

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



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

## Public Hearings

## Audience publique

**Commissioner**

L'Honorable juge /  
The Honourable Justice  
Bruce Cohen

**Commissaire**

**Held at:**

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

Monday, November 29, 2010

**Tenue à :**

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

le lundi 29 novembre 2010

## APPEARANCES / COMPARUTIONS

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Tim Timberg Geneva Grande-McNeill	Government of Canada
Boris Tyzuk, Q.C. D. Clifton Prowse, Q.C.	Province of British Columbia
No appearance	Pacific Salmon Commission
No appearance	B.C. Public Service Alliance of Canada Union of Environment Workers B.C. ("BCPSAC")
Charlene Hiller	Rio Tinto Alcan Inc ("RTAI")
Alan Blair Shane Hopkins-Utter	B.C. Salmon Farmers Association ("B.C.SFA")
No appearance	Seafood Producers Association of B.C. ("SPAB.C.")
Lisa Glowacki	Aquaculture Coalition: Alexandra Morton; Raincoast Research Society; Pacific Coast Wild Salmon Society ("AQUA")
Tim Leadem, Q.C. Judah Harrison	Conservation Coalition: Coastal Alliance for Aquaculture Reform Fraser Riverkeeper Society; Georgia Strait Alliance; Raincoast Conservation Foundation; Watershed Watch Salmon Society; Mr. Otto Langer; David Suzuki Foundation ("CONSERV")
Don Rosenbloom	Area D Salmon Gillnet Association; Area B Harvest Committee (Seine) ("GILLFSC")

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

David Butcher, Q.C.	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")

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

No appearance	Métis Nation British Columbia ("MNB.C.")
No appearance	Sto:lo Tribal Council Cheam Indian Band ("STCCIB")
No appearance	Laich-kwil-tach Treaty Society James Walkus and Chief Harold Sewid Aboriginal Aquaculture Association ("LJHAH")
No appearance	Heiltsuk Tribal Council ("HTC")
No appearance	Musgagmagw Tsawataineuk Tribal Counsel ("MTTC")

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Vancouver, B.C. /Vancouver (C.-B.)  
November 29, 2010/le 29 novembre  
2010

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2  
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4  
5 THE REGISTRAR: The hearing is now resumed.

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

9 Mr. Commissioner, this morning we embark on  
10 the Wild Salmon Policy, Part 1, of these hearings.  
11 We have here this morning a panel of witnesses who  
12 will speak to the development of that policy. And  
13 this -- if I may just briefly introduce them to  
14 you and to the participants.

15 On our left is Dr. Brian Riddell who will  
16 speak to the genesis of the Wild Salmon Policy,  
17 and also to his involvement in its development.  
18 To Dr. Riddell's left is Mr. Pat Chamut. Mr.  
19 Chamut was the Assistant Deputy Minister of Fish  
20 Management with DFO, and just before his  
21 retirement from DFO in 2005, he was a special  
22 advisor with responsibility for the development of  
23 the Wild Salmon Policy. To Mr. Chamut's left is  
24 Mark Saunders who was the Wild Salmon Policy  
25 development coordinator from 2003 to 2005. On his  
26 left is Dr. Jim Irvine who has been involved in  
27 the Wild Salmon Policy forever.

28 Now, I wonder if we could ask to have these  
29 witnesses affirmed, and then we'll proceed.

30 THE REGISTRAR: Witnesses, do you solemnly affirm that  
31 the evidence to be given by you to this hearing  
32 shall be the truth, the whole truth and nothing  
33 but the truth? Witness number 1, how do you  
34 respond?

35 DR. RIDDELL: I do.

36 THE REGISTRAR: Number 2?

37 MR. CHAMUT: I so affirm.

38 THE REGISTRAR: Number 3?

39 MR. SAUNDERS: I do.

40 THE REGISTRAR: Number 4?

41 DR. IRVINE: I so affirm.

42 THE REGISTRAR: Witness number 1, provide your full  
43 name, please?

44 DR. RIDDELL: Brian Riddell.

45 THE REGISTRAR: Thank you. Number 2?

46 MR. CHAMUT: Patrick Steven Chamut.

47 THE REGISTRAR: Thank you. Number 3?



1 MR. SAUNDERS: Mark William Lewis Saunders.

2 THE REGISTRAR: Thank you.

3 DR. IRVINE: James Richard Irvine.

4 THE REGISTRAR: Thank you.

5 MR. WALLACE: Thank you very much. As a matter of  
6 housekeeping, I've submitted to the participants  
7 last week a list of a number of exhibits that I  
8 asked to have entered by consent that relate to  
9 this panel, as a matter of efficiency, and we  
10 received that -- well, there were no objections  
11 other than for about four documents that the  
12 Government of Canada objected to, so I will just,  
13 if I may, ask the participants to go to the list  
14 which Mr. Lunn has on the screen, and I take it  
15 there are no objections to the other documents.  
16 So if I may ask that Exhibit 9 -- or, sorry,  
17 document number 9 be given the next exhibit  
18 number.

19 MR. LUNN: I think that belongs -- have the wrong list  
20 on the screen.

21 MR. WALLACE: Oh, yes, yes, sorry.

22 MR. LUNN: I've got it in hard copy here.

23 MR. WALLACE: Well, then, let me -- okay. So document  
24 number 9 -- how do we deal with this?

25 MR. BUTCHER: Bring a sample up.

26 MR. WALLACE: Oh, it has the same numbers. Thank you.

27 MR. LUNN: That's true, it does.

28 MR. WALLACE: So this is document number 8 from the  
29 Wild Salmon Policy development list of proposed  
30 exhibits.

31 THE REGISTRAR: That will be marked as Exhibit number  
32 78.

33

34 EXHIBIT 78: Wild Salmon Policy discussion  
35 paper, "A New Direction" dated March 1, 2000  
36

37

37 MR. WALLACE: Number 13.

38 THE REGISTRAR: Seventy-nine:  
39

39

40 EXHIBIT 79: Response to Consultations on The  
41 Wild Salmon Policy Discussion Paper and the  
42 Salmon Enhancement Program dated February 1,  
43 2002  
44

44

45 MR. WALLACE: Fourteen.

46 THE REGISTRAR: Eighty.  
47

47

1 EXHIBIT 80: Wild Salmon Policy Draft, "A New  
2 Direction", dated February 20, 2002  
3

4 MR. WALLACE: Fifteen.  
5 THE REGISTRAR: Eighty-one.  
6

7 EXHIBIT 81: Wild Salmon Policy, presentation  
8 to Policy Committee, April 5, 2002  
9

10 MR. WALLACE: Sixteen.  
11 THE REGISTRAR: Eighty-two.  
12

13 EXHIBIT 82: RMC Meeting, April 25, 2002,  
14 Record of Decisions  
15

16 MR. WALLACE: Seventeen.  
17 THE REGISTRAR: Eighty-three.  
18

19 EXHIBIT 83: Review of the 2002 Fraser River  
20 Sockeye Fishery, report by the External  
21 Steering Committee  
22

23 MR. WALLACE: Eighteen.  
24 THE REGISTRAR: Eighty-four.  
25

26 EXHIBIT 84: Email from Steven Wright to Paul  
27 Macgillivray dated May 9, 2003  
28

29 MR. WALLACE: Twenty-one.  
30 THE REGISTRAR: Eight-five.  
31

32 EXHIBIT 85: Email from Paul Sprout to John  
33 Davis dated July 16, 2003  
34

35 MR. WALLACE: Twenty-two.  
36 THE REGISTRAR: Eighty-six.  
37

38 EXHIBIT 86: Memorandum to Paul Chamut from  
39 Regional Director General dated December 3,  
40 2003  
41

42 MR. WALLACE: Twenty-three.  
43 THE REGISTRAR: Eighty-seven.  
44

45 EXHIBIT 87: Memorandum to Regional  
46 Management Committee from Associate Regional  
47 Director General dated December 3, 2003

1 MR. WALLACE: Twenty-four.  
2 THE REGISTRAR: Eighty-eight.

3  
4 EXHIBIT 88: 2004 Report of Commissioner of  
5 Environment and Sustainable Development,  
6 Chapter 5

7  
8 MR. WALLACE: Twenty-five.  
9 THE REGISTRAR: Eighty-nine.

10  
11 EXHIBIT 89: Memo to DMC Members from  
12 Michaela Huard

13  
14 MR. WALLACE: Twenty-eight.  
15 THE REGISTRAR: Ninety.

16  
17 EXHIBIT 90: Policy Framework for  
18 Conservation of Wild Pacific Salmon, draft  
19 dated November 3, 2004

20  
21 MR. WALLACE: Twenty-nine.  
22 THE REGISTRAR: Ninety-one.

23  
24 EXHIBIT 91: Policy Framework for  
25 Conservation of Wild Pacific Salmon dated  
26 December 2004

27  
28 MR. WALLACE: Thirty-three.  
29 THE REGISTRAR: Ninety-two.

30  
31 EXHIBIT 92: Email from Paul Chamut dated  
32 March 29, 2005 re "Definitions and Principles  
33 for Wild Salmon Policy".

34  
35 MR. WALLACE: Thirty-six.  
36 THE REGISTRAR: Ninety-three.

37  
38 EXHIBIT 93: Canada's Policy for Conservation  
39 of Wild Pacific Salmon dated May 16, 2005

40  
41 MR. WALLACE: Thirty-eight.  
42 THE REGISTRAR: Ninety-four:

43  
44 EXHIBIT 94: Memo from the Minister date-  
45 stamped May 27, 2005

46  
47 MR. WALLACE: Thirty-nine.

1 THE REGISTRAR: Ninety-five.

2

3

EXHIBIT 95: Memo from the Minister date-  
stamped May 31, 2005

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6

MR. WALLACE: Now, from -- there's one document from  
the Wild Salmon Policy implementation list of  
proposed exhibits, and that would document -- the  
document from last number 43.

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10 THE REGISTRAR: Ninety-six.

11

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EXHIBIT 96: Article in *Science Direct* by  
James R. Irvine

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14

15

MR. WALLACE: And there are two documents which are not  
in Ringtail, but have been provided to  
participants. The first was provided to  
participants on November 12th and is a Powerpoint  
presentation entitled, "The Build-up to Canada's  
Policy for Conservation of Wild Pacific Salmon,  
1980 to 2000."

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22 THE REGISTRAR: Number 97.

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EXHIBIT 97: Powerpoint presentation  
entitled, "The Build-up to Canada's Policy  
for Conservation of Wild Pacific Salmon, 1980  
to 2000."

26

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MR. WALLACE: And the final document, also provided to  
participants on November 12th with the speaking  
notes entitled, "Setting the Stage for Canada's  
Wild Salmon Policy, 1980 to March 2000."

30

31

32

33

34 THE REGISTRAR: Ninety-eight.

35

36

37

EXHIBIT 98: Speaking notes entitled "Setting  
the Stage for Canada's Wild Salmon Policy,  
1980 to March 2000".

38

39

40

MR. WALLACE: Thank you. Mr. Commissioner, with that  
out of the way, I would, as I mentioned, Dr.  
Riddell is going to start his evidence using a  
Powerpoint presentation and speaking to the  
genesis of the wild salmon policy.

41

42

43

44

MR. BUTCHER: This is Exhibit 97.

45

46

MR. WALLACE: Is this Exhibit 97? And the Powerpoint  
presentation is Exhibit 97. Thank you. Dr.  
Riddell, please.

47

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49

1 EXAMINATION IN CHIEF BY MR. WALLACE:  
2

3 DR. RIDDELL: Thank you. Good morning, Commissioner  
4 Cohen and others. It's my pleasure to introduce  
5 to you Canada's policy for the conservation of  
6 wild Pacific salmon. We have limited time, so I  
7 have taken the chore on of trying to give you some  
8 edited notes so we can go through this fairly  
9 quickly.

10 I was asked to address two topics. One is  
11 the build-up to the first draft in March 2000 of  
12 the Wild Salmon Policy covering the period 1980 to  
13 2000, and also to comment on the introduction of  
14 how conservation units were developed. This will  
15 be a very short graphic presentation. The methods  
16 have been fully documented in Holtby and Ciruna,  
17 published in 2007 and submitted as Canada document  
18 004-236.

19 I've also provided the accompanying text that  
20 Mr. Wallace has just referred to, and I should  
21 note at the very beginning that the presentation  
22 obviously reflects my personal perspective on the  
23 background, but the policy's development certainly  
24 benefited from the involvement of many others,  
25 some you'll meet this week, plus the input of many  
26 public groups and individuals that have  
27 participated in consultations leading up to the  
28 final draft in 2005.

29 I've summarized the build-up into three main  
30 topics. The period 1980 to 2000 was a period of  
31 major change in science and thinking about the  
32 importance of diversity in resource management,  
33 and by no means only in salmon. The second topic  
34 addresses the importance of diversity in Pacific  
35 salmon, sometimes referred to as the stock  
36 concept, as it naturally integrates the habitat  
37 and ecosystems into salmon production and its  
38 management. Simply stated, maintaining salmon  
39 diversity provides the greatest opportunity for  
40 sustaining salmon production.

41 And the final point then is how we managed  
42 this diversity. How should we manage diversity in  
43 Pacific salmon, given their geographic range and  
44 the number of streams throughout British Columbia  
45 and the Yukon? I'll show you the number of  
46 populations like that later.

47 So the first slide, talking about the 1980 to

1 2000 period, I refer to it as a chronology of  
2 change. This really was a period of significant  
3 accomplishments, new agreements, historic highs  
4 and lows in salmon production and changes in  
5 resource management. Ironically, the Wild Salmon  
6 Policy probably changes management outside of the  
7 Fraser sockeye more than in most cases. Fraser  
8 sockeye have had the stock concept well ingrained.

9 In my submission, the supplemental text is my  
10 perspective including 25 events that contributed  
11 to the development of the policy. I'm sure that  
12 other participants would add more and different  
13 examples. For example, I've not focused much on  
14 habitat management or the development of reference  
15 points and the use or application of precaution in  
16 setting our management objectives.

17 I have condensed my 25 bullets into the five  
18 summary points presented on this slide. So we're  
19 talking about the development of new ideas in  
20 conservation, biology and biodiversity, a real  
21 explosion in research in population genetics from  
22 both methods and types of analyses and  
23 applications in fisheries. It was a period of  
24 introspection and change in fisheries, and I'll  
25 just show you an example of this graphically.

26 I provide attachment 1 in my written  
27 submission to indicate the extent of change that  
28 actually occurred in the commercial catches and  
29 compared it with the numbers of salmon spawners  
30 since the mid-1990s. The lines are smooth trends  
31 of the actual data, but indicate the major change  
32 within the commercial fisheries occurred in order  
33 to sustain the number of salmon spawning,  
34 particularly after 1996 and onward.

35 This figure was prepared for the December  
36 2004 draft of the Wild Salmon Policy, but was  
37 excluded from the later ones 'cause it really does  
38 not comment on salmon diversity. These are sums  
39 of all species in catches and rivers.

40 Even with the reduction in catches, there  
41 were significant concerns about populations of  
42 salmon that needed conservation. Some notable  
43 examples were provided in the text: Cultus Lake  
44 sockeye, Sakinaw Lake sockeye, B.C. Interior coho  
45 for the Fraser River, Rivers and Smith Inlet,  
46 sockeye salmon.

47 The final two points to really be made are

1 the major changes in agreements going from the  
2 international biodiversity convention to the  
3 establishment of the first comprehensive agreement  
4 on Pacific salmon, Pacific Salmon Treaty with the  
5 United States. I'd also note key scientific  
6 papers in conservation, major environmental events  
7 including the extraordinary El Nino event of 1982  
8 and 1991 to '93. I think we're all aware of a  
9 heightened environmentalism that occurred  
10 throughout that period.

11 All of this occurred with a broadening  
12 development of Canada's salmon enhancement program  
13 and associated debates, listings of Pacific salmon  
14 under the **Endangered Species Act** in the United  
15 States, the development of wild salmon policies  
16 and recovery programs in Washington State, Oregon,  
17 California, and the heightened debate between  
18 users within Canada under the Pacific Salmon  
19 Treaty and for conversation, and increasingly  
20 vocal environmental concerns about biodiversity  
21 and ecosystems. These 20 years really were a  
22 significant period of change and reassessment in  
23 fisheries science.

24 The second point I want to refer to is the  
25 value of diversity in Pacific salmon. I call it  
26 the original value. The reason for that is that  
27 the distribution and availability of Pacific  
28 salmon to the First Nations and to the natural  
29 ecosystems were really the original value of  
30 salmon, but the non-Native commercial fishers  
31 developed very rapidly following the late 1800s,  
32 and by the early 1900s, the diversity of salmon  
33 was widely recognized by fishers and biologists.

34 The home stream theory developed, the stock  
35 concept developed. These were discussed for a  
36 long time before they were formalized in 1939.  
37 The genetic evidence for the importance of these  
38 to salmon conservation was not established until a  
39 Canadian scientist, Bill Ricker (phonetic),  
40 published in 1972.

41 Interesting question is then presented about  
42 given the importance of the stock concept and  
43 diversity in salmon, why did we really need to  
44 establish a new Wild Salmon Policy?

45 These are my personal summaries that I've  
46 used in a number of different talks and I used in  
47 lectures for universities. Why wasn't the stock

1 concept in Pacific salmon sufficient? Well, the  
2 diversity amongst populations was acknowledged.  
3 The concept was frequently misused or  
4 misunderstood, and in practice, stocks had become  
5 identified as management units, but the  
6 composition of diversity within the stock was  
7 frequently not protected or fully appreciated.

8 There is a question about how stock should be  
9 delineated, and I'll show you in a second about  
10 individual streams, and species that have been  
11 referred to as stocks in a prominent publication  
12 are not genetic lineages, unique genetic lineages.  
13 The Department can't manage in excess of 8,000  
14 individual combinations of streams and species.

15 The stock concept also emphasizes differences  
16 between populations, but the underlying process,  
17 called adaptability, is equally important and  
18 really has been lost in discussion. The reference  
19 to Peter Larkin, 1974, is simply noting that this  
20 is not something that's new, that they had been  
21 discussed for a long period of time.

22 The final point was that as we started  
23 talking about diversity, instead of acknowledging  
24 the need to conserve it, the discussion frequently  
25 became about how much do you really need?

26 I think in the genesis of the Wild Salmon  
27 Policy, by the mid-1990s, the debate about  
28 diversity and the stock concept had led me to  
29 develop three major principles that really needed  
30 to be incorporated into managing and valuing  
31 salmon diversity, and to make one significant  
32 conclusion, by my mind.

33 These three principles I summarize here.  
34 I'll go through these briefly. The adaptation  
35 that we observe today really reflects past  
36 environments and conditions, but evolution as a  
37 continuous process, and you need to maintain the  
38 adaptability of salmon, and that's what's really  
39 critical for our future. The genetic lineages  
40 today are irreplaceable and they provide the basis  
41 of our current production.

42 Secondly, the interest in ecological and  
43 habitat diversity, these are the templates against  
44 which genetic diversity develops. So the tie  
45 between conservation units, habitats and  
46 ecosystems within the Wild Salmon Policy is very  
47 natural and is actually required.



1           Finally, maximizing production and diversity  
2 of salmon are actually consistent objectives.  
3 They are not inconsistent in that, and in  
4 management, this trade-off that people debate is  
5 really about the rate of use, not about total  
6 production. The rate of use is directly related  
7 to the quality of the habitat and the ecosystems  
8 and the rate of productivity.

9           So the conclusion that I had personally drawn  
10 by the early 1990s is that scientifically, there's  
11 no question that diversity in Pacific salmon is  
12 essential for their continuance and for  
13 sustainable benefits. Accepting these leads to  
14 the problem, then, of the third item:  
15 incorporating diversity and challenge. How do you  
16 delineate this diversity from management?

17           This brings us to a slide with a table. This  
18 is extracted from the publication that was also  
19 submitted by Slaney et al in 1996. In here, stock  
20 is rather misused and it's heightened by the  
21 scientific paper here. They identified over 8200  
22 stocks by defining individual species in every  
23 stream as a stock. But these individual  
24 combinations are not unique genetic lineages of  
25 salmon and DFO has never tried to manage at this  
26 micro-scale. This leads us to a challenge, then,  
27 about how do you organize salmon diversity in a  
28 way that can be addressed in management?

29           These streams and species combinations are  
30 only the base of the spatial organization of  
31 salmon. Through time, these groups of local  
32 spawning clusters become isolated from other such  
33 groups through changes in habitat, the distance  
34 between them or the geographic isolation and  
35 random events.

36           This figure is taken from a paper I've also  
37 submitted, or I did in 1993, an inverted triangle  
38 specifically to make the point that the local  
39 spawning populations and individual pairs of  
40 salmon are the base of the triangle from which  
41 everything else is developed. The gradual  
42 isolation of spawning groups or populations and  
43 the development of adaptations within them, form  
44 the biological and geographic variation through  
45 space used to define conservation units within the  
46 Wild Salmon Policy.

47           There are three important points about the

1 definition of conservation units. The major  
2 premise of the policy is that the genetic  
3 similarity within conservation units is greater  
4 than between them. Secondly, that the diversity  
5 within the conservation units provides a means to  
6 recolonize local spawning populations or demes  
7 that may become extirpated within a conservation  
8 unit. Thirdly, that the spatial size and spatial  
9 scale of conservation units are very different  
10 between species, largely reflecting the specific  
11 species' genetic structure and their history.

