

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



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

Public Hearings

Audience publique

Commissioner

L'Honorable juge /
The Honourable Justice
Bruce Cohen

Commissaire

Held at:

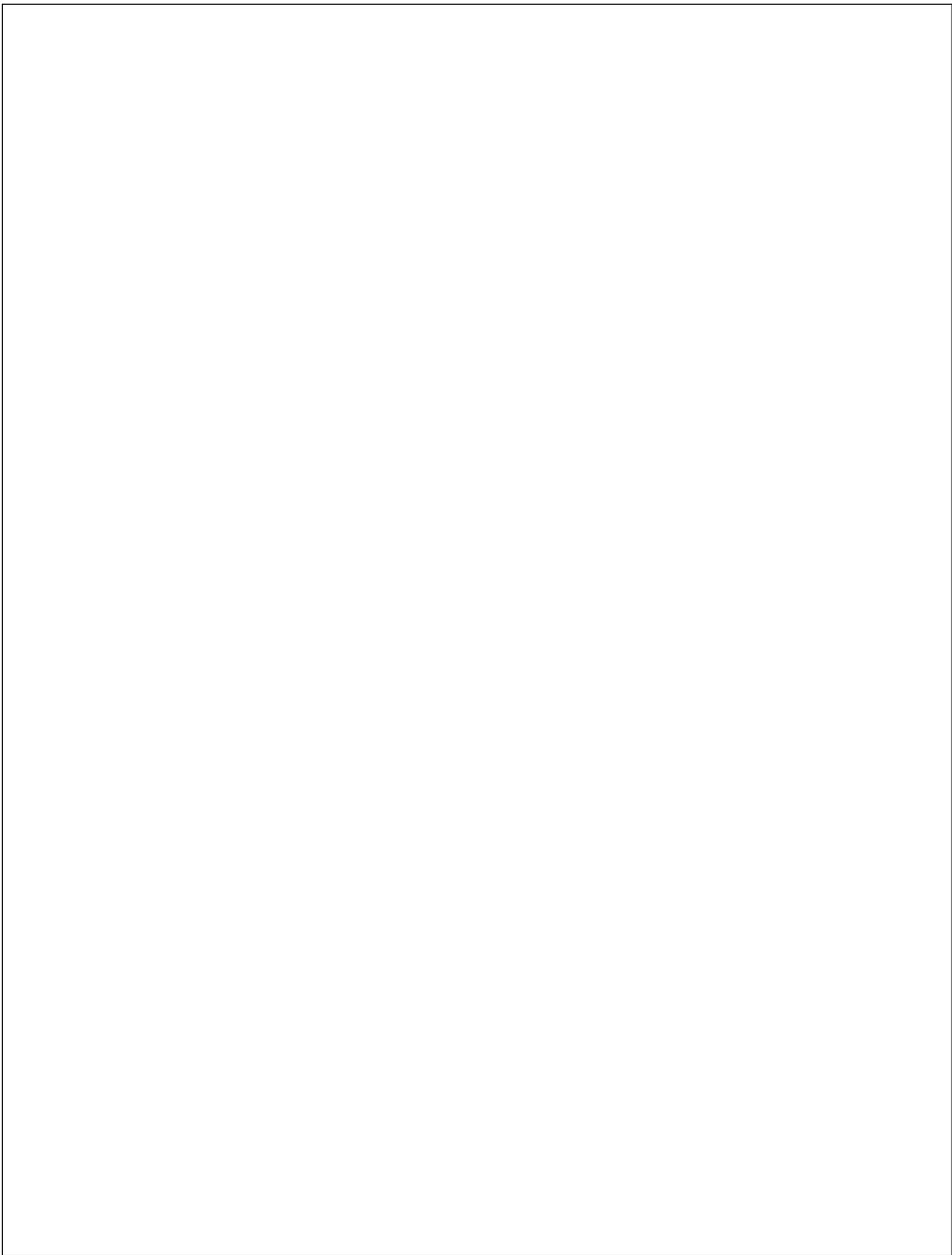
Room 801
Federal Courthouse
701 West Georgia Street
Vancouver, B.C.

Wednesday, September 28, 2011

Tenue à :

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

le mercredi 28 septembre 2011



APPEARANCES / COMPARUTIONS

| | |
|---|--|
| Brian Wallace, Q.C. Patrick McGowan Brock Martland Jennifer Chan | Senior Commission Counsel Associate Commission Counsel Associate Commission Counsel Junior Commission Counsel |
| Mitchell Taylor, Q.C. Tim Timberg | Government of Canada ("CAN") |
| Clifton Prowse, Q.C. Boris Tyzuk, Q.C. | Province of British Columbia ("BCPROV") |
| No appearance | Pacific Salmon Commission ("PSC") |
| Chris Buchanan | B.C. Public Service Alliance of Canada Union of Environment Workers B.C. ("BCPSAC") |
| No appearance | Rio Tinto Alcan Inc. ("RTAI") |
| No appearance | B.C. Salmon Farmers Association ("BCSFA") |
| No appearance | Seafood Producers Association of B.C. ("SPABC") |
| No appearance | Aquaculture Coalition: Alexandra Morton; Raincoast Research Society; Pacific Coast Wild Salmon Society ("AQUA") |
| Tim Leadem, Q.C. | Conservation Coalition; Coastal Alliance for Aquaculture Reform Fraser Riverkeeper Society; Georgia Strait Alliance; Raincoast Conservation Foundation; Watershed Watch Salmon Society; Mr. Otto Langer; David Suzuki Foundation ("CONSERV") |
| Don Rosenbloom | Area D Salmon Gillnet Association; Area B Harvest Committee (Seine) ("GILLFSC") |

APPEARANCES / COMPARUTIONS, cont'd.

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

APPEARANCES / COMPARUTIONS, cont'd.

| | |
|--|---|
| Tim Dickson Nicole Schabus | Sto:lo Tribal Council Cheam Indian Band ("STCCIB") |
| No appearance | Laich-kwil-tach Treaty Society Chief Harold Sewid, Aboriginal Aquaculture Association ("LJHAH") |
| No appearance | Musgamagw Tsawataineuk Tribal Council ("MTTC") |
| Benjamin Ralston Ming Song Lisa Fong | Heiltsuk Tribal Council ("HTC") |

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| 1956 | Departmental Priorities, Extended DMC, September 29-30, 2010 [DFO] | 10 |
| 1957 | Pacific Region - Interim Assessment Framework and Procedures for Addressing Changes to First Nation Food, Social and Ceremonial Allocations and Fishing Locations, Draft, 20/01/2005 | 16 |
| 1958 | Decision Guidelines for Evaluating Requests to Change the Provisions of FSC Mandates, Draft 2, June 27, 2005 | 19 |
| 1959 | Articles re Missouri River Recovery Implementation Committee (MRRIC) and Independent Science Advisory Panel | 34 |
| 1960 | Memorandum from Mitch Bloom to Claire Dansereau, dated December 23, 2010, Object: Administration and Enforcement of the Pollution Prevention Provisions of the Fisheries Act (Section 36) | 35 |
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| 1965 | Fisheries and Oceans Canada Pacific Aboriginal Fisheries Framework (PAFF) Strengths/Weaknesses/Opportunities/Threats Assessment by Barry Huber, dated 2008 | 53 |

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| 1967 | Affidavit #1 of Mike Lapointe, 27 September 2011, and attachments | 95 |
| 1968 | Canadian Okanagan Basin Technical Working Group Terms of Reference, January 7, 2003 | 95 |
| 1969 | The Okanagan Fish/Water Management Tool: Guidelines for Apprentice Water Managers, v.2.0.000 | 95 |
| 1970 | Hyatt et al, Fish and Water Management Tool Project Assessments: Okanagan Adult Sockeye Salmon (<i>Oncorhynchus nerka</i>) Abundance and Biological Traits in 2005 | 96 |
| 1971 | Upper Columbia Aquatic Management Partnership (UCAMPO), Aboriginal Aquatic Resources and Oceans Management Program Collaborative Management Agreement, Quarterly Report, January 1-March 31, 2007 | 96 |
| 1972 | Holtby, A Synoptic Approach for Assessing the Conservation Status of Pacific Salmon on a Regional Basis, CSAS Working Paper 2011/P23, Draft | 100 |
| 1973 | Untitled DFO document purported to be models of a scenario in which FSC allocations are decreased so that economic opportunity can be increased (formerly marked as OOO for identification) | 104 |

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1 Vancouver, B.C. /Vancouver (C.-B.)
2 September 28, 2011/le 28 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 MR. MARTLAND: Mr. Commissioner, Brock Martland, M-a-r-
16 t-l-a-n-d, appearing for the Commission on three
17 very quick really housekeeping kinds of matters
18 we'd like to canvass at the outset.

19 The first is just to put on record that
20 Exhibit 682 and Exhibit 1020 appear to be
21 identical documents, except that 1020 has some
22 highlighting to the identical text. I just wish
23 to place that on record.

24 The second, which is also housekeeping in
25 nature, has to do with Exhibit 1680, which is
26 something put in evidence on August 31 as a
27 website. The printed version of the website that
28 we have marked as an exhibit is missing text. The
29 way it was printed doesn't capture all the text.
30 We're proposing, and I don't see any controversy
31 to it, that we simply use the website proper in a
32 manner that we can put on -- we can ensure that
33 our exhibit has all the text from it. So we're
34 proposing to do that on 1680.

35 The third and last matter I wish to address
36 comes out of evidence that was led through Dr.
37 Craig Orr when he testified recently on a panel on
38 sea lice. The Exhibit 1785, Mr. Commissioner, is
39 the subject of an outstanding application brought
40 by the B.C. Salmon Farmers Association. We have
41 reached a resolution as between the Salmon Farmers
42 Association and the Conservation Coalition, and if
43 you'll recall, this had to do with the workshop
44 with members of both those two participants
45 involved in the workshop and Dr. Orr's notes that
46 recorded what occurred at a workshop in November
47 '09. At this point we're proposing to do three

1 things, and I propose to simply read into the
2 record a letter that's been prepared to record
3 that. It is as follows [as read]:
4

5 The Conservation Coalition supports the
6 application by BCSFA to include as additional
7 evidence at the Cohen Inquiry the complete
8 audiotapes of the Morbidity and Mortality
9 Workshop referenced in Exhibit 1785. While
10 this workshop did take place and was
11 sponsored by CAAR and Marine Harvest Canada,
12 Exhibit 1785 does not represent either a full
13 word-by-word transcript where a consensus
14 summary by both co-sponsors and should not be
15 represented as such.
16

17 Exhibit 1785 is a draft document intended to
18 capture and summarize the presentations and
19 discussion at the morbidity and mortality
20 workshop. It was prepared by CAAR in order
21 to facilitate the development of final
22 proceedings of the November '09 workshop with
23 MHC. In interviews with Cohen Commission
24 counsel this workshop was identified as
25 information of interest to the Commission and
26 was submitted by the Conservation Coalition
27 counsel without review by or agreement of
28 Green Harvest Canada.
29

30 A final joint CAAR-MHC summary of this
31 workshop is expected to be released in mid-
32 fall 2011 and it will be available on both
33 organizations' websites. Questions about or
34 disagreements with Exhibit 1785 should be
35 based on the complete audiotape for
36 clarification.
37

38 And on that footing we are proposing three things.
39 First, Exhibit 1785 will remain as it is.
40 Secondly an audio CD, which I've provided to Mr.
41 Lunn, will become the next exhibit. That will be
42 Exhibit 1954.

43 THE REGISTRAR: So marked.
44

45 EXHIBIT 1954: Audio files from CARR-MHC 2009
46 Mortality and Morbidity Workshop
47

1 MR. MARTLAND: And that's with the consent of the
2 Conservation Coalition.

3 And thirdly the B.C. Salmon Farmers
4 Association seeks and we support having a three-
5 page errata sheet that identified in writing what
6 were said to be difficulties in 1785. That errata
7 sheet would become the next exhibit, Exhibit 1955.
8 The Conservation Coalition takes no position on
9 the portion of what we're proposing to do.

10 THE REGISTRAR: That document is so marked.

11
12 EXHIBIT 1955: Errata sheet to Exhibit 1785
13 draft summary of CARR-MHC 2009 Mortality and
14 Morbidity Workshop
15

16 MR. MARTLAND: With those matters having been
17 addressed, Mr. Commissioner, that application now
18 falls off. There is no outstanding application,
19 and that concludes my brief matters. Thank you.

20 THE COMMISSIONER: Thank you, Mr. Martland, very much.

21 MR. MCGOWAN: Just one more brief matter, and I'm just
22 going to canvass, Mr. Lunn, if we can deal with
23 it. Now, do you have Mr. Lapointe's affidavit?
24 That's fine, perhaps, Mr. Lunn, we'll deal with
25 that after lunch.

26 MR. LUNN: Okay.

27 MR. MCGOWAN: Mr. Gailus can carry on with his
28 examination.

29 MR. GAILUS: Mr. Commissioner, John Gailus, again for
30 Western Central Coast Salish First Nations. By my
31 count I have 37 minutes left. Mr. McGowan has
32 requested two or three minutes, and I am prepared
33 to give him two of my minutes, so I'll have 35
34 minutes left.

35 Just before we start, I wanted to apologize
36 yesterday, Mr. Commissioner. I think I usurped
37 your authority. Fortunately that's not going to
38 happen again, given that this is the last day of
39 the hearings.

40 THE COMMISSIONER: And I'm used to it by now, Mr.
41 Gailus.

42
43 CROSS-EXAMINATION BY MR. GAILUS, continuing:
44

45 Q For the panel, yesterday we started looking at the
46 Wild Salmon Policy and we talked a little bit
47 about the three, as I called them, pillars of the

1 Wild Salmon Policy for successful implementation.
2 Perhaps this is a question for Ms. Dansereau. The
3 recommendations that come from this Commission,
4 will those likely shape the future of the Wild
5 Salmon Policy and it's implementation?

6 MS. DANSEREAU: Oh, I can't speculate. I do know that
7 they will be taken very seriously and whichever
8 direction they take us in, that's where they will
9 take us.

10 Q Okay. And if there are to be changes to the
11 Policy and, you know, the implementation, is that
12 something that First Nations are going to be
13 consulted on?

14 MS. DANSEREAU: We consult with First Nations on
15 everything we do.

16 Q Thank you. Now, during this panel we've heard a
17 lot of numbers thrown around in terms of the
18 budget and the fact that there are cuts that are
19 being expected over the next few fiscal years.
20 I've got a question for you, Ms. Dansereau, and I
21 also want to have a question posed to you, Ms.
22 Farlinger, as well, given that you're kind of on
23 the ground in the region. But for Ms. Dansereau,
24 do you expect these cuts, if these cuts were
25 implemented, and we're not really sure what the
26 scale is, I understand, will they impact on the
27 implementation of the Wild Salmon Policy?

28 MS. DANSEREAU: I can't speculate on this.

29 Q Okay. Ms. Farlinger, you've had a lot of
30 experience in the Department over the years. I
31 was wondering if you could give us some idea
32 whether there is a hierarchy of priorities within
33 DFO for funding. So, for example, are certain
34 sectors or areas of the Department more immune
35 from funding cuts than others?

36 MS. FARLINGER: There is no hierarchy that I am aware
37 of. We review whatever programs come up for
38 review at the time they come for review, and in
39 the case of a broader review we review all aspects
40 of the departmental programs and the supporting
41 corporate functions.

42 Q Okay. But certainly you'd agree with me with that
43 perhaps operations might be a higher propriety
44 than policy development?

45 MS. FARLINGER: I'm not sure that I can agree, because
46 we certainly need all of those elements in order
47 to have an integrated program, a solid policy case

1 and operations. In terms of operations we go back
2 -- and policy, in fact, we go back to the Report
3 on Plans and Priorities and the expected
4 deliverables. We assess risk on a variety of
5 levels, and then we make proposals to the
6 government who then makes decisions about those
7 priorities.

8 Q And I want to turn to -- I just really want to
9 focus on Strategy 4 of the Wild Salmon Policy.
10 Mr. Lunn, can you pull up page 25, please. Now,
11 Mr. Lowes asked a question yesterday and I'm going
12 to phrase it a little bit differently, I think,
13 and I think it's a question for you, Ms.
14 Farlinger. On the Integrated Strategic Planning
15 component does DFO need to complete Stages 1 to 3
16 to implement Stage 4, or can this work be done
17 concurrently?

18 MS. FARLINGER: I think over the last five years we
19 have piloted models for Strategy 4 at a variety of
20 levels with First Nations and with stakeholders,
21 and in integrated fora. I think that we, because
22 of the fact we are required to make decisions or
23 gather information for decisions each and every
24 year, the answer to the question is, is we need to
25 implement Strategy 4 and use whatever information
26 and data is available to us.

27 Q Okay. So if we can just pull up the top parts of
28 the exhibit, please, Mr. Lunn. So Stage 4 is
29 actually broken down into two, I guess, two action
30 steps: an interim process, which I believe we're
31 in right now, which says it provides for immediate
32 progress, and the development of a new integrated
33 planning structure.

34 Now, I want to -- and I understand that we're
35 in this interim process and we've heard, I think,
36 a little bit about the Barkley Sound initiative
37 and some of the other things that DFO is doing.
38 Can we go to the Tab 16 of our book. Actually, I
39 believe it's already an exhibit. It's Exhibit
40 946. And the sixth page, Mr. Lunn, please.

41 So this is the Work Plan for 2011-2012, this
42 is the year we're in now. Do you recognize that,
43 Ms. Farlinger?

44 MS. FARLINGER: Yes.

45 Q And it talks about on 4.1 that they're -- it looks
46 like there's three projects you're working on
47 right now.

1 MS. FARLINGER: There are three that are identified
2 here, yes.

3 Q Correct. So there's one in Barkley Sound, one on
4 Skeena, and then we've got the Fraser -- the
5 FRSSI, the Fraser River Sockeye Spawning
6 Initiative. Could you, just for the
7 Commissioner's assistance, give us a sense of
8 where we're at on the FRSSI initiative?

9 MS. FARLINGER: This is an initiative that I think
10 you've heard has been going in the direction of
11 setting escapement goals for the Fraser River
12 sockeye stocks, populations, CUs. We do expect,
13 as Dr. Richards said, to have a report on limit
14 reference points for Fraser sockeye CUs and some
15 of the work we will be doing under this rubric,
16 under the FRSSI process, as it's called, is
17 integrating the new information that we have and
18 advice to Science into the planning process for
19 the Fraser sockeye CUs.

20 Q So you'd agree that this is something that's going
21 to probably feed into Action Step 4.2, which is
22 development of the integrated planning process?

23 MS. FARLINGER: It's certainly one -- one activity that
24 contributes to that, along with several other
25 activities. And I would point to activities like
26 the, quote, forum process, or the Roadmap for
27 Fraser River sockeye, First Nations, other
28 processes. So there's -- it is one of several
29 issues or several activities that will come
30 together to evolve into a kind of planning process
31 that's seen in Strategy 4.

32 Q Mr. Lunn, can we go to the next page, please. And
33 if you could just blow that up a little bit for
34 the panel. I'm actually looking at the third box,
35 I suppose, would be probably helpful. Okay. So
36 now this is Action Step 4.2, this is really where
37 I would say where the rubber meets the road. If
38 we scroll down just after the bullets, you've got
39 for 2012 to 2015:

40
41 Develop draft framework for long-term
42 integrated planning process.

43
44 Consult with First Nations, partners and
45 stakeholders on framework.

46
47 So next year, or is this happening right now?

1 Next year you're going to start developing this
2 framework, or is this something that's in
3 progress?

4 MS. FARLINGER: We have done work on this framework at
5 the moment, but we don't expect to have it
6 completed by the end of this year.

7 MR. GAILUS: Mr. Taylor has asked that we look at the
8 second box over. If you can just slide over.

9 MR. TAYLOR: Well, I just wonder if it's legible if
10 both can be on the screen at once.

11 MR. GAILUS:

12 Q Perhaps we want to zoom out on that. So the
13 "Progress Made":

14 o Completed discussion paper on identifying
15 planning units (March 2009)

16 o Internal workshop on March 10, 2009 to
17 discuss planning units, summary report done.

18 So that's actually a good point. So what's gone
19 on since 2009?

20 MS. FARLINGER: Part of the work that's been done in
21 the Integrated Salmon Dialogue, part of the work
22 that's been done on the Strategy 4 pilots, part of
23 the work that has been done internally to look at
24 DFO's requirements out of this strategy have been
25 at least begun to be drafted into the kind of
26 information pieces that will be taken forward in
27 the development of this framework for Strategy 4
28 for consultation.

29 Q Now, assuming we get a framework in place by 2015,
30 what are the next steps after that to get what I
31 would call full implementation?

32 MS. FARLINGER: I'm not sure that I would be able to
33 clearly articulate what our steps would be after
34 2015. I know there will be a number of elements,
35 which we have gone over a number of times, the
36 principles that are set out in the Wild Salmon
37 Policy respecting those principles, respecting our
38 other conservation and allocation policies of the
39 day, and certainly we'll have to set out the next
40 steps after that, after we have that strategy and
41 have consulted on it, and have a decision on it to
42 move forward, we'll have to set out the
43 implementation steps. And I think at this point,
44 other than that they would need the broad
45
46
47

1 principles of how we carry out our work, I can't
2 be more specific.

3 Q So there isn't a timeline beyond 2015 at this
4 point.

5 MS. FARLINGER: That's correct.

6 Q Thank you. But you would agree that this is the
7 type of high-level planning that for the resource
8 that requires First Nations participation?

9 MS. FARLINGER: Absolutely.

10 Q Thank you. Mr. Lunn, if you could pull up our Tab
11 1, please. Now, this appears to be a Department
12 of Fisheries and Oceans document. I'm not sure,
13 it's called "Departmental Priorities, Extended
14 DMC, September 29-30, 2010". Ms. Dansereau or Ms.
15 Farlinger, do you recognize this document? Mr.
16 Bevan?

17 MR. BEVAN: I'm familiar with the meeting. I attended
18 it. Just trying to find out, look at this and
19 determine if it's a record of decision or not.

20 MS. DANSEREAU: If I may, we saw an awful lot of
21 extended DMCs or meetings that go on as it says
22 here for two days, and so there was a lot of
23 material. Whether or not this particular page was
24 there, I don't think it's possible for us to
25 confirm that.

26 Q Okay. Mr. Bevan, you attended the meeting?

27 MR. BEVAN: Yes, I did.

28 Q Did Ms. Dansereau or Ms. Farlinger, did you attend
29 this meeting, as well?

30 MS. DANSEREAU: I normally attend them. Whether I was
31 at this particular one, I can't actually put my
32 mind back. I'd have to look at my calendar.

33 Q Okay.

34 MS. FARLINGER: I did attend this meeting.

35 Q Okay, thank you. So if we could turn to the next
36 page, Mr. Lunn, and just focus in on -- there's an
37 area called "Aboriginal". I just want to read
38 this in for the record:

39

40 In light of long-standing issues and more
41 recent flashpoints, it was agreed that
42 Aboriginal issues were becoming increasingly
43 complex and were largely centred around
44 access/allocation and consultation.
45 Priorities identified include:

46

47 • establish Aboriginal Fisheries

1 Frameworks and renew treaties and/or
2 treaty-type arrangements

3
4 And under that:

- 5
6 o adopt a coordinated approach to the
7 renewal of **Larocque**, AICFI and PICFI

8
9 The second bullet:

- 10
11 • Understand how court decisions will
12 affect DFO policies, programs and
13 operations

14
15 And then the third bullet

- 16
17 • Aboriginal consultations - duty to
18 consult - need to better understand vis-
19 à-vis court decisions, DFO obligations
20 and stakeholder expectations. Develop
21 and adopt, across the Department, a
22 coordinated approach to consultations,
23 with best practices being shared across
24 NHQ/regions, and drawing from a whole-
25 of-government approach.

26
27 Now, on the Aboriginal file, if I can call it
28 that, within DFO, would you agree, Ms. Dansereau,
29 that those are likely the priorities that DFO has
30 to address going forward?

31 MS. DANSEREAU: These are certainly areas of real
32 interest for us, because we believe we can always
33 improve. And so part of the improving is to learn
34 from each other and to consult with each other,
35 and to develop and adopt, as it says here, a
36 coordinated approach for consultation.

37 Q And this was a meeting that was held in Ottawa?

38 MS. DANSEREAU: Usually, I think, yes.

39 Q So these are priorities really on a national
40 level?

41 MS. DANSEREAU: Yes.

42 Q Thank you.

43 MS. DANSEREAU: The "Extended DMC" means the Extended
44 Departmental Management Committee. Normally that
45 group meets once a week, but every two months
46 approximately it meets for two full days.

47 MR. GAILUS: Now, I want to focus on one of those

1 priorities that's identified there, and that's the
2 Allocation Policy. We've heard earlier that
3 Canada's negotiation mandates change very little
4 from year to year in terms of fish and funding.
5 We've heard from First Nations that these
6 allocation numbers have remained static over the
7 years. Now, we understand that there's a document
8 "Coastwide Framework", which I'm not going to talk
9 about, but I'd like to go to Exhibit 1426. Oh, if
10 we could just back up. Could I have that marked
11 as the next exhibit, Mr. Lunn, the "Departmental
12 Priorities".

13 THE REGISTRAR: Exhibit 1956.

14
15 EXHIBIT 1956: Departmental Priorities,
16 Extended DMC, September 29-30, 2010 [DFO]
17

18 MR. GAILUS:

19 Q 1426 is the exhibit. Now, we've seen this
20 document before. If we could just go down to the
21 bottom, the bottom third, Mr. Lunn, starting with
22 there's a bullet, "The Framework encompasses". So
23 the Aboriginal Fisheries Framework provides that:

24
25 ...encompasses three main components,
26 including:

- 27
28 - **Key Principles** that will guide the
29 negotiation and implementation of
30 fisheries arrangements;
31
32 - an **Allocation Strategy** which establishes
33 a coast wide endpoint for First Nation
34 fishery allocations to guide the
35 negotiation of fisheries agreements
36 inside and outside of the treaty
37 process, and
38
39 - **New Fisheries Arrangements** that better
40 align with DFO policies and objectives
41 and establishes arrangements that are
42 more manageable and flexible.
43

44 So we see an allocation strategy in there.

45 Now, our understanding from the evidence
46 that's given that First Nations weren't consulted
47 on their needs prior to the establishment of this

1 endpoint number; is that correct? Ms. Farlinger.
2 MR. TAYLOR: We've had evidence about a lot of
3 consultation, and that's all inputted. I'm not
4 precisely certain where my friend is going and
5 what this question is trying to capture. Mr.
6 Commissioner, you well know that this Aboriginal
7 Framework has been a matter of a motion and a
8 ruling by you, and as I understand your ruling,
9 you said with one exception, all of the material
10 sought to be obtained is not going to be given
11 out. And that ruling, by the way, is now up on
12 the Commission's website, so it's there for
13 everyone to see. And the one thing that, Mr.
14 Commissioner, you said should be provided became
15 the subject of a s. 39 certificate, and is
16 therefore not provided.

17 So with that, I think we're at the point
18 where this is an exhibit, this document. There it
19 is. People can make submissions on it. But the
20 material that is behind and related to that is
21 firstly subject of a claim of privilege, and now
22 is the subject of a finding of privilege by Mr.
23 Commissioner for the most part, and a s. 39
24 certificate for what remained of that. So it
25 seems to me we're at the end of the road in where
26 we can go or what evidence there can be about
27 this.

28 MR. GAILUS: Mr. Commissioner, my question was actually
29 very simple, and I wasn't trying to stray into
30 those areas for which Canada has claimed
31 privilege. We heard from Ms. McGivney earlier in
32 her testimony that there was no consultation with
33 First Nations in establishing this endpoint
34 allocation. I'm just asking for confirmation from
35 the Deputy that that is in fact the case, and the
36 understanding at HQ.

