

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.

Thursday, December 16, 2010

Tenue à :

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

le jeudi 16 décembre 2010

APPEARANCES / COMPARUTIONS

Brian J. Wallace, Q.C. Lara Tessaro	Senior Commission Counsel Associate Commission Counsel
Tim Timberg Geneva Grande-McNeill	Government of Canada
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")
No appearance	Rio Tinto Alcan Inc. ("RTAI")
Shane Hopkins-Utter	B.C. Salmon Farmers Association ("BCSFA") Seafood Producers Association of B.C. ("SPABC")
No appearance	Aquaculture Coalition: Alexandra Morton; Raincoast Research Society; Pacific Coast Wild Salmon Society ("AQUA")
Tim Leadem, Q.C.	Conservation Coalition: Coastal Alliance for Aquaculture Reform Fraser Riverkeeper Society; Georgia Strait Alliance; Raincoast Conservation Foundation; Watershed Watch Salmon Society; Mr. Otto Langer; David Suzuki Foundation ("CONSERV")
Don Rosenbloom	Area D Salmon Gillnet Association; Area B Harvest Committee (Seine) ("GILLFSC")

APPEARANCES / COMPARUTIONS, cont'd.

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)
No appearance	Adams Lake Indian Band
No appearance	Carrier Sekani Tribal Council ("FNC")
No appearance	Council of Haida Nation

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	Musgamagw Tsawataineuk Tribal Council ("MTTC")

TABLE OF CONTENTS / TABLE DES MATIERES

	PAGE
PANEL NO. 8:	
PAUL SPROUT	
Cross exam by Mr. Timberg	2/4/11/20/32/35
Cross-exam by Mr. Leadem	45/50/52/55/62
Questions by the Commissioner	58
Cross-exam by Mr. Rosenbloom	62/76/84/87/89/91
SUSAN FARLINGER	
Cross-exam by Mr. Timberg	3/5/12/26/34
Cross-exam by Mr. Leadem	41/48/51/54/56
Questions by the Commissioner	61
Cross-exam by Mr. Rosenbloom	74/81/86/88/91

EXHIBITS / PIECES

<u>No.</u>	<u>Description</u>	<u>Page</u>
309	Cohen File No. 2-2720, Wild Salmon Policy - List of Documents to be relied on by the Government of Canada (December 16th)	18
310	Letter from Susan Farlinger of DFO to Skeena Watershed Initiative Planning Group, date-stamped September 30, 2010	28
311	Document entitled "Barclay Sound Salmon Initiative"	29
312	Document entitled "Wild Salmon Policy Development and Implementation" dated September 2010	31

Vancouver, B.C. /Vancouver (C.-B.)
December 16, 2010/le 16 décembre
2010

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

6 MR. WALLACE: Good morning, Commissioner Cohen. There
7 are a couple of preliminary matters that I wanted
8 to raise, but I understand that Mr. Timberg may
9 have a position to take on one of them before I
10 speak on the application.

11 THE REGISTRAR: Before we start, may I remind the
12 witnesses that their affirmation is still in
13 effect.

14 MR. TIMBERG: Mr. Commissioner, I believe we don't have
15 a motion to -- this morning, that we will not be
16 proceeding with any motion on documents. We've
17 reached an agreement.

18 MR. WALLACE: Just one other point, for the record.
19 This sound system seems to be misbehaving.
20 Perhaps, Mr. Commissioner, we should just
21 stand down for a moment and try and correct it,
22 because I notice that Mr. Giles' mic also sounded
23 weird.
24

25 (MICROPHONES TESTED)
26

27 MR. WALLACE: Mr. Commissioner, last week Mr. Timberg
28 put in several documents on which Commission
29 counsel reserved the right to question their
30 relevance at the time that he wished to put them
31 to witnesses. I've spoken to Mr. Timberg about
32 those documents, all of which are now exhibits,
33 and he has advised me that these are documents he
34 wishes to put to these witnesses in order to put
35 the WSP in context.

36 I don't actually accept that that's
37 necessarily something that should be done with
38 this panel; however, Mr. Timberg has assured me
39 that this will be done in a very summary way, and
40 on that basis I will not oppose him raising them.
41 Thank you.

42 MR. TIMBERG: Mr. Commissioner, last week there were
43 three matters arising with respect to documents
44 that we said we would look into and get back to
45 you, so first we indicated, on December 9th, as to
46 whether there was a letter from Paul Sprout to the
47 PFRCC requesting that the latter provide a report

1 on a Strategy 6 assessment framework. I can
2 advise that DFO searched its records and can
3 confirm that no such letter exists.

4 Ms. Farlinger, on December the 9th, explained
5 this in her testimony at the transcript, page 61,
6 line 39.

7 A second issue that arose was in direct
8 examination on December 9th. Mr. Sprout made
9 several references to a briefing note to him from
10 the then acting director of policy on the PFRCC's
11 report on the Strategy 6 review, and we said we
12 would look for that briefing note.

13 And Mr. Lunn, if we could have Exhibit 242
14 brought up, please? And I'd ask, Mr. Sprout -- if
15 you could flip the page to page 2, Mr. Lunn, and
16 then to page 3, and then the next page, which has
17 the recommendations.

18
19 CROSS-EXAMINATION BY MR. TIMBERG:

20
21 Q Mr. Sprout, is this the briefing note that you
22 spoke of?

23 MR. SPROUT: It is.

24 Q And these are the recommendations, there, set out
25 that:

26
27 It is recommended that the Wild Salmon Policy
28 Implementation Team work with Audit and
29 Evaluation Branch to develop and evaluation
30 framework for a review of the WSP.

31
32 MR. SPROUT: That's correct.

33 Q Thank you.

34 MR. TIMBERG: And Mr. Commissioner, also on December
35 9th we requested that Exhibit 121 be removed for
36 -- as there was private information in the
37 document, and we can advise that this will be
38 replaced by a redacted version in Ringtail, using
39 the same CAN number, so the record will remain the
40 same, but we will have that document redacted, and
41 that's in the works. And we've already provided a
42 pdf redaction.

43 Q So my question for Ms. Farlinger, in direct, Mr.
44 Wallace asked both -- well, actually both yourself
45 and Mr. Sprout about the implementation of the
46 Wild Salmon Policy and whether this would increase
47 the sustainability of Fraser River sockeye, and

1 this morning I'm asking you, could you describe
2 the tools that you have to support the
3 sustainability of Fraser River sockeye, what are
4 the tools that you have?

5 MS. FARLINGER: I can -- maybe I can briefly, very
6 briefly set the context, and I think I'll try and
7 use the metaphor of a dashboard, which is the
8 sustainability of Fraser sockeye. And we've
9 mentioned, over the last while, a large number of
10 factors ranging from very broad global factors
11 through to the effect of human development and
12 right down to the matter of how harvest or habitat
13 regulation is managed.

14 And what the Wild Salmon Policy really
15 attempts to do is take the tools that are in --
16 within the authorities of Fisheries and Oceans and
17 attempts to extend those tools out to partners,
18 including British Columbia, First Nations,
19 community groups and various other organizations,
20 to give them more scope to deal with these issues.

21 So if we look at that very broad dashboard,
22 there's some very big levers on that over which we
23 have very little control. By "we" I mean not only
24 Fisheries and Oceans, but regulators in general,
25 and volunteers in the public.

26 But there are some over which we do have
27 control, and we sometimes refer to these inside
28 DFO as the three H's. So we do regulate the
29 harvest of salmon. So we have our hand on that
30 dial. The question is, is how big is that dial
31 relative to all the other impacts and factors that
32 affect these species that fundamentally go through
33 every aquatic ecosystem from the top of rivers
34 right out to the Bering Sea and back.

35 The second one is habitat, and while we have
36 our hand on that dial through the s. 35 and 36 of
37 the **Fisheries Act**, that dial, and the impact we
38 have, is very much controlled and dependent on our
39 relationship with others, other regulators, the
40 province, municipalities and stewardship groups,
41 particularly in the area of habitat restoration
42 and protection.

43 Another dial we have our hand on is
44 hatcheries or enhancement, and we take a look at
45 the Wild Salmon Policy in terms of the guidelines
46 we would use for enhancement.

47 So while we include things like ecosystem

1 factors, this is an attempt to extend our reach
2 well beyond our actual regulatory control. So
3 when we were looking at the factors that we, as a
4 society and as regulators have our hands on,
5 they're very small dials on that very big screen.

6 So in terms of the tools, to respond to Mr.
7 Timberg's question, they really are focused on
8 those three things and the fourth thing, which is
9 probably most important, which is addressed in
10 Strategy 4 principally, but through other
11 strategies, is relationships; whether the
12 relationships with the Americans, who also harvest
13 those fish; relationships with stakeholders who
14 harvest those fish; relationships with public
15 interest; relationships with First Nations.
16 Relationships is what will allow us to extend
17 beyond those three, quite frankly, very small
18 dials that we have.

19 Q Thank you very much. I'd like to, now, as you to
20 turn to the place in the Wild Salmon Policy within
21 its broader policy framework within the Department
22 of Fisheries and Oceans, and I've prepared a
23 binder of policies for you to -- and Mr. Lunn,
24 we'll be starting at Exhibit 260. this is the
25 Policy for the Management of Fish Habitat. And in
26 the interests of time, I'd like you to, Ms.
27 Farlinger and Mr. Sprout, take us through these
28 policies, not as much to describe what the
29 policies do, but to describe their linkage to the
30 Wild Salmon Policy so that we can understand -- we
31 can locate the WSP within the broader work that
32 DFO does.

33 So with that, perhaps you could start off by
34 describing -- my understanding is that a good
35 place to start is the 1985 Pacific Salmon Treaty
36 as perhaps the first place to start, and then
37 we'll move into these policies.

38 Mr. Sprout?

39 MR. SPROUT: Perhaps I could do the treaty briefly. In
40 1985, Canada and the U.S. agreed to an
41 international treaty on how we would regulate the
42 management of fish that do not respect
43 international boundaries. And Fraser sockeye,
44 although spawning in Canadian waters, enter
45 American waters both in Washington and in Alaska.
46 Therefore, the treaty of 1985 was crucial in terms
47 of regulating the management of stocks that are

1 caught by the United States.

2 In 1999, that treaty was significantly
3 renewed. It moved to what we described as an
4 abundance-based arrangement. It also includes
5 other species, besides Fraser River sockeye. But
6 the point to be made is that if we're going to
7 manage Fraser sockeye, we have to have the
8 cooperation of the United States. For those
9 stocks to be sustained, we have to have a
10 cooperative management regime. I'm pleased to say
11 that we do have that. I'm pleased to say that the
12 relationship is very solid, much better than it
13 has been, historically, and the future looks
14 promising with respect to that aspect of Pacific
15 salmon and Fraser River salmon specifically.
16 Thank you.

