercial or food?  
22    MS. FARLINGER: I think that both those fisheries occur  
23           over that period. I mean, they look to me like  
24           commercial fisheries, but I can't confirm it.  
25    MR. EIDSVIK: Thank you. We'll move on.  
26    THE COMMISSIONER: I note the time, Mr. Eidsvik. Now,  
27           for these tabs, did you wish them marked?  
28    MR. EIDSVIK: Yes. Yes, I do, Mr. Commissioner, and  
29           perhaps they're non-controversial.  
30    THE COMMISSIONER: Then they'll be the next three  
31           exhibit numbers, Mr. Registrar. Tab 12, 13 and  
32           14.  
33    THE REGISTRAR: Tab 12 will be marked as 1948, Tab 13,  
34           1949, Tab 14, 1950.  
35  
36           EXHIBIT 1948: Lower Fraser Area Fishing  
37           Times, Openings Ending Between Jan 1 2010 and  
38           Dec 31 2010 [DFO website as of Feb 14 2011] 3  
39           pages  
40  
41           EXHIBIT 1949: Lower Fraser Area Fishing  
42           Times, Openings Ending Between Jan 1 2010 and  
43           Dec 31 2010 [DFO website as of Feb 14 2011],  
44           21 pages  
45  
46           EXHIBIT 1950: Lower Fraser Area Fishing  
47           Times, Openings Ending Between Jan 1 2010 and

1 Dec 31 2010 [DFO website as of Feb 14 2011],  
2 5 pages  
3

4 MR. EIDSVIK: Thank you, Mr. Commissioner. Lunch  
5 break?

6 THE COMMISSIONER: Thank you very much, Mr. Eidsvik.  
7

8 (PROCEEDINGS ADJOURNED FOR NOON RECESS)  
9 (PROCEEDINGS RECONVENED)  
10

11 MR. EIDSVIK: Good afternoon, Mr. Commissioner. I have  
12 about 10 more minutes to go so I'll be done at  
13 quarter after. I'm sure Patrick will be after me.  
14 Mr. McGowan, I mean. Philip Eidsvik for Area E  
15 and the BCFSC again.  
16

17 CROSS-EXAMINATION BY MR. EIDSVIK, continuing:  
18

19 Q Ms. Farlinger, thanks for your answering the  
20 questions after lunch, and I'm sorry to keep  
21 asking you, but you're the person most familiar  
22 with what goes on in B.C. Are you familiar with  
23 the beach seine projects going on on the Fraser  
24 River right now?

25 MS. FARLINGER: Yes, I am.

26 Q And the idea of those projects is to be selective  
27 and release non-target coho, sockeye and chinook?

28 MS. FARLINGER: That's right.

29 Q Because they're targeted primarily at pink salmon;  
30 is that correct?

31 MS. FARLINGER: That's right.

32 Q Yeah. And the idea is to count every fish?  
33 That's correct, count every fish?

34 MS. FARLINGER: Yeah, the idea is to harvest the  
35 available harvest without having an impact on the  
36 other stocks that are co-migrating, yes.

37 Q And in recent days, you've seen some controversy  
38 in the *Globe and Mail* and *Times Colonist* about  
39 this?

40 MS. FARLINGER: I've certain been aware of some  
41 controversy in the *Globe and Mail*, yeah.

42 Q Yeah.

43 MR. EIDSVIK: If I could have Tab 18 up, please, Mr.  
44 Lunn? And if we could go to the next page in that  
45 tab.

46 MR. LUNN: 18?

47 MR. EIDSVIK: Yeah. There should be three photographs

1           with -- in that tab.  
2       MR. LUNN: Oh, I see what you're saying.  
3       MR. EIDSVIK: Yeah.  
4       MR. LUNN: I have the files separately. Do you want to  
5           just go to each photograph, then?  
6       MR. EIDSVIK: Yeah, I understand that.  
7       MR. LUNN: So to the first photograph?  
8       MR. EIDSVIK: Please.  
9       MR. MCGOWAN: Mr. Commissioner, I'll allow Mr. Eidsvik  
10           to ask his question. Just in terms of the  
11           position the witnesses may be in. These were  
12           additional to Mr. Eidsvik's list. The  
13           photographs, at least three of them which are  
14           attached were added to his list last Thursday  
15           after the witnesses had commenced giving their  
16           evidence, but while they were still in chief. The  
17           first page was added to the list on Monday and  
18           would have been circulated after they were in  
19           cross-examination. Commission counsel has not  
20           provided a copy of that exhibit to these  
21           witnesses. They haven't seen it before, and I  
22           don't believe counsel for the Department of  
23           Justice has provided this exhibit to the  
24           witnesses, either. We have not placed it before  
25           them in any way prior to this.  
26       MR. TAYLOR: As a rule of thumb, if we had these things  
27           before about Sunday morning, the witnesses would  
28           have them. If we got them after that, they  
29           wouldn't, and I think you just said we got them  
30           after that, after Sunday morning.  
31       MR. MCGOWAN: The Commission received this first page  
32           after Sunday morning. The photographs were  
33           received before that.  
34       MR. EIDSVIK: Yes.  
35       MR. TAYLOR: Well, the witnesses can answer, then.  
36           Depending when they were given to us affects  
37           whether they got them.  
38       MR. EIDSVIK: Yeah. The photographs were distributed  
39           last week, Mr. Commissioner, but I wanted to  
40           ensure that I had proper identification for them  
41           so I followed that up with an email identifying  
42           the photographs on Monday. So that's why there's  
43           a bit of confusion on the time.  
44           If we could go back to the photograph, Mr.  
45           Lunn, and if you could focus in on the area where  
46           the fishing activity is taking place.  
47       Q       Now, in the photograph, Ms. Farlinger, would you

1           say this is representative of the selecting  
2           fishing practices that you've talked about in this  
3           Commission, and we've heard about?  
4   MS. FARLINGER: I'm not familiar with this particular  
5           photograph, but I understand it to be a photograph  
6           that was taken on the Fraser River around and  
7           about the time --  
8   MR. MCGOWAN: Well, Mr. Commissioner, I'm sorry to rise  
9           and interrupt the witness. There may well be some  
10          controversy amongst the participants about what  
11          this photograph shows, where it's located, when it  
12          was taken. I'm going to suggest that the witness  
13          speak about what she knows, not what she  
14          understands from reading a newspaper article. I  
15          think that would be the appropriate way in which  
16          she ought to respond to the questions.  
17   MR. EIDSVIK: Yeah. I think that's fine.  
18   Q       And I'm specifically asking you to address, is  
19          that fishing activity you see there representative  
20          of selective fishing that you have described at  
21          the Commission and we've heard about in the past  
22          10 months or so?  
23   MS. FARLINGER: I can't say as to whether this  
24          photograph is. We certainly have selective  
25          fishing for pink salmon going on now.  
26   Q       Well, do you see the dead fishing floating in the  
27          water, what appear to be dead fish?  
28   MS. FARLINGER: I do see the dead fish floating in the  
29          water, yeah.  
30   Q       Do you see the dead fish on the beach, or near the  
31          beach?  
32   MS. FARLINGER: I see that in some of these  
33          photographs, yes.  
34   MR. EIDSVIK: Could you go to the next photograph, Mr.  
35          Lunn, please?  
36   Q       That pile of dead fish on the beach, does that  
37          look like a selective fishery to you, Ms.  
38          Farlinger?  
39   MR. DICKSON: Mr. Commissioner, I object to this line  
40          of questioning. Mr. McGowan is indeed right,  
41          there's a great deal of controversy about what  
42          these photos show. They were taken, we're told,  
43          in an email which came in to the Commission on  
44          Monday morning, by someone named Chris Hodge.  
45          He's not a witness, he can't speak to what these  
46          photos show. Nor can he actually, if he were  
47          here, speak to what are in the photos. The photos

1 do not speak for themselves. My clients did some  
2 asking around in respect of the photos. They have  
3 a very different interpretation of what Mr.  
4 Eidsvik would put forward. I won't get into that  
5 because they're not here to give evidence and nor  
6 can these witnesses give evidence on that point,  
7 but I assure you, Mr. Commissioner, that there's a  
8 great deal of controversy over this. There's  
9 various interpretations of it.

10 Perhaps the key point, Mr. Commissioner, is  
11 that the fish in that photo are not sockeye, they  
12 are pink salmon.

13 MR. EIDSVIK: Excuse me, Mr. Commissioner, now he's  
14 testifying to the content of the photo and he just  
15 told me that he couldn't tell what was in the  
16 photo.

17 MR. DICKSON: That's exactly so, Mr. Commissioner, we  
18 can't tell what is in this photo. Mr. Eidsvik  
19 cannot tell you that they are sockeye. They are  
20 not sockeye, but he certainly cannot show that.

21 MR. MCGOWAN: With respect, Mr. Commissioner, I  
22 question the utility of this and whether it's  
23 relevant or of any use to you whatsoever. We  
24 don't have the photographer here. We don't know  
25 when the photo was taken, where it was taken, what  
26 it was taken of. There appears to be a great  
27 degree of controversy about what the photograph  
28 depicts. From what I've ascertained from the  
29 questions and the answers so far, I can't imagine  
30 that any of these witnesses are in a position to  
31 enlighten you in that regard. The line of  
32 questioning that is likely to follow, I  
33 anticipate, and we've heard some hints of it, is  
34 going to allege something which might be arguably  
35 wrongdoing on the part of some of the participants  
36 or members of the participants. They're not here  
37 to respond to it. In my submission, he can ask  
38 the witnesses questions that they can answer from  
39 their own personal experience or their own  
40 understanding, but I'm not sure these photographs  
41 assist in any regard.

42 MR. EIDSVIK:

43 Q Ms. Farlinger --

44 MR. EIDSVIK: Oh, sorry, Mr. Commissioner?

45 THE COMMISSIONER: Mr. McGowan and counsel, let Mr.

46 Eidsvik ask his question. If the witnesses have  
47 personal knowledge about the content of these

1           photographs, they can tell him so. If they don't,  
2           they can say so. So please proceed, Mr. Eidsvik.

3 MR. EIDSVIK:

4 Q    Ms. Farlinger, do you have personal knowledge  
5           about the events depicted in this photograph, and  
6           this series of photographs?

7 MS. FARLINGER: I'm not sure about the photographs. I  
8           do have knowledge of the pink beach seine fishery  
9           being carried on currently in the Fraser River.

10 Q   So if this was a pink seine fishery in the Fraser  
11          River and you hadn't been advised of this, would  
12          you be concerned?

13 MS. FARLINGER: Advised of the photograph?

14 Q    Advised of the type of fishing activity you see  
15          depicted in the photograph. Would you expect to  
16          be advised of this, as the Regional Director  
17          General?

18 MS. FARLINGER: Unless there were a problem with fish  
19          mortalities that had been caused by the fishery or  
20          other fish mortalities, I would not expect to be  
21          advised.