37 MR. TAYLOR: Well, he's going behind the document
38 that's here, and he's going against your ruling.

39 MR. GAILUS: That's not the case at all.

40 MR. DICKSON: Mr. Commissioner, I support the question
41 here. Certainly the information in the documents
42 that were the subject of the ruling is privileged.
43 That's definitely the case. But the process that
44 leads to that information, in my respectful
45 submission, is not, and the simple question of the
46 degree of consultation, if any, on the endpoint
47 allocation numbers is not -- is not a matter

1 covered by that privilege. It's not a matter in
2 those documents, and it's not going to expose what
3 those numbers are. It's simply talking about
4 process, and in my respectful submission, it is an
5 issue that is open to questioning.

6 MR. TAYLOR: Your ruling was that you didn't need to
7 have the antecedent material. That was part of
8 your ruling, as I read it, Mr. Commissioner.

9 MR. MCGOWAN: I just have a couple of brief comments by
10 way of assistance, Mr. Commissioner. The
11 ruling --

12 THE COMMISSIONER: Mr. McGowan, I'm sorry, I can't hear
13 what you're saying.

14 MR. MCGOWAN: I have a couple of brief comments,
15 hopefully by way of assistance to you, Mr.
16 Commissioner. The ruling, of course, does speak
17 to privilege, but it doesn't speak to this
18 document. This document was provided to the
19 Commission and in doing so Canada, in my
20 submission, waived privilege over this document.
21 The question speaks about consultation with First
22 Nations. The ruling did not uphold the claim of
23 settlement privilege. To the extent consultations
24 took place with First Nations, those are
25 communications which involved a third party who is
26 not part of government, and those communications
27 would not be privileged according to your ruling,
28 in my submission. If they took place, in my
29 submission, questions about those consultations
30 may well be fair. Seeking to get behind the
31 documents, straying into matters which are covered
32 by the public interest privilege, or by the s. 39
33 certificate, in my submission, would be off base.

34 MR. GAILUS: Mr. Commissioner, that's the only question
35 I was planning on asking in terms of consultation
36 with First Nations.

37 THE COMMISSIONER: Yes. Can I just have -- just before
38 Mr. Taylor speaks, can I just have the question
39 again, Mr. Gailus.

40 MR. GAILUS: So the question was, were First Nations
41 consulted on their needs prior to the
42 establishment of this endpoint number.

43 THE COMMISSIONER: Mr. Taylor.

44 MR. TAYLOR: The motion was wide-ranging. The ultimate
45 finding by you, Mr. Commissioner, was that the
46 endpoint document should be provided, and that was
47 what was subject of the s. 39 certificate. But in

1 the course of going there, you took in hand the
2 very wide-ranging motion which was essentially
3 access to everything about the food, social,
4 ceremonial mandate, and everything about the
5 Coastwide Framework. The question that we're just
6 discussing that Mr. Gailus wants to put is part of
7 that, and you've found and ruled in your decision
8 of the 12th of September that everything but for
9 that endpoint document is not to be produced,
10 either because it's irrelevant or unhelpful to you
11 or subject of public interest privilege. There's
12 no getting around, in my view, that what Mr.
13 Gailus is now asking is the subject of that motion
14 and your ruling, and therefore shouldn't be
15 answered.

16 THE COMMISSIONER: Mr. Taylor, I wonder if you have
17 with you the s. 39 certificate.

18 MR. TAYLOR: I do.

19 THE COMMISSIONER: I wonder if you could just read it
20 into the record.

21 MR. TAYLOR: Sure. It's quite long, do you want me to
22 read all of it?

23 MR. MCGOWAN: Mr. Lunn, do you have access to that
24 document?

25 MR. LUNN: I'm not sure (indiscernible - away from
26 microphone).

27 MR. MCGOWAN: I believe it's on our website with the
28 ruling.

29 MR. TAYLOR: I'm happy to read it.

30 THE COMMISSIONER: If it's on the website, that might
31 be the quickest way to go.

32 MS. GAERTNER: Mr. Commissioner, while he's doing that,
33 perhaps I'll weigh in on this.

34 THE COMMISSIONER: Yes, Ms. Gaertner.

35 MS. GAERTNER: You know, frankly speaking, the
36 processes between First Nations and Headquarters
37 and on these types of matters is a matter that you
38 have been considering and you will be considering
39 more in questions that I'm going to ask later
40 today. He's not asking what the endpoint is.
41 That was the nature of the privilege that was
42 being sought and actually taken. He's asking what
43 process did Headquarters use when coming to that
44 place and how were First Nations engaged and
45 consulted, and that is something that we all need
46 to know the answer to, including you, in looking
47 at these very complex matters. And there is no

1 privilege that needs to be asserted as to how
2 they're relating to First Nations on these very
3 important matters. He's asking a process
4 question, not an outcome question.
5 THE COMMISSIONER: I'm sorry, we may not -- I
6 apologize, Mr. Taylor, I'm not sure if we will be
7 able to get that up on the screen.
8 MR. TAYLOR: I'm happy to read it, if you want.
9 THE COMMISSIONER: All right.
10 MR. TAYLOR: It comes in the form of a letter from
11 Wayne G. Wouters, who is the Clerk of the Privy
12 Council, and Secretary to the Cabinet. It's dated
13 September 22, 2011 and it's addressed to the
14 Honourable Mr. Justice Bruce I. Cohen, which of
15 course is yourself, at the address provided for
16 this inquiry:
17
18 Dear Mr. Justice Cohen:...

19
20 THE COMMISSIONER: Ah, we have it up on the screen.
21 Thank you very much, Mr. Lunn. Just give me a
22 moment.
23 MR. TAYLOR: I was just getting warmed up.
24 THE COMMISSIONER: I just want to read it through.
25 I'll just take a moment, thank you.
26 Can you scroll down, Mr. Lunn, please. Thank
27 you.
28 Yes, thank you. I'm sorry, I cut you off,
29 Mr. Taylor, I apologize.
30 MR. TAYLOR: I forgot exactly where I was, but what I
31 do want to say at this moment is this certificate,
32 of course, is only dealing with the aspect of your
33 ruling where you dealt with the endpoint document.
34 You have to also read your ruling, or of course
35 you have it to mind, but you have to take into
36 account all aspects of your ruling in deciding
37 what to do with the question that's now being
38 asked. And I've made submissions on what I'm
39 saying the ruling is, if you want to see that, to
40 have it precisely to mind. I'm sure it can be
41 brought up, as well.
42 THE COMMISSIONER: No, I have the ruling in mind, and I
43 just wanted to just have a look at this
44 certificate.
45 My decision this morning, Mr. Gailus, is that
46 you ought to be permitted to ask questions about
47 process, but I in saying that would certainly

1 allow Canada or any other participant or their
2 counsel to again raise an objection to further
3 questions that may flow from an answer you receive
4 from the panel, or of course if deemed appropriate
5 by counsel to any other counsel's questions
6 relating to the matters upon which I have ruled
7 with respect to those matters contained in the
8 application. So I will allow this question, but I
9 am not making a blanket ruling by any means.

10 MR. GAILUS: I don't intend to go any further down this
11 path, Mr. Commissioner, given the amount of time
12 that we have taken up on this. So I'll just
13 repeat the question for -- I guess for Ms.
14 Dansereau.

15 Q Were First Nations consulted on their needs prior
16 to the establishment of this endpoint number?

17 MR. TAYLOR: I am going to object to the question, Mr.
18 Commissioner, and I am going to seek leave and
19 time to consider whether there would be a
20 certificate provided in respect of that question
21 if it's necessary.

22 THE COMMISSIONER: Well, I think what I would suggest
23 you do, Mr. Gailus, is I want to respect -- this
24 was an area that took a long time to resolve, a
25 lot of thought went into it, and the ruling now
26 stands, and if Canada takes a position on it,
27 they're entitled to take that position. I'm going
28 to respect Mr. Taylor's request to consider the
29 question. Perhaps the way to be most efficient
30 about this is for you to move on with your other
31 questions and we could either stand down at that
32 point, or during the morning break counsel could
33 have a discussion around this particular question
34 you've now put to the witness. And Canada may or
35 not pursue its intent with regard to objecting to
36 this question or any other line of questioning in
37 this vein.

38 MR. GAILUS: That's fine with me, Mr. Commissioner.
39 Given the amount of time that we've taken up on
40 this, I may have to take my two minutes back.

41 Q Now, we've heard from First Nations, and I'm going
42 to have to breeze through this, I'm afraid. We've
43 heard from First Nations' reps throughout this
44 hearing their allocations from year to year have
45 remained static and their needs are not being met.
46 Meanwhile, First Nations populations have
47 increased substantially, and this is supported by

1 Statistics Canada data. I'm not going to take you
2 to it, but earlier we identified access and
3 allocations as a priority for DFO. Now, 2005, it
4 appears from a review of the documents, that
5 several First Nations were asking for increased
6 allocations. Can we pull up Tab 23, Mr. Lunn.

7 This is titled "Pacific Region - Interim
8 Assessment Framework and Procedures for Addressing
9 Changes to First Nation [FSC] Allocations and
10 Fishing Locations". Now, it says that it's a
11 draft on it. I think this question is probably
12 best for Ms. Farlinger. Are you aware of whether
13 this is the current policy, or whether the policy
14 has been updated?

15 MS. FARLINGER: I am not aware specifically, but I
16 would say that the principles and the steps set
17 out in this policy continue to be guidance for
18 staff inside the Department and in fact are
19 discussed at a subcommittee specifically focused
20 on food, social and ceremonial fisheries of the
21 DFO First Nations Fisheries Council.

22 MR. GAILUS: Can we go to Tab 24, Mr. Lunn, please.
23 Oh, perhaps we can have that marked as the next
24 exhibit.

25 THE REGISTRAR: Are you speaking of Tab 23?

26 MR. GAILUS: Tab 23, please.

27 THE REGISTRAR: Yes, that will be 1957.

28
29 EXHIBIT 1957: Pacific Region - Interim
30 Assessment Framework and Procedures for
31 Addressing Changes to First Nation Food,
32 Social and Ceremonial Allocations and Fishing
33 Locations, Draft, 20/01/2005
34

35 MR. GAILUS:

36 Q And Tab 24. Now, this document is called
37 "Decision Guidelines for Evaluating Requests to
38 Change the Provisions of FSC Mandates". And this
39 appears to be a very draft document, again, 2005.
40 I'm not certain whether you've seen this document
41 before, Ms. Farlinger.

42 MS. FARLINGER: At this particular time I was not
43 working in Pacific Region, and have not seen this
44 specific draft.

45 Q Do you know if this draft went any further beyond
46 this stage?

47 MS. FARLINGER: I do know that we have a set of

1 guidelines that would be based on drafts that have
2 gone before and may have significant revisions
3 that we currently have in practice and that we're
4 currently, as I said, discussing with the First
5 Nations Fisheries Council.

6 Q Could we turn to page 7 of this document, please.
7 Perhaps we need to go back to page 6, I want to be
8 fair to the witness, starting with "FSC Mandates"
9 at the top. So in this document it appears that
10 someone at DFO has drafted some text and then
11 gotten comments, both regionally and it looks like
12 perhaps from Headquarters, as well. But I wanted
13 to start with the part that says "FSC Mandates":
14

15 FSC mandates are intended to reflect the fish
16 allocation needs of each First Nation or
17 Tribal Council representing member First
18 Nations in a CFA. Currently FSC mandates
19 normally specify allocations for some species
20 (i.e. an amount of fish) identified as an
21 **upper limit** as well as access rights to other
22 species.
23

24 And then there's a note in there:

25
26 [...check with Cam West as I do not think
27 fishing locations is part of approved
28 mandates?]. To preserve flexibility for
29 negotiation mandates for FSC allocations will
30 continue to be confidential, and *Protected*
31 *for Negotiation*.
32

33 I don't want to ask you a question on that. It's
34 the next part:
35

36 Based on this interpretation, mandated
37 allocations of fish should reflect an
38 equitable upper limit on each First Nation's
39 dietary and cultural needs.
40

41 Ms. Farlinger, do you agree with that statement?
42 MS. FARLINGER: I'm not familiar with that statement
43 specifically, and I would say that my experience
44 working at DFO with respect to FSC allocations
45 reflect a number of criteria. We have not
46 specifically done a calculation, I think as you
47 may have discussed earlier, based on population,

1 but that is one of a variety of factors. And I
2 suppose at a very high level, this may be
3 addressed, but there certainly is no specific
4 calculation of dietary and cultural needs.

5 Q So DFO doesn't do a needs assessment, if I may
6 call it that.

7 MS. FARLINGER: In fact, DFO consults with the First
8 Nation or First Nation groupings, as they come
9 together to talk to us about their requirements
10 for food, social and ceremonial fisheries. We
11 take into account the needs as identified by the
12 First Nation, their recent fishing practices,
13 their ability and capacity to go and catch the
14 fish, the needs of the -- of other First Nations
15 in the area, that may or may not be fishing on the
16 same stocks or species. And also the conservation
17 requirements for those species. So all of those
18 things are taken into account and we do not do a
19 specific calculation on dietary or cultural needs,
20 but get that information in our consultation with
21 the First Nations.

22 Q Thank you for that, that's very helpful. Going
23 down to the next line:

24
25 Also implicit in this interpretation of FSC
26 Mandates is the concept that allocations
27 should be roughly proportional to the number
28 of registered members for all the bands
29 covered by the mandate (i.e. they should
30 reflect community needs).

31
32 You talked a little bit about the -- in terms of
33 DFO's process, that you don't just look at
34 sockeye, you look at other fish, perhaps
35 groundfish that are available, as well, in coming
36 to that allocation number, correct?

37 MS. FARLINGER: It is correct that we look at the
38 species that are present in the area that are
39 identified by the First Nation as part of their
40 food requirements. Yes.

41 Q But in the absence of other sources of protein, if
42 I may call it that, population would probably play
43 a very large role in that allocation, would it
44 not?

45 MS. FARLINGER: It's simply one of the several
46 considerations that I listed. Not least of those
47 considerations is whether the First Nation has

1 access to other fish or not. We don't consider
2 whether that First Nation has access to other
3 sources of protein, but certainly access to other
4 fish, either fish species or other sub-stocks or
5 other elements of fish.

6 Q I've been informed that my time is running out, so
7 I just want to pull up one more exhibit, if I
8 could, 1744.

9 THE REGISTRAR: Did you wish to mark Tab 24?

10 MR. GAILUS: Yes, please.

11 THE REGISTRAR: That will be marked as 1958.

12

13 EXHIBIT 1958: Decision Guidelines for
14 Evaluating Requests to Change the Provisions
15 of FSC Mandates, Draft 2, June 27, 2005

16

17 MR. GAILUS:

18 Q Now, this is a memorandum to your predecessor, Mr.
19 Sprout, regards a request from the Cowichan Tribes
20 for an increase in their allocation. I understand
21 that there's -- in terms of context that if we
22 look at the part that says "Background" right at
23 the bottom, it states this:

24

25 First Nations throughout the South Coast Area
26 have indicated that current FSC allocations
27 provided for salmon do not meet their needs
28 and they are demanding increases. The
29 Cowichan request is for an increase of
30 130,000 sockeye.

31

32 The result of that was Cowichan's allocation was
33 increased from 20,000 to 30,000. Now, my
34 understanding is that it's still at 30,000, I
35 think, from when we reviewed the PPR; is that
36 correct?

37 MS. FARLINGER: I don't know if that's correct, but it
38 certainly sounds within the range.

39 Q Okay. If we could just go to -- I probably don't
40 want to go there, but the population of Cowichan
41 is about 4,500 or so, is it, you'd agree?

42 MS. FARLINGER: I can't specifically verify, but it
43 sounds reasonable.

44 Q Okay. Thanks. It's in the tab, anyway. So by my
45 rough calculations, that works out to about
46 6.66666 salmon, sockeye, per registered member.
47 I'm not asking you to do the math, but I think

1 that works out that way. On this topic, though,
2 you'll note on the next page, page 3, there's a
3 reference to the availability of other fish in
4 their territory, and it says:

5
6 Cowichan do not have significant alternatives
7 (mainly local chum and chinook).
8

9 So, Ms. Farlinger, in your view, and Cowichan in
10 particular, and I know that other First Nations
11 have expressed this issue, particularly on
12 Vancouver Island, are FSC -- or First Nations FSCs
13 currently being met with the allocations that are
14 in place?

15 MS. FARLINGER: I should first say that the agreements
16 we have with First Nations around the FSC
17 allocation for an application in a given year and
18 for licensing are under agreements that are
19 without prejudice, so I should say that from the
20 start, and are not intended to be a final number.
21 They're simply the result of a consultation
22 between the First Nations and DFO on their needs,
23 their capacity to fish other species that are in
24 the area. Now, I appreciate that you've pointed
25 out that local chum and chinook are not available,
26 however as we know, they live on the ocean and
27 there are other species available. So I would say
28 that it is not the intention of the FSC
29 allocations in any year to do anything other -- to
30 do anything other than to manage the fishery based
31 on those -- a negotiation which is guided by those
32 considerations, which I just set out.

33 MR. GAILUS: Thank you, Mr. Commissioner, my time is
34 up, so those are my questions.

35 THE COMMISSIONER: Thank you, Mr. Gailus.

36 MS. GAERTNER: Good morning, Commissioner. It's Brenda
37 Gaertner for the First Nations Coalition and with
38 me, Leah Pence. Good morning, panel. Just a
39 quick recap as to who I represent in this inquiry,
40 in case that isn't something that you remember.
41 I'll start with the organizations I represent. I
42 represent the First Nations Fisheries Council, who
43 carry a mandate from the AFN, the UBCIC and the
44 Summit. I work for the Fraser River Aboriginal
45 Fishing Secretariat, which carries -- provides
46 assistance to Fraser River tribes along the river,
47 and Ms. Farlinger is very familiar with that

1 organization, I'm sure. I also represent the
2 Haida, three of the Douglas Treaty Bands in the --
3 on Vancouver Island, and then from Chehalis all
4 the way up to the headwaters of the Fraser,
5 including the Upper Fraser Fisheries Commission.

6 And so I have been thankfully, despite the
7 multiple stressors that are involved in this type
8 of inquiry, been provided consistent instructions
9 throughout this inquiry. And so as we spoke when
10 we first met at the beginning of it, my goal in
11 this and the questions that I have to ask is to
12 focus where the challenges are, use by example
13 some of those challenges, but also I come here
14 with proposed solutions, and suggestions, perhaps,
15 and seeking your feedback on how and whether they
16 would work and could move us forward to move
17 collaborative work.

18 I have a lot to do, I have 80 minutes in
19 which to do it, and so we're going to have to move
20 quickly through the various topics that I have to
21 do today.

22
23 CROSS-EXAMINATION BY MS. GAERTNER:

24
25 Q We've heard a number of comments about the
26 uniqueness of the Wild Salmon Policy and the
27 unusual nature of it being both principles and
28 action steps. Ms. Farlinger, you'll recall that
29 when this was being drafted, in order to achieve
30 buy-in from First Nations, that was part of the
31 goal from First Nations, that we couldn't just
32 have principles, we needed to have some way of
33 figuring out how we were going to concretize these
34 difficult principles and figure out some processes
35 that would respect their unique role at the table.
36 Do you agree with that?

37 MS. FARLINGER: There were certainly a number of
38 concerns from First Nations about how the policy
39 was constructed in terms of how it would move
40 forward, yes.

41 Q I'm going to page to turn 19, and that's Action
42 Step 1.3. And while Mr. Lunn gets that forward,
43 I'll just read it. It's a particular action, and
44 I'll say that we've had a lot of evidence on the
45 Wild Salmon Policy. I'm not going to rehash all
46 of that. I want to go to a couple of places where
47 I think implementation, moving forward, could be

1 found. In the second column there is the
2 statement in Action Step 1.3:

3
4 A core program (i.e., an agreed minimum
5 monitoring plan) will be established by the
6 Department and partners and funded annually
7 to maintain --

8
9 - and now the emphasis -

10
11 -- the long-term information fundamental to
12 management of local salmon resources.

13
14 So I'm going to start with questions around that
15 long-term information and what we might need to
16 maintain and ensure we maintain fundamental to the
17 management of local salmon resources, and I'll
18 start with you, Ms. Farlinger. Do you agree that
19 one of the minimum long-term information
20 requirements would be information gained from
21 stock assessment programs, and that continued
22 stock assessment programs are required for the
23 precautionary prosecution of fisheries, as well as
24 part of the Wild Salmon Policy?

25 MS. FARLINGER: We do need collectively stock
26 assessments programs to support the implementation
27 of the Wild Salmon Policy.

28 Q Do you also agree that in order to implement the
29 Wild Salmon Policy that such stock assessment
30 needs to be expanded as possible to include the
31 information required for the conservation units?

32 MS. FARLINGER: I think the policy is fairly clear on
33 that, and the issue is when the information is
34 available we have made a commitment to include
35 that information.

36 Q Do you also agree that DFO working closely with
37 First Nations and those stakeholders including the
38 Province of British Columbia who are interested in
39 conservation could, relying on both your existing
40 science, First Nations traditional ecological
41 knowledge, and the wealth of information that's
42 been gained through this inquiry, could begin now
43 to establish the initial habitat indicators for
44 the Fraser River sockeye salmon migratory route,
45 including those that are already set out in the
46 Wild Salmon Policy like water flow, temperature
47 and quality.

1 MS. FARLINGER: "Could begin now" is the part of the
2 question that is giving me pause. We certainly --
3 we have more information than we had at the time
4 the policy was set out and approved. We have
5 established a framework inside the Department for
6 that and we can certainly move ahead on the
7 monitoring for habitat. The question will be
8 where the priority will be on gathering stock or
9 habitat or some combination of those both, and we
10 will have to continue to work internally with
11 First Nations and with other stakeholders to
12 establish that priority.

13 Q All right. And do you agree that the management
14 adjustment which creates a buffer to address en
15 route mortality when establishing escapement goals
16 for Fraser River sockeye salmon is already a
17 precautionary step taken by DFO to adjust to the
18 increasing unpredictable state of Fraser River
19 sockeye salmon?

20 MS. FARLINGER: Yes, I agree.

21 Q And that can be identified as part of the work of
22 Action Step 3.2 of the Wild Salmon Policy, which
23 looks at identifying the indicators for freshwater
24 ecosystems and integrating climate and ocean
25 information into annual salmon management
26 processes?

27 MS. FARLINGER: Yes, I do.

28 Q And do you as the guardian of the Wild Salmon
29 Policy agree that it is important for DFO to
30 remain committed now and in the future to ensuring
31 that the baseline data required to do such stock
32 assessment and make and improve the management
33 adjustment for Fraser River sockeye salmon is
34 necessary going forward, including the work of the
35 Environmental Watch Program?

36 MS. FARLINGER: I understand your question to mean do
37 we need to continue to collect information and
38 incorporate it into our decision-making under the
39 policy, and if that is your question, then, yes, I
40 agree.

41 Q So we need to continue to generate long-range
42 forecasts of Lower Fraser summer temperatures and
43 flow conditions by looking at winter snow packs,
44 summer air temperatures and river environmental
45 conditions?

46 MS. FARLINGER: It's important for us to continue to
47 gather information on those matters, environmental

1 conditions in the river, yes.

2 Q And now just before I leave page 19, there's a
3 second part of that which is to establish:

4
5 A core program...will be established by the
6 Department and partners and funded
7 annually...
8

9 Have we identified that core program and can we --
10 do have a commitment that it will be funded
11 annually to maintain this long-term information?

12 MS. FARLINGER: We have a core program for assessment
13 at the moment which we are continually modifying
14 and adding to. Do -- have we assigned funds
15 beyond this year? No, we have not assigned them
16 beyond this year.

17 Q So that's work that we need to do in the future.

18 MS. FARLINGER: Yes.

19 Q All right. Just before I leave the issues of
20 data, it's a bit of a segue, but I think it's
21 quite related. I take it from the evidence that
22 I've listened to most recently from all of you
23 that you as managers are now proceeding on the
24 basis that we need to expect the unexpected, with
25 the Fraser River sockeye salmon - I've got some
26 nods already on that, yes - including, and this is
27 the most specific, more specific of the question,
28 the timing entry of the conservation units into
29 the mouth of the Fraser cannot be assumed to be
30 the same as the past. The timing groups are
31 changing both in space and time, and the status of
32 stocks must be monitored carefully to ensure our
33 fisheries are conducted in the most precautionary
34 and present time basis, i.e., we cannot simply
35 rely on forecasts.

36 MS. FARLINGER: I would agree with you that we cannot
37 rely solely on forecasts and that in-season
38 indicators are a key part of managing --
39 successfully managing Fraser sockeye.

40 Q Well, you also agree on those earlier parts, that
41 the timing entry of the conservation units can't
42 be assumed to be the same as the past, and the
43 timing groups are changing in both space and time.

44 MS. FARLINGER: We're certainly seeing more variability
45 in those indicators that you mentioned.

46 Q Would you agree that it would be useful to revisit
47 and review, and perhaps use the word "modernize"

- 1 the composition of the run timing groups,
2 including conducting analysis of management
3 impacts and implications of moving stocks from one
4 run timing group to another?
- 5 MS. FARLINGER: I think that in general the work you
6 mention is important to successful management, and
7 it is, I would argue, work that we continue to do
8 at -- we do at the moment and will continue to do.
- 9 Q And you agree that First Nations need to be
10 involved in that type of analysis, because it
11 could in fact impact the exercise of their rights?
- 12 MS. FARLINGER: Where activities and analyses impact
13 the exercise of those rights, it's certainly our
14 intention to meet our obligations to consult where
15 we are able, where the technical capacity exists,
16 and it exists in many First Nations areas in the
17 Fraser River. We have engaged on a technical
18 basis and will continue to engage on a technical
19 basis.
- 20 Q And one more step on this, do you agree that this
21 should and could be done as part of the
22 renegotiations of the Fraser sockeye annex to the
23 PST?
- 24 MS. FARLINGER: I think that that is too specific, but
25 it is very clear that when Canada renegotiates
26 that particular annex of the Pacific Salmon
27 Treaty, that our process of engaging and
28 consulting First Nations will be important and
29 will be something we will do.
- 30 Q But the discussion regarding timing groups of the
31 aggregates and whether or not the timing groups as
32 they're presently defined and the adjustments that
33 need to be made are also something that would be
34 important to do as part of the renegotiation of
35 the annex with the PST?
- 36 MS. FARLINGER: Those certainly would be factors that
37 would be considered.
- 38 Q Thank you. I just wanted to make sure I heard the
39 evidence correctly and it may have just been the
40 way I heard it. But I heard, Ms. Farlinger, you
41 testified that if funding wasn't available for
42 test fisheries, that DFO would need to make
43 adjustments to the management of the fishery.
44 What were you considering there? Are you
45 considering changes in how the fisheries would be
46 conducted? Are you talking about finding ways of
47 finding new money for these? I mean, as you know,

1 we can't -- sorry, we rely heavily on these test
2 fisheries for conducting fisheries, either in the
3 marine or in the early part of the mouth. So if
4 we're looking at not doing these, we'd really have
5 to wait till we get the information past Mission
6 or up to Qualark. So I'm just curious what you
7 were meaning when you said adjustments to the
8 management of the fishery.

9 MS. FARLINGER: I was making a rather general statement
10 that we will have the tools necessary in place to
11 manage the fishery. And we have a number of
12 decisions that need to be made in advance of that,
13 and ultimately at some point those may need to
14 include changes to how the fishery is managed.
15 There was nothing specific implied in there.

16 Q But you will agree with me that if we don't do the
17 marine test fisheries, that the first time we get
18 reliable in-season data for these returns,
19 including these mixed stocks, is at Mission, which
20 generally needs to be confirmed by Qualark. Do
21 you agree with me on that?

22 MS. FARLINGER: Those are certainly -- the test
23 fisheries, the Mission count and the Qualark count
24 are key elements of how we currently do that,
25 create that --

26 Q Okay.

27 MS. FARLINGER: -- knowledge.

28 Q All right. Let's move on to something more
29 specific to the Wild Salmon Policy again, and in
30 particular Strategies 4 and 5. Now, Ms. Farlinger
31 and Ms. Dansereau, implicit in the implementation
32 of the Wild Salmon Policy is the bringing together
33 of different world views, you'd agree with me on
34 that. Throughout the whole of the Policy we've
35 got recognition there are different world views
36 and there is different ways that we need to bring
37 that information together.