17 Q And Ms. Farlinger, perhaps you could then comment
18 on Exhibit 260, the policy for management of fish
19 habitat and its relationship and relevance to the
20 Wild Salmon Policy?

21 MS. FARLINGER: This policy, written in 1986, has been
22 the basis of guidance for habitat practitioners
23 and, in fact, our stewardship activities and
24 watershed planning activities that we have engaged
25 in with partners since the time it was written.

26 We have very much focused on modernizing this
27 policy because, quite frankly, having every single
28 project reviewed by a habitat biologist has turned
29 out to be really an astonishing and really
30 overwhelming workload. And in the Wild Salmon
31 Policy we introduced the environmental
32 modernization framework, which really took a look
33 at habitat in terms of how can we identify the
34 areas that have the -- that are at the highest
35 risk in terms of salmon sustainability, how can we
36 prioritize the resources and efforts we have not
37 only of our own staff, who carry out a regulatory
38 function, but of our partners, which are the ten
39 to 15,000 stewardship folks that are supported in
40 some measure through the salmonid enhancement
41 program, as well as taking a look at agreements
42 with the province, for example, of the B.C.
43 riparian area regulations, for example, we have
44 agreements -- we have an agreement with the B.C.
45 Oil and Gas Commission to just provide an example.

46 So the Wild Salmon Policy really looked at
47 the principles in this policy and attempted to

1 move them into a more practical context, which is,
2 "Let's look at where we're having the really big
3 habitat impacts and focus our efforts there.

4 I would say at this time we are also
5 reviewing this policy inside the department at
6 large, because of the fact it was written in 1986,
7 because of the fact it applies to the entire
8 country, and the Wild Salmon Policy is really just
9 a small piece of that policy.

10 Q Thank you. If we could turn, Mr. Lunn, to Exhibit
11 261. This is the 1993 Policy for the Management
12 of Aboriginal Fishing.

13 MS. FARLINGER: One of the things about the aspects of
14 managing fishing, or managing habitat, is that not
15 only do we need to look at the regulatory function
16 and the conservation function, but we need to look
17 at who gets what, which is called the allocation
18 policy. I think we'll get to the Salmon
19 Allocation Policy later.

20 This is a very practical document that
21 describes for employees of DFO how it is we will
22 approach Aboriginal fishing, what we can negotiate
23 in agreements, what are the guidelines and
24 standards around which those agreements will be
25 measured, and how will we set up a monitoring and
26 enforcement regime so that those agreements can be
27 put into place and effected?

28 So really this is a very practical document
29 and one of a suite of documents that would go
30 along with the Wild Salmon Policy really on the
31 operational side. It's to give effect to the
32 harvest aspect as it pertains to Aboriginal
33 fishing.

34 Q Thank you. And if you could turn, then, to
35 Exhibit 262, the 1996 Pacific Salmon
36 Revitalization Plan?

37 MS. FARLINGER: Briefly, this and the Pacific Fishery
38 Restructuring Program which followed, really
39 attempted to address the very significant issues
40 around the salmon fishery which is increased
41 fishing power. Now, this is something that was
42 coming to the attention of the world through our
43 activities and the activities of others on the
44 international stage looking at fisheries across
45 the world and the fact that fishing power and
46 technology had increased to the point where there
47 was more fishing power than, in fact, there were

1 fish.

2 And this really focuses on the west coast
3 salmon fleet. It talks about the fact that being
4 concerned about the level of stocks, about
5 conservation, that one of the first measures we
6 would have to take was reduction of the size of
7 the salmon fleet. And between this program and
8 the program that followed, which was a 400 million
9 dollar federal program, 200 million of which was
10 focused on fundamentally cutting the fishing fleet
11 in half, this was a significant step in
12 recognizing the challenges both for those people
13 who were harvesting the fish and also for the
14 managers in reducing the fishing power of that
15 community to deal with the conservation issues.

16 Q Thank you. And if we could then turn to Exhibit
17 263, Canada's Ocean Strategy from 2002?

18 MS. FARLINGER: Canada's Ocean Strategy really is, once
19 again, a policy document flowed out of the **Oceans**
20 **Act** -- 1997 **Oceans Act**, and this really is the
21 point at which DFO begins to document the concept
22 of requiring an ecosystem approach to management.
23 There's several places in the document that refer
24 to it, but I won't go to them, but it really is
25 the source of bringing that broader ecosystem
26 thinking into the management in the salmon fishery
27 -- the policy source, I should say.

28 Q And then if we could turn to Exhibit 32, October
29 1998, A New Direction for Canada's Pacific Salmon
30 Fisheries?

31 MS. FARLINGER: This really is more directly tied to
32 the Wild Salmon Policy and is the framework
33 endorsed by the minister of the day in which there
34 are 12 principles and commitments about
35 conservation, about the necessity for having an
36 allocation framework, and about improving the
37 consultation processes.

38 It very clearly states the priority as being
39 conservation in a much clearer way than had been
40 set out in the past. We could, in fact, go
41 through those 12 principles, but I think they are
42 very clearly the context in which the Wild Salmon
43 Policy was created. Out of this framework came
44 four or more documents. The Wild Salmon Policy
45 was -- there was a commitment in this document to
46 do that. There was a selective fishing policy
47 which gets very much at the harvest aspects of

1 managing salmon, and the fact that the
2 complexities, as we understand it, pertaining to
3 salmon are not only avoiding other species of
4 salmon that may be present in these mixed stock
5 fisheries but, in fact, avoiding other stocks of
6 sockeye that may be a problem. We also developed
7 a new consultation framework out of that.

8 So this new direction really set the stage
9 for the Wild Salmon Policy in moving forward.

10 Q Thank you. If we could then move to Exhibit 264,
11 An Allocation Policy for Pacific Salmon, October
12 1999.

13 THE COMMISSIONER: I'm sorry, what was the exhibit
14 number?

15 MR. TIMBERG: That one, New Directions, was Exhibit 32,
16 and we're now moving to Exhibit 264.

17 THE COMMISSIONER: Thank you.

18 MS. FARLINGER: When we talked about the Policy for the
19 Management of Aboriginal Fishing a few minutes
20 ago, I mentioned that in order to manage the
21 issues around the sustainability of salmon we need
22 not only to talk about our conservation objectives
23 and how we set those, but we also need to talk
24 about how we operationalize those. And a key
25 pillar of any successful management regime is
26 deciding and writing down who gets what. I will
27 just say that in my experience in fisheries
28 management, if people are arguing about
29 allocation, it's very difficult for them to focus
30 on conservation. So this document was one of
31 those four that came out of the new directions
32 framework. So we have the allocation piece, we
33 have the conservation piece, which is the Wild
34 Salmon Policy, and then we have the consultation
35 improvements that came out of this new directions
36 document.

37 All of these three things together really are
38 what would provide a more complete context, and if
39 you do not resolve these issues they will get in
40 the way of resolution at almost any other level.

41 Q And then if we could turn to Exhibit 265, New and
42 Emerging Fisheries Policy?

43 MS. FARLINGER: This is really an example of the
44 evolution, the emerging policy frameworks that DFO
45 was beginning to realize it needed to have in
46 order to carry on managing fisheries in what was
47 becoming a more and more complex not only climate

1 environment or biological environment, but also a
2 more and more complex social environment.

3 It won't surprise you that when a species has
4 been unharvested, people who would like to harvest
5 it can have a very optimistic view of what might
6 be available. And so this is just merely an
7 example of if we are looking at fisheries for
8 species that have not yet been harvested, it sets
9 out a fairly conservative regime for how we will
10 gather data before we would agree to move into a
11 fishery for that species. So while it's not
12 directly related to the Wild Salmon Policy, it's a
13 parallel indication of policy development that is
14 going on really around all of the management of
15 the fisheries.

16 And although salmon has been a focus in the
17 Pacific region since DFO started working in
18 fisheries here, after the extended jurisdiction in
19 the mid '70s, the Global Extended Jurisdiction
20 Agreement, DFO was now responsible for managing
21 all the species within the 200-mile limit.

22 This caused a rapid evolution in the
23 management framework for species in the Pacific
24 region. In particular, as you may know, a lot of
25 the fisheries that occurred in the east coast in
26 the Atlantic had existed for many more years on
27 the Grand Banks, cod, lobster, lots of fisheries
28 out there. Our focus on anything other than
29 salmon really became much more -- we became much
30 more engaged and had many more responsibilities
31 with this extended jurisdiction in the mid 1970s
32 and thus, today, we are responsible for managing
33 all the marine species fisheries on the Pacific
34 coast inside the 200-mile limit. And this is
35 merely an example of the parallel evolution around
36 those fisheries.

37 Q Thank you. If we could then turn to Exhibit 266,
38 A Policy for Selective Fishing in Canada's Pacific
39 Fisheries, January 2001?

40 MS. FARLINGER: Once again, this is part of the suite
41 of new direction of policies that flowed out of
42 new directions. It focuses very specifically on
43 salmon. I would say in the intervening years it
44 has very much become a topic of interest and
45 policy and evolution of harvest management in the
46 groundfish fishery and other fisheries, and you
47 will see in the sustainable fisheries framework,

1 which is a national policy framework, policies
2 that really get at this issue of what is referred
3 to in that policy as bycatch.

4 So this policy, for the very first time,
5 states that if a fishery is unable to meet
6 conservation guidelines because of selectivity
7 issues, the opportunities will be curtailed. And
8 I think harkening back to the first time we were
9 here with Mr. Sprout and the deputy minister,
10 there was a question around salmon opportunities
11 and how they had changed out in the marine
12 environment and moved closer in to the estuaries
13 and the rivers, and this is very much a reflection
14 of the statement in this policy, that fishing
15 opportunities are limited by the ability of the
16 fisherman and their gear and the management
17 framework, like time or length of openings that we
18 can put into place, to avoid catching unintended
19 either species or, in the case of sockeye, sockeye
20 stocks of concern.

21 Q Thank you. If we could then turn to Exhibit 267,
22 A Framework for Improved Decision-Making in the
23 Pacific Salmon Fisheries, June 2000?

