

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



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

Public Hearings

Audience publique

Commissioner

L'Honorable juge /
The Honourable Justice
Bruce Cohen

Commissaire

Held at:

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

Thursday, March 17, 2011

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

le jeudi 17 mars 2011

APPEARANCES / COMPARUTIONS

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Mitchell Taylor, Q.C. Hugh Macaulay	Government of Canada ("CAN")
Clifton Prowse, Q.C. Tara Callan	Province of British Columbia ("BCPROV")
No appearance	Pacific Salmon Commission ("PSC")
No appearance	B.C. Public Service Alliance of Canada Union of Environment Workers B.C. ("BCPSAC")
No appearance	Rio Tinto Alcan Inc. ("RTAI")
Shane Hopkins-Utter	B.C. Salmon Farmers Association ("BCSFA")
No appearance	Seafood Producers Association of B.C. ("SPABC")
Gregory McDade, Q.C. Lisa Glowacki	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")
Lyndsay Smith	Area D Salmon Gillnet Association; Area B Harvest Committee (Seine) ("GILLFSC")

APPEARANCES / COMPARUTIONS, cont'd.

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

APPEARANCES / COMPARUTIONS, cont'd.

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

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1
Laura Richards
In chief by Mr. Wallace

1 Vancouver, B.C. /Vancouver
2 (C.-B.)
3 March 17, 2011/le 17 mars 2011
4

5 THE REGISTRAR: The hearing is now resumed.

6 MR. WALLACE: Good morning, Mr. Commissioner. For the
7 record, Brian Wallace, Commission counsel, and
8 with me is Lara Tessaro and Micah Carmody.

9 This morning, Mr. Commissioner, we are here
10 to hear from Dr. Laura Richards, who is the
11 Regional Director of Science for DFO. This arises
12 as a result of a ruling you made in November that
13 we should give participants an opportunity to
14 question Dr. Richards with respect to process
15 issues relating to science and the management at
16 DFO and, in particular, with respect to a science
17 workshop that occurred in September 2009, and
18 subsequent advice that came from that.

19 I would emphasize this is not intended to get
20 into the substance of that advice. Those issues
21 go directly to the scientific questions that are
22 before you, and they have been and will continue
23 to be dealt with in the substantive hearings on
24 each of those issues.

25 We are very tight for time. As always, I've
26 advised participants that this matter will be
27 dealt with today, and my proposal to them, and
28 this, of course, is subject to your ultimate
29 determination. My proposal to them is that I have
30 pinched their time unrealistically and tried very
31 hard to -- and they've all agreed to try and deal
32 with it in that sort of timeframe, and they
33 understand, I think, that in the event that we
34 can't finish, my proposal will be that anything
35 that remains will have to be done by writing.

36 With that in mind, I hope to complete my
37 examination by the morning break. Canada will
38 then have 45 minutes before I ask them to
39 complete, followed by the Aquaculture Coalition,
40 who has asked for 90 minutes and to whom I have
41 said, "Please take 60," and Mr. McDade will be
42 followed by Mr. Prowse, for the Province, for whom
43 I have proposed 20 minutes, followed by the
44 Conservation Coalition at 30 minutes.

45 Those are all of the time estimates that we
46 received ahead of time. We have since had
47 indications and late notifications from the First

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1 Nations Coalition, the B.C. Salmon Farmers
2 Association, and Areas D and B that they may have
3 some questions and we'll just have to see how the
4 day plays out for that, but it's going to be very
5 difficult.

6 With that in mind, perhaps we could start.
7 THE REGISTRAR: Dr. Richards, I remind you, you're
8 still under oath.

9 MR. WALLACE: Thank you.

10

11

LAURA RICHARDS, recalled.

12

13 EXAMINATION IN CHIEF BY MR. WALLACE:

14

15 Q Dr. Richards, if I may just go to your *curriculum*
16 *vitae* quickly, you have a zoology PhD. From UBC
17 from 1982?

18 A Yes, that's correct.

19 Q And you were appointed Acting Regional Director of
20 Science in the Pacific Region in 1998, and
21 Regional Director in 2002, correct?

22 A Yes, that's correct.

23 Q And you've held that position since?

24 A That's correct.

25 MR. WALLACE: Thank you. Mr. Giles, could this be
26 marked, please, as the next exhibit, the
27 *curriculum vitae* of Laura Jean Richards?

28 THE REGISTRAR: It will be Exhibit 610.

29

30

EXHIBIT 610: *Curriculum Vitae* of Dr. Laura
Jean Richards

31

32

33 MR. WALLACE: Thank you.

34 Q Dr. Richards, you have had an opportunity to
35 review and amend a Summary of Anticipated
36 Evidence; do you have that?

37 A Yes, I have that in front of me.

38 Q Now, you have reviewed that, and will you adopt
39 that as correct?

40 A I think there are a few places where we may need
41 to go for some clarifications that I have just, in
42 particular, discussed with your counsel.

43 Q All right. I will ask questions about this. Why
44 don't we just deal with those. The first one is
45 at R --

46 MR. TAYLOR: Well, I'd like to clarify the process for
47 these statements. These are something that is

1 prepared by Commission counsel, they're then given
2 to me to give to the witness, the witness
3 comments, and Commission counsel accepts some
4 comments and not other comments. This is not the
5 evidence of this witness, by any means. The
6 kernel of it is there, but Mr. Wallace hasn't
7 pursued his first question, was, "Do you adopt it
8 as correct?" It's not something that this witness
9 has written and it's not something, as she said,
10 that she can agree to holus-bolus. I don't think
11 it's useful to go through, line by line, and have
12 her identify where there's changes. It seems to
13 me that the witness is here to answer questions
14 that Mr. Wallace asks and not simply adopt
15 something he's written.

16 MR. WALLACE: Mr. Commissioner, there have been varying
17 practices here. The purpose of this, in my
18 submission, is to make this go as efficiently as
19 possible. I accept that this document isn't the
20 entirety of Dr. Richards' evidence; indeed, a
21 large part of the summary talks about issues on
22 which she will be asked questions. But some of it
23 is, I think, uncontentious and it's evidence which
24 we would like you to be able to rely on, so I'm
25 not asking if it's complete; I'm asking if it's
26 correct. And I intend to ask questions on large
27 parts of it, but it's simply whether or not this
28 can be -- what's in here can stand as correct.

29 So I will ask the witness to adopt this with
30 whatever clarifications she thinks is necessary
31 and have it marked as an exhibit. Thank you.

32 Q Dr. Richards, I think you have a clarification you
33 wish to make at paragraph R?

34 A Yes. I did want to just clarify, first of all, my
35 area of expertise, and what I'd like to say is,
36 you know, basically my background has been in data
37 analysis, quantitative analysis of fisheries data
38 and stock assessment data, and in that context I'm
39 quite good at data analysis, but I'm not very good
40 at disease, and for issues related to disease I do
41 rely very heavily on my staff and on their advice.

42 And in this particular context, too, it says:

43
44 ...with particular expertise in preparing
45 briefs,
46

47 The wording of this is just a little bit

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1 unfortunate, and so I think it's more correct to
2 say I do rely heavily on input from my scientists
3 and that they -- and I rely on their advice when I
4 am preparing briefs and --
5 Q Yes. So is it fair to say that you rely on your
6 scientists for advice on disease and fish health
7 issues and your strength is in the data analysis?
8 A That's correct.
9 Q Thank you. Is there any other portion of this
10 you'd like to clarify?
11 A I think we did.
12 Q At paragraph ff, I think.
13 A Thank you. Yeah, paragraph ff there is a typo
14 there in that last line.
15 Q Yes. So it should be February 17th?
16 A It should be February 17th.
17 Q Thank you. With those two clarifications, can you
18 adopt this as correct, that --
19 A Yes.
20 MR. WALLACE: Thank you. Mr. Commissioner, I'd like to
21 have this, then, marked as the next exhibit, the
22 Summary of Anticipated Evidence of Dr. Richards.
23 THE REGISTRAR: Exhibit Number 611.
24
25 EXHIBIT 611: Summary of Anticipated Evidence
26 of Dr. Richards
27
28 MR. WALLACE:
29 Q Dr. Richards, in September of 2009, am I correct
30 that you, along with Mark Saunders, convened a
31 science workshop as a result of the low sockeye
32 return of that year?
33 A Yeah, that's correct. Obviously, there was an
34 intense amount of scientific interest in what had
35 happened in 2009, and we wanted to bring staff
36 together to really exchange views and begin to try
37 to understand what might have happened. And as
38 part of our process of just trying to work with
39 staff and given the intense interest, we realized
40 we needed to have a relatively large meeting to
41 make sure we had different points of view on the
42 table, and so yes, that was the process that we
43 undertook.
44 Q Thank you. And in the book in front of you there
45 are a number of tabs which, for the record, are
46 the same as the numbering of the exhibit list that
47 we provided to participants, and at Tab 1, Dr.

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1 Richards, you'll see, first of all, an e-mail
2 invitation; secondly, an agenda; and thirdly, a
3 table that sets out a summary of hypothesis
4 relating to the 2009 Fraser sockeye. Are those
5 the invitation, agenda and summary prepared for
6 that meeting?

7 A Yes. I think the summary, I'm not sure it was
8 prepared in advance. I can't recall precisely the
9 timing here, but part of what happened at that
10 meeting was to go through and to try to look and
11 try to get evidence from the scientists on their
12 views on some of these different hypotheses and
13 try to flesh that out.

14 Q Thank you. So these were all prepared in
15 conjunction with that meeting?

16 A Yes, that's correct.

17 MR. WALLACE: Thank you. Mr. Commissioner, could this
18 be marked as the next exhibit, please? And this
19 will be the invitation, the agenda, and summary of
20 hypothesis from the 2009 DFO workshop.

21 THE REGISTRAR: That will be marked as Exhibit 612.

22
23 EXHIBIT 612: E-mail invitation for Science
24 meeting September 30, 2009; Agenda; and table
25 setting out a summary of hypothesis relating
26 to the 2009 Fraser sockeye
27

28 MR. WALLACE: Thank you.

29 Q And the next exhibit I would take you to is number
30 2, which is at Tab 2 in your binder, Dr. Richards,
31 and this is a bundle, I'll call it, of material
32 relating to various hypotheses. Have you had an
33 opportunity to review that material?

34 A I have verified that those were, in fact,
35 presentations which were prepared for that
36 meeting. I did not, personally, attend most of
37 the meeting, I was there for the later part of
38 that meeting, so I cannot personally verify that
39 these were fully presented, but they were the
40 information that was prepared for that meeting.

41 MR. WALLACE: Thank you. May that material then
42 prepared for the science workshop in September
43 2009 be marked as the next exhibit, please?

44 THE REGISTRAR: 613.

45
46 EXHIBIT 613: Package of documents prepared
47 for DFO science workshop in September 2009

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Laura Richards
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1
2 MR. WALLACE:
3 Q I wonder if I might, Dr. Richards, now just take
4 you to Tab D of 2?
5 MR. LUNN: Sorry to interrupt, just a clarification on
6 Tab 2. There are documents A through H.
7 MR. WALLACE: Thank you.
8 MR. LUNN: Do you want those marked separately, or as
9 the same one?
10 MR. WALLACE: All as one exhibit.
11 MR. LUNN: Thank you.
12 MR. WALLACE: Thank you. You can mark them A through
13 H, if you like, but all with the same number.
14 MR. LUNN: Right.
15 MR. WALLACE: Thanks.
16 Q Dr. Richards, if I could take you to Tab 3 of 2,
17 and this is, on the second and third page of that
18 document --
19 A Mm-hmm.
20 Q -- again, this is the summary of hypotheses, and
21 then at page 2 and 3 there are items marked
22 Identified Issues and Things That Might Be Worth
23 Looking Into, and I wonder if looking at Things
24 That Might Be Worth Looking Into, whether or not
25 subsequent to the meeting, science staff have been
26 assigned to look into those six issues?
27 A Staff have been continuing -- obviously staff have
28 been extremely interested in this question of what
29 happened, because it is a very interesting
30 question from a scientific perspective, and so
31 staff have been trying to do some follow-up on
32 these areas as well as some other areas, so not
33 just these areas.
34 I'd say in terms of follow-up, there was much
35 more follow-up on some of the other hypotheses.
36 These were some additional pieces of information
37 where we thought we might be able to have some
38 extra added value. But some of these are
39 probably, not all these, sort of the main areas in
40 which further investigations would be ongoing.
41 Q So these were thought to be of lesser interest?
42 A Well, I mean, some of them are -- there's very
43 different ones. You've got a bit of a mix here.
44 I think the first three topics are, you know,
45 fairly small questions; the last three are fairly
46 major questions.
47 Q Thank you. The next document, Dr. Richards, I

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1 would take you to is entitled, Update on Science
2 Review 2009, Fraser Sockeye, which is at Tab 3.
3 Am I correct that that document was produced as a
4 result of the workshop?

5 A Yes. The workshop was sort of a starting point,
6 and then following from that workshop we did
7 attempt to make some summaries of the current
8 situation. You know, this was really a bit of a
9 work in progress. There were different versions
10 of this document that were prepared and updated as
11 we went along and tried to get more information.
12 And so, you know, very much of what you're seeing
13 here is a bit of an evolution of scientific
14 thinking on this whole topic and that scientific
15 thinking was evolving and has continued to evolve
16 as we get more information on various pieces.

17 Q And how was this update used subsequent to the
18 meeting?

19 A Well, as you know, one of the things that we did
20 was, and we used this to prepare a briefing note
21 that we sent off, eventually, to the Minister, but
22 in addition to that, it was also used to brief
23 staff so that the scientific staff themselves who
24 are working in one specific area would have some
25 sense of the broader understanding and the broader
26 scope of the issue so that they could also be
27 informed and think about work of their colleagues
28 as they were doing and moving forward on their
29 hypotheses. So to try to be as integrated as
30 possible.

31 You know, generally in these kinds of
32 situations, as I know you understand, there isn't
33 simple answers. None of this stuff is simple, and
34 we know that things are connected and linked and,
35 therefore, we need to have large teams that are
36 starting to investigate some of these questions,
37 and in order to do that efficiently and
38 effectively it's very important that staff are
39 knowledgeable about other areas of research and
40 what others are doing and so that they can use
41 that information as they move forward and think
42 about their own area of specialization.

43 Q Thank you. Just for the record, I note, in Tab 3,
44 there is what appears to be a covering e-mail to
45 this document, dated Thursday, November 12th, to
46 you from Mark Saunders. Can you just confirm that
47 that is the case?

8
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1 A Yes.

2 MR. WALLACE: Mr. Commissioner, if I may mark the
3 covering e-mail and the attached update as the
4 next exhibit, please?

5 THE REGISTRAR: Exhibit Number 614.

6

7 EXHIBIT 614: Update on Science Review 2009,
8 Fraser Sockeye, and attached e-mail dated
9 November 12, 2009, to Laura Richards from
10 Mark Saunders
11

11

12 MR. WALLACE:

13 Q You mentioned, Dr. Richards, the briefing notes,
14 and I just will ask you a series of questions
15 about --

16 A Okay.

17 Q -- those briefing notes and their genesis and what
18 finally happened to them. And the first step in
19 that process are the -- take you to the documents
20 at Tab 4, and this is an e-mail, it appears to be,
21 from you, dated October the 6th, to Mark Saunders,
22 Subject: Draft BN. "BN" is "briefing note",
23 correct?

24 A Yes.

25 Q And then attached to that is a document entitled,
26 Briefing Note For the Minister, Factors Affecting
27 the 2009 Fraser Sockeye Returns. Am I correct
28 that this is an early draft of the briefing note
29 that you referred to a moment ago?

30 A Yes. I think this is an early draft. The note
31 was really drafted by Mark Saunders, and I think
32 this is his first attempt to pull that together
33 for an initial discussion between the two of us.

34 Q Thank you. Am I correct that ultimately there
35 were, I think, three briefing notes prepared?

36 A Yes, that's correct.

37 MR. WALLACE: May I have that early draft briefing note
38 and the covering e-mail marked as the next exhibit
39 please?

40 MR. TAYLOR: I don't have an objection to that, but I
41 have a clarification.

42 MR. WALLACE: Yes?

43 MR. TAYLOR: The very last page of that tab appears to
44 be something different from the early draft
45 briefing note. I am suspecting that there's a
46 photocopying error, but I wonder if Mr. -- and
47 that photocopying error, if that be the case,

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1 might have happened before it got to the
2 commission or after, I don't know. It's a page
3 that starts with speaking points --

4 MR. WALLACE: Yes.

5 MR. TAYLOR: -- which appears to have nothing to do
6 with the briefing note.

7 A Perhaps I could clarify? We have a normal
8 template for preparing briefing notes that Mr.
9 Saunders would have used, and that normal template
10 -- and this bit is just part of that normal
11 template. It's not relevant for this particular
12 case, but since this was a very, very early draft,
13 and he was just working from the template, that
14 was not removed when he did this work.

15 MR. WALLACE: Thank you. Sorry, if that could be
16 marked as the next exhibit, Mr. Giles, thanks?

17 THE REGISTRAR: 615.

18
19 EXHIBIT 615: Briefing Note For the Minister,
20 Factors Affecting the 2009 Fraser Sockeye
21 Return, and covering e-mail dated October 6,
22 2009, from Laura Richards to Mark Saunders,
23 Subject: Draft BN, and transmittal sheet
24

25 MR. WALLACE: And the next tab, Dr. Richards, I'm going
26 to take you to what I believe to be the final
27 version of this and the other briefing notes, and
28 if I could ask you to look at Tab 5 of your book,
29 and this is a series of documents. The first one
30 is dated March 02 of 2010, headed, Memorandum for
31 the Minister, Potential Causes of Poor Returns of
32 Fraser River Sockeye Salmon: With Focus on Sea
33 Lice Impacts. And then behind that is a similar
34 document, but dated December 3 of 2009, headed,
35 Factors Affecting the 2009 Fraser Sockeye Return,
36 and the third document, dated December 11th, 2009,
37 also describes a Memorandum for the Minister,
38 headed, Potential Causes of Poor Returns of Fraser
39 River Sockeye Salmon: With Focus on Disease-
40 Related Factors.

41 Q Now, am I correct that you've looked into this and
42 you've determined that these are the forms of the
43 three memoranda that you've spoke of that finally
44 went to the Minister's office?

45 A Yes, that's correct.

46 MR. WALLACE: Thank you. Mr. Giles, could these three
47 documents, together, be marked as the next

10
Laura Richards
In chief by Mr. Wallace

1 exhibit?
2 THE REGISTRAR: Exhibit Number 616.
3 MR. WALLACE: Thank you.
4 Q Now, going to the second of those two documents
5 within that exhibit, we have the document headed,
6 Factors Affecting the 2009 Fraser Sockeye Return,
7 dated December the 3rd, and am I correct that that
8 is the final version of the document that we saw
9 in its preliminary version at the previous
10 exhibit?
11 A Yes, that's correct.
12 MR. McDADE: Sorry, Mr. Commissioner, just on a
13 housekeeping matter, I wonder, it seems to me to
14 make a lot more sense that these three memos,
15 which were prepared at different times and in
16 different ways, be marked separately as exhibits.
17 THE REGISTRAR: Would you provide your name, please?
18 MR. McDADE: Greg McDade, for Dr. Morton.
19 MR. WALLACE: Thank you. Mr. Commissioner, these three
20 documents were all found as one group in -- and
21 perhaps Dr. Richards can explain the system of
22 tracking documents?
23 THE COMMISSIONER: I think to accommodate Mr. McDade,
24 why don't they just get marked 616A, B and C?
25 MR. WALLACE: That is satisfactory to me. I think we
26 should leave them in the order they were found,
27 even though that is neither chronological or
28 topical, but it's the way they were found. So the
29 Exhibit A will be the March 02 of 2010; B will be
30 the document of December 3, 2009; and C will be
31 the document of December 11, 2009.
32 MR. TAYLOR: What these are, Mr. Commissioner, and I
33 believe this is uncontentious, between Mr. Wallace
34 and I, at least, is the first of those documents
35 you can see is the latest in time, and the latest
36 in time attached the two earlier briefing notes.
37 Each briefing note is in a file, separate one from
38 the other, but this latest briefing note had
39 attached to it the earlier briefing notes for
40 reference, and that's why it's in a package. But
41 they really are independent documents, of course,
42 and they now are independent exhibits, as A, B, C,
43 within 616.
44 THE COMMISSIONER: Thank you, Mr. Taylor.
45 THE REGISTRAR: Mr. Wallace, I think best to maintain
46 the sequence of the exhibits, we need to identify
47 616 and then 616A and then 616B, otherwise we have

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1 a 616 that seems to have vanished.

2 MR. WALLACE: Whatever.

3 THE REGISTRAR: Okay. So the ones you cited, the March
4 2nd document will be 616, which you had previously
5 said 616A, so that is 616; B, the December 3rd
6 document, will be 616A; and the C document
7 previously, will be 616B.

8

9 EXHIBIT 616: Memorandum for the Minister,
10 Potential Causes of Poor Returns of Fraser
11 River Sockeye Salmon: With Focus on Sea Lice
12 Impacts, dated March 2, 2010

13

14 EXHIBIT 616A: Factors Affecting the 2009
15 Fraser Sockeye Return, dated December 3, 2009

16

17 EXHIBIT 616B: Memorandum for the Minister,
18 Potential Causes of Poor Returns of Fraser
19 River Sockeye Salmon: With Focus on Disease-
20 Related Factors, dated December 11, 2009

21

22 MR. WALLACE: And while we're making things clean, why
23 don't we also identify 616 as the document with
24 the focus on sea lice impacts; A as the document
25 which is simply factors affecting Fraser River
26 sockeye returns; and B being the document with a
27 focus on disease-related factors.

28 Q So with that, Dr. Richards, if we could look at
29 616A, which is the second document at the tab, I'd
30 like to just briefly ask you to compare it to the
31 original draft, the early draft of the same
32 document, which is Exhibit 615.