38 MS. FARLINGER: Yes.

39 Q Now, if I can go to --

40 MS. FARLINGER: Yes.

41 Q Thank you. If I can go to page 29 of the Wild
42 Salmon Policy, the drafters identified two key
43 successes for the planning structure embedded in
44 Strategy 4, and you'll see that right there.
45 Thank you, Mr. Lunn. And to summarize it, the two
46 key areas are First Nations, the high degree of
47 support and participation at all levels of the

1 planning structure, and secondly a high degree of
2 support and involvement of the provincial,
3 territorial and local governments.

4 There are some that may argue that the Wild
5 Salmon Policy is too complicated, it's too costly
6 and it's too time-consuming to be implemented in
7 the Fraser River, which as you can imagine, Ms.
8 Farlinger, that's very troubling to our clients
9 who are very dedicated to biodiversity and very
10 dedicated to ensuring conservation units are
11 protected for their FSC requirements. Do you
12 agree, and I'll start with you, Ms. Farlinger, and
13 then turn to you, Ms. Dansereau, do you agree that
14 a clearly mandated Tier 1 and 2 process that
15 identifies strategic and local mechanisms for WSP
16 implementation would be helpful to the integrated
17 strategic planning contemplated in Strategy 4 of
18 the Wild Salmon Policy.

19 MS. FARLINGER: Okay. I just want to make sure I'm
20 covering this right. Tier 1 as we talk about it
21 is the First Nation-to-First Nation process and
22 you're talking about the engagement at that level
23 in the strategic planning, and also the specific
24 planning. I think that the degree to which those
25 are present of the First Nation-to-First Nation
26 level will be highly variable in situations,
27 depending on the First Nations, but in general the
28 principle is a reasonable one.

29 Q Ms. Dansereau.

30 MS. DANSEREAU: I can't speak to the specifics of the
31 various systems we have in place, but I can say
32 that consultation in whatever form is a
33 requirement for this to work.

34 Q And that identifying the specific levels and the
35 types of consultation where it needs to be
36 strategic and where it needs to be local, could be
37 very useful for the implementation of Strategy 4
38 and 5?

39 MS. DANSEREAU: Yes.

40 Q And we've heard also lots of evidence during this
41 inquiry regarding the inter-jurisdictional work
42 and challenges around habitat and water
43 management. Do you agree that a tripartite MOU
44 between First Nations, DFO and the Province that
45 facilitated how and where habitat protection and
46 water management issues can be discussed, the
47 nature of the dialogue, the types of input and

1 assistance from stakeholders, and the type of
2 deliverables would be useful?

3 MS. DANSEREAU: I'd say something that could be looked
4 at, although there are many stakeholders, as you
5 know, as so we would have to have a broader
6 discussion on that.

7 Q Well, let's start with First Nations, the
8 Department of Fisheries and Oceans, and the
9 Province of British Columbia. If those three
10 parties were willing to enter into and engage in a
11 tripartite MOU, which clarified the types of
12 things I've just listed, would that be helpful to
13 you?

14 MS. DANSEREAU: It would certainly be useful to look
15 at.

16 Q Ms. Farlinger, would you also agree that that
17 would be useful on a local level, regional level?

18 MS. FARLINGER: I think we'd have to understand what
19 we're looking at and how to move forward. But it
20 certainly is one option for working -- for setting
21 out how we work together.

22 Q All right. From my listening to the evidence, and
23 from your own evidence and the evidence that I've
24 heard throughout this inquiry and in discussions
25 with my clients, the questions that become most
26 challenging around the Wild Salmon Policy is
27 what's the best way and most efficient way to
28 manage humans to protect weak stocks and how to
29 modernize the conduct of these fisheries and how
30 to really look at what restoration projects are
31 prioritized and how are we doing to do that?
32 Those really seem the questions, because this
33 Policy is so detailed, and when you look it in
34 relation to the Fraser River, those details can
35 really bog people down.

36 So I want to take you to the First Nations,
37 our Tab 53, and suggest to you, I'm not sure
38 whether you're familiar with the Missouri River
39 Project that is going on right now. Are you
40 familiar with that, Ms. Farlinger?

41 MS. FARLINGER: I'm not personally familiar with it,
42 although I have looked over, not in great detail,
43 but I have looked over the material provided here.

44 Q Now, what this project is, is that it encourages
45 partnerships to develop and implement restoration
46 efforts, it identifies criteria and opportunities
47 for restoration projects. It aligns stakeholder

1 members, eight states, 18 American Indian tribes
2 and 15 federal agencies appointed, all who have
3 appointed representatives to sit on this broad-
4 based committee. They actively engage in the
5 design of basin-wide plans for restoring the
6 Missouri River, which as this front page says:

7
8 ...drains one-sixth of the United States,
9 encompassing over 529,350 square miles, the
10 river flows 2,341 miles through seven states.
11

12 I mean, it's a much -- at least as challenging as
13 the Fraser River, you would agree with me on that,
14 based on that easy summary. Yes?

15 MS. FARLINGER: It certainly seems to cover a greater
16 geography. I think they don't have Pacific
17 salmon, which I would argue is a rather more
18 difficult topic, but nonetheless it's a complex
19 matter.

20 Q I haven't heard about Pacific salmon in Missouri
21 either. But it is complex, you'll agree with me,
22 and it has a lot of stakeholders, it has a lot of
23 governments and it has -- and what they've done in
24 this situation is decided to come together to
25 prioritize restoration projects and the approaches
26 that they will be using. They use an independent
27 scientific advisory panel. Do you think it could
28 be useful for the Department of Fisheries and
29 Oceans, First Nations, the Province of British
30 Columbia, and interested stakeholders to use -- to
31 look at and use a similar type of approach for the
32 implementation of the Wild Salmon Policy within
33 the Fraser?

34 MS. FARLINGER: I think that the basic elements of
35 having the public interest, the stakeholder
36 interest, the First Nations and the levels of
37 government concerned with impacts and management
38 of Fraser sockeye, is a key element of any long-
39 term solution. As to whether this model
40 specifically would apply, I can't comment further
41 than that generality.

42 Q Would you agree that it was also an approach that
43 could help us tackle a very difficult -- the very
44 difficult task of the death by a thousand cuts
45 concerning -- that arise in habitat protection
46 within the Fraser River ecosystem?

47 MS. FARLINGER: I think that the -- I think that it is

1 important to look at cumulative effects, if that's
2 what -- which is what I assume you mean by the
3 death of a thousand cuts, in the management of
4 habitat on the Fraser River. And I do think it is
5 important for the various levels of government,
6 including First Nations, to work together to
7 understand and mitigate or prevent those impacts.
8 So I agree with the generality, rather than the
9 specific model.

10 Q Yes. I'm not proposing that we adopt that model
11 holus bolus, that would be impossible given the
12 uniqueness of the Fraser River and the uniqueness
13 of the tribes and all of that. Ms. Dansereau, do
14 you see that type of model being useful for you in
15 Headquarters, knowing that that type of model
16 would be put into place and actively used by those
17 concerned with the conservation of Fraser River
18 stocks?

19 MS. DANSEREAU: We're always interested in looking at
20 new ideas and new models, although I'm not sure
21 this one is necessarily the one that we would want
22 to look at. I think the IFMP, that process that
23 includes a lot of stakeholders, at least on the
24 fisheries side, is a step somewhat in this
25 direction. But I would say that the issues that
26 are of interest to Fraser sockeye are not only in
27 the Fraser. They happen out at sea and they
28 happen out at various entrance points. And so
29 that has to be -- that would have to be factored
30 into the planning process and the planning
31 structure, as well.

32 Q Yes, so we would include all of those along the
33 migratory route of the Fraser River sockeye, well,
34 Fraser River salmon.

35 MS. DANSEREAU: I'm not sure where you'd have to set
36 the boundary. So it would be very complicated and
37 it would require a lot of thought.

38 Q Definitely it's going to require a lot of thought.
39 We're looking for new models here. I guess the
40 difference, and I'll just give you an opportunity
41 to consider this, the IFMP model is really looking
42 at harvesting plans, and this is much broader a
43 perspective. From the Wild Salmon Policy it's not
44 just about harvesting plans, you'll agree with me
45 on that.

46 MS. DANSEREAU: Ye, I agree.

47 Q Yes, all right. I just have a couple of questions

1 that I'd like to see if I can finish before the
2 Commissioner takes his morning break. But, Mr.
3 Bevan, I have to switch and I'm going to talk a
4 little bit about international work for a second.
5 You mentioned the international work that was
6 important to the Atlantic, and I wonder, does DFO
7 have in place the necessary places of dialogue to
8 address concerns that we've heard in this
9 Commission regarding competition for food in the
10 Gulf of Alaska, including the increasing
11 competition caused by hatchery production of pinks
12 in places like Russia and Japan? Do we have a
13 place that you can turn to already?

14 MR. BEVAN: Well, we have the scientific work of the
15 North Pacific Anadromous Fish Commission, and I
16 believe it's PICES, as well. So there are bodies
17 that can bring that broader dialogue together.
18 Certainly that has been a question that we've had,
19 looking at the volume of smolts that are produced
20 by all the parties around the North Pacific. It
21 did raise questions about carrying capacity, et
22 cetera, and that some of those questions have been
23 put to the scientific community. But I think that
24 those are the bodies that would at least be able
25 to determine whether or not there's a problem.
26 The question then would arise if there is a
27 problem, what do you do about it? And the
28 structure of the North Pacific Anadromous Fish
29 Commission was to deal with enforcement issues, to
30 stop the high seas driftnetting, and to implement
31 the UN ban on that activity, so there's joint
32 enforcement. There's some joint scientific work,
33 but there is not necessarily a mandate to talk
34 about limitations on production of fish in
35 hatcheries. So that may raise a question. There
36 is a commission being put together to deal with
37 all other species in the North Pacific but because
38 of the Anadromous Fish Commission we'd have to
39 look at the mandate of that particular body.

40 Q So you as a manager right now don't have a place
41 to talk to other managers in Russia or Japan, but
42 that would require amendment to those terms of
43 reference?

44 MR. BEVAN: We have a place to talk, but we don't
45 necessarily have the mandate to deal with the
46 problem. But I would point out, first off, that
47 we have not yet had definitive information from

1 Science to indicate that there is a -- the current
2 practices are in fact creating a carrying capacity
3 issue. And I don't know if my colleague has more
4 information on it, but that's the situation as I
5 understand it.

6 Q I think my clients will get worried about waiting
7 for the definitive science on the Gulf of Alaska,
8 given how difficult it is to do studies up there,
9 Mr. Bevan, and so we need to look at what
10 precautionary steps need to be taken, associated
11 with the amount of fish that are showing up in the
12 part of the world. And so I wonder if we might
13 need to get in place, the place of that dialogue
14 and a meaningful dialogue before we wait for
15 Science.

16 MR. BEVAN: I take your point that definitive is the
17 wrong term in terms of science. We haven't had
18 indications that there's -- that the -- there is a
19 problem, but I take the point that we should have
20 that discussion.

21 Q So you would encourage the Commissioner, when
22 considering some of the reports, and in this one
23 I'll consider Dr. Peterman's report specifically,
24 where he identified as quite a likely contributor
25 to the challenges associated with the production
26 of pinks that are going into the Gulf of Alaska,
27 you would encourage learning more about that
28 directly from the Commissioner and taking steps
29 accordingly?

30 MR. BEVAN: I think that we would certainly await the
31 recommendations of the Commissioner and we'll be
32 responding to it in a very serious manner. If
33 that includes recommendations relevant to starting
34 dialogue in the -- with our partners in the North
35 Pacific, then we'll have to take that under
36 consideration at the time.

37 Q All right. Perhaps before I move on, we should
38 mark as an exhibit the tab that we've put forward
39 on the Missouri River recovery implementation
40 committee. Oh, sorry.

41 MS. DANSEREAU: I don't want to cut into your time, but
42 I realized after --

43 Q No, please.

44 MS. DANSEREAU: -- I'd stopped talking, in answer to
45 your question to me on the planning process, two
46 outstanding -- I think, part of the response is
47 one, we can't forget that the Minister has also a

1 discretion in whatever the planning process would
2 be working on would have to be at the Minister's
3 discretion, and his or her decision-making powers
4 at this point can't be fettered. So that would
5 have to be factored into the how the group did its
6 work. And British Columbia has an awful lot of
7 experience in developing planning tables and
8 planning structures and very often we can get
9 bogged down and not make progress. So those are
10 two sort of caveats that I would put in the
11 thinking about the creation of that planning
12 table.

13 Q One of the things, just on your latter point, in
14 the Missouri that is useful to note, Commissioner,
15 is that they set specific timelines and approaches
16 for what needs to be reported out on, and what
17 needs to be put into place. And you'd agree that
18 that's often useful, Ms. Dansereau.

19 MS. DANSEREAU: It's definitely necessary, yes.

20 Q Just one final question on the marine situation.
21 I appreciate that we've got a fair bit of science
22 that still needs to be done. Dr. Richards, would
23 you agree that it would be useful to conduct
24 studies that more clearly identify the specific
25 marine migratory routes of the Fraser River
26 sockeye at a conservation unit level, including
27 identifying what Mr. Marmorek has identified as
28 the potential bottlenecks or the significant
29 stressors along that migratory route?

30 DR. RICHARDS: I think, Mr. Commissioner, in the course
31 of trying to look at the science for this inquiry,
32 and it would help you to address some of the
33 issues from a scientific perspective, our lack of
34 knowledge on the precise migratory routes of
35 sockeye in general, and in fact salmonids in
36 general, has been one of the obstacles.

37 We were very interested in trying to
38 understand more explicitly the impacts of certain
39 oceanographic conditions, and in order to do that,
40 we needed to know exactly where the sockeye were
41 and when in order to look for links with
42 oceanographic conditions, because the
43 oceanographic conditions themselves are quite
44 variable in space and time, and that was certainly
45 one of the problems that we'd led to whether -- to
46 the extent we need to do it at the CU level. I
47 mean, I think we'd be happy with the more general

1 information first, and eventually perhaps get to
2 the CU level. But I think we are lacking some
3 fairly basic information here. And so I would
4 probably start more generally than going to the
5 very specific question that you raised.

6 Q To the extent that we can do them both at the same
7 time, so that we could learn what we have already
8 -- are already suspecting as it relates to the
9 Harrison stock, for example, that would be useful.

10 DR. RICHARDS: If we do certainly tagging, then we can
11 do stock identification if we have the fish back
12 afterwards, and so, yes, we will know. I think
13 one of the problems of these studies is that we
14 also know that the fish distribution changes,
15 changes each year. We can't just because we do
16 the study one year and they go a certain route,
17 doesn't mean that they will do that route next
18 year. It doesn't mean that all the fish in that
19 CU will behave exactly the same. So we know
20 there's going to be variation here. so that's why
21 it's a bit difficult to give a very general
22 answer.

23 MS. GAERTNER: Right. I would like the Missouri River
24 Project marked as the next exhibit, if I may.

25 THE REGISTRAR: That's Tab 53?

26 MS. GAERTNER: I'm in your --

27 THE REGISTRAR: Exhibit 1959.

28
29 EXHIBIT 1959: Articles re Missouri River
30 Recovery Implementation Committee (MRRIC) and
31 Independent Science Advisory Panel
32

33 MS. GAERTNER: Good number.

34 THE COMMISSIONER: We'll take the morning break.

35 MS. GAERTNER: Thank you.

36 THE REGISTRAR: The hearing will now recess for ten
37 minutes.
38

39 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)

40 (PROCEEDINGS RECONVENED)

41
42 THE REGISTRAR: The hearing is now resumed.

43 MS. GAERTNER: Thank you, Mr. Commissioner. Although
44 the marine is a very large place, I have to leave
45 it, now, and return to a few other things. Could
46 I have First Nations Coalition Tab 37, which is
47 document for identification BBB (sic).

1 CROSS-EXAMINATION BY MS. GAERTNER, continuing:
2

3 Q Ms. Dansereau, earlier in the hearing this
4 document was put to Dr. Paradis, from Environment
5 Canada. It's a memo to you from Mitch Bloom,
6 regarding the administration and enforcement of
7 the Pollution Prevention Provisions of s. 36 of
8 the **Fisheries Act**. It was signed by you on
9 December 29th, 2010. Do you recognize this
10 document?

11 MS. DANSEREAU: I'd prefer to see the page with my
12 signature, because this looks --

13 Q Absolutely.

14 MS. DANSEREAU: -- like the cover of any --

15 Q Absolutely. There you go.

16 MS. DANSEREAU: -- any memo...

17 Q There it is.

18 MS. DANSEREAU: Yes.

19 Q Thank you. And could I have that --

20 MS. DANSEREAU: Definitely my handwriting.

21 MS. GAERTNER: Thank you. Could I have that marked as
22 the next exhibit.

23 MR. LUNN: Could I just clarify that this document says
24 -- it's actually BB, not triple B?

25 MS. GAERTNER: Sorry, I might have one extra "B" in my
26 notes.

27 THE REGISTRAR: So you want that to become a full
28 exhibit, now?

29 MS. GAERTNER: I want that as a full exhibit, now.

30 THE REGISTRAR: Okay, that caveat BB will be rescinded,
31 thank you.

32 MS. GAERTNER: Thank you. And I could take -- I would
33 like to take you --

34 THE REGISTRAR: And it will be 1960. It will be 1960.
35

36 EXHIBIT 1960: Memorandum from Mitch Bloom to
37 Claire Dansereau, dated December 23, 2010,
38 Object: Administration and Enforcement of the
39 Pollution Prevention Provisions of the
40 **Fisheries Act** (Section 36)
41

42 MS. GAERTNER: 1960.

43 Q And I'd like to take you to page 3 of that
44 document, the second bullet from the bottom. And
45 while he's doing that, Ms. Dansereau, it says that
46 the main disadvantage of DFO not controlling s. 36
47 issues is related to aquaculture and aquatic

1 invasive species. It goes on to say that
2 Environment Canada may pursue those issues on a
3 different priority or take a different approach
4 potentially resulting in delays.

5 Could you explain why you think Environment
6 Canada's approach would differ and why that would
7 be significant for the Department of Fisheries and
8 Oceans?

9 MS. DANSEREAU: If I may, this is one document amongst
10 many where we are -- or whether or not they're
11 documents, certainly one document within a long
12 series of discussions that we've been having on
13 the pros and cons of various approaches. So this
14 was "a" statement. I don't have any -- any proof
15 to back up this statement, it's simply a
16 conjecture on the part of Mitch or the group when
17 they were writing this. But, clearly, what it
18 means is that more work was required and more
19 discussions would be required with Environment
20 Canada.

21 Q Do you know when they were talking about the
22 delays, were they talking about delays in issuing
23 new licences for aquaculture? Is that what the
24 concern was?

25 MS. DANSEREAU: It could be general delays, it could
26 have been aquaculture, but anything else as well.

27 Q You don't recall?

28 MS. DANSEREAU: No.

29 Q I'll try this one, to see whether or not you have
30 any recollection. On page 4, bullet 2, it says
31 that you agree to the pursuit of Environment
32 Canada becoming fully accountable s. 36 of the
33 **Fisheries Act**, including new aquaculture pest
34 control regulations, future aquaculture waste, and
35 other emerging issues. And here's the question I
36 have, as it:

37
38 ...will best serve to limit DFO's immediate
39 and future liabilit[ies].
40

41 Can you tell me what liabilities you were
42 concerned with, here, and how this would serve to
43 limit yours?

44 MS. DANSEREAU: I think it's one of the areas where
45 there was some consideration given to - and this
46 is a very narrow area - to the potential that we
47 may be perceived to have some conflict between

1 being the regulator and working with the industry,
2 and so it's very difficult, in some of these
3 circumstances, for the Minister of Fisheries and
4 Oceans on certain files. So it would be better
5 left to potentially another minister doing this,
6 but as I say, the discussions have not yet
7 finalized and I haven't had them with the
8 minister, yet.

9 Q All right. Thank you for that, in terms of
10 helping us understand what the words meant and
11 what your intentions were.

12 I'll need to move on again. Ms. Dansereau
13 and Mr. Bevan, the next area of questions that I'm
14 going to have, and I'll just preface it this way,
15 is that there has been an experience by First
16 Nations and others in the Province that sometimes
17 the chain of communication could be improved
18 between those of us working on the ground and the
19 decision-makers in Ottawa.

20 And in particular, from a First Nations
21 perspective, the need to develop better processes
22 for ensuring that as decision-makers in Ottawa
23 you're best informed of the nature of the impacts
24 or infringements that could result from your
25 decisions and how those might be mitigated.

26 So what I'm going to do, now, is take you to
27 three examples and then, thankfully, again, as I
28 mentioned in my preface, I've got a proposed
29 approach to how we might address this. So we're
30 going to start with the aquaculture decisions,
31 then we're going to go onto **SARA**, and then the
32 approval of the IFMPs.

33 Now, as it relates to aquaculture, Ms.
34 Dansereau, I heard your evidence earlier that you
35 were the one that was the decision-maker to
36 rollover approximately 130 existing finfish farm
37 licences in December 2010; is that correct?

38 MS. DANSEREAU: Yes.

39 Q Do you recall when, in the process, DFO determined
40 that it would rollover these licences? And in
41 particular, was it part of the understanding
42 reached with the Province when the process for
43 transfer of regulatory responsibilities was being
44 implemented?

45 MS. DANSEREAU: It was part of an ongoing process.

46 Q So was it part of the discussions that you had
47 with the Province? Is that when it was determined

1 that you would rollover those licences?
2 MS. DANSEREAU: I can't answer that, I don't know. And
3 I'm aware, also, that there is an ongoing court
4 case on the question of consultation around these
5 licences, so I'm afraid I'm going to have to be a
6 little bit careful here.
7 Q Well, you'll need to answer my questions, though,
8 whether or not there's an outstanding court case
9 or not, and --
10 MR. TAYLOR: Well --
11 MS. GAERTNER: With due respect, if I'm --
12 MR. TAYLOR: There's a number of things that come into
13 play, and Ms. Gaertner's client is one of the
14 litigants in the court case that's referred to,
15 and this is not an examination for discovery in
16 that court case.
17 MS. GAERTNER: No.
18 MR. TAYLOR: So I think there has to be some care
19 taken.
20 MS. GAERTNER: I am, actually, trying to be as careful
21 as I can, Mr. Commissioner. And as you recall,
22 you've had evidence and concerns raised about the
23 decision, and so I'm just trying to understand the
24 timing and the process. I'm not, you know, he's
25 not going to make a finding of fact in this
26 inquiry that's going to effect the outstanding
27 court case.
28 Q So was it -- as I understand, it was part of the
29 process. You said you made the decision. I'm
30 just curious when, in the process, was that
31 decision made?
32 MS. DANSEREAU: I would have to go back and look at the
33 notes. It was a period, as you are aware, I
34 think, we had very limited time to make a whole
35 series of decisions, we were meeting on a regular
36 basis, and I'm not sure exactly at what point in
37 that process that decision was made, whether it
38 was early or later. I'm not sure if David
39 remembers.
40 MR. BEVAN: I can't recall the specific moment when
41 that was taken. I know we had a number of
42 discussions about the need to rapidly takeover the
43 responsibilities from the Province. There were
44 discussions with the Province. But that decision,
45 as I recall, is one that was put to us by those
46 involved in the development of the program and it
47 happened in the discussion in Ottawa, but I -- and

1 without the Province being directly engaged in
2 that. It was a suite of options of how do we get
3 to the finish line by December 18th and be ready
4 to continue on with the industry, on the one hand,
5 but also take on our responsibilities on the
6 other. So I can't give you a date. I think it
7 was in the, obviously, second half of the year,
8 but I can't tell you much more specifically than
9 that.

10 Q All right. While Mr. Lunn is bringing forward
11 Exhibit 1589, which is Tab 44 of our documents,
12 Mr. Andy Thomson, who I'm sure you're familiar
13 with in relation to this, has come and given
14 evidence, and on September 1st, in answer to a
15 question of mine, and I'll just read it:

16
17 So you took no additional or independent
18 steps at the time in which you made the
19 decisions in December 2010. You just assumed
20 since this criteria was in place that the
21 existing finfish farms had been screened for
22 that purpose?
23

24 Mr. Thomson replied:

25
26 I assume that the siting buffer had been in
27 place since 2000 and provided some measure of
28 comfort that these siting buffers had been
29 adhered to before making that decision, yes.
30

31 So to your knowledge, Ms. Dansereau, did DFO take
32 any steps in 2010 to determine whether the siting
33 criteria remained current with existing scientific
34 understandings regarding the relationship between
35 finfish farms and wild stocks, including
36 cumulative impacts associated with climate change
37 before you made the decision to rollover the
38 licences in 2010? Oh, you'll have to go forward.
39 I was giving you -- page 5, sorry, Mr. Lunn. That
40 gives you the siting criterias, if that's useful
41 to you to have in front of you.

42 But the question is: To your knowledge, Ms.
43 Dansereau, did DFO take any steps in 2010 to
44 determine whether the siting criteria remained
45 current with current scientific understandings
46 regarding the relationship between finfish and
47 wild stocks, in this case, Fraser River sockeye,

1 including cumulative impacts associated with
2 climate change, before making the decision to
3 rollover these licences in 2010?

4 MS. DANSEREAU: The advice that I received was such
5 that the sites as they currently were, were in
6 compliance with the rules that existed and that we
7 would be working with them over time to ensure
8 that any future requirements would be met.

9 Q Did you take any steps to ensure and inform
10 yourself that the criteria was actually being met
11 by the existing farms?

12 MS. DANSEREAU: There was no evidence otherwise.

13 Q So you didn't take any specific steps to determine
14 whether or not the criteria, as general as that
15 can be, i.e. then that would pre-empt important
16 aboriginal, commercial or recreational fisheries,
17 that that criteria was current in 2010?

18 MS. DANSEREAU: I can't remember if it was in the
19 advice that I received.

20 Q You don't recall it?

21 MS. DANSEREAU: That's right.

22 Q Now, the second question on aquaculture is more of
23 a process questions, Ms. Dansereau. I had an
24 opportunity to talk to Mr. Backman, who was a
25 representative from industry as it relates to
26 finfish farms, and discussed with him the
27 challenges we have in British Columbia around
28 creating certainty for industry in a situation
29 where outstanding issues around First Nations
30 impacts and rights are in place, and we had an
31 opportunity to talk about the benefits of a
32 protocol that could be put into place that would
33 help facilitate the necessary consultation that
34 could occur and that protocol would be between the
35 Department of Fisheries and Oceans and First
36 Nations and be -- clearly set out industry's role
37 in helping to answer some outstanding questions.
38 Do you also see that such a protocol like that
39 would be valuable to you going forward?

40 MS. DANSEREAU: I'm always supportive of as many
41 parties as possible developing protocols and
42 developing rules of engagement so that we are all
43 more comfortable in what the future may hold.