12 I provide you just one example. This is the  
13 graphic distribution of even your pink salmon  
14 conservation units after the methodology of Holtby  
15 and Ciruna. You see for all of the spawning  
16 populations over which there's approximately 3000  
17 streams in B.C. with pink salmon spawning, they  
18 can be condensed to only 13 conservation units  
19 that encompass all of their distribution in  
20 British Columbia. There are no pink salmon in the  
21 Alsek and there are no pink salmon in the Canadian  
22 portion of the Yukon drainage.

23 Fraser sockeye salmon only occur in the odd  
24 years, and so if this example was odd-year pink  
25 salmon, there would actually still only be 19  
26 conservation units for all of British Columbia.

27 However, the opposite extreme is lake-rearing  
28 sockeye salmon with over 200 conservation units.  
29 They're typically localized to specific lakes and  
30 there could be multiple CU's within a larger lake.  
31 This discreteness of these population units has  
32 also been reinforced by a history of extensive  
33 efforts to transplant sockeye between lakes with  
34 essentially complete failure; for example, efforts  
35 to restore sockeye salmon into the Upper Adams  
36 River above Adams Lake in the Fraser basin.  
37 Essentially, each sockeye CU is irreplaceable.

38 Which brings me, then, to the final portion  
39 that will be largely graphical. How did we define  
40 conservation units? The definition in the box in  
41 the slide is directly from the Wild Salmon Policy  
42 itself. The citation is to the Holtby and Ciruna  
43 that has been submitted, in that, and so I'm going  
44 to show you a very condensed version of how all  
45 that work was done.

46 Well, we started from three basic premises,  
47 really. The natural special organization of

1 salmon are what we call networks of populations  
2 across varying habitats, and this represents the  
3 intra-specific diversity critical to salmon.

4 Secondly, there's a need to manage  
5 uncertainty, to be precautionary in the future, and  
6 this is for a number of reasons. High uncertainty  
7 in the data, significant environmental impacts  
8 with unpredictable interactions and outcomes, and  
9 because of our expectations for climate change,  
10 what we -- sort of a phrase we use if the future  
11 isn't represented by the past, then we basically  
12 have a very limited base to work from.

13 Finally, the essential need, under the Wild  
14 Salmon Policy, is to protect adaptability in  
15 salmon, not just the current adaptations.

16 Well, we can break the methodology down into  
17 two fundamental steps. The first step is map-  
18 based without consideration of salmon other than  
19 their presence or absence, nothing about salmon  
20 other than that they exist in a particular  
21 geographic area. The second stage after the first  
22 is then we apply the biological and genetic  
23 attributes of salmon within each of these map  
24 areas.

25 So the first step applies to existing  
26 analyses to subdivide British Columbia into zones  
27 that are ecologically similar. Those analyses  
28 used river habitats, what we call fluvial  
29 freshwater habitats, near shore and marine  
30 habitats, and zoogeography which -- for freshwater  
31 fishes throughout British Columbia.

32 In combination, these ecological  
33 considerations determined what we call 38 joint-  
34 adaptive zones in British Columbia and the Yukon.  
35 However, they do not all include each species of  
36 salmon. I'll step you through some maps to show  
37 you more clearly how this comes about. After you  
38 have the 38 joint-adaptive zones where each of  
39 these salmon species are known to recur, these are  
40 referred to as ecotypic conservation units, and  
41 they would define one conservation unit at a  
42 minimum if a species existed within it. I'll just  
43 show you three slides here in terms of how we got  
44 to this end point.

45 This is a map developed by the Province of  
46 B.C. It defines B.C.'s freshwater adaptive zones.  
47 The slide also includes what are the critical

1 parameters there: similar climate, geography,  
2 hydrography and connectivity, common species and  
3 we look at the salmon populations within each. So  
4 this is simply map 1 that we start with from the  
5 Province of B.C.

6 Map 2 is the marine zones. So this has to do  
7 with the estuary and near-coastal conditions that  
8 the salmon would go out into. This work was  
9 conducted through the Wild Salmon Centre and done  
10 throughout the North Pacific. So this is the map  
11 for British Columbia only.

12 When you then use graphic information systems  
13 to combine all of these, we end up with the 38  
14 joint-adaptive zones. All of this is done without  
15 any consideration of salmon at this point. So  
16 this is straight sort of zoogeography and  
17 environment.

18 Now, at this point, we then start looking at  
19 the biological attributes. So step 2, after  
20 determining the ecotypics you use, the joint-  
21 adaptive zones for Pacific salmon, the methodology  
22 then starts examining things like genetic  
23 population structure, life history variation,  
24 habitat, all to further characterize diversity  
25 within the species.

26 Through combinations and splits of these  
27 ecotypic conservation units, we determine the  
28 final conservation units for salmon that have been  
29 published now. The intent of all this work is to  
30 identify groups of spawning sites where fish are  
31 adaptively similar and hence are likely to be  
32 ecologically interchangeable.

33 To finish up quickly, this is the end of the  
34 first round. So after looking at all of the  
35 methodology, we come down to 435 conservation  
36 units accounting for all the information we have  
37 available on 8200 combinations of species and  
38 streams for the five species of Pacific salmon.  
39 The policy does not include steelhead or cutthroat  
40 trout at this time.

41 These are the currency used by species for  
42 British Columbia. As the text notes here, they  
43 will be increased by accounting for Chinook, chum  
44 and coho salmon in the Yukon drainage. I should  
45 point out further that the original delineation of  
46 the conservation units was recognized as a  
47 starting point, and they will be modified as new

1 information becomes available. So we may have  
2 more, we may have fewest (sic). The default was  
3 to maximize conservation of diversity if there was  
4 any uncertainty.

5 Finally, just to bring us to the Wild Salmon  
6 Policy, this summary slide has been used in many  
7 public presentations only to emphasize that  
8 strategies 1, 2 and 3, addressing the spatial  
9 definition of salmon, the assessment of habitat  
10 and consideration of ecosystem values, are all  
11 what we called information-gathering or  
12 organizational and they provide inputs to strategy  
13 4. Strategy 4 is where local communities and  
14 users have input to the long-term planning and  
15 management of Pacific salmon for their -- within  
16 their local ecosystems.

17 That is the end of my talk so hopefully it  
18 provides you some insight into the policy.

19 MR. WALLACE: Thank you, Dr. Riddell. I just have a  
20 couple of -- several questions from the summary of  
21 evidence which you have reviewed. There are a  
22 number of items in there that I would rather not  
23 have to spend the time here going through and have  
24 you say them again, so I wonder if I could ask  
25 you, with respect to your summary of evidence, if  
26 you can adopt that as being the evidence so far as  
27 it is definitive, subject, of course, to the  
28 questions which will be asked here.

29 DR. RIDDELL: I can, yes.

30 MR. WALLACE: Thank you. Mr. Commissioner, I wonder if  
31 Dr. Riddell's summary of evidence could be marked  
32 as the next exhibit, please.

33 DR. RIDDELL: Marked as 99.

34  
35 EXHIBIT 99: Summary of evidence of Dr.  
36 Riddell  
37

38 MR. WALLACE: Thank you.

39 Q Dr. Riddell, can you pinpoint your first  
40 involvement with the development of the Wild  
41 Salmon Policy? Is that your paper in 1993?

42 DR. RIDDELL: Well, I think if I was to identify a  
43 particular starting point for the actual policy,  
44 yes. My interest in population genetics in salmon  
45 goes back to my original thesis work.

46 Q And were you involved in the initial consideration  
47 of developing the policy itself in the late 1990s

1 and up to 2000?

2 DR. RIDDELL: I was involved with all of the policy  
3 with the exception of September 2001 to April 2004  
4 when I was in secondment to the Pacific Fisheries  
5 Resource Conservation Council.

6 Q Just in a very general way, can you tell the  
7 Commissioner how -- first of all, may I suggest  
8 that it's the Commissioner that is important as  
9 opposed to anyone out here. Thanks.

10 Can you generally describe how, in an  
11 organizational management sense, the policy was  
12 initially developed in -- I gather there was  
13 consultation early on in the late '90s. What was  
14 the first manifestation of a draft?

15 DR. RIDDELL: Well, Mr. Commissioner, the first  
16 manifestation of a draft was the March 2000 Wild  
17 Salmon Discussion Paper. It was one of a number  
18 of policy papers being written by the Department  
19 in the late 1990s and that (sic). And it really  
20 came about as an initiative through the salmon  
21 subcommittee of what's called PSARC. At that time  
22 it was the Pacific Science Advisory and Research  
23 Committee, and largely driven by science --  
24 members of Science Branch, some people in the  
25 Salmonid Enhancement Program and in Fish  
26 Management. So it was actually started largely as  
27 a science paper, part of the development of the  
28 provincial policy papers.

29 Q And that draft was taken out to public discussion  
30 at that time?

31 DR. RIDDELL: Yes. It was taken out for a set of  
32 discussions over, I think, about three months.  
33 Yeah, throughout the spring of 2000.

34 Q And can you describe those discussions beyond  
35 that? Who was involved?

36 DR. RIDDELL: Well, Mr. Commissioner, they were public  
37 consultations. They were both publicly notified  
38 so that you had as many people as wished to  
39 comment came. There was a parallel process with  
40 the First Nation groups. That was maybe more  
41 structured and that. In terms of how it was  
42 organized, I'm afraid I don't have much of a  
43 recollection of that at this point anymore.

44 There were extensive notes taken. There was  
45 a company hired to document what was said so that  
46 we could ensure that we captured all the comments,  
47 and there was an extensive document written

1 following the public consultations by this company  
2 and provided back to the Department. The  
3 Department then followed up by providing a  
4 response from that back to the public people that  
5 contributed.

6 Q Now, what was the state of development, do you  
7 recall, when you left DFO in 2001 to join the  
8 Pacific Fisheries Resource Conservation Council?

9 DR. RIDDELL: Well, by the -- sorry, Mr. Commissioner,  
10 by the time I left, we were really just getting  
11 the report from Dovetail Consulting concerning all  
12 of the comments and what, really, we needed to  
13 address in revisions to the first draft discussion  
14 paper. I don't think that we had any significant  
15 new paper distributed at that time. We had gone  
16 back and started to talk to community groups about  
17 what we had heard and what we would take into  
18 account in review, but about that time is when I  
19 left in September 2001.

20 MR. WALLACE: Thank you.

21 Q Mr. Chamut, at about this time in 2001, am I  
22 correct that you were ADM of Fish Management in  
23 Ottawa?

24 MR. CHAMUT: Yes, that's correct.

25 Q And that's when you became involved in the Wild  
26 Salmon Policy, or does your involvement go back  
27 earlier than 2000?

28 MR. CHAMUT: Well, if we're talking about the Wild  
29 Salmon Policy in the context of the document that  
30 was finally released in 2005, my -- you're correct  
31 in saying that my first exposure to it was in  
32 2001. I'd had a lot of experience in sort of  
33 dealing with operational issues associated with  
34 wild salmon, but in terms of actually developing a  
35 Wild Salmon Policy along the lines of what was  
36 being proposed in the region, my first exposure to  
37 it was in 2001 when it came to headquarters for a  
38 review in -- as most policies would, it was  
39 reviewed within the Departmental Management  
40 Committee.

41 So my involvement was as the representative  
42 of the Fisheries Management Sector to look at this  
43 policy and provide comments back to the region  
44 along with every other sector that was involved in  
45 the department. They would similarly look at it  
46 and provide comments.

47 Q Thank you. In 2002, you did an external -- you

1           chaired a committee doing an external review of  
2           the 2002 sockeye fishery; is that correct?

3       MR. CHAMUT: Yes, that's correct.

4       Q     And that -- that report is filed now as Exhibit 83  
5           dated March 1st, 2003. Perhaps we can just turn  
6           to that, and particularly page 39 of that document  
7           which is on the screen. At that time, you called  
8           for the implementation of -- for the development  
9           of the Wild Salmon Policy and particularly the  
10          development of implementation guidelines on  
11          resource management, habitat management,  
12          aquaculture and enhancement for that policy,  
13          correct?

14      MR. CHAMUT: Yes, that's correct. I think it was  
15          fairly clear given the controversy that was  
16          associated with the conduct of the fishery in  
17          2002, that a lot of it stemmed from either  
18          disagreements about conservation objectives or  
19          just a lack of understanding of what the  
20          Department was trying to achieve. I think myself,  
21          as well as other members of the Department who  
22          were involved in this review, along with  
23          stakeholder representatives, I think everybody  
24          felt that a lot of the conflict could in fact be  
25          resolved, or at least addressed, if we had a wild  
26          salmon policy that was fairly clear about what our  
27          objectives were for protecting diversity and how  
28          we were going to go about that.

29             At the time, the thinking that was current at  
30          the time that this report was written was that we  
31          needed a policy that would be supplemented with  
32          operational guidelines, and those operational  
33          guidelines I think were in the context of what I  
34          would call decision rules, decision rules that  
35          would basically provide guidance as to how  
36          decisions would be made with respect to  
37          management.

38             That was certainly the direction that was  
39          being adopted in 2003 when this document was  
40          actually prepared. I would add that subsequently  
41          the policy that was -- the Wild Salmon Policy that  
42          was finally developed took a different approach.  
43          Instead of developing detailed guidelines, it  
44          instead took an approach of developing a broader  
45          framework that set out objectives to be achieved,  
46          strategies that would be followed, and it did not  
47          include detailed guidelines. I can certainly



1 provide additional information, if the Commission  
2 would like, as to what caused that change in  
3 position to be adopted.

4 Q Well, indeed, Mr. Chamut, we will get to that,  
5 because your involvement of course became much  
6 more hands on as you went on. So you can speak to  
7 that as well.

8 But I -- just can you expand a little bit on  
9 just what you had in mind with the operational  
10 guidelines? Did you expect the policy itself to  
11 have detailed limits on various activities and  
12 managing?

13 MR. CHAMUT: Well, I think at the time, the whole  
14 notion of implementation guidelines was, to some  
15 extent, a little bit vague. I envisioned it as  
16 something that would provide more explicit  
17 guidelines as to exactly how the Department would  
18 manage in differing circumstances, and I used the  
19 terms "decision rules" earlier, and I thought that  
20 probably these guidelines would include decision  
21 rules that would be more prescriptive or  
22 deterministic, that would actually provide some  
23 fairly clear guidance that -- how the Department  
24 would manage in differing circumstances.

25 So if a particular circumstance arose, then  
26 there would be guidance in these guidelines that  
27 would help define what action the Department would  
28 take. That was the thinking at the time.

29 Q And am I correct -- and I'm looking in particular  
30 at the briefing that was provided to the  
31 Departmental Management Committee in May of 2003,  
32 which is document number 18 which I think was  
33 subsequently almost immediately thereafter  
34 provided to the Minister, in which the  
35 finalization of the policy -- it was identified  
36 that the finalization of the policy has been  
37 bogged down with the difficulty of translating the  
38 principles into practical operational guidelines.

39 If I could take you to document 18, I think  
40 that's at page 5. I'm sorry, I have the wrong  
41 document number.

42 MR. WALLACE: Mr. Lunn, if I could ask you to go to  
43 document 19, which has not been marked as an  
44 exhibit. It's a June 23rd deck of 2003.

45 MR. LUNN: Page 5 did you say?

46 MR. WALLACE: Page 5.

47 MR. LUNN: Sorry, it looks like all of the pages are

1           oriented differently. Is there some text you'd  
2           like me to go to specifically?

3       MR. WALLACE: Thank you. First of all, can we go to  
4           the cover page, or are we going to get...

5       Q     Mr. Chamut, I understand this is a briefing to the  
6           Minister in mid-2003 dated June 23rd. Do you  
7           recall this briefing?

8       MR. CHAMUT: To be honest, no. I attended -- in my  
9           capacity as the Assistant Deputy Minister for Fish  
10          Management, I attended hundreds of these things,  
11          and I do not recall specifically attending this  
12          briefing. I would undoubtedly have been there,  
13          and I don't want to suggest that I wouldn't have  
14          been. I just don't have any immediate  
15          recollections of what the debate or what debate  
16          would have ensued or what sort of comments were  
17          made at the time.

18       Q     Just at page 5, I think it's the -- not so much  
19          the document, Mr. Chamut, that's important, it's  
20          the why -- to get a handle on why directions  
21          changed over the course of it, and I want to see  
22          whether or not this indicates one of the reasons  
23          why the operational guidelines you had in mind  
24          initially may not have occurred.

25                So on page 5 of this document, the reference  
26                says that -- the bullet the second from the bottom  
27                [as read]:

28  
29                        Finalization of the policy has been bogged  
30                        down by the difficulty of translating the  
31                        principles into practical operational  
32                        guidelines.  
33

34                        Do you recall that issue as being a motivator  
35                        ultimately to resile from the use of operational  
36                        guidelines?

37       MR. CHAMUT: Well, I think what that comment infers,  
38          and fairly directly, is that the policy was not  
39          moving ahead quickly. By this time, the region  
40          had received the report that was referred to  
41          earlier that was the review that I did of the 2002  
42          fishery which recommended the Wild Salmon Policy  
43          be resolved and finalized by December 31st, 2003.

44                        Clearly this flags the challenge that the  
45                        region was having in actually translating the  
46                        principles into operational guidelines. I think  
47                        the reality that they were coping with was,

1 firstly, it's very difficult to develop  
2 operational guidelines until one has defined how  
3 many conservation units you're dealing with, how  
4 big they are, and issues of that nature that  
5 basically made it very, very challenging - in fact  
6 I think impossible - to be able to come up with  
7 operational guidelines that would be practical and  
8 realistic and would actually allow fisheries  
9 management to proceed.

10 And I think the second issue that this  
11 probably implies, as I realized at the time, there  
12 was some disagreements between people in the  
13 Science sector of the Department that were, at  
14 this time, taking the lead in developing the Wild  
15 Salmon Policy, and fisheries managers who were  
16 coping with the challenge of having to take the  
17 Wild Salmon Policy and then be able to use it or  
18 operate fisheries within its framework. I think  
19 they were -- it was very difficult for the two  
20 groups to get together and actually agree on how  
21 to go about developing these guidelines.

22 So it was a very difficult task, given the  
23 rather rudimentary nature of the conservation unit  
24 in terms of the number of them, and I think that  
25 that certainly -- those considerations were  
26 obviously very much instrumental in influencing  
27 the change that was adopted in the development of  
28 the Wild Salmon Policy in 2004.

29 MR. WALLACE: Thank you. I realize, Mr. Commissioner,  
30 I did not invite Mr. Chamut to consider, and if he  
31 wished to adopt the summary of evidence. I'm just  
32 going through some of the comments in it.

33 Q I wonder, Mr. Chamut, you have reviewed the  
34 summary of evidence which has been provided to  
35 participants?

36 MR. CHAMUT: Yes, I have.

37 Q And, as you can see, I'm asking some questions  
38 about particular areas in it, but subject to the  
39 questions on it that I've been putting to you, do  
40 you adopt that summary as your evidence?

41 MR. CHAMUT: I am prepared to adopt it, but I do want  
42 to indicate that there are probably some areas  
43 that I would probably amplify or add a bit of  
44 context as I go through it, and I would do that in  
45 my oral questioning.

46 Q That's perfect. Thank you very much.

47 MR. WALLACE: Mr. Commissioner, I wonder if, then, Mr.

21  
PANEL NO. 6  
In chief by Mr. Wallace

1 Chamut's summary of evidence could be marked as  
2 Exhibit 100, I think.

3 DR. RIDDELL: It's 100.

4 MR. WALLACE: Thank you.

5

6 EXHIBIT 100: Summary of evidence of Mr.  
7 Chamut

8

9 MR. WALLACE:

10 Q Now, in your --

11 THE COMMISSIONER: Mr. Wallace, just going back, the  
12 document number 19 that you referred to a moment  
13 ago, is that to be marked as an exhibit, or no?

14 MR. WALLACE: Mr. Commissioner, I wasn't sure that Mr.  
15 Chamut could identify it sufficiently. I will  
16 look at having it marked. The point was simply to  
17 identify a view about a conflict that existed at  
18 the time, and I think Mr. Chamut has addressed  
19 that orally. For completeness, we will mark the  
20 exhibit, but we'll come back to that.

21 THE COMMISSIONER: Should it be marked for  
22 identification at this stage?

23 MR. WALLACE: That would be -- well, if we're going to  
24 do that, then let me -- Mr. Lunn, I wonder if you  
25 could -- let's just marked this as an exhibit for  
26 identification for the moment, please.

27 THE REGISTRAR: To be marked M for identification.

28

29 MARKED M FOR IDENTIFICATION: Policy Issues  
30 for Management of Wild Salmon, June 23, 2003

31

32 MR. BUTCHER: Do you have the Ringtail number?

33 MR. WALLACE: Yes.

34 MR. LUNN: I've got it here.

35 MR. WALLACE: You're showing off, Mr. Butcher. It's  
36 001421; is that correct?

37 Q Mr. Chamut, at page 3 of your summary of evidence,  
38 you make a comment, and I'll just quote it, that  
39 you believe that sockeye would be the most  
40 complicated CU's to define because of the unique  
41 biology of the sockeye. Am I correct that that  
42 relates to the diversity that Dr. Riddell was  
43 speaking of earlier?