24 MS. FARLINGER: Once again, this is part of the suite
25 of discussion papers and ultimately either policy
26 documents or decisions that came into play as a
27 result of new directions. The current
28 consultation framework for salmon, which is
29 extensive, and we can certainly describe it at
30 some point, is really based on this idea that we
31 can no longer consult only with commercial
32 fishermen, only with First Nations, only with
33 recreational fishermen, that it really is a set of
34 processes that allows both those users to develop
35 their own ideas in the input and information about
36 their fisheries, but it also brings it together at
37 the top of the process in an integrated multi-
38 sector forum.

39 Q Thank you. If we could then turn to Exhibit 268,
40 Pacific Region Fishery Monitoring and Reporting
41 Framework, January 2002?

42 MS. FARLINGER: One of the great challenges in bringing
43 different groups together is the issue of trust.
44 Trust has a great deal to do with people believing
45 other people's numbers. You will see this
46 reflected in a number of things we talk about in
47 the integrated salmon dialogue process, and this

1 is internal work done by DFO to take a look at
2 monitoring across fisheries in Pacific region to
3 assess standards and where they should be and to
4 set the stage for beginning to implement those
5 standards, which, quite frankly, prior to this
6 varied widely across fisheries.

7 Q Thank you. And if we could then turn to Exhibit
8 269, a Discussion Paper on the Implementation of
9 Pacific Fisheries Reform?

10 MS. FARLINGER: At the time the Wild Salmon Policy was
11 announced approved by the minister and announced,
12 it was announced in the context of what would --
13 what are -- what were the changes that would need
14 to take place in order to move forward with
15 Pacific fisheries. It deals with a number of
16 issues. There were reports that had come out at
17 that time from various sources from First Nations
18 about their view of moving forward in Pacific
19 fisheries and their share and their participation
20 in fisheries. There were reviews, again, of
21 allocation in the salmon fishery and how it might
22 move forward post treaty in B.C. There was a need
23 to implement the conservation aspects, including
24 elements of the Wild Salmon Policy, and this is
25 really beginning to describe what kind of program
26 elements and additional concepts do we need to
27 bring into play. And this is the precursor of the
28 Pacific Integrated Commercial Fisheries
29 Initiative.

30 Q And perhaps we'll turn to that Pacific Integrated
31 Commercial Fisheries Initiative, which is Exhibit
32 103 -- or Exhibit 270. Exhibit 270. And perhaps,
33 Mr. Sprout, could you describe this program?

34 MR. SPROUT: Well, really what I'll do is just
35 highlight a couple things. This is a very
36 significant investment by the Federal Government;
37 approximately 175 million dollars, designed
38 principally to transfer licenses from non natives
39 to First Nations, and in doing so offset and
40 actually improve conservation by reducing
41 fisheries in areas where the stocks are more
42 mixed, where there's more problems with the
43 fisheries, in terms of conservation, transferring
44 those opportunities to First Nations, typically
45 more inward, and in some cases in the Fraser
46 River, for example.

47 This program also has other components,

1 including co-management and stewardship and other
2 aspects as well. It's a very significant program.
3 It's well under way and is going through an
4 evaluation period right now.

5 Q Thank you. If you could then turn to Exhibit 207?
6 And this is a Fishery Decision-Making Framework
7 Incorporation the Precautionary Approach. I'm not
8 sure, Mr. Sprout or Ms. Farlinger?

9 MS. FARLINGER: Well, perhaps I'll start and Mr. Sprout
10 might add.

11 I have mentioned, earlier, the sustainable
12 fisheries framework. How is that different from
13 the Pacific new directions framework? Well, it is
14 different because it is a national framework. It
15 is more recently developed than the new directions
16 and the policies that flowed out of it, but it
17 addresses exactly the same principles.

18 This is one of the policies or frameworks
19 under that sustainable fisheries framework. That
20 framework has a conservation aspect to it. It has
21 social and economic aspect to it. This, of
22 course, is one of the principal conservation
23 policies. It sets out something you could see
24 runs very closely in parallel to looking at lower
25 and upper reference points in the Wild Salmon
26 Policy. There is a similar - not exactly the
27 same, but a very similar - framework that says
28 there is a point below which there will be no
29 fishing, there is a point -- there is an area
30 between that point and a point of healthy
31 fisheries in which fisheries will be restricted in
32 order to support rebuilding of the stocks. And
33 then over that healthy stock size, there is a
34 point where fishing will be able to go on in a
35 less constrained manner, not completely
36 unconstrained, but less constrained.

37 So conceptually it is very closely aligned
38 with the Wild Salmon Policy, but what this does is
39 set it out at a national level for all of the
40 fisheries. And I will say that it has aspects
41 that it does because of the fact that very many of
42 the fisheries in Canada are not anadromous
43 species, like Salmon. They are marine species.
44 And so it is intended to cover that whole
45 framework.

46 Q Thank you. If we could then turn to Exhibit 271?
47 This is the Policy for Managing the Impacts of

1 Fishing on Sensitive Benthic Areas. And perhaps
2 you could just explain what a benthic area is,
3 first?

4 MS. FARLINGER: Benthic area is really one of the
5 habitats in the marine environment. You will
6 notice in the habitat policy in 1986, it
7 explicitly states that it's more focused on
8 freshwater estuarine areas and, to some extent
9 coastal -- near coastal areas. This is a policy
10 that takes a look at marine fisheries and begins
11 to bring in the habitat aspects through a policy.

12 Q Okay. And so a benthic area is an area in the
13 marine waters?

14 MS. FARLINGER: I'm sorry. It's the bottom.

15 Q It's the bottom, thank you. And if we could then
16 turn to Exhibit 272, Policy for New Fisheries for
17 Forage Species?

18 MS. FARLINGER: This is one of the, once again, marine
19 species policies, but this is one that is directly
20 related to wild salmon, simply because they spend
21 a good deal of their life cycle out in the marine
22 environment, and it really intends to be cautious
23 about the harvest of species that are food for
24 other species. Now, one might well say that all
25 species fall into that category, but this is very
26 focused on looking at what is your target catch,
27 what is your bycatch, do you, for example, look at
28 a species which is widely used by other species,
29 for example, herring, and how do you manage that
30 so that you're taking into account not only the
31 human harvest but the forage by other species,
32 certainly including salmon.

33 Q And if we could turn to Exhibit 273, Fisheries
34 Sustainability Checklist from the Sustainable
35 Fisheries Framework?

36 MS. FARLINGER: Right. Once again, this is a very
37 operational piece. As we do for every fishery in
38 Pacific region, we have an integrated fisheries
39 management plan. Under this integrated fisheries
40 management plan, this checklist sets out how have
41 we used the precautionary approach, how have we
42 addressed ecosystem issues, how have we addressed
43 basic stock assessment issues. It's an extensive
44 list that allows us, then, to use this checklist
45 to report back to Canadians through the report on
46 plan and priorities to parliament.

47 Q And this document here, I'm just looking at it, it

1 references a complete fisheries checklist, using
2 106 questions, and I note that those 106 questions
3 aren't attached to this document; is that -- so
4 there's another document that lists the 106
5 questions?

6 MS. FARLINGER: Yes.

7 MR. TIMBERG: So Mr. Commissioner, we'll raise that
8 further document and we'll provide that to
9 Commission counsel so that can be entered in, in
10 due course.

11 Q If you could then turn to Exhibit 274A and B?
12 These are the Integrated Fisheries Management
13 Plan. One is a guidance document, the first one,
14 and then the second one is a guidance document and
15 template. And perhaps you can explain how the
16 Integrated Fisheries Management Plan relates to
17 the WSP?

18 MS. FARLINGER: We do have, for both north coast salmon
19 and south coast salmon, an integrated fisheries
20 management plan, as we do for the 30-odd other
21 fisheries that we manage in the region. This is
22 very much a guideline for looking at that
23 sustainability checklist we saw in the last
24 exhibit, and giving guidance to staff on changing
25 the integrated fishery management plan from
26 something that has evolved over time in each
27 fishery to something that is more consistent that
28 we can explain that sustainability checklist and
29 how well or not we are doing against that to
30 parliament and Canadians.

31 Q Okay. Thank you. Then Exhibit 275A and B is
32 Bycatch Policy, and there's a Background for FCC
33 Meeting. If you could explain these two
34 documents? The first one is an email -- oh,
35 you've got them both up, thank you, Mr. Registrar.

36 MS. FARLINGER: Once again, this is a parallel between
37 the Wild Salmon Policy and the other new direction
38 documents and the sustainability -- fisheries
39 sustainability framework, sorry. The selective
40 fishing policy is really a very -- is the salmon
41 piece of this. This really takes a look at mostly
42 marines pieces. We would see that the selective
43 fisheries policy under that new direction suite,
44 which aligns with the Wild Salmon Policy and the
45 Allocation Policy, is the parallel for salmon
46 that, quite frankly, on the marine species side,
47 the policy framework is really just emerging.

1 The best example we have of this, is the
2 integrated groundfish fishery in British Columbia.
3 It's a fishery which catches some 30-odd species
4 in the course of harvesting halibut, rockfish,
5 black cod and numerous other species that exist in
6 the same environment are caught in bycatch. We
7 have a very elaborate share base system where
8 fishermen are required to account for every
9 species they catch. It is intended to deal with
10 issues, like throwing away fish that you don't
11 have a quota for, and it is intended to address,
12 specifically, the impact on all stocks that are
13 caught as bycatch when you're fishing for
14 something else.

15 This policy is really catching up to the
16 framework we have for the integrated groundfish
17 fishery here in the Pacific coast, but the
18 parallel in salmon is very much reducing access to
19 mixed stock fisheries, introducing selective gear
20 and, as Mr. Sprout just referenced, where we can,
21 moving fisheries to those places in the system
22 where they re out of the mixed stock zone and can
23 be fished without having impacts on other stocks.

24 MR. TIMBERG: Thank you. We have to do a correction of
25 the record, Mr. Commissioner. Exhibit 276. This
26 is actually the incorrect document. This is
27 titled, Guidelines for Ecological Risk Assessment.
28 This is an American document; it's not the DFO
29 Ecological Risk Assessment document, so we should
30 get this removed from the record.

31 THE COMMISSIONER: I think what we should, perhaps, do
32 is simply mark this for identification purposes?

33 MR. TIMBERG: Okay.

34 THE COMMISSIONER: Are you planning to replace it with
35 another document, Mr. Timberg?

36 MR. TIMBERG: I do not have the document with me today,
37 Mr. Commissioner.

38 THE COMMISSIONER: I see.

39 MR. TIMBERG: So I'm agreeable to having it marked for
40 identification purposes, as the -- and then I'll
41 ask Ms. Farlinger and Mr. Sprout to describe,
42 without the benefit of the document, the Canadian
43 equivalent.