33 Now, in your summary of evidence, you
34 indicated that the final version reflects a shift
35 in the focus of the potential causes memorandum to
36 the 2009 return as opposed to the possible causes
37 for a long-term decline --

38 A Mm-hmm.

39 Q -- for Fraser sockeye. Can you explain why that
40 change in focus occurred?

41 A Well, to be honest, I'm having trouble remembering
42 precisely all the details around this, but as I
43 recollect, I think we wanted to keep the focus
44 strictly on 2009, because we thought that was the
45 area of most intense interest at this particular
46 time. While these other factors were not -- it's
47 not that they weren't important, but when you're

1 writing briefing notes you need to be sort of
2 concise and short, and we wanted to try to make it
3 as simple and straightforward as possible, and
4 that's why the focus was just on 2009.
5 Q So was that a conclusion, that it wouldn't be
6 useful to the Minister --
7 A No, no, I don't --
8 Q -- have a sense of the (indiscernible -
9 overlapping speakers) --
10 A -- mean to imply at all that it wouldn't be useful
11 or it's not important information, but, you know,
12 realistically, these briefing notes need to be
13 very short and you need to make some decisions
14 about what is the most important piece, and at
15 that time obviously the most -- the thing that was
16 of most intense interest was what happened in
17 2009, so that's what we were trying to address.
18 Q Dr. Richards, am I correct that these three
19 memoranda were prepared at the initiative of
20 Regional Science and not at the request of the
21 Minister?
22 A No, these were really prepared on my initiative.
23 Q And you have confirmed before, but just to
24 reiterate, and you have determined by looking at
25 Exhibit 616, A, and B, that these were received by
26 the Minister's office?
27 A Yes, to the best of my -- yes.
28 Q Again, looking at 616A, I wonder if I could just
29 -- this being the factors memorandum of December
30 3rd, 2009, at page 2, I want to just very briefly,
31 if you could just confirm the genesis of the 10
32 factors that were set out on page 2 and how you
33 came to this ordering?
34 A Well, these factors were -- really came from
35 discussions with staff after more discussion at
36 that meeting that we just discussed in September,
37 where we did try to come to some initial thinking
38 on what was important there or what was less
39 important. And so this was really based on
40 thinking of my staff at the time and we came to
41 order them in this sort of way to try to make the
42 story as clear as we could based on the
43 information we had at that time.
44 Q And at that time you determined that pollution in
45 the Fraser captured by Canadian fisheries,
46 predation on juvenile salmon in the Strait of
47 Georgia, and low food abundance in the Strait of

1 Georgia, were all unlikely to have contributed to
2 the 2009 poor return?

3 A That's correct. That's what we had, at that time.
4 Now, if you allow me to go on, I can say that some
5 of our ideas obviously have evolved on these
6 particular topics, and I'm sure you'll hear more
7 about that later. That does demonstrate that
8 science and thinking on these topics does evolve.
9 But this is where we were at this point in time.

10 Q And that's the point of this discussion, so it's
11 where you were at the time and what was
12 communicated about that.

13 The next bullet talks about factors that may
14 have contributed to sockeye mortality but not at a
15 magnitude sufficient to explain the poor return in
16 2009, and there you have, in that middle category,
17 predation by Humboldt squid, capture by U.S.
18 fisheries, and mortality attributed to sea lice
19 from fish farms in Discovery Passage, correct?

20 A Yes.

21 Q Can you help me with the line between that bullet
22 and the unlikely on the one side and the third
23 bullet, which is factors that could possibly have
24 led to the sockeye mortality at the scale
25 observed; how are those lines drawn, briefly?

26 A Well, as I said, this was based on some early
27 thinking around this, but, I mean, these were
28 areas where we thought, yes, it was likely that
29 there could have been some predation. Certainly
30 we had heard reports of things, like Humboldt
31 squid, so it's possible that we were thinking that
32 we -- it was very likely that there was some
33 mortality of sockeye because of those factors, if
34 the juvenile sockeye had gone out the Juan de Fuca
35 route and come up the west coast of Vancouver
36 Island, they would have encountered Humboldt
37 squid, so that we know that Humboldt squid could
38 have eaten sockeye. We don't have great data on
39 that, but we had some evidence.

40 So it was our thinking that those were things
41 that we just could not really rule out as
42 possibilities, because there was some -- we did
43 think that, yes, they could have led to some
44 mortality, but we didn't, at that time, think that
45 it could have been sufficiently large mortality to
46 lead to the mortality -- the actual scale that was
47 observed.

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1 Q And just to round this out, the three issues that
2 the scientists concluded could possibly have led
3 to the sockeye mortality in the scale observed are
4 the toxic algal blooms in Georgia Strait, low food
5 abundance in Queen Charlotte Sound, and viral
6 disease, correct?

7 A That's correct.

8 Q If I may take you to Tab 6, to the next document,
9 here we have an e-mail cover from Mark Saunders.
10 You do not appear to be on this, but perhaps you
11 have been able to confirm that this refers to the
12 document attached, which is headed Brain Lesions
13 Found in Southern B.C. Salmon Stocks. You're
14 familiar with that document?

15 A Yes, I am.

16 Q You were involved in its --

17 A Yes.

18 Q -- preparation? Sorry, you were involved in the
19 preparation of that document?

20 A Yes, I was.

21 MR. WALLACE: Thank you. Mr. Giles, could we mark
22 this, please, as the next exhibit, a document
23 entitled, Brain Lesions Found in Southern B.C.
24 Salmon Stocks.

25 THE REGISTRAR: This will be marked as Exhibit 617.

26 MR. WALLACE: Sorry, with the covering e-mail of
27 December 9th, 2009.

28
29 EXHIBIT 617: Memorandum for the Minister,
30 Brain Lesions Found in Southern BC Salmon
31 Stocks, and attached e-mail dated December 9,
32 2009, from Mark Saunders to Brent Hargreaves
33 and Arlene Tomkins, and transmittal sheet
34

35 MR. WALLACE:

36 Q Now, in the development of this document, it
37 appears that the Deputy Minister's office sought
38 clarification from the Region in the finalization
39 of this document. Can you tell us what that
40 clarification was? There also seems to be some
41 question as to whether it was the Deputy
42 Minister's office or the Assistant Deputy
43 Minister's office, but perhaps you can clarify?

44 A Yeah, the ADMO would refer to the office of the
45 Assistant Deputy Minister, in this case, the
46 Assistant Deputy Minister of Science.

47 Q Okay. So that's the reference to "revised final

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1 per ADMO" on the covering memo of this exhibit?
2 Doctor, that's --

3 A Yes.

4 Q -- the reference to ADMO?

5 A Yes.

6 Q I'm not sure that this is significant, but at the
7 bottom of the e-mail there's reference to:

8

9 Judy received clarification from the [Deputy
10 Minister's] office. Laura has approved these
11 changes.
12

13 Is that just a typo, or was the Deputy Minister
14 involved as well?

15 A No, I think this would have been from -- that's
16 probably a typo. Or it may have just been a lack
17 of clarity of the understanding of the admin staff
18 who were working on this.

19 Q Can you identify in this exhibit what the changes
20 were that were made at the request of the
21 Assistant Deputy Minister of Science?

22 A Well, since I don't have the original, this wasn't
23 -- my e-mail correspondence and I wasn't on this
24 e-mail, I can't verify precisely, but if I look at
25 this it seems to be related to the first bullet,
26 which would have been -- and the intent of that
27 first bullet really would have been to provide the
28 context and then the linking with the other note
29 that we just discussed. So my recollection, here,
30 was really trying to improve the overall context
31 in preparation of this note.

32 Q When you compare this exhibit with Exhibit 616B,
33 which is the last document at Tab 5 in your book,
34 there's a change in the title.

35 A Mm-hmm.

36 Q Can you explain how this changed from "Brain
37 Lesions Found in Southern BC Salmon Stocks" to the
38 final title, which is, "Potential Causes of Poor
39 Returns With a Focus on Disease-Related Factors"?

40 A I can't recall, explicitly, but to the best of my
41 recollection, my understanding here is, again, it
42 has to do with context in linking it and improving
43 the clarity because, really, the note was more
44 than about the brain lesions piece of it; it was
45 really trying to provide the broader context on
46 at least one piece of the disease issue.

47 So again, it was really trying to link and

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1 demonstrate sort of the flow in what we were
2 doing.
3 Q Do you recall if that was a change that was
4 proposed by the Assistant Deputy Minister's
5 office?
6 A I don't recall exactly where that proposal came
7 from, but, you know, I guess I did agree that it
8 made sense to -- in my view, that was a helpful
9 change, because it did provide extra clarity in
10 linking with the previous note and showing the
11 flow of these ideas, because clearly there was a
12 link between these concepts.
13 Q If I may take you, then, to the next tab, Dr.
14 Richards, which is Tab 7 of your book, which has
15 an e-mail of December 23rd, 2009, which is from
16 Arlene Tomkins, addressed to you, attaching the
17 briefing note, and again, this one is entitled,
18 Potential Causes of Poor Returns of Fraser River
19 Sockeye Salmon: With Focus on Sea Lice Impacts,
20 can you confirm that this was an early draft of
21 the first document at Tab 5, which is now marked
22 Exhibit 616?
23 A Yes, that's correct.
24 MR. WALLACE: May we mark this as the next exhibit,
25 please?
26 THE REGISTRAR: Yes, it will be marked 618. Is that to
27 include the attached e-mail?
28 MR. WALLACE: Yes.
29 THE REGISTRAR: Thank you.
30
31 EXHIBIT 618: Potential Causes of Poor
32 Returns of Fraser River Sockeye Salmon: With
33 Focus on Sea Lice Impacts, with attached
34 e-mail from Arlene Tomkins to Laura Richards,
35 dated December 23, 2009, and transmittal
36 sheet
37
38 MR. WALLACE:
39 Q And the sea lice memorandum at Exhibit 618, at
40 Tab 7, was approved by you, as Regional Director
41 of Science?
42 A I'm not sure that that is the final version.
43 You've got so many different versions here.
44 Q Indeed, I think it's not the final version.
45 A So it may not have been a version that I approved.
46 I'm sorry, I can't...
47 Q If you go to the last page, the one I have doesn't

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1 have your -- of Exhibit 618, Tab 7, there is a
2 transmittal slip there, but it hasn't been signed,
3 in my version.
4 A No. And they would have been -- this would have
5 been a standard template, again, that was used, so
6 that doesn't necessarily mean that that's a
7 version that I would have approved.
8 Q Thank you.
9 THE COMMISSIONER: Mr. Wallace, I apologize for
10 interrupting just for two points. I just want you
11 to keep your eye on the clock, because you're
12 going to be finished by the break. The other
13 matter is that you just answered Mr. Registrar
14 that you wanted the e-mail as part of the
15 attachment to this exhibit, but as you just said,
16 there's a transmittal slip as well, in the tab I
17 have, and whether you wanted to mark the
18 transmittal slip as well?
19 MR. WALLACE: Mr. Commissioner, I was including the
20 transmittal slip as part of the document, itself,
21 because they all have them, and the e-mail is just
22 a way in which it was conveyed and is often the
23 only way you can --
24 THE COMMISSIONER: I just wanted to make sure for the
25 record, that everything that's in the tab as
26 described.
27 MR. WALLACE: Thank you. For the record, then, I'll
28 just confirm that each of the memoranda has a
29 transmittal slip attached to it.
30 Am I correct, we just marked the draft, the
31 initial draft, of the -- not necessarily the
32 initial, but the draft of the sea lice memorandum
33 and the attached --
34 THE REGISTRAR: We marked the full document --
35 MR. WALLACE: Thank you.
36 THE REGISTRAR: -- as 618, including the attachment and
37 the transmittal.
38 MR. WALLACE: Thank you.
39 Q If I may ask you, Dr. Richards, the next document
40 I direct you to is a subsequent version of the
41 same document, and that's at Tab 8 of your book.
42 Can you confirm that -- and this one, from the
43 transmittal slip, appears to have been approved by
44 you, as Regional Director of Science, and also by
45 Sue Farlinger, as Regional Director, FAM, and by
46 Paul Sprout, Regional Director General, correct?
47 A I think just for clarity, Sue Farlinger, herself,

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1 did not approve this. Those initials there are
2 "BA". That would have been Bonnie Antcliffe, who
3 was acting in that position at that time.

4 Q Thank you.

5 A And I can also see it says, at the top, just for
6 clarity, it looks like I've got some other
7 initials other than Paul Sprout's there, so
8 somebody -- because this is happening right over
9 the Christmas break, there are probably a number
10 of people that were taking needed leave at that
11 time, so there would have been some others who
12 would have signed on their behalf.

13 Q Thank you for that clarification. So this
14 document would have been a subsequent version of
15 the document we marked previously?

16 A Yes, that's correct.

17 Q Just comparing those two, if I could take you to
18 page 2 of Tab 7, the previous document, in that
19 version it says:

20
21 The impact of sea lice from commercial fish
22 farms has been identified by various groups
23 as possibly a major contributing factor to
24 the low return of Fraser sockeye in 2009.

25
26 And if you compare that to the version at Tab 8,
27 at the same place, it says:

28
29 Various groups including environmental
30 organizations have speculated that sea lice
31 from commercial fish farms are a major
32 contributing factor to the low returns of
33 Fraser sockeye in 2009.

34
35 MR. TAYLOR: Mr. Wallace, you're ahead of at least Mr.
36 Lunn and I. Where are you?

37 THE COMMISSIONER: I think he's in Tab 8.

38 MR. WALLACE: Yes, I was comparing Tab 7, which has
39 been marked as an exhibit, with Tab 8, which has
40 not yet been marked, being the two successive
41 versions of this memo. Are we all on the same
42 page?

43 MR. TAYLOR: Yes, thank you, I see, now.

44 MR. WALLACE: Thank you.

45 Q Dr. Richards, you see the difference in wording?
46 I'm wondering if you --

47 A I'm sorry, I'm having trouble finding exactly --

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1 Q Okay.
2 A -- which bullets are you referring to?
3 Q The third bullet on the left-hand side of the
4 screen -- the third bullet on both sides of the
5 screen. Do you recall the genesis of that change?
6 A No, I'm sorry, I don't recall that, specifically.
7 Q Was the change from --
8 A I guess in my reading of it I don't really see
9 that they're that different.
10 Q Okay. You don't read any qualitative difference
11 between "identifying" and "speculating"?
12 A Well, it says "identified as a possible," and the
13 other -- so "speculate" versus "identified" -- I'm
14 not reading a large --
15 Q All right.
16 A I guess, in my mind, I'm not reading a large
17 difference between those two, but I cannot recall
18 precisely the discussion around that.
19 MR. WALLACE: Okay. Thank you. Then, if I may, this
20 is a document which does not have an e-mail with
21 it, be marked as the next exhibit, please, Mr.
22 Giles, along with its transmittal stub?
23 THE REGISTRAR: 619.
24
25 EXHIBIT 619: December 30, 2009, Memorandum
26 for the Minister, Potential Causes of Poor
27 Returns of Fraser River Sockeye Salmon: With
28 Focus on Sea Lice Impacts, and transmittal
29 sheet
30
31 MR. TAYLOR: Just for the record, so this is the
32 briefing note at Tab 8 that's now 619?
33 MR. WALLACE: Correct.
34 Q And if we can then go to Tab 9, Dr. Richards, we
35 have, starting with an e-mail from Jean Landry, or
36 Jean Landry --
37 A Jean Landry.
38 Q Jean?
39 A Yes.
40 Q And attached to that we have another version of
41 this same briefing memorandum. Can you tell me
42 what this version, or what changes are reflected
43 in this version and where they came from?
44 A My understanding, going through this, was that
45 there was one sentence in the summary, the last
46 sentence was added to this particular version, and
47 that change was proposed by one of the staff

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1 members in the office of the Assistant Deputy
2 Minister of Science and would have been part of
3 the review process of these notes.
4 Q Okay. So the one change would be the last
5 sentence in the first bullet of the summary, the
6 addition of the words:

7
8 Sea lice is not considered to be one of the
9 three most likely factors but is a high
10 profile issue.

11
12 Correct?

13 A Yes.

14 Q And that was proposed in National Headquarters,
15 not in the Region, correct?

16 A Yes.

17 THE COMMISSIONER: Mr. Wallace, in my Tab 9, there are
18 two summaries; which one are you referring to?

19 MR. WALLACE: I see only one summary.

20 A Mr. Commissioner, I think, again, what has
21 happened here is the way these notes were
22 prepared, the earlier note listing all the factors
23 was part of an attachment, so there are, in fact,
24 two briefing notes within this, one of which was
25 an attachment to the note on the sea lice impacts.

26 MR. WALLACE:

27 Q Thank you. So the second document in the briefing
28 note at Tab 9 is the previous one we just saw?

29 A It's the original one of the 10 factors.

30 Q Right.

31 MR. TAYLOR: Which, in turn, is referred to as an
32 attachment, at the bottom of the first briefing
33 note, which is the one that you're focused on
34 right now.

35 MR. WALLACE: Right. Thank you. So we have here,
36 then, for the next exhibit, the briefing note, the
37 covering e-mail from Jean Landry, as well as the
38 briefing note with the change noted in the
39 summary, and attached to that we have the previous
40 version. No?

41 MR. TAYLOR: No, the previous briefing note.

42 MR. WALLACE: Sorry, we have the factors -- thank you.
43 So we have the factors memoranda, I guess what
44 we'll call the general memorandum, which deals
45 with the 10 factors.

46 THE REGISTRAR: That will be marked as Exhibit 620.

47

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1 EXHIBIT 620: Memorandum for the Minister,
2 Potential Causes of Poor Returns of Fraser
3 River Sockeye Salmon: With Focus on Sea Lice
4 Impacts, with attached e-mail from Jean
5 Landry, dated January 5, 2010
6

7 MR. WALLACE:

8 Q So Dr. Richards, with these three memoranda which
9 are collected at Exhibit 616 and A and B, and
10 we've seen the genesis of them and through other
11 predecessor documents, am I correct that those are
12 the only briefing memoranda that went to the
13 Minister's office relating to the poor returns of
14 the sockeye in 2009?

15 A Yes, that is correct. Can I take the time to
16 explain on why?

17 Q Yes, please.

18 A Because I think that might be helpful. You know,
19 I think what happened is we were going -- when
20 going through this, certainly the situation was
21 changing, and at that time we were starting or
22 thinking, at that time, about the workshop that
23 was going to happen with the Pacific Salmon
24 Commission, and so our focus shifted to working on
25 the preparation for the Pacific Salmon Commission,
26 and then looking at that as perhaps a more
27 effective, more up-to-date, better compilation of
28 the material, rather than just doing these sort of
29 one-off sequences of briefing notes.

30 So that's why we decided not to continue that
31 particular path, but really to focus on another
32 process, which was starting to happen at that
33 time.

34 Q So, for example, two of the likely issues were low
35 food abundance and toxic algal blooms, and I take
36 I they weren't pursued because you abandoned this
37 process for the PSC process?

38 A Well, there's actually perhaps a couple of things
39 going on here. First of all, the issue in terms
40 of the toxic algae was not an area where Fisheries
41 and Oceans Canada really has expertise. So that
42 was not an area where we actually could make a
43 contribution and provide extra, additional
44 information to feed into a note for the Minister,
45 so we probably would not have done that,
46 specifically. We would have, perhaps the best we
47 could have done, would have included the

1 information that we gleaned in with additional
2 information in a broader body of work.

3 The issues on the food abundance in Queen
4 Charlotte Sound, I think around that time, as
5 well, our thinking was probably shifting to
6 perhaps it was more the Strait of Georgia than
7 Queen Charlotte Sound. There was some debates
8 going on between the relative importance of Queen
9 Charlotte Sound and the Strait of Georgia. So
10 really, our thinking around that was starting to
11 shift, and most of that information was pulled
12 together for the Pacific Salmon Commission
13 workshop, which happened in June of that year.

14 Q Thank you. And following the Pacific Salmon
15 Commission workshop in June, am I correct that the
16 DFO Science briefed the Deputy Minister in August
17 of 2010?

18 A Yes, Mr. Commissioner, there was a briefing note
19 that was prepared based on that workshop. Because
20 that was done through the Pacific Salmon
21 Commission, our organization gets a little bit
22 more confusing within our regional organization.
23 It's the policy sector which has a lead on things
24 related to the Pacific Salmon Commission, so
25 actually the note was put out through the policy
26 sector, but it was prepared by myself, Mark
27 Saunders, and the science staff.

28 MR. WALLACE: Thank you. Mr. Commissioner, there's a
29 document which isn't included in the tabbed
30 document, which we have circulated. It commenced
31 with a document headed, Action Request, from
32 Allison Webb, Regional Director of Policy, and the
33 subject is the PSC Workshop Report "Synthesis of
34 Evidence From a Workshop on the Decline of Fraser
35 River Sockeye".

36 Q Is the briefing note attached to that the briefing
37 note to which you're referring?

38 A Yes, that's correct.

39 MR. WALLACE: I wonder if the action request and the
40 September 21, 2010, briefing note to the Deputy
41 Minister, can be marked as the next exhibit,
42 please?

43 THE REGISTRAR: Exhibit 621.

44
45 EXHIBIT 621: Action Request, from Allison
46 Webb, Regional Director of Policy, Subject:
47 The PSC Workshop Report "Synthesis of

1 Evidence From a Workshop on the Decline of
2 Fraser River Sockeye", dated September 21,
3 2010
4

5 MR. WALLACE:

6 Q Did this note go to the Minister?

7 A I believe that this was just prepared for the
8 Deputy Minister.

9 Q Do you know why it didn't follow the course of the
10 previous memoranda?

11 A I'm sorry, no, I can't say that.

12 Q If I may take you to page 3 of this exhibit under
13 Recommendations/Next Steps, it says that:

14
15 ...DFO will develop a research plan,
16 supplementing some of the suggestions in the
17 report with other knowledge gaps relating to
18 an improved understanding and forecasting
19 ability.
20

21 Has DFO developed that research plan?

22 A We have begun to develop that plan. You know, I
23 think that we have certainly started to pull
24 together information that was related to where we
25 think the gaps are, what additional work we think
26 should be done. We have done quite a bit of
27 background work on it. We haven't finalized it,
28 in terms of final plan. But subsequent to that,
29 there has been some other discussion within the
30 Pacific Salmon Commission about the next steps.

31 And because part of the report also discussed
32 advice on how we would proceed with next steps,
33 and that involved a couple of stage process, and
34 the Salmon Commission has endorsed that process
35 and we are, now, looking at potentially some
36 upcoming workshops to flesh this out further, that
37 will be probably being held in perhaps June and
38 September, I'm not sure precisely on the dates,
39 but there has been a Canada/US team that's been
40 set up to help formulate the tasks associated with
41 that workshop.

42 And the first one would really be aimed at
43 working with different groups who are active in
44 doing research or could contribute to research on
45 this particular topic and just try to do as much
46 coordination as possible and try to think about
47 how to bring that forward.

1 And then it would be leading into probably a
2 research plan or development of a plan that would
3 be presented to the Pacific Salmon Commission. So
4 there is more ongoing that's following from that.
5 Q Thank you. If I may move to another topic, at Tab
6 11 of the binder, there's an e-mail from Terry
7 Davis, on the subject of sample speeches and
8 templates. Were you aware, in October of 2009, of
9 the request for regional subject matter experts to
10 develop speeches for a possible House of Commons
11 emergency debate, as described in that e-mail?
12 A Yes, I was aware.
13 MR. WALLACE: I wonder if this e-mail may be marked as
14 the next exhibit, please?
15 THE REGISTRAR: Exhibit 622.
16 MR. TAYLOR: So just the e-mail?
17 MR. WALLACE: Thank you, Mr. Taylor. Attached to the -
18 if I can make this cleaner - attached to the
19 e-mail and referred to in it are the draft of
20 Speaking Notes for a Member of Parliament.
21 Q Are you familiar with this e-mail and the
22 attachment?
23 A I am. I am familiar with the e-mail.
24 Q And the attached --
25 A The attachment, yes, I have looked at this.
26 MR. WALLACE: Thank you. If we may then have the
27 e-mail marked as the next exhibit and the
28 attachment with the letter A?
29 THE REGISTRAR: That will be marked as 622 and 622A.
30
31 EXHIBIT 622: E-mail string, dated October 2,
32 2009, from Terry Davis to multiple parties,
33 Subject: Sample speeches and templates
34
35 EXHIBIT 622A: Draft Speaking Notes for a
36 Member of Parliament for a Debate on Low
37 returns of sockeye salmon to the Fraser
38 River, House of Commons, September 17, 2009
39
40 MR. WALLACE:
41 Q In the e-mail, at page 2, it says:
42
43 The bottom line is that Parliamentary Affairs
44 has asked for 80 minutes of speeches to be
45 developed on a range of issues related to
46 Pacific salmon, for use by members of the
47 government, in the event that an emergency

1 debate on Pacific salmon is called in the
2 House of Commons.
3

4 Do you think it's the role of DFO scientists to
5 develop speeches for parliamentarians?

6 A Well, that's certainly a bit of a leading
7 question. I think what we -- the role of Science
8 is really to provide factual information, and
9 that's what we do.