44 MR. CHAMUT: Yes, that's right. I mean, the other  
45 species are -- have far less specificity, and so I  
46 knew that sockeye were going to be the most  
47 challenging, and I think Brian Riddell's

1 presentation amply demonstrated that.

2 Q Would you also say that sockeye would be among the  
3 most complicated to manage?

4 MR. CHAMUT: I'm assuming your question is they'd be  
5 the most complicated to manage under the Wild  
6 Salmon Policy, and the answer would certainly be  
7 yes.

8 Q Yes. And that is -- I take it that's because of  
9 the -- there are so many individual stocks and the  
10 fishery is essentially a mixed-stock fishery?

11 MR. CHAMUT: Yes, that's correct.

12 MR. WALLACE: Mr. Commissioner, I'm about to go from  
13 2003 to 2005, and I wonder if this might be a  
14 convenient time to take a break?

15 THE COMMISSIONER: Yes. Thank you.

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

18

19 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)

20 (PROCEEDINGS RECONVENED)

21

22 THE REGISTRAR: Order. The hearing is now resumed.

23

24 EXAMINATION IN CHIEF BY MR. WALLACE, continuing:

25

26 Q Thank you. Mr. Chamut, I wonder if I could take  
27 you back to your -- to Exhibit 83, the External  
28 Review Committee report and page 44 of that  
29 report. There the committee chair made a  
30 recommendation, we've talked about the guidelines.  
31 Then the last sentence of the recommendation:

32

33 This policy will provide a framework for  
34 defining conservation objectives for  
35 naturally spawning salmon and will include a  
36 direction for resource management,  
37 conservation units and reference points,  
38 habitat protection enhancement and  
39 aquaculture.

40

41 Sorry, and the paragraph just ahead of that,  
42 preceding that recommendation, you identified that  
43 there's a need for development of a policy on wild  
44 salmon that explicitly defines conservation  
45 objectives for naturally spawning salmon.

46

47 Now, would you agree that in the final  
development of the Wild Salmon Policy that

1 explicit definition of conservation objectives was  
2 not carried through?

3 MR. CHAMUT: The final policy doesn't provide specific  
4 numerical objectives defining conservation. What  
5 it does is lays out probably the most important  
6 point, which is that the department will conserve  
7 conservation units, but it doesn't say exactly at  
8 what level or how much would constitute  
9 conservation. That is left -- those decisions are  
10 -- would obviously have to be developed once  
11 conservation units were defined and biological  
12 status had been assessed and the process that was  
13 eventually adopted under Strategy 4 had been  
14 completed. But if you want me to say that the  
15 Wild Salmon Policy does not provide specific  
16 conservation objectives in the sense of numerical  
17 values, you're right.

18 Q Am I correct that was part of the debate in  
19 developing the policy is whether or not they  
20 should be prescriptive units and whether  
21 conservation units should entail in terms of  
22 management and ultimately the idea of having  
23 prescriptions on conservation outcomes was omitted  
24 from the final policy.

25 MR. CHAMUT: Well, we -- you've mentioned the evolution  
26 of the policy and this report that you're citing  
27 here was written from about January through to  
28 March in 2003 and the thinking at the time was  
29 certainly along the lines that we would end up  
30 with a policy plus implementation guidelines. In  
31 the time between writing that report and including  
32 that recommendation and actually becoming  
33 personally more involved in the development of the  
34 policy, the thinking amongst the group that was  
35 actually responsible for pulling it together, I  
36 think, did evolve and we had a lot of discussions,  
37 a lot of debates around the table. And I think we  
38 recognized and I think we would all agree that the  
39 policy that is put in place deliberately chose not  
40 to be deterministic.

41 And there are a variety of reasons for that.  
42 Notably, I've mentioned the lack of scientific  
43 information that we -- at that time about  
44 conservation units, would constrain the ability to  
45 develop those guidelines. I think secondly there  
46 was a recognition that trying to be deterministic  
47 in the policy was probably not the most preferred

1 -- was not the preferred approach because we've  
2 had experience and I could, in fact, cite the 2002  
3 fishery and give you some examples if you'd like,  
4 but we had experience that demonstrated that  
5 trying to forecast each and every eventuality that  
6 could happen in a fishery and then define decision  
7 rules to cover those eventualities is -- it's  
8 pretty well impossible to do.

9 The -- there's an awful lot of things that  
10 happen in the fishery and if you have prescribed a  
11 particular -- or a single approach of what you're  
12 going to do in a particular circumstance, that may  
13 actually reduce the ability to innovate solutions  
14 and to come up with more optimal solutions. And I  
15 think the ability to be able to forecast each and  
16 every eventuality and the ability to then  
17 prescribe decision rules governing it was thought  
18 to be just simply a wrong-headed approach for us  
19 to take. And the policy as I'm sure if you -- for  
20 those who read it, is very clear that that whole  
21 issue of being deterministic was considered and  
22 was rejected because it was felt that it was not  
23 the appropriate -- an optimal approach to take.

24 Q And is it fair to say that that -- there was an  
25 initial view in 2003 that -- for a more  
26 deterministic approach, but that it evolved by  
27 2005 but the debate was still on, am I correct, in  
28 2005? It wasn't until 2005 that it was resolved;  
29 is that right?

30 MR. CHAMUT: I don't recall the specific time. I think  
31 it was earlier than that. I think within -- at  
32 some point in 2004 the group that I was working  
33 with concluded that trying to develop all of these  
34 resource or guidelines that we're discussing was  
35 simply not the appropriate course of action to  
36 take.

37 And I think the other factor too is that they  
38 could be enormously complicated. It would take a  
39 large amount of time and effort, and I think if  
40 the objective which I think we all agreed to was  
41 to try and develop a Wild Salmon Policy that could  
42 be in place and could start to be implemented in  
43 2005 and thereafter, if we waited until we had all  
44 of these guidelines, then I think the policy in my  
45 opinion would probably still not have been adopted  
46 at this point in time. And I think having the  
47 policy that we put in place which does provide

1 very good guidance to the department about what  
2 we're going to conserve and how we're going to go  
3 about it, I think provides a good starting point  
4 and frankly, I would still, if I had the choice  
5 again, I would certainly not opt for taking the  
6 extra time to develop these guidelines, because I  
7 think it would have worked to the disadvantage of  
8 the resource and the department and all of those  
9 who depend on it for their livelihood.

10 Q Mr. Chamut, do you remember any other involvement  
11 you had in the development of the policy while you  
12 were ADM and before I think it was late 2004 when  
13 you -- no, the Spring of 2004 when you moved to --  
14 moved to Vancouver on that project?

15 MR. CHAMUT: The -- my -- I left Ottawa on December  
16 31st, as I recall, 2003 and I arrived -- so  
17 essentially January 1st in 2004 and I took up my  
18 responsibilities to work on Wild Salmon Policy at  
19 that time. Most of my involvement in the Wild  
20 Salmon Policy had been as -- in reviewing the  
21 draft policies that had come forward from the  
22 region, which was, I think -- I'm always difficult  
23 on these dates, but around 2000, plus the second  
24 one that came through in 2002, I was reviewing  
25 that, and I'm pretty sure that I would have had a  
26 hand in being involved in preparation of briefing  
27 material for the minister. And I was searching my  
28 own recollection as to my involvement in the deck  
29 that you had -- that we had discussed previously,  
30 the one that went to, I think, for briefing the  
31 minister in June of 2003. It wouldn't surprise me  
32 if I had a hand in helping to frame the questions  
33 and laying out some of the approaches. But that's  
34 -- I won't say speculation. I don't really recall  
35 it, but I'm reasonably certain I would have had a  
36 hand in that.

37 MR. WALLACE: Thank you. Perhaps to just -- if we can  
38 just -- sort of to tie that loose end off, Mr.  
39 Commissioner, this is Exhibit N for  
40 identification?

41 THE REGISTRAR: That's correct.

42 MR. WALLACE:

43 Q And that's a deck marked June 23rd, 2003 and I  
44 note that the adjacent Ringtail number appears to  
45 be -- and a fax cover sheet to Mr. Chamut of July  
46 15th, 2003, that document 20 in the development  
47 book. And the third document which seems to tie



1 those together are comments on a briefing note  
2 4-U, I think, Mr. Chamut, and this is document 2  
3 in the development book of documents. And it  
4 appears to me that the -- what occurred here is  
5 the deck was produced, then -- in Ottawa by you or  
6 your staff, provided to the region and the cover  
7 sheet and the briefing note to you was providing  
8 it back to you for your briefing of the minister;  
9 does that assist?

10 MR. CHAMUT: I can't really -- I can't really be sure.  
11 The thing that I'm puzzled by is the date on this  
12 particular note which came from the region was  
13 July the 15th. It's at the top.

14 Q Yes.

15 MR. CHAMUT: And I believe that -- and from my  
16 recollection of the document you put up recently,  
17 just a couple of minutes ago, the deck that was  
18 used for the minister, I think it was a June -- a  
19 June date, so I'm just a little puzzled about the  
20 genesis of all this.

21 MR. WALLACE: Okay. All right. Well, perhaps we can  
22 run this to ground in due course, Mr.  
23 Commissioner. I wonder then if the -- the  
24 briefing note which is document number 2 could be  
25 marked as the next exhibit for identification and  
26 the fax cover sheet as a third.

27 THE REGISTRAR: The briefing note will be marked as for  
28 identification N Norman, and the fax cover sheet  
29 O.  
30

31 EXHIBIT N FOR IDENTIFICATION: Briefing Note  
32 for the Assistant Deputy Minister, Fisheries  
33 Management  
34

35 EXHIBIT O FOR IDENTIFICATION: Fax cover  
36 sheet  
37

38 MR. WALLACE: I note, Mr. Commissioner, that all of  
39 these documents are provided by DFO in their  
40 Ringtail production, so we'll try and get the  
41 authors for it.

42 Q Mr. Chamut, the -- am I correct that then the  
43 debate about the definition of conservation and  
44 the prescriptive nature of it continued into 2005  
45 and I'd just refer you to Exhibit 92, which is  
46 document 33 in the development list. Can you  
47 identify this as an email that you sent to people

1 working on the Wild Salmon Policy issues in March  
2 of 2005?

3 MR. CHAMUT: Yes, that's correct.

4 Q And here you identify the two options for the  
5 definition of conservation. Am I correct that  
6 this reflects the same debate that we were just  
7 referring to, the need for whether or not there  
8 should be prescription or whether or not the  
9 conservation should be a purely biological  
10 question with the management issues left for  
11 another process?

12 MR. CHAMUT: No. I'd say you're -- it's entirely  
13 wrong.

14 Q Oh, okay.

15 MR. CHAMUT: This -- see, you're pulling, with all  
16 respect, you're pulling documents out, you know,  
17 back and forth and I think -- and that's fair  
18 enough, but I think you have to recognize that  
19 there's a timeline that's being followed here, and  
20 as we went through the development of this Wild  
21 Salmon Policy beginning from my involvement in  
22 2004 through to the finalization, it was in my  
23 view a remarkable process because different people  
24 came in with different ideas, different  
25 understanding, different thinking about the issue  
26 and we worked together as a group and there were  
27 lots of disagreements, as you'd expect in  
28 developing a policy like this.

29 But we did collectively come up with a  
30 document that we all agreed represented what we  
31 felt a Wild Salmon Policy should be, and through  
32 that process, people's views evolved. And I think  
33 what you see here is not so much a debate about  
34 guidelines versus no guidelines or prescription  
35 versus more flexible strategic approach. This  
36 reflects a basic discussion about how you define  
37 conservation and how that pertains to sustainable  
38 use.

39 And it follows on the consultative process  
40 that we engaged in in -- beginning in December of  
41 2004. We received an awful lot of comments from a  
42 lot of different groups that are involved or  
43 interested in the fishery and one of the concerns  
44 that was expressed was that there was seemingly a  
45 conflict in the policy between conservation and  
46 use. And that's not surprising, because that  
47 conflict has gone on since, you know -- for

1 thousands of years, in my opinion. So what we  
2 were trying to do in March of this -- when this  
3 was written was to set -- come to ground as a  
4 group on what -- how we wanted to define  
5 conservation and how we wanted to deal with  
6 sustainable use.

7 And the two alternatives here, basically were  
8 for discussion. The first option that is on the  
9 screen was that we would have a conservation  
10 definition that excluded sustainable use. And the  
11 other option was we would have a stand-alone  
12 definition of conservation and a separate  
13 definition of sustainable use. And based on the  
14 comments that we received from a variety of  
15 groups, we felt that for clarity and to make  
16 absolutely clear in the policy that conservation  
17 is the primary objective of the policy, we adopted  
18 option 1 after discussion. And we had a separate  
19 definition for conservation that focused only on  
20 conservation being required or conservation being  
21 defined in terms of protecting or maintaining  
22 genetic diversity, without any reference to use.  
23 And then sustainable use was a separate  
24 definition, was included that made it clear that  
25 sustainable use is, you know, is essentially  
26 consumptive activities that would not adversely  
27 affect the, you know, future generations and the  
28 like.

29 So it clearly was, I think, a fairly  
30 important discussion. It's a fundamental issue  
31 and it's one that we wanted to be absolutely clear  
32 that conservation was the top priority and it  
33 wasn't going to be compromised for meeting  
34 sustainable use objectives.

35 Q Thank you. The third item under the principles of  
36 conservation and the option that was accepted,  
37 resource management decisions will consider  
38 biological, social and economic benefits and costs  
39 in an open and transparent and inclusive process,  
40 is -- now, that was then where the debate -- so  
41 this policy was a biological conservation policy,  
42 but the questions of how you take the next step to  
43 sustainable use was to be part of a -- this open  
44 process?

45 MR. CHAMUT: No. The policy provided guidance on this.  
46 I think, as I say, this is a very fundamental  
47 point. What we said was that conservation by

1 defining it in terms of protecting genetic  
2 diversity, it made it quite clear that  
3 conservation was the primary objective of this  
4 policy. But when you read the policy, you'll see  
5 there are also principles in there that talk about  
6 -- I think the fourth principle was sustainable  
7 use. We wanted to have a policy that protected  
8 the genetic diversity of wild salmon but at the  
9 same time, we also wanted to ensure that there was  
10 an opportunity for sustainable use. I mean, that  
11 we wanted recognized within the policy.

12 So we defined conservation as we did. We  
13 made it quite clear that where a conservation unit  
14 is so-called in the red zone, and the red zone is  
15 a level at which the conservation unit is at risk,  
16 that at the red zone, the primary almost exclusive  
17 -- I can say exclusive consideration for dealing  
18 with that conservation unit would be biological,  
19 in other words, what's necessary for protecting  
20 that conservation unit.

21 As you move up from red to amber to green in  
22 terms of the biological status of the conservation  
23 unit, then the consideration -- you know, there's  
24 still biological considerations for protecting the  
25 conservation unit, but as you get into a unit  
26 that's green, which means that it's abundant, that  
27 it's in good health, then the sustainable use and  
28 the biological, social and economic considerations  
29 become more important.

30 So there's a continuum. At the bottom level  
31 where the resource is thought to be at risk, then  
32 biological considerations drive management action.  
33 As you move through into the safer zone where  
34 harvesting can be considered, then social and  
35 economic considerations become part of the  
36 considerations, and that, in fact, would be done  
37 in the strategic planning process that was  
38 outlined in Strategy 4 and would be implemented in  
39 the annual management plans that were put in place  
40 by the department under Strategy 5.

41 Q One of the other issues that was -- evolved, I  
42 guess, during the development was the explicit  
43 reference to the relationship between wild salmon  
44 and aquaculture initially, and ultimately the  
45 policy deals with aquaculture as an environmental  
46 condition as opposed to -- I think I have that  
47 right, as opposed to having explicit rules with

1           respect to it. Can you comment on that evolution?  
2 MR. CHAMUT: Yes, I can. In the initial thinking,  
3 there was going to be operational guidelines that  
4 would deal with habitat and enhancement and  
5 resource management and aquaculture. And as the  
6 policy was evolving, as I've explained we  
7 concluded that operational guidelines were not  
8 necessarily a good approach and we avoided getting  
9 into that kind of a deterministic approach, and  
10 that certainly was why -- one reason why  
11 aquaculture was not there.

12           But I think more importantly the question  
13 comes up as to why would one focus only on  
14 aquaculture in the Wild Salmon Policy? It was  
15 seen as being another form of human activity that  
16 could adversely affect the well-being of the  
17 salmon resource. And there's lots of examples  
18 where fish farms have, in fact, created problems  
19 because of their location or because of their --  
20 the way in which they've been operated.

21           But I think the thinking in the policy was  
22 that why would we single out anything explicit  
23 about aquaculture and then not do anything about  
24 the variety of other activities that adversely or  
25 can adversely affect salmon. We didn't anticipate  
26 having, for example, guidelines on forestry or  
27 mining or pollution or any of the other things  
28 that routinely can affect habitat. And I think  
29 that was the thinking that drove the group to  
30 conclude that having anything other than what's in  
31 the policy now about aquaculture, I think that was  
32 the way -- why we concluded the policy the way we  
33 did.

34           There are references to aquaculture in the  
35 document. It does indicate that there are a  
36 variety of -- or a variety of regulations and  
37 programs that are directed to assess the impact of  
38 aquaculture and it's quite clear in saying that  
39 where aquaculture operations may adversely affect  
40 the wild salmon resource, then appropriate action  
41 will be taken under regulation or legislation to  
42 prevent it.

43 Q       Thank you. Mr. Chamut, one of the other issues  
44 you -- that's come up in this debate or this  
45 discussion and which you address in your summary  
46 is the question of the resources provided for the  
47 implementation of the Wild Salmon Policy. Can you

1 comment on your view on that, please?

2 MR. CHAMUT: Yes. I -- I mean, I think the issue of  
3 resources was always something that was  
4 considered, and there is no question that if there  
5 were more resources dedicated to the wild salmon  
6 -- or to wild salmon, then more could be done.  
7 But at the time this was being prepared, I'm  
8 reasonably confident that there was very little  
9 likelihood that additional resources would be made  
10 available to enable the department to implement  
11 the policy in a more robust manner. And in my  
12 discussions with some of the people, in fact, that  
13 are here around this table with me, I think it was  
14 understood that while more resources would be  
15 really nice, there was adequate resources to  
16 enable the policy to be implemented, admittedly  
17 over time. It was understood that it was going to  
18 take a -- probably a five-year period before the  
19 policy was going to be implemented in a way that  
20 was, you know, that would meet its -- the  
21 expectations that I think we all had. But it was  
22 expected it would be phased in and that the  
23 resources that were currently in place in the  
24 department would be adequate to allow that policy  
25 to be implemented in a phased manner.

26 Q Now, do I take it you didn't independently form  
27 the view that the existing resources were  
28 sufficient, but rather you relied on others for  
29 that advice?

30 MR. CHAMUT: I relied on others for an awful lot of the  
31 stuff that's in the Wild Salmon Policy and that  
32 certainly was one of them. I did receive opinions  
33 that resources were adequate to enable a policy to  
34 be implemented in a phased timeframe.

35 Q And you indicated that some of the people here  
36 might address that; would that be Mr. Saunders?

37 MR. CHAMUT: I can't speak for the others, and I don't  
38 want to put words in their mouth but --

39 Q Yes.

40 MR. CHAMUT: -- I mean, I think it's a question that I  
41 can recall discussing it because it was -- it was  
42 important. I discussed it with members of the  
43 team and I think the general view was it is, in  
44 fact, possible to implement in a phased timeframe  
45 and make the policy operational.

46 Q One of the things that seems to have come into the  
47 policy very near the end is a provision for

1           Strategy 6 which is an independent five-year  
2           review. Do you recall how that requirement  
3           evolved?

4       MR. CHAMUT: Yes, I do. When we -- when the department  
5           was finalizing the policy and the -- excuse me, I  
6           have to collect my thoughts. As we were nearing  
7           the end of finalizing the policy, we engaged in  
8           consultation, so the variety of groups. And there  
9           were a number of common themes that were raised  
10          about the policy, but I think the one that was  
11          pretty much universal was a concern about the  
12          point you previously raised about resources. Are  
13          the resources there? And secondly, does the  
14          department have the will to implement this policy.

15                 And it seemed that that was a very strongly-  
16          held view by a number of individuals and I  
17          strongly felt and continue to strongly feel that  
18          it was important to provide -- to build in the  
19          sixth strategy, which was this sort of performance  
20          review to provide people with some confidence that  
21          there would be a review of the policy to see how  
22          it's operating five years out, and secondly, my  
23          own personal motivation in putting that in was to  
24          serve as a really important spur to the  
25          department, so that they knew that this was not an  
26          open-ended process and that it was going to be  
27          extremely important that they focus resources on  
28          the implementation of the policy knowing that  
29          it'll be embarrassing five years out if, you know,  
30          things haven't -- if things prove that they  
31          haven't been properly implemented.

32       Q        You raise the consultation as being the place  
33                 where a number of these things were raised. Can  
34                 you recall any other important aspects of the  
35                 learning that the department obtained from those  
36                 consultations?