44 MR. WALLACE: Mr. Commissioner, I fear huge confusion
45 if we unmark and remark. My suggestion is we just
46 leave this, and if there's a new document to be
47 referred to later, then they can be separately

1 marked, but I think this is fraught with risk.

2 MR. TIMBERG: Fair enough. I agree with that, and
3 perhaps I'll just ask the witnesses just to
4 confirm that this is the wrong version, and then
5 I'll --

6 Q Is this the -- can you please answer the question
7 as to whether this document, Exhibit 276, is this
8 the American version of the Ecological Risk
9 Assessment?

10 MS. FARLINGER: What I can say is it's not DFO's
11 version. I believe it's the American version. It
12 was certainly a piece of information we used in
13 our policy development of the ecological risk
14 assessment to implement the benthic policy I
15 referred to earlier. So we do have a DFO
16 Ecological Risk Assessment, and this is one of the
17 documents that was used as background in its
18 preparation.

19 Q Okay. Thank you. And perhaps for the benefit of
20 the Commissioner, you can describe what the
21 Canadian Ecological Risk Assessment is, and its
22 relationship to the WSP?

23 MS. FARLINGER: Once again, this is focused on marine
24 species and is the parallel for looking at
25 ecological factors in the marine environment. So
26 as salmon spend a good deal of their life in the
27 marine environment, it would have some application
28 to salmon. I'll try and pick an example. If
29 there is a rocky reef out in the near shore marine
30 area, that will often be an area where young
31 salmon, when they emerge from the rivers, will
32 spend some time feeding, hiding in the kelp and
33 the eel grass, before they grow to a certain size
34 and migrate out further. So when we're looking at
35 this ecological risk assessment, we are trying to
36 identify areas that are key ecosystem -- of key
37 ecosystem importance, and I would say rocky reefs,
38 for example, is one of those in the near shore
39 marine environment. Eel grass is one of those
40 that's used by salmon. And the process of looking
41 through this is to gather information on these key
42 ecological areas that are important to all the
43 marine species and salmon and then to develop
44 mitigations or avoidances for causing any
45 problems.

46 Q Thank you. If we could move to Exhibit 277? This
47 is Canada's Ocean Strategy Policy and Operational

1 Framework for Integrated Management of Estuarine,
2 Coastal and Marine Environments in Canada.
3 MS. FARLINGER: Like the Oceans Strategy before this,
4 this is a framework operational document under
5 that in which there is clear guidance for staff
6 who are working on integrated management in the
7 ocean environment about the inclusion of key
8 ecological elements that need to be identified and
9 either protected or damage against them mitigated
10 in the course of integrated planning in the
11 oceans.
12 Once again, this takes us back to the
13 guidance on consideration of ecosystem factors.
14 MR. TIMBERG: Thank you. Those are the policies we
15 sought to have described this morning.
16 THE COMMISSIONER: Mr. Timberg, I wonder if it would be
17 possible for you just to help me understand which
18 of the policies fall under the direct
19 responsibility of the region for administrative
20 purposes --
21 MR. TIMBERG: Mm-hmm.
22 THE COMMISSIONER: -- and which, perhaps, are
23 administered at a national scope, just so I
24 understand how these policies relate to the Wild
25 Salmon Policy in terms of the administration of
26 these policies?
27 MR. TIMBERG: Certainly.
28 THE COMMISSIONER: Thank you.
29 MR. TIMBERG:
30 Q You have an index in that binder, Ms. Farlinger,
31 that may assist you to give you an overview of the
32 exhibits we just went through, and perhaps you
33 could assist the Commissioner and all of us by
34 delineating which ones are regional, national or
35 perhaps both, I'm not certain.
36 MS. FARLINGER: Okay, I'll try --
37 Q And perhaps, I'm thinking just for organization,
38 perhaps we should even go through the list again,
39 if that's possible? Do we have that -- do we have
40 it? Ms. Gaertner's asked if we could bring the
41 list up, the index up.
42 MS. GAERTNER: Maybe not the (inaudible - away from
43 microphone) --
44 MR. TIMBERG: Yeah.
45 MS. GAERTNER: Or if it's possibly to the exhibit list,
46 your exhibit list (inaudible - away from
47 microphone)

1 MR. TIMBERG: Okay, there it is. Perfect. Okay, we
2 have it.

3 Q So Ms. Farlinger, if you can take us -- perhaps we
4 should get this document marked as the next -- for
5 identification purposes, or does it matter?

6 MR. WALLACE: I think we can just mark it as an
7 exhibit.

8 MR. TIMBERG: Okay, so if we could --

9 Q Ms. Farlinger, this is -- do you recognize this
10 list of policies?

11 MS. FARLINGER: I do.

12 MR. TIMBERG: Okay. If this could be marked as the
13 next exhibit?

14 THE REGISTRAR: Exhibit 309.

15

16 EXHIBIT 309: Cohen File No. 2-2720
17 Wild Salmon Policy - List of Documents to be
18 relied on by the Government of Canada
19 (December 16th)
20

21 MR. TIMBERG:

22 Q So for the clarity of the record, this list
23 includes some additional documents that Ms.
24 Farlinger did not just -- Ms. Farlinger and Mr.
25 Sprout did not speak to, so I'll clarify that as
26 we go through. So I think we're fine just
27 starting at the top with the Pacific Salmon Treaty
28 and moving down as to how that operates on either
29 a regional or a national level.

30 MS. FARLINGER: Okay, the Pacific Salmon Treaty is a
31 document that is national. It's Canada
32 negotiating with the U.S., but it pertains
33 specifically to Pacific salmon, including Fraser
34 sockeye. So it is not implemented anywhere else
35 in the country.

36 The Policy for the Management of Fish Habitat
37 is a national policy, and we operate the regional
38 habitat program within the constraints of that
39 policy. The Policy for the Management of
40 Aboriginal Fishing was developed during the
41 development of the Aboriginal Fishery strategy,
42 which is a national program, and specifically
43 pertains to fisheries in the Pacific region and in
44 the Fraser River as well, including the Fraser
45 River.

46 The Pacific Salmon Revitalization Plan is
47 specific to the Pacific region and the salmon

1 fishery. The Ocean Strategy is a national policy,
2 which gives guidance on the ecosystem. The New
3 Direction Suite for the Pacific Salmon Fisheries
4 really are the core, Mr. Commissioner, of the
5 policies that are directly implemented here in the
6 region around Pacific salmon.

7 We're accountable for implementing all these
8 policies, national and regional, but the New
9 Direction was developed here in the region, the
10 Allocation Policy for Pacific salmon, the Policy
11 for Selective Fishing in Canada's Pacific
12 Fisheries, A Framework for Improved Decision-
13 Making in Pacific Salmon Fisheries, the Pacific
14 Region Fishery Monitoring and Reporting Framework
15 is specifically for Pacific region, but is broader
16 than salmon.

17 What's next?

18 Q And did you mention the New and Emerging Fisheries
19 Policy?

20 MS. FARLINGER: The New and Emerging Fisheries Policy
21 is a national policy.

22 Q Thank you.

23 MS. FARLINGER: Beg your pardon.

24 Q So we're onto page 2 with Pacific Fisheries
25 Reform.

26 MS. FARLINGER: Both of those, the Pacific Fisheries
27 Reform and the Wild Salmon Policy are specific to
28 the Pacific region and to the salmon fishery. The
29 Pacific Integrated Commercial Fisheries Initiative
30 is broader than salmon, but includes salmon.

31 Q And is that a national program or a --

32 MS. FARLINGER: That is a Pacific region program.

33 Q Thank you.

34 MS. FARLINGER: Fishery Decision-Making Framework.

35 We're moving into the national policy suite here,
36 which is the sustainable fisheries framework is
37 the overarching group that contains these
38 policies. This is a national policy.

39 Q And so my understanding is that the Sustainable
40 Fisheries Framework includes Exhibits 271, 2, 3, 4
41 and 5, those five policies together make up the
42 Sustainable Fisheries Framework?

43 MS. FARLINGER: Yes, including 2007 as well, that is
44 one of the policies.

45 Q Including 2007.

46 MS. FARLINGER: Yeah.

47 Q And just as an overview question, can you just

1 described what that umbrella, Sustainable
2 Fisheries Framework is?
3 MS. FARLINGER: The Sustainable Fisheries Framework is
4 a national fisheries policy.
5 Q Okay. And so all of these, then, are national?
6 MS. FARLINGER: Mm-hmm.
7 Q Okay. So that would be 207 through to 275?
8 MS. FARLINGER: That's right.
9 Q Okay. Thank you. And then if we could move to
10 Exhibit 276?
11 MS. FARLINGER: This is the American document that we
12 would be replacing with the Canadian document,
13 which is part of the national suite of Sustainable
14 Fisheries Framework Policies.
15 Q And then over the page, the top, Exhibit 277,
16 Policy and Operational Framework of Estuarine,
17 Coastal and Marine Environments, is that a
18 Pacific --
19 MS. FARLINGER: That is a national policy under the
20 oceans strategy.
21 Q Thank you.
22 MR. SPROUT: Could I just clarify or add something to
23 this?
24 Q Yes, please.
25 MR. SPROUT: I agree with the way Sue has characterized
26 these policies in terms of which ones are likely
27 mostly implemented in the region versus national,
28 but it's important to make this -- I think to add
29 this. What you'll find is the regions typically
30 don't develop policies isolated from headquarters,
31 from national level. The regional policies are
32 nested within national policies, but they
33 typically elaborate in more detail specificity for
34 that region. And I think the list that we've just
35 gone through, we need to confirm that the regional
36 programs that Sue spoke to are still nested within
37 a broader national umbrella, whether it's the
38 habitat policy or other things.
39 So just to make that clarification, because
40 we're one department.
41 Q Right. So moving on, then, to other questions,
42 can we have Exhibit 8, please, Mr. Registrar, and
43 page 35? This is the Wild Salmon Policy. So if
44 we could focus in on the third paragraph, please?
45 So this is for Mr. Sprout. The Wild Salmon
46 Policy here, and the section "Implementation
47 'Making it all Work'", and the third paragraph

1 says:
2

3 This new approach to salmon conservation is
4 complex, and the pace and effectiveness of
5 implementation will be influenced by two key
6 factors. First, implementation must be
7 accomplished within DFO's existing resource
8 capability and will be phased in over time.
9 Second, it will depend on the effectiveness
10 of our sharing of responsibilities with First
11 Nations Governments, volunteers, stakeholders
12 and other Governments.
13

14 I'd like you to explain why these are the two key
15 factors in implementation.

16 MR. SPROUT: Well, as the policy indicates, we were
17 required to implement it within existing
18 resources. Now, we did receive -- the department
19 did receive some new resources, and I referred to
20 those in testimony two weeks ago, when I first
21 appeared on the RDG panel on WSP, but the reality
22 is, we had to work with what we had. And that's
23 an important consideration, because the policy
24 recognized that. It said that the policy is
25 challenging, it's complex, it's going to take time
26 to implement, and you must work within existing
27 resources.