44 Q And so when particular protocol that set out the
45 roles and responsibilities and how industry could
46 participate and fund the necessary studies that
47 would need to be completed to assess the potential

- 1 impacts and options for mitigation associated with
2 these farms and the exercise of s. 35 fishing
3 rights would be useful to you?
- 4 MS. DANSEREAU: I think a protocol between the First
5 Nations and industry to set out what you described
6 would be quite useful.
- 7 Q I think we need to go one step further, though,
8 because as a decision-maker you're going to make
9 decisions about renewals of these licences. Would
10 it be useful to have this protocol in place so
11 these studies could be completed so you could
12 assess the potential impacts to the exercise of
13 these rights going forward and make adjustments to
14 the licences in a necessary way?
- 15 MS. DANSEREAU: I would -- it's hard to say in the
16 specific. In the general, I would agree, yes, but
17 whether or not we have sufficient information at
18 this time in preparation for the next round, I'm
19 not sure, but as a general practice, it might be a
20 good idea.
- 21 Q And so as a result of hearing all of the evidence
22 regarding this very complex issue, and if the
23 Commissioner sees fit to make recommendations as
24 to the nature of the studies that need to be done,
25 do you see the value in ensuring how those studies
26 would be done, including the participation of
27 industry and funding those studies and getting to
28 the bottom of this?
- 29 MS. DANSEREAU: I would say that's for the Commissioner
30 to decide on those recommendations.
- 31 Q Would that be valuable to you?
- 32 MS. DANSEREAU: I would have to see what the studies
33 are and what the recommendations are.
- 34 Q Given the strong concerns raised by First Nations
35 inside and outside of this Inquiry, as to the
36 effect of farm fish -- or finfish farms on wild
37 salmon and the exercise of their s. 35 rights, are
38 you willing to rely upon annual renewals of the
39 licences along the Fraser River sockeye salmon
40 migratory routes until such work, including the
41 studies and the consultation that I've just
42 mentioned has been implemented?
- 43 MS. DANSEREAU: That's a piece of work that would
44 require more thought than just answering a
45 question here, so I'll --
- 46 Q So you're willing to consider it?
- 47 MS. DANSEREAU: Yes.

1 Q Are you also willing to consider adding, as a term
2 of the licence, the obligation to participate in
3 the experimental removal, following or relocation
4 of these finfish farms along the migratory route?

5 MS. DANSEREAU: I don't know. I can't answer. In the
6 absence of a full discussion, I don't know which
7 of the parts would be acceptable or not
8 acceptable.

9 Q But you'd be willing to consider it?

10 MS. DANSEREAU: Of course.

11 Q All right. Let's move onto **SARA** and the
12 socioeconomic analysis. And Ms. Dansereau, you
13 can relax for a bit, these questions are for Mr.
14 Bevan.

15 You're familiar, Mr. Bevan, with DFO's
16 recommendations made in 2004, that the Minister of
17 Environment not list Cultus or Sakinaw as
18 endangered under the **SARA**, correct?

19 MR. BEVAN: Yes, I am.

20 Q And you mentioned this process in November, when
21 you first testified before the Commissioner,
22 correct?

23 MR. BEVAN: Yes, I believe I did.

24 Q And on November 2nd, and it's at transcript page
25 42, if we need to, but you testified that one of
26 the reasons that Cultus wasn't listed was, and I'm
27 quoting now, "very extensive socioeconomic
28 implications". Do you recall that?

29 MR. BEVAN: Yes, I do.

30 Q Now, the Commissioner's heard a lot of evidence
31 regarding the Cultus **SARA** decision, and he's
32 heard, specifically, from Dr. Davis, who you know,
33 correct?

34 MR. BEVAN: That's correct.

35 Q And Mr. Schubert, who was the head of the Cultus
36 Recovery Team and is now head of the Freshwater
37 Ecosystems with Science Branch in Burnaby. Are
38 you familiar with him, also?

39 MR. BEVAN: Not as -- not personally, as I am with Dr.
40 Davis.

41 Q All right. On May 31st, transcript page 31, line
42 43, Dr. Davis says this:

43

44 There was [a] round criticism of the
45 socioeconomic analysis coming from a lot of
46 quarters.

47

1 Then also at line 20, transcript page 32 on the
2 same day, he said:

3
4 DFO...recognized in fact that we had to have
5 more robust socioeconomic analysis...
6

7 Mr. Schubert, head of the Cultus Recovery Team,
8 gave evidence here on May 31st, and at page 72,
9 line 40, he says this, the socioeconomic report
10 authored by Gord Gislason, and I quote now:

11
12 ...seemed quite rudimentary and undeveloped
13 and I didn't realize it was a final
14 document...
15

16 Then further, at page 74 of the same day, he says
17 this Cultus Sockeye Recovery Working Group has
18 identified six major issues with the socioeconomic
19 analysis.

20 Now, having heard those two gentlemen's
21 comments as it relates to the socioeconomic and
22 reflecting on your earlier testimony, do you agree
23 that there may have been some deficiencies in the
24 socioeconomic analysis that DFO relied on to make
25 its recommendations that Cultus and Sakinaw not be
26 listed under **SARA**?

27 MR. BEVAN: We expected the socioeconomic analysis to
28 come under tremendous scrutiny and criticism
29 because of the people who disagree with the
30 decision would use that mechanism to bring it into
31 question. So we wanted to have as much robustness
32 around the analysis as we possibly could. I would
33 say that while some flaws could be pointed out by
34 critics of the analysis, what is the basic issue
35 is the scale of the impact that listing Cultus and
36 Sakinaw Lakes would have had on the economics of
37 the fishery and other activities in British
38 Columbia. So I don't think whether it was within
39 plus or minus a million dollars is a question.
40 Whether it is in the ballpark, I think it is. I
41 think it provided the Minister with the scale of
42 the impacts and that the Minister had to have that
43 information in order to come to a reasonable
44 determination as to what the Government of Canada
45 wished to do with the recommendation that came
46 from COSEWIC.

47 So I'm not going to say that it's perfect.

1 I'm saying that it provided the scale of the
2 impacts and we did expect that there be some
3 criticism, so we tried to ensure it was as robust
4 as possible in that whether it's a science report
5 or whether it's a socioeconomic report, people who
6 don't like decisions usually go to the criticism
7 of the reports that support the decision, and
8 that's what happened here.

9 Q Ms. Farlinger, would you agree that DFO, First
10 Nations and stakeholders in British Columbia would
11 benefit from improving our capacity to do
12 socioeconomic analysis and better -- and be better
13 informed about the socioeconomic implications so
14 that decisions like this can be done more
15 transparently and reliably, including those
16 decisions that are envisioned by the Wild Salmon
17 Policy?

18 And perhaps as a corollary to that, do you
19 agree there is a unique challenge associated with
20 establishing the socio -- and understanding the
21 socioeconomic implications of the loss of food,
22 social and ceremonial fisheries to First Nations?

23 MR. TAYLOR: Well, I'm going to ask that Ms. Gaertner
24 let the witness answer the first question before
25 she goes to the second question, particularly
26 because in these --

27 MS. GAERTNER: I'm just trying to save time.

28 MR. TAYLOR: -- these questions are very long, have
29 multiple clauses within them and, to some extent,
30 have speeches within them as well, which the
31 witnesses can speak to. But I think, in fairness
32 to the witness, Ms. Farlinger should have one
33 question at a time.

34 MS. GAERTNER:

35 Q Ms. Farlinger, I think you understood the two
36 parts to the question?

37 MS. FARLINGER: With respect to the first part to the
38 question, one thing I will say is that in DFO,
39 regionally, we have rebuilt our capacity to do
40 economic analysis, specifically within what's
41 called our policy branch in the region, and we
42 currently have increased the number of economists
43 with expertise in that area. We have done that
44 for a couple of reasons. One, is for the
45 requirement in the integrated fishery management
46 plan for an economic view or overview of the
47 fishery, but the other is to get at the issues you

1 raise, which was an improvement from our previous
2 capacity to be able to do economic analysis.

3 I think the issue of the social components of
4 the analysis are certainly difficult and it's not
5 a capacity we have in DFO, but we will often
6 contract consultants or others to do that, so...

7 Q And you'll agree at this point, and we've seen a
8 number of the reports that you do have, and you'll
9 agree that we do need to look carefully at the
10 socioeconomic implications and how you would even
11 measure those as it relates to First Nations
12 access to food, social and ceremonial fisheries?

13 MS. FARLINGER: That's certainly a challenging area,
14 yes.

15 Q Thank you. Okay, I need to move on again, and I'm
16 going to go to Exhibit 327, which is the 2009,
17 which you'll recall the nature of the year of
18 2009, now, and it's the approval of the IFMP. Ms.
19 Dansereau, this question is to you. And again,
20 this is an example, and I'd like to go to page 6
21 of the document, pdf 6 and page 6 of the document.
22 This is the signature of it. And this is the
23 IFMP, it's setting out various different harvest
24 opportunities that are being planned for the 2009
25 year, and you'll note the comment that's reached
26 -- that the Minister of Fisheries and Oceans puts
27 there:

28
29 Need to ensure we maximize opportunities for
30 commercial fisheries.

31
32 I'm curious, and my clients are very curious, as
33 to why it doesn't say, "need to ensure that we
34 need to maximize ensuring s. 35 fishing rights are
35 properly provided the necessary priorities. Could
36 you help us understand the nature of the comment
37 and why it doesn't include the s. 35 fishing
38 rights?

39 MR. ROSENBLOOM: Excuse me, I object. If my friend is
40 inquiring as to why someone else, namely the
41 Minister, made an entry on that document, I say it
42 is way beyond the ability of this panel to start
43 reading into the mind of the Minister.

44 MS. GAERTNER:

45 Q Well, Ms. Dansereau, you and the Minister approved
46 this briefing note, or approved this fishing plan.
47 Could you advise the nature of the concerns the

1 Minister was raising with you at the time around
2 maximizing opportunities for commercial fisheries?
3 MR. ROSENBLOOM: I apologize. Same issue, it's hearsay
4 evidence, if the Deputy Minister is informing this
5 Commission as to what was in the Minister's mind
6 at the time.
7 MS. GAERTNER: With all due respect, Mr. Commissioner,
8 if it's hearsay, you'll decide what weight you
9 want to put to it. This is an important issue, as
10 I've mentioned, as to how headquarters makes
11 decisions. I'd like Ms. Dansereau's thoughts on
12 this.
13 THE COMMISSIONER: Well, I think it's more than
14 thoughts. I guess the most helpful thing is, does
15 she have any personal knowledge --
16 MS. GAERTNER: Sure.
17 THE COMMISSIONER: -- regarding those words on the
18 page.
19 MS. GAERTNER:
20 Q Let's start there.
21 MS. DANSEREAU: No, I don't.
22 Q All right. Then let's turn to possible solutions
23 to what I -- and again, your counsel may feel
24 uncomfortable with my opening comment here, but I
25 have to say these three examples provide the kinds
26 of concerns that our clients have around making
27 sure that the decision-makers in Ottawa are fully
28 informed of the concerns and interests of First
29 Nations, and so I'm going to move forward, now, to
30 First Nations Coalition document number 2.
31 Deputy Minister, I understand that this July
32 the First Nations Leadership Council, being the
33 UBCIC, the Summit and the AFN - it's on the
34 screen, Ms. Dansereau - and certain
35 representatives of the First Nations Fisheries
36 Council met with the Minister to talk about key
37 issues facing First Nations in British Columbia
38 related to fisheries and aquaculture; is that
39 correct?
40 MS. DANSEREAU: I wasn't at the meeting. Ms.
41 Farlinger, I think, was.
42 Q Oh, great. Sorry. At least one of you was there,
43 that's great. Ms. Farlinger, do you recall that
44 meeting?
45 MS. FARLINGER: I do.
46 Q And do you agree that during that meeting the
47 First Nations Leadership Council emphasized a need

- 1 for a strategic-level government to government
2 relationship between First Nations Leadership
3 Council and the Minister?
4 MS. FARLINGER: The First Nations Leadership put
5 forward a proposal for a system of meetings
6 between the Minister and the First Nations
7 Leadership Council.
8 Q And one of the suggestions was that the Minister
9 enter into an MOU with the First Nations
10 Leadership Council that would outline mutual
11 commitments to work together on areas of shared
12 interest and importance, correct?
13 MS. FARLINGER: That was part of the proposal, yes.
14 Q And do you recognize this letter, which is dated
15 July 13, as being a letter from the First Nations
16 Leadership Council to Minister Ashfield, as a
17 follow-up to the July 7th meeting?
18 MS. FARLINGER: I have seen this letter in the -- yes,
19 in our correspondence system.
20 Q And you recall, at paragraph three of this letter,
21 the First Nations Leadership Council is strongly
22 recommending entering into a formal MOU, correct?
23 MS. FARLINGER: I see that's noted in the letter yes.
24 MS. GAERTNER: Thank you. Could I have that marked as
25 the next exhibit.
26 THE REGISTRAR: 1961.
27
28 EXHIBIT 1961: Letter from First Nations
29 Leadership Council to the Honourable Keith
30 Ashfield, dated July 13, 2011
31
32 MS. GAERTNER: And if I could go, then, to First
33 Nations Coalition's document number 3.
34 Q Ms. Dansereau, perhaps you recognize this letter,
35 which is dated August 2nd, as being a follow-up
36 from the First Nations Fisheries Council's meeting
37 and the letter to Minister Ashfield. Do you
38 recognize this letter?
39 MS. DANSEREAU: I have not seen this letter,
40 (indiscernible - away from microphone) what you
41 say it is.
42 Q Ms. Farlinger, do you recognize this letter?
43 MS. FARLINGER: I have to say I don't, although it's
44 very likely that I've seen it in the course of my
45 work.
46 Q And you recognize, well, at paragraph three, it
47 speaks for itself, the First Nations Fisheries

1 Council, which you're familiar with and have been
2 working with, is committed to providing the
3 technical and operational support to the
4 Leadership Council as part of the government to
5 government relationship, and that is the type of
6 working relationship you're developing with the
7 First Nations Fisheries Council, correct?

8 MS. FARLINGER: The First Nations Fisheries Council --
9 excuse me for a moment while I read this. I
10 understand the perspective that the First Nations
11 Fisheries Council has committed to providing that
12 technical and operational support to the
13 Leadership Council. The work of Fisheries and
14 Oceans with B.C. First Nations Fisheries Council
15 is focused not only on technical and operational
16 support matters that can be dealt with at the
17 level of the council and the level of the regional
18 management in DFO.

19 MS. GAERTNER: Thank you, that's very helpful. Could
20 I have this marked as the next exhibit.

21 THE REGISTRAR: 1962.

22
23 EXHIBIT 1962: Letter from First Nations
24 Fisheries Council to the Honourable Keith
25 Ashfield, dated August 2, 2011
26

27 MS. GAERTNER:

28 Q Now, perhaps, Ms. Dansereau, or Ms. Farlinger, and
29 perhaps or Mr. Bevan, I don't know, are you aware
30 that the Government of Canada, as well as the
31 Provincial Government has entered into similar
32 types of MOUs with the First Nations Leadership
33 Council on issues relating to housing and health?

34 MS. DANSEREAU: I'm hesitating only because I think so,
35 and so I can't say definitively (indiscernible -
36 overlapping speakers) --

37 Q Okay. If I could go to Tabs 5, 6, and 7 of our
38 documents, please.

39 MR. LUNN: Would you like those up together?

40 MS. GAERTNER: Yes, please. Yes, I think that's
41 helpful.

42 Q Would that refresh your memory, Ms. Dansereau, as
43 to the existing agreements that are presently in
44 place on issues related to housing and health at
45 that level?

46 MS. DANSEREAU: To a certain extent, although they are
47 with other departments.

1 MS. GAERTNER: Yes. Could I have those marked as
2 exhibits, please.

3 MR. TAYLOR: Just on 6, can Ms. Gaertner say if that's
4 a final document? There's no evidence, on its
5 face, it is. Wrong number. Seven.

6 MS. GAERTNER: I don't have -- I'm confused. We have
7 been provided --

8 MR. EIDSVIK: Excuse me, Ms. Gaertner. Mr.
9 Commissioner, Philip Eidsvik, for Area E and the
10 Coalition. Yesterday, when I was entering
11 documents, even the annual report of the
12 Department of Fisheries, I was -- numerous
13 objections because a document couldn't be
14 identified, and here we are entering documents as
15 exhibits from a different department that nobody
16 knows what it is. And it does cause us a little
17 bit of concern, although the document, I don't
18 think, is particularly relevant. But, I mean, if
19 there's one standard for us, I think there
20 probably should be the same standard for all
21 participants. Thank you.

22 THE COMMISSIONER: Thank you, Mr. Eidsvik.

23 MS. GAERTNER: I am seeking that these be marked as
24 examples of the types of MOUs that are being
25 provided -- being entered into between the
26 Leadership Council. I have a question on them
27 that I'm about to ask as it relates to the
28 implementation of fisheries, strategic fisheries
29 matters. I'll ask that question.

30 MR. TAYLOR: I'll just leave it this way: Number 7, I
31 can't agree to it being an exhibit, I have no idea
32 what it is. The others, I think, are largely
33 irrelevant, Mr. Eidsvik just spoke to that, but
34 will have a question. But I can see that they are
35 documents that are signed, so fine. Number 7, I
36 can't see that and I don't know anything about it.
37 I can't agree to it.

38 MS. GAERTNER: It is my understanding that it's the
39 final version. It has been signed. I don't have
40 a signed version in my possession right now. I
41 wasn't aware that this was a difficulty for Mr.
42 Taylor.

43 Q Are you aware -- does DFO headquarters welcome a
44 clear process for strategic engagement with the
45 First Nations Leadership Council, Ms. Dansereau?

46 MS. DANSEREAU: Yes, we do.

47 Q And given the benefits of resolving some

1 outstanding business between DFO and First Nations
2 at a strategic level, do you agree that an MOU
3 setting out mutual objectives could be a useful
4 step within the negotiations of both joint
5 management and addressing the challenges
6 associated with ensuring headquarters is operating
7 on reliable information in making decisions that
8 could affect fisheries in British Columbia?

9 MS. DANSEREAU: I guess it depends on the MOU, and I
10 wouldn't say by saying yes to an MOU is an
11 approach that I would want to close the door to
12 other approaches, so it is one of many, but it
13 would depend on the MOU itself and the discussions
14 that we were having.

15 We had started consultations with National
16 Chief Atleo and Minister Shea, and we had begun a
17 process with her and the National Chief, and we
18 intend to continue those discussions, and where
19 they end up we will see.

20 Q All right. I understand there's no objection to
21 documents 5 and 6 going forward as exhibits.

22 MR. MCGOWAN: With respect, there was an objection.

23 MS. GAERTNER: Oh, sorry.

24 MR. MCGOWAN: Mr. Eidsvik --

25 MS. GAERTNER: I'm sorry, Mr. Eidsvik --

26 MR. MCGOWAN: -- took the position that there ought not
27 to be two standards.

28 MS. GAERTNER: With due respect, I don't think we're
29 dealing with two different standards here. These
30 are documents that are relative to my client,
31 who's a party to this matter, and their
32 relationship with the Government of Canada.

33 MR. MCGOWAN: And Mr. Taylor also raised the issue of
34 relevance, although I don't know if he's
35 particularly pressing that submission, but --

36 THE COMMISSIONER: Mr. Eidsvik?

37 MR. MCGOWAN: -- there are objections.

38 MR. TAYLOR: If I objected on relevance, there would be
39 an awful lot of objections --

40 MS. GAERTNER: Exactly.

41 MR. TAYLOR: -- so I don't intend to do that.

42 MS. GAERTNER: Neither do I.

43 MR. TAYLOR: I've raised it, and I've raised a point
44 about number 7, and Mr. Eidsvik's got his further
45 points.

46 MR. EIDSVIK: Mr. Commissioner, just pointing out
47 yesterday I was trying to get a document in, the

1 1925-26 annual report of the Department of
2 Fisheries, and there was objections to it because
3 nobody could identify it. And, of course, nobody
4 in this room was alive to identify that that was
5 the proper document. And now I see documents
6 coming in. But I'll withdraw my objection.
7 THE COMMISSIONER: Thank you very much, Mr. Eidsvik.
8 Again, we'll go back to the tabs here. I'm sorry,
9 Ms. Gaertner, you've got Tabs 5, 6, and 7; is that
10 correct?
11 MS. GAERTNER: That's correct. And I understand that
12 -- are you still objecting to --
13 THE COMMISSIONER: Yes, 5 and 6 will be marked; 7 will
14 be marked for identification purposes only.
15 MS. GAERTNER: All right.
16 THE REGISTRAR: Document number 5 will be 1963, and
17 document number 6 will be 1964. Document number 7
18 will be marked as NNN, triple "N".
19
20 EXHIBIT 1963: First Nations Health Plan
21 Memorandum of Understanding between the First
22 Nations Leadership Council et al and
23 Government of Canada and Government of
24 British Columbia, dated November 27, 2006
25
26 EXHIBIT 1964: British Columbia Tripartite
27 First Nations Health Basis for a Framework
28 Agreement on Health Governance between BC
29 First Nations, Canada, and British Columbia,
30 dated July 26, 2010
31
32 MARKED NNN FOR IDENTIFICATION: Unsigned,
33 undated First Nations Housing Memorandum of
34 Understanding between First Nations
35 Leadership Council et al, Government of
36 Canada et al, and Government of British
37 Columbia et al
38
39 MS. GAERTNER:
40 Q Do you welcome the continued discussions with the
41 Leadership Council in completing an MOU that might
42 be useful to both them and the Government of
43 Canada through the Department of Fisheries and
44 Oceans, Ms. Dansereau?
45 MS. DANSEREAU: I'd certainly welcome continued
46 discussion. Whether or not it ends in an MOU, I
47 don't know.

1 Q Ms. Farlinger, would that be helpful at the
2 regional level?

3 MS. FARLINGER: I think the First Nations Fisheries
4 Council, which is largely a regional First Nations
5 council to advise on regional matters is certainly
6 very useful to me in terms of the implementation
7 of operational programs in B.C. and any regional
8 advice that we provide to policy processes. So
9 that perspective that's provided by the Council.
10 And the Council has been very careful to say that
11 they do not represent individual First Nations.
12 So I just want to be clear that the nature of that
13 relationship is clearly focused on higher level
14 regional-type issues rather than issues specific
15 to any particular First Nation, is certainly
16 helpful to us. And anything that supports that
17 would very likely be helpful, depending on what it
18 was.

19 Q Thank you. With the limited time I have left,
20 which is approximately 15 minutes, I'm going to
21 turn to one more topic, which is perhaps bearing
22 down on what we've just talked about, which is how
23 to implement co-management and consultative
24 processes in a complex environment such as the
25 Fraser River.

26 Now, Ms. Farlinger, you're familiar with
27 Barry Huber's work, I'm assuming. And Ms.
28 Dansereau and Mr. Bevan, are you also familiar
29 with Barry Huber's work? He's been with the
30 Department of Fisheries for over 30 years. He's
31 been a resource manager and an aboriginal affairs
32 advisor, and he's now on special assignment to
33 build a co-management structure with First Nations
34 on the Fraser Watershed. Are you familiar with
35 his work?

36 MR. BEVAN: I'm familiar --

37 MS. DANSEREAU: No, not specifically.

38 MR. BEVAN: I'm familiar with Barry, but not with this
39 most recent work, no.

40 Q All right. But Ms. Farlinger, you're aware of the
41 work that he's doing through the roadmap process
42 and otherwise to try to implement a co-management
43 structure on the Fraser Watershed?

44 MS. FARLINGER: Yes, to try to design and, in fact,
45 ultimately, yes, put an arrangement into place.

46 Q And Mr. Huber has come to give evidence and so the
47 Commissioner has had the benefit of his thoughts

1 and ideas on the roadmap and developing a Tier 1,
2 Tier 2 process, so I'm not going to go through all
3 of that. Rather, I think it's useful for the
4 Commissioner to hear from you, Ms. Farlinger,
5 about some of the challenges, and from you, Ms.
6 Dansereau, where it's appropriate.

7 But I'm going to use one of his documents and
8 I need to go to Heiltsuk Tribal Council's document
9 number 75, which is a Strength, Weaknesses,
10 Opportunities and Threats, SWOT, assessment that
11 Mr. Huber did in 2008. I appreciate that it is a
12 bit dated, but I think that some of the key topics
13 are useful.

14 Now, Ms. Farlinger, do you recognize this as
15 a Department of Fisheries and Oceans document and
16 have you seen it before?

17 MS. FARLINGER: I have been briefed on this document,
18 but I don't believe I've specifically seen it.

19 Q All right. Could I have this marked as an
20 exhibit?

21 THE REGISTRAR: 1965.

22
23 EXHIBIT 1965: Fisheries and Oceans Canada
24 Pacific Aboriginal Fisheries Framework (PAFF)
25 Strengths/Weaknesses/Opportunities/Threats
26 Assessment by Barry Huber, dated 2008
27

28 MS. GAERTNER:

29 Q And I'd like to turn to page 9, and it won't
30 surprise you, it's a topic -- it's under the
31 heading, Options and Ideas for Change, and section
32 b) particularly:
33

34 Does DFO have other options for achieving
35 stability of the resource and reconciliation
36 with First Nation other than treaty?
37

38 And under this heading I find these words [as
39 read]:
40

41 DFO needs to work through a mutually
42 agreeable process with representatives of
43 Aboriginal organizations (whether in treaty
44 processes or not) to build a management
45 structure such as the Northwest Indian
46 Fisheries Commission (example: a Fraser River
47 Fisheries Commission). Initially this will

1 require an engagement strategy with DFO;
2 followed by Aboriginal organizations and non
3 government organizations that support
4 activities associated with the management of
5 fisheries and protection of fish and fish
6 habitat.
7

8 So I'll stop there for a moment. My question for
9 you, first of all, Ms. Farlinger is: Do you agree
10 with Mr. Huber that building a structure like the
11 Northwest Indian Fisheries Commission with First
12 Nations is a good way to achieve stability of the
13 resource and reconciliation with First Nations?

14 MS. FARLINGER: I think that the specificity of the
15 Northwest Indian Fisheries Commission which, of
16 course, exists in an entirely different governance
17 structure, is probably a bit strong. I think that
18 as part of this process I recall that DFO and
19 First Nations had invited the Northwest Indian
20 Fisheries Commission to come and advise the group
21 on the nature of the commission and their work.

22 I think that what we are attempting to build
23 through, I'm going to call it, informally the
24 forum or the roadmap process, is something that is
25 more closely tailored to our situation here in
26 B.C. But there's certainly aspects of the
27 organization and the challenge -- and things we
28 can learn from the challenges faced and resolved
29 in the Northwest Indian Fisheries Commission.

30 Q Thank you. Ms. Dansereau, can you confirm that
31 DFO headquarters has also concluded that achieving
32 collaborative governance with First Nations inside
33 and outside of treaty will be a good way to
34 achieve stability of the resource and
35 reconciliation with First Nations?

36 MS. DANSEREAU: I would say that we certainly agree
37 that collaboration is required through -- in all
38 of our relationships.

39 Q But specifically with First Nations is my
40 question.

41 MS. DANSEREAU: That it would be helpful, yes.

42 Q And can you also confirm that DFO Headquarters
43 hopes or intends to proceed to do such work and
44 reach such agreements without the necessity of
45 conducting strength of claim analysis for every
46 First Nations along the migratory route of the
47 Fraser River sockeye salmon?

1 MS. DANSEREAU: I can't answer that question.

2 Q Ms. Farlinger, can you answer that question?

3 MS. FARLINGER: As to the specific processes for
4 arriving at a collaborative structure, I can't
5 comment on whether we would use or not use
6 strength of analysis -- strength of claims
7 analysis. It is certainly part of the tools
8 provided to us by the Department of Justice with
9 respect to how we deal with many matters about
10 aboriginal fishing, and we certainly do use it and
11 would use it in some circumstances.

12 I think the process of building a
13 collaborative structure may or may not include
14 that, but I certainly don't see it as a universal
15 application.

16 Q All right. I need to move on because I'm very
17 time sensitive here. Mr. Huber also suggested, at
18 the bottom of page 9, that where appropriate
19 support for intertribal treaties and the looking
20 for opportunities for supporting organizations to
21 resolve difficult issues, such as overlapping
22 claims and fish allocation issues. And I'll stop
23 here again.

24 Do you see the benefit of developing capacity
25 within First Nations organizations to facilitate
26 dialogue amongst themselves as it relates to
27 intertribal allocations and to reach necessary
28 agreements at that level? Ms. Farlinger?