37       MR. CHAMUT: Yeah. I can give you sort of my  
38                 recollection. I know that there was a lot of  
39                 changes that were made between the initial draft  
40                 that was released in December of 2004 and the  
41                 final policy that was adopted in 2005. Some of  
42                 the changes that were incorporated you mentioned  
43                 Strategy 6 which was the performance review, that  
44                 was added towards the end of the process. We made  
45                 a number of changes with respect to including  
46                 comments about aboriginal rights and treaty and  
47                 how the policy pertained in those areas. We added

1 -- we talked about the definition of conservation  
2 and sustainable use. We included that at the end,  
3 along with more explicit guidance about what to do  
4 with conservation units that are in the so-called  
5 red zone.

6 We also -- let's... I'm running out of  
7 things, but I'd have to go back and do a  
8 comparison, but there were quite substantial  
9 changes made as the result of the comments that we  
10 received, and I'm reasonably sure that they're  
11 probably itemized somewhere. But I'm -- as I say,  
12 it's been -- it's been quite awhile since I had  
13 the good fortune to go through this process and I  
14 don't recall all of the changes that were made,  
15 but they were quite substantial.

16 Q I wonder, perhaps some of these documents might be  
17 of assistance. Exhibit 93. It's -- Mr. Chamut,  
18 this is a ministerial briefing from May of --  
19 16th, 2005 and it identifies at page 4, I think  
20 beginning at page 4, some of the key changes as a  
21 result of the first round of consultations. Does  
22 that refresh your memory?

23 MR. CHAMUT: Well, it does more than refresh my memory,  
24 and it's basically gives a listing as I recall of  
25 all of the issues that were addressed in the  
26 policy and that were changed at the -- at the --  
27 after the concluding consultations.

28 Q Yes. If you go to page 8, the remaining concerns,  
29 were those -- can you comment on those?

30 MR. CHAMUT: Yes, I can. I think that there were  
31 groups that were concerned about the lack of any  
32 direct reference to aquaculture in the policy or  
33 anything that's prescriptive about aquaculture. I  
34 think the -- I think, as well, that there was a  
35 general feeling among a number of organizations  
36 that they felt that they wanted a policy that was  
37 much more prescriptive, as opposed to the policy  
38 the department adopted. There were a lot of  
39 concerns -- this is probably the one that was most  
40 universal was about the need for new resources for  
41 effective implementation, and the other one that's  
42 not listed here, but probably is captured under  
43 the second bullet, and that was the provision in  
44 the policy that allowed the minister under certain  
45 circumstances to be able to decide not to protect  
46 a particular CU that was in difficulty if there  
47 were unique situations with respect to cost,



1           likelihood of success and the like. And, I mean,  
2           that is one of the features of the policy that did  
3           draw a fair bit of attention, but it is something  
4           that was there because it was felt that it would  
5           be prudent to have some sort of a provision in the  
6           policy like that. And -- but those are basically  
7           the main concerns that were reflected by some of  
8           the groups that we consulted it.

9           Q     And going over to page 11 of the deck, one of the  
10           specific revisions which is referred to there is  
11           reference there to Strategy 6 which we've spoken  
12           about, and then under implementation, a commitment  
13           to preparation and release of a plan for  
14           implementation. Do you recall a debate on that  
15           and...?

16          MR. CHAMUT: Oh, I don't think there was much debate.  
17           I think it was -- it was included at the end,  
18           along with the Strategy 6 which talked about  
19           performance review, but one of the recommendations  
20           in the policy, a statement in the policy, would be  
21           that once it was adopted, the department would  
22           develop an implementation plan, and that plan  
23           would provide guidance to departmental staff that  
24           would be engaged in implementing the policy post-  
25           2005. And it was important, I think, to try and  
26           give some confidence to people that there would be  
27           some immediate action that would be taken in order  
28           to make sure the policy was being implemented.

29          Q     I wonder, Dr. Riddell, if I might just come back  
30           to you for a moment. You were away, but you came  
31           back to the department in 2004. Do you have any  
32           comments to add to -- on the question of DFO's  
33           efforts to develop operational guidelines for the  
34           -- under the WSP and how that evolved, following  
35           on what Mr. Chamut had to say?

36          DR. RIDDELL: Actually, I don't have much to add to  
37           what Mr. Chamut said. A lot of the operational  
38           guideline discussion was going on while I was  
39           away. The only knowledge I had of it was  
40           attending a couple of public meetings and hearing  
41           about that discussion.

42          Q     Yes.

43          DR. RIDDELL: So I really had very little contribution  
44           to the development of the policy at that time.

45          Q     Okay. Thank you. Do you -- you say in your  
46           summary of evidence at page 3 that aspects of the  
47           Wild Salmon Policy were intentionally non-

1 prescriptive and that some of the vagueness  
2 reflects debates about how the policy should  
3 develop, should be developed or could evolve. How  
4 do you see the benefits of vagueness as you say  
5 there?

6 DR. RIDDELL: Well, there were some discussions that  
7 really didn't have a good technical basis that you  
8 could really recommend something to. Particular  
9 example we talked about in that summary is the  
10 idea about the duration of time that a  
11 conservation unit may take to recover. You could  
12 have expressed those in generations of salmon  
13 lifetimes or a person's lifetimes. The notion was  
14 simply to get the -- capture the idea that if  
15 something is lost, it's going to take a long time  
16 to recover. That's a very well-documented  
17 observation where salmon have been lost  
18 particularly in the Southern U.S. You must  
19 protect what you have because recovering something  
20 that is very depressed is extremely difficult.  
21 It's very unlikely and it can cost a huge amount  
22 of money. So the sort of point we're trying to  
23 make is protect what you have now because recovery  
24 is uncertain.

25 We used a similar type of wording in the  
26 ecosystem-based management in that we didn't have  
27 prescriptive measures that we could put in place  
28 to implement Strategy 3 immediately. We fully  
29 agreed that the value of salmon to terrestrial  
30 ecosystems and other aquatic ecosystems was a very  
31 valid objective and the commitment was that we  
32 would develop those over the next couple of years.

33 So it wasn't something where we tried to  
34 avoid hard decisions. It was where we were trying  
35 to acknowledge that we simply didn't have a strong  
36 technical basis in how to implement and that we  
37 would be willing to work with others to develop  
38 how to do that over time.

39 Q One of the challenges you identify in your summary  
40 at page 3 again is the challenge of integrating  
41 the Wild Salmon Policy with the Salmon Enhancement  
42 Program. Can you discuss that challenge and how  
43 it was affected?

44 DR. RIDDELL: Yes, I can. The issue, Mr. Commissioner,  
45 was a substantial investment by a Government of  
46 Canada in salmon enhancement, very, very strong  
47 social support throughout British Columbia for

1 that program, but at the same time, significant  
2 numbers of concerns about the interaction of major  
3 enhancement facilities with naturally spawning  
4 populations of Pacific salmon.

5 So the first issue was one of how do you  
6 differentiate a fish produced from an enhanced  
7 system -- and major hatcheries and spawning  
8 channels is what we're talking about for enhanced.  
9 We're not necessarily talking about small  
10 conservation hatcheries or habitat restoration  
11 programs.

12 And so one of the discussions was how would  
13 you define wild salmon. The definition that we  
14 came to actually is extremely similar to a similar  
15 debate that was going on in Europe with Atlantic  
16 salmon at the time and it simply requires that  
17 hatcheries, major hatcheries can't contribute fish  
18 to naturally spawning populations which is one of  
19 their goals, but it would not be counted as wild  
20 salmon until there was evidence that it could  
21 contribute within one full generation in the  
22 natural habitat.

23 The other aspects of it was there are  
24 conflicts between harvesting more productive  
25 hatchery-based salmon versus wild salmon in terms  
26 of what are sustainable harvest rates and how do  
27 you actually build those into harvest plans and  
28 that, so I mean there's a long debate about the  
29 interaction between major hatchery production in  
30 the United States and growing in Canada and how  
31 that would be incorporated under Wild Salmon  
32 Policy. An extreme example is that some  
33 organizations have identified hatchery production  
34 areas in that as opposed to naturally conserved  
35 areas. That was not an avenue we wanted to go  
36 down because in most areas of B.C. there are  
37 groups that value those local natural populations.  
38 So we were trying to find ways of integrating the  
39 use of hatcheries within the Wild Salmon Policy  
40 generally.

41 Q So that's interesting. Where are there  
42 management's regimes where they identify separate  
43 areas for it? And this is for salmon, I take it?

44 DR. RIDDELL: Atlantic salmon and Pacific salmon. And  
45 that -- well, I mean, one of the -- the best-known  
46 probably example for that is the Atlantic salmon  
47 in Norway and certain areas where they zone for

1 aquaculture and not aquaculture. In Alaska there  
2 are areas that are zoned for major ocean ranching  
3 and that they maximize production from ocean  
4 ranching, but they're not concerned about local  
5 populations. It's not that you don't have  
6 spawning populations there. It's that you end up  
7 with a mixture of the enhanced and wild genetic  
8 pools.

9 Q Yes. I asked Mr. Chamut questions about the  
10 revision definition of conservation in 2005. What  
11 -- do you recall that discussion?

12 DR. RIDDELL: Yes. I think I wrote the document.  
13 Yeah.

14 Q Your name is on it, yes. Do you have anything you  
15 would add to that evidence?

16 DR. RIDDELL: No. I think that Pat gave a good  
17 description of that discussion. The definition of  
18 conservation in resource management I think had  
19 been evolving for a number of years, and it was  
20 separating out -- much of the debate was about  
21 separating sustainable use from the conservation  
22 of basic biodiversity and that, and my obvious  
23 opinion was that that is a sound thing to do, that  
24 first we conserve the diversity and that was the  
25 explicit objective of the Wild Salmon Policy and  
26 then we can talk about appropriate levels of use  
27 or sustainable use. But it was our recommendation  
28 that most groups were separating use from  
29 conservation and that's the recommendation I made.

30 Q One of the discussions which one sees in the --  
31 through the development of the Wild Salmon Policy  
32 is the choice of benchmarks versus reference  
33 points which I think relates to prescription or  
34 not in terms of management. In your summary of  
35 evidence at page 4 you discuss those -- that issue  
36 generally and you say in that also if -- and this  
37 is at the -- in the middle of page 4 also, if DFO  
38 had written lower reference point directly into  
39 the Wild Salmon Policy, you believe that would  
40 have had resulted in difficult discussions with  
41 First Nations. Can you explain that, please?

42 DR. RIDDELL: Well, Mr. Commissioner, I think -- sorry.  
43 Mr. Commissioner, the issue here was the Wild  
44 Salmon Policy refers to a lower benchmark which  
45 was a -- this was a major development of the  
46 policy. This is where the significant protection  
47 or conserving biodiversity would take place. In

1           there we noted that there is going to be concern  
2           about how you get around the significant levels of  
3           uncertainty in both environmental variation and in  
4           management control of fisheries. And the notion  
5           was that we would define in the lower benchmark a  
6           significant buffer and that buffer was to account  
7           for the uncertainty, but it would be probably  
8           above that -- the lower benchmark would have an  
9           increment added to it.

10           The lower benchmark in itself in a basic  
11           biological principle, is probably where legally  
12           you might define conservation. There are  
13           decisions in the past where First Nations that  
14           have limited opportunity to fish other than at  
15           local populations would want to fish below the  
16           lower benchmark and that, and so the reason you  
17           would do that is that we would say that for  
18           fishing in a particular year at a low level, that  
19           would not have a long-term risk likely on that  
20           population. And so that's where the conflict  
21           comes in, in that if you had the lower benchmark  
22           including the buffer, that would have a  
23           significant increase in terms of what that lower  
24           benchmark was going to be, and then may limit  
25           opportunities for First Nation peoples that only  
26           have limited access to particular populations.

27           Q     Mr. Saunders, you were the development coordinator  
28           for the Wild Salmon Policy from 2003 to 2005?

29           MR. SAUNDERS: Yes, that's true.

30           Q     You say in your summary of evidence that the Wild  
31           Salmon Policy was a contentious policy. Can you  
32           describe the tensions when you first became  
33           involved in 2003?

34           MR. SAUNDERS: Yes, I can. I think, Mr. Commissioner,  
35           my colleagues have, I think, noted the majority of  
36           the issues that were confronting the group, and I  
37           think both within the department and external to  
38           the department there were a lot of policy issues  
39           that were quite contentious. As has been  
40           mentioned, the notion of what to conserve, what  
41           level of biodiversity were we actually going to  
42           commit to managing and protecting, as we were just  
43           discussing the precautionary approach, so how do  
44           we -- are we prescriptive and how do we determine  
45           -- and this notion of moving towards benchmarks.  
46           How do we -- the notion around sustainable  
47           development is a really key one. Are we simply

1 prescriptive or how do we -- how do we make trade-  
2 offs between biological and conservation  
3 considerations and social and economic.

4 And I think the movement that we made there  
5 that I think is quite fundamental to this policy  
6 is to move towards sustainable development and  
7 sustainable use. That recognizes that we need to  
8 move towards -- we took the -- one of the words we  
9 took out that was very contentious was balancing,  
10 where there was an indication, a strong concern  
11 that losing -- that any time conservation is  
12 pitted against social and, in particular, economic  
13 that the biological loses. So we -- the policy is  
14 based on sustainable development and collaboration  
15 so the development of a process to look for net  
16 positive in all three accounts rather than trading  
17 off one against the other. So that was a key area  
18 of contention about how to do that.

19 I think the definition of conservation was a  
20 very key one and I think it was discussed, Mr.  
21 Commissioner, earlier, that -- in the note that  
22 Brian brought forward. A lot of the definition  
23 around conservation was contentious with the  
24 recreational sector being very pro-use of the  
25 sustainable use idea, which was a use that had  
26 been wise use, rather, that had been co-opted by  
27 organization in the United States. It was very  
28 much about -- not about conservation in the  
29 biological sense. And First Nations in a number  
30 of the meetings that you mentioned were very  
31 instrumental in bringing forward what they  
32 recommended as a more modern version of definition  
33 of conservation and our group and Brian in  
34 particular, worked and brought that forward.

35 I think it was also mentioned here this  
36 notion of when social and economic considerations  
37 would come into play on varying ends of the  
38 spectrum of abundance. So with stocks in the red  
39 zone, in fact, while biology is a prime  
40 consideration there as Mr. Chamut pointed out,  
41 there was also the policy includes consideration  
42 of an extreme consideration of social and economic  
43 impacts and high costs, et cetera, that there may  
44 be a rationale for not opting to continue or make  
45 large effort to maintain a conservation unit. So  
46 that was a very contentious part.

47 Q At page 2 of your -- actually, I should take --

1 seek to mark this as an exhibit. Mr. Saunders,  
2 you have read your summary of evidence?

3 MR. SAUNDERS: Yes, I have.

4 Q And I'll ask you some questions about it and give  
5 you an opportunity to amplify it, but do you adopt  
6 that as your evidence?

7 MR. SAUNDERS: Yes, Mr. Commissioner, I'm happy to  
8 adopt that into evidence. I would say, as well,  
9 that I would be interested in being able to  
10 amplify in the course of this -- our discussion  
11 here some points on it, but I'd also like to point  
12 out that in the context of the development of that  
13 statement of evidence, the answers were in  
14 response to direct questions and an area -- an  
15 exploration of the Wild Salmon Policy and I don't  
16 want to be -- to suggest that this is my full sort  
17 of breadth of understanding or experience related  
18 to the Wild Salmon Policy.

19 Q Your answers were limited by our questions.

20 MR. SAUNDERS: That's -- indeed.

21 MR. WALLACE: With that caveat, Mr. Commissioner, I  
22 would ask that this be marked as, I guess, Exhibit  
23 101.

24 THE REGISTRAR: One hundred and one, correct.

25

26 EXHIBIT 101: Summary of Anticipated Evidence  
27 of Mark Saunders, Manager, Salmon Assessment  
28 and Freshwater Ecosystems, DFO Science,  
29 November 16 and 17, 2010

30

31 MR. WALLACE:

32 Q At page -- where was I? Page 2 of your summary,  
33 Mr. Saunders, you say that -- you speak of the UN  
34 Convention on Biological Diversity as a driver of  
35 the Wild Salmon Policy. Can you explain what you  
36 mean by that?

37 MR. SAUNDERS: Well, I think the -- I was not involved.  
38 I think you heard some of the earlier history of  
39 the policy in 2000, et cetera, in the late '90s.  
40 The UN Convention on Biodiversity was an impetus  
41 to -- around, as Dr. Riddell described, the notion  
42 of the importance of protecting biodiversity and  
43 Canada as a signatory. That became a policy  
44 driver to develop the Wild Salmon Policy.

45 Q Dr. Riddell, is that your view, as well?

46 DR. RIDDELL: No. I think in my evidence statement I  
47 said I didn't believe it was a driver because --

1 not because we disagree with any element of it at  
2 all about the UN Convention, but that we were  
3 trying to make the point that - and this is why I  
4 included it in my opening comments, sustaining  
5 diversity and sustaining salmon production are  
6 hand-in-hand. I mean, to maximize production for  
7 any use or any benefit requires maintaining  
8 diversity, their habitats and their ecosystems.  
9 And so we were trying to develop that for a period  
10 of time.

11 The Wild Salmon Policy is certainly  
12 consistent with the intent of the Convention on  
13 Biological Diversity. We were also trying to  
14 develop the Wild Salmon Policy in advance of **SARA**  
15 and that because if the Wild Salmon Policy is  
16 implemented correctly, then we shouldn't have to  
17 worry about **SARA** very often until Mother Nature  
18 gives us a blow like at Sakinaw Lake or something  
19 and that. So, I mean, we were trying to develop  
20 these things in parallel, but I would say that  
21 while it matches the intent of the Convention on  
22 Biological Diversity, we were trying to do it for  
23 a rational and forward-thinking resource  
24 management.

25 Q Thank you. Mr. Saunders, would you have the same  
26 comments about the **Species At Risk Act** that Dr.  
27 Riddell suggests?

28 MR. SAUNDERS: Yes, indeed.

29 Q Mr. Saunders, do you recall the discussion about  
30 the use of the expression "an acceptable  
31 timeframe" with respect to the prospect of losing  
32 a population within a CU?

33 MR. SAUNDERS: Yes. I have the same recollection as  
34 Dr. Riddell presented earlier.

35 Q At page 3 of your summary, Mr. Saunders, you speak  
36 of the -- another challenge being the --  
37 determining the role of First Nations and  
38 aboriginal traditional knowledge in Wild Salmon  
39 Policy implementation. What was that challenge?  
40 What was the challenge of determining the First  
41 Nations and aboriginal traditional knowledge  
42 roles?

43 MR. SAUNDERS: Well, I think in the development of the  
44 Wild Salmon Policy, Mr. Commissioner, it's -- was  
45 very -- recognized very early on that there's a  
46 need to incorporate traditional ecological  
47 knowledge. How to actually do that has proven to



1 be much more -- much more of a challenge. So how  
2 to -- there have been a couple of attempts to  
3 develop proposals and guidelines but to my --  
4 certainly nationally, but I don't -- we haven't  
5 made significant progress in the region in that  
6 aspect of directly relating it to the Wild Salmon  
7 Policy implementation.

8 Q You were involved in the consultation with -- in  
9 late 2004, 2005?

10 MR. SAUNDERS: Yes.

11 Q What do you -- what can you -- what is your  
12 recollection of those consultations?

13 MR. SAUNDERS: Well, I think, Mr. Commissioner, I would  
14 -- I think this is one of the first policies and I  
15 don't have -- I didn't have a long history within  
16 the Policy Branch starting in 2003, but I think at  
17 the time there was a -- one of the -- this is one  
18 of the first policies that I believe was developed  
19 in such an open and transparent fashion. The  
20 several meetings that we had, we took great care  
21 to meet with both First Nations and stakeholders  
22 separately and then made efforts to bring First  
23 Nations into the larger multi-interest  
24 stakeholders' sessions. I think it's -- these  
25 were done -- all of these consultations were held,  
26 I think, in good faith in that everything that we  
27 -- that we were in the draft policy were on the  
28 table and every -- everything that was heard was  
29 very carefully considered in terms of subsequent  
30 drafts of the policy. So there were at least two  
31 major sessions where we put a draft policy on the  
32 table and then came back and made significant  
33 changes to it. And also with that explanation of  
34 in cases where we didn't make changes the  
35 rationale for not doing so. So I think it's fair  
36 to say that -- I mean, I think there was a high  
37 degree of understanding of this policy and  
38 engagement in its development with First Nations  
39 and stakeholders.

40 Q Were there any -- any of the stakeholders who you  
41 thought were offside by the end of the process?

42 MR. SAUNDERS: Can you tell me what you mean by  
43 offside?

44 Q Not in agreement with the policy as it was  
45 developing.

46 MR. SAUNDERS: I think that's -- I think in general, we  
47 had agreement with the principles and the majority

1 of the policy framework that was being presented.  
2 I think we still had select groups that still felt  
3 at the end that this notion of prescription needed  
4 to be -- and perhaps guidelines needed to be more  
5 clearly developed in the policy.

6 Q So they were still -- there was scepticism about  
7 how it was all going to play out, as opposed to  
8 problems with the policy itself?

9 MR. SAUNDERS: I think, Mr. Commissioner, as noted  
10 already, I mean, there were concerns about  
11 resources, but there were also concerns that it  
12 was not prescriptive.

13 Q Do you recall who held these concerns?

14 MR. SAUNDERS: I think it would -- I would say it was  
15 the -- a number of the NGO groups that were  
16 concerned.

17 Q In your summary, Mr. Saunders, you mention a  
18 document which hasn't been put into evidence yet,  
19 but I'll ask Mr. Lunn if you bring this up. It's  
20 the -- and I don't -- the news release of June  
21 24th, 2005. This may only be a Ringtail document  
22 and it's...