28 And so the department, I think, over the last
29 couple of weeks in the various sessions, has
30 attempted to describe what it's been doing, and I
31 think the progress is significant. And it's not
32 just my opinion, it's other opinions, as well,
33 outside the department. All six strategies,
34 there's 17 actions under the six strategies. If
35 you total them up there's 17 actions.

36 Okay, all the actions are in some level of
37 implementation. Some are nearly complete, if not
38 complete; others, arguably, are just getting
39 started and are not as nearly as mature, but every
40 action has been implemented and is underway and it
41 is being done principally within the resources
42 that the department received, but acknowledging
43 that there was some increment.

44 The second aspect of this is, really, DFO
45 can't do this alone. Now, I expressed this
46 earlier in the RDG panel, and I particularly think
47 the Wild Salmon Policy, even if fully implemented,

1 could not get at the question of sustainability of
2 Fraser sockeye.

3 Now, why do I think that? Well, the reason I
4 do is I think the principal threats that are
5 affecting Fraser River sockeye are climate change
6 and human population growth. And these are
7 factors that DFO and the Wild Salmon Policy do not
8 plan or control or regulate. These are much
9 broader issues that need to be considered by
10 others besides DFO. And I referred briefly to
11 that, the province, regional districts,
12 municipalities, other organizations, and it really
13 argues for, frankly, a different governance
14 approach.

15 Now, in my witness statement I refer to this
16 briefly, and possibly under cross I could expand.
17 But that was really -- those are my remarks with
18 respect to these two points.

19 Q Okay. Perhaps to unpack that a little bit, at
20 page -- Mr. Registrar, if we could turn to page 16
21 of the Wild Salmon Policy document? Yeah.

22 This chart on the top left, Mr. Sprout, are
23 those the points you're referring to?

24 MR. SPROUT: I am. Those are the points. I think if
25 you add them up there should be 17 actions.

26 Q Okay.

27 MR. SPROUT: And I was pointing out that all of these
28 actions had been put into effect, but the levels
29 of progress on them vary. For example, the
30 identification of conservation units. What you
31 will have heard, I think, in painful detail a
32 couple of weeks ago with our scientists, is the
33 effort that's been put into classifying
34 conservation units. It looks like it's a simple
35 thing, three words, "identify conservation units",
36 but it turns out that it, in fact, is incredibly
37 complicated to actually come to an agreement on
38 what a conservation unit is. Not just
39 scientifically, but with the other constituents,
40 First Nations and other parties, who also have
41 strong views on conservation units.

42 So behind those three words is an
43 extraordinary amount of effort to actually come to
44 grips with 400 conservation units in B.C. So that
45 one we can say is done.

46 Similarly, we could go through each of these
47 actions in turn and describe the progress that's

1 being made. My view is, the progress is
2 significant. We're well along the pathway, but we
3 acknowledge, the department has, that it is not
4 fully implemented, and then I argue - and this is
5 a personal observation - that to get to where we
6 need to go you've got to go well beyond DFO.

7 Q Okay. Perhaps, at this point, I could ask you to
8 describe the work that -- whether the work that
9 DFO has engaged in with the province on Wild
10 Salmon Policy implementation, what steps have you
11 taken in that regards?

12 MR. SPROUT: Quite a number, and it's important that we
13 acknowledge the work of the province in various
14 areas. So earlier, Ms. Farlinger described that
15 to look at the issue of sustainability of the
16 Fraser sockeye in the context of Wild Salmon
17 Policy, you need to look beyond the Wild Salmon
18 Policy, and it's crucial to have that
19 understanding, because the Wild Salmon Policy in
20 itself will not fundamentally address the issue of
21 sustainability of Fraser sockeye; you must look
22 broader.

23 So on that, for example, on oceans
24 management, you need to look at issues of how to
25 integrate oceans management. So Ms. Farlinger
26 referred to the law, regulations and operational
27 plans. Well, in this area we work with the
28 province on the Pacific north coast integrated
29 marine planning area. And it's important that we
30 work with the province in these areas to bring
31 together these very fragmented activities in the
32 oceans in a more cohesive way. That's one
33 example.

34 Q Right.

35 MR. SPROUT: I also want to point out that we're
36 working with the province in various other
37 organizational arrangements. For example, the
38 province and ourselves sit on the Fraser Basin
39 Council.

40 Q So could you explain what the Fraser Basin Council
41 is?

42 MR. SPROUT: So the Fraser Basin Council is an
43 organization of constituencies in the Fraser
44 Watershed, principally municipalities, regional
45 districts and governments and First Nations, who
46 come together in a common process to talk about
47 issues and stresses that are affecting the Fraser

1 River environment, and attempt to try to reconcile
2 them as best they can.

3 So DFO is there with other federal groups,
4 the province is there, municipalities and First
5 Nations, as I've just described. Now, this body,
6 an aspect of what it does is looks at Pacific
7 salmon. So in this group we do discuss activities
8 that are relevant for Pacific salmon in this
9 watershed and try to reconcile some of the
10 inconsistencies and values that humans have in
11 terms of wanting to develop land, extract water,
12 but have abundant Pacific salmon. And so this is
13 an important body.

14 The province also has created a living river
15 trust fund, which they've endowed, and I used to
16 sit on that when I was the former RDG, and this
17 group also works with Pacific salmon and, in this
18 case, steelhead as well, and attempts, again, to
19 bring conservation-related matters and utilizing
20 or directing the funds endowment against projects
21 designed to assist not just Pacific salmon, but
22 also, obviously, other species like steelhead.

23 There's a long list of these kinds of
24 cooperative ventures that we have participated
25 with, with the province, and attempt to try to
26 advance, I think, our mutual interests.

27 Q Could you describe what the Integrated Salmon
28 Dialogue Forum is?

29 MR. SPROUT: I'd like to take you, briefly, to the Wild
30 Salmon Policy, itself, to set this up, because I
31 think it's important, again, to look at the Wild
32 Salmon Policy broadly.

33 On page 36, the second paragraph, the last
34 paragraph of this page says the following, and
35 I'll just read it:

36
37 There is a second requirement for successful
38 policy implementation. The Department must
39 adopt better partnerships with First Nations
40 Governments, volunteers, stakeholders and
41 other levels of Government and share
42 responsibility and accountability for program
43 delivery.

44
45 Now, this is a key aspect, I believe, of really
46 going forward in a constructive way at the issue
47 of sustainability of salmon and specifically

1 Fraser River sockeye. Now, the reason I think
2 that is because of the argument I've already made:
3 I don't think DFO, itself, can get where we need
4 to go on the question of sustainability of salmon.
5 It doesn't have all the tools, it doesn't have the
6 legislative authority, and it needs others to work
7 together to achieve, I think, and realized this
8 issue.

9 So on this question, the department has put
10 into place some significant leadership initiatives
11 over the last five years. Now, one of those is
12 the Integrated Salmon Dialogue, and what this is
13 about is in 2008 the department approached some
14 conflict specialists and said, "Look, we would
15 like you to facilitate workshops with natives and
16 non natives and government and NGOs, to bring
17 these parties together and talk about how we might
18 have integrated fisheries that are conservation-
19 based and have more consensus around the issues
20 that are dividing us and increase the likelihood
21 that we'll have sustainable fisheries and,
22 therefore, sustainable salmon."

23 So that process is underway. Now, it has
24 been challenging, because there are such divergent
25 views on fundamental questions. There are
26 undefined rights and title. There are different
27 ideologies and different values. But the reality
28 is, leadership is being demonstrated in bringing
29 people together through the Integrated Salmon
30 Dialogue Forum to resolve those differences and
31 inform the department in terms of the direction it
32 takes to better manage the resource.

33 I'd like to mention one other significant
34 leadership initiative, and that's the Fraser River
35 Watershed -- Fraser River Salmon and Watersheds
36 Program. In 2007, the Government of Canada, and
37 Minister Hearn at the time, announced a 10 million
38 dollar investment in the Fraser River Salmon and
39 Watersheds Initiative. That investment was five
40 million dollars of new money and five million
41 dollars of DFO in-kind support. Those monies and
42 in-kind support are administered by the Pacific
43 Salmon Foundation and the Fraser River Basin
44 Council. They used those monies, then, to
45 identify projects which are designed to support
46 Fraser River sockeye and other salmon species in
47 the Fraser River Watershed, and those projects

1 are, in turn, done by groups and organizations in
2 the Fraser River, many of which are First Nations.

3 And this goes directly to the Wild Salmon
4 Policy, because the Wild Salmon Policy says that
5 you've got to think bigger than just DFO. You've
6 got to form relationships with other organizations
7 and other agencies and other governments to really
8 sustain Pacific salmon.

9 My view is the Commission might consider
10 inviting the Pacific Salmon Foundation, the Fraser
11 River Basin Council to a group like this to talk
12 about the initiatives they're doing and to ask how
13 well they're getting at the issue of
14 sustainability of Fraser Sockeye or salmon in
15 general in the Fraser River. I think it would be
16 helpful to provide a perspective on WSP and the
17 broader aspects of salmon sustainability.

18 Q Can you tell us about the funding arrangements for
19 the Fraser Salmon Watershed Program?

20 MR. SPROUT: As I noted, there was five million dollars
21 of new money, so that was a treasury board
22 submission the department had to prepare. That
23 submission lays out the main components of how the
24 funding will be allocated, and lays out the
25 administrative arrangements, in this case with the
26 Pacific Salmon Foundation, who will administer and
27 identify those projects with the Fraser River
28 Basin Council. And that also lays out the efforts
29 the DFO will make to support its in-kind
30 contribution of five million dollars.

31 That document is accessible, and if the
32 Commission wished, could be entered as evidence to
33 elaborate on my remarks.

34 MR. TIMBERG: Perhaps this is a good opportunity for
35 the morning break, Mr. Commissioner?

36 THE REGISTRAR: We will now recess for 15 minutes.

37
38 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)

39 (PROCEEDINGS RECONVENED)

40
41 THE REGISTRAR: The hearing is now resumed.