10 Q If you go to the next tab, Dr. Richards, you'll
11 see an e-mail chain, the top of it is an e-mail
12 from Diane Lake, and the subject matter is Re:
13 Sample speeches and templates. Have you had an
14 opportunity to review that e-mail?

15 A Yes, I have.

16 Q And in it there's a reflection of concern about
17 this sort of job for DFO scientists. You were
18 aware that that concern was being expressed within
19 DFO region?

20 A I believe this e-mail chain is from Paul Ryall,
21 who is not part of the Science organization, so
22 this was being -- the concern was being expressed
23 perhaps more broadly than just in the Science
24 organization.

25 I am certainly aware, and I think we would
26 have concerns if we were asked to prepare material
27 that was really political in origin rather than
28 factual and objective because, as I said, our role
29 is to provide factual, objective information.

30 Q Yes. So you were aware that these concerns were
31 there and you have, in your mind, quite firmly,
32 where the line comes; is that right?

33 A Yes.

34 MR. WALLACE: Thank you. May I have the e-mail
35 exchange that I just referred to, headed with an
36 e-mail from Diane Lake, marked as the next
37 exhibit, please?

38 THE REGISTRAR: Exhibit 623.
39

40 EXHIBIT 623: E-mail string dated September
41 29, 2009, from Diane Lake to multiple
42 parties, Subject: Sample speeches and
43 templates
44

45 MR. WALLACE:

46 Q And the next tab in the book, Dr. Richards, starts
47 with an e-mail from Allison Webb, to you, subject:

26
Laura Richards
In chief by Mr. Wallace

1 Sea lice speech.

2 A Mm-hmm.

3 Q You're familiar with this e-mail and the attached
4 speaking notes?

5 A Yes.

6 MR. WALLACE: May these be marked, please, as the next
7 exhibit?

8 THE REGISTRAR: 624.
9

10 EXHIBIT 624: E-mail string dated October 5,
11 2009, from Allison Webb to Laura Richards,
12 Subject: Sea Lice Speech, with attached draft
13 Speaking Notes for a Member of Parliament for
14 a Debate on Low returns of sockeye salmon to
15 the Fraser River, House of Commons, October
16 5, 2009
17

18 MR. WALLACE:

19 Q What was your involvement in the writing of this
20 speech?

21 A I was not involved in the writing of the speech.
22 Allison did want to clarify with me the fact that
23 -- the factual information, and that's the
24 discussion I had on that.

25 Q Okay. And the next tab starts with an e-mail from
26 Allison Webb to several people and you're copied
27 on it, Dr. Richards, entitled, Revised Sea Lice
28 Speech. Is this the version in which you had
29 input?

30 A I believe that these -- well, these were pulled
31 from my e-mail, so this would have been a version,
32 yes, which was copied to me and we would have
33 discussed. But as I said, my role here was really
34 just to ensure that we had -- that the information
35 was as factual as possible and as objective as
36 possible based on the best science we had at that
37 time.

38 THE COMMISSIONER: Do you wish it marked, Mr. Wallace?

39 MR. WALLACE: Yes, please. Thank you.

40 THE REGISTRAR: Exhibit 625.
41

42 EXHIBIT 625: E-mail string dated October 5,
43 2009, from Allison Webb to multiple others,
44 Subject: Revised Sea Lice Speech, with
45 attached draft Speaking Notes for a Member of
46 Parliament for a Debate on Low returns of
47 sockeye salmon to the Fraser River, House of

March 17, 2011

27
Laura Richards
In chief by Mr. Wallace

1 Commons, October 5, 2009

2
3 MR. WALLACE:

4 Q The next tab in the book, at Tab 15, is covered
5 with an e-mail from Tom Robbins to you, entitled,
6 Fraser River sockeye overview document. Do you
7 recognize this e-mail and the attached speaking
8 notes?

9 A Yes. And again, these were pulled directly from
10 my e-mail.

11 Q And what was your involvement in these speaking
12 notes?

13 A I probably would have just discussed some of the
14 factual evidence on this with Tom Robbins, who
15 works in -- for communications.

16 Q That's in the Region?

17 A Yes. Yes.

18 MR. WALLACE: May this document, please, and the e-mail
19 covering it, be marked as the next exhibit,
20 please?

21 THE REGISTRAR: Exhibit 626.

22
23 EXHIBIT 626: E-mail dated October 6, 2009,
24 from Tom Robbins to Laura Richards, Subject:
25 SP Fraser River sockeye overview with
26 attached draft Speaking Notes for a Member of
27 Parliament for a Debate on Low returns of
28 sockeye salmon to the Fraser River, House of
29 Commons, September 17, 2009

30
31 MR. WALLACE:

32 Q Dr. Richards, was this period of time in the fall
33 of 2009, the only time you've been involved in
34 speech writing for members of parliament?

35 A This is the only time I have seen a request of
36 this nature in my career.

37 Q And going, then, to the next tab, we have an
38 e-mail from Dr. Kristi Miller-Saunders to a number
39 of people, including yourself, on the subject of a
40 discussion on B.C. sockeye salmon and science
41 issues. And you've reviewed this e-mail?

42 A Yes.

43 Q And just, if I may summarize, because we're
44 running out of time, this relates to suggestions
45 of concerns about DFO staff participating in a
46 Pacific Salmon Foundation series of meetings. Can
47 you comment on that concern, please?

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In chief by Mr. Wallace

1 A Okay, I think there is a few issues which are
2 actually raised here, but if I can address that?
3 This was, at the time, I think you have to realize
4 what was happening at that time, was we had just
5 found out about the establishment of the
6 Commission. We didn't know and have a lot of
7 details about how that was going to operate, how
8 that was going to work, what our rules or how --
9 what was going to be expected of DFO and how we
10 were supposed to operate in that kind of
11 environment.

12 And so I think there were some concerns about
13 staff going and presenting it and talking to
14 various groups, and then because we're not quite
15 sure how that would interact with what was
16 happening with the establishment of the Commission
17 and how that would lead into or perhaps compromise
18 or just how that evidence would be used, so I
19 think there was a decision made at that time that
20 we would participate in our normal DFO processes,
21 but we would not participate in external
22 processes.

23 And as I say, it was really relates to the
24 fact that the Commission was just established and
25 we're just trying to figure out, effectively, what
26 the ground rules were.

27 Q When you say "the Commission" you mean this
28 Commission?

29 A Yes, this Commission.

30 MR. WALLACE: I wonder if that e-mail string, headed
31 with an e-mail from Dr. Miller-Saunders could be
32 marked as the next exhibit, please?

33 THE REGISTRAR: 627.

34
35 EXHIBIT 627: E-mail string dated November 3,
36 2009, from Kristi Miller-Saunders to multiple
37 others, Subject: A discussion on BC sockeye
38 salmon and science issues
39

40 THE COMMISSIONER: Mr. Wallace, I've come to appreciate
41 the role you have with your learned friends in
42 keeping them on their time limits, and so I --

43 MR. WALLACE: It's not (indiscernible - overlapping
44 speakers) --

45 THE COMMISSIONER: -- am concerned that there are still
46 two tabs, I think, that you haven't marked.

47 MR. WALLACE: There's one more, and it relates to the

Laura Richards
In chief by Mr. Wallace

1 same line, so I think we can deal with it
2 almost --

3 THE COMMISSIONER: Am I mistaken that Tab 10 was not
4 marked?

5 MR. WALLACE: That's correct.

6 THE COMMISSIONER: All right. So which tab number are
7 you on, now?

8 MR. WALLACE: I'm now at Tab 17.

9 THE COMMISSIONER: All right.

10 MR. WALLACE:

11 Q Dr. Richards, it's a similar line, an e-mail from
12 Dr. Miller-Saunders, and in it there's a quote
13 that:

14
15 Laura does not want me to attend any of the
16 sockeye salmon workshops that are not run by
17 DFO for fear that we will not be able to
18 control the way the disease issue could be
19 construed in the press.

20

21 Can you comment on that concern?

22 A Well, that's very much a misrepresentation. First
23 of all, it was not my decision, it was that, in
24 terms of the participation, that I just said, that
25 was a departmental decision, it was not my
26 decision.

27 I think we were not so concerned -- I really
28 -- first of all, let me say I think the work that
29 Kristi Miller is doing is incredible, exciting
30 research that I think I -- and the department has
31 really wanted to fully support, and I do fully
32 support that work. So if there's some impression
33 here that I don't support that, that's completely
34 false.

35 What we were concerned about, however, is
36 that there are processes that we need to operate
37 within a government department, and one of those
38 processes is you need to make sure that you don't
39 surprise your boss, and in this context we wanted
40 to get a briefing note into the system so that we
41 could give a heads up, up the line, about some of
42 her work, and we were probably delaying preparing
43 that briefing note because she was continuing to
44 get more and more information and we wanted to
45 make sure that when we did send up the briefing
46 note it was as accurate as possible and had as
47 much information in it as possible, and so we were

1 perhaps delaying getting that note because we were
2 hoping we'd get some more information that we
3 could include in the note, because I'm sure you
4 appreciate that particular topic is one where
5 there's been quite an evolution and we're really
6 on the forefront.

7 So in this context here, I think the issue
8 was only that we wanted to get a note up so that
9 we could -- so there would be a process issue
10 within the system they would be informed before we
11 were speaking publicly about it. You know, it's
12 really a courtesy process issue that's the
13 standard within government operations. That was
14 the issue.

15 MR. WALLACE: Thank you, Dr. Richards. May this
16 document, then, the Dr. Miller-Saunders' e-mail of
17 November 4th, be marked as the next exhibit,
18 please?

19 THE REGISTRAR: 628.

20
21 EXHIBIT 628: E-mail dated November 4, 2009,
22 from Kristi Miller-Saunders to Mark Saunders,
23 Subject: Version 2
24

25 MR. WALLACE: Would this be a convenient time for the
26 break?

27 THE COMMISSIONER: Yes, thank you.

28 THE REGISTRAR: The hearing will now recess for 15
29 minutes.
30

31 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)
32 (PROCEEDINGS RECONVENED)
33

34 THE REGISTRAR: Hearing is now resumed.

35 MR. WALLACE: Thank you. Mr. Commissioner, Mr. Taylor
36 is next and I've allotted him 45 minutes.

37 MR. TAYLOR: Mitchell Taylor for the participant
38 Government of Canada and with me is Hugh MacAulay.
39 Mr. Commissioner, as well as Mr. Lunn, at Tab 6,
40 7, 8 of Canada's book there are three documents to
41 do with preparation of speeches for
42 parliamentarians. Mr. Wallace is agreeable, and I
43 have asked others and no one has objected to
44 simply putting those documents in without the need
45 for anyone to speak to them, any witness to speak
46 to them, so I propose then that we do just that.

47 The first tab is number 6 - getting used to

31
Laura Richards
Cross-exam by Mr. Taylor (CAN)

1 Mr. Lunn putting things right to left -
2 Preparation for Speeches is the name of the
3 document at Tab 6 and I ask that that be the next
4 exhibit.

5 THE REGISTRAR: Exhibit 629.

6
7 EXHIBIT 629: Preparation for Speeches

8
9 MR. TAYLOR: The document at Tab 7 is labelled
10 Speechwriting at DFO and I ask that that be the
11 next exhibit.

12 THE REGISTRAR: 630.

13
14 EXHIBIT 630: Speechwriting at DFO

15
16 MR. TAYLOR: The document at Tab 8 is entitled
17 Compendium of Procedure House of Commons Canada
18 which I ask to be the next exhibit.

19 THE REGISTRAR: 631.

20
21 EXHIBIT 631: Compendium of Procedure House
22 of Commons Canada

23
24 MR. TAYLOR: Those documents, Mr. Commissioner, which
25 we will, of course, deal with later in more detail
26 when it comes to making submissions before you,
27 govern the process for writing speeches for
28 government Members of Parliament and who does it
29 and so forth.

30
31 CROSS-EXAMINATION BY MR. TAYLOR:

32
33 Q Dr. Richards, you have described in answer to Mr.
34 Wallace's questions the process by which three
35 briefing notes on the 2009 return, Fraser sockeye
36 return, were developed and you've described a
37 September 30th, '09 workshop that DFO had. I'm
38 not sure that you laid out what the purpose of
39 that 2009, that is September 30th, 2009 workshop
40 was; can you elaborate on that?

41 A Yes. Certainly, Mr. Commissioner. So I think the
42 purpose of that workshop was really to engage
43 different staff who had interest within the
44 science organization into trying to understand
45 what happened to -- in 2009 to the return.
46 Obviously when this event happened, the scientific
47 staff were immensely interested in this. I mean,

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1 there was -- I should say interested not only just
2 from the event itself, but also from the let's say
3 scientific interest in trying to understand what
4 actually happened.

5 So there was a lot of coffee table hallway
6 discussion about this and that meeting was really
7 an attempt to bring those groups together, to have
8 a more thorough, informed discussion about what
9 happened and thinking about how we then might move
10 forward, because we expected that we would be
11 called on to help explain that and we needed to
12 make sure that we could prepare an informed answer
13 to that question.

14 Q Now, this would be early days in terms of when you
15 had first heard about or it became evident that
16 there was a poor Fraser sockeye return in 2009.
17 Can you say when that piece of information would
18 have come to light to science and to everyone
19 else?

20 A Well, I think, Mr. Commissioner, that what we
21 would be doing is we would be following with great
22 interest what happened through the Pacific Salmon
23 Commission during the summer or the Fraser Panel.
24 The Pacific Salmon Commission meets just about
25 weekly with -- and they put updated press reports
26 out with the return and the expected return. So
27 through particularly, I guess it would be, in
28 particular, through -- probably starting in July
29 and into August, we would have been watching the
30 forecasts or the in-season forecast of the return
31 change and would have been really flagging it at
32 that time.

33 Q Even before the September 30, '09 workshop,
34 actually just before leaving that, was that a
35 workshop attended by DFO scientists only or other
36 people, as well?

37 A No, that was really intended as an internal
38 workshop. It was DFO staff only.

39 Q Right.

40 A And really, this was an opportunity for us, as
41 part of our normal process, to really talk with
42 staff about what was going on here. Clearly there
43 were a lot of other groups that were also
44 interested, but this was -- we wanted to have an
45 internal discussion, you know, talk with staff
46 first, as we would normally do.

47 Q Even before the September 30, '09 workshop, was

1 there an occasion when the minister attended in
2 Vancouver to meet with people interested in the
3 sockeye situation?

4 A Yes. Mr. Commissioner, the minister did come into
5 Vancouver in September and did hold a round table
6 with stakeholders at that time. I was invited to
7 participate in that meeting and I was asked to
8 make a short presentation to that meeting on the
9 return. I think at that time there were a couple
10 of things that were in play. One was trying to
11 explain why our -- there was a lot of question
12 about why our forecast was bad, what happened to
13 our forecast, so that was a lot of the initial
14 focus and thinking about trying to explain why we
15 did not -- cannot do a very good job on
16 forecasting.

17 And secondly, a lot of what was happening at
18 that meeting also was trying to inform the
19 minister about the next steps in the process,
20 which eventually led to this commission, but we
21 didn't know -- there were different options that
22 were being discussed and, you know, one of them
23 was a scientific process as opposed to a formal
24 commission. And at that time, the minister was
25 really trying to seek views of stakeholders on
26 what process to follow.

27 Q The minister you're speaking of is Minister Shea,
28 Minister of Fisheries and Oceans, correct?

29 A Yes, that's correct.

30 Q And do you recall when Minister Shea was appointed
31 Minister of Fisheries and Oceans approximately?

32 A I'm sure you have that information --

33 Q No, I don't actually.

34 A I can't recall precisely.

35 Q It was obviously before September of '09 but
36 that's fine. Do you know it to be the case that
37 Minister Shea has been the Minister of Fisheries
38 and Oceans continuously from at least September
39 '09 and before that, whenever she was appointed,
40 right through to the present and continuing?

41 A Yes, that's correct.

42 Q Now, you have a binder there of some documents,
43 Dr. Richards. If you turn to Tabs 1, 2 and 3, you
44 will see some documents that relate to a round
45 table that was happening on September 11, 2009.
46 Is that the meeting that you were describing that
47 the minister was present at in Vancouver?

1 A Yes, that is correct.

2 Q Is the document at Tab 1 the presentation that you
3 were referring to a moment ago?

4 A Yes, that's correct. I was asked to make that
5 summary presentation at the meeting.

6 MR. TAYLOR: All right. May that be the next exhibit,
7 please, the document at Tab 1 which is Update on
8 2009 Fraser Sockeye Context, Forecasts and
9 Returns, September 11, 2009.

10 THE REGISTRAR: 632.

11
12 EXHIBIT 632: Update on 2009 Fraser Sockeye -
13 Context, Forecasts & Returns - Roundtable
14 Presentation September 11, 2009
15

16 MR. TAYLOR:

17 Q This document says September 11, 2009. Do you
18 recall whether that was the date that the minister
19 met with the people you've described?

20 A Yes, that was the date.

21 Q If you turn to Tab 2, you'll see a Media Lines
22 document underneath some email headers. What's
23 that? Do you recognize that and what's that?

24 A I guess I would not have -- I recognise this as
25 the standard kind of Media Line package. I
26 probably would not have had a specific input into
27 this document. But it is our --

28 Q This is a --

29 A -- standard protocol.

30 Q This appears to be a document relating to the
31 meeting that the minister had with people in
32 Vancouver, is it?

33 A Yes. Yes.

34 Q Do you know whether this would be prepared before
35 or after the meeting? Just from the first
36 sentence, we can see it's probably after.

37 A I would expect that it would be prepared - it
38 could have been started and they may have started
39 prepping it prior to the meeting when they've --
40 based on anticipated, but it would have to be
41 verified or completed after the meeting, because
42 it would need to explain what actually happened at
43 that meeting.

44 MR. TAYLOR: All right. May this be the next exhibit,
45 please?

46 THE REGISTRAR: 633.

47

1 EXHIBIT 633: Email from T. Davis to K.
2 Colpitts re Media Lines on Minister's
3 Roundtable on Fraser River sockeye, September
4 11, 2009
5

6 MR. TAYLOR:

7 Q You'll see at the top of Tab 2, now Exhibit 633,
8 that this is -- the Media Lines are underneath an
9 email from Terry Davis, and we've seen his name in
10 a document that Mr. Wallace took you to earlier,
11 same document that had Mr. Robbins, Tom Robbins,
12 in it who you identified. Can you identify who's
13 Terry Davis?

14 A Yes. Terry Davis is the Regional Director of
15 Communications in Pacific Region Fisheries and
16 Oceans.

17 Q If you turn to Tab 3, you'll see a summary of
18 Minister Shea's Pacific Region visit September 11,
19 2009, it's called; have you seen that document
20 before and can you identify it as a document
21 summarizing the meeting that you described
22 Minister Shea had in Vancouver?

23 A I can't recall whether I was actually party to
24 this document but I -- it does seem to accurately
25 reflect what happened at that event.

26 MR. TAYLOR: May that be the next exhibit, please?

27 THE REGISTRAR: 634.
28

29 EXHIBIT 634: Summary of Minister Shea's
30 Pacific Region Visit - September 11, 2009
31

32 MR. TAYLOR:

33 Q If you turn to page 3 of that document, you'll see
34 a list of people there. If you take a second or
35 so to look over it, can you identify whether that
36 is a record of the people from various
37 organizations that attended with Minister Shea?

38 A That does match my recollection of that meeting.
39 It does not include on this list the DFO members
40 who were present at that meeting or the ministry
41 staff who were present.

42 Q All right. If you turn back then to the first
43 page of that same document, you'll see about a
44 third down a list of DFO people; is that --

45 A Yes.

46 Q -- the DFO people who attended? Well, is that
47 others who attended? All of them may not be DFO.

1 A Yes. That -- those -- yes, I believe that's
2 correct.

3 Q Okay. And that includes you, of course.

4 A Yes.

5 Q You see your name there. It also says in the list
6 though Minister G. Lunn; is that Gary Lunn?

7 A Yes.

8 Q So that's a minister of another department, is it?

9 A Yes.

10 Q Or is he? And he was there as well, was he?

11 A He was certainly -- I know that he was there in
12 the beginning. I can't recall whether he was
13 actually there for the entire meeting.

14 Q All right. Thank you.

15 Now, in addition to what you've said in
16 answering Mr. Wallace's questions and what you've
17 said just now in answering my questions, what
18 other work did Science undertake to try and
19 understand and see what the scientific foundation
20 or explanation or reasons for the 2009 stock or
21 poor returns was? What else was done, what else
22 is going on?

23 A Well, in fact, there's quite a bit that is
24 actually happening and I hope that there will be
25 an opportunity that that will come out as we
26 proceed with the hearings over the summer. But in
27 particular, there certainly was more work done
28 focused on what we thought were the main
29 hypotheses, so we did ask staff to do more work,
30 to do follow-up. In particular, I'm sure you'll
31 hear about the work of Dr. Richard Beamish in
32 terms of the Strait of Georgia, Dr. Marc Trudel
33 was really focused on what was happening in Queen
34 Charlotte Sound. We were working on the broader
35 fish health aspects, as well as the disease
36 aspects that you'll hear about with Dr. Stewart
37 Johnson, Simon Jones, Kristi Miller.

38 So those pieces, that's probably some of the
39 major pieces, were ongoing. Each of those
40 individuals would have been working with
41 collaborators. We have had some subsequent
42 meetings to try to review progress and keep
43 updated. We set up an internal Wiki-type site
44 where we could keep people informed as to the
45 progress on different pieces of the scientific
46 research.

47 There were subsequent meetings. There was

1 the -- after that September meeting that we
2 discussed earlier, certainly the next major event
3 after that would have been the Pacific Salmon
4 Commission workshop that happened. But then
5 following that, we certainly have continued to
6 meet. I did meet with staff in January of this
7 year to get an update on the progress on specific
8 items, in particular at that time a particular
9 focus on the work that was happening within the
10 Strait of Georgia.