22 Q    Well, I think if you look beside the boat, you can  
23          see a bunch of dead fish lying on the bottom of  
24          the river, a bunch of dead fish on the beach,  
25          aren't those fish mortalities?

26 MS. FARLINGER: I have, it probably won't surprise you,  
27          been advised of the activities that are going on  
28          around the beach seine fishery. My understanding  
29          is, is that our staff have been on the grounds and  
30          the concern we hear both from -- or the concerns  
31          that have been expressed did not seem to me to be  
32          consistent with what I'm hearing back from my  
33          staff and with the Pacific Salmon Commission,  
34          which is that the pink salmon are piled there in  
35          preparation for being taken away after having been  
36          caught, and most of the mortalities in the river,  
37          in fact, are fairly routine in terms of years  
38          where we have sockeye mortality in the river, and  
39          that these are all being sampled and counted.

40                 So so far, any information that's been  
41          provided to me has been that these are well within  
42          normal mortalities in the river, and that any pink  
43          salmon on the bank are those being taken away  
44          after having been caught.

45 Q    So you're telling me that this is a perfectly  
46          routine and normal type of way to fish in a  
47          selective fishery upriver?

1 MS. FARLINGER: My understanding of how the pink  
2 fishery is being prosecuted on the banks of the  
3 Fraser is that fish being caught are being piled  
4 on the banks of the Fraser before they're being  
5 taken away, and that the mortalities floating in  
6 the Fraser River are within the normal sockeye  
7 mortality expected and is being sampled as we do  
8 whenever there is mortality in the river.

9 Q When you were familiar with the selective fishery,  
10 the seine fishery on sockeye, for example, in the  
11 Skeena River, you were aware that commercial seine  
12 boats were being fined \$500 for catching a single  
13 coho salmon, and you had DFO fishery officers and  
14 counters at the loading stations. Does this  
15 compare to that?

16 MS. FARLINGER: It does compare to that in the sense  
17 that the fishery is managed in the way to avoid  
18 catch of the non-target species, and there are  
19 landing stations and fish counted, and so it's not  
20 inconsistent. I think you count fish in a  
21 different way on a seine boat than you do on a  
22 beach seine, but the same principles apply.

23 Q And who counts these fish?

24 MS. FARLINGER: I can't tell you specifically who  
25 counts these fish, but I know when there is an  
26 economic fishery, there are specifics about  
27 landings, who counts them, where they're counted  
28 and that's part of the management regime of the  
29 fishery.

30 Q Is it the Fraser Valley Aboriginal Fishery Society  
31 that counts the fish?

32 MS. FARLINGER: I don't know the answer to that  
33 question, specifically.

34 Q Are you familiar with the Fraser Valley Aboriginal  
35 Fishery Society?

36 MS. FARLINGER: Yes, I am.

37 Q And who are the directors of that, because they do  
38 catch monitoring for the Stó:lō fishery; is that  
39 correct?

40 MS. FARLINGER: I can't specifically name the directors  
41 today.

42 Q You're confident that none of the directors of  
43 that organization are involved in fishing?

44 MS. FARLINGER: I can't speak directly to that today.  
45 I don't know.

46 Q Thank you.

47 MR. EIDSVIK: I want to go back quickly, and I'm

1           cognizant, Mr. McGowan, of the time.  
2       Q     And I want to finish something I brought up before  
3           lunch with you, Ms. Richards and it was re the  
4           dropout rate and set nets. How is it that the DFO  
5           hasn't done any work on this issue?  
6       DR. RICHARDS: Well, I think that there was some work  
7           that was done, and there was one or two studies  
8           that were done, I'm just not --  
9       Q     Can you --  
10      DR. RICHARDS: -- familiar that -- those were some  
11           years ago, and I'm sorry, but I just can't  
12           recollect the details at this time.  
13      Q     Now, if the commercial public seine fleet was  
14           killing five fish and losing five fish for every  
15           one they delivered, wouldn't they have been shut  
16           down immediately?  
17      DR. RICHARDS: That's a management decision and you'd  
18           have to ask one of the management staff that  
19           question.  
20      Q     And one question more for you, Ms. Farlinger.  
21           We've heard a lot of talk about share-based  
22           management. Can you tell me when DFO will impose  
23           individual quotas on the set net fishermen in the  
24           Fraser Canyon? How far are you in your  
25           discussions on that?  
26      MS. FARLINGER: The arrangements for share-based  
27           fisheries have not been discussed in terms of when  
28           a decision will be made for the salmon fishery so  
29           I don't have a date for a potential share-based  
30           fishery. I would say the feasibility of the  
31           share-based fishery has not been concluded on at  
32           this point, either.  
33      MR. EIDSVIK: Mr. Commissioner, I could easily use  
34           another day with these particular witnesses, but I  
35           appreciate all the time and I appreciate the  
36           answers to the questions. Thank you.  
37      THE COMMISSIONER: Do you want to mark that one?  
38      MR. EIDSVIK: Yes, Mr. Commissioner, I'd like to get  
39           the photos marked as an exhibit, please.  
40      THE COMMISSIONER: Marked for identification purposes.  
41           Thank you.  
42      THE REGISTRAR: It will be marked as MMM, triple M.  
43  
44                   MMM FOR IDENTIFICATION: Church email and  
45                   photos  
46  
47      MR. EIDSVIK: And sorry, Mr. Commissioner, I have one

1 last issue, and it was raised by my friend about  
2 the opening and the licence times, that were  
3 entered as exhibits, and I think the DFO staff had  
4 a hard time, Ms. Farlinger had a hard time  
5 deciding what it is, and the problem is in the DFO  
6 webpage, it says "communal openings," and then  
7 when you go to the link with the list, it doesn't  
8 show on the page. So I'm wondering if it was  
9 possible for Ms. Farlinger to check that tonight  
10 and then very quickly, we'll deal with it in the  
11 morning, just for identification. It will take  
12 one minute.

13 MS. FARLINGER: Certainly.

14 MR. EIDSVIK: Thank you.

15 MR. HARVEY: Members of the panel, I'm Chris Harvey. I  
16 act for the West Coast Area G Trollers and the  
17 United Fisherman Allied Workers' Union. I have 40  
18 minutes, Mr. Commissioner.

19  
20 CROSS-EXAMINATION BY MR. HARVEY:

21  
22 Q I'd like to start much as Mr. Rosenbloom did, by  
23 acknowledging the heavy burden of responsibility  
24 that all the members of the panel bear in carrying  
25 out a public mandate that has huge impacts for  
26 both fish and the lives of countless individuals  
27 and communities. Those people and all Canadians  
28 owe you a debt of gratitude, I think I can say,  
29 for undertaking a difficult job. And my questions  
30 will likely indicate that I don't agree with the  
31 way you carry out your mandate, but I don't want  
32 you to think that I don't appreciate and respect  
33 the job you do.

34 So I'd like to start with Ms. Farlinger and  
35 to say this, to ask this. Do you accept that many  
36 remote coastal communities in B.C., some  
37 aboriginal, some predominantly non-aboriginal have  
38 had a connection with and dependence on the salmon  
39 fishery for over 100 years?

40 MS. FARLINGER: Many of the participants in the various  
41 fisheries on this coast have been from coastal  
42 communities. Some still are, many are not. And  
43 certainly, there have been secondary industries in  
44 coastal communities that have been a significant  
45 part of coastal communities.

46 MR. HARVEY: I'm going to start by asking Mr. Lunn to  
47 bring up I think it's Tab 4 on my list. It's a

1 copy of the **Ahousaht** Supreme Court of B.C. case.  
2 I want to just read a passage from page 686 and  
3 then ask you a question about it. No,  
4 paragraph 686, Mr. Lunn.

5 Q This is the judgment of Madam Justice Garson in  
6 the trial court. She says at paragraph 686:

7  
8 I find that the evidence of the actual  
9 participants in the industry, that is, the  
10 Nuu-chah-nulth community members, paints a  
11 more accurate picture of Nuu-chah-nulth  
12 participation than the statistical evidence  
13 of the experts based on licences and quota.  
14 I also find that the loss of a fishing job in  
15 the Nuu-chah-nulth communities imposes  
16 greater hardship on the plaintiffs than it  
17 does on non-aboriginal communities because of  
18 the isolation of Nuu-chah-nulth communities  
19 and the lack of other significant economic  
20 opportunities. Evidence of other economic  
21 opportunities such as guiding recreational  
22 fishers, working in fishing lodges, working  
23 in aquaculture (which is relevant to this  
24 conclusion and is therefore admissible), and  
25 tourism does not refute the evidence of  
26 historical economic dependence on the fishery  
27 and the relative absence of other significant  
28 economic opportunities.  
29

30 Ms. Farlinger, do you basically agree with those  
31 findings of the court?

32 MS. FARLINGER: I'm certainly not going to argue with  
33 the findings of the court. I do think that  
34 certainly in B.C., the fishing industry, the  
35 forest industry have been significant economic  
36 opportunities to isolated communities.

37 Q Yes, all right.

38 MR. HARVEY: And while we're on this case, Mr. Lunn,  
39 could I ask you to bring up paragraph 656? I'm  
40 just going to refer to the first sentence.

41 Q It says:

42  
43 Dr. Hall testified that the individual  
44 transferrable quota system is simply too  
45 expensive for Nuu-chah-nulth fishers.  
46

47 Now, that wouldn't surprise you, Ms. Farlinger,

1 would it?

2 MS. FARLINGER: It wouldn't surprise me that Dr. Hall  
3 said that, no.

4 Q But it wouldn't surprise you, either, would it,  
5 that -- well, let's put it this way, that the ITQ  
6 system adds a layer of cost to the expenses of any  
7 fisherman, any fisherman, I'm sorry, other than  
8 the first generation who receive it free?

9 MS. FARLINGER: Depending on the design and  
10 implementation of the quota system, there  
11 certainly is increased monitoring requirement in a  
12 quota system and that cost can accrue to  
13 fishermen. I think there's a broad set of design  
14 principle which means that the generality here can  
15 be tested in the design and system.

16 Q Yes. And then, of course, the ITQs immediately  
17 take on a value which can be bought and sold on  
18 the market, correct?

19 MS. FARLINGER: As I understand, licences held by  
20 individual fisherman are also bought and sold.  
21 The privilege is exchanged on the market. That  
22 there are quota systems that are transferable and  
23 where they are transferable, it is specifically to  
24 introduce the kind of flexibility in the system  
25 that would allow fishermen to be able to transfer  
26 that quota.

27 Q Yes. But you would agree that for a fisherman to  
28 have to buy quota, that fisherman would be  
29 incurring a cost which he does not otherwise have  
30 to incur?

31 MS. FARLINGER: A fisherman could buy quota which would  
32 incur a cost. A fisherman can also acquire a  
33 licence which does incur cost.