42 MR. TIMBERG: Mr. Timberg for -- and Ms. Geneva Grande-
43 McNeill for Canada.

44
45 CROSS-EXAMINATION BY MR. TIMBERG, continuing:

46
47 Q Ms. Farlinger, we've heard testimony from previous

1 panels on the role that pilots, pilot projects
2 play in the implementation of the Wild Salmon
3 Policy. Can you, perhaps for the benefit of the
4 Commissioner, provide your view on the role of
5 pilots generally, and some of the pilots that are
6 presently underway, and then I'll take you to some
7 documents after that.

8 MS. FARLINGER: Mr. Commissioner, one of the tough
9 parts is --

10 MR. WALLACE: Excuse me, Mr. Commissioner, I apologize
11 for interrupting. I'm finding it very difficult
12 to keep this within Strategies 1, 2 and 3, and not
13 into integrated planning, and the pilot projects I
14 think are clearly within the integrated planning
15 issue, which is Strategy 4.

16 MR. TIMBERG: I'd ask that the witness be allowed to
17 answer the question as to the role that pilots
18 play with respect to the implementation of Wild
19 Salmon Policies as to how it affects Strategies 1,
20 2, 3 and 6. That's what -- I'd ask her to be
21 allowed to answer that question.

22 THE COMMISSIONER: If you restrict it to those areas,
23 Mr. Timberg, I think that's appropriate.

24 MR. TIMBORG: Okay, thank you.

25 Q So, Ms. Farlinger, can you speak about the role
26 that pilots play in -- with respect to Wild Salmon
27 Policy implementation with respect to strategies
28 1, 2, 3 and 6, as to how you see those playing
29 out.

30 MS. FARLINGER: The multi-sector multi-stakeholder
31 First Nation multi-level of government groups that
32 are contemplated in Strategy 4 do much of the work
33 and guide much of the work in terms of Strategy 1,
34 2 and 3. The consultations that occur around, for
35 example, the definition of conservation units and
36 implementing habitat work, doing the habitat
37 assessments for particular ecosystems or
38 watersheds, and ultimately moving into the
39 ecosystem information, is what ultimately comes
40 into that strategy for process.

41 Now, when we talk about pilots, what we're
42 trying to do is figure out how this is going to
43 come together, and on a watershed basis, things
44 come together in a different way in different
45 watersheds. They're somewhat organic. They
46 depend on the populations and the species of
47 salmon that are there. They depend on the First

1 Nations organizations and groups that are there,
2 the harvesting groups that are there, and the
3 environmental groups that are there.

4 So every "pilot" is a little bit different.
5 The examples I can bring forward, which are kind
6 of extreme, I'll stick with three that are outside
7 the Fraser, very briefly, and then go to the
8 Fraser.

9 There is a process in Barclay Sound which
10 looks at the salmon species there. It is an
11 integrated process. They have collectively
12 provided advice on the work around conservation
13 units, on the work around the habitat assessment
14 and on the work around ecosystem. And I think you
15 heard Dr. Hyatt speak to the ecosystem work that
16 he was doing that contributes to the Barclay Sound
17 pilot. It is that information that that group
18 will use in Strategy 4, fundamentally to bring
19 together a set of recommendations.

20 In the Skeena River, the balance is somewhat
21 different. There is a strong representation, not
22 in the Barclay Sound group, in the Skeena Group,
23 from environmental NGOs. The focus there is on
24 defining conservation units, and this work is
25 expected to be done in the fall of 2011 in
26 consultation with this group. This group is
27 guiding the prioritizing of work on Strategies 1,
28 2 and 3, to move towards Strategy 4.

29 Q So, Ms. Farlinger, I could ask that Canada's Tab
30 53 be brought up as the next exhibit. This is a
31 letter that is signed by your -- you're the author
32 of this letter and I note that at the second page,
33 it talks about this Skeena watershed initiative
34 incorporating Strategies -- information from
35 Strategies 1 through 3 of the Wild Salmon Policy.
36 So you'll agree that the Skeena watershed
37 initiative is relevant to Strategies 1, 2 and 3 of
38 the WSP?

39 MS. FARLINGER: Yes.

40 MR. TIMBERG: And can I have this letter marked as the
41 next exhibit, please?

42 THE REGISTRAR: Exhibit 310.

43
44 EXHIBIT 310: Letter from Susan Farlinger of
45 DFO to Skeena Watershed Initiative Planning
46 Group, date-stamped September 30, 2010
47

1 MR. TIMBERG:

2 Q Perhaps you could just, for the benefit of the
3 Commissioner, explain briefly what this letter
4 sets out.

5 MS. FARLINGER: This letter is fundamentally a
6 reconfirming of the support of DFO for this
7 watershed group to continue its work in bringing
8 together the studies and information to support
9 Strategies 1, 2 and 3.

10 MR. TIMBERG: Thank you. And, Mr. Registrar, if we
11 could have Tab 54 brought up from Canada's list.

12 Q This is the document, "Barclay Sound Salmon
13 Initiative", in terms of reference, and my
14 understanding, Ms. Farlinger, that this -- that
15 the Barclay Sound is a pilot to look at all six
16 steps of the WSP to get an integrated pilot going;
17 is that a fair --

18 MS. FARLINGER: Yes.

19 Q -- summary?

20 MS. FARLINGER: Yes, that's true.

21 MR. TIMBERG: Thank you. And if this document could be
22 marked as the next exhibit?

23 THE REGISTRAR: Number 311.

24

25 EXHIBIT 311: Document entitled "Barclay
26 Sound Salmon Initiative"

27

28 MR. TIMBERG: Mr. Registrar, if we could have Canada's
29 Tab 51 brought up?

30 Q This is a letter dated October 31st, 2006, about
31 "Fraser River Sockeye Spawning Initiative and the
32 Wild Salmon Policy pilot." I note at the "cc" at
33 the back, there's -- sorry, I thought it was Mr.
34 Sprout, but it's not Mr. Sprout. It's Mr. Paul
35 Ryall. Have either of you seen this letter or
36 this document?

37 MS. FARLINGER: Yes.

38 Q And can you explain what the FRSSI pilot is, for
39 the benefit of the Commissioner?

40 MS. FARLINGER: The FRSSI pilot is a process of looking
41 at modelling and potential interim reference
42 points for the Fraser stocks based on existing
43 information. It is intended to be inclusive of
44 all groups who -- all interest groups on the
45 River, and it is another example of a pilot.

46 I think you'll see in these three examples
47 that each of them are different and they reflect

1 the differences in both the river system
2 biologically, and the number of groups and
3 interests that are around the table.

4 I have one more example that I'd like to
5 mention and it's different because it is a process
6 that is run by the province on the Cowichan
7 watershed. In fact, now being run by the Regional
8 District, but it was initiated by the province.
9 It's very focussed around water management and
10 habitat.

11 Now, this is another instance of a pilot
12 where we come to the table as DFO with our
13 interest which is implementing the Wild Salmon
14 Policy. But the table itself is a table that is
15 focussed on water management and is specifically
16 concerned, in this case, with Chinook and chum
17 stocks in that river. So it's just another
18 example of how we can participate in either
19 processes which we initiated ourselves, or
20 processes which are initiated by our partners.

21 MR. TIMBERG: Thank you. And if I could have that
22 document, the FRSSI document --

23 THE REGISTRAR: Counsel, that is already marked as
24 Exhibit 255.

25 MR. TIMBERG: Okay, thank you.

26 Q Are there other points to be made about the use
27 that pilots can be utilized in the future with
28 respect to ongoing implementation of the WSP? Do
29 you have any views on that?

30 MS. FARLINGER: Because all of the ultimate
31 recommendations that will come out of these
32 processes will be a balancing of the impacts and
33 the conservation issues, social impacts, economic
34 impacts and conservation requirements, the need
35 for these groups to work together and have a
36 common understanding and participation in
37 development of the information that will be used
38 in those processes in the next step in the
39 Strategy 4 that develops recommendations, really
40 is the basis of implementing a successful public
41 integrated process to get the kind of
42 recommendations at the end of it that the Minister
43 will have to consider in terms of the ultimate
44 implementation of the Wild Salmon Policy.

45 The fact is that although there are many
46 complications having to do with science and with
47 data and with resources, the most complicated

1 factor is the impacts and the different views and
2 perceptions based on those impacts that all of
3 these people bring to the table.

4 MR. TIMBERG: Thank you. Mr. Registrar, if we could
5 move to Tab 81 from the Commission's
6 implementation binder. It's September 2010 deck
7 of the "Wild Salmon Policy Development and
8 Implementation."

9 Q Ms. Farlinger, have you seen this document before?

10 MS. FARLINGER: Yes.

11 MR. TIMBERG: And if we could have this marked as the
12 next exhibit, please?

13 THE REGISTRAR: Exhibit 312.

14
15 EXHIBIT 312: Document entitled "Wild Salmon
16 Policy Development and Implementation" dated
17 September 2010
18

19 MR. TIMBERG:

20 Q Ms. Farlinger, could you move to page 16 of this
21 document? Now, actually, before we get into the
22 details of this particular document, could you --
23 for the benefit of the Commissioner, could either
24 yourself, Ms. Farlinger, or yourself, Mr. Sprout,
25 just provide a brief overview of how the -- how
26 the RDG office is kept informed with respect to
27 Wild Salmon Policy implementation? What, you
28 know, structure do you have to make sure that you
29 are informed?

30 MS. FARLINGER: As we've talked about, there is an
31 Operations Committee. This is a committee that,
32 quite frankly, prior to 2006 was not in existence.
33 It's a committee that's focused on the
34 implementation of, in this instance, the Wild
35 Salmon Policy, in other instances programs that
36 occur across the many programs in DFO. It
37 requires the Science Directorate, the fisheries
38 harvest folks, the habitat folks, the oceans folks
39 and also the policy people to be at the same table
40 so that our work is integrated in terms of a
41 horizontal, as we call it, project like the Wild
42 Salmon Policy.

43 That Operations Committee is chaired by the
44 Regional Director General, and it is in briefing
45 for that committee, in direction -- providing
46 direction for materials to be brought to that
47 committee that the RDG is engaged in the Wild

1 Salmon Policy.

2 Q And with that, can you explain what the purpose of
3 this deck was prepared for, for September 2010?

4 MS. FARLINGER: This deck is looking at progress at
5 large, specifically progress in 2009/10. It does
6 not detail achievements in the previous years but
7 really just looks at the incremental work that has
8 been done over the period 2009/10. It's intended
9 to update the entire Operations Committee and the
10 RDG.