29 MS. FARLINGER: I think that processes for First
30 Nations to resolve these issues are very
31 important, yes.

32 Q And I have to move on quickly, so I can't do the
33 lead that I'd hoped to do with you as it relates
34 to the next two questions, but I'll get down to
35 the basic, which is: Do you see the resolution of
36 the allocation issues and the resolution of
37 providing a meaningful place for First Nations as
38 managers as useful incentives for bringing in
39 First Nations Leadership into the discussions in a
40 meaningful way? And I'll start, again, with Ms.
41 Farlinger, given her experiences in this matter in
42 B.C. So resolution of allocation and resolution
43 of co-management as useful incentives for
44 increasing active participation by First Nations
45 Leadership in these issues?

46 MS. FARLINGER: It seems a very general question, and I
47 think both those aspects are important

1 understandings that we need to have with First
2 Nations Leadership to move forward on improved
3 fisheries management.

4 Q And allocation and co-management are important
5 incentives to that leadership's involvement,
6 you've heard that over and over again over the
7 years?

8 MS. FARLINGER: They're important aspects to having
9 better fisheries management and better
10 relationships with First Nations Leadership.

11 Q Thank you. And the five -- could I have that
12 marked as the next exhibit?

13 THE REGISTRAR: 1966.

14 MS. GAERTNER: I understand from many around me that I
15 have five minutes left. I have to go to one final
16 matter, which is PICFI and terminal fisheries.

17 THE REGISTRAR: Ms. Gaertner, could you clarify what
18 tab that was, 1966?

19 MS. GAERTNER: It's Tab 76 from Heiltsuk's document.

20 THE REGISTRAR: Okay, we've already marked that, then.

21 MS. GAERTNER: Oh, sorry. Thank you.

22 THE REGISTRAR: I thought you wanted another document.
23 Thank you.

24 MS. GAERTNER: No, I'm not.

25 THE REGISTRAR: So we'll discard 1966.

26 MS. GAERTNER: I'm sorry.

27 Q I want to turn to Exhibit 1746, which is our Tab
28 14, which is DFO's evaluation of PICFI, dated
29 August 31st, 2010, and in particular at pages 8
30 and 9 there's a Recommendation #3. If you could
31 just take a moment and read that:
32

33 PICFI should lead a move toward a terminal
34 fishery for salmon, offering more support for
35 this transition through all elements of the
36 initiative. Decisions on a balance between
37 ocean and in-river allocations should be made
38 in consultation with [First Nations]. The
39 transition should be coordinated with licence
40 acquisition, so the appropriate species are
41 available to mitigate any potential loss to
42 [First Nations] that might otherwise have
43 received increased allocations to fish for
44 salmon in the ocean.
45

46 And then Recommendation #7:
47

1 DFO should plan for the continuation of PICFI
2 activities after the 5-year program ends,
3 contingent on available resources.
4

5 Ms. Dansereau and Ms. Farlinger, do you agree with
6 these recommendations and do you -- well, let's
7 start with that.

8 MS. FARLINGER: I should say that this is a mid-term
9 report that was done by internal DFO evaluation
10 directorate and was required as -- by the
11 Government, by the Treasury Board, as part of the
12 PICFI program. I should say that the
13 recommendations included in this report were
14 generally useful. The process to arrive at these
15 recommendations was not necessarily an internal
16 analysis, and that internal analysis, as the
17 Deputy has indicated earlier, is still ongoing
18 with respect to the aspects of PICFI which of
19 those should be carried forward and which of those
20 may not and how that may or may not be funded or
21 brought into the fishery management.

22 So specifically on Recommendation #3, no
23 decision has yet been made. And on Recommendation
24 #7, which I believe is about the continuation of
25 PICFI, is still under evaluation.

26 Q So at this point you can't say whether you agree
27 with those recommendations?

28 MS. FARLINGER: That's right.

29 Q And Ms. Dansereau, are you in the same position?

30 MS. DANSEREAU: Yes.

31 Q Are you aware of the call from First Nations for
32 the continuation of the PICFI program for a second
33 five-year term?

34 MS. FARLINGER: Yes, I am.

35 Q Could I have Exhibit 1747, which is First Nations
36 Tab 13. This is the First Nations Fisheries
37 Council's report that puts together a business
38 case for the second phase of PICFI from 2012 to
39 2017. Ms. Farlinger, have you had an opportunity
40 to review this report?

41 MS. FARLINGER: I have seen this report, yes.

42 Q And do you agree that some of the lasting benefits
43 of PICFI that First Nations have identified, and
44 I'll take you to page 12, are reduced conflicts,
45 savings to Canada, improve fisheries management,
46 enhanced regional economies, and social benefits
47 to First Nations?

1 MS. FARLINGER: I do agree that those are benefits of
2 PICFI, yes.
3 Q And would you agree that the PICFI program
4 recognizes that terminal fishery programs may not
5 be immediately profitable, but that the aim is
6 that they would become sustainable over time?
7 MS. FARLINGER: I think that the PICFI terminal
8 fisheries, or in-river fisheries are still under
9 evaluation as pilots, and so obviously the
10 economic viability of those are something -- is
11 something that we would continue to want to
12 understand.
13 Q And continue to work on? And in some ways it's an
14 example of how the -- the initiatives in PICFI are
15 what I would call half-baked, we're not quite
16 finished the work that we've started under PICFI?
17 MS. FARLINGER: Testing things sometimes takes longer
18 than we thought.
19 Q So you agree with me?
20 MS. FARLINGER: I agree with you that sometimes -- we
21 don't have a conclusion on the in-river fisheries
22 at this point.
23 Q There's more work to be done?
24 MS. FARLINGER: (No audible response)
25 Q I just have one final question. Would you agree
26 that the road to co-management through the roadmap
27 and the forum and all the outgoing work, and the
28 efforts under the Wild Salmon Policy are really a
29 process of DFO incrementally sharing
30 responsibility with First Nations and finding a
31 place at the table for them in the ongoing
32 management of the fisheries?
33 MS. FARLINGER: I think that the evolution of the
34 co-management processes happening on a continuum,
35 which largely has to do with everyone bringing
36 their authorities to the table; that is, DFO and
37 the First Nations, and figuring out what the
38 interaction is between those authorities and
39 sharing information and, therefore, knowledge and
40 -- in that process. The extent -- the end point I
41 can't identify.
42 Q But incrementally sharing responsibility in a
43 clear and more cooperative manner is the goals of
44 those processes?
45 MS. FARLINGER: I think that it may include the sharing
46 of responsibilities on both sides, and that may be
47 simply through increased understanding or maybe

1 through a more explicit arrangement. So I think
2 that we're not at the point of deciding what is
3 shared and what is not shared, at this point.

4 MS. GAERTNER: Apparently, I have to sit down, so Mr.
5 Commissioner, I am completed my questions. And
6 thank you very much, panel.

7 THE COMMISSIONER: Thank you, Ms. Gaertner.

8 MR. DICKSON: Mr. Commissioner, it's Tim Dickson for
9 the Stó:lō Tribal Council. Good morning --
10 afternoon, panel.

11
12 CROSS-EXAMINATION BY MR. DICKSON:

13
14 Q I wanted to start by asking a little bit about
15 traditional aboriginal knowledge. We've heard a
16 number of times in this inquiry that First Nations
17 have a great deal to offer in terms of fisheries
18 management, including through the incorporation of
19 traditional aboriginal knowledge. And recently
20 David Marmorek, I think, encapsulated the benefits
21 of it well. He stated that TEK's:

22
23 ...a very important form of knowledge, in
24 particular because of the time span both in
25 duration and also in terms of resolution,
26 namely that people, First Nations, have been
27 in particular locations for a very long
28 period of time, have seen many fluctuations
29 in resources, have amazing memories about --
30

31 And he said:

32
33 -- well, hopefully recorded from elders and
34 the like about what's changed, but also
35 because they're there all the time during a
36 given year.
37

38 Ms. Farlinger, do you agree that traditional
39 aboriginal knowledge is a unique source of
40 knowledge and that it's different than the local
41 knowledge that many experienced fishers have?

42 MS. FARLINGER: I do.

43 Q And Dr. Richards, do you agree?

44 DR. RICHARDS: Yes, I do.

45 Q Ms. Farlinger, in your evidence on this panel, I
46 believe I heard you express support for the
47 incorporation of TEK into the management of Fraser

1 sockeye; is that right?

2 MS. FARLINGER: That's certainly an objective we have
3 in the implementation of our programs, yes.

4 Q And it's an objective because much more can be
5 done to incorporate TEK into fisheries management;
6 that's fair?

7 MS. FARLINGER: I think that's fair. The incorporation
8 of traditional ecological knowledge has been a
9 challenging area, certainly in terms of mutual
10 understandings of how information is recorded and
11 communicated and concerns that First Nations,
12 themselves, have about the use of the knowledge.
13 So while it's certainly an objective and we're
14 very interested in that knowledge because of the
15 contribution we think it can make to the
16 management of Fraser sockeye in this instance, we
17 are continuing and moving slowly, I would say, on
18 the incorporation because of those and some other
19 issues.

20 Q Yes. And I want to put the proposition to you
21 that perhaps the best way of addressing the
22 challenges and the incorporation of TEK is to
23 incorporate aboriginal organizations into
24 fisheries management. Would you accept that that
25 is a direction that could yield benefits for
26 incorporating TEK?

27 MS. FARLINGER: Certainly one of the objectives of the
28 various aboriginal programs that we have as
29 they're implemented in the region, which is to
30 build capacity for -- to build capacity for
31 aboriginal organizations and, as you know, there's
32 a variety of them out there, including the
33 recently come together Lower Fraser Fishing
34 Authority - I may have the name wrong - and all of
35 these things are focused on improved management of
36 the fishery and the extent to which we can bring
37 in traditional aboriginal knowledge to those
38 processes will help us improve fisheries
39 management.

40 Q I want, now, to turn to aboriginal rights just
41 very quickly. I don't want to ask you about the
42 aboriginal rights of any particular First Nation
43 but, rather, more generally.

44 Ms. Farlinger, you accept, don't you, that a
45 number of First Nations have aboriginal rights to
46 Fraser sockeye for FSC purposes?

47 MR. LOWES: I'm objecting to that question. Perhaps my

1 friend might specify some communities that have
2 proved aboriginal rights in courts of law, rather
3 than put the question the way he has.

4 MR. TAYLOR: Ill only add to that, that the way the
5 question is framed certainly sounds like it's
6 calling for a legal conclusion. Even if the
7 witness, Ms. Farlinger, answers in terms of how
8 it's applied or how they apply the requests and so
9 forth that they get from First Nations, it might
10 be taken as some kind of legal conclusion or legal
11 admission, or whatever. This is really about what
12 factually is done, how is the fisheries managed,
13 and so forth. So I do have some concerns about
14 framing the question in terms of what rights are
15 there. She's not here to speak on legal rights.

16 MR. DICKSON: Yes, Mr. Lowes, before you cut in, just I
17 have --

18 MR. LOWES: Well, I think I can help you here. I'm
19 with Mr. Taylor on that one, that if perhaps I
20 suggest that Mr. Dickson might ask, "What working
21 assumptions about rights are held or applied?"

22 MR. TAYLOR: I'm not sure I'm with Mr. Lowes on that.
23 I don't know how much that helps.

24 MR. DICKSON:

25 Q Ms. Farlinger, DFO has a policy of allowing First
26 Nations to fish for FSC purposes, some of those
27 First Nations, on Fraser River sockeye; that's
28 fair enough?

29 MS. FARLINGER: Yes, the Department provides for access
30 for food, social and ceremonial fisheries for the
31 practical purposes of fisheries management
32 consistent with our understanding of potential and
33 existing First Nations rights.

34 Q The Department sees First Nations, in that
35 respect, as being in a different category than
36 stakeholders such as commercial and recreational
37 fishers?

38 MS. FARLINGER: There are specific court decisions and,
39 therefore, policies inside DFO that are specific
40 to First Nations.

41 Q Well, First Nations, from the Department's
42 perspective, have a unique relationship with
43 Fraser River sockeye?

44 MS. FARLINGER: I'm trying hard to understand this
45 without going outside my area of expertise. We
46 certainly have policies that are unique to First
47 Nations as we approach the management of fisheries

1 that has to do with, as I said earlier, the
2 understanding of potential and existing rights,
3 fishing rights, yes.
4 MR. DICKSON: Mr. Commissioner, I see the time. I'm in
5 your hands. I can continue, or --
6 THE COMMISSIONER: No, debates like we just had make me
7 hungry, Mr. Dickson.
8 MR. DICKSON: Exactly, I bet. We should fortify
9 ourselves, yes.
10 THE COMMISSIONER: Thank you.
11 THE REGISTRAR: The hearing is now adjourned until 2:00
12 p.m.

13
14 (PROCEEDINGS ADJOURNED FOR NOON RECESS)
15 (PROCEEDINGS RECONVENED)

16
17 THE REGISTRAR: The hearing is now resumed.
18 MS. GAERTNER: Tim Dickson for the Stó:lō Tribal
19 Council, and I neglected to say before, but with
20 me is Nicole Schabus.

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

23
24 Q I want to turn, now, to co-management and ask a
25 few questions on that topic. The objective of
26 managing collaboratively has a number of sources,
27 I believe but one of them is Strategy 4 of the
28 Wild Salmon Policy; is that correct, Ms.
29 Farlinger?

30 MS. FARLINGER: Yes.

31 Q Ms. Gaertner, before me, raised the roadmap
32 process with you, and I just want to understand
33 clearly, is DFO committed to supporting and
34 engaging in the roadmap process, Ms. Farlinger?

35 MS. FARLINGER: I think that DFO has been both funding
36 and very much a participant in the development of
37 the roadmap process, and I think that's some
38 indication of our support of it. I think we will
39 need to know where the roadmap process will go in
40 the future and will have to, at the same time,
41 assess how we participate and how we support it.

42 Q One of the issues that we heard about with respect
43 to the roadmap process is that First Nations are
44 unsure of the Department's commitment to
45 implementing co-management, and I think part of
46 that uncertainty that I heard is what the
47 Department understands co-management to mean,

1 because sometimes the term "co-management" is used
2 in relation to co-management with First Nations,
3 and sometimes I hear it used in relation to
4 co-management with all stakeholders. And so I
5 want to get the Department's perspective on this
6 point clear, if I can.

7 In light of traditional aboriginal knowledge,
8 in light of First Nations unique relationship
9 with the fish, does the Department agree that
10 co-management with First Nations means something
11 deeper and more intensive than co-management with
12 other stakeholders? Ms. Farlinger, could you
13 answer that?

14 MS. FARLINGER: I think that I would just go back,
15 again, to the approach that the Department takes
16 to working with First Nations and the principles
17 that guide that, which have to do with the
18 fiduciary relation -- the fiduciary nature of the
19 relationship and the fact that we are trying to
20 operate with First Nations in accordance with
21 court decisions and legal guidance. That is by
22 its nature a different relationship than one we
23 have with other stakeholders.

24 I wouldn't say that co-management, in our
25 view, is limited to co-management with First
26 Nations. It certainly includes all those with an
27 interest in fish and the fishery. I think that as
28 it pertains to co-management, the work that is
29 going on through the forum and the roadmap work is
30 very much focused on in some way defining what
31 co-management means in this context.

32 Q Yes, and my point was not to ask Ms. Farlinger
33 whether co-management is only co-management with
34 First Nations or whether it's co-management with
35 all, but that to ask whether the Department agrees
36 that co-management with First Nations is going to
37 be a more robust form of co-management than with
38 commercial and recreational fishers?

39 MS. FARLINGER: It would be difficult to be definitive
40 about it except in the context I just previously
41 said, that we have a different kind of
42 relationship with First Nations and that whatever
43 we work together on and develop will have to
44 reflect the principles I just referred to. And
45 if, by that, it means it is more robust, that may
46 be -- that may well be the outcome.

47 Q And this uncertainty about what co-management

1 means is, again, a factor that I heard that poses
2 a challenge to First Nations really getting
3 involved in the roadmap process, and what I heard
4 was that a strong demonstration by Ottawa of their
5 commitment to robust co-management with First
6 Nations could galvanize that process, bring First
7 Nations to the table.

8 Deputy Minister, Ms. Gaertner was raising the
9 issue of an MOU with --this morning with, I
10 believe, the First Nations Fisheries Council. Is
11 an MOU on co-management within the roadmap process
12 a step that you will recommend be actively
13 explored by DFO?

14 MS. DANSEREAU: It wouldn't be up to me to make that
15 kind of recommendation. That would be the kind of
16 recommendation that would come to me after the
17 field work had been done and then we would
18 deliberate it.

19 Q If that recommendation did come to you, you would
20 take it forward and recommend it to the Minister,
21 would you?

22 MS. DANSEREAU: There are quite a few "ifs" in those
23 statements. It's very hard to answer in the
24 general in hypothetical questions. It would
25 depend entirely on the content, it would depend on
26 the desired end point.

27 Q I want to --

28 MS. FARLINGER: Could I just add something?

29 Q Sure.

30 MS. FARLINGER: I think the fact that among the huge
31 suite of priorities we have, the fact that here in
32 the region of the funding we have, that we have
33 chosen to invest it in building this process in
34 this instance with the Fraser River -- the First
35 Nations concern with the Fraser River, and that we
36 have a fairly ambitious schedule and timeline
37 around that and the commitment of our own staff is
38 an indication of the fact that we believe this is
39 an important avenue to explore.

40 And once we have done that, as the Deputy
41 says, then we would be in a position to advise how
42 to move forward on it.

43 Q Thank you, Ms. Farlinger. I want to move to
44 monitoring, because I think that everyone would
45 agree, here, that good monitoring programs are
46 essential and, indeed, Strategy 1 of the Wild
47 Salmon Policy speaks to monitoring and it calls

1 for local partnerships with First Nations and
2 other groups; that's correct, isn't it, Ms.
3 Farlinger?

4 MS. FARLINGER: Yes, there are discussions of that in
5 the Wild Salmon Policy in terms of how to move
6 forward.

7 Q And the Commissioner has heard about the work that
8 the Fraser Valley Aboriginal Fisheries Secretariat
9 does on monitoring the fishery in the Lower
10 Fraser, and in recent years in expanding into
11 joint monitoring with recreational fishers. And
12 Colin Masson testified that he sees opportunities
13 to expand the work of the secretariat. Ms.
14 Farlinger, do you agree, is this work the kind of
15 shared stewardship activity that the Department
16 would like to see expanded?

17 MS. FARLINGER: I think under the circumstances that
18 you describe the relationships that have developed
19 in the Lower Fraser Valley, in this instance
20 between the recreational fishery and the First
21 Nations communities, is one of -- that is only a
22 benefit to catch monitoring, and certainly where
23 those kinds of relationships and projects can move
24 forward, we would be supporting them.

25 Q And another program in a similar vein was the
26 Aboriginal Guardians Program, and we heard that
27 the Lower Fraser had 18 aboriginal guardians at
28 one point, but then that program was terminated.
29 And I suggest that this is, again, the kind of
30 shared stewardship program that the Department
31 should be pursuing. Karl English commended the
32 program. Both Mr. Nelson and Mr. Coultish called
33 for the program to be restored. Ms. Farlinger, do
34 you agree that the program should be restored?

35 MS. FARLINGER: I think that the opportunity to proceed
36 with a guardian program still exists under the FS
37 program. It's really a question of the priorities
38 of the communities and DFO. DFO is certainly
39 supportive of moving forward with a program where
40 both communities -- where the communities want to
41 move in that direction.

42 Q Mr. Bevan, you've spoken, over the past several
43 days, about the need for C&P to work in a
44 collaborative and integrated way within the
45 Department; that's fair to say?

46 MR. BEVAN: Yes, I have.

47 Q And we've heard in this inquiry that C&P used to

1 be part of DFO's matrix management model and
2 fisheries officers used to report to area
3 directors and be integrated into the Department
4 that way, but now there's a line reporting
5 relationship and all fisheries officers in the
6 province report to Mr. Nelson.

7 Do you agree that line reporting has impeded
8 the type of integration and collaboration you're
9 calling for from C&P?

10 MR. BEVAN: It's not necessarily a cause of line
11 reporting. I think that what we need is -- and
12 this is an issue that was raised at the time we
13 moved to align. Line provides flexibility on
14 distribution and utilization of resources. So
15 particularly in a region where you have salmon
16 arriving from the north and moving into the south
17 and seasons, et cetera, that may differ, you have
18 an opportunity to look at your priorities and to
19 move your resources accordingly.

20 It also is expected that the management of
21 C&P will work within the context of the regional
22 organization, and that's an expectation right
23 across the country. We want C&P resource managers
24 and the people developing the fish plans
25 monitoring to work together. Just because one's a
26 line and the other's at the area level, doesn't
27 mean that that can't be achieved. It takes energy
28 and it takes a focus, and I think that's what we
29 need to see more of.

30 Q You'll agree that there has been some deficiencies
31 and challenges in that integration between C&P and
32 the area?

33 MR. BEVAN: Well, I'd have to turn to the Regional
34 Director General relative to this area. We've had
35 some good success in some locations and challenges
36 in others, and that gets down to the relationships
37 that exist between the people and the fact that
38 they need to work collaboratively because they
39 can't get along -- they can't do it on their own.
40 Resource managers can't make good fish plans
41 happen and implement -- be implemented, and C&P
42 can't work on its own if they want to have a suite
43 of measures presented to them to enforce that are
44 practical for enforcement. So it's something that
45 has to be constantly focused on and you get --
46 there's times when it's working better or
47 locations when it's working better than others.

1 And when it's not working you really need to focus
2 on rebuilding those relationships.
3 Q I'm going to have to move on from this, Mr. Bevan,
4 because I want to touch on the ban of the sale of
5 FSC fish. We heard from many witnesses in the
6 inquiry that if an FSC fish is caught during an
7 FSC opening and is included within a band's
8 allocation, the sale of that fish does not pose
9 any threat to conservation, it doesn't pose a
10 conservation concern. Mr. Nelson and Mr. Coultish
11 agreed with this, so did Mr. Huber, so did Mr.
12 Rosenberger, and Karl English. Mr. Bevan, do you
13 also agree?
14 MR. BEVAN: Well, clearly, a dead fish is a dead fish.
15 Q Right.
16 MR. BEVAN: If as long as the number of fish extracted
17 from the system are within the limits, then it
18 doesn't pose a conservation concern.
19 Q Right.
20 MR. BEVAN: The real concern you have, though, with FSC
21 fish is the increased draw - or increased need, if
22 you're taking the FSC and diverting it to sales,
23 you may be seeing a situation where there's some
24 increased desire to catch more fish to make up for
25 that, and that's the concern that we would have.
26 Q The real issue is making sure that the harvest
27 stays within allocations; isn't that right?
28 MR. BEVAN: That's the focus on conservation, but that
29 could become more difficult if more fish that is
30 destined for FSC use is moved into sales and
31 creates a further demand for additional fish. It
32 may get harder to keep the limits -- or keep
33 within the limits and have the rules respected
34 relevant to the total catch.
35 Q We've heard, Mr. Bevan, that the enforcement
36 against the ban on FSC fish creates enormous
37 antagonism between the Department and First
38 Nations and that from the Department's perspective
39 it's very difficult to enforce, it uses up a great
40 deal of resources. You agree that it raises those
41 two challenges?
42 MR. BEVAN: I would agree that it is challenging to
43 enforce, but because it has the highest priority
44 after conservation, it is something that has to be
45 treated differently than economic opportunity
46 fisheries.
47 Q We've heard, Mr. Bevan, just last point on this,

1 from some witnesses that First Nations could
2 receive a straight allocation of fish without a
3 restriction as to the use of that fish. And
4 obviously that allocation would have to be
5 negotiated. Obviously, we're not at that stage
6 yet, but would you agree that it's a possible
7 arrangement that could be explored in the future?

8 MR. BEVAN: That's a very difficult arrangement to
9 contemplate, given the priority that FSC fish has
10 over economic opportunities. So if all the
11 fishing was done under the same priority, then
12 that's a realistic model, but where you have a
13 Supreme Court decision that notes that after
14 conservation FSC fish has the highest priority,
15 there's a need to keep that fish separate from
16 economic opportunities, which would have the same
17 relative priority as all other economic users.

18 Q Indeed, the issue of priority would be one that
19 would have to be worked out within that scheme?

20 MR. BEVAN: The mix creates an issue, that's just the
21 reality of the situation if you have priorities
22 that are different for different users.

23 MS. FARLINGER: I'd just like to add that - and I made
24 reference to this earlier in a different context -
25 that one of the basic tenants of fishery
26 management is looking at fishing power and
27 incentive to fish, and that really dictates the
28 framework of the management of the fishery. And
29 where there is - and I used the term earlier - a
30 natural limit, there is a very different incentive
31 to fish than where there is economic benefit from
32 fishing, and that is one of the basic reasons that
33 economic fisheries are managed in a different way
34 than those fisheries with, what I'm calling at
35 this moment, is a natural limit.

36 We see that whether it's in the aboriginal
37 fishery, where we have the priority on FSC, we see
38 it across other fisheries, for example, in
39 differentiating the recreational fishery from the
40 commercial fishery. And this is covered in some
41 detail in terms of the catch monitoring strategy,
42 that it really is the nature of the fishery and
43 the incentives that drive it that make management
44 requirements, catch reporting requirements, and
45 the whole management framework of the fishery
46 different, and that's fundamentally, rather than
47 Mr. Bevan's discussion about policy issues and

1 legal issues, that is a fundamental of fisheries
2 management.

3 Q I don't have much time left. I want to touch on
4 two more points. So the first of them is share-
5 based fisheries. We've heard from the panel, I
6 think, some interest in considering share-based
7 fisheries for salmon, and I want to ask you about
8 this, because my clients, and I think a number of
9 other First Nations, are opposed to share-based
10 fisheries for two reasons, as I hear them. First,
11 they're concerned about the priority to fish,
12 they're concerned that that priority would not be
13 accommodated as well, within a share-based regime.
14 And secondly, seek a greater share of the fishery
15 and they worry that a share-based fishery would
16 create property rights and would make it more
17 difficult to achieve that objective.

18 Ms. Farlinger, have you heard concerns of
19 that kind?

20 MS. FARLINGER: Certainly in a variety of discussions
21 over the years I have heard those kinds of
22 concerns from some First Nations, and I would say
23 that it is in the design of the share-based
24 fishery that those kinds of matters need to be
25 seriously considered.

26 Q Yes, with deep consultation with First Nations; is
27 that so, Ms. Farlinger?

28 MS. FARLINGER: We do consult with First Nations on
29 both policy changes and, of course, specifics, so
30 it would be our normal practice to consult with
31 First Nations.

32 Q Deputy Minister, I think I have time for just one
33 more question. When the topic of co-management
34 comes up, we always hear from DFO that the
35 Minister has the ultimate authority to manage the
36 fish, that he cannot fetter his authority, indeed,
37 you raised this point this morning. During this
38 panel, however, the Commission and the
39 participants have heard of serious budget cuts the
40 Department is facing. I expect all of us found
41 that to be quite depressing, because it appears
42 the Department simply cannot afford to take
43 certain concrete actions, such as defining
44 benchmarks for CUs. We've heard a number of times
45 on the panel the Department is implementing the
46 spirit of the Wild Salmon Policy, but it can't
47 afford to perform many of the actual strategies

1 within the Wild Salmon Policy.

2 And my question to you, Deputy Minister, is
3 simply this: Isn't it true that the Department
4 just doesn't have enough money to implement the
5 Wild Salmon Policy and that the Minister needs
6 more money to fulfil his mandate to manage the
7 fishery?

8 MS. DANSEREAU: Thank you for the question. I think
9 I've said many times that I think we are
10 adequately funded to do our work. I don't want to
11 sound naive or to sound as though I have rose-
12 coloured glasses on and to say that more money
13 wouldn't be helpful. Obviously, more money can be
14 helpful. But as I've said many times, I think,
15 given the resources that we have, the
16 implementation is moving to the best of our
17 ability. So I think I would not say that the
18 Minister is not in a position to fulfil his duties
19 with the resources that we have.