11 We have another meeting, internal meeting,
12 with staff planned for next month to again have
13 another update on the briefing -- update on
14 different aspects of what's going on in terms of
15 the research. There will be some more work that
16 will be done in conjunction with the Pacific
17 Salmon Commission as a follow-up to that report
18 and I mentioned that earlier.

19 So really, there is a very large amount of
20 work and some of this is ongoing. The story is
21 evolving as we get more information and try to
22 follow up on certain leads.

23 Q For the most part, and recognizing that people
24 come and go, are the scientists that were doing
25 this work starting and even before September or so
26 of 2009 still with DFO in the Science Branch here
27 in Pacific Region?

28 A Yes. Yes, they are.

29 Q So there's a fair continuity of scientists --

30 A Yes.

31 Q -- working on this, is there?

32 A Yes. And I have to say that even when scientists
33 retire, they still tend to continue doing their
34 work, because really, say from a scientific
35 perspective and from the perspective of these
36 individuals' careers, scientifically speaking this
37 is a tremendously exciting and challenging
38 question and so they are very much engaged in
39 trying to move forward and get some answers.

40 Q Just on that, I understand that what you're
41 referring to is a program, formal or informal,
42 that's called the Emeritus Program within DFO
43 Science, is it?

44 A Yes.

45 Q And can you just briefly in a sentence or two
46 explain that?

47 A Well, certainly. I think once scientists retire,

- 1 we realized that they just don't stop working or
2 -- some do, but that's quite rare. So we do have
3 a program called the Emeritus Program where they
4 can still have access to some of the DFO
5 facilities, libraries, email, to continue and
6 potentially write up some of the work that they
7 were doing during their career. They're also very
8 active in mentoring some of our other staff, so
9 this is really very much a win/win situation for
10 us and for them as they ease into retirement.
- 11 Q Coming back to the scientists that have been
12 working on the situation or trying to understand
13 and analyse the return that happened in 2009, are
14 these mainly senior scientists or junior
15 scientists or what?
- 16 A Well, in fairness, I think we have got scientists
17 and others throughout the organization that are
18 very much engaged in this but -- and they are at
19 different stages of their career working on some
20 of these different pieces. So we do have a bit of
21 a spectrum, depending on areas of expertise so,
22 you know, work falls within areas of expertise.
23 But in general the leaders are the more
24 experienced.
- 25 Q You've spoken to some of what I'm about to answer,
26 but am I correct that answers to the science
27 questions that relate to the stock returns are not
28 easy to come by?
- 29 A That's -- yes. I think if we had some easy
30 answers, we would not be in this inquiry, but --
31 and in general, as normal, when you start to delve
32 into certain kinds of questions or start to get
33 some information, it just raises more questions,
34 so this work really is ongoing.
- 35 Q And relative to that, is it the case that when
36 answers start to emerge, they are often not firm,
37 but rather soft in terms of how sure --
- 38 A Yes.
- 39 Q -- you are of the answer?
- 40 A That's very much. I think the situation is, you
41 know, the normal scientific process goes on by
42 really effectively some kind of speculation about
43 what could be happening and then you try to gather
44 evidence to try to sort out your degree of
45 certainty or belief in that information. And some
46 things go by the wayside and other things are
47 pursued. But often there will be some key pieces

- 1 of information which change your thinking on
2 something, but very much the situation is evolving
3 as we get more information coming in.
- 4 Q Am I also correct that analyzing a problem that
5 emerges in terms of the science analysis and
6 finding answers often takes considerable time?
- 7 A That's very much correct. I mean, these are
8 complicated issues and, as I said, unfortunately
9 it's not simple and it's likely to be compounding
10 on several factors that are involved and so it
11 really does take time to assemble, try to collect
12 more information. Often in these situations you
13 wish you had some data that just simply don't
14 exist, so you try to do the best you can to look
15 at surrogates for some of that information and to
16 some extent other information becomes apparent
17 later that wasn't available in the beginning.
- 18 Q Now, you've spoken of the Pacific Salmon
19 Commission forum in June of 2010 already. Can you
20 elaborate on that? Firstly, was that hosted by
21 the Pacific Salmon Commission?
- 22 A It was hosted by the Pacific Salmon Commission and
23 the Pacific Salmon Commission, as you know, is an
24 intergovernmental organization between Canada and
25 the United States, so it was really co-funded by
26 both parties.
- 27 Q And it was focused on Fraser sockeye, was it?
- 28 A It was focused on trying to understand what
29 happened in 2009 and to try to pull together the
30 best advice we had based on the work that not only
31 DFO was doing, but also based on information that
32 was available from others who were -- other
33 scientists who were collecting data and
34 information around that question.
- 35 Q Was it scientists who attended this forum?
- 36 A There were -- there were scientists who were
37 presenters at that forum. There was also some
38 observers or other participants who were not
39 scientists. I believe some of counsel was present
40 at that meeting and there were also some members
41 of the fishing industry and First Nation
42 representatives who also attended. It was open, I
43 believe, to some members of the Fraser Panel which
44 includes a fairly broad group, as you would have
45 heard.
- 46 Q Was it over two days or so?
- 47 A Yes, it was.

1 Q Did you attend?

2 A I did attend the meeting.

3 Q And without going through a list of names, can you
4 say what sort of organizations or entities sent
5 people to this forum?

6 A Well, what we tried to do, because it was, in
7 part, balanced and between Canada and the United
8 States, we tried to make sure that we had a broad
9 representation of U.S. interests, as well as
10 Canadian interests, so in addition to the -- to
11 members of DFO, we also had members from
12 university. Alexandra Morton was invited and was
13 there. So it was a fairly broad spectrum of
14 people who we thought might have information to
15 contribute to this topic.

16 Q Thank you. So this would be -- include
17 government, NGOs, other governmental agencies
18 besides Fisheries, would it?

19 A Yes, that's correct.

20 Q Did it include First Nation representatives, do
21 you know?

22 A I believe that there were some -- I believe, as I
23 recall, that there were certainly First Nation
24 participants who were a part of the Fraser Panel,
25 so they did observe, but there were no
26 presentations that were from First Nations.

27 Q Now, I understand and you've, I think, referred to
28 this, that a report resulted from that forum?

29 A That's correct.

30 Q And that's a report that came out end of August of
31 2009?

32 A Yes.

33 MR. WALLACE: That's Exhibit 73.

34 MR. TAYLOR: Thank you.

35 Q Is there a core group within DFO of scientists who
36 are working on analyzing what happened in 2009 and
37 trying to come up with some answers from a science
38 perspective?

39 A I would say yes, there is a core group who are
40 involved in this and that would be specifically
41 the individuals who were already engaged in
42 research on salmon in and around the Strait of
43 Georgia and particularly on sockeye salmon. We've
44 also pulled in some others who were not so engaged
45 directly, some of the experts, for example, in
46 marine mammals, because certainly that piece of
47 the question has come up.

- 1 Q And are those the scientists that core group that
2 will be at a meeting that you were indicating
3 you're going to have internally in the next short
4 while?
- 5 A That is certainly the intent. You know, it would
6 be an internal meeting, again, for -- and part for
7 me to understand how things are evolved because I
8 need to find out from my staff what their thinking
9 is and they needed a chance to talk to each other
10 about some of these issues.
- 11 Q And you, in turn -- or in turn, rather, will they
12 be the ones that will participate in a further
13 salmon commission forum that you indicated --
- 14 A Yes.
- 15 Q -- is being planned, at least, for sometime later
16 this year?
- 17 A I'm not sure exactly where we are in terms of the
18 preparation for this future meeting and who will
19 be invited to that. Certainly some of them will.
20 Whether they all will or not, normally at these
21 kinds of international events, we have a
22 restricted ability for invitations and so we would
23 not have everyone. We would have perhaps a
24 representative group attend.
- 25 Q How is the very high return that we saw for Fraser
26 sockeye in 2010 being worked into the work on the
27 2009 low returns, if it is being worked in?
- 28 A Well, clearly there is as much scientific interest
29 in what happened in 2009, there is similarly
30 scientific interest in what happened in 2010. And
31 what we'd like to have is make sure that if we
32 have an explanation for what happened in 2009,
33 that it would be consistent with what happened in
34 2010.
- 35 Q So if the June of 2010 Pacific Salmon Commission
36 forum was on the 2009 low returns, do you envisage
37 that the 2011 forum, whenever it happens this
38 year, will be looking at both the 2009 low return
39 and the 2010 high return?
- 40 A Yeah. As I mentioned, I'm not explicitly involved
41 in the organization, but I -- of that meeting, but
42 I assume that that would be a topic of interest.
- 43 Q Then moving even further beyond that is the work
44 that's been done now currently underway that
45 you've described to deal with the 2009 and the
46 2010, as well, is it tied into or relate back to
47 the overall decline in productivity that has been

- 1 observed in varying ways or varying degrees from
2 sometime in the 1990s forward?
- 3 A Well, as you will have seen from the Pacific
4 Salmon Commission report from the June workshop,
5 that workshop was interested in the longer-term
6 decline, as well as what happened in 2009. And I
7 think the concern was we again, we're looking for
8 consistency. We want to have a series of
9 hypotheses and explanations that sort of fit the
10 overall picture, as well as fit the specific
11 events to the extent that's possible. So I would
12 anticipate that that would continue to be a focus.
13 Obviously there has been some concern about the
14 overall long-term decline and we need to
15 understand that piece, as well.
- 16 Q All right. Thank you. Now, Mr. Wallace took you
17 to Tab 2 of the commission's binder which has got
18 -- that's the one that's got a lot of documents in
19 it, and you identified that as the material for
20 the meeting that you had in September, September
21 30th of 2009. I'm not going to ask you to look at
22 all of the material at Tab 2, but you're generally
23 familiar with it, are you?
- 24 A Yes.
- 25 Q And can you say whether more is known now on the
26 science topics that are covered in this material
27 than was known then?
- 28 A Absolutely. There's more known. I mean, this was
29 work, you have to appreciate, that was pulled
30 together as very preliminary and probably on short
31 notice. You know, we hadn't -- we didn't know a
32 lot at that time. We hadn't had much and it was
33 just said, you know, science takes place over, you
34 know, an extended period to get -- to develop on
35 some of this and so I think some of the work that
36 would have been presented here would be
37 contradictory to and different from stories that
38 you will hear later as we get more information and
39 the thinking on this scientifically evolves.
- 40 Q And then it tends to follow, but let me ask you
41 whether some of the content of the material in Tab
42 2, which is now an exhibit, will be outdated?
- 43 A Yes, absolutely. It will be outdated.
- 44 Q And that's the beauty of science, in part, is it,
45 that it's --
- 46 A Exactly. That's the way science operates, is we
47 tend to put things out and then those are

1 challenged and there's more information that comes
2 in and things change. You know, particularly when
3 you're looking at a topic like this because it's
4 something we'd never seen before, so really, we're
5 at the forefront of our thinking and that thinking
6 -- the longer-term thinking tends to be a little
7 bit different from the short-term thinking.

8 Q And if you like, one of the hearts, and there may
9 be more than one heart, but one of the hearts of
10 science is it's a constant learning exercise.

11 A Absolutely. Absolutely.

12 Q Now, another document that Mr. Wallace took you to
13 is what's now called Exhibit 616B and that's the
14 disease briefing note and the easiest place to
15 find it, I think, is in Tab 5 of Mr. Wallace's
16 material, and the disease briefing note is the
17 last of the documents in that tab.

18 On page 3 of that note, which is almost at
19 the end of the tab, there is a bullet under
20 "Analysis" and I think we've got what we need,
21 thank you, Mr. Lunn. The fourth bullet which
22 begins:

23
24 Other causes (than a virus) have been
25 considered.

26
27 And then it says:

28
29 Several different parasites are known to
30 infect adult sockeye salmon as they migrate
31 up the Fraser River.

32
33 A Mm-hmm.

34 Q And then it goes on. Are you aware of a parasite
35 that's in brackish water at the mouth of the
36 Fraser River?

37 A Yes, I am. Certainly we had been concerned about
38 this and I believe when Dr. Hinch was here, he may
39 have referenced some of this work. We had been
40 very interested in what was going on with the Late
41 Run group of sockeye and the high mortality that
42 they were experiencing with their early entry into
43 the river and that mortality seems to have been
44 exacerbated by presence of a parasite and so there
45 was quite a bit of -- an interest over time and
46 within the last decade on some of this work
47 because it seemed to be at least related to

- 1 mortality or at least related to the -- whether it
2 was actually the cause of mortality or not, that
3 wasn't so clear, but it was at least -- the fish
4 that were found on the spawning ground did seem to
5 have this particular disease factor.
- 6 Q Can you say what is brackish water?
- 7 A I think brackish water, it would be water -- I'm
8 not sure I can give you a precisely correct
9 oceanographic definition, but it would be a water
10 which has a --
- 11 Q A layman's definition will suffice.
- 12 A A layman's definition would be one where there is
13 -- in between marine salinity and fresh water of
14 sort of zero salinity, so it would have some low
15 level of salinity.
- 16 Q All right. And obviously that's typically found
17 at the mouths of rivers.
- 18 A Right. Right.
- 19 Q Now, Mr. Wallace asked you some questions that,
20 amongst other things, led you to say that the role
21 of science is to provide factual information and
22 that's what we do, as I heard you. In addition,
23 is it also the case that science as a branch
24 provides advice to the Department of Fisheries and
25 Oceans, scientific advice, that is?
- 26 A Yes, absolutely. We provide scientific advice,
27 but that scientific advice needs to be grounded in
28 the -- in research and into factual evidence.
- 29 Q And that advice, in turn, and the facts that
30 you've learned comes from research of various
31 sorts?
- 32 A Yes. Yes. Maybe if I could just clarify that
33 too, you know, the scientific advice is only one
34 piece of the advice that goes into the department,
35 so it may or may not impact on any final decision
36 that's taken in any particular situation. But,
37 you know, our role is to provide the scientific
38 piece of the story which is then combined with
39 other factors that would then influence a final
40 decision.
- 41 Q All right. I'd like to take you back, if I might,
42 for a moment to the document that's at Tab 3 which
43 has now become an exhibit, Tab 3 of the Canada
44 list of documents. That's the summary of the
45 September 11th, 2009 meeting the minister had with
46 people in Vancouver. And you'll see on the first
47 page, I'm going to call it the third bullet, but I

1 suppose properly it's the first sub-bullet under
2 the second bullet. It begins:

3
4 Request for a science forum...

5
6 A Yes.

7 Q Is that one of the genesis or drivers that
8 ultimately led to the June '09 -- sorry, June 2010
9 Pacific Salmon forum?

10 A No. Perhaps I could clarify what was going on
11 here. As I think I mentioned, the context of this
12 meeting was before any decision was made on this
13 particular commission, and there certainly was
14 some thinking about different options that were
15 being considered at that time should we have this
16 kind of inquiry or should we do some other kind of
17 process. So I think the science forum was an
18 alternative process that was being proposed rather
19 than going forward with a commission. And there
20 were various other kinds of options in between
21 that were also being proposed.

22 MR. TAYLOR: Is my time up?

23 MR. WALLACE: No, by my calculation though you have
24 nine minutes.

25 MR. TAYLOR: Thank you.

26 Q Would I be correct that it's by no means an
27 everyday occurrence that the minister comes out to
28 Vancouver and meets with a group of stakeholders
29 and Fisheries officials?

30 A I mean, ministers do tend to come out on a fairly
31 regular basis, probably a couple times a year, and
32 meet with various stakeholders.

33 Q All right. Still within this document at Tab 3
34 which I should say has an exhibit number now, and
35 I apologize, I don't know it.

36 MR. LUNN: 633.

37 MR. TAYLOR:

38 Q Exhibit 633. On the second page --

39 MR. WALLACE: Apparently it's 634.

40 MR. LUNN: Oh, pardon me.

41 MR. TAYLOR:

42 Q 634 is the exhibit number. You'll see on the
43 second page about halfway down the text there's a
44 bullet that begins:

45
46 Many participants...

1 Et cetera. It's the second-last bullet there.

2 A Yes.

3 Q And it says in the last part of that bullet:

4

5 ...DFO staff were acknowledged for their
6 efforts to conserve and protect salmon...

7

8 Is it your memory that at that meeting the
9 participants there gave high support for
10 conserving and protecting salmon?

11 A I mean, I think most of the stakeholders believe
12 that we do need to conserve and protect salmon. I
13 can't recall the explicit, but I do recall some
14 very passionate discussions around that topic at
15 the meeting.

16 Q All right. Do you recall whether biodiversity or
17 conservation units or stocks and the importance of
18 different stocks was discussed?

19 A I think again the stakeholders who were there
20 probably spoke to their specific area of interest.
21 In particular, as I recall, some of the First
22 Nations participants, you know, spoke to their
23 specific areas, so in that context, yes. But
24 perhaps -- perhaps not with those kinds of words.

25 Q All right. Turning to the preparation of speeches
26 for a possible debate in the House of Commons that
27 Mr. Wallace was asking you about, first let me ask
28 do you know whether a debate ever occurred in the
29 House of Commons on Pacific salmon in 2009?

30 A I believe that it did not occur.

31 Q And you've testified what you and some others
32 within the Pacific Region of Fisheries did and
33 were asked to do. Was this an exercise that was
34 being led and driven from the Department in
35 Ottawa?

36 A Well, it probably was. I mean, we get it down
37 through the region, so I'm not necessarily always
38 aware of the background that's happening at the
39 Ottawa level on this kind of topic.

40 Q All right. And you may not have an answer to this
41 question yet based on what you've just said, but
42 do you have any knowledge as to what unit or part
43 of Fisheries was spearheading this?

44 A I probably should, but I know that's not my area.

45 Q All right. That's fine. And you've given
46 evidence about this and just to underline what may
47 be the obvious, this was a highly unusual request

- 1 that was being made of Science Branch, I take it?
2 A Yes.
3 Q And you've spoken to this, but again to underline
4 things, is this something that you had not been
5 engaged in before?
6 A Well, we have certainly been engaged in certain
7 areas, for example, in doing notes for Question
8 Period if there's some kind of question we would
9 be engaged in writing that kind of material. But
10 it would be simply factual. This is what we know.
11 Q Right. But in terms of speech writing?
12 A But in terms of speech writing, at least my
13 interpretation of a speech was that it would be --
14 include information that was not necessarily
15 factual. It may include the feelings of the
16 individual and certainly we could not prepare that
17 kind of information. We were certainly able to
18 input into the factual material.
19 Q And you as a scientist or in Science Branch had
20 not been asked to participate in that kind of
21 exercise before?
22 A That's correct.
23 Q Or since?
24 A Correct.
25 Q You mentioned Question Period notes, probably
26 almost ask the commissioner to take judicial
27 notice of what Question Period is, but again, to
28 be clear, that's a period in the House of Commons
29 -- or do you know whether that's a period in the
30 House of Commons when people can ask various
31 government ministers whatever question they decide
32 to ask?
33 A I believe that's the way our parliamentary system
34 works.
35 Q And Question Period notes are factual information
36 that's prepared by staff on a particular topic
37 that they know something about that then --
38 A Yes.
39 Q -- is inputted to the system, is it?
40 A Well, I think if there is an expectation that the
41 member may be asked a question on specific topic
42 or the minister might be, that -- and we have
43 background on that, we are asked to pull together
44 the information that we have and our factual
45 information on that note. But it is strictly
46 factual.
47 MR. TAYLOR: All right. Thank you. I believe I've met

1 my time.

2 MR. WALLACE: Thank you, Mr. Taylor. Mr. McDade I have
3 as the next counsel.

4 MR. McDADE: It's Gregory McDade for Dr. Morton and the
5 Aquaculture Coalition.

6

7 CROSS-EXAMINATION BY MR. McDADE:

8

9 Q Good morning, Dr. Richards. Can I ask -- let's
10 turn to the commission and start with the
11 commission documentation. As I understand it, the
12 September 30, 2009 meeting was really the genesis
13 or the basis of the information that was
14 ultimately included in the briefing note on
15 factors?

16 A Yes, that's what we've --

17 Q And the 2009, the September 30th, 2009 meeting was
18 an internal meeting for DFO scientists who you
19 felt were particularly knowledgeable on the
20 subject?

21 A Well, it was for scientists who were particularly
22 knowledgeable, plus some others who were
23 interested. We did try to bring a fairly broad
24 group of people. In fact, there was quite a lot
25 of interest in that particular -- obviously, there
26 was interest in that subject.

27 Q So it was really your best minds on the subject,
28 or at least that was your attempt?

29 A Our attempt was to bring our best minds and
30 tempered to some extent by availability of staff.

31 Q And as -- I think as you stated, you're not a
32 particular expert in these subjects. You relied
33 on these people to give you your advice?

34 A Well, these were the people who were out in the
35 field, who were there on the ground, who were
36 engaged in the research who are working to pull
37 that information together.

38 Q So I want to take you to Exhibit 613G, one of the
39 presentations there by Dr. Miller. You're
40 familiar with this presentation?

41 A I'm familiar with the presentation, and I will say
42 just for clarity that I was not present in the
43 audience when this work was presented.