23 MR. LUNN: Do you have a tab number or a Ringtail ID?

24 MR. WALLACE: Yes. It's CAN032215.

25 MR. LUNN: And is that in one of our lists?

26 MR. WALLACE: I think this is a complete surprise.

27 MR. LUNN: Okay. 032215?

28 MR. WALLACE: Yes. It's referred to in Mr. Saunders'  
29 summary, but not attributed to a document there.

30 Q Mr. Saunders, this is a document from the release,  
31 the press release, on June 24th, 2005 which  
32 accompanied Minister Higgins; approval and release  
33 of the Wild Salmon Policy and in your comment you  
34 say you agree that the WSP is a living document  
35 and not designed to be set in stone. Can you  
36 expand on that, please? Or you disagree with  
37 that?

38 MR. SAUNDERS: I --

39 Q Sorry? I'm sorry? You agree with the press  
40 release except for the statement that it's a  
41 living document. Can you comment, please?

42 MR. SAUNDERS: Yes. Mr. Commissioner, I'm of -- my  
43 understanding is that the policy is a national  
44 policy that's been adopted as written, so I  
45 suppose to some degree I don't have experience  
46 with what steps would be taken to actually modify  
47 a national policy, but in terms of our approach to

1 implementation, we approach it as a document and  
2 follow it to its letter and its intent. So I'm  
3 not aware of a process to implement the policy,  
4 move the policy forward as a living document.  
5 Q Okay. Thank you. Mr. Chamut, while we have this  
6 news release in front of us, the minister says  
7 that this policy is transformative, which is:

8  
9 The Wild Salmon Policy --

10  
11 This is in the third paragraph.

12  
13 -- significantly transforms the management  
14 and conservation of wild salmon, their  
15 habitats and dependent ecosystems.

16  
17 Would you agree that the policy is -- reflected a  
18 transformation in management of fisheries?

19 MR. CHAMUT: Well, first of all, I usually try to avoid  
20 using the words "transformative". I suspect  
21 here's a press release that I would -- I've only  
22 just -- this is the first time I've seen it, and I  
23 would confidently predict it was written in  
24 Ottawa, because everything likes to be  
25 transformative. But having said that, it is, in  
26 my opinion, the Wild Salmon Policy is probably one  
27 of the few things that actually meets the  
28 definition of transformative. It is fundamentally  
29 changing the management of wild salmon.

30 It -- I mean, I don't want to belabour my  
31 background and experience and I'm particularly not  
32 eager to get into it, but the reality is -- I  
33 mean, I've dealt with management of Pacific salmon  
34 since probably 1985 through till I retired in one  
35 form or another, and it was always fraught with  
36 inevitable conflict and debate over what are we  
37 trying to conserve? How much are we trying to  
38 conserve? And how are we going to do it? And it  
39 just fragmented the management program and caused  
40 endless conflict between user groups, every one of  
41 whom decided what it was that we should as a  
42 department should be conserving.

43 And what this policy does is it defines what  
44 we're trying to conserve, it should stabilize  
45 management and allow people to get onto more  
46 productive approaches to meeting the objectives of  
47 the policy and I'm not so naïve to think that it

1 will eliminate conflict and that it will be  
2 utopian road from this point forward. There will  
3 always be that kind of conflict. But it really  
4 lays to rest a longstanding issue about what we're  
5 trying to conserve. And I'm absolutely convinced  
6 that the policy with the way it defines  
7 conservation, the way it defines for how  
8 sustainable use will be achieved and how we're  
9 going to proceed in terms of an integrated,  
10 strategic sort of watershed plan, I think it is  
11 transformative. I believe it is a very strong  
12 policy that provides a good foundation for the  
13 department to meet its objectives for Pacific  
14 salmon. And I think it's good for the department,  
15 but I think more importantly it's good for the  
16 resource and ultimately for all of the people that  
17 depend upon it for enjoyment and livelihood and  
18 all the other things that the salmon resource has  
19 as value. So, yeah, I think it is a really  
20 important document, not to be understated.

21 Q Thank you. Dr. Irvine, you've been sitting  
22 patiently. You -- tell me how and when you first  
23 got involved with the development of the Wild  
24 Salmon Policy?

25 DR. IRVINE: Well, as you said in your opening  
26 statements, I guess forever. But no, really the  
27 Wild Salmon Policy is -- it's part of the  
28 evolution of a process and there's quite a few of  
29 us within DFO that have been involved in this kind  
30 of research, I guess, for most of our careers but  
31 I became officially involved with the WSP in about  
32 1999, and so for the preparation of the first  
33 draft in 2000 and then right throughout until the  
34 final version was released in 2005.

35 MR. WALLACE: Thank you. I'll take you to your summary  
36 in a moment, but I realize, Mr. Commissioner, I  
37 did not mark the press release, the news release  
38 of June 24th, 2005 which Mr. Saunders addressed.  
39 I wonder if that could be marked as the next  
40 exhibit, please?

41 THE REGISTRAR: One hundred and two.

42  
43 EXHIBIT 102: Fisheries and Oceans Canada New  
44 Release dated June 24, 2005, entitled,  
45 "Adoption of Wild Salmon Policy Continues  
46 Reform of Pacific Fisheries"  
47

1 MR. WALLACE:

2 Q Mr. Irvine, as I have asked the others, you have  
3 reviewed a summary of evidence which we prepared  
4 and subject to opportunities you'll have orally,  
5 do you adopt that as your evidence?

6 DR. IRVINE: Yes. There's nothing incorrect, what is  
7 in the summary of evidence, but as others have  
8 pointed out, it is a fairly incomplete  
9 documentation of sort of my history and  
10 involvement. And so I would say I would accept  
11 this providing I am able to at some point amplify  
12 some of the issues that were discussed  
13 particularly in the first publication listed in  
14 bullet 4, which kind of documents a lot of the  
15 history that we've been talking about this  
16 morning. So I definitely would like to amplify  
17 some of the issues that are at least from my  
18 perspective that are raised in that publication.

19 And then if we do get into a discussion of  
20 biological benchmarks and management reference  
21 points, I would ask that we are allowed to refer  
22 to the Wild Salmon Policy document itself and, in  
23 particular, Figure 3 and some of the text  
24 associated with that. So -- so with those  
25 provisions, I would accept this. Thank you.

26 Q You will certainly have an opportunity to make the  
27 picture complete.

28 DR. IRVINE: Thank you.

29 MR. WALLACE: Subject to that, Mr. Commissioner, may we  
30 mark as Exhibit 103 Dr. Irvine's summary of  
31 evidence, please?

32 THE REGISTRAR: One hundred and three.

33

34 EXHIBIT 103: Summary of Anticipated Evidence  
35 of Dr. Jim Irvine, Research Scientist, DFO  
36 Science, November 16 and 17, 2010  
37

38

39 MR. WALLACE: Perhaps, Mr. Commissioner, this would be  
40 a convenient time. Is that -- I'm not sure  
41 whether -- well, we have five minutes.

42 Q Perhaps, Dr. Irvine, would you care to take five  
43 minutes to address the amplification that you  
44 would like to add on the publications referred to  
45 in the fourth bullet?

46 DR. IRVINE: Well, to be honest, it would probably take  
47 more than five minutes.

Q Take more than five minutes. Well, perhaps you

1           could just introduce the topic.

2 DR. IRVINE: But basically, this publication which is  
3 referred to as CAN185538 --

4 Q Now, this --

5 DR. IRVINE: I'm a little confused about how this  
6 works, if this has actually been entered into  
7 evidence. I don't really --

8 Q It has not yet been entered into evidence.

9 DR. IRVINE: Okay.

10 Q It has been entered -- oh... This is -- thank  
11 you. This is Exhibit 96.

12 DR. IRVINE: So, thank you. You know, as mentioned, I  
13 was involved with the development of the Wild  
14 Salmon Policy, you know, right from the get-go  
15 until 2005 and so I do have a recollection of the  
16 history during the period when Dr. Riddell was on  
17 secondment or was outside of the department. And  
18 this particular paper was very important for me to  
19 write and it really had two objectives: one was  
20 to document the history of the development of the  
21 policy, but what's kind of interesting, Mr.  
22 Commissioner, is that we had the first release of  
23 this Wild Salmon Policy in 2000 and it wasn't  
24 until another five years when the policy was  
25 completed. And there were a number of lessons  
26 that I think were sort of germane or that we  
27 learned during the development of the policy. And  
28 I firmly believe that if we had been better  
29 informed in the beginning, we probably could have  
30 done -- we could have completed the policy  
31 quicker, I guess. And I would like to have the  
32 opportunity to kind of go through some of these  
33 lessons and a little bit of the history. I'm not  
34 just sure if there's time to do that right now.

35 Q Perhaps we can have a discussion about this and  
36 we'll give you an opportunity to do that --

37 DR. IRVINE: Thank you.

38 Q -- early this afternoon.

39 MR. WALLACE: Mr. Commissioner, may we break now for  
40 lunch?

41 THE REGISTRAR: Hearing is now adjourned until 2:00  
42 p.m.

43

44                           (PROCEEDINGS ADJOURNED FOR NOON RECESS)

45                           (PROCEEDINGS RECONVENED)

46

47 THE REGISTRAR: The hearing is now resumed.

1 MR. WALLACE: Thank you, Mr. Commissioner.  
2

3 EXAMINATION IN CHIEF BY MR. WALLACE, continuing:  
4

5 Q I wonder if we could start by cleaning up the  
6 question of the June/July 2003 exchange between  
7 Mr. Chamut and the Pacific Region, relating to  
8 advice to the Minister.

9 I wonder, Mr. Lunn, if you could pull up  
10 Exhibit M, please.

11 MR. LUNN: I'm sorry. Excuse me, the screen's not on.  
12 It will take just a moment.

13 MR. WALLACE: We have it on our screens here.

14 Q Mr. Chamut, this was the document which we looked  
15 at previously, just to remind you.

16 And I wonder, Mr. Lunn, if you could call up  
17 Ringtail CAN001426.

18 Now, Mr. Chamut, do you recognize that note,  
19 which appears to be a cover note from you,  
20 accompanying the document we just looked at, the  
21 deck, with a note from you to the Pacific Region.  
22 Do you recall that?

23 MR. CHAMUT: Well, to be quite honest I don't actually  
24 recall it, but clearly it's my writing, my  
25 signature, and it clearly indicates that I had  
26 prepared a deck for briefing the Minister on Wild  
27 Salmon Policy at some point, and I sent it out to  
28 the Regional Director General, John Davis. And in  
29 this note I was asking him for comments.

30 Q And this occurred three days after the date on the  
31 deck?

32 MR. CHAMUT: That's correct, yeah. I suspect that that  
33 would have involved the -- the time delay would  
34 have been the time it took to get it typed. I  
35 would have written it on the -- was it the 23rd?

36 Q Yes.

37 MR. CHAMUT: Yes. And then --

38 Q Well, that's the date on the deck.

39 MR. CHAMUT: Right. And then I -- this would have been  
40 -- would have been returned to me in final form  
41 and I would have sent it out with a handwritten  
42 note out to John Davis three days later.

43 Q Okay. Now, thank you. If we could then look at  
44 document -- yes, perhaps now that we've gone that  
45 far, we'll just mark those two documents, which is  
46 the draft, the deck of June of 23rd, 2003 on the  
47 Wild Salmon Policy, and the cover note from Mr.

1 Chamut as the next exhibit.  
2 THE REGISTRAR: That will be 104.

3  
4 EXHIBIT 104A: Draft of Wild Salmon Policy,  
5 "Conservation of Pacific Salmon, Policy  
6 Issues for Management of Wild Salmon" dated  
7 June 23, 2003 (formerly marked as M for  
8 Identification)

9  
10 EXHIBIT 104B: Cover note from Pat Chamut to  
11 John Davis

12  
13 MR. WALLACE:

14 Q Then having seen, getting the context from those  
15 two documents, Mr. Chamut, I wonder if I could ask  
16 you then to look at Exhibit for identification N,  
17 which is document 2 in the Wild Salmon Development  
18 binder. This is identified as a "Briefing Note  
19 for the Assistant Deputy Minister, Fisheries  
20 Management" in June of 2003. That was you?

21 MR. CHAMUT: That's correct.

22 Q And again reviewing it, it appears to be the  
23 response from the Region to your request for  
24 comments of the 26th of June.

25 MR. CHAMUT: That's correct.

26 Q And just for continuity, if I could have Exhibit O  
27 for identification, it would seem that that was  
28 the cover, the fax cover which was addressed to  
29 you, including this briefing note. Although  
30 perhaps that doesn't add anything to it. So --

31 MR. CHAMUT: Well, I --

32 Q It really doesn't add anything.

33 MR. CHAMUT: No, and it's -- I can't tell whether  
34 that's the cover note or not. Because all it is  
35 is dated without a subject.

36 Q Right.

37 MR. CHAMUT: So it could very well be, or possibly not.

38 Q Indeed, the substances are more important. So  
39 perhaps we could just mark the briefing note as  
40 the next exhibit, please, "Briefing Note to the  
41 Assistant Deputy Minister from Pacific Region".

42 THE REGISTRAR: 105.

43  
44 EXHIBIT 105: Briefing Note to the Assistant  
45 Deputy Minister, Fisheries Management from  
46 Pacific Region (formerly marked N for  
47 Identification)



1 MR. WALLACE: And then I think we can simply ignore  
2 Exhibit O for identification, Mr. Commissioner.  
3 Q Now, Mr. Irvine -- Dr. Irvine, rather, thank you,  
4 we have -- you have directed us from your summary  
5 of your evidence to a document that you wrote in  
6 2008, which is Exhibit 96. And I understand you'd  
7 like just simply to make use of that, to put some  
8 perspective on your summary of evidence. If you  
9 could do so briefly, I would appreciate it.

10 DR. IRVINE: Yes, if I may. Thank you very much.  
11 So this publication was probably written in  
12 2005/2006. The peer review process in science  
13 tends to take a couple of years before something  
14 is actually published. And I should point out  
15 that this -- I am the sole author of this, so that  
16 the points expressed in the paper are mine.  
17 Hopefully, they're shared by my colleagues within  
18 Fisheries and Oceans Canada.

19 So I'd like to just quickly walk through some  
20 of the elements in this report, but I don't -- my  
21 purpose is not to review or to repeat what we  
22 talked about this morning. But I would like to  
23 just review some of the history of the development  
24 of the Wild Salmon Policy. And the other thing  
25 that has sort of struck me in this morning's  
26 discussions is that we haven't actually talked  
27 very much about the policy itself. And so I'll  
28 hope to just use this as sort of a -- a bit of a  
29 springboard to just try and talk a little bit  
30 about the policy.

31 Dr. Riddell provided an excellent background  
32 as to the factors leading up to the development of  
33 the policy, and then he discussed in some detail  
34 the process by which conservation units are  
35 identified. But we haven't really had an actual  
36 discussion of the policy, and this may or may not  
37 be the appropriate time but I'm going to try and  
38 insert just a little bit of discussion there.

39 But before doing that, if maybe we could just  
40 look at the first paragraph in the Introduction.  
41 And we talked this morning about how this policy  
42 is somewhat transformative. But I'd like to just  
43 expand on that a little bit and just talk about  
44 how unusual it is. I've got in the very final two  
45 lines there, I've got the definition of what a  
46 public policy is. So it is:

1                   A course of action adopted by a government to  
2                   achieve a desired goal.

3  
4                   What science is about, is about testing  
5                   hypotheses. So most scientists, you know, if they  
6                   were given the opportunity to be involved in the  
7                   development of a public policy, they would  
8                   probably find themselves rapidly falling asleep.  
9                   You know, it really isn't what we're sort of  
10                  trained to do, and yet that's exactly what we did  
11                  within the Wild Salmon Policy.

12                  The Wild Salmon Policy was really a major  
13                  change in direction, if you like, within Fisheries  
14                  and Oceans Canada because it actively involved the  
15                  participation of several of us scientists in the  
16                  development of a -- of a public policy. And so  
17                  that, that is quite unusual, and it's something  
18                  that a couple of decades ago would not have taken  
19                  place, I don't think. But it's becoming  
20                  increasingly more common that scientists are  
21                  feeling passionate about seeing the results of  
22                  their research actually implemented in a way that  
23                  actually has an effect on society.

24                  So if we just, you know, turn to the -- I  
25                  guess the next page, maybe the top of the -- that  
26                  second page there, that the end of the first  
27                  paragraph up on the top left there

28                  So really the Wild Salmon Policy as it began  
29                  was really started out as quite a local initiative  
30                  by -- it was led by Science Branch, but over the  
31                  course of the next five to six years it really  
32                  evolved into something that was more of a national  
33                  initiative, and it not only involved scientists  
34                  and policy makers within the Fisheries and Oceans,  
35                  but also stakeholders, academics, members of the  
36                  public, First Nations, so it became much, much  
37                  broader than we had originally intended, I guess,  
38                  or at least understood.

39                  So if we just look at the very first  
40                  "Lesson".

41                  So the paper, what this paper does, is it  
42                  documents the history of the policy, the  
43                  development of the policy, which goes over six  
44                  years. But what I did is I've tried to identify  
45                  lessons learned, which I think if we'd known them  
46                  in the beginning, we probably would have done the  
47                  policy quicker. But also I think a lot of these

1 lessons are applicable to policy implementation,  
2 so they might be of some -- some reason or some  
3 value just to quickly touch on them.

4 So the first lesson is really that "decision  
5 makers must be receptive to proposed changes". So  
6 if you really want to have a policy that's going  
7 to be effective, if the senior decision-makers in  
8 Ottawa or wherever are not receptive to these  
9 changes, you're probably wasting your time.

10 Now, if you just turn to -- if you could  
11 highlight the paragraph on the -- that starts "A  
12 turning point for DFO".

13 Now, really one -- the text before this  
14 talked a little bit about the International  
15 Convention on Biological Diversity and some of the  
16 issues that Dr. Riddell talked about. But I don't  
17 think this New Directions Policy has come up yet  
18 today. Now, this New Directions Policy was  
19 released in 1998 and this was extremely pivotal in  
20 terms of our management and assessment of Pacific  
21 salmon. And really this New Directions Policy  
22 identified that conservation was the primary goal  
23 in terms of fisheries management.

24 And I just want to point out that if you look  
25 at the - maybe move it forward one line - that  
26 there were actually four major policies that  
27 developed as a result of this New Directions  
28 document. So there was a policy on Salmon  
29 Allocation, there was a policy on Improved  
30 Decision Making, one on Selective Fishing, and  
31 then the Wild Salmon Policy. So really the Wild  
32 Salmon Policy wasn't done in isolation. It really  
33 developed following the New Directions paper, but  
34 it was along with three other significant  
35 policies. And what's kind of interesting is that  
36 you'll notice that the Wild Salmon Policy is dated  
37 2005, the others are dated much earlier, just to  
38 give an idea of the complexity of the issues that  
39 we're talking about.

40 So maybe we could just highlight that house  
41 on the bottom of the page. Now, this is a -- so  
42 it's that figure. I don't know how well you can  
43 see that. Now, this figure is actually taken from  
44 the Wild Salmon Policy, and I'm not -- it doesn't  
45 reproduce very well here, and I don't want to go  
46 into any -- any great detail. But it just will  
47 give me an opportunity to just provide a little

1 bit more background on -- on the actual policy.

2 And so we spent a lot of time talking about  
3 the wording of a lot of these -- you know, that's  
4 in this house. And if you look at the "Goal", for  
5 instance. So the goal is to:

6  
7 Restore and maintain healthy and diverse  
8 salmon populations and their habitats for the  
9 benefit and enjoyment of the people of Canada  
10 in perpetuity.

11  
12 So we just think a little bit about that.

13 So it's not only "maintain", but it's  
14 "restore", so that's, you know, a little bit --  
15 means a little bit more than just sort of  
16 accepting the status quo. "Healthy and diverse",  
17 so the status has to be reasonable acceptable, but  
18 they're also diverse, so that the populations have  
19 to be genetically diverse. So "salmon populations  
20 and their habitats". So as Dr. Riddell pointed  
21 out, you really need to have the habitats and the  
22 ecosystems, those are really what form the basis  
23 for adaptations. That's how salmon adapt, is that  
24 they live in different environments. And really  
25 what this is about is preserving this  
26 adaptability. So then "benefit and enjoyment", so  
27 again that means a lot. So benefit kind of  
28 implies that there's an economic gain. Enjoyment  
29 implies that there's other sorts of attributes,  
30 you know, the non-consumptive uses of salmon that  
31 are really important. And then we talk about "for  
32 the people of Canada in perpetuity". So this is a  
33 really -- this, you know, this is forever.

34 So this is a major, major statement, this  
35 goal, and there's a lot of -- a lot of, you know,  
36 thinking and debate went into those particular  
37 words.

38 And I'm not going to belabour this, but if  
39 you look at the "Objectives", you know the first  
40 is about the genetic diversity of wild salmon. So  
41 we feel very strongly that we're in a period of  
42 changing environments, climate change, the way to  
43 ensure that we have wild salmon for our  
44 grandchildren is to ensure sufficient genetic  
45 diversity so that the fish are able to adapt to a  
46 changing environment. How do we do that? We do  
47 that by maintaining habitat and ecosystem

1 integrity. Without the habitat and ecosystems,  
2 you really don't -- you won't have the ability to  
3 develop the diversity within the fish. But then  
4 finally, because we are a resource agency, we  
5 certainly need to manage fisheries for sustainable  
6 benefits.