20 MR. DICKSON: Thank you, Mr. Commissioner. That's all
21 my time.

22 THE COMMISSIONER: Thank you very much.

23 MR. RALSTON: Benjamin Ralston for Heiltsuk Tribal
24 Council, and with me, today, are my co-counsel,
25 Lisa Fong and Ming Song.

26
27 CROSS-EXAMINATION BY MR. RALSTON:

28
29 Q To begin with, my questions will be for Ms.
30 Dansereau. Mr. Lunn, could you please bring up
31 Heiltsuk Tribal Council's document number 71. Ms.
32 Dansereau, if you're ready, are you aware that
33 during the course of the Commission an application
34 was made for the disclosure of various documents
35 related to the Coastwide Framework over which
36 Canada has claimed privilege?

37 MR. TAYLOR: We've claimed privilege over a lot of
38 documents. We've listed them. That's normal
39 practice. Some of those are within the ruling
40 that you made, and I said earlier, September 12th
41 - I had my dates mixed up - the ruling we're
42 talking about is September 20th. My friend is now
43 wanting to proceed into our list of privileged
44 documents, and that's an area that I think is no-
45 go.

46 MR. RALSTON: It's not that we want to proceed into
47 this list of documents, we're simply taking the

1 position that we'd like to enter it as an exhibit
2 in these proceedings.

3 MR. TAYLOR: Well, I object. It's completely
4 nonsensical to enter a list of documents as an
5 exhibit.

6 MS. FONG: Are you finished with your objection, so
7 that he can respond? Sorry, go ahead.

8 MR. MCGOWAN: In his response, I wonder if he might
9 offer to the Commissioner what possible relevance
10 the Commissioner might make of this list, were it
11 to be entered?

12 MR. RALSTON: All right. The terms of reference for
13 this inquiry, as far as we understand them,
14 require the Commissioner to consider the policies
15 and practices of DFO with respect to the Fraser
16 River sockeye salmon fishery, and to develop
17 recommendations for improving this future
18 sustainability of the Fraser River sockeye salmon
19 fishery, such as changes to DFO policies,
20 practices and procedures related to the management
21 of this fishery.

22 We have made an application for the
23 disclosure of the documents contained in this list
24 and their relevance to this Commission was not
25 disputed during that application.

26 We know from the documents and information
27 disclosed on the Coastwide Framework documents to
28 date, such as the Aboriginal Fisheries Framework,
29 the list of documents here, and witness testimony,
30 that the Coastwide Framework is made up of a suite
31 of aboriginal fisheries policies. This list of
32 documents, in our submission, is not simply
33 procedural. The list of documents contains the
34 names and types of documents that have been
35 produced, their dates, their authors, and their
36 recipients, as well as the overall quantity of
37 documents over which privilege has been claimed.

38 We submit that it's relevant that the
39 information has not been put before the
40 Commissioner. The Commissioner's recommendations
41 must be understood as not having had access to
42 these documents. Likewise, participants' closing
43 submissions and recommendations must be understood
44 as not having had access to these documents.

45 It is particularly important to First
46 Nations, such as our clients, to have this clarity
47 as the recommendations do not end here. DFO and

1 First Nations will continue to have an ongoing
2 relationship with respect to the management of the
3 Fraser River sockeye salmon beyond this
4 Commission. And while we take the position that
5 this Commission does not constitute consultation,
6 we recognize that this ongoing relationship will
7 be informed by positions taken in these
8 proceedings, making it all the more critical that
9 we have clarity as to what our recommendations are
10 based on and what they're not based on.

11 Finally, we submit that there would be no
12 prejudice to Canada in having this document made
13 an exhibit, as no privilege has been claimed over
14 the document or its contents. The weight to be
15 afforded to this document is in the Commissioner's
16 hands, and any concern that Canada has with its
17 relevance and probative value can be addressed in
18 their closing submissions.

19 Those are my submissions on this document.

20 MR. MCGOWAN: With respect, Mr. Commissioner, it's not
21 sufficient just to say there's no prejudice.
22 There has to be some probity to the document.
23 What we have listed here is akin to a -- what was
24 a part 3 and now, I think, a part 4 list on a list
25 of documents in civil litigation. It's produced
26 that somebody can take issues with the documents
27 should the need arise, and I understood that to be
28 the purpose of this list.

29 My friend suggests that these documents were
30 not placed before the Commission, and I think, in
31 part, attributed that to some intention on the
32 part of either Canada or the Department of
33 Fisheries and Oceans. There was an application
34 made for these documents, an assertion of
35 privilege, legal privilege was made, and that has
36 been ruled upon. In my submission, for this
37 document to be marked, my friend would have to
38 convince you that there is some probity that the
39 list, in and of itself, beyond that which related
40 to the application that was made but which relates
41 to you carrying out your mandate as articulated in
42 your terms of reference.

43 THE COMMISSIONER: Mr. Taylor?

44 MR. TAYLOR: I don't think I have anything more that I
45 need to add. Mr. McGowan said what I would. It's
46 unheard of to put a list of documents of counsel
47 in as an exhibit.

1 THE COMMISSIONER: Thank you very much, Mr. Ralston,
2 for your submissions. At this time, the document
3 will not be marked.

4 MR. RALSTON: Thank you. Okay. Mr. Lunn, could you
5 please bring up Heiltsuk Tribal Council's document
6 number 83. Okay.

7 Q Ms. Dansereau, this is a letter from counsel for
8 Canada, Mitch Taylor, to Commission Counsel Brian
9 Wallace. Mr. Lunn, could you please turn to the
10 second page of this pdf, the letter's enclosure.
11 Its enclosure is a letter from the Clerk of the
12 Privy Council and Secretary to the Cabinet, Mr.
13 Wayne Wouters, addressed to the Commissioner. Do
14 you recognize this document?

15 MS. DANSEREAU: If this is the document we saw earlier,
16 then yes. If you go to the last paragraph, I can
17 confirm that. Yes.

18 MR. RALSTON: Could we have this document entered as an
19 exhibit, please.

20 THE REGISTRAR: Exhibit 1966.

21 MR. MCGOWAN: Just before it's entered, I wonder if my
22 friend could articulate for what purpose the
23 letter of the Clerk of the Privy Council is being
24 entered as an exhibit? It is on the record, the
25 fact of it's on the record. It's listed on the
26 website and is available publicly, along with the
27 ruling. But in terms of you fulfilling your
28 mandate, I'd ask him to articulate the use that it
29 might be put to by you, Mr. Commissioner, in
30 fulfilling that mandate.

31 MR. TAYLOR: I might just - and then I'll let my friend
32 speak - say that as I understand it, and so what
33 I'm now saying is based on I understand it, and
34 Mr. McGowan or Mr. Wallace may confirm it, when
35 this Commission has ended, the rulings of Mr.
36 Commissioner and this document appears in the same
37 part of the website as the rulings, those rulings
38 and including this document, would be maintained,
39 if I could put it that way, as a record of this
40 Commission of Inquiry, and it will exist for
41 everyone and people can use it as they see they
42 need to.

43 If that's the case, while I don't have a
44 position one way or the other on making it an
45 exhibit, if this is part of the rulings part of
46 the web that will be saved, there's no need to
47 mark it.

1 MR. RALSTON: In our submission, if we can rely on this
2 document as it's currently proposed on the website
3 and in conjunction with your ruling for our
4 closing submissions, I think we would be satisfied
5 with that. Our simple purpose in entering it as
6 an exhibit is to understand the closure on our
7 document application.

8 THE COMMISSIONER: Yes, thank you again, Mr. Ralston.
9 I don't see any reason why you wouldn't be able to
10 rely on it for final submissions.

11 MR. RALSTON: Okay, thank you.

12 Q All right, I'm going to stay with you, Ms.
13 Dansereau. I hope that's okay. Do you know Ms.
14 Sarah Murdoch, the acting Regional Director of
15 DFO's Treaty and Aboriginal Policy Directorate?

16 MS. DANSEREAU: I'm sorry, I may have met her, but I
17 don't work with her on a regular basis, so --

18 Q Okay.

19 MS. DANSEREAU: -- Ms. Farlinger can speak to this.

20 Q Okay. Ms. Farlinger, are you familiar with Ms.
21 Murdoch?

22 MS. FARLINGER: Yes, I am.

23 Q Okay. Are you aware that Ms. Murdoch swore an
24 affidavit with respect to the reasons underlying
25 Canada's privilege claims over the Coastwide
26 Framework documents and Canada's opposition to the
27 disclosure?

28 MS. FARLINGER: I am not sure that I am.

29 Q Okay. That's fine. I'm going to put to you some
30 of the propositions made in Ms. Murdoch's
31 affidavit, to see whether you agree or disagree
32 with these statements. First of all, Ms. Murdoch
33 states that Canada must maintain privilege over
34 documents and communications created for treaty
35 negotiation purposes if those negotiations are to
36 be successful. Would you agree with this
37 proposition?

38 MR. TAYLOR: I object. We're now embarking upon an
39 area of questioning that my friend has already
40 said is material put before you, Mr. Commissioner,
41 on a motion, you were asked to rule on all of
42 this, you considered all of this, and you ruled on
43 it. This has been dealt with.

44 Firstly, it wouldn't be of any help to you,
45 Mr. Commissioner, in fulfilling your mandate, to
46 now, after you've had this evidence, considered
47 everything and ruled on it, to hear what Ms.

1 Farlinger or any of the other witnesses have to
2 say about it. And secondly, I don't know what the
3 witnesses would say, but if they say something
4 different, it puts the inquiry in a very difficult
5 position, because it would be information
6 different from what you had when you made the
7 ruling, which comes back to, once a ruling is
8 made, those matters are dealt with and they're not
9 to be revisited for any number of reasons,
10 including the kind of scenario that I just
11 outlined.

12 MR. MCGOWAN: I wonder if a sensible way to proceed,
13 and perhaps of assistance to Mr. Ralston, to the
14 extent there may be propositions that are relative
15 to your mandate, I think it's unobjectionable for
16 him to put them to these witnesses and ask them to
17 adopt them without referencing the source of them,
18 of his question. And if he's content to proceed
19 in that way, it may well solve the problem.

20 MR. RALSTON: I'm definitely content to proceed in that
21 way. We have no interest in re-litigating the
22 application. I simply want to draw forward
23 evidence on DFO's perspectives on the disclosure
24 of this information. And in our submission, DFO's
25 perspectives as to what information should be
26 shared with First Nations and what information
27 should not, both in the treaty negotiations and
28 the negotiations of AFS agreements goes to their
29 perspectives or what they would consider their
30 limitations when looking to make recommendations
31 on a co-management framework or co-management
32 structure. And in that respect, we think that
33 it's very much relevant to the terms of the
34 Commission.

35 THE COMMISSIONER: Could you rephrase your question,
36 then --

37 MR. RALSTON: Okay.

38 THE COMMISSIONER: -- and see if it's appropriate?

39 MR. RALSTON: Okay.

40 Q So again, Ms. Farlinger, would you agree that
41 Canada must maintain privilege over documents and
42 communications created for treaty negotiation
43 purposes if those negotiations are to be
44 successful?

45 MS. FARLINGER: I'm certainly not an expert in the
46 matter of privilege. I do, as part of my job,
47 implement a mandate which is provided to me by the

- 1 Government, and really have no view on privilege
2 or not with respect to those. It's merely a
3 matter of following instructions in the mandate.
- 4 Q Now, again, would you agree that disclosure, or
5 non disclosure of information relating to current
6 treaty negotiation approaches and strategies, as
7 well as possible shifts in these approaches and
8 strategies, would disadvantage Canada in future --
9 sorry, could I start that question again? Okay.
- 10 Would you agree that disclosure of
11 information relating to current treaty negotiation
12 approaches and strategies, as well as possible
13 shifts in these approaches and strategies, would
14 disadvantage Canada in future negotiations by
15 making it more difficult, expensive and time-
16 consuming to conclude treaties?
- 17 MS. FARLINGER: I think it's a very general question.
18 I think a significant part of the treaty process
19 that we engage in here at the operational level
20 with the Department of Aboriginal Affairs, is very
21 much a sharing of information on both sides. So I
22 would find it difficult to agree with the
23 principle that sharing of information would create
24 problems because I think, in fact, it's a key part
25 of the negotiations.
- 26 As I said, with respect to what Canada wishes
27 to negotiate on fish, that's merely a matter of
28 following the mandate and instructions that we're
29 given.
- 30 Q Would you agree that treaty negotiations would be
31 more difficult, expensive and time-consuming if
32 Canada's bottom line were made public going into
33 these negotiations?
- 34 MS. FARLINGER: I think that my personal views on this
35 are irrelevant, and I revert to my previous
36 answer.
- 37 Q Okay. Ms. Dansereau, could you give a DFO
38 perspective on this question? I could read it to
39 you again, if you'd like.
- 40 MS. DANSEREAU: No, that's fine. They're very
41 difficult questions to answer, as you can imagine.
42 I think just in basic rules of negotiation, bottom
43 lines are never exposed at the start of a
44 negotiation. They are arrived at through back and
45 forth. And so to state something at the outset is
46 not necessarily useful to the overall process.
- 47 Q Okay. So your evidence would be that it would not

1 be useful to the process?

2 MS. DANSEREAU: Yes, that's right.

3 Q Okay. Would you agree that the disclosure --
4 pardon me, I'll take a step back. You're familiar
5 with the documents related to the Coastwide
6 Framework or Aboriginal Fisheries Framework, to
7 some extent? Are you not?

8 MS. DANSEREAU: I'm familiar with some. I'm not sure
9 of the entire list that you're talking about.

10 Q That's fine. Would you agree that disclosure of
11 Coastwide Framework documents would be harmful to
12 Canada's relationship in negotiations with the
13 parties with whom Canada in an active treaty
14 negotiation, such as the Province of British
15 Columbia and the First Nations that Canada's
16 actively negotiating with?

17 MR. TAYLOR: I'm going to object again, and I'm going
18 to object to this entire line of questioning.
19 I'll put it on the record that I'm objecting to
20 the questions that have been answered and the
21 questions yet to come, assuming they're roughly
22 the same, and this particular question.

23 Mr. Ralston says he's not re-litigating the
24 motion that you've ruled on, but that's exactly
25 what he's doing.

26 MR. MCGOWAN: Mr. Commissioner --

27 MR. TAYLOR: And he's getting into privileged areas.

28 MR. MCGOWAN: Mr. Commissioner, I have a similar
29 concern. The suggestion I made is that he put
30 propositions that are relevant to your mandate,
31 but the questions here seem to go straight to the
32 heart of the matters that were before you on the
33 Heiltsuk Tribal Council's application and the
34 ruling that you've made, and don't, at least on
35 their face, as near as I can tell, aren't designed
36 to assist you in fulfilling your mandate in the
37 contest of your terms of reference for the main
38 body of the inquiry.

39 MR. TYZUK: Mr. Commissioner, Boris Tyzuk, for the
40 Province of B.C., and we take the same position on
41 this issue as Canada and the Commission Counsel.

42 MR. RALSTON: I'm prepared to move on.

43 THE COMMISSIONER: I think you should, Mr. Ralston.

44 MR. RALSTON: Okay.

45 Q Okay, I'm going to put some more propositions to
46 you, without respect to Ms. Murdoch's affidavit,
47 but I want to see if I can get any agreement to

1 these propositions. And if I run array of
2 objections, that's fine.

3 Would you agree that the disclosure of --
4 actually, no, I'm going to move on. I'll move on.
5 Okay.

6 Mr. Lunn, could you please bring up Exhibit
7 596. Okay. First of all, Ms. Dansereau, can you
8 tell me, are you familiar with this document?

9 MS. DANSEREAU: No, I'm not.

10 Q Okay. Ms. Farlinger, are you familiar with this
11 document?

12 MS. DANSEREAU: I may have seen it, but I don't
13 recognize it on first blush.

14 Q Okay. Mr. Bevan?

15 MR. BEVAN: I'm aware of the fact we have documents on
16 this subject, but I can't say that I have seen
17 this particular document.

18 Q Okay. Thank you. So the document has a date of
19 June 2006 on the cover page. Would any of you be
20 aware of any more recent reiteration of a best
21 practices for consultations guideline for DFO? So
22 documents such as this that would be more recent?

23 MS. FARLINGER: I'm not aware of more recent documents,
24 but I do know there certainly has been more recent
25 activity in terms of sharing and putting out best
26 practices for use within the Federal Government,
27 broadly, recent guidance from the Department of
28 Justice, and also within DFO it's something more
29 actively engaged in at this point.

30 Q Okay. Thank you. Mr. Lunn, could you bring up
31 page 3 of this document. Now, the first paragraph
32 under the heading, The Importance of Consultation
33 with First Nations, sets out several of the
34 reasons why the Federal Government consults with
35 Aboriginal people. These reasons include:

36
37 To meet legal requirements;
38 To develop and/or strengthen mutually
39 respectful relationships with Aboriginal
40 people; and
41 To fulfil policy commitments and improve
42 policy development.

43
44 It also states that First Nations can:

45
46 Provide new approaches from their cultural
47 perspective;

1 Identify pitfalls or gaps in [DFO's]
2 thinking; and
3 Raise issues that [DFO] has not considered.
4

5 Is it still DFO's view that consultation takes
6 place for these reasons? Sorry, are we at page 3
7 of the document? I see page 2 at the bottom.
8 It's not of the pdf. Thank you. Sorry, would you
9 like me to repeat that question, then? Okay.

10 The first paragraph under the heading, The
11 Importance of Consultation with First Nations,
12 sets out several of the reasons why the Federal
13 Government consults with Aboriginal people. These
14 include:

15
16 To meet legal requirements;
17 To develop and/or strengthen mutually
18 respectful relationships with Aboriginal
19 people; and
20 To fulfil policy commitments and improve
21 policy development.
22

23 It also states that First Nations can:

24
25 Provide new approaches from their cultural
26 perspective;
27 Identify pitfalls or gaps in [DFO's]
28 thinking; and
29 Raise issues that [DFO] has not considered.
30

31 Now, is it still DFO's view that consultation
32 takes place for these reasons? Ms. Dansereau?

33 MS. DANSEREAU: I would say yes. There may be more,
34 but this is a good cross-section of them.

35 Q Okay. Ms. Farlinger, would you agree as well?

36 MS. FARLINGER: In the same sense, this seems a
37 reasonable statement that may not be exhaustive.

38 Q Okay. Thank you. Now, the first line of the
39 final paragraph on this page states that:

40
41 At the heart of consultation is a commitment
42 to constructive and mutually respectful
43 relationships with [First Nations], based on
44 reconciliation, enhanced collaboration,
45 effective working partnerships and mutual
46 respect.
47

1 Now, would you say, Ms. Farlinger, is this still
2 an accurate reflection of DFO's views on
3 consultation?

4 MS. FARLINGER: I think this sentence describes a
5 reasonable approach to consultation, yes.

6 Q And Ms. Dansereau, what were your views on that?
7 Would this still be DFO's perspective?

8 MS. DANSEREAU: It would certainly be part of the
9 perspective, yes.

10 Q Okay. Thank you. Now, the second line (sic) of
11 this paragraph, which goes onto the next page,
12 states that:

13
14 DFO strives to involve [First Nations] in the
15 early stages of policy, project and program
16 development where policies, projects and
17 programs may affect the interests of [First
18 Nations]. Consultation allows for an open
19 forum of information exchange, assists DFO in
20 addressing the concerns and interests of
21 [First Nations], and generally results in
22 better policies, projects and programs.
23

24 Now, would this still be an accurate reflection of
25 DFO's views on where consultation should take
26 place and why?

27 MS. DANSEREAU: I would say yes, but we have to keep in
28 mind, and I'm sure you know this, that there are
29 different definitions of what constitutes
30 consultation, and so what we may consider to be
31 adequate may not be for all of these reasons
32 others might say it was insufficient.

33 Q But you would still say that it's an accurate
34 reflection of DFO's view?

35 MS. DANSEREAU: Yes.

36 Q Thank you. And Ms. Farlinger, would you echo that
37 response, or...?

38 MS. FARLINGER: Yes.

39 Q Okay. Thank you. Now, Mr. Lunn, could you please
40 turn to page 5 of this document and zoom in on the
41 chart. Okay. The chart refers to DFO issues that
42 might require consultation with First Nations.

43 Now, Ms. Dansereau, do you see the line I'm
44 referring to, the title? Sorry, What DFO issues
45 might require consultation with FNS?

46 MS. DANSEREAU: Yes.

47 Q Which I take to mean First Nations.

1 MS. DANSEREAU: Yes.
2 Q Okay. My next questions will focus on these
3 listed items of when DFO might need to consult to
4 better understand DFO's perspective on the
5 limitations of their duty to consult. The first
6 item under this list is, Agreements under the
7 Aboriginal Fisheries Strategy (AFS) and under the
8 Aboriginal Aquatic Resources and Ocean Management
9 Program (AAROM). Do you agree that DFO might need
10 to consult on AFS and AAROM agreements?
11 MS. DANSEREAU: First, I need --
12 MR. TAYLOR: The way the question's phrased --
13 MS. DANSEREAU: Yeah.
14 MR. TAYLOR: -- is calling for a legal conclusion.
15 MS. DANSEREAU: I think the use of the word "duty to
16 consult" is the one that I would have objected to,
17 so these are areas that certainly we would be
18 exchanging information with the First Nations and
19 consulting on, but I would not put them under the
20 rubric of duty to consult.
21 MR. RALSTON: Okay.
22 Q Could you clarify the circumstances in which DFO
23 would not feel it necessary to consult on these
24 agreements?
25 MR. TAYLOR: Calls for a legal conclusion.
26 MR. RALSTON: All right, that's fine.
27 Q When would you not have discussions on such
28 programs as the Aboriginal Fisheries Strategy or
29 the Aquaculture -- or, sorry, the AAROM program?
30 So getting away from the duty to consult, in what
31 circumstances would you find it unnecessary to
32 have discussions with First Nations?
33 MS. FARLINGER: It would depend on the matter and the
34 situation, and we consult on that and we seek
35 advice from the Department of Justice on that, and
36 we do that on a situational basis.
37 Q Okay. I'm going to move to the fourth item in
38 this chart, which is Integrated Fisheries
39 Management Plans, IFMPs. Maybe again, Ms.
40 Farlinger, could you speak to any circumstances in
41 which DFO would not think it necessary to engage
42 in discussions with First Nations on an IFMP,
43 particular sections of an IFMP where that would
44 not be necessary? Sorry, I can break that into
45 two questions.
46 MR. MCGOWAN: And if I might suggest, it's the word
47 "necessary" that's causing problems. If my

1 friend --

2 MR. RALSTON: Okay.

3 MR. MCGOWAN: -- asks about practice as opposed to
4 duty.

5 MR. TAYLOR: Really, what the witnesses are here to do
6 is answer a question like, "When do you consult?
7 When do you not consult?"

8 MR. RALSTON: Okay.

9 Q So from DFO's perspective, when do you not consult
10 on an IFMP, in what circumstances?

11 MS. FARLINGER: It is our intention to consult with
12 First Nations on all IFMPs and I can't think of a
13 particular aspect of an IFMP that we don't consult
14 on. We gather perspectives and interests and
15 views on fishing and requirements for FSC
16 fisheries in our consultation with First Nations.
17 There are stages of decision-making that those
18 consultations inform and, once again, I would just
19 go back to a specific issue. The Integrated
20 Fisheries Management Plans, in their entirety, are
21 made available to First Nations and arrangements
22 are made to consult on those plans. So I'm sorry,
23 I don't think I can answer your question.

24 Q Okay. Ms. Dansereau, would you have anything to
25 add?

26 MS. DANSEREAU: No.

27 Q Okay. I'm going to go to the fifth item in this
28 list, which is in-season fishing decisions. Now,
29 again, Ms. Farlinger, could you tell me when DFO
30 would not engage in discussions with First Nations
31 on in-season fishing decisions?

32 MS. FARLINGER: I think that the commitments that we
33 make in our agreements with First Nations very
34 clearly indicate that our intention is to consult
35 with First Nations, and sets out exceptions when
36 decisions need to be made on a timely way by the
37 Minister, but it's a very general distinction.

38 Q Okay. Now, finally, I'm going to move to the 11th
39 item on this list, or the second-last, if you
40 prefer. It refers to salmon enhancement
41 initiatives such as ESSR opportunities and
42 Community Economic Development projects and
43 programs.

44 Could you tell us when DFO would not engage
45 in discussions with First Nations on applications
46 for programs such as these?

47 MS. FARLINGER: I think where -- it's, once again, very

1 difficult to define it in a situation specific. I
2 think where there is no First Nations involvement
3 and First Nations impact on matters concerning a
4 specific hatchery, for example, who we hire as a
5 hatchery manager, we may or may not ask First
6 Nations to participate in that, or discuss it with
7 them.

8 Q Okay. Thank you. Ms. Dansereau, did you have
9 anything to add?

10 MS. DANSEREAU: No.

11 Q Okay. Thank you. Mr. Lunn, could you please turn
12 to page 8 of this document? Now, in the second-
13 last paragraph, under the heading, Limited Impact,
14 it states that:

15
16 If DFO's view is that the claim to the
17 Aboriginal rights or Aboriginal title by the
18 [First Nation] is weak or limited, or the
19 potential for the proposed DFO action or
20 decision to adversely affect the claimed
21 right or title as minor, the only legal duty
22 on DFO may be to give notice, disclose
23 information, and discuss any issues raised in
24 response to the notice.
25

26 Is this still an approach that DFO adopts for what
27 it views as limited impacts on Aboriginal rights
28 or Aboriginal title?

29 MS. DANSEREAU: This is getting into the area of duty
30 to consult, as opposed to consultation in general,
31 and what we have been answering to for the past
32 few questions has been on the relationship in
33 consultation that we have on an ongoing basis,
34 irrespective of the question of duty to consult,
35 and this is much more related to the legal
36 definition, duty to consult.

37 Q Well, I don't want information on when DFO would
38 make the decision that there is a duty to consult
39 or that there would be a limited impact in these
40 circumstances. I guess my question, as I see it,
41 is more aimed towards the procedure for what
42 approach would be taken by DFO once they
43 understand that someone, somewhere along the line,
44 has made that determination, legal determination,
45 that there's limited impact, would DFO's policy
46 approach be to - where is it again here - to give
47 notice, disclose information, and discuss any

1 issues raised in response to the notice?

2 MS. DANSEREAU: It depends entirely on the situation.

3 Q Okay. Thank you. Okay, under the heading, Medium
4 to high impact, it states:

5

6

In all other circumstance,

7

8

referencing the past two paragraphs:

9

10

DFO staff should consider following the
11 proposed "Six Step Process" described [in
12 this document].

13

14

Now, Ms. Dansereau, are you familiar with the "Six
15 Step Process referred to in this paragraph?

16

MS. DANSEREAU: No, and I don't have this document, so
17 I can't tell where the other subheadings would
18 have been to describe what this section of the
19 paper is.

20

Q Okay. Could we scroll up, please, Mr. Lunn.

21

Okay. So, "No Impact", is the first heading that
22 we referred to. If you like, you could take a
23 moment to read that.

24

MS. DANSEREAU: Do we have this document here so we can
25 actually look at it?

26

Q It should be in my list of documents.

27

MR. MCGOWAN: I wonder if my friend has a tab number?

28

MR. RALSTON: We have an exhibit number, but not a tab
29 number at this moment. I can move on so as not to
30 waste my remaining time.

31

Q Okay, I'm just going to go to page 9 of this
32 document, Mr. Lunn, please. Okay, Step 1, here,
33 at the bottom of this page, is stated as:

34

Inform First Nations of Intent to Consult.

35

36

The first bullet here states that:

37

38

It is important to provide sufficient
39 information so that the First Nation can then
40 decide whether or not to participate in the
41 consultation process.

42

43

Would you agree, Ms. Dansereau, that this is an
44 important step to go through in consultation with
45 First Nations?

46

MS. DANSEREAU: Again, this is a document from 2006.