34 Q I'm wondering if anyone in your Department has  
35 done any study of the effect of quotas in other  
36 sectors, such as the dairy industry and, in  
37 particular, the indication that those quotas have  
38 created a windfall for the first generation and a  
39 terrible burden for subsequent generations wishing  
40 to enter that industry. Have those sort of  
41 studies been done?

42 MS. FARLINGER: The kind of studies that, to my  
43 knowledge, have been done, that either have been  
44 done by the Department or considered by the  
45 Department are those that apply to common property  
46 resources and quota systems or share-based  
47 systems, or transferable quota systems that

1           pertain to common property resources.

2           Q     Turning to the PICFI licence scheme, are you aware  
3           that the Department holds about 14 Area G troll  
4           licences at present, acquired through PICFI  
5           funding and has, so far, refused to reissue them  
6           to West Coast Vancouver Island First Nations?

7           MS. FARLINGER: I'm aware there are some Area G troll  
8           licences in the holdings of PICFI.

9           Q     Yes.

10          MS. FARLINGER: I am not aware that we have refused to  
11          issue those to West Coast First Nations.

12          Q     I think it was Mr. Chamut who said that the  
13          intention is that those would be used for transfer  
14          of access upriver, to First Nations upriver.  
15          That's the general -- isn't that why they're being  
16          held in inventory?

17          MS. FARLINGER: They are being used both in marine  
18          fisheries and used in planning through PICFI for  
19          both marine fisheries and potentially, for in-  
20          river fisheries. They're used for both.

21          Q     Yes, all right.

22          MS. FARLINGER: And in fact, there are negotiations I  
23          have been a part of where salmon licences,  
24          including troll licences, were very much part of  
25          the discussion.

26          Q     We had evidence on August 19th that about 15  
27          percent of the PICFI resources of about 100  
28          million over five years was earmarked for moving  
29          access to salmon fishery to in-river First Nations  
30          for terminal fisheries. I want to know whether  
31          there's been any change in this policy with  
32          respect to West Coast Vancouver Island First  
33          Nations following the recent decision of the Court  
34          of Appeal in the **Ahousaht** case?

35          MS. FARLINGER: First of all, I should say that that is  
36          not a policy, that the 15 percent identified of  
37          PICFI funds and salmon licences was a practice and  
38          that they have not all, nor were they intended all  
39          to go to upriver. Many of them have been used to  
40          support the in-river fisheries, but not all of  
41          them, and there's certainly negotiations with many  
42          of the PICFI First Nations groups who have asked  
43          for and received interim use of salmon licences,  
44          and who have negotiated the use of marine salmon  
45          licences in their ongoing proposals. So both  
46          marine fishing licences, that is regular,  
47          commercial fishing licences, and the pilots

- 1 upriver have been supported by the PICFI licences  
2 that have been retired.
- 3 Q Do you agree that aboriginal and non-aboriginal  
4 fishermen alike operating in the integrated  
5 coastal fishery have the advantage of what's been  
6 called a diverse portfolio of other species to  
7 access on salmon off-cycle years, and yet, still  
8 face significant challenges in terms of long-term  
9 economic viability? Do you accept that as a  
10 general statement?
- 11 MS. FARLINGER: There are more species and, therefore,  
12 more licences, and therefore an ability to adapt  
13 to changing markets and economic conditions for  
14 licences in the marine environment generally than  
15 there are in freshwater.
- 16 Q Yes, and yet, that fishery, the coastal commercial  
17 fishery still faces significant challenges, does  
18 it not, even with that advantage?
- 19 MS. FARLINGER: Depending on the species, the kind of  
20 fishery, where it takes place, and the market  
21 value of the particular fish in a year, yes, the  
22 fishing industry is a challenging business.
- 23 Q All right. Would you agree with me that those  
24 challenges increase as the total allowable catch  
25 available to the coastal salmon industry  
26 decreases?
- 27 MS. FARLINGER: I think the management structure of the  
28 fishery which provides for access which has  
29 reduced access to mixed stock fisheries has meant  
30 that without further change, the amount of  
31 available fish for harvest has reduced access to  
32 the commercial fishery. However, at the same  
33 time, I note that in demonstration fisheries where  
34 salmon fisherman have chosen to test share-based  
35 fisheries, that they report an increased value  
36 that is more money for less fish. So I think  
37 there are two sides to that coin.
- 38 Q And it differs for each individual fishery, too,  
39 does it not?
- 40 MS. FARLINGER: It does. It's very dependent on the  
41 gear, whether the gear is selective, where it  
42 takes place.
- 43 Q Yes.
- 44 MS. FARLINGER: And for example, a fishery on a stock  
45 that is not a multi-stock or a mixed-stock fishery  
46 is certainly far easier to deal with in terms of  
47 management and access for the fisherman.

1 Q Ms. Dansereau, could I ask you -- well, first of  
2 all, you're aware, obviously, of the large  
3 expenditure of public funds that has been made  
4 over the past decade, or so, on the revitalization  
5 strategy to reduce fleet size with the object of  
6 ensuring that the remaining fleet is economically  
7 sustainable?

8 MS. FARLINGER: To some extent, yes.

9 Q Yes. Is it still a policy objective of the  
10 Government of Canada under the **Fisheries Act** and  
11 **Oceans Act** to have sustainable and economically  
12 viable ocean fisheries and to benefit coastal  
13 communities so far as possible?

14 MS. FARLINGER: So far as possible, yes, although we've  
15 changed the language to "economically prosperous."

16 Q Yes, all right. Thank you. Should that policy  
17 objective be taken into account in the socio-  
18 economic analysis that DFO managers are required  
19 to carry out under the Wild Salmon Policy?

20 MS. FARLINGER: Yes, although, as you know,  
21 conservation has to be our first principle and so  
22 once that's taken into consideration and we're not  
23 threatening the species, then the allocation and  
24 the management decisions come into play against  
25 those economic realities.

26 Q Yes. You need a scientific biological basis of  
27 information to assess those risks and also some  
28 basis for assessing the socio-economic  
29 considerations?

30 MS. FARLINGER: Yes.

31 Q Yes, all right. I'd like to turn to the Wild  
32 Salmon Policy, if I may, Exhibit 8, at page 14.  
33 Page 14, the paragraph beginning:

34  
35 DFO has a responsibility ...

36  
37 It's right under there. And I'll just read it  
38 because it's useful to read this again:

39  
40 DFO has a responsibility to provide a  
41 sustainable harvesting opportunities that  
42 will best meet its obligations that First  
43 Nations contribute to the social wellbeing  
44 and provide employment and other economic  
45 benefits to individuals in fisheries-  
46 dependent communities. A significant  
47 challenge for this policy is to safeguard the

1 genetic diversity of salmon while accounting  
2 for and realizing these benefits of the  
3 salmon catch. Since harvest restrictions  
4 necessary to conserve the wild salmon  
5 resource affect communities and individuals,  
6 cultural, social and economic impacts need to  
7 be considered.

8  
9 Some critics will suggest that consideration  
10 of the social and economic benefits arising  
11 from salmon harvesting will compromise salmon  
12 conservation. Others will claim that a focus  
13 on maintaining diversity means the  
14 elimination of major salmon fisheries. In  
15 reality, the interests of both salmon and  
16 people need to be accounted for --  
17

18 MR. HARVEY: Could we go up to the upper right?

19 MR. LUNN: Yes.

20 MR. HARVEY:

21  
22 -- need to be accounted for in a successful  
23 conservation program. This policy reflects a  
24 management framework that can provide care  
25 and respect for a resource and its ecosystem  
26 and for the people within it. Protecting the  
27 resource base provides the maximum potential  
28 for benefits to people. The full measure of  
29 the WSP's success will be the achievement of  
30 salmon conservation accompanied by human  
31 well-being.  
32

33 So Ms. Farlinger, I interpret that as meaning that  
34 the WSP requires a kind of merging of socio-  
35 economic wellbeing with conservation; am I right?

36 MS. FARLINGER: I think, generally, that's true, and  
37 it's certainly expressed in the Wild Salmon Policy  
38 and particularly focussed in Strategy 4.

39 Q Yeah. Another way of saying it, in its  
40 application and intent is that it contemplates the  
41 continuance of a mixed stock fishery, the  
42 fisheries that presently support many individual  
43 families and fisheries-dependent communities in a  
44 manner that also conserves and protects the  
45 resource base? Is that a --

46 MS. FARLINGER: Could you maybe say that again? I'm  
47 sorry.

1 Q So I tried to kind of summarize and encapsulate  
2 the idea. It contemplates the continuance of the  
3 mixed stock fisheries that presently support many  
4 individuals, families and fisheries-dependent  
5 communities in a manner that also conserves and  
6 protects the resource base?

7 MS. FARLINGER: I'm not sure I agree with the summary  
8 of continuing at all costs a mixed stock fishery.  
9 I think that economic values are something that  
10 can be considered, and social values, in a fairly  
11 limited context by Fisheries and Oceans. And by  
12 that, I say that Fisheries and Oceans, on the  
13 Pacific Coast does not say that if you are a  
14 fisherman who lives in Ucluelet or in Bella Bella,  
15 that you cannot move to Vancouver or Delta, or  
16 Vancouver Island. And in fact, many fishermen,  
17 successful fishermen have.

18 DFO cannot say you can build a processing  
19 facility in X, Y or Z location. That's simply not  
20 within the scope of our regulatory responsibility.  
21 So while we can put choices in front of people  
22 that provide for conservation, I would not agree  
23 with you that these statements you've just read  
24 led us to believe that the mixed-stock fishery is  
25 the only or the best way to fish for salmon in a  
26 profitable way.

27 Q I didn't mean to make that implication and I  
28 didn't mean to read in the words, "at all costs,"  
29 if I did.

30 MR. HARVEY: Mr. Lunn, could I have document number 2  
31 on the screen, please? It's an article on the  
32 social wellbeing approach, and I'd like to read a  
33 passage from page 4. It's in the left-hand  
34 paragraph, the paragraph beginning:

35  
36 The most obvious ...

37  
38 Yes, there we have it. Could you highlight that,  
39 Mr. Lunn, "The most obvious and commonly advocated  
40 ..."?

41 Q This is, I should say an international article, it  
42 deals with international matters that we also see  
43 here:

44  
45 The most obvious and commonly advocated  
46 global policy response to the fisheries  
47 crisis is to reduce fishing effort by cutting

1 the number of fishers and boats in operation,  
2 following the Malthusian argument that there  
3 are too many fishers chasing too few fish.  
4 Accordingly, fisheries policy regimes around  
5 the world consistently adopt a set of  
6 policies whose main purpose is to reduce  
7 fishing effort and to remove fishers from  
8 those ecosystems perceived as under threat.  
9 The measures adopted involve the use of  
10 standard policy instruments such as licensing  
11 gear, restrictions and catch quotas, but also  
12 the newer approaches such as individualized  
13 transferable quotas which create  
14 individualized virtual property rights in an  
15 effort to enable market-type transactions in  
16 marine-protected areas.