7 So there are the six "Strategies" that we've  
8 talked about briefly. I'll just point out that  
9 the first three are kind of as Brian pointed out,  
10 are the information gathering. These are really  
11 the scientific information gathering approaches.

12 So the first is basically how healthy are the  
13 fish. The second is what's the state of the  
14 habitat, and the third is all about the ecosystem.  
15 So those three -- information from those three  
16 strategies feed into Strategy 4, which is the  
17 "integrated strategic planning", and this is where  
18 socioeconomic considerations take place.

19 So I'll just mention that the "Principles",  
20 again "Conservation of wild salmon and their  
21 habitats" is the highest priority. So that's  
22 number one. As I mentioned this morning, this is  
23 -- takes precedence over sustainable fishing. We  
24 have a guiding principle of honouring "obligations  
25 to First Nations". And then finally "Open and  
26 transparent decision-making".

27 So it's -- you know, this is just a real  
28 snapshot of the Wild Salmon Policy, but I think  
29 it's important for people to understand that this  
30 is -- this is really a major document that went  
31 through a lot of review.

32 So maybe just move ahead to the middle of the  
33 -- let's see, that bullet number 3 there, "Lesson  
34 2". And I just -- I just want to point out that,  
35 you know, this is -- when we started this policy,  
36 you know, we started it -- we released the first  
37 draft in 2000.

38 And if you highlighted the paragraph that  
39 starts with "Ecological policy issues", it's kind  
40 of interesting because the first version of the  
41 policy that we released in 2000 included a  
42 statement DFO expected to finalize the policy  
43 later that year. So that's kind of how naïve we  
44 were. So it took -- it took another five years.  
45 So clearly this was a far more complicated  
46 document than we anticipated.

47 If we move down to "Lesson 3", which is

1           essentially:  
2

3                   Good scientific advice requires good science.  
4

5           Well, that seems to be pretty -- pretty obvious.  
6           But it's a bit of a challenge when you're -- when  
7           you're talking about scientists that work for  
8           Fisheries and Oceans Canada, there is the possible  
9           perception that we may be influenced by political  
10          pressures. So we may be less than biased. I  
11          mean, I personally think that we've got probably  
12          the best scientists in the world, you know, some  
13          of them anyway, working for Fisheries and Oceans.

14          But what we did is we developed, and doing,  
15          developing the policy, we made a real effort to  
16          interact with others. And this second paragraph  
17          on the top there talks about several science based  
18          workshops that were held early on. So we invited  
19          participation from scientists from the East Coast  
20          and from the Pacific Northwest and the United  
21          States. We had regular reviews and contributions  
22          from groups such as the Pacific Fisheries Resource  
23          Conservation Council. So this was definitely not  
24          done independently of scientists from elsewhere.

25          If you move down to "Lesson 4", and this for  
26          me personally was the biggest -- the biggest  
27          lesson, I guess. And so this lesson is:  
28

29                   Recognize that environmental consequences are  
30                   only one element to consider when making  
31                   decisions.  
32

33          And this -- so maybe just highlight Lesson 4.

34          When we started the policy in 1999 and 2000,  
35          it was primarily a science-driven process. We had  
36          some involvement from others, but it was basically  
37          -- it was largely driven by science. So we  
38          released a policy in 2000. Then we had a round  
39          of public consultations. There was a -- the  
40          version in 2002 that I was primarily responsible  
41          for, which included all the information on  
42          operational objectives and all that kind of stuff.  
43          But it was really at about that -- let me back up  
44          a little bit.

45          So the 2000 draft and the 2002 draft - maybe  
46          just go down about two paragraphs - were really  
47          science-based policies that really didn't consider

1 social and economic issues. And so it's  
2 relatively easy to think about how you're going to  
3 manage a resource if you don't have to worry about  
4 economics, you know, it's fairly simple.

5 So and this was -- just move down to the  
6 paragraph that starts "The WSP seeks to conserve  
7 salmon diversity". So this is really, I think  
8 important. Now, everybody agreed -- virtually  
9 everybody agreed that with the Wild Salmon Policy  
10 we want to conserve diversity. We want to protect  
11 the fish. We want to protect their habitats and  
12 we want to protect their ecosystems.

13 But the real issue was how much diversity to  
14 protect. And that's where you got disagreement  
15 amongst the different user groups. And this is  
16 where the debate about whether the policy should  
17 be prescriptive or not should come in. And  
18 initially we thought in our naïve way, we did  
19 think that it should be prescriptive. We had  
20 started along the line of developing these  
21 operational guidelines. But this was really  
22 before we seriously recognized the importance of  
23 social and economic considerations in the  
24 decision-making process.

25 And so commencing in about 2003, we expanded  
26 the involvement of others in the development of  
27 the policy. We involved people, like Mark  
28 Saunders in Policy Branch got involved. And we  
29 sort of recognized that ecological consequences  
30 are only one element to weigh when making  
31 decisions about complicated environmental issues.

32 And the other point I make in the last  
33 sentence of that paragraph is that societal views  
34 that might dictate a particular prescriptive  
35 approach, they can change quickly. So if you had  
36 an overly prescriptive policy, environmental  
37 policy, chances are it would become out of date  
38 very, very quickly.

39 So I think we'll probably talk about  
40 benchmarks and reference points at some other  
41 point, so I'm going to leave that.

42 But "Lesson 5" is about uncertainty and  
43 managing risk. And I think it's important for  
44 non-biologists to understand just how much  
45 uncertainty there is in environmental science.  
46 It's not like, you know, an engineer that if he  
47 wants to build a bridge, or a building and he can

1 go to a book somewhere and read about how much  
2 stress and figure out what to do. You know, we're  
3 talking about, you know, ecosystems which are  
4 changing, they're adapting, they're evolving,  
5 there is always going to be uncertainty when --  
6 when it comes to predicting things. For instance,  
7 how many salmon will return to the Fraser. I  
8 mean, it's a very difficult thing to do. But we  
9 attempted to do -- we attempted to do this, or  
10 deal with this by managing -- managing risk.

11 I think I'll just quickly move ahead to  
12 "Lesson 6", which is all about maintaining

13  
14 ...effective, transparent, and open  
15 communication recognising the need for  
16 significant public inclusion.  
17

18 And we talked a little bit about the process by  
19 which the 2004 document was revised to produce the  
20 2005 document. And this was a really significant  
21 process for me. And if we could maybe just go to  
22 the top of the second column there, that starts  
23 "During 2005".

24 So this was up until this point, what we had  
25 been tending to was essentially visit different  
26 communities in the province, First Nations  
27 communities, stakeholders groups, and provide  
28 lectures and talks. But in 2005 what we did was  
29 something very different. We formed these quite  
30 large multi-interest dialogue groups or fora, and  
31 -- and we had two sets of them. One was  
32 specifically for First Nations and the second was  
33 for everybody, including First Nations. And we  
34 started by providing them with copies of the 2004  
35 draft policy. And basically we went through that  
36 policy line-by-line, in these large groups. We  
37 had breakout sessions and near the bottom there it  
38 says:

39  
40 During 2005 alone we received and reviewed  
41 246 electronic and written submissions.  
42

43 So we had a huge amount of effort basically making  
44 changes, but not only that, documenting and  
45 responding to the input that we got from many  
46 people.

47 And there -- if you move down to the next



1 paragraph, there were a large number of changes  
2 that were made. And I think one just has to  
3 compare the 2004 document with the final version  
4 in 2005. And in that paragraph there, I just  
5 comment on a few of these changes that were made  
6 towards the end. And a lot of them were as a  
7 result of input from First Nations.

8 And so, for instance, we added a totally new  
9 principle, Principle 2:

10  
11 Resource management processes and decisions  
12 will honour Canada's obligations to First  
13 Nations.

14  
15 So that was put in at that stage.

16 We modified Principle 3 to reflect Aboriginal  
17 Traditional Knowledge.

18 We expanded Strategy 5 to include references  
19 to First Nations governments and we changed the  
20 proposed planning structure.

21 so those are just a few of the changes that  
22 we made in response to the -- you know, to input  
23 at the -- at the final stage.

24 So why don't we just -- just skip ahead to  
25 "Lesson 7" and I think I'll probably stop after  
26 that. And this is about planning for the future  
27 and especially policy implementation.

28 Now, a lot of these lessons that I've very  
29 briefly touched on, although they were specific to  
30 the development of the policy, they, I think, are  
31 in many cases relevant to policy implementation.  
32 And I think I'll leave it there.

33 But I do sort of have the feeling that this  
34 group here is not sufficiently informed about the  
35 policy itself, and it would be nice if we had the  
36 opportunity to just talk about it a little bit.  
37 But I'll stop there. Thank you.

38 Q In your summary of evidence you speak of the  
39 challenges at page 1 of the summary. You speak of  
40 the challenge in developing the concept of CU's,  
41 and your preference for the use of benchmarks  
42 rather than reference points. Can you just  
43 address that. Thank you.

44 DR. IRVINE: That was my other request, is if we could  
45 look at Figure 3 in the Actual Wild Salmon Policy,  
46 I think that this will clarify this discussion  
47 quite a bit. So this is --

1 Q That's on page 17.

2 DR. IRVINE: Page 17, yes.

3 Q Page 17 of Exhibit 8.

4 MR. LUNN: Thank you.

5 DR. IRVINE: What we were trying to do in Strategy 1 of  
6 the Wild Salmon Policy -- let me just back up. So  
7 Strategy 1 is about the first action step is to  
8 identify conservation units. So what are the  
9 units of salmon diversity that we are attempting  
10 to assess and manage. The second action step is  
11 about the identification of these benchmarks. And  
12 then the third action step deals with categorizing  
13 the status.

14 Now, what we tried to do in Strategy 1 was  
15 essentially separate what you might call biology  
16 from social science. So the whole intent of the  
17 purpose of this particular figure and these  
18 benchmarks is to develop for each of these  
19 conservation units a measure of the biological  
20 status of the group of fish. So this does not  
21 have to do with whether you are managing for  
22 whatever the management objectives are.

23 So essentially the lower benchmark and the  
24 upper benchmark were intended to demarcate groups  
25 of salmon that would be in what we called the Red  
26 Zone, the Amber Zone, and the Green Zone. Now the  
27 types of information that were used, the two most  
28 important ones that we identified in the policy  
29 were the number of fish within a conservation  
30 unit, and their distribution. And so when you're  
31 thinking about the health of a group of fish, if  
32 you think of a watershed, you think about the fish  
33 in that watershed, if that was a conservation  
34 unit. You obviously want to have a certain number  
35 of animals. But you also want to have them  
36 distributed throughout that watershed. So you  
37 don't want to have all your eggs in one basket.  
38 So it's really talking about the abundance and  
39 their distribution.

40 So those are the primary means by which to  
41 identify whether, you know -- that's how you  
42 identify the lower benchmark and the upper  
43 benchmark.

44 Now, I think you were asking about reference  
45 points. Now, benchmarks and reference points are  
46 the same thing. A benchmark is a reference point;  
47 a reference point is a benchmark.

1           Now, we specifically used the term  
2 "benchmark" to avoid some of the sort of  
3 implications with target reference points and  
4 limit reference points.

5           Now, a target reference point is -- is more  
6 of a fishery management objective. So where is it  
7 that you would like that population to be. And so  
8 for instance you may decide that your objective  
9 for a particular group of fish is to maximize  
10 economic opportunities from that fishery. You  
11 might decide that your objective is to maximize  
12 catch, which is quite different than the economic  
13 gains. Or you might decide that your objective is  
14 simply to prevent that group of fish from going  
15 extinct. So those are three very different  
16 targets.

17           So what we tried to do in Strategy 1 is  
18 separate out the science from the management. And  
19 so the higher benchmark was attempted to -- it  
20 would be at a point at which the population would  
21 achieve maximum yield. The lower benchmark was  
22 deliberately precautionary, so that it was set at  
23 a point above which COSEWIC or **Species at Risk**  
24 would consider listing a population as endangered.  
25 So it's just a biological status of a group of  
26 fish which would then feed into the decision-  
27 making process along with other information on the  
28 habitat that the fish lived in, their ecosystem,  
29 and of course social concerns and economic  
30 considerations.

31 MR. WALLACE:

32 Q    Am I right then that in the Wild Salmon Policy as  
33 it was finally developed, Strategy 4 is that  
34 taking into account of the other values?

35 DR. IRVINE:    Would you repeat that, please?

36 Q    If Strategy 4 is the place in which the science is  
37 merged with decision-making.

38 DR. IRVINE:    That's correct, yes.

39 Q    And early on that, am I correct that that second  
40 step was considered -- operational guidelines,  
41 management guidelines were considered as a, if I  
42 may put it, a different way to merge those two  
43 pieces.

44 DR. IRVINE:    That's right. I mean, if you look at the  
45 first version of the policy, it actually talks  
46 about LRP's and Tarps. So the policy, you know,  
47 over six years went through a real evolution.

1 Q And if I may just go back to -- you were, I think,  
2 involved in the early stages with the development  
3 of the operational and management guidelines,  
4 correct, the operational guidelines?

5 DR. IRVINE: That's correct.

6 Q I'd like just to take this opportunity, then, to  
7 ask you to identify a couple of documents which  
8 relate to that process. The first is document 1  
9 on the development, proposed exhibits, Mr. Lunn.

10 Now, is this -- are you familiar with this  
11 document?

12 DR. IRVINE: I haven't seen it for a few years, but it  
13 -- yes.

14 Q Can you -- are you an author of it?

15 DR. IRVINE: This -- can you scroll down, give me a  
16 little more of a clue.

17 Yes. So this, it would be interesting to  
18 know what year it was.

19 Q I was going to ask you that.

20 DR. IRVINE: Well, you see, as I mentioned, there was  
21 the version of Wild Salmon Policy that was -- that  
22 was completed in 2002, that I was primarily  
23 responsible for, and went to the Policy Committee  
24 in Ottawa. And I think it was probably Mr. Chamut  
25 that wisely said this needs more work, and then it  
26 came back. But so this would have been either  
27 prior to or subsequent to that. So this is a -- I  
28 would have been involved in the development of  
29 this document, I presume, but I don't remember  
30 this one in particular.

31 Q If you look at the first page of the document  
32 under "Principle 3", it speaks of establishing:

33  
34 ...operational guidelines consistent with  
35 best practices in risk management for  
36 carrying out harvest, habitat, fish  
37 cultivation activities.

38  
39 Can you just tell us how establishing those  
40 operational guidelines for each of those  
41 activities were intended to be achieved?

42 DR. IRVINE: Sure. We actually did develop very  
43 preliminary guidelines for each, fish management,  
44 habitat management, enhancement and aquaculture,  
45 and I think I saw some of those in the binders.  
46 So but we understood that this was a far more  
47 complicated exercise than we had initially

1 thought, and as Mr. Chamut indicated this morning,  
2 the decision was made that this was probably not  
3 the best way to go.

4 And the way I really look at it is one of the  
5 points I tried to make when I went through the  
6 paper was it was really sort of the recognition  
7 that of the importance of social and economic  
8 considerations in the decision-making process.  
9 And so if you're going to have an operational  
10 guideline that says, you know, that you will stop  
11 harvest when "X" happens, I mean, you know, really  
12 what you're trying to do is reflect society.  
13 You're not trying to reflect a conservation  
14 biologist's perspective, or an economist's. And  
15 it's really the decision was made that this was  
16 not the -- a prescriptive approach towards this  
17 policy was not the best way to do it.

18 And so there was a major change in direction  
19 in about 2003, where we went away from the  
20 operational guidelines and attempted to more  
21 clearly identify the important principles in the  
22 policy. But also to involve stakeholders more  
23 broadly in the development of the iterations of  
24 the policy. And that's primarily what we did in  
25 2005.

26 Q Thank you. So this document, the "Definition of  
27 Conservation Units under the Resource Management  
28 Guidelines" would have been part of the process  
29 which you say came to an end in about 2003?

30 DR. IRVINE: I wouldn't say it came to an end, but it  
31 changed direction.

32 Q The direction changed towards the --

33 DR. IRVINE: That's right. Yes.

34 Q -- strategy for ultimate (indiscernible -  
35 overlapping speakers).

36 DR. IRVINE: Yes, and at this point, you know, we  
37 hadn't really -- it's a very exciting time in  
38 fisheries right now because basically you're  
39 dealing with, you know, the development of the  
40 **Species at Risk Act** and what constitutes  
41 designateable units. We were grasping, grappling  
42 within WSP what is a conservation unit. So there  
43 was a lot of thinking that was going on and not  
44 surprisingly there were changes being made at  
45 different stages. So this would have been written  
46 in perhaps 2002 or 2003.

47 MR. WALLACE: Thank you. Mr. Commissioner, with that

63  
PANEL NO. 6  
In chief by Mr. Wallace

1            timeframe, I wonder if this could be marked as the  
2            next exhibit.

3   THE REGISTRAR: 106.

4  
5            EXHIBIT 106: "Definition of Conservation  
6            Units under the Resource Management  
7            Guidelines", undated  
8

9

MR. WALLACE:

10   Q    And another document on the -- from that same era,  
11         perhaps a little earlier, Dr. Irvine, is document  
12         12, Mr. Lunn, in that same binder, and this is a  
13         document entitled "Wild Salmon Policy, Operational  
14         Guidelines, Preliminary Outlines" and it has your  
15         name on the bottom left-hand corner and the date  
16         of December 6, 2001. Do you recall this document,  
17         Dr. Irvine?

18   DR. IRVINE: Yes. Again if you could show me the  
19         second page.

20         Yeah, so this was early on. So this was --  
21         so this was the Resource Management Guidelines, an  
22         initial estimate of the time to completion.

23   Q    And that was part and parcel of that initial view  
24         of how they should be done.

25   DR. IRVINE: That's correct.

26   MR. WALLACE: I wonder, Mr. commissioner, if that could  
27         be marked as the next exhibit.

28   THE REGISTRAR: 107.

29

30            EXHIBIT 107: "Wild Salmon Policy,  
31            Operational Guidelines, Preliminary Outlines"  
32            dated December 6, 2001  
33

34

MR. WALLACE:

35   Q    Dr. Irvine, just looking beyond the second page of  
36         the document, can you just explain how this  
37         document addresses the operational guidelines  
38         challenge. There were four areas, I think. If  
39         you go to page 4, for example, "Habitat  
40         Sustainability Guidelines".

41   DR. IRVINE: That's correct. So there were, as I think  
42         I mentioned earlier, there were fisheries or  
43         resource management guidelines, habitat  
44         sustainability guidelines, and then my  
45         recollection is that there were both enhancement  
46         and aquaculture.

47   Q    And if you just scroll through there is "Salmon

1           Enhancement Guidelines" and on the last page  
2           "Aquaculture Operational Guidelines".  
3       DR. IRVINE: That's correct, yeah. So this doesn't  
4           really provide the guidelines. This is just sort  
5           of was my estimate of the time it would take to  
6           complete the guidelines.

7       Q       And an outline of what each of the guidelines  
8           would entail.

9       DR. IRVINE: An early outline, yes.

10      Q       Yes. Thank you. Now, Dr. Irvine, at page 2 of  
11           your summary you note that:

12  
13                   ...it was sensible to incorporate  
14                   consideration of Aboriginal Traditional  
15                   Knowledge into the Wild Salmon Policy,  
16                   including in Action Step 1.1.

17  
18           Action Step 1.1 is identifying the conservation  
19           units?

20      DR. IRVINE: That's correct.

21      Q       And it's your view that this reflects:

22  
23                   ...a desire to access the best available  
24                   information, which can include not only  
25                   genetic and ecological information but  
26                   potentially also Aboriginal Traditional  
27                   Knowledge.

28  
29      DR. IRVINE: That's correct.

30      Q       Can you give some examples of how you would use  
31           Aboriginal Traditional Knowledge in the  
32           identification of CU's.

33      DR. IRVINE: Sure. And as Dr. Riddell, he summarized  
34           the approach that was really developed by Drs.  
35           Holtby and Ciruna on the Identification of  
36           Conservation Units. And you will recall it  
37           started with kind of an overlay of maps, of zones,  
38           and then the next step is the inclusion of  
39           ecological information on the fish in particular  
40           areas.

41                   So two examples were traditional knowledge,  
42                   whether that be from First Nations, or people  
43                   living in an area would be of use, would be on the  
44                   distribution of fish within a watershed, and  
45                   secondly on the timing of arrival into a  
46                   watershed, or the timing of spawning. So those  
47                   were the sorts of information, the types of

1 information that can be used to further  
2 differentiate or alter, you know, what would  
3 constitute a conservation unit. So those would be  
4 two examples.

5 Q Thank you. Mr. Chamut, I wonder if I could come  
6 back to again the issue of -- and I apologize, I  
7 keep coming back to operational guidelines, but it  
8 seems to have been something that's been reflected  
9 and then the policy was changed and the  
10 explanation you've given and others as to why, is  
11 I think on the record. But I want to just -- in  
12 2004, following on your 2002 review, there was a  
13 report done by the Commissioner of Environmental  
14 and Sustainable Development of the House of  
15 Commons, which commented on your report and also  
16 commented on the Wild Salmon Policy. This is at  
17 Exhibit 88.