47

1 I'm still not clear on whether or not we're
2 talking about the legal duty to consult or whether
3 or not we're talking about consultation in the
4 course of our regular business, so there are
5 formal steps that need to be taken and they're
6 different in either circumstance, and sometimes
7 it's not as formal as this, and sometimes this is
8 what's required. So I can't really answer your
9 question in generalities, because it will be case
10 specific.

11 Q Okay. So speaking practically, rather than in the
12 context of the duty to consult, would DFO
13 typically take an approach where the first step
14 that they would go through -- okay, sorry, Mitch.

15 MR. TAYLOR: I think the difficulty is that, with this
16 question, the witnesses have repeatedly said what
17 they do depends on the circumstances, in answer to
18 many of these questions, and now Mr. Ralston is
19 asking, typically what would they do. I think
20 it's a difficult question for the witnesses, and
21 I'm objecting to it on the basis that if they've
22 said it depends on the circumstances, how can they
23 answer a question, "Typically, what would you do?"

24 This document, as I understand it, is an
25 exhibit that went in at some point in time. I may
26 have been present in the hearing room when it did,
27 I don't recall it. I suspect it went in, in the
28 aboriginal panel hearings. We haven't been given
29 the context that this document went in under and
30 what it was identified as. I can see, from the
31 beginning, that it's best practices, it's a
32 Fisheries and Oceans document, and it says that
33 it's a practice document, and page 2 refers to its
34 -- it's not policy, it's some guidelines. And
35 essentially, as I understand this document, it's
36 an example of transparency where what's been said
37 to DFO staff is being put on the website and
38 otherwise given out, so people know the approach.

39 But it's a practice document that's then
40 applied by staff in particular circumstances in
41 their daily works

42 MR. RALSTON: Okay. This document was adopted, my
43 co-counsel advised me, in the testimony of Mr.
44 Huber as well as Mr. Rosenberger, earlier in these
45 proceedings. Now, I don't have that citation
46 before me, but I could pass that onto the
47 Commissioner, if he so wishes.

1 MR. MCGOWAN: The document, Mr. Commissioner, was
2 originally entered, I believe, on March 16th. It
3 may have been Mr. Ryall, though we're trying to
4 sort out exactly who it went in through.

5 I don't see it listed on my friend's list of
6 documents, and we've been attempting to find the
7 full copy of it so that Ms. Dansereau can view it.
8 I don't know if it's in the binders they have
9 before them, because I don't see it on the list
10 here. There's 80-odd exhibits and I've just done
11 a quick scan.

12 But if it's just an exhibit and not on one of
13 the lists, we don't have the ability, at this
14 moment, to put a full version before the witness.

15 MR. RALSTON: Okay. My co-counsel's reviewing our list
16 of documents, but I'm prepared to move onto
17 another stage of questions.

18 MS. DANSEREAU: If I may also, I don't -- and I really
19 am not trying to be difficult here, it's just that
20 there are various ways that a consultation could
21 take place. A meeting could happen between myself
22 and a chief and we could decide that we need to
23 consult further on a different issue. I mean, it
24 could happen between the Minister and some chiefs
25 and decide that further consultation is required
26 and, therefore, certain steps would flow from that
27 meeting.

28 So if this is a general practice that happens
29 in the field for standard, possibly it is, I don't
30 know. But I do know that I can't say under oath
31 or under affirmation, whatever, that this is
32 always the way. There are different types of
33 approaches, depending on the circumstances.

34 Q Okay. Would you agree that there is always some
35 amount of sharing of information and exchange of
36 information, then, during a consultation process
37 between DFO and First Nations?

38 MS. DANSEREAU: Yes.

39 Q Okay. Just give me one more moment. Okay, and
40 would you also agree that DFO generally engages in
41 some amount of response to First Nations which
42 would essentially deal with the concerns raised
43 during the consultative process that those First
44 Nations have raised?

45 MS. DANSEREAU: Yes.

46 Q Okay. Could you explain why that would be
47 important for DFO to give that response?

1 MS. DANSEREAU: To exchange information?
2 Q No, sorry; response.
3 MS. DANSEREAU: If we are consulting, we are exchanging
4 information.
5 Q Yes. So okay, I can stay at the information
6 exchange. Sorry, I've been thrown around a bit
7 here. Okay, so information exchange, you do agree
8 that that always takes place, as far as you know,
9 during DFO's consultation process?
10 MS. DANSEREAU: Well, usually, because the point of
11 consultation is to exchange information.
12 Q Okay, usually takes place. Would you agree that
13 it's important that this takes place?
14 MS. DANSEREAU: Yes.
15 Q Okay. Would you agree that in circumstances where
16 information is not being exchanged it ought to be
17 exchanged during a consultation process?
18 MS. DANSEREAU: I...
19 Q Okay. That's fine. Okay. In terms of a response
20 from DFO to First Nations addressing their
21 concerns at a later stage in the consultation
22 process, would you agree that that's generally an
23 approach that's adopted by DFO is --
24 MS. DANSEREAU: I guess I'm a little bit worried that
25 you're going to go down a road that says, "In all
26 cases we have to give all information." Clearly,
27 if we're in negotiations, which is different from
28 a consultation, there will be some information
29 that will not be shared at the outset. As we said
30 earlier, when we're in negotiations we don't
31 disclose all information at the outset.
32 So there are various types of engagements
33 that we have with First Nations and all of them
34 require different levels and degrees of
35 information sharing.
36 Q Thank you. I'll leave that point, but I was
37 actually trying to speak to DFO's response to
38 First Nations, so at a later stage in the
39 consultation process whereby DFO would address in
40 as much detail as appropriate, First Nations
41 interests and concerns which have or have not been
42 addressed by DFO during that process. Would you
43 agree that that is something that generally takes
44 place, a sort of follow-up on behalf of DFO?
45 MR. TAYLOR: Well, I've got the same objection, really.
46 MR. RALSTON: I'm willing to move on. Okay, I'll
47 withdraw my last question, for the record, thank

1 you.

2 Q Okay, I'm going to move onto one more line of
3 questioning, unless -- okay, I have five minutes
4 remaining, so I'll see what I can do. Now, we
5 understand that DFO manages to an end-point
6 allocation percentage for aboriginal access to
7 salmon, and we're respectful of the fact that we
8 are not at liberty to ask you for that percentage
9 figure.

10 Now, being mindful of the Commissioner's
11 September 20th ruling on the Coastwide Framework
12 document disclosure application, the letter of Mr.
13 Wouters, dated September 22nd, setting out Cabinet
14 confidence claims over the documents ordered to be
15 produced, and the objections heard this morning,
16 I'll be keeping my questions general and, as much
17 as possible, trying to avoid asking for an
18 particular contents of any particular document.

19 I would, however, like to ask some general
20 questions about how an end-point percentage is
21 contemplated?

22 MR. TAYLOR: I'll object to the entire line of
23 questioning before we start, and I'll further
24 object as we go.

25 MR. RALSTON: Okay, I'll keep going.

26 Q First of all, can you confirm that the end-point
27 percentage covers both FSC and economic access for
28 First Nations?

29 MR. TAYLOR: I object.

30 THE COMMISSIONER: Objection sustained.

31 MR. TAYLOR: Well, the --

32 THE COMMISSIONER: Objection sustained, Mr. Taylor.

33 MR. RALSTON: Okay.

34 Q When modelling for an end point, has DFO explored
35 the possibility of increases in economic access
36 opportunities to levels that would require
37 concomitant decrease in current FSC allocations to
38 remain within the end-point percentage?

39 MR. TAYLOR: The s. 39 certificate is extremely clear;
40 that is, if there is to be questioning in oral
41 evidence on the end point, the s. 39 certificate
42 is saying that that, too, is a Cabinet confidence.

43 MR. RALSTON: Okay. In our submission, our
44 understanding of Mr. Wouters' letter is that
45 questions for oral testimony to the actual
46 percentage set out in these documents over which
47 Cabinet confidence has been claimed, that that is

1 the information that will be objected to in terms
2 of oral evidence, as opposed to more of the
3 process behind the actual existence of an end-
4 point allocation.

5 Testimony has already been given in this
6 Commission on some of the modelling that's taken
7 place under an end-point allocation for First
8 Nations access under this Coastwide Framework.
9 And I can bring the Commissioner's attention to
10 the testimony that has been given, if he so
11 wishes. For example, on August 19th, if Mr. Lunn
12 could please bring up that transcript, at line 25
13 of page 38 of this transcript, Mr. McGowan has a
14 line of questioning towards how DFO can model
15 under one end-point percentage allocation. I'll
16 just wait for Mr. Lunn to bring it up. Okay. All
17 right.

18 And likewise, in September 2nd, I'll just get
19 this on the record, of 2011, at page 89, line 8 of
20 that transcript, Ms. Fong asked -- begins a line
21 of questioning, asking various questions on the
22 end-point allocation percentage as to how this
23 end-point allocation affects particular aboriginal
24 programs such as PICFI and the AFS agreement, and
25 testimony was given on that topic.

26 Our understanding is that in those
27 circumstances, pursuant to the Supreme Court of
28 Canada case of **Babcock v. Canada**, wherein the
29 Supreme Court of Canada stated that a claim of
30 Cabinet confidence does not apply to information
31 that has already been disclosed. And now I can
32 hand up a copy of this ruling, if the Commissioner
33 so wishes? And we have copies to distribute to
34 other participants.

35 But pursuant to that decision, we would make
36 the submission that over certain aspects of
37 information here, Cabinet confidence has been
38 waived and cannot be claimed.

39 MR. TAYLOR: If the question were, "I'm putting to you
40 what Ms. McGivney had to say," which is the
41 witness he's speaking of, "What do you say about
42 it," fine, but I didn't understand that to be the
43 question. He seems to be wanting to go behind the
44 end point.

45 MR. RALSTON: If I can respond, we have no interest in
46 seeking what's already been -- had Cabinet
47 confidence claimed over it, which would be the

1 end-point percentage. We simply want to
2 understand how DFO will be dealing with the fact
3 of an undisclosed amount, but that is a
4 percentage, and we wish to simply ask questions
5 based on that process for how they will model
6 underneath a fixed percentage, whatever that fixed
7 percentage may be, and move forward on that
8 ground.

9 THE COMMISSIONER: I think you're probably going to run
10 out of time before we get anymore submissions, but
11 following Mr. Taylor's suggestion, if there's
12 evidence already before the Commission, Mr.
13 Ralston, and you mentioned, I think, two
14 transcript references, if you wish to put those
15 transcript references to these witnesses to get
16 their view on that evidence, I think that's
17 appropriate --

18 MR. RALSTON: Okay.

19 THE COMMISSIONER: -- if you wish to do that.

20 MR. RALSTON: Okay, I'm just going to move on. And Mr.
21 Lunn, could you please bring up Heiltsuk Tribal
22 Council's document number 66. This is a document
23 related to the question I'm asking, and that will
24 be my last question. Mr. Lunn, could you please
25 move to page 3 of this document, and could you
26 focus in on lines 10 to 14 of column B.

27 Q Now, line 4 reads:

28
29 FRC Allocation decreased by 100,000 pieces
30 from historical...

31
32 Whereas line 5 reads:

33
34 First Nations communal share of the
35 commercial CTAC is doubled to 40%, non-First
36 Nation share is 60% as of 2008.

37
38 And my question for you, Ms. Dansereau, would be,
39 although very little context is given in this
40 document, would you agree that it appears to
41 involve modelling of a scenario in which FSC
42 allocations of Fraser River sockeye salmon are
43 begin decreased, whereas communal access to
44 commercial allocation is being increased?

45 MS. DANSEREAU: I'm sorry, I have no idea what this
46 document is or what it is trying to say.

47 Q Okay. Ms. Farlinger? I could repeat the same

1 question. Could you speak to this? Are you
2 familiar with this document? It was on our list
3 of documents and it was disclosed to the
4 witnesses.

5 MS. FARLINGER: I'm not entirely sure of what the
6 context is. I do know that when models were run,
7 and I would just refer back to the comments from
8 Dr. Richards on modelling, a variety of
9 assumptions are tested and made. These may form
10 some of those or not, I'm not sure.

11 Q Okay. Mr. Bevan, could you add any further
12 information on this document?

13 MR. BEVAN: The models were run to create the aggregate
14 number, and I'm loathe to comment further than
15 that on these as it relates to the discussion
16 that's been held prior to getting to this
17 particular document. I'm not -- I can't put this
18 in a particular context, but I do know that we are
19 looking at scenarios depending on the
20 circumstances in a particular First Nations if
21 they had an economic opportunity fisheries, et
22 cetera. But it gets to part of the Coastwide
23 process.

24 MR. RALSTON: Okay. Could I have this document marked
25 as the next exhibit, please.

26 MR. TAYLOR: Well, no one's identified it as anything.
27 I'm wondering if this is part of what is properly
28 privileged. I, frankly, don't know what this is.
29 It's seemingly gone in as an unidentified
30 document. I think the most that it could be is a
31 document for ID.

32 MR. RALSTON: Could we just simply zoom in on the
33 information at the bottom of this document. Now,
34 this is, in our understanding, a DFO document. It
35 was disclosed through the ringtail procedure, and
36 it is a document that we disclosed on our list of
37 documents well within our week's notice to Canada
38 and other participants, and it's something that we
39 would also imagine, under Commission processes,
40 would have been put to the witnesses. Okay.

41 So our understanding is, well, it refers to a
42 "Rob". There's definitely not a particular author
43 we can refer to here, but we do understand it to
44 be a document that has been disclosed by Canada
45 and is ostensibly a DFO document and it contains
46 what seems to be ostensibly models of a scenario
47 in which FSC allocations are decreased so that

1 economic opportunity can be increased.

2 MR. MCGOWAN: Mr. Commissioner, just perhaps by way of
3 assistance, I know we're well over Mr. Ralston's
4 time, now, but perhaps to clean up this last -- I
5 don't know if any of the witnesses or Mr. Taylor
6 can assist, but there's the initials PAFF near the
7 bottom of the page, and if my recollection serves
8 me, that has some association with the Coastwide
9 Framework process and may well fall within the
10 context of your ruling in the event this document
11 was inadvertently disclosed. I don't know if that
12 might assist Mr. Taylor.

13 THE COMMISSIONER: Mr. Ralston, may I respectfully
14 suggest that we mark this for ID purposes.
15 Perhaps Mr. Taylor, yourself and Mr. McGowan can
16 further discuss its source, and I could be advised
17 later as to some clarification on where this
18 document comes from and whether or not there, as
19 Mr. McGowan says, there happens to be an element
20 of it that might fall within the privileged
21 communication category. But at this stage,
22 perhaps the safest thing to do is mark it for
23 identification purposes.

24 MR. RALSTON: Okay, thank you.

25 THE COMMISSIONER: Thank you.

26 MR. RALSTON: Those are my questions.

27 THE REGISTRAR: It will be marked as 000, triple "0".

28
29 MARKED 000 FOR IDENTIFICATION: Untitled DFO
30 document purported to be models of a scenario
31 in which FSC allocations are decreased so
32 that economic opportunity can be increased
33

34 MR. MCGOWAN: Take the afternoon adjournment, Mr.
35 Commissioner?

36 THE COMMISSIONER: Yes. Can you just tell me what's
37 left on the agenda, Mr. McGowan?

38 MR. MCGOWAN: Yes, Mr. Commissioner. There is a couple
39 of housekeeping matters which will need to be
40 addressed. Mr. Taylor, I understand, will have
41 some questions in re-examination, I will have some
42 questions in re-examination, and certainly if you,
43 Mr. Commissioner, have any questions, there will
44 be time provided for that.

45 THE COMMISSIONER: I just want to make sure we don't
46 run out of time before four o'clock, just --

47 MR. MCGOWAN: I understand we're concluding at

1 4:00 p.m. today.

2 THE COMMISSIONER: All right, thank you.

3 THE REGISTRAR: The hearing will now recess for 10
4 minutes.

5

6 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)

7 (PROCEEDINGS RECONVENED)

8

9 THE REGISTRAR: The hearing is now resumed.

10 MR. MCGOWAN: Thank you. Mr. Commissioner, first
11 there's a couple of housekeeping matters and
12 points of order that we're going to deal with at
13 the outset. First Mr. Gailus wants to address the
14 matter of the question that was left outstanding
15 from his examination.

16 MR. GAILUS: Thank you, Mr. McGowan. Mr. Commissioner,
17 as you'll recall, you sent me away to talk to my
18 colleagues and do a little review. I've looked at
19 the ruling and the certificate and I remain of the
20 view that the question is admissible. However, in
21 the interests of bringing some closure to this, I
22 am content to rely upon the testimony that we've
23 heard already from the DFO representatives, and I
24 am therefore withdrawing my question.

25 THE COMMISSIONER: Thank you, Mr. Gailus.

26 MR. MCGOWAN: Yes, Mr. Commissioner, just before Mr.
27 Taylor commences his re-examination, there's a
28 couple of exhibit matters I'd like to deal with.
29 The first, Ms. Gaertner had an exhibit that was
30 put in as NNN today. It was marked for
31 identification because she did not have a signed
32 copy of the agreement. She has now provided to me
33 what appears to be a copy of a signed copy. It's
34 been provided to Mr. Taylor. I understand there's
35 no objection to this now becoming a full exhibit,
36 and with the assistance of Ms. Gaertner, we'll
37 endeavour to get the signed copy on the website.
38 So if NNN could become a full exhibit, please.

39 THE REGISTRAR: Exhibit 1966.

40 MR. MCGOWAN: Oh, if we have the signed copy. I just
41 thought we were still waiting for the electronic
42 to come in.

43 MS. GAERTNER: I have a hardcopy that was provided by
44 my friend, Mr. Tyzuk from the Province. I've
45 provided it to Mr. Lunn. There's a hardcopy of a
46 signed agreement.

47 MR. TAYLOR: But my real question is what is the

1 process for getting a signed copy as an exhibit.
2 MS. GAERTNER: Well, he can either scan it and PDF it,
3 and mark it, which is something that Mr. Lunn is
4 very capable of doing, or I can send him an
5 electronic version.

6 MR. TAYLOR: The practical point is I'm very alive to
7 the fact we're closing the evidence, as I
8 understand it, at four o'clock.

9 MR. MCGOWAN: If the hardcopy could be marked as the
10 next exhibit.

11 MR. TAYLOR: I thought someone was going to send it
12 electronically to Mr. Lunn.

13 MR. MCGOWAN: If there's no objection to the document
14 itself, I suggest the hardcopy be marked and we
15 proceed to scan it and put it on the website in
16 the usual course.

17 MR. ROSENBLOOM: The very matter about closing the
18 evidence at four o'clock I do want to speak to
19 before four o'clock. Because there are -- not to
20 suggest any new evidence, but there are some
21 matters that I believe are outstanding that will
22 have to be placed into the body of evidence, isn't
23 currently before the body of evidence, and an
24 example are some decisions that the Commissioner
25 is making on applications that have been made.

26 MR. MCGOWAN: At the conclusion of the day, Mr.
27 Commissioner, I'll be suggesting we adjourn until
28 the first day of closing submissions. That is
29 subject, of course, to your approval.

30 THE COMMISSIONER: Thank you.

31 MR. MCGOWAN: So if the -- unless Mr. Taylor objects,
32 if the hardcopy could be marked as the next
33 exhibit, to subsequently be scanned and put on the
34 website.

35 THE REGISTRAR: That will be 1967.

36 MR. MCGOWAN: 66.

37 THE REGISTRAR: It's already been marked.

38
39 EXHIBIT 1966: Signed First Nations Housing
40 Memorandum of Understanding between First
41 Nations Leadership Council et al, Government
42 of Canada et al, and Government of British
43 Columbia et al (unsigned copy formerly marked
44 as NNN for identification)
45

46 MR. MCGOWAN: If we could have Mr. Lapointe's affidavit
47 up. Mr. Commissioner, Commissioner counsel has

1 received an Excel spreadsheet data chart from Mr.
2 Lapointe, Chief Biologist for the Pacific Salmon
3 Commission, which provides sockeye abundance
4 information for a number of years. This fills in
5 some data gaps and some other information
6 previously entered. It's been distributed to all
7 participants, and I understand there's no
8 objections. If this affidavit along with its
9 attachments could become the exhibit, please.

10 THE REGISTRAR: Exhibit 1967.

11
12 EXHIBIT 1967: Affidavit #1 of Mike Lapointe,
13 27 September 2011, and attachments
14

15 MR. MCGOWAN: Thank you. There's three, or I believe
16 four additional documents that follow up on some
17 information that was previously entered in the
18 hydro and water flow and temperature hearing. Mr.
19 Prowse advises he's discussed them with all
20 counsel and all counsel are content to have them
21 go in as exhibits, and I'll just have him identify
22 them so they can be marked as the next exhibits,
23 please.

24 MR. PROWSE: Yes, thank you, Mr. Commissioner. Mr.
25 Lunn, the terms of reference which is dated
26 January 7, 2003 of the Canadian Okanagan Basin
27 Technical Working Group Terms of Reference. If
28 that might be the next exhibit.

29 THE REGISTRAR: Exhibit 1968.

30
31 EXHIBIT 1968: Canadian Okanagan Basin
32 Technical Working Group Terms of Reference,
33 January 7, 2003
34

35 MR. PROWSE: And then the Okanagan Fish/Water
36 Management Tool: Guidelines for Apprentice Water
37 Managers, Canada 281980. Next exhibit.

38 THE REGISTRAR: Exhibit 1969.

39
40 EXHIBIT 1969: The Okanagan Fish/Water
41 Management Tool: Guidelines for Apprentice
42 Water Managers, v.2.0.000
43

44 MR. PROWSE: Fish and Water Management Tool Project
45 Assessments, Canada 198280, the next exhibit.

46 THE REGISTRAR: Exhibit 1970.
47

1 EXHIBIT 1970: Hyatt et al, Fish and Water
2 Management Tool Project Assessments:
3 Okanagan Adult Sockeye Salmon (*Oncorhynchus*
4 *nerka*) Abundance and Biological Traits in
5 2005
6

7 MR. PROWSE: Upper Columbia Aquatic Management
8 Partnership (UCAMPO), Aboriginal Aquatic Resources
9 and Oceans Management Program Collaborative
10 Management Agreement, Quarterly Report, January 1-
11 March 31, 2007, which is Canada 068981. If that
12 might be the next exhibit.

13 THE REGISTRAR: Exhibit 1971.

14
15 EXHIBIT 1971: Upper Columbia Aquatic
16 Management Partnership (UCAMPO), Aboriginal
17 Aquatic Resources and Oceans Management
18 Program Collaborative Management Agreement,
19 Quarterly Report, January 1-March 31, 2007
20

21 MR. PROWSE: Thank you, all participants, and thank
22 you, Mr. Commissioner.

23 THE COMMISSIONER: Thank you.

24 MR. HARVEY: I think Mr. McGowan has one more exhibit.

25 MR. MCGOWAN: I had planned to deal with that in the
26 course of my re-examination, Mr. Harvey.

27 Mr. Taylor now has a few questions in re-
28 examination.

29 MR. TAYLOR: I'm going to start with what I think Mr.
30 Harvey is referring to, because I wanted to
31 address an aspect of it. So I'll ask if what Mr.
32 McGowan was going to bring -- which must be
33 somewhere in the computer, Mr. Holtby's paper
34 could be brought up. We might as well -- is that
35 what you're asking, Mr. Harvey?

36 MR. HARVEY: No, it was actually Tab 11 in my
37 documents, which is --

38 MR. TAYLOR: Okay, all right.

39 MR. HARVEY: Which is a DFO publication.

40 MR. TAYLOR: Sorry to be a little disjointed here. Then
41 could we go to Mr. Holtby's paper. I believe Mr.
42 McGowan was going to have it for you, Mr. Lunn.

43 MR. LUNN: (Indiscernible - away from microphone).

44 MR. MCGOWAN: Tab 49 on our list, Mr. Lunn.

45 MR. LUNN: Thank you.

46 MR. TAYLOR: This is a document, Mr. Commissioner, that
47 was referred to yesterday by probably Dr.

1 Richards, and then the Commission gave notice last
2 night or thereabouts that they were going to put
3 it in as a document, which we're happy -- as an
4 exhibit, which we're happy to see. I'll come back
5 to that when it comes up on the screen.
6

7 CROSS-EXAMINATION BY MR. TAYLOR, continuing:
8

9 Q Let me ask you, Mr. Bevan, if I may, about -- and
10 Deputy Minister, about the current figures under
11 the current strategic review that's been
12 announced, or the strategic review that's happened
13 and now been announced. I just want to see if we
14 can get some clarity, because I think it's not
15 completely clear by any means after Mr. Rosenbloom
16 and Mr. Buchanan were asking you questions about
17 it. There is evidence that over four years there
18 will be \$56 million trimmed from the DFO budget.
19 And I think I've got that evidence right, do I,
20 Deputy Minister, or Mr. Bevan?

21 MR. BEVAN: It's \$56.8 million, as will be the final
22 number in that it's achieved in terms of the
23 cumulative, and then ongoing reductions.

24 Q All right.

25 MS. DANSEREAU: But it's over three years.

26 Q Yes. And so the \$56 million comes in which year
27 for the -- the aggregate is realized, if I could
28 put it that way, in which year, or which fiscal
29 year?

30 MS. DANSEREAU: At the end of the third year, so 2015.
31 Right?

32 MR. BEVAN: '13-'14.

33 MS. DANSEREAU: '13-'14, sorry, yes.

34 MR. BEVAN: 2013-'14 is the final fiscal year by which
35 time the budget will have been reduced by \$56.8
36 million on an ongoing basis.

37 Q All right. And then backing up from that, I'm
38 just trying to understand and have clarity for the
39 Commissioner what the figure is for each of the
40 previous years.

41 MR. BEVAN: I know that it's nine million this year,
42 and I cannot off the top of my head with any
43 degree of precision give you the number for the
44 middle year.

45 Q All right. I'm going to do this, then, and sorry,
46 Mr. Lunn, I'm bouncing around. I might have been
47 able to accomplish the question I'm on right now

1 without a piece of paper, but I think I'm going to
2 have to go to it. So please don't lose Mr.
3 Holtby. At the same time, can we bring up the
4 document I gave you last night. It's -- or,
5 sorry, this morning. I think it's the only one
6 we've sent, I hope, and it's short. At least it's
7 short before in terms of my questioning. Yes,
8 thank you.

9 All right. I'll stick with you, if I may,
10 Mr. Bevan. Do you recognize that as a cover page
11 for what I'm going to call the "second" Budget
12 2011?

13 MR. BEVAN: Yes, I do.

14 Q All right. And so that would be, as the date
15 shows, the one we're operating, or the one that
16 was ultimately passed, to your knowledge, by the
17 House of Commons?

18 MR. BEVAN: That's correct.

19 Q And if you go to the next page of that document,
20 Mr. Lunn, and if we could see the whole page, do
21 you recognize that page, which is listed as 222?

22 MR. BEVAN: Yes, I do, and those are in fact the
23 numbers that are to be achieved on the dates by
24 which time they have to be achieved.

25 Q All right. And you were -- you've already said
26 the nine and the 56, and you're trying to see or
27 search your memory for the middle number, and does
28 this refresh your memory what that is?

29 MR. BEVAN: Yes, it does. The middle number is 18.9.

30 Q All right. And then if I understand it, the year
31 you're in right now, the budget has been trimmed
32 by nine million and next year it will be trimmed
33 by a total of 18, and then 56.8, these are
34 aggregate numbers?

35 MR. BEVAN: That is correct.

36 Q All right. And the nine million that -- well, the
37 56 million that is the ultimate number, that's 56
38 million less on a budget of about 1.8 billion, is
39 it, that we heard about yesterday?