17  
18 Then it talks about the number of failings. Then  
19 dropping down about six lines:

20  
21 This failing is most obvious.

22  
23 There it is:

24  
25 This failing is most obvious in criticisms of  
26 the distributional shortcomings of an ITQ-  
27 based management system much touted by  
28 mainstream fisheries economists.

29  
30 And finally, a passage on page 5, the next page,  
31 upper left, the last six lines of the top  
32 paragraph:

33  
34 The displacement of fishers from often  
35 ancestral occupations that are the basis for  
36 pride, a sense of personal and social  
37 identity and of cultural heritage raises  
38 fundamental questions about the trade-offs  
39 between conservation, development and the  
40 human right to a distinctive and culturally  
41 informed way of life.

42  
43 Ms. Farlinger, those seem to highlight the same  
44 issues you face in implementing the Wild Salmon  
45 Policy; would I be correct?

46 MS. FARLINGER: Well, it's certainly a set of very  
47 broad statements, ranging from marine protected

1 areas to share-based fisheries and the reduction  
2 of the fleet. I think in our instance, the  
3 reduction of the salmon fleet was a very specific  
4 and focussed activity in which the --

5 Q Yeah.

6 MS. FARLINGER: -- government made a significant  
7 investment that was aimed at a viable fishery, as  
8 you point out. I do think that there are a number  
9 of ways to design management systems, whether they  
10 are share-based, or whether they are not. And I  
11 think that the basic proposition, and this is my  
12 view, the basic proposition that shares create a  
13 sense of ownership is really a bit of a red  
14 herring, excuse me for saying that, because  
15 really, it is the holding of the licence in  
16 perpetuity, whether it is for a competitive  
17 fishery, or for a share-based fishery, it's really  
18 that which gets at the issue of some people having  
19 access or being able to purchase access, either  
20 through the buying of a licence or of a share that  
21 really is the long-term access question to the  
22 fishery.

23 Q Yes.

24 MS. FARLINGER: So I certainly don't agree with some of  
25 the premises in here, but I think it's very broad  
26 and I could probably agree with parts of it, and  
27 not parts of others.

28 Q Yes. All right.

29 MR. HARVEY: I wonder if we could just have that  
30 marked, please, as the next exhibit?

31 THE REGISTRAR: 1951.

32

33 EXHIBIT 1951: Coulthard et al, Poverty,  
34 Sustainability and Human Wellbeing: A Social  
35 Wellbeing Approach to the Global Fisheries  
36 Crisis, 2011

37

38 MR. HARVEY:

39 Q Now, Mr. Bevan, I'd like to ask you some  
40 questions, and I thank you for the explanation you  
41 gave of the precautionary approach. And I think  
42 I've got it right, haven't I, that it originates  
43 as a matter of Canadian law and policy from the  
44 United Nations Fisheries Agreement of '95, which  
45 was incorporated into Canadian policy in 2003?

46 MR. BEVAN: Yes, that is the mechanism that created the  
47 obligation to move into the precautionary

1 approach.

2 Q Yes.

3 MR. HARVEY: I'd like to add that United Nations  
4 agreement that's been discussed to the record, if  
5 Mr. Lunn could pull it up, please? I've discussed  
6 this with Mr. Taylor. It wasn't in the disk that  
7 I think it was intended to be in. So Mr. Lunn,  
8 could you pull up the United Nations Fisheries  
9 Agreement?

10 Q United Nations Conference on Straddling Fish  
11 Stocks and Highly Migratory Stocks, Agreement for  
12 the Implementation of the Provisions ... et  
13 cetera. This, I think, is the UNFA, is it not?

14 MR. BEVAN: Yes, that's correct.

15 MR. HARVEY: Yes. Could that be marked, please?

16 THE REGISTRAR: 1952.

17

18 EXHIBIT 1952: United Nations Fishery  
19 Agreement  
20

21 MR. HARVEY:

22 Q And Mr. Bevan, you explained -- thank you -- that  
23 this was developed in the context of a multi-year  
24 class fish populations and that your challenge was  
25 to apply it to the different type of stock we have  
26 here, namely, stock of salmon where you have one  
27 year class that all die after spawning?

28 MR. BEVAN: Yes, that's correct. This was designed to  
29 deal with the normal marine fish populations and  
30 doesn't necessarily fit as well in its design  
31 concept to an anadromous fish stock where the  
32 entire spawning stock dies off.

33 Q Yes. The last page, Mr. Lunn, is Annex II, and it  
34 seems to be the guidelines for application of the  
35 precautionary reference points. Perhaps if we  
36 could highlight that and, in particular, the  
37 second paragraph. The second paragraph deals with  
38 the concept of limit reference points and the  
39 second sentence reads:

40

41 Limit reference points set boundaries which  
42 are intended to constrain harvesting within  
43 safe biological limits within which the  
44 stocks can produce maximum sustainable yield.  
45

46 So that's the basic originating concept; is that  
47 correct?

1 MR. BEVAN: Yes, the concept was that there would be  
2 decision rules set around the reference points.  
3 The limit reference point is reference point that  
4 defines the transition of the stock from a  
5 cautious zone and into a critical area where  
6 there's a danger of serious or irreparable harm,  
7 and you don't want to go there, and therefore,  
8 your decision rules should limit fishing mortality  
9 in that regard. And then there's reference points  
10 for defining the end of the cautious zone and  
11 entry into a situation where you can move towards  
12 a higher yield. I think the concept of maximum  
13 sustainable yield has been re-evaluated since this  
14 document was put together because it assumes a  
15 steady state and that you can define something  
16 over multi-year term that is not taking into  
17 consideration of significant variations in the  
18 ecosystem. In addition, the -- I'll just leave it  
19 at that, that point.

20 Q Yes, we've got limited time here. Am I right that  
21 some 77 nations have, to date, signed this  
22 international agreement, including the U.S.?

23 MR. BEVAN: I have to confess that I haven't got a  
24 current count. All I know is that it is enforced  
25 now because it's been ratified by enough nations  
26 that that's the case.

27 Q Are you aware that the U.S. has signed onto it?

28 MR. BEVAN: I have to confess that the U.S. hadn't  
29 signed onto the U.N. Law of Sea convention so I'm  
30 not quite sure of their status regarding this and  
31 I haven't had --

32 Q No.

33 MR. BEVAN: -- a briefing on that.

34 Q All right. All right. Well, I suggest they have  
35 and that this model is also the origin of the  
36 Alaskan approach, but I won't pursue that with  
37 you.

38 MR. HARVEY: If we just go, before we leave it, to  
39 paragraph 7, down at the bottom of the page, Mr.  
40 Lunn, and read the second sentence. This relates  
41 to the upper limit reference point. It says:

42  
43 For stocks which are not overfished, fishery  
44 management strategies shall ensure that  
45 fishing mortality does not exceed that which  
46 corresponds to maximum sustainable yield, and  
47 that the biomass does not fall below a

1                   predefined threshold.  
2

3                   So that deals with the upper benchmark and it  
4                   seems that if you have a healthy stock, you can  
5                   crop it back to the MSY level. That's the basic  
6                   concept, is it not?

7           Q       The concept is that at that -- that the healthy  
8                   stock will allow for a bigger harvest, obviously,  
9                   and that your harvest level should be such that  
10                  you don't endanger the productivity of that stock  
11                  and move it on a trajectory towards a cautious  
12                  zone. I would, however, point out that -- again,  
13                  that there's an issue here in that not all  
14                  populations are responsive to controlling fishing  
15                  mortality in the same way. So some stocks are  
16                  multi-year low natural mortality, and they may be  
17                  more influenced by fishing mortality than short-  
18                  lived variable productivity stocks where the  
19                  ecosystem may have a much greater influence than  
20                  the fishing mortality.

21       MR. HARVEY: All right. Now, Mr. Leadem referred you  
22                  to Exhibit 1940, if we could bring that up, which  
23                  I think deals with the Canadian acceptance of this  
24                  model.

25       Q       This discusses the model being accepted into  
26                  Canada; is that correct, Mr. Bevan?

27       MR. BEVAN: That's correct.

28       Q       And at page 4, if we could have it, explains  
29                  removal reference again? The paragraph, yes,  
30                  beginning, "The removal reference ...":  
31

32                   *The Removal Reference* is the maximum  
33                   acceptable removal rate. The removal rate is  
34                   the ratio of all human induced removals and  
35                   total exploitable stock size.  
36

37                   So just so we understand that, if we have a stock  
38                   size of 20 million, and the MSY level is 2  
39                   million, which you may have in a very healthy  
40                   salmon run, before we take into account the  
41                   balancing with other stocks, this model provides  
42                   for -- would provide for removal of 18 million, 18  
43                   out of the 20 million?

44       MR. BEVAN: I think that's an oversimplification.  
45                  Again, this is taking what is designed for a  
46                  multi-year spawning stock standing biomass and  
47                  trying to then interpret it against the different

1 biology of the salmon so that's why there's a Wild  
2 Salmon Policy that takes the concept and modifies  
3 it to fit the --

4 Q Yes.

5 MR. BEVAN: -- fit the biology of Pacific Salmon. What  
6 this says is that you must have a limit on your  
7 removals and if you saw the removal rate on the  
8 draft, it was flat lined in the healthy zone so  
9 that you would make sure you didn't move the stock  
10 back into the cautious zone.

11 Q Yes.

12 MR. BEVAN: But that applies to a multi-year standing  
13 spawning stock biomass and does not apply to how  
14 it has to be interpreted relative to Pacific  
15 salmon.

16 Q All right. But there's nothing in the U.N. model  
17 or the Canadian Scientific paper adopting it which  
18 would limit removals to a 60-percent rate? The  
19 removal is intended to be a proportionative  
20 exploitable stock size and the MSY point, is it  
21 not?

22 MR. BEVAN: Again, I think that application of MSY in  
23 the context of the biology of the Pacific salmon  
24 is a bit of a stretch. What we need to do on the  
25 Pacific salmon context is understand the spawning  
26 escapement targets and the river conditions and  
27 migration conditions, and then work backwards from  
28 that to determine your harvest rates. To use a  
29 formula on a stock based on something designed for  
30 another reality would be very risky.

31 Q All right. Well, I think we've dealt with the  
32 concept. I want to ask you, with regard to the  
33 precautionary approach, whether you deal with  
34 this. This comes from another exhibit, but I'm  
35 just going to read you one sentence, and I think  
36 you will agree with it. This is with respect to  
37 the application of the precautionary approach:

38  
39 The appropriate risk to consider when using  
40 this framework is the probability of and the  
41 severity of the impact from management  
42 actions on stock productivity.

43  
44 That's the risk that you're dealing with when  
45 you're applying the precautionary approach, is it  
46 not?