44 Q Yes. But the -- presumably the rest of your best
45 minds were there when it was presented.

46 A I hope so.

47 Q And it formed the basis of your thinking as you

- 1 and Mr. Saunders prepared the briefing note?
2 A It was part of that, yes.
3 Q All right. And so I'm really just trying to get
4 what you knew and when you knew it in terms of DFO
5 science. If I could turn to page 4, you understood
6 at that point that at least in September of 2009
7 that Dr. Miller was targeting a retrovirus?
8 A Well, that was certainly one hypothesis, I mean,
9 at that time, and there was no virus that was
10 identified.
11 Q All right. But that -- your best scientist on
12 this was identifying a retrovirus?
13 A Well, she was suggesting it was a retrovirus. I'm
14 not sure that -- I mean, that was her view on this
15 at that time.
16 Q Right. And you, as you've said, have to bow to
17 her expertise?
18 A Yes. And in this particular area, you know, we
19 also had other experts on -- in fish health and
20 there was not necessarily always full agreement
21 between all the experts and particularly, what was
22 going on here.
23 Q There was nobody at that meeting who disagreed,
24 was there?
25 A I can't answer that question because I was not in
26 the audience at that time.
27 Q All right. Fine. Can I go to page 9? You see
28 the reference to unprecedented levels of mortality
29 in 2008?
30 A Yes.
31 Q And the reference below that is to 2009 sockeye
32 not showing up, which is the purpose of this
33 commission, and the suggestion that the 20 percent
34 decline in tumours could account for .9 million
35 fish going missing in the Strait of Georgia,
36 right?
37 A That's what that says, although I think we have to
38 be a little careful in doing an interpretation of
39 a -- this kind of presentation because we don't
40 have all the full context and the facts stated
41 here.
42 Q True. But the -- in terms of what DFO science
43 knew, this was the best information you had in
44 September 2009?
45 A Well, this was -- this was the -- her
46 interpretation at that time. I mean, this is very
47 much -- has been a work in progress and I think we

- 1 need to be really clear that the work that she's
2 been doing here has really been on the forefront
3 and when you're on the forefront, you don't always
4 have all -- it isn't fully worked out and this
5 particular area is something -- this area has been
6 one which has been quite evolving in the thinking.
- 7 Q Yes. I'm just going to what -- in the evolution,
8 September 30th, 2009, this was the thinking of
9 your top scientist on this matter?
- 10 A That was her thinking at that time.
- 11 Q Right. And that she noted that in 2005, which was
12 the brood year for the 2009, that 75 percent of
13 the adults were positive for that viral signature,
14 right?
- 15 A That's what this -- yes. You're reading the
16 document, yes.
- 17 Q And --
- 18 A That's what --
- 19 Q Well, I'll go in a few minutes to what you did
20 with this material, but I just wanted to know what
21 material you had to work with. So if I could go
22 to page 11. So the heading of that page is
23 "Strong Linkages of Genomic and Brain Tumour Data
24 with Plasmacytoid Leukemia Caused by the Salmon
25 Leukemia Virus". That was the hypothesis of your
26 best scientist on this matter?
- 27 A That was her hypothesis. I'm not -- as I say,
28 there was some other points of view amongst some
29 of our other experts in fish health on this and I
30 don't -- I'm not fully aware of the debate that
31 took place at that particular event, because I
32 wasn't there.
- 33 Q What other experts in your fish health field would
34 you have consulted about this, if any?
- 35 A Well, we have a group of staff whose expertise is
36 fish health. That group of people are currently
37 led by Stewart Johnson. We also have on staff
38 Kyle Garver, who is an expert in virology, the
39 study of viruses.
- 40 Q Well, did either of those people disagree with Dr.
41 Miller to your knowledge?
- 42 A I'm not quite sure. I know that there were some
43 concerns about going too far and speculation at
44 this time, but I'm not fully -- let's say I'm
45 having trouble remembering the full sequence of
46 details. I think what we want to do is just to
47 try to be, you know, careful. Some of this was

1 really on speculation and what we're really trying
2 to do is ground this in fact, and the scientific
3 process really does evolve by challenge and then
4 trying to get more information to confirm or
5 reject certain points of view.
6 Q But in this period of September 30th and shortly
7 thereafter, when you were drafting the briefing
8 note, is -- I'm just asking for your evidence, as
9 to whether you recall any -- consulting any
10 specific other scientist who would have disagreed
11 with this conclusion.
12 A Certainly in the preparation of that briefing
13 note, we did engage others, including Stewart
14 Johnson to make sure that we were representative.
15 As I said, my task is to try to get people
16 together and to agree as much as possible on what
17 was being presented and this is one area where the
18 thinking was -- or has evolved.
19 Q But you don't specifically recall today speaking
20 to Dr. Johnson and having him tell you he
21 disagreed with this?
22 A Well, I know that there were some more general --
23 he had some other points of view. I can't recall
24 explicitly what those were in the context of this
25 particular slide that you have on -- up here now.
26 Q All right. Well, I'll come to the subsequent
27 documents in a few minutes. But the name of the
28 virus that was being purported at that point was
29 the salmon leukemia virus, right?
30 A That certainly was a hypothesis that she was
31 putting forward.
32 Q This is also called -- you see the third bullet,
33 it's also called marine anaemia?
34 A Yes.
35 Q That's the name for it when it's in fish farms,
36 right?
37 A I am not the expert on diseases, so I'm sure we'll
38 -- you'll have more testimony on that later, I
39 would expect.
40 Q Well, when you were preparing the briefing note,
41 did you know that?
42 A Well, I think what I was doing was relying on
43 those experts to help prepare that note and I was
44 clarifying them that we did have that technically
45 correct.
46 Q All right. Can we go to page 14? Heading on page
47 14 refers to "If SLV" - that's salmon leukemia

- 1 virus - "is a primary factor in the salmon
2 declines in B.C.". So the -- there was at least
3 speculation by Dr. Miller that the salmon leukemia
4 virus was a primary factor in the salmon declines.
5 A That was her speculation at the time as I recall.
6 Q Yes. Now, under the heading "Potential for
7 mitigation", you'll see that she refers to the
8 possibility that if one takes action, you could
9 minimize the vertical transmission. What do you
10 as a scientist understand the words "vertical
11 transmission" to mean in the salmon field?
12 A Well, I really think that that level of discussion
13 would be better placed with our disease experts at
14 the time we have that testimony.
15 Q Do you not know what vertical transmission even
16 means?
17 A I am not -- I have a general sense of that but I'm
18 not going to give you a specific definition. I
19 think that really needs to be done with the
20 experts.
21 Q Well, Dr. Richards, I don't -- I'm not looking for
22 a highly technical definition here. I'm looking
23 for your understanding of what that means.
24 A Well, we are talking -- I -- look, I'm just --
25 sorry, I'm sorry. I just -- my brain has gone
26 fuzzy on that particular point right now, so I
27 would rather not give you an answer that's wrong.
28 Q Well, doesn't it simply mean that you can transmit
29 from the parent stock through the eggs to the next
30 generation?
31 A It -- I think that's what it is, but I would like
32 to -- as I said, this is not my area and I just
33 want to be very careful to not give incorrect
34 evidence.
35 Q Well, when you were preparing the briefing note,
36 would you have consulted someone to get a
37 definition of that other than Dr. Miller?
38 A As I mentioned already that there were multiple
39 individuals who were involved in preparing that
40 note and in particular, I would have also had some
41 discussions with our experts on fish health that I
42 would have relied on to -- and between the two to
43 make sure everything was technically correct.
44 Q Well, wouldn't it be important to at least
45 understand what that concept means?
46 A Well, I'm sure I did at the time. You're asking
47 me today.

1 MR. McDADE: I see. All right. Well, there's two
2 minutes left, Mr. Commissioner.

3 THE COMMISSIONER: I think maybe this would be a good
4 place to...

5 MR. McDADE: Yes.

6 THE COMMISSIONER: Thank you very much.

7 THE REGISTRAR: Hearing is now adjourned until 2:00
8 p.m.

9

10 (PROCEEDINGS ADJOURNED FOR NOON RECESS)

11 (PROCEEDINGS RECONVENED)

12

13 THE REGISTRAR: The hearing is now resumed.

14

15 CROSS-EXAMINATION BY MR. McDADE, continuing:

16

17 Q Dr. Richards, you attended a conference on early
18 migration and premature mortality in June of 2008?

19 A Yes, that's correct. I did attend most of that.
20 I wasn't there for the full meeting again but I
21 was there for most of that meeting.

22 Q So now, this is a document that's at Tab 8 of my
23 list of documents but it's an early draft of the
24 document that became Exhibit 557 that was entered
25 when Dr. Hinch testified. Can I just go to page
26 64 of this document, though? Yes, and if you
27 could just -- we'll blow up the abstract in the
28 bottom third of the page. So at that conference,
29 Dr. Miller presented her hypothesis that the
30 disease agent is intercellular, possibly a virus.
31 Do you remember that?

32 A There was certainly a presentation that she made
33 at that meeting and I can't recall specifically
34 exactly what she said but I have to assume that
35 the abstract is an accurate representation.

36 Q Well, you, in fact, attended there as the co-chair
37 of the Committee on Scientific Cooperation?

38 A That's correct.

39 Q And ultimately prepared a summary of these
40 proceedings?

41 A Yes, that's correct. Well, a very short summary
42 that was sort of based on this.

43 Q But Dr. Hinch sent you a copy of the very document
44 we're looking at?

45 A Yes, that's correct.

46 Q Yes, and so you reviewed it?

47 A Well, I didn't review the -- I can't say that I

1 honestly read every single line in this document
2 but I did skim the document, yes.

3 Q If we could go over to page 66 in the middle of
4 the page, again, four lines under the "Healthy/Un-
5 Healthy Profiles", you'll see the reference to
6 "viral or parasitic origin". So you'd agree with
7 me, would you, that the Department, DFO, Science,
8 was aware of this viral hypothesis at least as
9 early as June of 2008?

10 A We were certainly aware of the fact that this was
11 a hypothesis and I think we were very actively
12 hoping and trying to work with Kristi to get more
13 information so that we could actually get more
14 solid information behind this. I think we all
15 wanted to -- we realized that this is incredibly
16 -- from a scientific standpoint, this work was
17 incredibly exciting and interesting but it was
18 also very novel and right on the edge of very
19 breaking kind of science. And so we also wanted
20 to get more information and to try to encourage
21 her to do some more work so that we could actually
22 get some more substance behind this.

23 MR. McDADE: If I could ask, Mr. Lunn, if you'd go to
24 Tab 13. Mr. Commissioner, I'm not going to
25 propose that this document go in as an exhibit
26 simply because we have Exhibit 557 and it's
27 identical in these particular lines. Unless
28 someone wants it in as an exhibit.

29 Q At Tab 13 then. You've reviewed this document,
30 Dr. Richards?

31 A As I say, this was not a document that was
32 submitted by me. I think I saw it.

33 Q This is a funding request.

34 A Yeah.

35 Q That would run through your office?

36 A Well, this was -- I mean she was certainly working
37 with Mark Saunders at the time and I don't
38 specifically recall but I probably did see this
39 document.

40 MR. McDADE: All right. And this is a November 13th,
41 2008, briefing note. If I could ask that we blow
42 up the second paragraph?

43 Q You'll see the reference there in the middle of
44 the paragraph to:

45
46 The unhealthy profile fish were characterized
47 by early river entry and high in-river

1 mortalities (16x greater probability of dying
2 en route to spawning grounds.
3

4 That's a very significant finding from a
5 departmental perspective, is it not?

6 A Well, this work was done in the context of the
7 other work that was done on the early entry of
8 Late Run sockeye. And certainly, we were a party
9 to and, you know, basically since about 2002, we
10 were supporting research into trying to understand
11 why this was actually happening. Some of the work
12 that's been done here is perhaps most leading as
13 to perhaps more evidence about what was going on
14 there. So obviously, yes, we are very interested
15 in this work but we're also realizing, as I say,
16 that this is basically cutting edge science and as
17 soon as you start looking at this, you start
18 raising more questions than you have answers.

19 Q Yes. Well, you see the last line of that
20 paragraph that:

21
22 Functional analysis revealed that un-healthy
23 fish were responding to an intracellular
24 pathogen with profiles most consistent with a
25 retroviral infection.
26

27 So the concept of retrovirus was certainly out
28 there in the Department at least as early as 2008?
29 A I mean there had been some speculation. I mean
30 this is early thinking and speculation on this.
31 This is not fully-developed, you know, peer-
32 reviewed science. And what we were trying to do
33 or were interested in doing is trying to confirm
34 whether, in fact, this was correct or not.

35 Q But it would not be correct to say that the
36 hypothesis that this could be a retrovirus first
37 occurred in mid or late 2009. It occurred in
38 2008.

39 A I can't recall specifically when this was first
40 being done. But certainly I know that Dr. Miller
41 was very active in sort of thinking about this and
42 we were certainly trying to get more information.
43 But I'd say this time it was very early in her
44 analysis.

45 Q And you notice in the next paragraph, if we could
46 scroll down a bit, that the reference is to Salmon
47 Leukemia Virus, SLV, on the fourth line and Marine

1 Salmon Anemia, also called Plasmacytoid Leukemia.
2 So by November 2008, that hypothesis was present
3 in the Department?

4 A Yes, it was there as a hypothesis.

5 Q You'll see at the last line of that paragraph, if
6 we can scroll down a bit, yes.

7
8 The table below lists the accumulating
9 evidence that suggests the disease afflicting
10 our sockeye salmon is retroviral in nature
11 and could be plasmacytoid leukemia.
12

13 And there's a table over the page that lists that
14 evidence. So there's accumulating evidence at
15 that point, is there?

16 A Well, there's some evidence. I mean I think, to
17 be fair to what was going on here, I think the
18 expertise by Dr. Miller was really in the area of
19 the genomics. And we did have others in the
20 Department that were more knowledgeable about
21 viruses and about fish health in particular but
22 certainly that she was very focused on this and
23 has been working to try to get more evidence and
24 further information on this particular topic.

25 Q If I could just go back, sorry, to the previous
26 page at the very bottom, the last line:

27
28 Vertical transmission of the virus would also
29 introduce the possibility of effects at other
30 developmental stages, such as smolts.
31

32 Do I take it that you don't understand what that
33 means or...?

34 A Well, I think we went through that already.

35 Q Okay. Over the page then just underneath the
36 table. Dr. Miller here refers to it in this
37 document as "the potential devastating impacts of
38 this disease on sockeye salmon". You see those
39 words? Just below the table.

40 A Okay, yes.

41 Q Yes. Now, I think I asked you on November 4th
42 when you were last here, when Science is dealing
43 with something that is a potentially devastating
44 impact, do you act any differently? Do you fund
45 more research? Do you move quicker?

46 A We try. Certainly. I would hope that we would do
47 that. But as I say, this was very cutting edge

- 1 work and I think we were extremely interested and
2 certainly were aware of these potential
3 consequences but we also wanted to try to get more
4 information and were wanting to work with Dr.
5 Miller so that we could get more substantive
6 information to understand this and also to
7 understand the scope because, as I say, once you
8 start to look at this, you certainly come up with
9 more questions.
- 10 Q You'll see at the bottom line of that paragraph
11 that the request is for \$60,000 in funding for
12 2009 and 2010. Do you know if Dr. Miller got that
13 funding?
- 14 A I can't recall precisely how much funding we did
15 find but I know that we did provide her with some
16 additional funding. I can't recall precisely what
17 the amount was.
- 18 Q Well, in terms of potentially devastating impacts,
19 certainly you gave her the whole funding she was
20 requesting, didn't you?
- 21 A I mean the normal process is that scientists often
22 try to inflate their budgets a little bit so we
23 normally would do a bit of challenge to say what
24 really of this piece is the most important right
25 now to get that. So we would always sort of go
26 and look at those numbers and try to focus on the
27 things that were the highest priority.
- 28 Q Well, would you be able to determine, by going
29 back to your office, whether that funding was
30 provided or how much? And could you provide that
31 to Commission counsel?
- 32 A I would have to discuss it with some others
33 because I'm not sure exactly what the root of that
34 funding was. It was probably done through the
35 office of Mark Saunders, who was the division
36 manager. So it was probably his group that
37 provided the additional funding rather than
38 directly from my office. So I'm sure we can
39 probably find it, yes.
- 40 Q Okay. And so you'll agree to provide that
41 information?
- 42 A We will try to provide it. We'll do everything we
43 can to provide that information for you.
- 44 MR. McDADE: Mr. Lunn, if I could go to Tab 36, which I
45 think is a -- hold it. Before I do that, I should
46 probably mark this document as an exhibit, the
47 November 13, 2008 Briefing Note.

1 THE REGISTRAR: Exhibit 635.

2
3 EXHIBIT 635: November 13, 2008 Briefing Note

4
5 MR. McDADE: So if I could go to Tab 36, if that's a
6 letter of March 3rd, 2011? Yes, thank you.

7 Q Dr. Richards, this is a letter to Dr. Morton from
8 the Minister. Did you have a hand in drafting
9 this letter?

10 A I did not draft the letter. It more than likely
11 would have gone through me to approve it but I
12 didn't not draft it.

13 Q All right. Well, can I just draw your attention
14 to the second-last paragraph on that page? The
15 statement from the Minister is, in the last
16 sentence:

17
18 The sockeye salmon that were studied were
19 sampled in 2006, but the tissue was not
20 analyzed until 2008 and 2009, and the
21 hypothesis that the results indicated
22 possible exposure to a virus was not made
23 until mid-2009.

24
25 Do you see that statement?

26 A Yes, I do.

27 Q Now, that's incorrect, isn't it? It was actually
28 mid-2008?

29 A Well, I take your point about that earlier note
30 and that possibility but I think I'm not quite
31 sure exactly. There were multiple things going on
32 here and multiple studies. And so I think it's
33 sort of in the context of which pieces. It's
34 possible that it was. I take your point from that
35 earlier documentation but I'm just not quite sure
36 what the background here in relation to this
37 particular piece in linking that particular
38 response to the other work that we were just
39 discussing.

40 Q Well, this is potentially a very important matter,
41 Dr. Richards. If a potentially devastating impact
42 from a virus was identified in 2008 by a senior
43 scientist at DFO, I'm going to ask you, what
44 action was taken between 2008 and 2009 to deal
45 with that?

46 A Yes, and what we wanted to do and what we're
47 doing, as I mentioned, was that we were trying to

- 1 get more information and try to get more
2 background to confirm this. So what we -- as I
3 said, I know that we provided more funding to Dr.
4 Miller. I can't at this point say exactly how
5 much but we were encouraging that more work could
6 be done because we also wanted to -- you know,
7 this was her personal point of view at that time
8 and we wanted to confirm that and try to get as
9 much additional information as we could.
- 10 Q Well, the statement from the Minister in 2011 that
11 the hypothesis wasn't made until mid-2009, as
12 we've seen, is potentially incorrect. And what
13 I'd like to know is, was the Minister misinformed
14 by your department on that?
- 15 A If that's the case then it would have been
16 something that we had reviewed internally. In
17 fact, yes.
- 18 Q If you could do it again, you'd correct that,
19 would you?
- 20 A Well, you've pointed to some additional pieces but
21 again I'm not sure of the context and I'd have to
22 verify all that.
- 23 Q All right. If we could go to document --
- 24 A I think in this context what we're talking about
25 is some other very specific samples that were not
26 analyzed in that time. So there were a lot of
27 samples and a lot of work that was going on and so
28 I'm just trying to match the specific samples with
29 the response. So that's why I can't give you a
30 completely clear answer on this.
- 31 MR. McDADE: Could I ask that that exhibit be marked?
32 THE REGISTRAR: Exhibit 636.
- 33 MR. McDADE: The letter of March 3rd, 2011, from the
34 Minister.
- 35
- 36 EXHIBIT 636: Letter dated March 3, 2011,
37 from Ministry of Fisheries and Oceans to Dr.
38 Alexandra Morton
- 39
- 40 MR. McDADE: If I could ask you, Mr. Lunn, to go to the
41 document at Tab 16?
- 42 Q Dr. Richards, this is a workshop on February 6,
43 2009. The list of attendees seems to include you?
- 44 A That's correct.
- 45 Q And Dr. Miller, four lines below you?
- 46 A Yes.
- 47 Q And Dr. Miller gave another presentation at that

1 workshop?

2 A Yes. Well, to be clear, this workshop -- there
3 were no formal presentations at this workshop.
4 This was a small group and what happened at this
5 particular meeting was there was an opportunity of
6 basically a round table where everyone got to
7 speak for a few minutes but it wasn't a formal
8 presentation.

9 Q Well, if we go to page 17 of that document, if you
10 can review page 17, 18 and 19. There's two or
11 two-and-a-half pages there of a report from Dr.
12 Miller. So she reported again on her work on the
13 virus at that conference, did she not?

14 A She reported on the work that she was doing, yes.

15 Q And so you were aware of that work at that time?

16 A I mean I was aware of the work that she was doing,
17 yes.

18 Q All right. If I could now go to the document that
19 was marked this morning at Exhibit 614, which is
20 at Tab 3 of the Commission documents?

21 MR. WALLACE: Sorry, Mr. McDade, did you intend to mark
22 the document you just referred to?

23 MR. McDADE: Oh, yes, thank you, Mr. Wallace. Yes,
24 could I mark that last exhibit, the report?

25 THE REGISTRAR: Exhibit 637.

26 MR. McDADE: Thank you.

27
28 EXHIBIT 637: Report on the Workshop on
29 Climate Impacts on Pacific Salmon - February
30 6, 2009 - Vancouver, BC
31

32 MR. McDADE: So Exhibit 614, Tab 3, if we go to page 5
33 of that document, please?

34 Q This document is the summary of the September
35 30th, 2009, Science review?

36 A I think it was more than a summary of that. I
37 think that there was additional material that was
38 put in and it would have perhaps been updated. So
39 it may have been a bit of an expansion on what was
40 done at that time. At the time this document was
41 prepared, it would have been the most up-to-date
42 information that was provided by the researchers.

43 Q Well, if we go to page 1 here, it seems to be an
44 email from Mr. Saunders dated November 12, 2009.
45 So that would be the date of this particular
46 document?

47 A I can't say precisely what the date of the actual

1 document was. I know that this was intended as a
2 living document and it was worked on at various
3 times.
4 Q Well, if I could go to page 4 again and if we
5 could go to the very bottom of that page?
6 MR. LUNN: Page 4 of --
7 MR. McDADE: Page 4.
8 MR. LUNN: -- the electronic?
9 MR. McDADE: No. Yes. Sorry. Page 5 is at the bottom
10 right-hand corner. Yes, thank you. A little
11 lower. There's a computer record at the bottom of
12 the document I just want to blow up at bit.
13 Q It seems to indicate a date of November 9. Can we
14 agree that this document was accurate as of
15 November 9?
16 A That would have been 2009 in November.
17 Q Oh, November.
18 A Not the 9th of November.
19 Q Okay. So an uncertain date in November. But in
20 any event, so this represented the departmental
21 thinking as of November 2009?
22 A Well, this represented a summary of what the
23 scientists had compiled as their best evidence.
24 This was not a peer-reviewed document. This was a
25 contributed document based on their best evidence
26 at that time and it was really intended for
27 internal use.
28 Q So this was a peer-reviewed document representing
29 their best --
30 A No, I'm saying it was not a peer-reviewed
31 document.
32 Q I see. Okay.
33 A Just to be clear, it was something that was put
34 together by the individual contributors to let
35 others internal to Science know what they were
36 thinking at the time to help them in the context
37 of their overall thinking about what might have
38 happened in 2009 to the sockeye.
39 Q Again, you see the last line of the large
40 paragraph under "Disease":
41
42 However, viral arrays pointed to the presence
43 of a virus in the retrovirus family.
44
45 So that was still the Department's thinking in
46 November of 2009?
47 A That was the work that was put forward by Dr.

1 Miller at that time. As I say, this piece would
2 have been contributed by Dr. Miller to that
3 overall document.

4 Q If I could go over the page to the second
5 paragraph on the next page starting, "The very
6 significant reduction". It suggests the en route
7 mortality may be indicative of lesion-associated
8 mortality.
9

10 If so, the levels of mortality required to
11 bring prevalence levels down by over 30%
12 would be sufficient in magnitude to account
13 for large-scale losses in the ocean.
14

15 Do you see that?

16 A Yes.

17 Q Now, the next sentence says that it's possible
18 that the lesions could regress. But if, in fact,
19 the lesions were the cause of the mortality, what
20 that statement says is large-scale mortality.
21 This could be the cause of the 2009 decline,
22 right?

23 A That's what that statement says. Or I should at
24 least -- could have said -- could have been
25 contributed to.

26 Q Well, it didn't say that, does it? On its own,
27 it's responsible for large-scale mortality.

28 A Yes, but we need to look at all of this in
29 context.

30 Q Yes. So that document was available to you when
31 you were preparing the briefing notes to the
32 Minister?

33 A And I think we need -- now, I just need to be a
34 little clear of the context here and the timing
35 because we actually started preparing the briefing
36 note after the meeting or in October was when we
37 had started working on the briefing note, I
38 believe. And this one is from November so there
39 could have been a little bit more thinking that
40 has gone into this subsequent to the material that
41 we had at the time that we did the first draft on
42 that briefing note.