40 MR. BEVAN: That is correct.

41 Q And that's the number that's about three percent,
42 in other words, 56 is about three percent of 1.8
43 billion?

44 MR. BEVAN: That's correct.

45 Q Thank you. Do you know, either of you, Mr. Bevan,
46 or Deputy Minister, whether that kind of
47 percentage, three percent is more or less than

- 1 other Departments are impacted, other Departments
2 of the Federal Government?
- 3 MS. DANSEREAU: It's actually, I think, quite average.
4 Some Departments were -- the full five percent was
5 taken, some Departments a lesser percentage was
6 taken.
- 7 Q All right, thank you. Now, Mr. Holtby, and I
8 apologize, it may be Dr. Holtby, I'm not sure. Dr
9 Richards, do you recognize this?
- 10 DR. RICHARDS: I don't recall that I've actually read
11 this document, but I am aware of it.
- 12 Q All right. Are you aware of it as being a paper
13 that's in draft form prepared by, and maybe you
14 can help me, Mr. or Dr. Holtby?
- 15 DR. RICHARDS: It's Dr. Holtby.
- 16 Q Thank you. Is this the paper that he's been
17 working on?
- 18 DR. RICHARDS: I'm aware that he has been working on
19 this paper, yes.
- 20 Q All right. Do you know what the status of it is?
- 21 DR. RICHARDS: No, I'm sorry, I can't inform you of the
22 status at this time.
- 23 Q All right. Do you know whether it's gone through
24 peer review or not?
- 25 DR. RICHARDS: I believe there has been some peer
26 review on this document. I know that there
27 certainly has been a lot of discussion in regard
28 to this document.
- 29 Q All right. Are you, Ms. Farlinger, are you
30 familiar with this document?
- 31 MS. FARLINGER: I was aware this document was being
32 prepared but I am not specifically familiar with
33 its contents.
- 34 Q Without going to the actual content, are you aware
35 of the kind of content that's supposed to be in
36 it, what it is about?
- 37 MS. FARLINGER: To the best of my understanding, this
38 is an assessment of different approaches for
39 determining conservation statuses -- status of
40 conservation units, let's try that.
- 41 Q And if that's the case, and the paper will speak
42 for itself, of course, but with that understanding
43 you have, what use would managers make of that
44 paper as and when it's finalized?
- 45 MS. FARLINGER: Depending on the status of the paper,
46 it could evolve at some point into recommendations
47 about specifically how the status of a

1 conservation unit would be assessed. At that
2 point we would receive that assessment, if that
3 were approved to go ahead under the scientific
4 advice process. We would consider how and when
5 and in what schedule we would incorporate it into
6 management.

7 Q Into the management of the fishery?

8 MS. FARLINGER: Yes, into the management of the
9 fishery.

10 MR. TAYLOR: All right, thank you. Commission counsel
11 was going to have this marked as an exhibit, and I
12 think we might as well do that now.

13 THE REGISTRAR: That will be 1972.

14

15 EXHIBIT 1972: Holtby, A Synoptic Approach
16 for Assessing the Conservation Status of
17 Pacific Salmon on a Regional Basis, CSAS
18 Working Paper 2011/P23, Draft

19

20 DR. RICHARDS: Can I make the same caveat on this
21 document that we made on the document for Sue
22 Grant, and that this is a draft and it could
23 therefore change under review. So the peer review
24 normally will change the outcome of somewhat of
25 the document, so I think there needs to be some
26 caution to take that this is a final accepted
27 document, because it is not.

28 Q All right, thank you. Yesterday, Ms. Farlinger,
29 Mr. Eidsvik asked you some questions about what
30 were then Tabs 12, 13, and 14. And I think this
31 remains outstanding. You were, as I understood
32 it, going to go and look at your website and see
33 if that helped you identify those documents. They
34 are somewhere in the computer, and I'm sorry, Mr.
35 Lunn, I can't point you to numbers.

36 MR. MCGOWAN: Exhibits 1948 through 1950.

37 MR. TAYLOR: Thank you.

38 Q Maybe we -- firstly I should ask, did you have an
39 opportunity to go and look at the website, and/or
40 explore what Mr. Eidsvik had asked you about?

41 MS. FARLINGER: I did not have time to go through the
42 documents specifically and determine exactly what
43 they were.

44 Q All right. Okay, so you don't know any more today
45 than you did yesterday.

46 MS. FARLINGER: That's correct.

47 Q All right. Well, we'll leave it there, then.

1 Mr. Eidsvik asked you, Ms. Farlinger, about
2 terminal fisheries in Shuswap Lake. Do you
3 remember that?

4 MS. FARLINGER: Yes.

5 Q And as I recall your evidence, you said you
6 weren't sure where they were. Do you know if
7 there's even a terminal fishery at all in Shuswap
8 Lake?

9 MS. FARLINGER: It's certainly near or around Shuswap
10 Lake.

11 Q All right. And then Mr. Eidsvik went on to ask
12 you about some of the impacts on -- or of terminal
13 fisheries on weak stocks. And as I understood the
14 questioning, he was suggesting to you that
15 terminal fisheries could adversely affect the weak
16 stocks and that there isn't any protection against
17 or for the weak stocks, no protection against that
18 effect or for -- in favour of the weak stocks, and
19 he was speaking in the context of the Adams
20 fishery. My question of you is whether in
21 designing terminal fisheries does DFO take steps
22 to ensure that the terminal fishery does not
23 impact adversely weak stocks?

24 MS. FARLINGER: Certainly one of the major objectives
25 of designing a terminal fishery is to reduce --
26 reduce the impact, or reduce the possibility of
27 impact on weak stocks. It's one of the primary
28 considerations in considering where a terminal
29 fishery will take place.

30 Q All right. My second-to-last question, and Mr.
31 McGowan in particular will be pleased that my last
32 question should be very quick, is that - my
33 second-to-last - on Monday, Deputy Minister, Mr.
34 McDade -- sorry, Mr. McDade was asking you, Dr.
35 Richards, not the Deputy, some questions about
36 studies to do with disease, and at page 68 of
37 Monday's transcript, September 26, and I don't
38 need it pulled up, I'll just read it, Mr. McDade
39 asked:

40
41 ..."We didn't see any evidence of impacts of
42 disease on the wild salmon, so we didn't do
43 any studies about it," would that be fair?
44

45 And he's trying to get the gist of what your
46 evidence was from a number of the panel members,
47 and, Deputy, you answered:

1 I don't know.

2
3 And said some other things, and then, Dr.
4 Richards, further down you said:

5
6 I think we agree that there is -- this is an
7 area where there hasn't been as much research
8 as potentially some of the other areas, but
9 you've asked us a very specific question
10 within a broad area where I think that we
11 could certainly do [some] more research.

12
13 And then you say:

14
15 So you've only -- you're focusing on a very
16 specific research question within a suite of
17 things where we could do more work.

18
19 I'd like to give you the opportunity to expand on
20 what you're referring to there by a "suite of
21 things" we could do. What is this suite that
22 either you're doing or could do?

23 DR. RICHARDS: Well, as I recall the question from Mr.
24 McDade, Mr. Commissioner, I think he was very much
25 focused, and I think it was that part where he was
26 very focused on pathways of viruses as one
27 specific example. And I think in that context the
28 pathways that we would look at for viruses would
29 be similar to the pathways that we'd look at for
30 other kinds of diseases, parasites, bacteria, and
31 in that context I think that we have done some
32 other work, but I think we recognize in general
33 that we would -- that there is more that we could
34 do in the overall context of fish health, and that
35 in fact we have undertaken some studies, starting
36 in 2009, to look more generally at the overall
37 status of health of juvenile salmonids within the
38 Strait of Georgia as a starting point, and in the
39 lower estuary. And we hope that those studies
40 will provide us with a much better baseline to
41 move forward.

42 Q All right, thank you. 596, there we are, page 2,
43 please. This is the document that, let's see, Mr.
44 Dickson, maybe, Mr. Ralston, was asking you about.
45 You'll see there in the second paragraph:

46
47 This document is not meant to be a statement

1 of DFO or Government of Canada policy.
2 Rather it is a collection of "best
3 practices"...

4
5 And so on. Ms. Farlinger, I'll ask you. Is that
6 an accurate statement then and still today?

7 MS. FARLINGER: Certainly in terms of what I've seen of
8 this document it is a collection of best
9 practices, yes.

10 MR. TAYLOR: All right, thank you. And then finally,
11 and this is not a question, it's a clarification,
12 Mr. Commissioner, Exhibit 000, triple "O" - not to
13 be confused with White Spot - is not something
14 that warrants any privilege. It's -- we're not
15 sure what it is, but it's not privileged.

16 THE COMMISSIONER: Thank you.

17 MR. TAYLOR: We know enough to know that it's not
18 privileged. It's some kind of a historical
19 modelling or assumptions or trying things out, but
20 it's not part of the privileged material.

21 MR. BUCHANAN: Thank you, Mr. Commissioner, Chris
22 Buchanan on behalf of the PSAC. There was a
23 document that was put to one of the witnesses by
24 Mr. Taylor, and we would ask that that document be
25 entered as an exhibit. It's the chart of the
26 Budget. And in fact it may be helpful for the
27 Commission to have the entire Budget, which I
28 supplied to Mr. Lunn. It will be important
29 because I think the evidence given by one of the
30 witnesses was inadvertently led astray by the
31 actual questioning. So we would ask that the
32 chart and the entire Budget be put in.

33 MR. TAYLOR: Well, I was -- I brought up the document
34 to assist Mr. Bevan in refreshing his memory. I
35 don't think the numbers are particular
36 controversial, but they're not things that people
37 carry around in their mind every day necessarily.
38 And so that was the aim of bring the document up.
39 I don't think I marked it. I don't need it. It
40 could be a document for ID perhaps.

41 Mr. Buchanan is now raising that somehow the
42 question led the witness astray. I mean, he read
43 what the number is on the document. I don't have,
44 you know, any -- I don't have a concern in terms
45 of the content that the Budget be marked. He
46 wants the whole thing in. The budget is 700, 800
47 pages. It's got appendices. It can deal with all

1 kinds of stuff that will simply crash the
2 Commission computer, and I'm really in the
3 interests of trying to manage the information load
4 or overload here, suggesting that you don't want
5 the entire Budget document put before the
6 Commission. It was there for a very limited
7 purpose only.

8 MR. BUCHANAN: I don't think it would crash the system
9 but we're content if the entire Budget is marked
10 for identification purposes, and not as an
11 exhibit.

12 MR. RALSTON: I was wondering if it would be
13 appropriate to ask that document marked for
14 identification will be entered as an exhibit now,
15 since Mr. Taylor has clarified that there's no
16 privilege claimed over it.

17 THE COMMISSIONER: Very well. That will be 1973, is
18 that correct?

19 THE REGISTRAR: That's correct, 000 will be 1973.

20
21 EXHIBIT 1973: Untitled DFO document
22 purported to be models of a scenario in which
23 FSC allocations are decreased so that
24 economic opportunity can be increased
25 (formerly marked as 000 for identification)
26

27 THE REGISTRAR: And the last document, what do you want
28 to do with that?

29 THE COMMISSIONER: I'm sorry. Mr. McGowan, do you have
30 any position on marking for identification
31 purposes the Budget.

32 MR. MCGOWAN: I'm not sure what utility it serves to
33 have an 800-dollar -- 800-page - I'm sure it's
34 more than 800 dollars, excuse me - an 800-page
35 document marked for identification. It's not
36 going to be of any use to you in deliberating and
37 it's just going to sit there accomplishing
38 nothing.

39 MR. TAYLOR: I'm only just going to add at this point
40 that since Mr. Buchanan says my question led Mr.
41 Bevan astray, I want to point out I have said 700,
42 800 pages. It's multi-hundred pages, but I'm not
43 going to be held to it's 800 as opposed to 900 or
44 600 or 2200. It's a big document.

45 MR. MCGOWAN: I vote for whatever option is the most
46 speedy resolution of this issue, Mr. Commissioner.

47 THE COMMISSIONER: Speedy resolution. We'll mark for

1 identification the page that was put to Mr. Bevan
2 for identification purposes, thank you.
3 MR. MCGOWAN: Thank you. I have just a few questions
4 in re-examination, Mr. Commissioner.
5

6 RE-EXAMINATION BY MR. MCGOWAN:
7

8 Q Ms. Dansereau, there were a number of questions
9 put to you over the past few days about the Wild
10 Salmon Policy and funding and implementation, and
11 one of the pieces of evidence that you gave to the
12 Commissioner was that in hindsight were you
13 redrafting this policy today you would have it
14 broken into two parts, both a policy part and a
15 program part; is that correct?

16 MS. DANSEREAU: Yes.

17 Q And is one of the reasons that you would like
18 portions of the Policy, the portions of the Policy
19 that perhaps deal with implementation to be in a
20 program is that they would then carry with them a
21 funding envelope?

22 MS. DANSEREAU: Well, not necessarily, but they would
23 -- they would carry with them, as it currently
24 does, targeted money. So it would simply be a
25 different way of managing it, and I can't go back
26 to 2005 because I wasn't there, so I don't know
27 what the thinking was. I do know that the very
28 statement that says we will -- we will implement
29 this within the resources that we have, meant that
30 very serious consideration had been given to the
31 costing implications.

32 Q Well, let me ask you about that, then, Deputy.
33 You told Commission counsel in your examination in
34 chief that you -- that the Department is fully
35 committed to implementing the Wild Salmon Policy.
36 That was your evidence, correct?

37 MS. DANSEREAU: Yes.

38 Q You answered one of the Commissioner's questions
39 later in the week when he queried you about the
40 original intention to implement the Wild Salmon
41 Policy within existing resources, that it wasn't
42 as realistic as it could have been, and there was
43 some naivety in the development of the Policy.
44 Taking those two statements together, and taking
45 your representation that DFO was fully committed
46 to implementing the Wild Salmon Policy, your
47 acknowledgment of the naivety and its development,

1 do I take it that it follows that you now accept
2 that some additional resources are going to have
3 to be found to meet DFO's current commitment to
4 implement the Wild Salmon Policy and all of its
5 component parts?

6 MS. DANSEREAU: No, not necessarily. Because what I
7 had -- what I meant when I said that there was
8 some naivety was the timeframes that were included
9 in the Wild Salmon Policy were timeframes that
10 would be difficult for us to implement, partly
11 because of the difficulty in getting access to the
12 real knowledge and the real science, and that is
13 sometimes a question of money. But sometimes it's
14 a question of timing in terms of when we develop a
15 certain bit of knowledge from science, it leads us
16 into a different direction. So putting the
17 serious, the absolute commitments around a
18 timeframe from when we're dealing with science is
19 a little bit, I think, being extra hopeful.

20 Q Okay. Well, let's move, then, perhaps to an issue
21 of timeframes. Ms. Farlinger, you recall some
22 questions put to you by Mr. Rosenbloom about
23 Habitat Status Reports?

24 MS. FARLINGER: Yes.

25 Q And particularly about the Habitat component of
26 the Wild Salmon Policy, and you accepted that it
27 was a critical -- a critical component of managing
28 stocks; do you recall that?

29 MS. FARLINGER: Yes.

30 Q And in response to his questions about how many of
31 the Habitat Status Reports had been completed, you
32 said to the best of your knowledge that only the
33 Harrison stock in the Fraser watershed, to your
34 knowledge, had been completed. And in terms of
35 the timetable, your evidence was that the
36 timetable set out in the original policy was
37 ambitious at best. Do you recall that?

38 MS. FARLINGER: Yes.

39 Q The timetable set out in the original policy with
40 the funding as it was in 2005 was ambitious at
41 best, and in the last five years you've managed to
42 accomplish only one Habitat Status Report. In the
43 context of today moving forward, with the budget
44 constraints that you're facing, what is a
45 realistic timeline, not one that's ambitious at
46 best, but a realistic timeline within which your
47 Department in the Pacific Region can produce the

- 1 Habitat Status Reports required under the Wild
2 Salmon Policy?
- 3 MS. FARLINGER: It would be difficult to set out a
4 specific timeline because of the fact we budget on
5 an annual basis, and because we have to balance
6 the priorities of our work across all of our work.
7 And we have to balance the priorities of the work
8 on the Wild Salmon Policy as to whether work on
9 the Strategy 1, 2, 3, 4 are more important to get
10 done. So for that reason, setting a timeline on
11 those is going to be very difficult and not
12 something I don't think -- I think I could do at
13 this point.
- 14 Q How long would the timeline have to be for you not
15 to suggest that it was ambitious?
- 16 MS. FARLINGER: I think I would situate this in terms
17 of my answer that we are implementing the Wild
18 Salmon Policy in its spirit and in accordance with
19 the data requirements that are setting out as the
20 data becomes important for us. One of the
21 elements that we are looking at in order to move
22 forward on the Habitat side of the National
23 Program, and therefore of the Wild Salmon Policy,
24 is the review that we are currently undergoing
25 about the Habitat Program and the Habitat Policy.
26 I think the timelines associated with
27 implementation of the Habitat portions of the Wild
28 Salmon Policy will in some measure be contingent
29 on the shape of the Habitat Program moving
30 forward, and any refinements that may be needed to
31 the Habitat Policy.
- 32 Q So you can give the Commissioner no timeframe even
33 in the most general terms as to when he might
34 expect the Habitat work we were just discussing
35 might be completed?
- 36 MS. FARLINGER: That's correct.
- 37 Q If we could have Mr. Tab 11 of Mr. Harvey's
38 documents, please, and just a brief question. Ms.
39 Farlinger, you may be able to assist with the
40 matter Mr. Harvey was hoping we could canvass.
41 There's a document on the screen entitled "Pacific
42 Salmon Treaty Economic Implications of Harvesting
43 and Processing Reductions". Is this a document
44 you're familiar with? I believe it's a -- or
45 anybody else on the panel?
- 46 MS. FARLINGER: I'm not familiar with it, no.
- 47 Q That's fine. If the witnesses aren't familiar

1 with it, I'll move on.

2 Ms. Dansereau, I want to come back to you
3 with a couple of questions about the **Larocque**
4 funding. With respect to Mr. Rosenbloom's
5 questions about the importance of test fishing and
6 whether you'd support its continuation at the
7 conclusion of **Larocque** funding, your position,
8 evidence to the Commissioner, was the evidence
9 isn't in and we don't have answers yet. Do you
10 recall that?

11 MS. DANSEREAU: I do.

12 Q Okay. Mr. Ryall testified before the Commission
13 and he --

14 MS. DANSEREAU: Excuse me, if I may.

15 Q Yes, certainly.

16 MS. DANSEREAU: No, no, that's -- I think that answer
17 was specifically to **Larocque** funding and the
18 **Larocque** program and whether or not we would be
19 seeking continuation of that funding. But I also
20 answered that in all indications test fisheries
21 have shown themselves to be important to this, and
22 that if we couldn't find the funding under
23 **Larocque** we would -- and we deemed that they would
24 be fully important, then we would find funding
25 elsewhere. So I didn't say that there's no
26 evidence that test fisheries are not -- or
27 important. I did say that the indications are
28 that they are, but that we had to finish our
29 evaluation of the whole program.

30 Q Right. And when you just gave your answer you
31 said there "And if we determine they're important
32 we will find a way to continue them".

33 MS. DANSEREAU: And that the findings couldn't be found
34 some other way. And this is what we would always
35 do. So, yes, there are many indications to show
36 that they are critical to the work that we're
37 currently doing, but somebody might come to me at
38 some point later and say we can find the same
39 information doing something else. No one has thus
40 far, but we do know that the information is
41 important.

42 Q Is there any doubt in your mind as to the
43 importance of test fishing to your fishery
44 managers in terms of fulfilling their need to
45 manage the stock on an in-season basis?

46 MS. DANSEREAU: There's no doubt in my mind that the
47 information that they currently provide is very

1 important.
2 Q Okay. Are you committed to finding funding,
3 whether it's through continuation of **Larocque** or
4 some other process, to continue test fishing?
5 MS. DANSEREAU: I am committed to finding funding to
6 make sure we have the information we need on which
7 to make decisions.
8 Q Okay. Is the test fishery -- you heard Ms.
9 Farlinger together refer to the test fishing as a
10 key element. The evidence was put to you in chief
11 with Mr. Ryall that it was extremely important,
12 and I don't have the precise words he used,
13 integral to gathering in-season information. In
14 the context of that evidence, are you or are you
15 not convinced that the specific aspects of test
16 fishing must be continued moving forward?
17 MS. DANSEREAU: For someone like me in the position
18 that I am in, evidence must come in a variety of
19 ways, and not through a five-minute conversation,
20 even though we are -- this is a very serious
21 conversation. I would have to receive a whole lot
22 of advice from across the Department and at that
23 point I would make a decision.
24 Q Yes. You're five years into the process of review
25 with the temporary **Larocque** funding -- almost five
26 years.
27 MS. DANSEREAU: Well, we're five years into the
28 program. We are one year into the review. We are
29 looking at the review right now.
30 Q So the review didn't commence until approximately
31 six months ago.
32 MS. DANSEREAU: The review of any program commences in
33 its final year.
34 Q Thank you. I just have one final question for
35 you, and it's for you, Mr. Bevan. And it was in
36 response to some questions that were put to you
37 about funding reductions and a concern that there
38 may be a disproportionate distribution between
39 operating expenses and salary dollars. Do you
40 recall those questions?
41 MR. BEVAN: Yes, I do.
42 Q And your response was, if I can summarize: Well,
43 no, we're not going to do that, have a bunch of
44 people with no operating expenses. We will manage
45 the distribution and the balance between attrition
46 and retirement.
47 MR. BEVAN: That's correct.

1 Q Okay. if DFO intends to maintain the balance
2 between salary and operations through attrition
3 and retirement, and as you move forward there are
4 the budget reductions and restrictions we've
5 talked about, does this mean DFO is planning to
6 address the budget decreases by having fewer
7 scientists, fewer catch monitors, fewer fishery
8 officers, or will it be distributed throughout all
9 of those or some other areas?

10 MR. BEVAN: It will be distributed as decided upon by
11 -- by Cabinet when those announcements are made by
12 -- with the approval of the government, that will
13 be clear as to where they're going to take place.
14 I would point out we have attrition rates that are
15 above five percent, so we have some flexibility to
16 look at issues, and we are looking at maintenance
17 of frontline services of importance to Canada or
18 Canadians and dealing with areas where there's
19 less priority and those will be, once approved to
20 be announced, made known.

21 MR. MCGOWAN: Thank you for that, and thank you to each
22 of the panel members. You have given a tremendous
23 amount of time to the Commission. Mr.
24 Commissioner, those are my questions.

25 THE COMMISSIONER: Yes, thank you, Mr. McGowan. I'm
26 sorry?

27 THE REGISTRAR: Mr. Commissioner, in terms of the
28 Budget document, you indicated that should be
29 marked.

30 THE COMMISSIONER: Just the page that was put to the
31 witness, Mr. Giles.

32 THE REGISTRAR: As an identification or a...

33 THE COMMISSIONER: As an exhibit.

34 THE REGISTRAR: Exhibit.

35 THE COMMISSIONER: I'm sorry, for identification
36 purposes. My apologies.

37 THE REGISTRAR: Identification, so that will be PPP,
38 triple "P".

39
40 PPP FOR IDENTIFICATION: Cover and page 222
41 from Budget tabled June 6, 2011
42

43 THE COMMISSIONER: Thank you. My apologies.

44 Yes, I wanted to add to Mr. McGowan's remarks
45 to the panel members the appreciation of the
46 Commission. You've been here more than once, and
47 the commission is grateful for your attendance and

1 for your answering the questions of counsel, and
2 thank you very much for that.

3 I think, Mr. Wallace -- before I think Mr.
4 McGowan correctly said we would be adjourning, Mr.
5 Wallace, but you may just want to put that on the
6 record. I mean adjourning to a date specific, not
7 *sine die*.

8 MR. WALLACE: Thank you, Mr. Commissioner. Just by way
9 of adjournment, inasmuch as I have two minutes, I
10 thought I would just like to record, if I may,
11 that you have now heard 125 days of testimony from
12 173 witnesses. There have been 1973 exhibits, 15
13 technical reports, 21 policy and practice reports
14 and more than 500 public submissions. That's the
15 evidence which you now get to enjoy. And I would
16 like to express my thanks to you, Mr.
17 Commissioner, and to all of the participants and
18 counsel for the immense cooperation and
19 flexibility and professionalism that's been shown
20 here over the last year. And this brings these
21 evidentiary hearings more or less to a conclusion,
22 but they're adjourned to November the 4th at 10:00
23 a.m.

24 THE COMMISSIONER: Yes. Thank you very much, Mr.
25 Wallace.

26 I just wanted to add just a few brief
27 comments, if I could. Firstly I wanted to thank,
28 as Mr. Wallace has, the participants and the
29 participants' counsel for the cooperation and
30 respect you've shown to the process, and for your
31 hard work that you have invested. The preparation
32 was obvious on each and every day that I sat in
33 this Commission and I'm very, very grateful. I'm
34 under no illusions about how much pressure you're
35 under, both time-wise and work-wise, and you
36 really did rise to the occasion, and for that I
37 shall be forever grateful, and I look forward to
38 your submissions in due course, which I know will
39 be immensely helpful. And I've learned a great
40 deal from the process, thankfully to your
41 questions to the witnesses, and I'm sure I'll
42 learn more from your submissions.

43 I wanted to thank all of the members of the
44 Commission legal staff. I don't see all of you
45 outside of this hearing room, but I do see them
46 and their work ethic, and I am very, very grateful
47 to each and every member of the legal team, the

1 science folks who have been in our Commission
2 staff, the entire Commission staff who back up
3 everybody in terms of the paper load and the
4 pressures on them to make sure everything is
5 flowing. So I'm very grateful to all of them.

6 To Mr. Giles, Mr. Lunn, and Ms. Kealy, I
7 think you have expressed your appreciation to
8 them, I must, as well. They make this hearing run
9 very smoothly. They're extremely cooperative and
10 entirely reliable, and I'm grateful to them. They
11 have been of great help to me and to Commission
12 staff and to participants and to participants'
13 counsel, so thank you to all them. I note Mr.
14 Giles is moving on to another project. He's
15 shaking his head, but it's too late, he's
16 committed to it. And Ms. Kealy, I believe, is not
17 going to be with us on November the 4th. So to
18 them, thank you very much.

19 I wanted to thank the Federal Court staff.
20 We were able to use these facilities through
21 cooperation between our Commission counsel and the
22 staff here at the Federal Court, and we've been
23 very fortunate to have this room for as long as
24 we've had it. To Donna, who is there each day
25 outside, to Mary, who you don't see, but she's
26 behind the scenes, being extremely helpful to me
27 and to others in terms of assisting us as we're
28 over here and not in our own office. So thanks to
29 them very much.

30 And to the members of the public, of course,
31 who came to our public forums, who have sent us
32 written submissions, who have attended these
33 hearings from time to time, they're the important
34 parties to keep in mind. They are very
35 interested in this process, and very much part of
36 the process. So I thank them.

37 For me personally it has been really a
38 pleasure and a privilege to chair this Commission.
39 I have learned, as I said, a great deal about the
40 fish, about the people who are reliant on the fish
41 and about its importance to Canadians. I think
42 for me the epiphany was not in this hearing room.
43 It should have been, but it wasn't. It was, and
44 some of you may have been there, on the weekend in
45 the summer of 2010 when the fish returned in such
46 abundance, I went out to Steveston and I walked
47 along the wharf with thousands of Canadians and

1 the buzz there was I think not even exceeded by
2 the buzz during the Olympics, frankly, it was the
3 excitement in the faces of all Canadians who were
4 there, young and old. And it brought home to me
5 the extreme importance of the topic we are all
6 engaged in examining and investigating, and the
7 privilege we have to be part of the process.

8 So thank you all very, very much. I look
9 forward to seeing you on November the 4th. Thank
10 you.

11 THE REGISTRAR: Thank you. We are now adjourned until
12 November 4th.

13
14 (PROCEEDINGS ADJOURNED TO NOVEMBER 4, 2011 AT
15 10:00 A.M.)
16
17
18
19

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

29 _____
30 Pat Neumann
31
32

33 I HEREBY CERTIFY the foregoing to be a true
34 and accurate transcript of the evidence
35 recorded on a sound recording apparatus,
36 transcribed to the best of my skill and
37 ability, and in accordance with applicable
38 standards.
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42 _____
43 Karen Hefferland
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