47 MR. BEVAN: Yes, that is one of the risks, I should

1 say, because part of the precautionary approach,  
2 as we now understand it, after a number of years  
3 of use, is that we have to deal with the risks the  
4 fishing activity poses to the ecosystem and the  
5 impact of the ecosystem and its productivity will  
6 have on the population.  
7 Q Yes.  
8 MR. BEVAN: So it's a bit broader than that now, but  
9 yes, that's the risk that we're primarily  
10 controlling.  
11 Q All right. Thank you. And would you agree that  
12 in a mixed stock fishery, you would include the  
13 impacts on stock productivity of both the healthy  
14 stock and the weak stock, correct?  
15 MR. BEVAN: You have to consider, in a mixed stock  
16 fishery, the overall impacts of the fishing  
17 activity on the --  
18 Q Yes.  
19 MR. BEVAN: -- suite of co-migrating stocks.  
20 Q Yes.  
21 MR. BEVAN: And you also have to look at the  
22 possibility of the impacts' reversibility. In  
23 other words, if you overfish to a point of  
24 extirpation of weak stock, then you don't have any  
25 options in the future.  
26 Q Yes, but the only point I wanted to make, because  
27 we've heard a lot about weak stocks, is that  
28 applying the precautionary principle would also  
29 include considering the risk of a healthy stock  
30 getting hammered down through delayed density  
31 dependent effects?  
32 MR. BEVAN: You'd have to consider all of the aspects  
33 and, again, the basic principle in precautionary  
34 approach is that your actions should not lead to  
35 irreversible --  
36 Q Yes.  
37 MR. BEVAN: -- impacts.  
38 Q Or irreversible or long-term, would you not  
39 also --  
40 MR. BEVAN: Both.  
41 Q Yes. All right. Well, we're hear in this  
42 Commission dealing with a long-term decline. I  
43 think you would -- and I want to ask Dr. Richards  
44 a few questions with respect to Exhibit 1364.  
45 MR. HARVEY: If we could have that brought up?  
46 Q 1364. This has been dealt with. This is the  
47 Draft Summary Report of the April 14 and 15th

1 workshop. At page 7, the overescapement issue is  
2 dealt with towards the bottom, and the last three  
3 bullet points, if we could highlight them, the  
4 third from the bottom bullet points:  
5

6 Chilko and Quesnel 2010 escapements (Smax)  
7 200-500% and will likely be hammered in  
8 coming years (negative effects observed at  
9 Smax greater than 200%, and apparent in  
10 current brood year, plus at least 3 following  
11 years).  
12

13 PSC report uncertain LIKELY-UNLIKELY, move to  
14 LIKELY for long term decline?  
15

16 Is that an outline of the discussion that took  
17 place, or a summary of the discussion, Dr.  
18 Richards?

19 DR. RICHARDS: I think that is a summary of some of  
20 what was going on in that presentation. I was not  
21 actually at the workshop on that particular day.  
22 I was at the workshop on the following day so I  
23 can't personally verify that that was what was  
24 said.

25 Q Okay.

26 DR. RICHARDS: But I understand that Dr. Selbie would  
27 have had an opportunity to write this.

28 Q Yes.

29 DR. RICHARDS: That would have been his -- likely,  
30 would have been some of his wording.

31 Q Yes. The interesting thing about delayed density  
32 dependence or density dependence is that you don't  
33 need to know the biological mechanism for it  
34 because decades of stock recruit data tell you  
35 that it happens after certain spawner density; is  
36 that fair?

37 DR. RICHARDS: I think that that is very much a  
38 generalization.

39 Q Yes.

40 DR. RICHARDS: And I think that there is some very good  
41 discussion of this in technical report number 10.

42 Q Yes.

43 DR. RICHARDS: In particular the summary on page 45 of  
44 that technical report, where Dr. Peterman goes on  
45 to really say that delayed density dependence  
46 overall, there is no evidence that it's happening  
47 generally.

1 Q Yes.  
2 DR. RICHARDS: There is some evidence for it, most  
3 likely in Quesnel.  
4 Q He wrote that report before this workshop that you  
5 set up here, didn't he?  
6 DR. RICHARDS: That's correct.  
7 Q Yeah. Now --  
8 DR. RICHARDS: And can I also say that on that third  
9 last bullet, they're talking about what is there  
10 is really, I would say, speculation. We are  
11 continuing to do some work in looking at what's  
12 going on within some of those populations and I  
13 believe that from the preliminary work that's been  
14 done right now, we're looking at, for Chilko Lake,  
15 which is what's referenced here, one of the  
16 highest productivities on record. So from the  
17 preliminary data. So I would say that that  
18 speculation there, based on work that is continued  
19 over the summer is probably not correct.  
20 Q You mean to say it's changed from April to now?  
21 DR. RICHARDS: Between April -- first of all, I think  
22 the comment from Dr. Selbie was really one of  
23 projection so he is speculating there.  
24 Q All right.  
25 DR. RICHARDS: That's a hypothesis. It's not based on  
26 evidence.  
27 Q All right.  
28 DR. RICHARDS: And the evidence that we have collected  
29 to date would suggest that that speculation turns  
30 out to be false, at least for Chilko Lake.  
31 Q Yeah. Well, you've got research evidence with  
32 respect to density effects, do you not, and I'll  
33 refer to one, and that's at my document number 8,  
34 Mr. Lunn.  
35 MR. HARVEY: This hasn't been marked yet so I'd like to  
36 add it. This is entitled, "Preliminary Report on  
37 Sockeye Fry in Quesnel and Shuswap Lakes in 2003,"  
38 Jeremy Hume, Ken Shortreed and Steve MacLellan.  
39 Q That's a research document developed by your  
40 Department; is that right?  
41 DR. RICHARDS: Yes. I'm not precisely sure of the  
42 origin of that document, since I didn't see any of  
43 the surrounding material, and it wasn't really  
44 identified, but I do know that they were doing  
45 studies, and they were doing studies at that time.  
46 And it would have been -- some of the information  
47 from that work, which would have been referenced

1 by Dr. Selbie and also by Dr. Peterman.

2 Q Yeah. All right.

3 MR. HARVEY: Could that be marked, please?

4 THE REGISTRAR: 1953.

5

6 EXHIBIT 1953: Hume et al, Preliminary Report  
7 on Sockeye Fry in Quesnel and Shuswap Lakes  
8 in 2003

9

10 MR. HARVEY: My time is up, but Mr. Lowes has kindly  
11 given me 10 minutes, and I know that's a kindness  
12 on his part because he's limited in time, too.

13 Q Let me just ask you this general concept. The  
14 biological mechanism for these density effects  
15 could be starvation, could be pathogens or a  
16 combination of both; is that correct, Dr.  
17 Richards?

18 DR. RICHARDS: I think we need to be clear to which  
19 you're specifically referring. Are you  
20 specifically referring to delay density  
21 dependence? Or are you talking about -- there's  
22 multiple factors at play here.

23 Q Well, let's take first the Ricker model standard  
24 of density dependence, which it seems everybody  
25 accepts, could be caused due to starvation. The  
26 limit on the carrying capacity could be caused by  
27 starvation or pathogens, correct?

28 DR. RICHARDS: That's a very limited subset. I think  
29 that there are -- it could be due to a wide range  
30 of potential factors.

31 Q All right.

32 DR. RICHARDS: It could be lack of spawning habitat.  
33 It could be just poor growth rates. Not  
34 necessarily starvation, that's sort of an extreme  
35 case.

36 Q Yes.

37 DR. RICHARDS: In some kinds of situations, it's often  
38 thought that there's some cannibalism which can  
39 help lead to this.

40 Q All right.

41 DR. RICHARDS: So it's a very, very general concept,  
42 which could have a lot of factors which could be  
43 at play.

44 Q But you don't exclude pathogens as one of them.  
45 Pathogens resulting from the sockeye being so  
46 densely confined?

47 DR. RICHARDS: Well, I think that that is a one of a

1           very wide range of possibilities and I wouldn't  
2           necessarily put that at the top of my list.  
3       Q     I thought you agreed, didn't you, with Mr. McDade  
4           that crowding amplifies the pathogens?  
5       DR. RICHARDS: I think at that time we were talking  
6           about a quite different context.  
7       Q     Yeah.  
8       DR. RICHARDS: But just because something is possible  
9           in theory doesn't mean that that is exactly the  
10          rational for what's going on in that particular  
11          situation.  
12       Q     All right. But are you aware that DFO and the  
13          aquaculture industry tried about 20 years ago to  
14          raise sockeye and fish farms and that attempt  
15          failed because the sockeye could not withstand the  
16          crowding in fish farms?  
17       DR. RICHARDS: I'm not aware specifically of what  
18          you're discussing. I do know that we do have  
19          trouble in general with sockeye in a laboratory  
20          situation so that might be similar.  
21       Q     Yes. They carry certain diseases, like IHN,  
22          throughout their whole lifecycle, don't they?  
23       DR. RICHARDS: Well, again, you've made a very general  
24          statement and I mean, you're assuming then that  
25          all fish are sick and I think that that's not the  
26          case. In fact, what I didn't have a chance to  
27          mention earlier was that we have been undertaking  
28          some studies of smolts now within the Strait of  
29          Georgia and have been looking at screening them  
30          for pathogens and we have not been finding any  
31          evidence of any viruses in the fish that we've  
32          looked at to date.  
33       Q     But you've nevertheless put down pathogens as one  
34          of the likely causes for the decline in this  
35          summary workshop report, correct?  
36       DR. RICHARDS: But this was not in the context of delay  
37          density dependence or density dependence.  
38       Q     Well, whatever. All right.  
39       DR. RICHARDS: But that was in a different context that  
40          we were thinking of it. It wasn't in that  
41          context.  
42       Q     Yes. Yes. But you have no way of tracing the  
43          origin of the inflated or increased pathogen  
44          level, do you, in the sockeye in the Gulf of  
45          Georgia or Queen Charlotte Sound?  
46       DR. RICHARDS: Okay. First of all, you've made an  
47          assumption that there's an increased pathogen

1 level, and I'm not sure that that's consistent. I  
2 mean, we have seen --  
3 Q Yes. All right.  
4 DR. RICHARDS: -- different levels of diseases at  
5 different times, but it's not been something where  
6 we've got a consistent trend.  
7 Q All right. Ms. Farlinger, finally, I'd like to  
8 turn to Exhibit 1908 for a moment. 1908, at page  
9 0014. The Shuswap graph in the middle indicates  
10 the 2010 run, this is only the females, affected  
11 females at over 3.5 million, the carrying capacity  
12 with the red asterisk, somewhat less than a  
13 million, indicating that there's over 5 million  
14 fish that were not removed from that particular CU  
15 that could have been removed. And I want to ask  
16 Ms. Farlinger this, that before the Late Summer  
17 run fishery was closed in 2010, leading to this  
18 situation, there was a seine opening at the mouth  
19 of the Fraser, correct?  
20 MS. FARLINGER: There were a number of seine fisheries,  
21 but there was a seine fishery at the mouth of the  
22 Fraser.  
23 Q Yes. And there was such an abundance of sockeye  
24 that they were catching huge catches. One is up  
25 to 35,000 sockeye in one set, I'm told?  
26 MS. FARLINGER: There were big seine catches in that  
27 fishery, yeah.  
28 Q Yes. And one advantage of the seine fleet is it  
29 provides a tap for fishery managers, does it not,  
30 that you can turn off to regulate escapement  
31 levels, correct?  
32 MS. FARLINGER: I'm not sure I understand your  
33 reference.  
34 Q Well, all right. Well, at any rate, the fishery  
35 was closed primarily to protect weak stocks; is  
36 that correct?  
37 MS. FARLINGER: Ultimately, the limiting factor on the  
38 fishery at the end of the fishery on the Late  
39 stocks had to do with protecting weak stocks, yes.  
40 Q Primarily, Thompson coho?  
41 MS. FARLINGER: It would depend on the date of the  
42 fishery. It could be Thompson coho.  
43 Q Yes.  
44 MS. FARLINGER: It could, a little later, be steelhead.  
45 It could earlier be Cultus sockeye.  
46 Q Yes. If we look at 5 million sockeye in the  
47 Shuswap alone and we give them a \$20 value each,