43 Q Well, there's nothing new in that statement I just
44 read to you, I suggest, than what was in the
45 September 30th presentation. The September 30th
46 presentation speculates the same point, that
47 large-scale mortality --

- 1 A Yeah, and I think through this period we were
2 continuing to get some more information but I
3 don't dispute that there was -- yes, that there
4 was some thinking that that could have been an
5 issue that could have been sufficient a magnitude
6 to account for the decline. And that information
7 is referenced in the briefing note.
- 8 Q Well, now, as you say, you were preparing this
9 briefing note from very early in October, at least
10 from October 5th or 6th, right?
- 11 A Yes.
- 12 MR. McDADE: And if I could go over to Exhibit 615,
13 we'll look at that.
- 14 Q So that's an email dated October 6th with an
15 attached draft of the factors affecting sockeye
16 return on the next page. Now, this is a document
17 that you had the pen on, right? You were the
18 drafting officer?
- 19 A This would have been written by Mark Saunders.
- 20 Q Of your office?
- 21 A Yes. Yes, he is a division manager that is
22 responsible for the Salmon Division. He's been
23 interviewed here several times.
- 24 Q And so you and Mr. Saunders together organized the
25 September 30th conference?
- 26 A Yes, most of the work was done by Mr. Saunders.
- 27 Q And you and Mr. Saunders were responsible for this
28 document?
- 29 A As I said, Mr. Saunders did the first draft of
30 this document but we did work on it together, yes.
- 31 MR. McDADE: Now, Mr. Commissioner, I just want to say
32 for the record at this point that we asked
33 formally of Commission counsel that Mr. Saunders
34 be present at this time and we've asked that he be
35 called. I just leave that recommendation with my
36 friend.
- 37 MR. TAYLOR: Mr. Saunders has been called and here
38 several times and he's not in Canada at the
39 moment.
- 40 MR. McDADE: On this subject is what our request was in
41 relation. Can I go to page 2, which would be, I
42 suppose, the third page of the exhibit, page 2 of
43 the attachment.
- 44 Q So this was an early draft of the document and in
45 it you go through a number of possible scenarios
46 for various causes. I just want to take you
47 through your conclusions at this time. Yours or

1 Mr. Saunders, whichever it was. The first,
2 "Pollution in Lake Watersheds", that was said to
3 be unlikely as the cause of the 2009 decline,
4 right?

5 A Yes.

6 Q The second, "Fishery Effects", it says "possible
7 impacts". But if you look at the last line, the
8 conclusion was it would only explain a small
9 proportion of the 2009 mortality. That was your
10 conclusion at the time.

11 A Yes.

12 Q So that was not the likely cause of the 2009
13 decline, in your view at that time.

14 A Yes.

15 Q The third bullet is the viral disease effects.
16 And the conclusion there is in the middle of --
17 that the virus could be a major contributor to the
18 mortality occurring through the life history. And
19 that it could provide an explanation for the short
20 and long-term declines for sockeye. Is that
21 right?

22 A Yes.

23 Q And the only reason for not concluding that is
24 that you have to complete histology to confirm the
25 virus.

26 A Well, I think the histology was not for the virus.
27 As I recall, the histology was more looking at the
28 tumour issue.

29 Q Okay. So at least this bullet was a possible
30 cause of the 2009 decline?

31 A Yes.

32 Q The next bullet is "Predation offshore by Humboldt
33 squid". It said that that's a possible impact.
34 But down the paragraph it suggests that it's not a
35 key factor. That's the second-last line of that
36 paragraph, right?

37 A Yes.

38 Q The next one is "Predation in Strait of Georgia".
39 And your conclusion then was that that was
40 unlikely to be the impact for 2009, right?

41 A Yes.

42 Q And the next one was sea lice. And what you say
43 there is it's possible. Let me paraphrase the
44 first sentence.

45
46 While it is possible that sea lice from farms
47 contributed to the mortality the degree of

- 1 impact is difficult to assess.
2 So you weren't attributing the 2009 cause to sea
3 lice at that point?
4 A That's correct.
5 Q The next heading on the following page is the
6 mortality attributed to algal blooms. And if you
7 look to the fifth line or so there the no reports
8 of fish kills suggests it is unlikely. So your
9 conclusion again was although it was a possible
10 impact, it was unlikely.
11 A Well, that's what is written here but that's not
12 consistent with I think what we have a little bit
13 later.
14 Q Right. But at this time, your conclusion --
15 A Well, as I say, this was, I think, the first draft
16 that Mr. Saunders had done for our discussion so
17 it's possible that not everything in here is
18 actually quite correct. So I suspect that he just
19 miscopied something or didn't interpret something
20 correctly when he drafted this.
21 Q All right. But we'd have to have Mr. Saunders to
22 know that, wouldn't we?
23 A Yes, but as I say, this was just his first draft
24 but then we did come up with another draft very
25 shortly after that, I think, so...
26 Q But you were relying on Mr. Saunders at this point
27 to attribute that cause as being unlikely.
28 A As I say, this is the work that he had just put in
29 and he was considering that. That's what he has
30 written in this note.
31 Q All right. The next phrase related to the krill
32 fishery. And there again the reference is that
33 the 2009 impact was unlikely.
34 A Yes.
35 Q That's both in the first line and --
36 A Yes.
37 Q -- in the fourth line.
38 A Yes.
39 Q And the mortality due to low prey abundance, there
40 doesn't seem to be a rating in that paragraph, but
41 that's the one that you said subsequently
42 lessened, in your view, as being a significant
43 cause.
44 A I think that we did go through some different
45 thinking on that. I think that, no, there was --
46 when we did actually write that note, we did think
47 that that was actually probably a fairly

- 1 significant factor. I think there is still some
2 scientific question about how significant that is
3 and we're still doing research to come up with
4 that. I think at this point we would rate the
5 Strait of Georgia issues as probably higher than
6 those than the factors that happened in Queen
7 Charlotte Sound.
- 8 Q Well, I suggest to you of all of those factors
9 then at that point the most likely factor in your
10 conclusions was the disease factor.
- 11 A Based on what is in that note at that time, as I
12 say, but this was just an early draft.
- 13 Q Now, I note under "Recommendations", the only
14 specific one, of course, that's dealt with is
15 exactly that, the one that's probably most likely,
16 the disease work, the second bullet, right?
- 17 A Yes.
- 18 Q And what is said there by you and Mr. Saunders is
19 the disease work will be of extreme interest and
20 may be quite controversial. Now, can you explain
21 to the Commissioner what you meant by "extreme
22 interest" and why?
- 23 A Well, okay, first of all, it's not what I meant.
24 As I said, this was the first draft of a note that
25 was done by Mr. Saunders. But I think what's
26 intended here is we do think that -- I mean I do
27 think we think that the work that Kristi Miller
28 has done is very important and -- first of all,
29 it's very interesting scientifically but also very
30 important from trying to contribute an
31 understanding to what's going on here. I mean her
32 research was one of the key pieces of research,
33 which is actually really finding some results that
34 seemed that they could be playing into what was
35 going on in terms of the 2009 return. And so,
36 yes, we were obviously very, very interested in
37 that. We were also aware that he hypothesis
38 around the virus, as you've said, could be
39 controversial and we needed to get some more
40 information to try to verify what was actually
41 going on.
- 42 Q And by "controversial", did you understand that to
43 mean controversial in terms of the public
44 reaction?
- 45 A Yes.
- 46 Q And the next line says a communication strategy
47 has to be developed or should be developed. What

- 1 did that mean, a communication strategy?
- 2 A Well, as I say, this was an initial draft that Mr.
3 Saunders had done about that work and just
4 thinking about normally -- but this is really --
5 if I can go back to process. I mean this is a
6 standard piece of the way things work. When we
7 have some new findings or new information, we
8 would normally prepare some kind of briefing note,
9 we would normally prepare some -- if we think that
10 there's going to be queries in the media about
11 this information, we would normally help staff in
12 preparing communication lines or media lines
13 around this kind of information. So that's
14 probably what was implied by Mr. Saunders at this
15 time. As I said, this is just part of standard
16 operating practice.
- 17 Q Well, were you concerned about public
18 overreaction?
- 19 A Well, we were concerned about trying to get as
20 much of the truth out as possible. And we were
21 concerned about trying to be as factual as we
22 could and trying to figure out what really was
23 going on because, yes, I think we were concerned
24 about overreaction but that's because we just also
25 had more questions ourselves and we know if we had
26 questions there were going to be other questions
27 that were going to be posed and we wanted to be in
28 a position to try to get answers to some of those
29 questions.
- 30 Q Was a communication plan prepared?
- 31 A I don't recall that one was prepared.
- 32 Q Let me suggest to you that the communications plan
33 was not to release this to the public at all.
- 34 A That is false.
- 35 Q When did the Department first release to the
36 public that there was a suspected virus in salmon?
- 37 A Well, I think Kristi Miller has been going to
38 various meetings and talking to that. And there
39 was some discussion in various forums about this.
40 There has certainly been some, you know, more
41 recent publications but there -- you know, when
42 there have been presentations given, that has been
43 on the table. As you already pointed out, that
44 was given at the workshop at the -- that was done
45 -- convened by Scott Hinch in 2008.
- 46 Q No, my suggestion to you -- my question to you
47 relates to releasing this data to the public or to

1 the media, not to scientific forums.

2 A Well, I mean our job is not to release things
3 directly to the media. That's not the -- that's
4 not the role of Science within the Department.
5 What we -- what I do, do is try to inform the
6 decision-makers.

7 Q You don't write letters to the -- the Department
8 doesn't write letters to the media relating to the
9 sea lice threat, for instance?

10 A Yes, the Department write letters. But I'm just
11 -- but normally letters would be done in response
12 to something that was sent to us.

13 Q Let me suggest to you the first time this question
14 of the virus has ever been in the public record in
15 the media was November 3rd, 2010, when the *Globe*
16 and *Mail* released this memorandum.

17 MR. TAYLOR: Well, I object to the question. How is
18 the witness supposed to know when the media did
19 something? I doubt Mr. McDade knows when the
20 media did everything that they do.

21 MR. McDADE: Well, I'll rephrase the question.

22 Q Do you know whether the media has ever been told
23 of this disease?

24 A I think, Mr. Commissioner, I don't -- I'm not
25 really interested -- or that my job has not got to
26 do with what the media knows or doesn't know.
27 Certainly, we -- had been opportunities where this
28 was discussed. This was discussed at the -- for
29 example, it was discussed at the June Pacific
30 Salmon Commission meeting. There was some
31 discussion about that within that meeting.

32 So it was -- and as we already said, there
33 was some discussion about it at the workshop on
34 Late Run sockeye that you've already pointed to.
35 So certainly these things were sort of known
36 within the scientific community. It's not that we
37 normally -- or our process would not be to go
38 directly to the media on this. Our process would
39 be to prepare scientific papers that follow
40 through a normal peer-review process where then
41 this stuff would be released through the normal
42 peer-review channels.

43 MR. McDADE: Can I go to Exhibit 628, please?

44 MR. WALLACE: Mr. Commissioner, I just note that by the
45 allocation, Mr. McDade has eight minutes.

46 MR. McDADE: Well, I count nine but I'll see what we
47 can do. Exhibit 628, please?

1 MR. LUNN: It's up.

2 MR. McDADE: All right.

3 Q This is the document, Dr. Richards, where --

4 A Okay.

5 Q -- Dr. Miller is quoted as saying that you have --
6 don't want to indicate to the PSC that disease
7 research is of strategic importance. Where did
8 she get that idea?

9 A I don't know where she got that impression and
10 that impression that she has is completely false.

11 Q And at the bottom of the page, the earlier email:

12

13 Laura does not want me to attend any of the
14 sockeye salmon workshops that are not run by
15 DFO for fear that we will not be able to
16 control the way the disease issue could be
17 construed in the press.

18

19 A Again, that is also a misrepresentation of what
20 was going on.

21 Q Did you talk to her about this?

22 A I probably did talk to her and she -- as I say,
23 this is -- I'm sure I did talk to her about this
24 and, unfortunately, this is not -- clearly, I did
25 not communicate what was going on but I think the
26 issue here is really -- the issue, as I explained
27 earlier, was really one of process. We realized
28 that this was a very important issue and we wanted
29 a chance, following our normal practice, to make
30 sure that we briefed up and informed our senior
31 authorities up the line before things were
32 announced publicly, which is the normal practice
33 within the Department.

34 We had taken a little longer to get this
35 information up than we would have liked because
36 the work that Dr. Miller was doing was changing
37 and evolving so quickly, we wanted to keep having
38 the most up-to-date contextual information and
39 that story just kept changing. And so what we
40 really -- the issue here is that we were trying to
41 wait to get some more results from her before we
42 put the note up and then suddenly we had a meeting
43 that was called and we hadn't had a chance to do
44 the full briefing up the line. So it's not that
45 we were trying to hide something; it was more that
46 we were trying to make sure that we had
47 information go up the line before people were

- 1 surprised by reports in the media.
- 2 Q So once you'd given the disease briefing note then
3 any reluctance to let her go to the media would
4 have been gone?
- 5 A Yes. On my part. But as I say, within the
6 Department, there's a process on this and this
7 process was then complicated by calling the
8 formation of this Commission. And as I mentioned
9 earlier today, when the Commission was first
10 established, we weren't quite sure within DFO what
11 our ground rules were and what we could do and how
12 we were supposed to behave in that context.
- 13 Q Dr. Richards, when Dr. Miller released her science
14 paper in January of this year --
- 15 A Yes.
- 16 Q -- she was told she should not speak to the media.
17 Are you aware of that?
- 18 A Yes. And again, I think -- but yeah.
- 19 Q And throughout all of 2010, she was told she
20 shouldn't speak to the media; isn't that right?
- 21 A I cannot -- I'm not aware of other instances.
- 22 Q I'd like to take you to Exhibit 622-A, the speech
23 -- the speaking notes for a Member of Parliament.
24 Are you aware those speaking notes were being
25 produced for an emergency session of Parliament?
- 26 A Yes, I gave that evidence already today.
- 27 Q Right. And the title, as I see, is "For a Debate
28 on Low Returns of Sockeye Salmon to the Fraser
29 River". You understood that was the subject of
30 the speech?
- 31 A That's -- I'm just going with the title. All I --
32 I wasn't party to how that work was being divided
33 up.
- 34 Q Well, Doctor, when I read that speech, it seems to
35 be a whole bunch about how sea lice is not the
36 problem but there's not one word in that speech
37 about virus. Is that right?
- 38 A As I say, I did not write these. They were based
39 on information that we had and some of that
40 information may have -- I know that what they were
41 doing, though, was trying to divide up some of
42 this material between various different notes. I
43 think the issue of diseases was somewhere in
44 these. I don't recall specifically which one.
- 45 Q If we go to page 7 of that document. Do you see
46 the second paragraph?
47

1 A number of factors could be the cause,
2 including the impact of climate change.
3

4 Now, you knew, Dr. Richards, at the time that
5 speech was being written for Parliament that virus
6 was the leading likely cause, likelihood, and why
7 is it that it doesn't appear --

8 MR. TAYLOR: I object.

9 MR. McDADE: Sorry?

10 MR. TAYLOR: Dr. Richards isn't here to answer how
11 someone else wrote a briefing note or a speech,
12 rather.

13 MR. McDADE: I think it's a relevant question. I have
14 nothing more to say about that on that matter.

15 MR. TAYLOR: Well, in addition, she hasn't testified,
16 and I don't think Mr. McDade has put forward any
17 evidence, that everyone knew that a virus was the
18 leading cause of something or other.

19 THE COMMISSIONER: It might be just a question of
20 rephrasing your question, Mr. McDade.

21 MR. McDADE:

22 Q Why, Dr. Richards, didn't you ensure in your
23 advice on this document that Parliament was
24 informed about the virus?

25 A Well, first of all, as I mentioned, these things
26 were done through different notes. And we were
27 still trying to determine whether, in fact, there
28 was a virus. And you know, so work has been
29 ongoing to determine whether or not there was
30 actually a virus and, you know, that work is still
31 ongoing to say whether this is actually a virus or
32 not. To the best of my knowledge, we have not
33 confirmed whether there's still a virus that's
34 related to the genomic signature that we've seen.

35 Q Can I --

36 A So --

37 Q Sorry.

38 A So I think -- and what we have said is that that
39 was -- there were other things that were in play
40 as well as that. There were other factors that we
41 thought were in the highly likely category at that
42 time. It's possible that all of these factors
43 were happening simultaneously so it's -- now, I
44 think we're thinking that it's just not one but
45 there's probably a host of factors here that are
46 interacting. So my recollection is that there
47 were other notes that were more explicit on this

1 particular topic. Or other of these speeches that
2 were prepared that had some other information in
3 it.

4 MR. McDADE: Can I go to Tab 22 of my documents?

5 Q Dr. Richards, here's a request from Dr. Miller for
6 funding for the fiscal year January to March 2010
7 to identify the virus in the retrovirus family.
8 You'll see that in the middle of the page, \$87,000
9 in funding is requested. Was that provided?

10 A I don't know where this was intended. I don't
11 know. You know, scientists write proposals all
12 the time to different funding sources and I'm not
13 sure what funding source was intended with this
14 particular note. Perhaps you should ask Dr.
15 Miller about that.

16 MR. McDADE: Can I go to Tab 25?

17 MR. WALLACE: Mr. McDade, did you wish to have that
18 marked?

19 MR. McDADE: Yes, please.

20 MR. WALLACE: You're now into injury time.

21 MR. McDADE: All right. I'll be two minutes. This
22 will be my last document I refer to.

23 THE REGISTRAR: Exhibit 638.

24 MR. McDADE: 638?

25
26 EXHIBIT 638: Proposed Research on Suspected
27 Novel Virus from Genomics Study on Sockeye
28 Salmon

29
30 MR. McDADE: At Tab 25, there's another funding
31 request.

32 Q That's a funding request to, again, establish the
33 prevalence and intensity of the viral signature.
34 And if you go over the page to item 3, there's a
35 request for establishing whether or not
36 aquaculture fish could be affected by the
37 purported viral disease and could thus be
38 carriers. And you'll see the cost is set out in
39 bold in the middle paragraph.

40
41 COST to establish using arrays whether anti-
42 viral signatures is present in Atlantic
43 salmon: \$18,750.

44
45 Was that funded?

46 A I don't know whether that specifically was funded.
47 I believe it was but I can't confirm that exactly.

1 Again, I'm not exactly sure. We have a lot of
2 different particular funding sources that are
3 going on here and I'm not sure exactly which one
4 this was. I presume it was but I can't confirm
5 that.

6 Q The Minister's letter of March 3rd says:

7
8 DFO has not conducted research associated
9 with this gene expression signature and
10 salmon farms, and will not speculate on such
11 a link.
12

13 Has it been done or not?

14 A I am not aware of the status of that work.

15 Q The DFO has contributed something like \$23 million
16 to aquaculture research to making -- including
17 making genetically modified fish that would be
18 protected from virus. Why is the Department not
19 prepared to fund this kind of work?

20 MR. TAYLOR: That's not something for this witness.

21 MR. McDADE: Well, isn't she the person who testified
22 as to how funding took place?

23 A I mean I think we would be interested in the work.
24 I don't -- I'm just not sure about this particular
25 -- whether this was in fact done or not. I agree
26 that we would be interested in doing that work but
27 I just can't verify whether in fact it was done.

28 Q At this point, you have no information as to
29 whether fish farms are the cause of this disease
30 or not, do you? None at all?

31 A I think we have no particular reason to suspect at
32 this point that there is any link, as was said.
33 Nor do we have -- as I mentioned, we're still
34 trying to confirm what we've actually got in terms
35 of what's causing the signature.

36 MR. McDADE: Thank you. Thank you for the extra time,
37 Mr. Wallace.

38 MR. WALLACE: Thank you, Mr. McDade. The Province of
39 British Columbia, Mr. Prowse. Mr. McDade, did you
40 wish to mark the last exhibit?

41 MR. McDADE: Yes, please.

42 MR. WALLACE: That was Tab 25.

43 THE REGISTRAR: It will be marked as 639.
44

45 EXHIBIT 639: Proposed 2010 DFO Funded
46 Genomics Research Relating to Sockeye
47 Declines, April 23, 2010, Kristi Miller

1

2

MR. PROWSE: Yes, D.C. Prowse, Mr. Commissioner. I'm here on behalf of the Province and I suspect that I may free up some time for those who are following me.

3

4

5

6

7

CROSS-EXAMINATION BY MR. PROWSE:

8

9

Q Dr. Richards, you got a Ph.D. in 1982, I think is what your c.v. tell us; is that right?

10

11

A Yes, that's correct.

12

13

Q And what was it that led you to have an interest in this field?

14

15

A In the whole field of marine science? Well, it was probably Jacques Cousteau when I was a child.

16

17

Q All right. And you then pursued that interest with the Department of Fisheries and Oceans?

18

19

A Yes, that's correct.

20

21

Q And your c.v. tells us that you got three promotions. And then in 1997/1998, you made the fateful step into management. So first of all, I think your c.v. indicates you'd done something like 40 research papers?

22

23

24

A Yeah, in the --

25

26

Q Participated in them?

A I should say those were papers that were in the peer-reviewed literature.

27

28

Q I see. So that doesn't include others that were internal or...?

29

30

A That's correct.

31

32

Q So what was it that led you to abandon -- abandon's not the right word because you're still doing some papers -- but why did you make the leap into management?

33

34

35

A Well, I mean I think it happens usually -- things happen in a career because of where you are in the place at the time and it's sort of a logical next step. But I think we're also -- it's something that I care about and I think it was a -- I appreciated the opportunity to work with such an incredible group of researchers that we have in the Department. And I considered it a real privilege.

36

37

38

39

40

41

42

43

Q And what have been the challenges and rewards since you've been a manager in DFO Science?