11 Q And was this -- I understand this document was
12 provided to Commission counsel, this deck.

13 MS. FARLINGER: That's my understanding.

14 Q Yeah, right. So if you could just then take us to
15 page 16 and just provide us -- is this a fair
16 summary, then, of the implementation status of the
17 various strategies of the WSP?

18 MS. FARLINGER: As I've said, this outlines activities
19 in 2009/10, but does not directly reference
20 activities before. For example, on page 16,
21 "Identify the 20 salmon conservation units for the
22 Yukon."

23 Q Right.

24 MS. FARLINGER: This does not say that, for example,
25 the conservation units for British Columbia were
26 identified in, I believe, 2008.

27 Q Right.

28 MS. FARLINGER: So just to give you an example, it is
29 bringing it up to current.

30 Q Okay. Thank you. So moving on from that
31 document, then, we've heard a number of statements
32 that the Wild Salmon Policy has been considered to
33 be transformative, and I'd like to ask both Mr.
34 Sprout and Ms. Farlinger your -- whether you
35 consider the Wild Salmon Policy to be
36 transformative and, if so, in what way.

37 MR. SPROUT: Well, perhaps I could start. I think
38 aspects of it are and others are not. I argued in
39 my witness statement that I think the fisheries --
40 fisheries management changes in the region clearly
41 pre-date the adoption of the Wild Salmon Policy in
42 2005. I've given examples, for example in 1998,
43 the Department of Fisheries and Oceans made a
44 decision to reduce the exploitation rate on Coho
45 in the South Coast to zero. This resulted in
46 significant disruption to fisheries, not just
47 marine fisheries, but also inland fisheries; not

1 just commercial fisheries, but also recreational
2 and First Nations.

3 This was six years in advance of the Policy
4 of Wild Salmon. The reason that we did it is
5 because we had significant conservation concerns
6 with the conservation units of Coho, in this case,
7 the interior of B.C., and action was taken by the
8 Department. This obviously pre-dates the policy.
9 And I argued earlier, under cross-examination,
10 that you can actually trace fisheries management
11 events over the last 20 years where significant
12 actions have been taking place controlling,
13 restricting outside fisheries, reducing
14 exploitation rates, moving progressively to more
15 conservative policies.

16 These are controversial. Commercial
17 fishermen, many, have argued with these policies,
18 but nevertheless, the Department's actions are
19 clear over a long period of time. So, in this
20 sense, I did not see the WSP as changing what had
21 already been in place.

22 Conversely, I believe the clarification of
23 the conservation units is a transformation. Prior
24 to the clarification of the conservation units, we
25 had a vague approach dealing with stocks and
26 populations of salmon. I think what the WSP did
27 is said, okay, you need to be more precise about
28 what you consider to be the genetic units that you
29 are going to be concentrating on. I believe that
30 was transformative.

31 I also believe that the ecological approach
32 that the policy speaks to is an important
33 progress, but I argue much along the lines that
34 Ms. Farlinger made before, that the WSP stands on
35 the shoulders of other policies and law and
36 regulations that have gone before. For example,
37 the ecological approach was first identified in
38 Canada's **Ocean Act** in 1998, well before the Wild
39 Salmon Policy. The Wild Salmon Policy elaborates
40 on it. So my view, in summary, is aspects of the
41 Wild Salmon Policy I think are transformative, but
42 I think many, frankly, are a continuation of
43 progress that pre-dates the Wild Salmon Policy and
44 can be pointed clearly to other laws, regulations
45 or actions of the Department.

46 Q Thank you. Ms. Farlinger?

47 MS. FARLINGER: I think there is perhaps another aspect

1 that we really did need a place to bring together
2 and document all the things that Mr. Sprout just
3 talked about and how they were coming together in
4 terms of how we did our regulatory work and to
5 guide our work with our partners.

6 So writing this down, and this is among the
7 most detailed policies I've certainly seen in my
8 experience in resource management, in this level
9 of detail, was in fact a different approach. As I
10 talked about earlier with the national policies,
11 this is really only happening four or five or six
12 years later at the national level. So, in a
13 sense, we were leading on that and, in a sense,
14 part of what we'll have to look at in the
15 evaluation, I believe, is really did we get it
16 right? Are we detailed enough? Are we too
17 detailed? Are we really -- you know, we really
18 need to look at that in terms of evaluation of the
19 policy.

20 Science evolves. I think you've heard a fair
21 bit about that, and we really need to look at that
22 from a long-term perspective and the policy as
23 well.

24 Q Thank you. Could I perhaps ask you then, with the
25 present, with what would be -- pending the final
26 implementation of the WSP, what is the interim
27 approach right now to the Wild Salmon Policy?
28 What -- how are you handling the Wild Salmon
29 Policy at the present?

30 MS. FARLINGER: Well, I'd just say there are a variety
31 of ways. In the lists you see in the deck you
32 just put up, and in our work plans and the reports
33 on the work plans, you can see very specific
34 activities that we are directing funding and
35 resources towards, that are incremental work to
36 help implement the policy.

37 The second piece is operationally we are
38 using this to guide decisions, and that has a
39 profound cultural effect inside the organization.

40 I think thirdly, we are also using the policy
41 to work with our stakeholders and provide -- and
42 our partners to provide a framework for the work
43 we do together.

44 Q Thank you. What are the key barriers that you've
45 encountered to date in implementing Wild Salmon
46 Policy principles and objectives? Mr. Sprout or
47 Ms. Farlinger, what are the key barriers you've

1 encountered in implementing Wild Salmon Policy
2 principles and objectives?

3 MS. FARLINGER: Perhaps I'll start, but I think we have
4 talked a bit about the challenges of having the
5 necessary data and information to, first of all,
6 define the -- and methodology. Some might say to
7 define the conservation units, to put the data
8 into place so that benchmarks can be developed in
9 the area of the abundance levels, habitat and
10 developing the ecosystem. I think you can tell
11 that the ecosystem science is rapidly evolving.

12 To some extent, it is resources. But really,
13 this -- there is an evolution of the science.

14 I think probably the principle issue is the
15 issue I mentioned earlier which is the impacts,
16 the impacts on harvesters, whether they're First
17 Nations harvesters, commercial harvesters or
18 recreational harvesters. And the fact that there
19 is uncertainty, none of these things are perfectly
20 defined. They become subjective at some point.
21 Any decision about these conservation units and
22 the points, and it is that subjectivity which is
23 always a question of debate with people that are
24 most affected by the outcome of the Policy.

25 MR. SPROUT: I think what I would add is that the
26 policy is complex, and if you read through it, it
27 actually says that it's complex. I think when I
28 look back at the five years or so the policy's
29 been in place, I believe that we were exuberant
30 when the policy got adopted. I know that, as the
31 RDG at the time, and newly coming back to the
32 region, I was excited that we'd adopted this
33 policy after several attempts to fail to adopt a
34 new Wild Salmon Policy. We were incredibly
35 optimistic, I believe, about how easily it would
36 be to achieve some of the elements and the
37 actions. I think in the end we were naïve. The
38 reality is that it's complex.

39 The other consideration is there's such
40 diverged views on some of the elements that I've
41 already spoken to, and it just requires time to
42 try to reconcile those views. The idea that we
43 could just do a top-down approach, that DFO could
44 dictate conservation units, or the DFO could
45 dictate integrated management, it's not a
46 sustainable concept today. The reality is we have
47 to work with the interests and that takes time.

1 So I think a barrier is that -- is time
2 itself, and complexity, and the need to work
3 through that systematically.

4 I also think there's a capacity issue in DFO.
5 I spoke to that specifically related to habitat.
6 I think that a little bit of effort there would be
7 helpful in trying to move that ahead.

8 Finally, as I've argued, we won't get where
9 we need to go by DFO alone. I just believe that,
10 and I have certainly a lot of experience to
11 suggest that the issues -- some of the issues that
12 are being flagged in WSP are outside of the
13 Department. This particularly gets into watershed
14 management, water management, and also I believe
15 there's governance arrangements that will need to
16 be re-evaluated and changed, I believe, to move
17 this policy ahead and to get at the broader
18 aspects of sustainability of salmon, and
19 specifically, Fraser sockeye.

20 Q Thank you. And then, Mr. Sprout, earlier this
21 morning, and also in your witness summary, you
22 spoke about the new governance arrangements. Can
23 you explain what you mean by your suggestion of a
24 need for new governance arrangements?

25 MR. SPROUT: Well, I had two. The first I've referred
26 to briefly previously, and spoke to again today is
27 one governance arrangement I think is watershed
28 management. I think that if you think about some
29 of the threats that are facing Pacific salmon,
30 particularly climate change, and I would argue
31 human population growth -- and it's not just me.
32 I note that some of the documents submitted by the
33 participants actually refer to these threats, the
34 two I've just mentioned, as being the principal
35 threats to Pacific salmon.

36 Okay, both of those things, climate change
37 and population growth are elements the DFO cannot
38 address, and certainly by itself. One is played
39 out at a national/international level, and another
40 is controlled by other parties, human population
41 growth.

42 So what I've argued for and what I think
43 needs to be done is we need to think about
44 watershed management where the agencies and
45 interests, First Nations, and other parties that
46 have an interest, come together to think about,
47 for example, the stewardship of water which

1 simultaneously looks at human consumption,
2 industrial use and fish needs. I think that if we
3 don't get at those things and find some way of
4 balancing those competing interests, then I worry
5 that if we rely exclusively on DFO's habitat
6 policy, or the Wild Salmon Policy, that we will
7 not get where we need to go.

8 So I've argued for -- of a watershed
9 governance approach that brings parties together
10 to actually get at, more fundamentally, this issue
11 of water management, in particular, and human
12 population growth in the watersheds.

13 Now, there's another level of governance, and
14 I regret to say I have to give a bit of context to
15 make this clear and I'll make it brief. But this
16 also gets at the issue of accountability. Now,
17 I'll just provide a little story. The Commission
18 will know from its public meetings and from these
19 sessions that DFO is not well liked. So why is
20 that? What is that? Why, after everything the
21 Department has laid out here today, the policies,
22 the law and the programs the Department has
23 implemented, which are incredible, and the
24 resources that the federal government have put
25 into Pacific salmon, why is DFO not liked?

26 My argument is this, that we've got competing
27 interests, we've got undefined rights and title,
28 we've got scientific uncertainty that will never
29 be eliminated, and we have diverged interests and
30 DFO is in the middle of it trying to broker
31 consensus amongst those interest with that climate
32 of uncertainty.