- 1           that's \$100 million. Ms. Farlinger, supposing you  
2           were asked whether to close the fishery or not, in  
3           circumstances like that, do you think you'd want  
4           to do a quick calculation of the amount of the  
5           loss to the GDP of Canada resulting from foregone  
6           harvest of sockeye?
- 7   MS. FARLINGER: I think that that's certainly one of  
8           the factors that needs to be considered and is  
9           considered by fishery managers and one of the  
10          reasons we need a policy like the Wild Salmon  
11          Policy to guide us when we have extraordinary runs  
12          as we did in the 2010.
- 13   Q       Who made the decision to close the fishery?
- 14   MS. FARLINGER: The decision to close the fishery would  
15          have been made on the grounds by the fishery  
16          manager.
- 17   Q       Did they do a calculation, do you know, of the  
18          amount of the foregone harvest, or the number of  
19          Thompson coho that they were attempting to save,  
20          or the possibility of lost production through  
21          density effects?
- 22   MS. FARLINGER: I know there was discussion at the time  
23          in which I participated about the value of the  
24          fish that had been landed already in the  
25          commercial fishery, the value of fish that may  
26          additionally be landed in that fishery as part of  
27          the management decision.
- 28   Q       Supposing you were engaged in the sockeye fishery  
29          as a seine boat operator who had struggled for  
30          years to keep his business viable, you would have  
31          expected those calculations to be made before the  
32          sockeye fishery was closed, would you not?
- 33   MS. FARLINGER: Not being a seine operator, I couldn't  
34          say, but I suppose a seine operator might expect  
35          that.
- 36   Q       Yes. And you would expect, given the huge  
37          importance of the decision, you'd expect a  
38          retrospective analysis afterwards to see if it was  
39          properly done and you'd expect transparency; would  
40          you not so that stakeholders could see whether the  
41          decision was the right one?
- 42   MS. FARLINGER: I think that the post-season review is,  
43          in fact, exactly that, yeah.
- 44   Q       Has an analysis been done to show, basically, the  
45          cost of each coho that was saved?
- 46   MS. FARLINGER: I don't believe an analysis has been  
47          done on the cost to the coho.

1 Q Thank you. Or the cost to GDP of the foregone  
2 harvest in the Shuswap and the other strong runs?  
3 MS. FARLINGER: I think that there has been an economic  
4 analysis that I'm just going to make brief  
5 reference to, and it had to do with whether the  
6 Cultus River stock should or should not be listed  
7 under the **Species At Risk Act**. And there was an  
8 economic analysis done there and it was the  
9 commitment of the Minister of Fisheries and Oceans  
10 to manage for that weak stock that provided the  
11 rationale for the support of the government to not  
12 list the Cultus sockeye. So while this specific  
13 economic analysis that you referred to in 2010, to  
14 my knowledge, has not been done with respect to  
15 coho and the value of coho, I think the broader  
16 economic analysis on whether a species would be  
17 listed under the **Species At Risk Act** which,  
18 really, was one of the formative steps in terms of  
19 implementing weak stock management, has been done.

20 Q Thank you.  
21 MR. MCGOWAN: Mr. Commissioner, Mr. Lowes is next. I  
22 wonder if you'd like a brief afternoon  
23 adjournment.

24 THE REGISTRAR: The hearing will now recess for 10  
25 minutes.

26  
27 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)  
28 (PROCEEDINGS RECONVENED)

29  
30 THE REGISTRAR: The hearing is now resumed.

31 MR. LOWES: Yes, Mr. Commissioner, J.K. Lowes for the  
32 B.C. Wildlife Federation and the B.C. Federation  
33 of Drift Fishers. And I know I'm the last one on  
34 the afternoon, and you're probably getting tired,  
35 so I'm --

36 MR. MCGOWAN: Well, I'm not sure Mr. Lowes is the last  
37 for the afternoon. He has half an hour, and I  
38 think we'll continue right till the end of the  
39 day.

40 MR. LOWES: Well, all right. So much for my sweet-  
41 talking of the witnesses.

42  
43 CROSS-EXAMINATION BY MR. LOWES:

44  
45 Q I'd like to start with Dr. Richards. Dr.  
46 Richards, the Commissioner is going to be faced  
47 with a mound of scientific evidence as a result of

1           these hearings and, in particular, scientific  
2           papers. I'd like you to step back a bit and speak  
3           about science, generally, to the Commissioner, and  
4           I'd like to hear your evidence on the use and  
5           particularly the limits on the kind of scientific  
6           evidence that's been led here and, in particular,  
7           the limits on the computer modelling. So the  
8           limits on scientific -- what can science deliver  
9           and what can't it deliver to the Commission as  
10          distinct from the Department, and what, in  
11          particular, limits there are on computer  
12          modelling?

13       DR. RICHARDS: Okay, Mr. Commissioner, this is a fairly  
14       broad topic. I'm not quite sure exactly how to  
15       proceed with answering this in the time we have  
16       available. But I can -- let me just start by  
17       saying that, I mean, science proceeds, often,  
18       through hypothesis testing, you try to then go out  
19       and get as much data as you can to verify your  
20       various hypotheses. A lot of the evidence that we  
21       have comes from long-term monitoring series, which  
22       we've continued on some time, and given that we've  
23       got long time series of data, we're able to see  
24       whether patterns are repeatable and consistent.  
25       And one of the factors we're looking at, here, is  
26       we have a number of different CUs for sockeye and  
27       a number of different stocks, and so we're  
28       obviously interested to look for comparisons  
29       amongst these, and to see -- and looking for a  
30       long time series of data. We're also interested  
31       in comparing what's going on there with other  
32       stocks of salmon, other stocks of sockeye, and so  
33       certainly comparison is one of the main tools that  
34       we use.

35                In the context more specifically of computer  
36       modelling, I think any time we do a model you  
37       could think of it perhaps more generally as a bit  
38       of a thought experiment, that models can be a very  
39       useful way to assemble your ideas and to allow  
40       you, then, given a certain set of assumptions, to  
41       say -- ask questions like "What if?"

42                So if I make certain assumptions here, I can  
43       end up with certain patterns and then I can sort  
44       of probe my knowledge around certain assumptions  
45       and then say, "Well, if the world were actually  
46       like 'X' and that happened, what would be the  
47       consequences under this particular system I have

1 built?"

2 But models are just that, they're thought  
3 experiments. They're not -- you have to be very  
4 careful, and I think it's often a bit dangerous,  
5 so you don't want to fall in love with your model,  
6 and so you need to be very careful to step back  
7 and look at it with a bit of a dose of reality,  
8 because, you know, any simplification is  
9 necessarily built on some assumptions, and the  
10 world can sometimes throw some big surprises at us  
11 and we can be dealing with things that are very  
12 much outside of the world that we built in our  
13 model.

14 So it's very important, in science, to always  
15 be looking to see whether there is something  
16 unusual, to see whether there is something that's  
17 different, and when we see -- often models will  
18 help us and to suggest areas where we could do  
19 some more experiments that would either help us  
20 say, "Well, yeah, this continues to make sense,"  
21 or, say, "No," when there's something else that we  
22 need to add and to look in.

23 Another thing that we can do is often -- in  
24 addition to this, we will work with data and often  
25 in the context of doing a model, you're trying to  
26 base it on some data series or data that you may  
27 have collected, and one of the obvious decisions  
28 that you have to make when you do that kind of  
29 analysis, is you need to think about how the data  
30 are constructed that will go into that analysis.  
31 There's usually some initial decisions that you  
32 make, maybe because of expediency, maybe because  
33 of ease or simplification, about selecting certain  
34 datasets or certain parts of a data series, and  
35 certainly when you make that selection, that can  
36 have quite a great determination on the outcome  
37 and the input -- end point that you reach with  
38 your analysis. And sometimes you may not even be  
39 so aware of that when you're doing -- because you  
40 can get sort of wrapped up in the data and the  
41 analysis that you've done with the data that you  
42 selected.

43 So you can end up thinking that you've got  
44 some kind of trend, but that may -- you might have  
45 come up with a different conclusion if you'd had  
46 earlier data or done some other selection of your  
47 data.

1           Now, another aspect here, too, when we're  
2 going forward, is to think about the whole issue  
3 of prediction. Obviously, in this context,  
4 prediction is very much of interest, and again,  
5 you know, prediction is very challenging. We're  
6 not nearly as good as the weather forecaster in  
7 doing the prediction, and we know how wrong that  
8 is. And to some extent, this is because we use  
9 models which are based on what happened in  
10 history. So we can say, "Well, if tomorrow is  
11 like what it was yesterday, then we may be doing  
12 okay in terms of what our prediction is, so we can  
13 perhaps do a better job." But sometimes things  
14 get thrown at you, sometimes the unexpected  
15 happens, and that means -- and in that context you  
16 can be very much thrown off and you could be very  
17 wrong in terms of your prediction.

18           Now, one of the other things that we've  
19 thought about, too, is -- is, "Well, maybe we just  
20 need to do more research and we can get all the  
21 answers and we can improve our uncertainty."  
22 Well, that's also not the way that science works.  
23 You know, fortunately, we can -- sometimes things  
24 are just hard and we can put a lot of effort into  
25 a problem and we could end up going some -- down  
26 some kind of wrong turn, or we don't -- you don't  
27 often tend to hear a lot about the negative things  
28 that happened with science, but -- but often you  
29 can go down a road and that doesn't really lead to  
30 a helpful answer in the end, or you could get  
31 something which could be extremely helpful to you.

32           So it's often hard to prejudge in advance how  
33 something is going to turn out. So you can -- you  
34 can hope and you can work and you can try to  
35 advance things quickly - you always want to try to  
36 make progress - but it is challenging and  
37 sometimes you may not even have the right tool to  
38 look at certain kinds of questions. Perhaps some  
39 other kind of technology will come along that will  
40 enable you more quickly to come to some answers  
41 that you wouldn't otherwise had access to.