18 I just was wondering, first of all, do you  
19 specifically recall that report?

20 MR. CHAMUT: I would recall the report, but I would not  
21 recall very much about the content.

22 Q Okay. This is a very general question about it.  
23 If you go to page 11, Mr. Lunn, paragraph 5.1.  
24 And for a little context, this is not the first  
25 report from the Commissioner and he's commenting  
26 on -- she's commenting on previous reports. And  
27 at paragraph 5.1 on page 11 she says:

28  
29 Overall, we are not satisfied with the  
30 progress made by Fisheries and Oceans Canada  
31 in responding to the recommendations we made  
32 in the three previous audits in 1997, 1999,  
33 and 2000. While many stocks are abundant,  
34 some Atlantic and Pacific salmon stocks are  
35 in trouble. We continued to identify  
36 significant gaps in managing risks.  
37

38 And she the refers at page 15 -- oh, and the first  
39 bullet under 5.1 the observation is that:

40  
41 The Department has not finalized the Wild  
42 Salmon Policy, which would set out clear  
43 objectives and guiding principles. The  
44 policy would also bring together biological,  
45 economic, and social factors -- for fisheries  
46 and resource management, habitat protection  
47 and salmon enhancement.



1           Then if you go over to page 15, under the  
2 heading "Wild Salmon Policy not finalized",  
3 paragraph 5.21, she says:  
4

5           In 1997, we recommended that the Department  
6 clarify the extent to which it intends to  
7 apply practices in sustainability and genetic  
8 diversity to the management of individual  
9 Pacific salmon stocks and their habitats. We  
10 also recommended that the Department develop  
11 more explicit operational objectives and  
12 targets for salmon stocks in its fishery  
13 management plans.  
14

15           There seems to be a theme through here about  
16 the value of a Wild Salmon Policy and the use of  
17 explicit operational objectives and targets. And  
18 I am wondering in the context of where the  
19 Department was at this time, which was in 2004,  
20 there was consideration as to whether in its final  
21 developed version the Wild Salmon Policy really  
22 does do what your initial report suggested, and  
23 what the way it started out, and the way this  
24 report suggests is necessary. In other words, a  
25 merging of operational and scientific...

26 MR. CHAMUT: Well, maybe I'm reading things a little  
27 differently, and this is where words start to  
28 matter. Your paragraph that's in front of us now,  
29 5.21, talks about 1997. The paragraph you had up  
30 earlier was from 2004. And when I read that  
31 paragraph from the Commissioner, it struck me that  
32 she was describing exactly what the Wild Salmon  
33 Policy does, which is provides clear objectives  
34 and guiding principles. So it would seem to me  
35 that what we have produced and what has been  
36 adopted, does precisely what was being recommended  
37 at that time.

38 Q       Carrying on down from the last paragraph I took  
39 you to, the balance of that page deals with again  
40 some of the more explicit recommendations, I  
41 guess. She refers to the 2000 report, refers to  
42 your post-harvest review in 2002, and notes that:  
43

44           The review identified --

45  
46 - this is at paragraph 5.26, that review  
47 identified -

1           -- that there were no clear objectives for  
2           the conservation of wild salmon. There was  
3           no consensus over conversation units, goals  
4           for escapement...and acceptable risks for  
5           managing the fishery.  
6

7           Do you think that the Wild Salmon Policy as it  
8           currently exists does that?

9           MR. CHAMUT: Well, I guess I'm going to have to repeat  
10          myself a little bit. I said in my testimony that  
11          the Wild Salmon Policy lays out a framework for  
12          conservation of wild salmon. It does -- it does  
13          indicate what the unit of conservation -- for  
14          conservation will be, and that's the conservation  
15          unit, but it does not provide explicit numerical  
16          targets for escapement, for example.

17         Q     Right.

18         MR. CHAMUT: And I think I've outlined the reasons for  
19          that. There is not a single escapement goal. If  
20          you look at Fraser sockeye, which is your  
21          preoccupation here, escapement limits or  
22          escapement targets that are set are set annually,  
23          because there's not -- there's no uniformity in  
24          the returns year by year by year. They operate on  
25          a four-year cycle. And so you couldn't in the  
26          first instance, even if you're managing by stock  
27          aggregates, say the escapement goals is "X". It  
28          would be "X" in 2001, and "Y" in 2002. So it's  
29          not something that you can set in stone and say  
30          this is your escapement target. It will vary  
31          depending on the year. It will vary depending on  
32          a whole number of factors that come into play.

33                 And I've said previously that the idea of  
34          being prescriptive I think would be a mistake. I  
35          think the approach that is being taken provides  
36          the Department and with stakeholders the  
37          opportunity to provide advice and input to what  
38          would be an appropriate target on a year-by-year  
39          basis for managing the fishery, guided by what's  
40          in the Wild Salmon Policy, in terms of the  
41          priority of conservation, the units that are going  
42          to be -- that are going to be managed, and how  
43          that's all going to come together in the strategy  
44          that is called Integrated Strategic Planning.

45                 Through that process you end up with  
46          something, in my view, that is far more robust as  
47          a management plan than the Department simply

1 saying this is what is -- this is the escapement  
2 target for a particular stock, it's "X". Because  
3 one of the things I've learned is that when the  
4 Department does that, it is unanimously and  
5 strongly attacked by various user groups that they  
6 haven't listened to input, that there may be other  
7 solutions. You've ignored this factor, you've  
8 ignored that factor.

9 And even though consultation can be very  
10 difficult, time consuming and indeed tedious at  
11 times, it does provide us with much better  
12 decision-making. And I strongly believe that  
13 having the opportunity to look at a variety of  
14 factors and accept advice from people that are on  
15 the ground provides us with a better management  
16 plan, and we will all be the better for it, and  
17 the salmon resource will be the better for it,  
18 too.

19 I think you can look at a whole range of  
20 options that will provide a better outcome than  
21 simply saying, you know, prescribing a particular  
22 number. Because as everyone has gathered, this is  
23 an enormously complex issue. It's difficult to  
24 manage and it's -- it's best managed when we've  
25 had input from a variety of groups who have an  
26 opportunity to provide their advice. And as I  
27 say, I'm convinced that decision rules along the  
28 lines that you are obviously pressing on here,  
29 would not be the right way to go. And there may  
30 be a difference of opinion here, but my opinion  
31 will not change.

32 Q I'm not pressing on these, I'm looking at what has  
33 -- one of the things that this Commission has been  
34 mandated to do is to look at DFO's response to  
35 previous recommendations. And I appreciate your  
36 evidence greatly, and I just wanted to make -- put  
37 it in the context of how it -- and I think you'd  
38 agree with me it's not exactly what was  
39 recommended, and actually we haven't come to the  
40 recommendation which is pretty much the lines  
41 we've just read.

42 But I take it that your response, Mr. Chamut,  
43 is that the Wild Salmon Policy is a more  
44 sophisticated nuanced and appropriate response  
45 than simply something which you can write in a  
46 four-line recommendation. And if I -- and the  
47 recommendation here is Fisheries and Oceans Canada

1           should finalize the Wild Salmon Policy to define  
2           conservation objectives and provide direction for  
3           the management of fisheries, protection of habitat  
4           and salmon enhancement. And I take it that the  
5           response you've just given would be the same,  
6           having heard that before.

7       MR. CHAMUT: Yes. And I think knowing a little bit  
8           about the way these audits are done, I mean, they  
9           send out a number of people out to various  
10          parties. In this case they would have undoubtedly  
11          sent people out to the Pacific Region. They would  
12          have talked about the Wild Salmon Policy and I'd  
13          be willing -- I'd be virtually certain that they  
14          would have talked about the sort of things that  
15          are in the report here about -- I mean it's no  
16          surprise that they would talk about operational  
17          guidelines for habitat, resource management,  
18          aquaculture and enhancement, because that's  
19          exactly what they would get from interviews from  
20          people in the region at that time.

21                And as I said at the outset, the thinking did  
22          evolve as time went by, but I'm pretty sure that  
23          what the -- that what was coming here was a  
24          reflection of what the -- what the current  
25          thinking was at the time within the Region, which  
26          would have been passed on to the staff that were  
27          doing the work for the Commissioner. And, you  
28          know, as I say, I think that's one of the -- one  
29          of the reasons why it's there. And secondly, the  
30          thinking did evolve along the lines of what I've  
31          -- what I've expressed.

32       Q       Do you recall any explicit consideration of this  
33                recommendation as this was evolving at that time?

34       MR. CHAMUT: Within the Wild Salmon Policy?

35       Q       Yes.

36       MR. CHAMUT: No, I don't think that -- I don't recall  
37                anything where we sat down and, you know,  
38                carefully considered this as part of it. It was  
39                -- my colleagues may correct me, but I don't  
40                remember it particularly, but others may.

41       Q       Well, does anyone recall any express consideration  
42                of the Commissioner's report and recommendations?

43       DR. RIDDELL: Brian Riddell. Mr. Commissioner, I think  
44                that it is true that we were well aware of this  
45                document. Because there was a history of comments  
46                like this, we were very aware that we needed to  
47                address these type of topics in the Wild Salmon

1 Policy.

2 And I actually think it's very misleading to  
3 say that the document doesn't have specific  
4 conservation objectives. It doesn't have a  
5 specific value by a stock in the old terminology,  
6 but you simply have to look at the composition of  
7 the policy to see it's much stronger as a  
8 conservation policy than anything that existed in  
9 the past. It gives a very explicit commitment to  
10 the conservation of genetic diversity. It's the  
11 first time ever in a fisheries policy document.  
12 It recognizes two benchmarks for management, not  
13 just the target for optimal escapement. It gives  
14 you a conservation level, including precaution  
15 where you incorporate the buffer for protection of  
16 the lower bound of the stock. And that it talks  
17 about a requirement to have an assessment program  
18 that's agreed by the people in those regions,  
19 First Nations, communities, fishers, others, about  
20 what the assessment framework actually is. And it  
21 gives a commitment to open, transparent processes  
22 and that provided through Strategy 4, which we'll  
23 talk about later.

24 Q Yes.

25 DR. RIDDELL: But I think it's very misleading to say  
26 that the policy does not give you explicit  
27 conservation objectives. It's simply the way  
28 people thought about them in the past in terms of  
29 having one value as the optimal escapement goal.  
30 The optimal escapement goal is not stable over  
31 time, and as we learned about it, we realize that  
32 with the uncertainty of the future, you needed to  
33 have more than a single goal and you needed to  
34 recognize the distribution of spawning populations  
35 throughout a conservation unit, not just the big  
36 goals. Not just the big populations. You needed  
37 to look at the diversity of all the populations.

38 Q Thank you. Any other comments from Dr. Irvine or  
39 Mr. Saunders? No?

40 Mr. Chamut, the -- we've heard this described  
41 -- Dr. Irvine described it as a local initiative  
42 that became a national policy, and it's been -- it  
43 is referred to as a national policy. It was  
44 signed off by the Minister. From your experience  
45 in Ottawa, how important was this policy in  
46 Ottawa? Was there a commitment to it there?

47 MR. CHAMUT: Well, I can't put -- I can't put words

1 into the mouth of my colleagues, but I do know  
2 that at the time that I was out here working on  
3 it, the Deputy Minister was a gentleman named  
4 Larry Murray, and I can assure you that he fully  
5 recognized the importance of this policy, and he  
6 very definitely did give his personal support for  
7 it. He was very insistent that it get done, and  
8 made sure that progress was in fact being made.  
9 And then he would phone me quite regularly, "How  
10 are things going?" and so he was keeping on top of  
11 it. And I think actually as well the fact that he  
12 wanted -- that he asked if I would come out here  
13 to take this on, I think reflected very much the  
14 fact that he put a high degree of importance on  
15 it.

16 And I would assume that following my  
17 retirement, that Paul Sprout would have even  
18 equally been an advocate for this policy, and I'm  
19 reasonably certain that he would have ensured that  
20 all of his colleagues in Ottawa would have  
21 recognized and continued to support it as a very  
22 important document. Because I think it is in many  
23 ways it is unique in terms of what it does in  
24 defining conservation for a stock that is, you  
25 know, very, very important to the mandate of the  
26 Department.

27 So I am virtually certain that it's  
28 recognized at a national level as a major step  
29 forward and one that deserves -- is worthy of  
30 support.

31 MR. WALLACE: Thank you. Mr. Commissioner, I wonder if  
32 this would be an appropriate time for the  
33 afternoon break. I can say that I think I just  
34 have a couple of questions left for each of Dr.  
35 Riddell and Mr. Chamut about implementation, which  
36 isn't really part of this panel, but they're not  
37 coming back, so then they have some insights, I  
38 think.

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

41  
42 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)  
43 (PROCEEDINGS RECONVENED)  
44

45 THE REGISTRAR: Order. The hearing is now resumed.

46 MR. WALLACE: Thank you, Mr. Commissioner. Having  
47 canvassed the participants on their availability

1 to stay late, they aren't.  
2

3 EXAMINATION IN CHIEF BY MR. WALLACE, continuing:  
4

5 Q Mr. Chamut, I just want to ask a couple of  
6 reflections from -- for a couple of reflections  
7 from you from today, because we're not -- this  
8 will be our last chance to ask you these  
9 questions. So it's a little off the development  
10 topic, but you, I think, are aware of the state of  
11 implementation of the Wild Salmon Policy and, in  
12 particular, the fact that there are no benchmarks  
13 yet determined for any CU under step 1.2, and that  
14 the CU status is not being monitored under step  
15 1.3. DO you have a reaction to that, five years  
16 later?

17 MR. CHAMUT: Well, I would be -- my honest reaction is  
18 one of disappointment. I did anticipate that this  
19 was going to be a difficult job to undertake, but  
20 I did understand that over the period of five  
21 years that I would have expected there would have  
22 been more progress made. In particular, we talked  
23 about the desirability of trying to do things like  
24 pilot projects, or at least testing out some of  
25 the approaches, particularly under Strategy 4. I  
26 thought that it would have been quite instructive  
27 to take a particular geographic area or management  
28 area and try to demonstrate how you would use  
29 Strategy 4 to do the sorts of things that are  
30 contemplated under the policy, and I would have  
31 expected that there would have been something of  
32 that nature that would have been completed within  
33 five years. So that's, I think, is a  
34 disappointment to me. It's probably a little bit  
35 slower than what I had anticipated.

36 Q In your summary of evidence, you indicate that you  
37 think that coordinating the implementation of the  
38 Wild Salmon Policy would be a perfect rule for an  
39 associate regional director general. Do you have  
40 any other suggestions on what might be done to  
41 improve the likelihood and pace of implementation?

42 MR. CHAMUT: Well, the first and easiest solution is  
43 probably about thirty or forty million dollars  
44 would be a good start. I mean, that would  
45 obviously be a very important contribution to  
46 progress. But beyond that, I think that what's  
47 really important is to highlight this as a

1 critical priority within the region, and as I sit  
2 here I'm reasonably sure that it is a priority  
3 within the region, but I'm not sure exactly where  
4 it sits among the various responsibilities that  
5 the department has to carry out, because it does  
6 much more than just manage salmon and manage  
7 salmon and -- or Sockeye salmon in the Fraser.

8 But I think it has to be identified not just  
9 as a responsibility of the associate RDG, but has  
10 to come from the regional director general as a  
11 priority, and I think she needs to identify  
12 someone that is going to really be accountable for  
13 pulling all the various bits and pieces within the  
14 region together to make this happen, because  
15 sometimes there are barriers between sectors,  
16 between fish management, between science, between  
17 habitat, and I think you need someone that sort of  
18 bridges all of those sectors to be able to lay  
19 down the priority and make sure that people are  
20 doing what they have agreed to do, and I think the  
21 associate RDG is probably that person.

22 But I'd go on to say it's -- it would be -- I  
23 don't think even that would be sufficient. This  
24 is -- the Pacific region oftentimes is, I won't  
25 say ignored, but it probably has less priority in  
26 Ottawa than does -- than some of the Atlantic  
27 regions. The fishery in the Atlantic is probably  
28 one of the primary drivers of economic  
29 development, particularly in small coastal  
30 communities. There's a lot of political  
31 importance to the management of the fishery in  
32 Atlantic Canada, and that gets translated back so  
33 that most of the headquarter folks in DFO  
34 oftentimes spend more time and attention on  
35 Atlantic problems than they do on Pacific. And  
36 unless there's something that's sort of a loud  
37 outcry from Pacific, I think the tendency is to  
38 oftentimes maybe ignore it a little bit. And so I  
39 think you've got to have good, strong regional  
40 structures and, at the same time, you've got to  
41 have a recognition in Ottawa, from the deputy  
42 minister on down, that this policy is really  
43 important, and the deputy's job is to make sure  
44 that resources are there to do the job and that  
45 individuals are given clear instructions, and the  
46 accountability for them to perform or to do  
47 certain things is clear. And that can be an



1 enormously powerful incentive for people to make  
2 sure that they focus on that particular job.

3 In the absence of that, there are a thousand  
4 other priorities clamoring for the department's  
5 attention out here, and I know that it's  
6 oftentimes difficult to just really focus on one  
7 thing. And I think I said in my testimony, in my  
8 document that was tabled, I said that the  
9 department is really, really good at mustering the  
10 resources and the energy and the effort to deal  
11 with big crisis, but it's less effective when it  
12 comes to managing sort of an ongoing program in  
13 making sure that it gets the priority and the  
14 attention and the focus it deserves.

15 And so on this case, given certainly my  
16 personal view about the importance of this, I  
17 think it has to start at the top with the deputy,  
18 who needs to be acutely aware of the importance of  
19 this, and it has to translate down an  
20 accountability system that's make sure that people  
21 know that they're going to be held to account to  
22 do certain things to make sure that this policy is  
23 implemented.

24 Q Thank you, Mr. Chamut. You made a comment that  
25 thirty or forty million dollars would do it. I  
26 suspect that was facetious, but just for the  
27 record, do you have a sense of what sort of  
28 infusion of operating funds might help?

29 MR. CHAMUT: I think it would be unfair of me to offer  
30 a number. There's a couple of issues here that,  
31 if I have the opportunity to speak maybe just a  
32 little bit just beyond the Wild Salmon Policy, I  
33 think it's clear that if the -- the way to  
34 expedite the implementation of this policy would  
35 be to invest some new resources in it, and how  
36 much it would be, I don't know, but I'm reasonably  
37 certainly that my colleagues on either side of me  
38 would be happy to venture an estimate.

39 But the one thing I think this commission  
40 needs to focus on, and I expect it will at some  
41 point in its deliberations, is trying to find a  
42 way to give additional impetus to some of the  
43 research that's necessary. We spend, at present  
44 time, in our research program, it's almost  
45 entirely focused on what I would call stock  
46 assessment in local areas, and the ability and the  
47 capability to go out and actually do research on

1 salmon once they leave their natal streams, in  
2 other words, where they go in the ocean, what  
3 feeds on them, what they feed on, what are the  
4 factors that influence them, that hasn't been  
5 really studied, in my estimation, since Dr. Ricker  
6 in the 1950s. The department, I don't think, has  
7 got the physical capacity in terms of vessels and  
8 probably in terms of personnel, to mount a major  
9 research program in the ocean.

10 But until we have a better understanding of  
11 what actually happens to these young fish when  
12 they go to sea, we're going to have a very  
13 difficult time, as a department, being able to do  
14 accurate forecasts of returns and really  
15 understand what's influencing the number of fish  
16 that came back. And we've had an excellent couple  
17 of examples in recent years, where we've predicted  
18 a low return, like this year, and we end up with  
19 the largest return on record. We've had other  
20 cases where we've predicted good returns and we  
21 get virtually nothing. And when we have those  
22 sorts of extremes, it makes resource management  
23 really, really difficult, because a lot of our  
24 management depends on that forecasting and the  
25 ability to set management and harvesting plans as  
26 the fish start to return, because, I mean, the way  
27 we harvest, we oftentimes don't have accurate or  
28 really precise information about how many fish are  
29 coming back and what their timing is, and all the  
30 rest of it.

31 So if there was one thing that I think the  
32 commission needs to get some expert focus on is  
33 what I would call ocean research. And to really  
34 understand what's happening in the ocean, it would  
35 give, I think, as much -- have as much value to  
36 understand that as implementing the Wild Salmon  
37 Policy, in my opinion, and I hope that's something  
38 that's not going to be -- I'm sure it won't be  
39 overlooked, but I really think it's one of the key  
40 needs --

41 Q We'll certainly be canvassing that. Coming back  
42 to the Wild Salmon Policy, I take it from your  
43 evidence you consider this to be a very important  
44 policy, and would I be correct in assuming that  
45 you would -- that, in your view, having it  
46 implemented would improve the future  
47 sustainability of Fraser River Sockeye?

1 MR. CHAMUT: Absolutely. I think it's -- I mean,  
2 that's the basis of everything, I think, everyone  
3 here has been saying and, yes, I would strongly  
4 endorse that.

5 Q We've heard, today, that the concepts have been  
6 around, you know, prior to the 1990s and were  
7 crystallized through the '90s, and here we are in  
8 2010 and it's not implemented. Had there been a  
9 Wild Salmon Policy developed and implemented more  
10 quickly, could it have been done more quickly?  
11 Could it have had any impact on the decline on  
12 Fraser River Sockeye?