44

45

46

A Well, I think clearly, as I mentioned, the challenge -- the rewards are working with such an

47

- 1 incredible group of people, having such
2 interesting scientific problems and being able to
3 work with people who are really world-class in the
4 field.
- 5 Q A miscellaneous question, if I might. Earlier in
6 the week, we marked as an exhibit part of some
7 work that was done by Dr. Selbie. Can you tell me
8 anything about his background?
- 9 A He's a relatively new researcher in the Department
10 and he's just -- he's been here for just a couple
11 of years.
- 12 Q All right.
- 13 A I believe his background is to be more in the
14 freshwater research. He's working out of our lab
15 at Cultus Lake.
- 16 Q And Dr. Miller, what can you tell us about her
17 background?
- 18 A Yes, Dr. Miller has been with the Department for
19 quite sometime. She came here initially as a
20 post-doctoral fellow, was working within the stock
21 ID genetics group, was really working mostly on
22 genetic aspects and was, you know, quite
23 instrumental in developing some of the technology
24 and moving forward some of the technology around
25 genomics.
- 26 Q And have you worked directly with her during her
27 career?
- 28 A No, I have not worked directly scientifically with
29 her.
- 30 Q All right. You've indicated that you're a
31 supporter of her research; is that correct?
- 32 A I mean absolutely, yes. I mean I'm a supporter of
33 most of the research that we do.
- 34 Q And earlier, I guess last week when Dr. Hinch was
35 testifying, we marked as an exhibit her January
36 2011 article in *Science*?
- 37 A Yes.
- 38 Q And what role, if any, did the Department play
39 leading up to the publication of that article?
- 40 A Role in -- I mean in the sense of I think we were
41 trying to be very supportive of her getting this
42 work done. I know *Science* is a high-profile
43 journal. We like it when our scientists are able
44 to have that kind of a profile and that kind of
45 publication.
- 46 Q And what's the benefit to the Department and to
47 the public of getting such an article published in

- 1 that publication or a publication like that?
2 A Well, I'm not sure to what extent I can speak
3 about benefit to the public but I think that it is
4 -- certainly that journal is seen as an indication
5 of status and it certainly is good for the
6 individual researchers in terms of their own
7 research career.
8 Q In speaking to my friend, Mr. McDade, earlier, you
9 talked about certain writings that were not peer-
10 reviewed. And what's the importance of that in
11 the science process?
12 A I mean I think the importance of peer review is
13 really a challenge function, a bit of a sober
14 second look, making sure that things are situated
15 correctly and not misconstrued or just not
16 inaccurate or taken out of context.
17 Q And Mr. Taylor, in reviewing the -- I think it was
18 the in-house September 2009, the one with all the
19 attachments, pointed out that many of these
20 statements in that -- in the various papers there,
21 generally had changed and some have been
22 superceded; is that right?
23 A Yes, yes.
24 Q And there have been changes in the work of --
25 A Yes.
26 Q -- Dr. Miller included in that?
27 A That's correct. I mean I think what you're
28 witnessing here, here through this process, is
29 really about an evolution of the thinking around a
30 very significant problem.
31 Q And part of the scientific process is
32 brainstorming and considering all kinds of
33 possibilities and narrowing those down; is that
34 right?
35 A Absolutely, yes.
36 Q And that's an ongoing process?
37 A Yes.
38 Q Many of us in the legal profession and elsewhere
39 are anxious to achieve instant results. I think
40 you've said to Mr. Taylor again this morning that
41 instant science is not something that can happen.
42 A Yeah. We all wish it could happen much faster
43 than it actually can.
44 Q And with respect to the research that was done by
45 Dr. Miller, there's some sampling that was done in
46 2006 but analysis and research was being done in
47 2008 and 2009; is that right?

Laura Richards

Cross-exam by Mr. McDade (AQUA)

Cross-exam by Mr. Leadem (CONSERV)

1 A Yes, well, what happens is often when we're doing
2 work, we will collect samples that we don't have
3 time or aren't analyzed for one particular thing
4 at a particular time. Those samples will be
5 archived and then they can be drawn on at a later
6 time to do more analyses or a different set of
7 analyses when different questions come to mind.

8 Q And with respect to the question of the Miller
9 paper, we've had -- the 2010 returns have come out
10 between the time of her research and the briefing
11 notes in 2009 and the publication in 2011. Have
12 you been party to any discussions about how the
13 2010 returns might be taken into account in terms
14 of the work that she has done?

15 A I think I am not -- I think that should be a
16 question that if you have an opportunity to speak
17 to her about, I'd rather she speak to that
18 directly.

19 MR. PROWSE: And indeed I think that we'll all have the
20 opportunity to do that. Those are my questions,
21 Mr. Commissioner.

22 THE COMMISSIONER: Thank you.

23 MR. WALLACE: Thank you, Mr. Commissioner. I think
24 that as we're proceeding, a five-minute break
25 would not run us over four o'clock and I think the
26 witness may like a break.

27 THE COMMISSIONER: Is that so, Dr. Richards? Would you
28 like a break now?

29 A Yes, please. Thank you.

30 THE COMMISSIONER: Yes, very well, thank you.

31 THE REGISTRAR: The hearing will now recess for five
32 minutes.

33

34 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)

35 (PROCEEDINGS RECONVENED)

36

37 THE REGISTRAR: The hearing is now resumed.

38 MR. LEADEM: Thank you, Mr. Commissioner. For the
39 record, Leadem, initial T., appearing as counsel
40 for the Conservation Coalition.

41

42 CROSS-EXAMINATION BY MR. LEADEM:

43

44 Q I've spoken with you before, Dr. Richards. You
45 may recollect that on November 3rd and 4th you
46 were in attendance and I had the privilege to
47 cross-examine you at that time on different

- 1 topics. And I may find that I may revisit some of
2 those same topics with you today.
- 3 You're the Regional Director and Head of
4 Science for the Pacific Region; as I understand
5 it.
- 6 A Yes, that's correct.
- 7 Q And you have a number of scientists who report to
8 you?
- 9 A Yes.
- 10 Q You in turn report to the Regional Director
11 General?
- 12 A That's correct.
- 13 Q And you also -- do you also report to the
14 Assistant Deputy Minister for Science, Dr.
15 Mithani?
- 16 A We have a somewhat complex matrix organization, so
17 I have a line reporting relationship to the
18 Regional Director General. I have a functional
19 reporting relationship to the Assistant Deputy
20 Minister, but the name has changed, it's Oceans
21 and Science. That name change occurred roughly a
22 year ago.
- 23 Q All right. And all of you in turn report to the
24 Minister, I mean, it's the Minister who is
25 ultimately responsible for the operations?
- 26 A Well, the Deputy Minister, I guess that's a -- I
27 mean, we report direct to the Deputy Minister. We
28 are public servants.
- 29 Q Right. And from time to time you may provide
30 advice to the Minister and the Minister is the
31 entity that's responsible for answering for your
32 actions in the confines of Parliament; is that
33 right?
- 34 A Yes, as far as I understand, parliamentary
35 democracy, yes.
- 36 Q Which is all perplexing to me, because the
37 speeches that I'm going to get to in a moment are
38 all written on behalf of Members of Parliament, as
39 opposed to the Minister; is that not correct?
- 40 A You know, this whole issue around these speeches,
41 I was really only very peripherally involved. So
42 if you want to ask those kinds of details, I think
43 my understanding of that is not perhaps what it
44 could be with some others that you could ask on
45 this topic.
- 46 Q Well, let me try it with you, and if you want to
47 defer the questions, that's fine, and hopefully we

- 1 can find someone who can answer them in due
2 course. And I'm going to begin by looking at the
3 email exchange that I find at -- which is now
4 marked as Exhibit 622, Mr. Lunn. You're familiar
5 with this because --
- 6 A Yes.
- 7 Q -- before you came here, you reviewed all of these
8 materials, did you not?
- 9 A Yes, that's correct.
- 10 Q And this seems to be an email exchange from a
11 fellow by the name of Terence Davis, who is the
12 Regional Director for Communications in your
13 region; is that correct?
- 14 A That is correct.
- 15 Q And if I look at the second page of that email
16 exchange, there's an email from Mr. Davis, and I
17 find these words about the middle of the page.
- 18
- 19 Essentially, in the debate --
- 20
- 21 - and they're talking about a debate that's going
22 to unfold or may unfold in Parliament -
- 23
- 24 -- members of the government will put forward
25 the Department's arguments/positions/
26 information on Pacific salmon. The MPs are
27 essentially speaking for the Department, and
28 representing us in the House.
- 29
- 30 Now, you know that that's inaccurate, do you not?
31 It's not the role of MPs to defend the Department
32 in the House, it's the role of the Minister. You
33 know that's wrong, isn't it?
- 34 A Well, that's -- you're the legal team, that's not
35 my area of expertise.
- 36 Q All right. But you just told me that it's not
37 your job to advise Members of Parliament. It's
38 your job to advise the Minister, is it not?
- 39 A Our job, my job is to provide the best information
40 I can up through my lines of communication.
- 41 Q Right. And that includes through the ministerial
42 lines of communication; isn't that correct?
- 43 A Up to the Minister, when I'm asked to do that,
44 yes.
- 45 Q All right. If I could have Exhibit 630. I found
46 this document to be very interesting. It's a
47 document that your counsel put in through you.

1 It's entitled "Speechwriting at DFO, Roles,
2 Responsibilities and Processes". You're familiar
3 with this document, are you?

4 A Actually, no, I'm not.

5 Q You're not familiar with it, and yet your counsel
6 put in through you?

7 MR. TAYLOR: No, I didn't. I put it in by agreement.

8 MR. LEADEM: I'm sorry, Mr. Taylor's correct. I stand
9 corrected.

10 Q Have you read the document before?

11 A I'm not familiar with this document.

12 Q So I can't ask you any questions about it. You
13 would just decry any interest or any knowledge of
14 the document.

15 A Well, on this kind of topic, I think that there
16 are others within the Department who would be
17 better positioned to answer.

18 Q Well, let me just put the question to you and see
19 if you can answer it. Under the heading number 2,
20 "House Speeches", second page. I think just
21 scroll up a little bit more. Thank you. There's
22 an entity known as the OPI, the Office of Primary
23 Interest, and I find these words:

24
25 For every issue, motion or legislative
26 initiative introduced or debated in the House
27 and Senate...that relates to the mandate of
28 Fisheries and Oceans Canada, there is a
29 departmental OPI...

30
31 And then in bold:

32
33 **Please note that HQ --**

34
35 - I would take that to mean "Headquarters" -

36
37 **-- Communications is never the OPI for a**
38 **House speech.**

39
40 So you're not aware of this policy and you were
41 not aware of it at the time that you were being
42 requested to provide information for House
43 speeches?

44 A I was following a request for others that I work
45 with in the region for their assistance. Normally
46 this kind of issue is dealt with through the
47 national headquarters group, and not through the

1 region.
2 Q Nonetheless you did get involved in reviewing some
3 of these speeches that were going to be used.
4 A I was asked, yes, I was asked to review some
5 speeches for accuracy.
6 Q And for example, if I could ask you to turn to
7 Exhibit 624, there's an email, and that's the one
8 I want to start with. This is an email from
9 Allison Webb to yourself. It appears that Ms.
10 Webb is the Regional Director for Policy Branch
11 within your region; is that correct?
12 A She was in that position at that time.
13 Q Right. And she's asking you for commentary on the
14 speech which is attached to that email; is that
15 correct?
16 A She's asking me to look at it for factual
17 correctness.
18 Q And then if we can turn to Exhibit 625, I find an
19 email also from Ms. Webb in which you're copied,
20 the central email appears to go to a person by the
21 name of Tom Robbins. What position does he
22 occupy, do you know?
23 A He is a Communications Advisor within Pacific
24 Region Communications.
25 Q And then it also is copied, it also goes to Terry
26 Davis, whom we've already come across him, and
27 then it's copied to you. And Ms. Webb says:
28
29 This speech may be a little short now, but
30 after speaking with Laura Richards, we had
31 some strong concerns over some of the
32 information contained which was not factually
33 accurate so needed to delete it. We have
34 redrafted. Further Laura suggested that you
35 may be able to find some information on
36 Alexandra Morton's website which points to
37 some successes with respect to sea lice and
38 pink salmon survival.
39
40 So this is the speech that essentially deals with
41 sea lice, is it not?
42 A It could be apparently, yes.
43 Q If we could pull that, Mr. Lunn, 625, the speech
44 that's attached, "Speaking Notes for A Member of
45 Parliament", and if we look at page 2 of the text,
46 for example, it talks about the aquaculture
47 industry, and I see this paragraph:

1
2 This is why the Government of Canada has
3 invested \$23.5 million over five years as
4 part of the Aquaculture Innovation and Market
5 Access Program to help establish a vibrant
6 and sustainable Canadian aquaculture
7 industry...
8

9 Are those the kind of facts that you're double-
10 checking?

11 A No, they would not be.

12 Q That's because you're a Doctor of Science, not a
13 "Doctor of Spin"; isn't that right.

14 A Well, that particular program was not a program
15 that was dealt with through the Science Program.

16 Q So you're simply looking at these speeches from an
17 aspect of commenting on the science.

18 A That's correct.

19 Q Is that fair to say?

20 A Yes.

21 Q Now, I heard your evidence earlier when you were
22 giving your evidence to Mr. Taylor, or through Mr.
23 Taylor, that you had some concerns about some of
24 the scientists attending at external meetings.
25 And as I understand your evidence, you were
26 concerned about the messaging that might come out
27 in light of this Commission being called into
28 being.

29 A No, I think that that's a misrepresentation of
30 what I had at least intended to say. I don't have
31 problems with scientists attending external
32 meetings. I think what happened in this context
33 is if there was going to be something important
34 that was going to be something new that was going
35 to be announced, I just wanted to make sure that I
36 had a chance to give a head's-up through the
37 system before that happened. I think that's one
38 point I made. The other point was in the
39 particular context we're discussing, we were not
40 sure what was appropriate for our role as federal
41 public servants in the context of a Commission of
42 Inquiry having just been announced.

43 Q All right. If I can examine with you Exhibit 627,
44 please. This is an email exchange. It looks as
45 though, if I ask you to track through to the
46 second page, I see an email from you to Mr. Sprout
47 in the middle of the page there. Can we just

1 highlight that and blow it up. Thank you. And
2 which you write to Mr. Sprout on November 3, 2009:
3

4 Paul - Do you support participation in the
5 PSF event next week? I am concerned about
6 how we co-ordinate all the proposed meetings
7 on Fraser sockeye. The meeting proposed by
8 Brian includes a number of external
9 participants and could raise issues where we
10 have work in progress that has not yet been
11 reported publically.
12

13 What are you referring to there, the work in
14 progress that has not been reported publically.

15 A Well, I think I was mostly concerned about the
16 work that we informed about within the briefing
17 note related to the disease impacts.

18 Q All right. So you were concerned about that
19 information being released publicly.

20 A I was concerned about it being released publicly
21 prior to briefing up, which is why the note goes
22 on to say that I have instructed them to write a
23 briefing note so that we could do this, so that we
24 could then proceed to talk about that work.

25 Q And as it turned out, did any of DFO scientists
26 attend that PSF meeting?

27 A I believe in the end, I can't recall whether that
28 meeting actually did happen at that time. But,
29 no, as I mentioned, that was just at the time when
30 the Commission had just been announced. We were
31 trying to sort out what we could and couldn't do,
32 and what was appropriate. And there was a
33 decision. It wasn't made by me. But there was a
34 decision that DFO staff would not participate in
35 these types of external meetings while we're
36 sorting out what's happening in terms of the
37 process with this new Commission, and this was one
38 of those external meetings.

39 Q Well, this is written before the Commission was
40 announced, was it not? The Commission was
41 announced on November the 6th, 2009.

42 A Okay. Well, I can't -- I'm sorry, then, perhaps
43 there is -- we were perhaps anticipating an
44 announcement, or there was something that was
45 going on, but we were expecting something to be
46 announced and therefore just uncertain about how
47 to proceed. So that was the context.

1 Q There was a further -- there was a meeting held by
2 academics under the auspices of Simon Fraser
3 University, a workshop to examine the potential
4 for decline and the 2009 returns in December of
5 2009, do you recollect that?

6 A Yes.

7 Q And none of your scientists were permitted to
8 attend that, were they.

9 A That's correct. That was part of the same
10 decision that affected this suite of meetings.

11 Q Now, when I was here before with you, one of the
12 issues that I put into evidence was a *Globe and*
13 *Mail* article that Mr. Sprout authored. If we can
14 have Exhibit 60, please, Mr. Lunn. This is a
15 letter to the *Globe and Mail* from Mr. Sprout. You
16 may recall me putting this into evidence through
17 Mr. Sprout when he was on a panel with you and Dr.
18 Mithani and a few other people.

19 A Yes, I recall that.

20 Q Did you have anything to do with this particular
21 note that went to the *Globe and Mail*?

22 A I would have commented on this note.

23 Q I'll get to that in a moment. But I wonder if I
24 can start with taking a look at -- Mr. McDade has
25 asked me because of lack of time to put some
26 documents to the witness. So I'm going to
27 accommodate him in that regard, Mr. Commissioner.
28 If I can have Tab 27 of the Aquaculture
29 Coalition's documents, please.

30 You should have before you a Memorandum for
31 the Minister, "Strategy to Address the Issue of
32 Sea Lice and Salmon Farms in Pacific Region". And
33 if you turn to the last page of it, it appears as
34 though you may be either one of the authors or may
35 be involved in this. There's an "A. Thomson/L.
36 Richards", that would be yourself; is that right?

37 A That would be myself. Andy Thomson would have
38 drafted this note.

39 Q All right. And you would have reviewed that note,
40 would you?

41 A The normal process would have been that I would
42 have reviewed that note.

43 MR. LEADEM: Could we have that marked as the next
44 exhibit, please.

45 THE REGISTRAR: Exhibit 640.

46

47 EXHIBIT 640: Memorandum for the Minister,

1 Strategy to Address the Issue of Sea Lice and
2 Salmon Farms in Pacific Region
3

4 MR. LEADEM:

5 Q Tab 28, please. This is an email exchange from
6 Mr. Terry Davis. We know who he is. He's the
7 Director of Communications for your region,
8 correct?

9 A Yes, that's correct.

10 Q And he's writing to Dr. Riddell, who at the time
11 was -- it appears to have still been associated
12 with the Department of Fisheries and Oceans.

13 A Yes. He would have been in -- at that time he
14 would have been the Manager of the group that Mark
15 Saunders now leads.

16 Q And you were copied on this note, were you not?

17 A My name is there, yes.

18 Q And do you recall this email?

19 A I must say I do pay more attention to an email,
20 which I'm directly sent, than those that I'm just
21 copied on. But I do recall that there was some
22 question about what we could get in terms of
23 various evidence from our own work on this
24 particular topic.

25 Q Right. I'm curious about the first sentence:

26
27 Have we done any sampling that would
28 counteract the findings of Alexandra's
29 sockeye research near the Discovery Islands?
30

31 That would be Dr. Alexandra Morton's work; is that
32 right?

33 A Yes.

34 Q Is DFO in the business of trying to counteract the
35 work of other scientists?

36 A DFO is in the business of trying objectively to
37 get to the truth.

38 MR. LEADEM: Could we have this marked as the next
39 exhibit, please.

40 THE REGISTRAR: Exhibit 641.
41

42 EXHIBIT 641: Email from Terry Davis to Brian
43 Riddell dated January 28, 2008
44

45 MR. LEADEM:

46 Q Tab 29, please. This is a Memorandum for the
47 Minister entitled "New Research Results on the

1 Interactions Between Sea Lice and Juvenile Pink
2 Salmon". Did you have a hand to play with respect
3 to either the drafting or reviewing of this
4 particular memorandum?

5 A Yes, I assume I did. Yes. Because the subtitle
6 has got the note on it that these are my revisions
7 in this document, so...

8 Q And under the "Analysis" portion there's a
9 statement:

10 This is the first Departmental...

11 This is second page, thank you, Mr. Lunn,
12 "Analysis":

13 This is the first Departmental confirmation
14 of lice-induced mortality on wild salmon and
15 will likely be used by ENGOs to support their
16 claims that salmon aquaculture farms cause an
17 increase in wild salmon mortality rates
18 through the spread of sea lice.

19 That was something that you either authored or
20 vetted, was it?

21 A I probably did not author this, but I assume from
22 the way that this is recorded is that I did vet
23 this. I did not get these documents in time to go
24 back and trace my own email records on this, but I
25 presume from what I can infer that that's correct.

26 MR. LEADEM: All right. Could this be marked as the
27 next exhibit, please.

28 THE REGISTRAR: Exhibit 642.

29 EXHIBIT 642: Memorandum for the Minister,
30 New Research Results on the Interactions
31 Between Sea Lice and Juvenile Pink Salmon

32 MR. LEADEM:

33 Q Now, Tab 30, please. This is the email I was
34 looking for with respect to the *Globe and Mail*
35 article that I showed you earlier, or the *Globe*
36 and *Mail* letter from Mr. Sprout. It's an email
37 from Terry Davis dated August 19, 2009. It's sent
38 directly to yourself from Mr. Davis, in which he
39 says:

40 I spoke to Paul Sprout on this. He is

1 concerned about backing away from the wording
2 we used in the media lines and the letter to
3 the editor of the Globe. The media lines
4 state: Sea lice from salmon farms...

5
6 And it goes on to basically quote from the *Globe*
7 and *Mail*. So you did receive this from Mr. Davis,
8 did you?

9 A Yes, I did.

10 MR. LEADEM: Next exhibit, please.

11 THE REGISTRAR: Do you wish to mark that document?

12 MR. LEADEM: Yes, sorry.

13 THE REGISTRAR: That was Tab 30, that would be 643.

14

15 EXHIBIT 643: Email from Terry Davis to Laura
16 Richards dated August 19, 2009

17

18 MR. WALLACE: And, yes, you have nine minutes left.

19 MR. LEADEM: Thank you.

20 Q Tab 31, please, of the Aquaculture Coalition's
21 documents. This appears to be an email exchange
22 written around that same timeframe, and the first
23 one is an email that you wrote to Mr. Davis, which
24 responded to an email that he sent you the same
25 date. Do you recall this?

26 A I do not recall this specifically.

27 Q But you're not denying that you did in fact send
28 this email.

29 A I'm not denying that I sent the email, no, it's
30 clearly I sent this email.

31 Q The email from Mr. Davis says that:

32

33 Alexandra Morton has submitted a letter that
34 she has written to the Minister to the
35 Georgia Strait and other media outlets. It
36 has been published in the Strait as well as
37 in the Courier-Islander. I have written a
38 possible response for your consideration, and
39 would like your advice on whether we should
40 respond.

41

42 So that's basically what you're doing there; is
43 that correct?

44 A That's correct.

45 MR. LEADEM: Might this be marked as the next exhibit,
46 please.

47 THE REGISTRAR: Exhibit 644.

1
2 EXHIBIT 644: Email exchange of August 19,
3 2009 between Terry Davis and Laura Richards
4

5 MR. LEADEM:

6 Q Now, looking back through the Memorandum to the
7 Minister and to what was unfolding back in 2009
8 and early 2010, around trying to explain the
9 declines in the 2009 return, it struck me that
10 there seemed to be almost an inordinate amount of
11 time being spent on saying why sea lice was not
12 necessarily the cause for the decline. Can you
13 explain why so much attention was being focused
14 upon sea lice back then?

15 A I think the attention that was being focused on
16 sea lice was in response to other work that was
17 being done in response to things, other things
18 that were being published in the media. And, you
19 know, that's why that was becoming apparent.

20 Q So you as a scientist were then in the business of
21 essentially responding to media letters, letters
22 to the editor, letters that appear in the media.
23 And it troubles me, because when you attended
24 earlier, some of the questions I put to you and to
25 Dr. Mithani specifically were that scientists
26 should be careful to insulate themselves from
27 becoming too political, from becoming protagonist
28 too much for either what their Department was
29 advocating or what their Minister was advocating.
30 Do you recall that general tenor of the discussion
31 that I had with you and Dr. Mithani on that
32 occasion?