42           So that's a bit of a ramble. I'm not quite  
43 sure where you wanted me to go with that.

44       Q     Well, that's not where I wanted you to go. I just  
45 wanted you to help the -- I just wanted you to  
46 help the Commissioner. So if I've got you right,  
47 is it fair to call science a formalized thinking

1 process? It's a way of thinking, or a way of --  
2 DR. RICHARDS: Well, I mean, it's -- science is -- it's  
3 more than thinking. Science is a line of inquiry.  
4 Q All right.  
5 DR. RICHARDS: Science is setting up of even things  
6 like standards and procedures. So it's, you know,  
7 it's quite broad and I think, depending on how you  
8 look at it, it could be taken in some different  
9 contexts.  
10 Q But it's one source of a number of sources of  
11 information for this Commission?  
12 DR. RICHARDS: Yes.  
13 Q And some other sources would be the judgment,  
14 common sense, and even intuitions of experienced  
15 fish managers and scientists and even users of the  
16 resource?  
17 DR. RICHARDS: Well, one thing that science does tell  
18 us is that sometimes your intuition is wrong.  
19 Q Yes. And sometimes it's right?  
20 DR. RICHARDS: And sometimes it's -- yes, sometimes  
21 it's right, but sometimes it's wrong. And so I  
22 think you have to be very careful to keep an open  
23 mind when you're doing your -- when you're doing  
24 science.  
25 Q Yes, absolutely. But you would agree that the  
26 input from experienced people in fisheries  
27 biology, fisheries management, and the  
28 institutional wisdom of institutions such as the  
29 DFO and the Pacific Salmon Commission are also  
30 sources of information along with the kind of  
31 science that the Commission has heard?  
32 DR. RICHARDS: I think we need to take a -- it's very  
33 important, I think, to take a broad context and to  
34 look at things from different perspectives and  
35 different angles.  
36 Q And a question that the Commissioner asked of one  
37 of the witnesses, and it was essentially, what is  
38 meant by terms like "likely" and "unlikely" as  
39 hypotheses, and how is the Commissioner to use  
40 those kind of terms in deciding the kind of  
41 questions that are asked of him?  
42 DR. RICHARDS: Well, that is a good question, and for  
43 which I --  
44 Q It's not mine, it's the Commissioner's.  
45 DR. RICHARDS: Unfortunately, there isn't one answer,  
46 because often, in certain circumstances, there  
47 will be very clear and precise definitions.

1           Certainly, for example, on the wording of the  
2           Intergovernmental Panel on Climate Change, where  
3           they have used those words, they have used them  
4           with very formal definitions. In the context  
5           where we have been writing some -- or I have been  
6           writing briefing notes, I think our -- it was less  
7           formally meant in that rather than the same formal  
8           definition that was used in some places, I think  
9           our terminology has been a little bit more loose,  
10          but is just based on the balance of evidence.  
11         Q       And as a general approach, I understand that  
12           science, or the strength is essentially in  
13           discarding hypotheses rather than proving  
14           hypotheses; is that fair enough?  
15         DR. RICHARDS: That is certainly one way in which  
16           science proceeds. There's some different theories  
17           about how to proceed with science. That is one of  
18           them.  
19         Q       All right. And should "likely/unlikely", et  
20           cetera, be taken in that kind of context?  
21         DR. RICHARDS: Well, I think in the context we're  
22           looking at here, we were often saying, you know --  
23           we were -- it was not -- we were really looking  
24           for explanations that could cause, I think, the  
25           magnitude of change in the population that we saw  
26           in 2009. So when we're looking at some  
27           possibilities, it was not to say that we couldn't  
28           have had, you know, deaths of individual fish  
29           through one source or another source, but we were  
30           trying to look at what made sense to us from a  
31           population level.  
32         Q       So the terms that are used at a pretty high level  
33           of generality?  
34         DR. RICHARDS: So they were really used at a -- in a  
35           bit more general context than they might have been  
36           in a, say, in a scientific literature.  
37         Q       Thank you. Mr. Bevan, in relation to monitoring,  
38           you described the recreational fishery as low  
39           risk. What do you mean by "low risk"?  
40         MR. BEVAN: If you have low fishing power and  
41           reasonable conservation ethic, then that means  
42           that you're not likely to have a pulse of fishing  
43           power that's so significant relative to the stocks  
44           being targeted that there could be a significant  
45           change in the population level very quickly, and  
46           so quickly, in fact, that management may be unable  
47           to respond in time.

1 Q Right.

2 MR. BEVAN: So the risk is relevant -- relevantly low  
3 compared to something like a seine fleet with a  
4 lot of fishing power and particularly if you're  
5 looking at high power fishing capacity on a finite  
6 or a limited number of fish, it becomes a real  
7 high risk that has to be very carefully managed.

8 Q Right. And the recreational fishery has that low  
9 power and good ethic?

10 MR. BEVAN: Generally, there's a lot of conservation  
11 concerns on the part of people who go and use  
12 these fish for recreational purposes. They want  
13 to have that conserved. It doesn't mean there  
14 aren't real problem people in it, but there's a  
15 community that has some significant track record  
16 in terms of conservation efforts and rebuilding  
17 efforts, et cetera.

18 Q And pretty well organized, for the sizes of it?

19 MR. BEVAN: In the context of British Columbia, I'd say  
20 that's correct.

21 Q Yeah. And Ms. Farlinger, along the same lines,  
22 during the discussion or the panel on the  
23 recreational fishery, one of the managers  
24 described the recreational fishery and, in  
25 particular, the Sports Fishing Advisory Board of  
26 the standard for good consultation. Would you  
27 agree with that proposition?

28 MS. FARLINGER: I think that the Sport Fish Advisory  
29 Board is one model that allows the recreational  
30 fishing community to get to its constituency. I  
31 think that we've certainly had lots of complaints  
32 from recreational fishers about the number of  
33 meetings and, you know, sort of practical issues  
34 around it, but I think it's fair to say the Sport  
35 Fish Advisory Board has made some significant  
36 efforts to ensure that they hear from their  
37 constituency, and that is certainly a mark of a  
38 good advisory process.

39 Q And the community, generally, on the board is also  
40 helpful in communicating information from the  
41 Department to their constituency; is that right?

42 MS. FARLINGER: They are. Whether they support the  
43 Department's decision or whether they don't, yes.

44 Q Staying with you, Ms. Farlinger, I asked Mr.  
45 Chamut to describe, generally, or to agree with me  
46 in describing, generally, the political climate,  
47 if you want to put it that way, but the changes

1 other than biological or environmental that took  
2 place over the '80s and '90s. And I want to go  
3 through the list and just get the sense of whether  
4 these are changes which either, in your view, were  
5 significant at the time or perhaps still are.  
6 You've got a full plate, and I wanted to describe  
7 the plate that was in front of Mr. Chamut.

8 The first change I understand was -- or the  
9 first one that I'm going to refer to is a shift in  
10 responsibility for setting escapement goals and  
11 harvest rates from the Pacific Salmon Commission  
12 to the Government of Canada, Department of  
13 Fisheries and Oceans; is that correct?

14 MS. FARLINGER: The domestic management of the fishery  
15 is done by Canada, although the specific  
16 management; that is, the high level management  
17 decisions about how much fish is available to  
18 catch, are done by the -- in the Fraser panel  
19 waters for pink and chum, by the commission --

20 Q Yeah, that's the current regime.

21 MS. FARLINGER: Yes.

22 Q But there was a change in that regime in the late  
23 '80s, early '90s, I don't have the date, but in or  
24 around that period. That responsibility went from  
25 the Salmon Commission to Canada.

26 MS. FARLINGER: Okay, I don't think I would be the  
27 right person --

28 Q Okay.

29 MS. FARLINGER: -- to ask about that, as I was not  
30 involved in salmon management in the late '80s.

31 Q All right. The other was the -- another was the  
32 1987 rebuilding program.

33 MS. FARLINGER: Yes?

34 Q The Aboriginal Fishing Strategy was introduced in  
35 1992?

36 MS. FARLINGER: Yes, that was an important change.

37 Q Yeah. And the early '90s saw the appearance of  
38 significant or substantial differences between  
39 estimates, DBEs?

40 MS. FARLINGER: DBEs, I'm sorry, you have --

41 Q Well, differences between the estimates of the  
42 returning fish at Mission and the estimates of the  
43 returned fish on the spawning grounds.

44 MS. FARLINGER: There's certainly, over a long period,  
45 were concerns about the counts on the spawning  
46 grounds and discrepancies between the -- that and  
47 the counts at Mission, yes.

1 Q Yes. And significant fleet restructuring, I think  
2 you mentioned the Mifflin Plan and that happened  
3 in and around the mid-90s?

4 MS. FARLINGER: Yes, there was a significant amount of  
5 effort, time and resources put into the  
6 restructuring of the commercial fleet.

7 Q Yeah, and I think you said, in answer to  
8 somebody's question, that the driving force of  
9 that restructuring was essentially the  
10 reallocation of the access?

11 MS. FARLINGER: No. I want to be clear to separate  
12 those two things. The reduction of the fleet by  
13 -- in the order of 50 percent in the Mifflin Plan,  
14 in the, I guess it would be, in the late '90s, and  
15 then the Canadian Fishery Adjustment and  
16 Restructuring Plan was focused on reduction of  
17 effort for conservation. And I think Mr. Bevan  
18 can certainly refer to the international direction  
19 with respect to that, but there was -- it was also  
20 an economic issue aimed at viability of the  
21 commercial fishery.

22 Q Yeah, I'm not interested in the detail, I just  
23 want to get the big picture of what the dynamics  
24 looked like through the '80s and '90s from the  
25 perspective of the fish managers.

26 MS. FARLINGER: Okay, I just want to be clear that  
27 there is a difference in the programs that support  
28 the increase in aboriginal participation in the  
29 commercial fishery and the reduction of the fleet.  
30 They are two different things for different  
31 reasons.

32 Q I understand.

33 MS. FARLINGER: Yeah.

34 Q Again, Ms. Farlinger, you've used the term "common  
35 property resource" a couple of times, and you  
36 referred to the *Larocque* case and you even -- and  
37 you talked about the introduction from the AFS.  
38 Where do you, as the RDG, get your update on the  
39 law that pertains to your department, and how do  
40 you disseminate it throughout the region? I'm not  
41 looking for a sense of whether you understand it  
42 or not, or whether we would agree with it or not,  
43 but in terms of the process, how do you get it and  
44 what do you do with it?