13 MR. CHAMUT: Well, of course, it could have been  
14 implemented more quickly, theoretically, but I  
15 find that if you look at some of the lessons that  
16 Jim Irvine went through, the idea of a policy,  
17 there has to be an overall impetus to adopting a  
18 policy. There has to -- I mean, in the case of  
19 wild salmon, I think it would have been very  
20 difficult, say in the mid '90s, a policy like this  
21 would have been dead on arrival. There was not  
22 going to be the sort of support for a policy of  
23 this nature.

24 I think, over time, whereas we went through  
25 some of the challenges in managing not just salmon  
26 but a variety of other species, particular Coho  
27 and Chinook, we started to recognize, and a lot of  
28 our stakeholder groups and other interests started  
29 to recognize the need for significant change, and  
30 so there was a willingness to consider things that  
31 10 years ago probably would have been  
32 unacceptable. So yeah, it probably could have  
33 been done quicker, but I do think that it was -- I  
34 think the timing, as it turns out, was probably  
35 just about right in terms of having a scientific  
36 understanding and the departmental impetus towards  
37 it, and the stakeholder willingness to embrace  
38 these sorts of changes.

39 Q One of the factors which was, I think, brought in  
40 late to the policy, but is now there, is under  
41 implementation, is an implementation plan. You, I  
42 think, left immediately after the announcement, so  
43 I take it you've never seen an implementation  
44 plan?

45 MR. CHAMUT: No, I haven't.

46 Q And what is your reaction to the fact that none of  
47 us have seen one, either?

1 MR. CHAMUT: Well, I know that -- I mean, I can't  
2 really speak to what you've just said. I've  
3 talked to my colleagues and I'm told that there  
4 are things associated within an implementation  
5 plan, or within an implementation of the Wild  
6 Salmon Policy, so I'll leave it to others to  
7 describe what they've done, but I think clearly,  
8 you know, putting something together that would  
9 describe, once the policy had been adopted, I  
10 think it was important to try and put something  
11 together that would basically describe, for staff  
12 members, as well as other interests, exactly what  
13 people would be doing and over what timeframe and  
14 the like. I think it would have been very  
15 helpful.

16 Q Do you recall how the notion of the requirement  
17 for an implementation plan got there? It was not  
18 in earlier drafts?

19 MR. CHAMUT: No, it wasn't in earlier drafts. It was  
20 something that was inserted probably in the week  
21 or two leading up to the finalization of the  
22 policy. You know, we did get a lot of really good  
23 feedback from a lot of different groups, and one  
24 of the concerns that did come up was about  
25 implementation, and I thought that putting  
26 something in as an implementation plan would  
27 provide some confidence to others that the  
28 department was gung-ho and ready to go and that  
29 would actually show a commitment to implementation  
30 of the policy. So it was intended to build  
31 confidence as well as serve as a device to try and  
32 inform departmental staff about the new way of  
33 doing business.

34 Q Thank you, Mr. Chamut. Yes, Mr. Saunders?

35 MR. SAUNDERS: I wonder if I might add --

36 Q Please.

37 MR. SAUNDERS: -- something to the piece on the  
38 implementation plan? I think this policy was  
39 unique in that most policies would have stopped at  
40 the -- when we looked at that house that Dr.  
41 Irvine presented, it would have stopped at the --  
42 probably the objectives and the principles. And  
43 what we've realized is that while we couldn't  
44 figure out all the details, the strategies, in my  
45 opinion, constitute an implementation plan, and we  
46 took it as such. There are a lot of steps in  
47 there, and so, really, that guided the department

1 in terms of how to go forward, was to stay within  
2 those -- move -- make progress on those action  
3 steps.

4 We didn't call it an implementation plan, per  
5 se, but we did develop annual work plans, and  
6 there were a series of multi-interest and First  
7 Nations stakeholder forums where we got together  
8 and we clearly heard, when we developed the  
9 policy, that you need to engage us in the  
10 implementation; you don't just stop the process  
11 that we started. So we maintained that process  
12 and took advice on how to move ahead on  
13 implementation and, in fact, we've had a lot of  
14 engagement of industries and NGOs, universities  
15 and others, in the implementation, which I know  
16 we'll deal with more.

17 But it may be a question of semantics about  
18 whether or not we actually -- you know, more  
19 traditional policy, where you had just laid out  
20 that high end principles and objectives, you would  
21 then put together another document, which would be  
22 the implementation plan, and I think we've got a  
23 hybrid and a different way of working that  
24 constitutes an implementation plan.

25 Q Dr. Riddell, you had some involvement, I think,  
26 with implementation early on, and you've made  
27 reference to it in your -- in the summary that you  
28 -- in your witness summary. Can you just tell us  
29 your role in implementation after the policy was  
30 finalized in 2005?

31 DR. RIDDELL: Yes. Mr. Commissioner, I was the  
32 division head for salmon and freshwater  
33 ecosystems, which was the science branch component  
34 that was responsible for advising on the Wild  
35 Salmon Policy, and we did develop a number of work  
36 plans, or implementation plans. Immediately  
37 following in your announcement news release that  
38 you showed us, there were numbers in there that  
39 were allocated for two or three years - I don't  
40 remember exactly how many, to be honest, in that -  
41 and those funds were allocated for a specific task  
42 done -- coordinated by the policy branch of the  
43 Pacific region. And there was an implementation  
44 team that was identified that allocated  
45 responsibilities for each of these strategies.

46 In particular, our science branch program was  
47 responsible for implementation of Strategy 1;

- 1 habitat looked after Strategy 2; and science  
2 branch was to develop the initial discussion paper  
3 on Strategy 3, ecosystem-based management; and  
4 there was, then, policy and fisheries management  
5 looking at Strategy 4. And the funds that you  
6 identified, or you saw identified, were allocated  
7 out over that time. And science put some  
8 additional funds in and staff that we recruited to  
9 implement and do some of the work. For example,  
10 you'll meet Dr. Carrie Holt --
- 11 Q Yes.
- 12 DR. RIDDELL: -- and she was recruited from Simon  
13 Fraser University to work on the benchmarks. So  
14 that was my responsibility.
- 15 Q Right. That was on Strategy 1?
- 16 DR. RIDDELL: Dr. Holt, in particular, and Dr. Holtby  
17 was also in the division that I managed.
- 18 Q Right.
- 19 DR. RIDDELL: Dr. Ciruna is a contractor with Nature  
20 Conservancy of Canada, and also had previously  
21 worked with the Province of B.C.
- 22 Q What was your involvement with the implementation  
23 of Strategy 2?
- 24 DR. RIDDELL: Science Branch had a couple of people  
25 involved. Dr. Irvine was involved. A biologist,  
26 named Ray Lauzier, was involved in advising on  
27 habitat indicators. It was largely led by a  
28 habitat group through Habitat and Oceans  
29 Management at the time.
- 30 Q Strategy 3 is the inclusion of ecosystem values  
31 and monitoring, and you, I think, were involved in  
32 that as well. Can you just tell us a little about  
33 your experience with the implementation of  
34 Strategy 3?
- 35 DR. RIDDELL: Strategy 3, on ecosystem-based  
36 management, this was a responsibility that science  
37 accepted involving both the biological components,  
38 with Dr. Kim Hyatt, and Dr. Irvine was involved,  
39 and we also hired an additional scientist to work  
40 on that. And then there was the state of the  
41 oceans report was also included in that activity.  
42 It was not something initiated by the Wild Salmon  
43 Policy; it was something that we were building on  
44 and already existed and that joint annual  
45 publication prepared by the ocean scientists at  
46 the Institute of Ocean Science and from the  
47 biological researchers, and Dr. Irvine is actually

1           the co-author of those reports at this time for  
2           biological science.

3           Q     Right.

4           DR. RIDDELL: That's a particular topic that has been a  
5           very slow process. I think, when we met, my  
6           discussion was I was unable to really get a  
7           discussion paper, all I really wanted to build on,  
8           and I think Dr. Hyatt's experience in ecosystem-  
9           based work going back a long time has really  
10          driven them to do a little bit more than maybe we  
11          wanted. We wanted to get something out that  
12          people could look at and start building from.

13          Q     In the policy, itself, it describes, at Action  
14          Step 3.1, that:

15  
16                     Within two years, an ecosystem monitoring and  
17                     assessment approach will be developed and  
18                     integrated with ongoing assessments and  
19                     reporting on the status of wild salmon.  
20

21           Is your comment related to the failure of that to  
22           happen?

23          DR. RIDDELL: Yes, I think that's a notable limitation  
24          on implementation. We haven't made any progress  
25          to that extent, although we are fully aware that  
26          that was the commitment we made when we wrote that  
27          policy.

28          Q     And the fact that that commitment was not met, you  
29          were trying to do too much at once; was that the  
30          point?

31          DR. RIDDELL: Well, I think probably it comes down to  
32          that. We really didn't have to write a definitive  
33          paper; we were clearly going to get extensive  
34          comments back on anything we wrote. Dr. Irvine  
35          can probably comment on this best, because he  
36          worked closely with the team as well in that.  
37          Really, it came down to I wanted something akin to  
38          a discussion paper, a white paper about what  
39          others are doing in ecosystem-based management.  
40          We did host two workshops on development of  
41          ecosystem-based indicators, we had good  
42          participation, and then they really didn't really  
43          develop into any product or application.

44          Q     Were you involved in the drafting and action plans  
45          or respond to the Marine Stewardship Council  
46          certification conditions?

47          DR. RIDDELL: The MSC certification for sockeye is all

1 that was available at that time. The conditions  
2 that were provided to receive that certification  
3 relied heavily on implementation of the Wild  
4 Salmon Policy, so we were definitely -- science  
5 branch was definitely consulted on whether we  
6 could meet the expectations in the conditions, but  
7 we were not really directly involved in writing  
8 the direct response to the MSC review, so we  
9 provided input only.

10 Q Do you recall - this is a more general question  
11 coming out and I'll end pretty much here - the  
12 relationship of the Marine Stewardship Council  
13 certification and the Wild Salmon Policy, do you  
14 recall when that first became an issue?

15 DR. RIDDELL: To be honest, going back and thinking  
16 about the sequencing here, the MSC certification  
17 for sockeye was actually in the works for, I  
18 think, for about nine years and it actually  
19 predated -- the initiation of that predated the  
20 Wild Salmon Policy. Once the Wild Salmon Policy  
21 was accepted, then they went through another full  
22 round of reviews, the department was writing  
23 responses to comments, and I would say it was  
24 around 2007, likely, that we saw the first plan to  
25 respond to, but it's a little grey on the dates,  
26 to be honest.

27 Q Right. Okay. So it was in people's minds through  
28 the development. It was only for sockeye, I take  
29 it; is that right?

30 DR. RIDDELL: The only MSC certification and discussion  
31 is for the four sockeye fisheries they talked  
32 about: the Nass; the Skeena; Barkley Sound; and  
33 Fraser River. And all of the conditional  
34 requirements of the certification - I shouldn't  
35 say "all"; I believe there was 37 in total - and  
36 the majority of them related to the implementation  
37 of the Wild Salmon Policy with respect to those  
38 four fisheries.

39 Q Mr. Saunders, I think you were involved with some  
40 of the relationship between the Wild Salmon Policy  
41 and the Marine Stewardship Council certification.  
42 In particular - I've lost the exhibit number, but  
43 it's document 28 -- sorry, document 38 in the  
44 development binder, which is --

45 THE REGISTRAR: 94.

46 Q -- Exhibit 94. Am I correct that you had a hand  
47 in this document? It's a Memorandum for the



1 Minister relating to the announcement of the  
2 policy in 2005.

3 MR. SAUNDERS: Yes, I would have had a hand in this.

4 Q And there's an observation in the third bullet  
5 there about the progress towards Marine  
6 Stewardship Council certification. Can you  
7 comment on the importance of that certification in  
8 the development of the policy?

9 MR. SAUNDERS: Well, I mean, I think what we recognized  
10 -- I didn't influence, at all, the actual  
11 development of the policy, but it was recognized  
12 that there was clearly -- the requirements that  
13 were developing under Marine Stewardship Council  
14 were very much in step with the Wild Salmon  
15 Policy. So there was just a recognition that one  
16 supported the other. Subsequently, I've been, in  
17 my job as the head of the salmon and freshwater  
18 ecosystem division, we've been involved with the  
19 action steps in -- as Brian was -- Dr. Riddell was  
20 pointing out earlier, making sure that we were in  
21 step and able to -- that the implementation of the  
22 Wild Salmon Policy development of benchmarks, et  
23 cetera, and the timetable for that is in step with  
24 and able to meet the requirements of Marine  
25 Stewardship certification.

26 MR. WALLACE: Thank you. Mr. Commissioner, I have no  
27 more questions for this panel. It's five to 4:00.  
28 I know that Mr. Blair has timing issues, but they  
29 seem to have been dealt with. Perhaps Canada  
30 could start, or not?

31 MR. TIMBERG: Mr. Commissioner, for Canada's  
32 examination, I'll provide you a brief overview.  
33 I'll be taking Dr. Riddell back through some  
34 questions arising from his presentation. I'll  
35 then be taking some notes that I've -- questions  
36 that have arisen from the Commission's  
37 examination, and then --

38 THE REGISTRAR: Would you state your name, please?

39 MR. TIMBERG: Sorry. It's Tim Timberg, T-i-m-b-e-r-g,  
40 counsel for Canada. And then, thirdly, I'll  
41 provide each of the witnesses an opportunity to  
42 review their witness summary, if they have  
43 anything further that they'd like to add. So  
44 that's what I intend to do in my examination.

45  
46  
47

1 CROSS-EXAMINATION BY MR. TIMBERG:

2  
3 Q So Dr. Riddell, if you could turn back to your --  
4 it's Exhibit 97, and -- actually, sorry, I thought  
5 that perhaps, Mr. Saunders, if you could perhaps  
6 explain the second-last page, it's WSP  
7 implementation steps, and if you could just, for  
8 the benefit of the commissioner, if you could just  
9 provide a brief description of what each strategy  
10 entails? I think we've had a fair amount of  
11 conversation about these, but it might be helpful  
12 to have a brief overview of how the six strategies  
13 fit together?

14 MR. SAUNDERS: Yes, Mr. Timberg and Mr. Commissioner.  
15 I think Dr. Irvine gave an overview about this,  
16 earlier. But, really, as it's outlined in the  
17 figure, the three strategies, 1, 2 and 3, are  
18 about providing information that's required to  
19 manage not just salmon but salmon in the context  
20 of the habitat that they require to maintain their  
21 diversity and within a healthy ecosystem.

22 And so the first strategy speaks to what Dr.  
23 Riddell was speaking to earlier in the day in his  
24 first presentation: what is the actual unit of  
25 salmon that we need to conserve, and getting  
26 around this lack of clarity that there's been  
27 around the stock unit.

28 The second strategy is around the status of  
29 habitat. So what are the key aspects of habitat  
30 that are required to maintain salmon; what are  
31 their status? And those are needed to inform the  
32 regulatory process for management of salmon  
33 habitat.

34 And, three, the determination of the status  
35 of ecosystems. So what are the key indicators  
36 that we require to understand the status of  
37 ecosystem and what are the values? This is one of  
38 the really key parts of the Strategy 3 is that it  
39 goes the other way. How much salmon do you need  
40 to maintain a functioning ecosystem? So for the  
41 most part our management of salmon has been about  
42 how much salmon do we need to escape to replace  
43 themselves to maintain fisheries production? This  
44 is also how much salmon, as our understanding of  
45 the importance of salmon in the ecosystem, how  
46 much salmon do we need to return into watersheds  
47 to maintain functioning populations of bears,

1 eagles, and others, in addition to the returning  
2 salmon?

3 Q If I could just ask, when you talk about habitat,  
4 is that habitat freshwater or marine water, or is  
5 it both? If you could perhaps just explain that  
6 concept?

7 MR. SAUNDERS: Really, what we're trying to build in  
8 the Wild Salmon Policy is a management and a  
9 science process that covers egg to egg. So in the  
10 broader sense, the ecosystem and the habitat are  
11 at all -- both marine and freshwater. The focus,  
12 as we'll talk about in subsequent -- later around  
13 the implementation, has tended to be on the  
14 terrestrial, and the work that's been done to date  
15 is around the freshwater habitats and their status  
16 indicators that are required for that.

17 All of these three inform and come together  
18 in Strategy 4. And I know we're not -- the intent  
19 isn't to talk about Strategy 4 until another day,  
20 but really it's, in my estimation, it's the heart  
21 of the Wild Salmon Policy. It's about building  
22 plans and set objectives, all the details that  
23 we're looking for that people were talking about  
24 in guidelines. Those details would be in those  
25 strategic plans.

26 And I think Strategy 4 - and there's an  
27 appendix, too, in the Wild Salmon Policy that  
28 outlines a process for building those strategic  
29 plans - but when I started work on the policy in  
30 2003, I suggested that, in my mind, one of the key  
31 pieces of the Wild Salmon Policy is collaboration,  
32 and I think it's an evolving process.  
33 Collaboration has influenced the legal profession,  
34 it's influenced us in just about every aspect of  
35 how we do business, now. And I think we have a  
36 recognition in the trials that we've done in  
37 Strategy 4 that would say this new way of doing  
38 business, that's collaborative rather than  
39 adversarial, interest-based in understanding what  
40 the needs of people, socially and economically, is  
41 how we work together to come up with a net  
42 positive. So it's not about coming together to  
43 argue that we need more or less fish to go to --  
44 to be allocated or we can't have fish getting in  
45 the way of progress; it's about recognizing that  
46 we need the fish, we need functioning ecosystems,  
47 and we need an economy -- a functioning economy,

1 and how do we work together. And I think that's  
2 part of the things that when Mr. Chamut talked  
3 about whether or not this policy is  
4 transformational, and I think it's a subtle -- it  
5 may be subtle. I think it's things that -- it's  
6 something that's lost on a lot of people, but it's  
7 absolutely the heart of this policy about bringing  
8 together these three pieces of information.

9 For instance, to understand, how do we  
10 maintain salmon across the landscape in a  
11 watershed that supports a conservation unit, as  
12 Dr. Riddell talked about. You need to bring  
13 people together to have decision-makers within the  
14 province, within municipalities and regional  
15 districts, in addition to DFO, to understand what  
16 the status of that ecosystem is and the habitat,  
17 the fish habitat. DFO brings one component of the  
18 information, but we need, within that integrated  
19 process, we need a holistic view of what a  
20 functioning ecosystem is and a way to build plans  
21 around that.

22 Those plans would inform fisheries management  
23 as well as habitat, and are regulatory. It would  
24 then inform -- and then the other components of  
25 the policy I think we've talked about as well,  
26 they would inform, in Strategy 5, the annual  
27 program delivery setting of annual objectives and  
28 tactics. And then Strategy 6, as Mr. Chamut  
29 pointed to, is the notion of a larger review of  
30 how well we're doing, whether the policy needs to  
31 be improved at any point.

32 I'll end by saying that despite five years  
33 passing and a lot of critical review of this  
34 process, I don't think I would change anything in  
35 the development of this policy and this six steps  
36 strategies that we've put forward at this point.

37 MR. TIMBERG: Thank you very much. I note the time,  
38 Mr. Commissioner. I'm wondering if this is a  
39 convenient time to break?

40 THE COMMISSIONER: Yes, thank you, Mr. Timberg. Just a  
41 couple of matters. Mr. Wallace, after we adjourn,  
42 if you wish, if you might canvass your colleagues  
43 as to whether you want to stretch the day tomorrow  
44 by starting at 9:45 or ending at 4:30; I leave  
45 that with you, and you could let me know --

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

47 THE COMMISSIONER: -- if your colleagues have any

1           difficulties with that.

2   MR. WALLACE: I will canvass, now, lengths that people  
3           intend to cross-examine.

4   THE COMMISSIONER: right.

5   MR. WALLACE: We've scheduled the second panel to start  
6           on Wednesday morning, now.

7   THE COMMISSIONER: I'll leave that with you to canvass  
8           with your colleagues.

9           The other matter I wish to raise, and I don't  
10          mean to embarrass him, but on Thursday the  
11          Attorney General announced 24 members of the  
12          profession receiving Q.C. appointments, and one of  
13          those I believe is in this room, and that's David  
14          Butcher, and I wish to congratulate him. I can  
15          tell him, from personal experience, that it will  
16          gain you no more, perhaps, respect or deference,  
17          but it is a wonderful recognition of you, sir, and  
18          I congratulate you.

19   MR. BUTCHER: Thank you very much.

20   THE COMMISSIONER: Thank you.

21   THE REGISTRAR: The hearing is now adjourned for the  
22           day.

23  
24                   (PROCEEDINGS ADJOURNED AT 4:04 P.M. TO  
25                   NOVEMBER 30, 2010, AT 9:45 A.M.)  
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1 I HEREBY CERTIFY the foregoing to be a  
2 true and accurate transcript of the  
3 evidence recorded on a sound recording  
4 apparatus, transcribed to the best of my  
5 skill and ability, and in accordance  
6 with applicable standards.  
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10 \_\_\_\_\_  
11 Diane Rochfort  
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23 Susan Osborne  
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35 Pat Neumann  
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39 evidence recorded on a sound recording  
40 apparatus, transcribed to the best of my  
41 skill and ability, and in accordance  
42 with applicable standards.  
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46 \_\_\_\_\_  
47 Karen Hefferland