33 A Yes. Yes, and I think I also need to correct
34 exactly what you've said. It's not that I am
35 writing; I am not writing letters to the media. I
36 am providing factual information that is going
37 into those letters.

38 Q But do you agree --

39 A And if there is something that's coming that is
40 technically incorrect, or that we think is, you
41 know, the kind of things where I might be more
42 involved, is if there is something seen to be
43 critical of DFO science, because I also see that I
44 need to be supportive of our staff and our
45 processes. So but our -- what we are trying to do
46 is be as factually and provide the technical
47 information, then trying to be as objective as

Laura Richards

Cross-exam by Mr. Leadem (CONSERV)

Cross-exam by Ms. Gaertner (FNC)

1 possible.

2 Q Do you agree with me that it's a very fine line
3 between vetting an email or vetting a potential
4 media release from Department of Fisheries and
5 Oceans for accuracy and actually spinning that in
6 terms of how that is going to be portrayed in the
7 media. There's a very fine line there, is it not?

8 A I don't dispute that there are, there are lines
9 all over this work, yes. But as I do want to
10 emphasize is that it's important that for our
11 perspective that Science is seen to be objective,
12 and we try to maintain that objectivity.

13 MR. LEADEM: Thank you. Those are my questions.

14 MR. WALLACE: Thank you. Ms. Gaertner.

15 MS. GAERTNER: Pleasantly surprised. It's Brenda
16 Gaertner for the First Nations Coalition and with
17 me, Leah Pence.
18

19

CROSS-EXAMINATION BY MS. GAERTNER:

20

21 Q Dr. Richards, I have just four or five questions
22 of you, depending on how we go from there.

23 Dr. Richards, given that Crown's obligations
24 to First Nations, including the Department of
25 Fisheries and Oceans, what steps have you taken,
26 and also given the importance of Fraser River
27 sockeye to First Nations that you're very aware
28 of. What steps have you taken to ensure that
29 First Nations have been provided the scientific
30 information and work which has informed the
31 briefing notes of December '09 and March '10, that
32 have been the subject of discussion today?

33 A Well, I think that, you know, basically in terms
34 of our work with First Nations, we will work
35 through -- I will work through my colleagues and
36 have some of this, a lot of the information is
37 communicated through the Fraser Panel, through the
38 Pacific Salmon Commission, where we do have First
39 Nation representatives.

40 Q What specific steps have you taken as Regional
41 Director of Science in the Pacific Coast --

42 A Right.

43 Q -- to make sure this information is getting to
44 First Nations?

45 A I have supported the attendance of staff at
46 specific meetings.

47 Q Which meetings, what staff? This is a very

- 1 serious matter, Dr. Richards. What information
2 has been provided to First Nations regarding viral
3 diseases and its potential impacts --
- 4 A Well, I'd say first of all --
- 5 Q -- impacts on Fraser sockeye salmon?
- 6 A Right, and I think first of all I want to be clear
7 that we are still trying to get more information
8 on this whole issue around the purported virus.
9 What we're trying to do is go forward with facts,
10 and we are still trying to work and find out what
11 exactly is going on. That information was -- some
12 of this information was presented, for example, at
13 the Pacific Salmon Commission sponsored meeting.
14 There were members of the Fraser Panel that were
15 in attendance at that meeting.
- 16 Q So that's general information around the reports
17 that have been provided. What -- have you told
18 your managers that they need to bring this
19 information to First Nations and the implications
20 of this to their rights and the potential
21 implications to the Fraser River sockeye?
- 22 A Well, I think at this point we're still trying to
23 sort out what we're trying to -- we're trying to
24 understand this issue ourselves.
- 25 Q Dr. Richards, we've heard lots of evidence in this
26 Inquiry about uncertainties.
- 27 A Yes.
- 28 Q And how it's always difficult --
- 29 A Yes.
- 30 Q -- for scientists to come to certain outcomes. It
31 is not scientists, we've heard from many people
32 from the Department of Fisheries and Oceans that
33 are --
- 34 A Yes.
- 35 Q -- that are supposed to balance those
36 uncertainties. That's to come to those whose
37 rights are going to be directly affected. What
38 steps have you taken?
- 39 A Well, what I am doing is supporting my staff in
40 various things. I know the staff are involved
41 with others. I can't say that there are things
42 that are directly that we are doing. We are
43 working in general through various consultative
44 processes that are organized by other sectors of
45 the Department. That's the way that we normally
46 operate.
- 47 Q You appreciate the potential devastating effect

- 1 this could have on the exercise of section 35
2 rights by the people that have a relationship to
3 Fraser River sockeye.
- 4 A I think this is just one piece of this overall
5 story. What we're trying to do is understand what
6 the story is.
- 7 Q They appreciate that there may be other pieces.
8 This one piece could be very important to them.
9 They did not fish in 2009.
- 10 A No.
- 11 Q What steps did you take to make sure they know
12 about what your scientists are learning?
- 13 A Well, we're still trying to, as I mentioned, I
14 think this story is very much still unfolding.
- 15 Q So can I take it that you haven't taken steps to
16 make sure that they know?
- 17 A I have not taken personal steps, if that's the
18 question is you're asking, but the work is that we
19 -- but we have been following our normal
20 processes. There are others in the Department who
21 are doing those direct consultations.
- 22 Q Dr. Richards, you're also aware that many First
23 Nations or some First Nations have informed the
24 Department of Fisheries that they are concerned
25 that there may be conflicts between your
26 obligations regarding Fraser River wild sockeye
27 salmon and aquaculture. Do you agree that given
28 those concerns it will be incumbent upon you to
29 make sure there are fulsome sharing of information
30 on all of these objectives, scientifics, facts
31 that you're unfolding?
- 32 A I think it's just a question of we're trying to
33 talk about the process here.
- 34 Q Yeah, I'm talking about process. What processes
35 are you using and relying upon to make sure First
36 Nations are getting this information?
- 37 A I mean, I fundamentally, I rely on working with my
38 colleagues in the Department, who have more direct
39 responsibility with First Nations.
- 40 Q Then I need to know what colleagues you relied
41 upon to make sure this information was getting to
42 First Nations in a timely manner, and where is the
43 -- where is that?
- 44 A I think at this point we have not been, as I say,
45 we're still trying to develop this information and
46 that's what this Inquiry is all about.
- 47 Q But you appreciate that it's not science that's

1 going to measure -- that is going to experience
2 the risks and uncertainties.

3 A But we also know that there are still lots of
4 questions about this, and we're --

5 Q There will always be questions, Dr. Richards.

6 A Yes, but what we're talking about is a field that
7 is going -- this particular piece that we're
8 talking about is something that is a rapidly
9 changing, rapidly getting some new information,
10 and we're all trying to come to grips with what
11 this means, so that we can explain it.

12 Q Dr. Richards, was Dr. Miller also told not to
13 speak to First Nations?

14 A Not to my -- I'm not aware of any discussion on
15 that topic.

16 Q So she was just told not to talk to the media?

17 A And I'm not aware of her -- other than in the
18 context of this one publication.

19 Q Given the obvious importance of this work to my
20 client's interests, and given the federal Crown's
21 obligations to First Nations, how is it, Dr.
22 Richards, that in response to Mr. McDade's
23 questions today regarding the funding of this
24 ongoing work, and as I understand the information
25 before us, it's funding that's less than \$100,000,
26 why is it that you couldn't come today to tell us
27 that this work is being done?

28 A I --

29 MR. TAYLOR: Well, that's not an accurate account of
30 the evidence. Dr. --

31 MS. GAERTNER: She has not been able to confirm that
32 this work has been done, nor has it been funded.

33 MR. TAYLOR: Dr. Richards has said that she doesn't
34 have specifics. Some has, she thinks, and some
35 work is ongoing, she's testified to it, and other
36 work she's not sure about.

37 MS. GAERTNER: Mm-hmm.

38 Q Dr. Richards --

39 A But we have, if I could, you know, what I have
40 done is I have done everything possible that I
41 could to make sure that Dr. Miller had funding to
42 continue this work. Some of the things that
43 you've looked at are proposals. I think in her
44 own mind the importance of some of this stuff is
45 changing and evolving. So and I wasn't able,
46 being given the timing of when I got this
47 information, I was not able to go and verify those

1 specific pieces. And to know, and sometimes even
2 if we put in a proposal, the work doesn't actually
3 transpire because of other things that happen
4 along the way.

5 So I know that this would have had a high
6 priority, and we would have done everything
7 possible to provide funding to her to do this, at
8 least for the highest priority pieces of this
9 work. Exactly where things are, I can't -- I
10 can't answer today.

11 Q Having reviewed the briefing materials that have
12 been filed today, and your responses, it doesn't
13 appear in any of the briefing materials that have
14 been filed today that the Crown's obligations to
15 inform First Nations about the potential impacts
16 of something like a virus on their rights was ever
17 a next step. Do you agree with me?

18 A That would not have been something that would have
19 thought, or that I would have put in, because
20 that, well, what we're trying to do is get at the
21 scientific evidence. So I would have --

22 Q But you're giving advice to the Ministers on what
23 next steps need to be taken, given the information
24 that you're --

25 A From the point of view of Science within the
26 Department.

27 Q But you appreciate as the Regional Director of
28 Science that this information could have very
29 strong impacts on First Nations rights.

30 A Well, and you know, I think it can have impacts on
31 others, too - I don't dispute what you're saying -
32 that, yes. But again we're trying to make sure
33 that we can move forward and get more -- we're
34 trying to work with the information that we had.
35 You know, my job is to inform up the line as a
36 first step.

37 Q Perhaps just one final general question, then, Mr.
38 Commissioner. As a Regional Director of Science,
39 when you're considering and making decisions
40 regarding the research you're going to do, the
41 next steps you're going to take, all of those
42 things, do you consider the Crown's obligations to
43 First Nations?

44 A That's generally not at the forefront. That would
45 be certainly -- that would come into play in some
46 pieces of the work we do. We have a very large
47 Science program. It would certainly come into

1 play on some of the stock assessment work that we
2 do and, as I say, we work with others and consult
3 with others in the Department who are probably
4 working more closely on some of these files.

5 Q But for some reason it didn't come to play when
6 you were looking at the causes, one of the primary
7 causes of decline in 2009, when Fraser First
8 Nations were not fishing?

9 A In our job, you know, I'm looking at my job as to
10 try to find the Science advice that I can pass
11 over to then others in the Department who are more
12 active in some of these other consultative issues
13 that you mention.

14 Q But you didn't advise the Minister that he should
15 take steps to inform First Nations?

16 A My recommendations were based on the science of
17 what we should be doing, and following to the best
18 of my knowledge in trying to update next steps on
19 the science.

20 MS. GAERTNER: Those are my questions, Mr.
21 Commissioner.

22 MR. WALLACE: Thank you, Ms. Gaertner.

23 Mr. Commissioner, those are all the
24 questioners in cross-examination. Mr. Taylor
25 informs me he has three questions in re-
26 examination. I have two, and if I might just say
27 at this point, Mr. Commissioner, I would like to
28 thank all counsel for working so hard to make this
29 work out today.

30 THE COMMISSIONER: Yes, I would like to add to that,
31 Mr. Wallace. The counsel throughout have been
32 gracious in accommodating the Commission counsel's
33 request for time limits, and I'm personally
34 grateful to all of them for being so cooperative.
35 I just have one question I just want to ask Dr.
36 Richards, if you don't mind, and then maybe Mr.
37 Taylor will follow up.

38

39 QUESTIONS BY THE COMMISSIONER:

40

41 Q Dr. Richards, in fairness to you, I don't have a
42 transcript in front of me so I'm not trying to put
43 words in your mouth. But my question is this. I
44 think I recall, I did make a note, but it wasn't
45 verbatim, that in an answer to, I think it was Mr.
46 McDade - I'm doing a lot of thinking here because
47 I don't have the transcript in front of me - I

Laura Richards

Questions by the Commissioner

Cross-exam by Mr. Taylor (cont'd) (CAN)

1 believe it was Mr. McDade, in reference to a
2 position or an opinion that had been expressed by
3 Dr. Miller. I think you used the words "that was
4 her personal opinion" or "personal view", or
5 something like that, and I apologize to you for
6 not having the exact words. I'm not sure I quite
7 followed that. Were you suggesting that she did
8 something on her personal time, or did you mean --
9 I'm not sure exactly what you meant by that.

10 A No, what I meant was that -- sorry. Yes, Mr.
11 Commissioner, what I meant was that this was work,
12 I mean, obviously the work that she's doing is
13 really very much on the cutting edge, and what she
14 was doing was really doing some speculations on
15 her part, which is part of the normal scientific
16 process and the way that Science operates. But I
17 think others within the group, or other fish
18 health experts may have had some different points
19 of view than that. So what I was trying to infer
20 was that those were -- that was her view at the
21 time.

22 Q Mm-hmm.

23 A It wasn't necessarily shared by everyone else in
24 the group.

25 Q Thank you very much.

26 A And part of my job was to try to then balance some
27 different points of view.

28 THE COMMISSIONER: Thank you very much. Mr. Taylor.

29 MR. TAYLOR: I had three questions when Mr. Wallace
30 asked me about two o'clock. But it's now almost
31 four o'clock, so I've found a couple more.

32

33 CROSS-EXAMINATION BY MR. TAYLOR, continuing:

34

35 Q Dr. Richards, as I heard the questioning from Mr.
36 McDade, there was a certain undercurrent to them
37 that was suggesting that Science should hurry
38 along, particularly with regard to the viral
39 disease that has been postulated. Can Science go
40 any faster than the research and facts will allow?

41 A I mean, we would very much like this to be sped
42 along, and we have been trying to very much
43 encourage this work to move forward. But this is,
44 I mean, basically this is a very challenging topic
45 and it's difficult. And so I think we've been
46 moving on this as quickly as we can.

47 Q There seemed to be another undercurrent to Mr.

- 1 McDade's questions that DFO is not forthcoming on
2 the risks of disease and/or underplays the risk.
3 What's your response to that?
- 4 A Well, I think we have been upfront in putting some
5 of these factors in the notes that we were
6 preparing. We have certainly have been talking
7 about these in some other forums and some other
8 meetings. But certainly we have been encouraging
9 development and trying to get forward the full
10 story on what's actually going on, and this is a
11 story that's still developing.
- 12 Q There is now Exhibit 640, which is a document that
13 perhaps Mr. Lunn could bring up to refresh your
14 memory. It comes from Tab 27 of the Aquaculture
15 documents. This is a briefing note. You may need
16 to see more pages there, but can you determine
17 from that whether it's a draft or a final version?
- 18 A That would have -- I am assuming that would have
19 been a draft version.
- 20 Q Mr. Leadem suggested in his questions to you that
21 as a scientist, or as a scientist and as the Head
22 of Science Branch, that there was an element of
23 becoming political or a protagonist in providing
24 input to media lines. Is the work that you do
25 that is subject of today's evidence regarding
26 media lines and/or providing input to potential
27 speeches, for that matter, a small or a large
28 portion of your work as a scientist and as the
29 Head of Science Branch?
- 30 A I think it's a relatively small portion of the
31 work that we actually do, that I actually do.
- 32 Q Is it the case nonetheless that in the context of
33 a government Department, in particular a
34 Department like Fisheries, which is science-based,
35 that it is something that needs to be done in the
36 course of your work, that is to say, Science needs
37 to provide input to media lines when requested,
38 and speeches, for that matter.
- 39 A Well, certainly what we need to do is make sure if
40 we have factual information that it is known, and
41 to try to contribute, and there are various ways
42 that we do that. This is one way. Probably
43 another way is something we also discussed
44 earlier, which would be through our CSAS process,
45 the centre for Science advice, and that would be a
46 more formal way that we would provide advice into
47 the Department.

Laura Richards

Cross-exam by Mr. Taylor (cont'd) (CAN)

Re-exam by Mr. Wallace

1 Q Ms. Gaertner asked you questions about what DFO,
2 or more particularly the Science Branch did or
3 didn't say or inform First Nations of about
4 information. I was never clear from her questions
5 what information precisely we're talking about,
6 but nonetheless it's in the context of disease.
7 My question of you is do you know whether First
8 Nations have science advisors?

9 A In some cases that they do. In other cases they
10 do not. So there is a bit of a mixture within the
11 organizations.

12 Q And do scientists talk to scientists?

13 A Absolutely they do.

14 Q And share information?

15 A Yes.

16 Q And does that include DFO scientists talking to
17 First Nation-retained scientists?

18 A Where that opportunity exists, yes, absolutely.

19 MR. TAYLOR: Thank you.

20 MR. WALLACE: Thank you, Mr. Commissioner.

21
22 RE-EXAMINATION BY MR. WALLACE:
23

24 Q Dr. Richards, I just have two questions about two
25 documents. I wonder, Mr. Lunn if you could pull
26 up Exhibit 615, which, Dr. Richards, you'll find
27 at Tab 4 in the binder that the Commission
28 provided you this morning. Mr. McDade asked you
29 about that document, about the early version of
30 the factors causing decline, briefing notes. And
31 in your evidence in responding to some of his
32 questions about that memo, you said that those
33 early statements were those of Mark Saunders, and
34 they were Mark Saunders' views and not yours. I'm
35 looking at the email that is at the first page of
36 Tab 4, and I'm just -- it says here in Mr.
37 Saunders' email to you:

38
39 Hi Laura,

40
41 Still needs summary bullets. Hopefully this
42 is closer. Could easily move the
43 hypotheses...

44
45 And so on. That suggests to me that the version
46 of the briefing note attached was produced by Mr.
47 Saunders in response to a question from you, and

1 that the bullets that Mr. McDade took you to in
2 that Mr. Saunders was trying to reflect what you
3 had asked him to reflect; is that fair?

4 A I think, no. I think certainly Mr. Saunders was
5 the one who did the drafting of these notes. I
6 think I would have perhaps discussed with him an
7 overall approach about -- but a lot of the way
8 that this was formulated was really the thinking
9 of Mr. Saunders.

10 Q Do you recall what it was that you asked him to do
11 in producing this memo and those bullets?

12 A I'm sorry, but, no, I don't recall that specific
13 discussion. I think one of the things we were
14 talking about was just in terms of how to organize
15 the material to make it as clear as possible in
16 going forward. I think the way that this was sort
17 of organized in terms of the magnitude of the
18 impact was one of the pieces we were hoping to
19 help bring some clarity to a very confusing and
20 potentially complex issue.

21 Q Thank you. The second question I have at this
22 point is with respect to Exhibit 643, which is Tab
23 29 of the Aquaculture Coalition documents. And in
24 that, your evidence was in response to Mr. Leadem
25 -- could you pull up 642, I think I had the wrong
26 number. Thank you, it's 642. Sorry, I was wrong,
27 Dr. Richards, it's 642.

28 And in answer to a question from Mr. Leadem
29 you said you weren't sure if you were involved as
30 a drafter. Well, we have the benefit of
31 technology here that you don't have in front of
32 you, and I wonder if, Mr. Lunn, you could pull up
33 the reference from our documents that we gave to
34 you before, CAN286996. And this appears to be, or
35 this is the email that was covering the document
36 which is now 642. And I'm wondering if that just
37 perhaps refreshes your memory that you appear to
38 have been involved in drafting that document.

39 A Sorry, if you had heard that I said I wasn't, I
40 think that was incorrect.

41 Q No, no, no, you didn't say, you didn't deny it,
42 you said you didn't know.

43 A Well, I was just saying, I was looking at the name
44 attached to the file, which suggests that I did do
45 it, because that was the way that I would have
46 named a file. So therefore I did touch that
47 document.

1 Q Yes, all right. I just wanted to make the record
2 clear --

3 A Yes.

4 Q -- as to that, and this I think does so. I
5 wonder, Mr. --

6 MR. TAYLOR: I think in fairness to the witness, she
7 specifically pointed in her evidence in answer to
8 whatever lawyer was asking the question, to the
9 note at the bottom about "L. Richards rev".

10 MR. WALLACE: I agree. And this is, I am producing
11 this as a covering -- is that the one? The
12 covering email, in any event, it's the cover
13 email, and I would ask, Mr. Lunn, that that be
14 marked as 642A.

15 THE REGISTRAR: It will be so marked.

16
17 EXHIBIT 642A: Cover email from Brian Riddell
18 to Laura Richards re Sea Lice Management
19 briefing notes
20

21 MR. WALLACE: Mr. Commissioner, I have no further
22 questions. Dr. Richards, thank you very much for
23 your attendance here today.

24 THE COMMISSIONER: Yes, Dr. Richards, may I also thank
25 you for your willingness to return today, and
26 answering the questions of all counsel who have
27 put questions to you. Thank you very much.

28 And to all other counsel, as you know, we are
29 adjourned after -- did Mr. Taylor have another
30 question? No, he just looks questionable.

31 MR. TAYLOR: I'm just slow in finding CAN numbers, tabs
32 and exhibits.

33 THE COMMISSIONER: Sorry, I thought you had another
34 question.

35 As you know, we're adjourned now, I think
36 it's until April 4th, Monday April 4th. And so as
37 my grandchildren call it "spring break". I don't
38 know what you call it. When our teachers used to
39 tell us that, there was a collective "Hooray" in
40 the room, and so I'm sure silently there's a
41 collective "Hooray" in this room as well. But I
42 wish you a well spent, hopefully a little bit of
43 relaxation time over the next couple of weeks, as
44 we gear up for the balance of our hearings. And I
45 thank you all again. As Mr. Wallace said, many of
46 you have been here most days. Some of you have
47 not been, but there has been a great degree of

1 cooperation and I'm always grateful when counsel
2 are able to do that. It makes my work and
3 hopefully your work more pleasant and more
4 efficient.

5 I'm sorry, Mr. Giles, did you -- oh, Mr.
6 Giles, who keeps a record of this apparently,
7 tells me we're at day 58, Exhibit 44. We have
8 heard, I think, 70 witnesses. I'm not sure what
9 the recalled is, is that 38 recalled?

10 THE REGISTRAR: Thirty-eight recalled with a break in
11 between.

12 THE COMMISSIONER: Ah, I see. So for those of you who
13 don't have enough data and statistics in front of
14 you, you can add this to your body of information.

15 Thank you all very much again, and enjoy your
16 break.

17 THE REGISTRAR: The hearing is now adjourned till
18 Monday, April the 4th at 10:00 a.m.

19
20 (PROCEEDINGS ADJOURNED AT 3:57 P.M. TO APRIL
21 4, 2011 AT 10:00 A.M.)
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1 I HEREBY CERTIFY the foregoing to be a true
2 and accurate transcript of the evidence
3 recorded on a sound recording apparatus,
4 transcribed to the best of my skill and
5 ability, and in accordance with applicable
6 standards.

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10 _____
11 Karen Hefferland

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

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21 _____
22 Susan Osborne

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

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34 Karen Acaster

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

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46 Pat Neumann
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