45 MS. FARLINGER: Fundamentally, the Department of  
46 Justice provides advice to the Department, that  
47 is, the Deputy, on court decisions, and there is

1 consideration of that in terms of potential  
2 program changes or any other issue, any change in  
3 how the Department conducts its work that's done  
4 in consultation with the regions, and at that  
5 point the Department decides how the advice from  
6 Justice on the case law is dealt with in terms of  
7 legal risk and the implementation of programs.  
8 Q And how does it get passed down to the on-the-  
9 ground managers?  
10 MS. FARLINGER: There's a variety of ways, but  
11 generally speaking, through policy documents or  
12 updates.  
13 Q Thank you. One of you, and my note,  
14 unfortunately, doesn't say which one, used the  
15 happy phrase, "The user groups need to understand  
16 each other's perspective." Do you recall who said  
17 that?  
18 MS. FARLINGER: I don't, but I agree with it.  
19 Q You agree with it. Well, this is not simply  
20 another objective that is desirable, this is  
21 really the *sine qua non* of whether we move forward  
22 in terms of the -- achieving the objectives of the  
23 Department of Fisheries and Oceans, isn't it?  
24 MS. FARLINGER: That's true.  
25 Q Yeah. And I think Mr. Bevan, in a pretty blunt  
26 way, said, "The alternative is pretty draconian  
27 measures by the Minister," is that --  
28 MR. BEVAN: If it's a consensus, the Minister will take  
29 that very significantly into consideration and  
30 almost inevitably will follow the consensus. In  
31 the absence of consensus, the Minister's in an  
32 unenviable position of having to take a decision  
33 and impose it on the players. Now, we still  
34 consult, et cetera, but that means the Minister's  
35 the one who has to make a final call.  
36 Q Okay. Now, am I right in my understanding that  
37 it's the intent of Strategy 4 of the Wild Salmon  
38 Policy to provide a forum for that kind of mutual  
39 understanding of each other's perspectives and  
40 input into the Department's thinking?  
41 MS. FARLINGER: I think that's a fair statement. It's  
42 also, as the policy is, itself, a statement of the  
43 way consultation was evolving as well as an  
44 intention to move forward with that principle.  
45 Q Now --  
46 MS. FARLINGER: Yes.  
47 Q -- is Strategy 4 a decision-making process, or is

1           it a process to design a decision-making process;  
2           do you understand the distinction?

3   MS. FARLINGER: I hope I do. I think that the  
4           intention of Strategy 4 is to ensure that we  
5           provide the Minister or decision-makers with the  
6           best possible advice, and we believe, as embodied  
7           in Strategy 4, that that can be done where people  
8           can -- who are concerned about the matters  
9           surrounding Pacific salmon, share each other's  
10          views and perspectives.

11   Q       Well, correct me if I'm wrong, but it seems as if  
12          progress on Strategy 4 is not dependent on  
13          completion of Strategies 1, 2, and 3. Shouldn't  
14          Strategy 4 be emphasized to get the understanding  
15          between user groups, or amongst user groups and  
16          between the user groups and the Department?

17   MS. FARLINGER: It's certainly true that a common  
18          understanding of information is a very useful tool  
19          in bringing groups together, and they're often  
20          dramatically -- dramatic differences within and  
21          between groups in terms of understanding status of  
22          stocks or the science around that. And I think we  
23          have focused our effort, in particular, on  
24          Strategy 1, but the reality is, is we need to use  
25          integrated processes as well to develop the  
26          fishing plans annually.

27                So it's both a long-term process that should  
28          benefit from better information, and a short-term  
29          process that we need to use annually to plan the  
30          fisheries.

31   Q       Ms. Farlinger, my understanding of the evidence  
32          I've heard is that putting aside the long-term  
33          decline issues and the uncertainty issues, the  
34          Department is faced with three current and urgent  
35          conservation-related management problems, that  
36          being the Early Stuart, the Early Migrating Late-  
37          Runs, and the Cultus Lake; is that correct?

38   MS. FARLINGER: Those are certainly three important  
39          issues pertaining to these stocks, yes.

40   Q       And with respect to the Early Stuart, my  
41          understanding, too, is that's a discreet stock  
42          that can, because of its timing, it's the first  
43          sockeye in, can be relatively isolated and managed  
44          as a discreet stock; is that correct? And it is,  
45          in fact?

46   MS. FARLINGER: It certainly has some advantages in  
47          timing over some of the other stocks, but there

1 are a significant number of First Nations, in  
2 particular, who have harvested that stock  
3 historically, and so have an interest in that  
4 stock. So even though that is a relatively  
5 contained problem, as you point out, with respect  
6 to timing, there still are a large number of First  
7 Nations groups who have an interest in it, so it  
8 still is complex in terms of the decisions that  
9 need to be made around -- around it.

10 Q That's where the demand is, is within the First  
11 Nations groups?

12 MS. FARLINGER: At the moment, yes.

13 Q Yes. And am I correct that the Cultus has some  
14 similarities to the Early Stuart in that it's  
15 essentially at the tail end of the summery and,  
16 again, is a stock that is relatively discreet and  
17 separate?

18 MS. FARLINGER: As I think the fisheries managers  
19 testified in certainly more detail, the Cultus  
20 Lake stock is considered as part of the Late  
21 stocks, and one of the trends we have seen more  
22 recently is shifts in timing. And, of course,  
23 that's what we're testing for in-season, is when  
24 stocks are coming through.

25 Q And with respect to the Early Migrating Late-Runs,  
26 I'm assuming that you've had some regard to Dr.  
27 Woodey's substantial amount of evidence in these  
28 proceedings? He has an analysis and a diagnosis  
29 and a prescription for how to manage that problem?

30 MS. FARLINGER: Personally, I have not seen Dr.  
31 Woodey's evidence, but I expect it is being -- is  
32 known to managers and they would be considering  
33 it.

34 Q I'm going to suggest that you -- we've heard lots  
35 of evidence of trade-offs within the context of  
36 the Wild Salmon Policy. Isn't the Cultus stock a  
37 prime candidate for a case study on the trade-off  
38 process?

39 MS. FARLINGER: It's certainly a weak stock that --  
40 whose harvest rate limits access to other, more  
41 productive stocks, and so could be the subject of  
42 a study.

43 Q Now, my last - I think I've got a minute - I want  
44 to read you the last paragraph - I won't take you  
45 to it - of Exhibit 185, which is a document that  
46 Mr. Harvey referred to in his questions. And so I  
47 don't leave you out, Ms. Dansereau, perhaps I'll

1 put this question to you.

2 The paragraph reads this [as read]:  
3

4 Among other things, the policy is guided by  
5 the principle that the fishery is a common  
6 property resource to be managed for the  
7 benefit of all Canadians consistent with  
8 conservation objectives, the constitutional  
9 protection afforded aboriginal and treaty  
10 rights, and the relative contributions that  
11 various users of the resource make to  
12 Canadian society, including socioeconomic  
13 benefits to communities.  
14

15 Do you see that as the paradigm within which you  
16 discharge your responsibilities?

17 MS. DANSEREAU: To a large extent, yes.

18 Q Sorry?

19 MS. DANSEREAU: To a large extent, yes. That is, it is  
20 a common property resource and we established the  
21 rules to make sure that it is shared in the best  
22 way possible.

23 Q Yes. And other members of the panel? Ms.  
24 Farlinger, was that the -- is that the correct  
25 paradigm, as you understand it, for you doing your  
26 job?

27 MS. FARLINGER: I think that the -- fundamentally, the  
28 regulatory job or the strategic outcomes that are  
29 identified by the Department set the direction for  
30 how we operate, generally, in that context you  
31 just described.

32 Q Yeah. Mr. Bevan?

33 MR. BEVAN: I agree with the statements made by the  
34 other witnesses.

35 Q And Dr. Richards?

36 DR. RICHARDS: I think I will defer to the other  
37 witnesses, since this is a management question.

38 MR. LOWES: Okay. Thank you.

39 MR. MCGOWAN: Mr. Commissioner, Mr. Gailus is next. We  
40 have three or four minutes left. I don't know if  
41 you would like him to start, or you wish him to  
42 start at 10:00 tomorrow morning.

43 THE COMMISSIONER: If he wants to start, that's fine.

44 MR. GAILUS: Mr. Commissioner, John Gailus, for Western  
45 Central Coast Salish First Nations. I'm cognizant  
46 of the time, and I'm going to actually give the  
47 panel some homework, and I think that -- to think

1 about tonight, and then I'll have some more  
2 substantive questions for them tomorrow.  
3

4 CROSS-EXAMINATION BY MR. GAILUS:  
5

6 Q Just to let the panel know, the First Nations that  
7 I represent are Cowichan, Penelakut, Chemainus,  
8 Hwlitsum, and the members of the Te-mexw Treaty  
9 Association.

10 Now, I want to start off with the Wild Salmon  
11 Policy, and I think I heard from the witnesses  
12 earlier in the week that the genesis of this  
13 policy was the new directions document from 1998;  
14 is that correct?

15 MS. FARLINGER: It was the new directions policy  
16 document that first stated publicly that the  
17 Department would write a Wild Salmon Policy.

18 Q Okay. And there were a series of reports from the  
19 Commissioner of the Environment that followed up  
20 on that, and I think the latest one was 2004.  
21 Would you agree that that kind of gave the push to  
22 the Wild Salmon Policy?

23 MS. FARLINGER: I'm not sure, but it's -- but reports  
24 from the Commissioner on the Environment do  
25 provide us with direction.

26 Q Okay. Thank you. If we could just bring up  
27 Exhibit 8, please, Mr. Lunn, page 7. So this is  
28 the homework for the panel. I just want to take  
29 you to a quote there. It starts with, "The  
30 successful implementation," and it provides:  
31

32 The successful implementation of this policy  
33 will provide Canadians with:  
34

- 35 • Healthy, diverse, and abundant wild salmon  
36 populations for future generations;
- 37 • Sustainable fisheries to meet the needs of  
38 First Nations and contribute to the  
39 current and future prosperity of all  
40 Canadians; and
- 41 • Improved accounting for ecosystem values  
42 in salmon and habitat management decisions  
43

44 I have one question for you on that. Perhaps Ms.  
45 Dansereau - I don't want to call you the Deputy,  
46 it sounds like I'd be the sheriff, in that case.  
47 Would you characterize these as the pillars of the

1 Wild Salmon Policy?

2 MS. DANSEREAU: I think those that were there at the  
3 drafting of this policy would be better suited to  
4 answer that question, but I think they are central  
5 statements to the policy as it currently stands.

6 Q You'd agree that these three goals, I suppose  
7 maybe is a better word, they're fundamental to the  
8 success of this policy?

9 MS. DANSEREAU: Well, they're certainly fundamental of  
10 the direction that the policy is trying to go to,  
11 because they "will provide Canadians with," so  
12 it's more of a directional statement.

13 MR. GAILUS: Okay. I note the time, Mr. Commissioner.  
14 I think I'll adjourn until tomorrow?

15 THE COMMISSIONER: Thank you very much.

16 THE REGISTRAR: The hearing is now adjourned until ten  
17 o'clock tomorrow morning.

18  
19 (PROCEEDINGS ADJOURNED TO SEPTEMBER 28, 2011,  
20 AT 10:00 A.M.)  
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26

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