33 I think the challenge for DFO is it needs to
34 distribute the accountability differently. Right
35 now, DFO makes all of the decisions, and I think
36 we have to re-examine that model. I think we have
37 to go to a governance model that changes the
38 accountability where DFO is a contributor, but not
39 necessarily the decision-maker in all instances.
40 I think when it comes to things like, for example,
41 establishing what I describe as strategic
42 conservation objectives like, for example, the
43 Cultus exploitation rate, I believe that we could
44 set up processes that would change that
45 accountability to others, others being the
46 stakeholders, First Nations and others who, in
47 turn, inform DFO of what it is that they wish to

1 implement, and DFO implements it.

2 Because I think the problem we have now is no
3 matter what DFO does and what programs it adopted,
4 what policies it puts into place, the environment
5 is so contested that DFO will get blamed. I think
6 that you have to shift that accountability, then,
7 to other parties and make them accountable for
8 what they say and responsible for their behaviour.

9 Now, what I'm describing as a new governance
10 arrangement will be incredibly challenging. This
11 is not easy, what I've just described. You will
12 have observed in your First Nations session this
13 week, the First Nations perspective. If you had a
14 commercial session, you would hear the same thing,
15 recreational, and on it would go.

16 So the reconciliation and the accountability
17 that I've described is not easy but, in my view,
18 the governance changes need to embrace two
19 elements, the watershed approach that I've
20 described, and I believe making strategic
21 decisions around conservation objectives that are
22 crucial for implementing the WSP. So those are
23 the elements that I refer to when I talk about
24 governance arrangements.

25 Q And how would that proposal work with the
26 **Fisheries Act**?

27 MR. SPROUT: Okay. The **Fisheries Act** makes it clear
28 that the power of the Minister, the Minister has
29 the authority --

30 MR. WALLACE: Mr. Commissioner --

31 MR. SPROUT: -- for policy decisions.

32 MR. WALLACE: -- I apologize, but this is a legal
33 opinion that's being sought here.

34 MR. TIMBERG: I'm asking the witness -- he's proposed a
35 governance model, and I'm asking him how he
36 envisions that operating within the present
37 structure.

38 MR. LEADEM: Mr. Commissioner, I would support the
39 question and getting this answer. We all are
40 lawyers, we know that Mr. Sprout is not going to
41 give us a legal opinion, but this is an important
42 issue and I'd like to hear the answer.

43 MS. GAERTNER: I also support the question. I think
44 the question really is framed as to what are the
45 challenges in the implementation of the **Fisheries**
46 **Act**, not so much the legal interpretation of the
47 **Fisheries Act**. RDG is actually responsible for

1 that.

2 THE COMMISSIONER: I don't have any particular problem
3 with the question, Mr. Timberg, other than your
4 use of the term "model". I didn't really hear a
5 model here. I heard some views and expression of
6 viewpoints.

7 MR. TIMBERG: Right.

8 THE COMMISSIONER: But I didn't really hear about a
9 model. So perhaps you could rephrase your
10 question.

11 MR. TIMBERG: Okay.

12 Q Mr. Sprout, could you elaborate on how your
13 fisheries -- your fisheries board, is that the
14 language I understood you used? What -- how are
15 you framing what you're proposing? What's your
16 language?

17 MR. SPROUT: Well, I think one possible approach to
18 deal with the governance arrangement around
19 establishing what I describe as strategic
20 conservation objectives, and I gave the example of
21 the Cultus exploitation rate, would be to create,
22 on an interim basis, a fisheries board, by policy,
23 comprised of constituents - and there are various
24 models of constituency - who would have the
25 responsibility of deciding on the strategic
26 conservation objectives along the lines of the
27 example I gave of Cultus.

28 This group, in turn, could then direct or
29 inform the Department on what it is the Department
30 would need to implement. This group would have to
31 be comprised of a constituency -- I didn't
32 elaborate on that, but I could go into detail
33 about the options. And this board would be
34 informed by broad national policies, the
35 precautionary approach and other things that it
36 would be required to comport with. This group
37 then would work with the advisory processes the
38 Department has in place. Those would still be
39 maintained or retained, and would be informed by
40 the various advisory processes and individuals
41 that are part of that. But the change that I'm
42 envisioning here is we would change the
43 accountability for an important consideration so
44 that there would be a group comprised of people
45 drawn from this area in British Columbia
46 responsible and accountable, informing the
47 Department on these levels of strategic

1 conservation objectives, which the Department then
2 implements.

3 That was the model -- or the description of
4 what it is that I thought -- I think could be
5 considered, and again, I'm arguing that if you
6 want to get to some of the issues that are coming
7 forward in the various forums that you're having -
8 and not just WSP - but to implement the WSP, you
9 need to look at what is driving those issues. I'm
10 arguing that in many cases what's driving those
11 issues are people's feeling of not being
12 empowered, of not being heard. I think if you
13 need to get at that, you need to change it, and if
14 you do that, you're going to make them accountable
15 and responsible. This will not be easy.

16 My views are preliminary. I would like to
17 consider and reflect on them more, but it is my
18 perspective that as one of the challenges facing
19 sustainability of Pacific salmon and this
20 particular aspect of WSP which is establishing
21 strategic conservation objectives at the level
22 that I've described.

23 Q Mr. Sprout, you commented on this being an
24 "interim fisheries board". What do you mean by
25 interim?

26 MR. SPROUT: I think that the board should be -- if it
27 is struck and is considered to be, then it should
28 be allowed to continue for a few years until the
29 advisory process is -- that the Department has put
30 into place are at a level where effectively those
31 processes can take over.

32 So, in other words, ideally what you want in
33 a future environment is First Nations and non-
34 Natives, NGOs sitting around a table with the
35 agencies making collective and consensual
36 decisions on the management of the resource and
37 its protection. That is the ideal model. We
38 don't have that today. We have inter-sectoral
39 processes. These are significant achievements by
40 the Department of Fisheries and Oceans, but at
41 this point in time, we don't have consensus by the
42 parties in those processes.

43 So I think the board needs to be established
44 on an interim basis, and allowing these processes
45 to continue to mature, evolve, improve the
46 capacity to the point where in fact they actually
47 can do that. And they can be consensual bodies,

41

PANEL NO. 8

Cross-exam by Mr. Timberg (CAN)

Cross-exam by Mr. Leadem (CONSERV)

1 they can make informed decisions, and therefore
2 making it no longer necessary to have a fisheries
3 board along the lines that I've described.

4 Q Thank you. Going back to your other -- the
5 watershed process that you spoke of earlier, is it
6 necessary for that watershed process to also have
7 binding decisions?

8 MR. SPROUT: Well, that's a good question. I would
9 need -- I could argue both sides of that, frankly.
10 I think -- I believe that a watershed process that
11 had the province, the regional districts, the
12 Department and key stakeholders, even if the
13 decisions were not binding, would be a significant
14 advance over what we have today.

15 If the decisions were binding, then I would
16 argue that that would even be a further step
17 forward. But I would argue, take the first step
18 first. Create a watershed process, have a
19 commitment from the agencies and those that have
20 the levers, and those interests that are affected
21 by those levers around the same table.

22 MR. TIMBERG: Thank you, Mr. Commissioner. Those are
23 all my questions.

24 MR. PROWSE: Mr. Commissioner, Cliff Prowse for the
25 Province of British Columbia. I do not have any
26 questions at this time, Mr. Commissioner. I may
27 have some questions depending on what arises in
28 other cross-examinations.

29 MR. LEADEM: Leadem, initial T., appearing for the
30 Conservation Coalition.

31 Before I begin my questions, I want to tell
32 the panel members that I'm more interested in
33 solutions than I am in critiquing past behaviour,
34 although I could do so, of DFO. I know that you
35 are probably aware, both of you, that I represent
36 clients who have taken issue, many times in the
37 past, with respect to actions that DFO has done.
38 I don't think that it would be of benefit to
39 actually rehash a lot of that here.

40 So I'm more interested in pursuing with you
41 in the line of questions moving forward, and
42 trying to see if we can achieve some common
43 ground.

44
45 CROSS-EXAMINATION BY MR. LEADEM:

46
47 Q I want to also begin by asking you that, as you

1 know, I represent the -- a lot of significant NGOs
2 who've been involved in the Wild Salmon Policy,
3 and it's fair to say that it's your understanding
4 that they are very much supportive of the Wild
5 Salmon Policy; is that not correct?

6 MS. FARLINGER: That's certainly my understanding,
7 although they expressed concerns with the Policy
8 when it was -- when it was announced and published
9 that it didn't go far enough. In general, yes,
10 these groups are supportive of the policy and, in
11 fact, in the years between the announcement of the
12 policy and now, there are many examples of where
13 the Department and the environmental organizations
14 have worked together to implement the policy.

15 Q And the environmental community, the NGOs, have
16 provided study documents and research papers and
17 provided those to DFO as a point of departure upon
18 which significant discussion can take place in
19 terms of how to implement the policy in a more
20 efficient manner; is that not correct?

21 MS. FARLINGER: We've certainly received documents and
22 studies from the groups, yes.

23 Q Now, I would like to begin the bulk of my
24 examination by focusing upon implementation, and
25 what it would mean to have the Wild Salmon Policy
26 be fully implemented. We've heard that expression
27 a lot. When the Wild Salmon Policy is fully
28 implemented, what would it look like? From your
29 perspective as an RDG, Ms. Farlinger, what would
30 it look like when the -- when there's actual full
31 implementation of this policy? How will we know
32 when we've gotten to that point?

33 MS. FARLINGER: I think in a sense it harkens back to
34 the ideal state that Mr. Sprout talked about,
35 which is -- there's a clear public and transparent
36 understanding of how decisions are made around the
37 management of salmon and salmon habitat, and that
38 there are processes to arrive at that common
39 understanding, and to understand and reconcile the
40 interests.

41 Q Would it come down to this, that the Wild Salmon
42 Policy would be a document that would be utilized
43 in any significant decision-making that would
44 affect the salmonid species in the Pacific Region.
45 Isn't that when it would be fully implemented? In
46 other words, when you're actually referring to it,
47 in terms of decision-making criteria?

1 MS. FARLINGER: I certainly think that's one -- one way
2 of describing it, and in fact I would -- I would
3 argue that even today we often use, certainly at
4 the principles' level, and often at the
5 information and data level, a reference to the
6 Wild Salmon Policy when we make -- when DFO makes
7 regulatory decisions.

8 I'm not sure that that is widespread in terms
9 of the other agencies or the other groups that can
10 potentially have an impact. But it's certainly --
11 the principles of the policy certainly are what we
12 intend in DFO to guide our decision-making.

13 Now, we do get to the point of evaluation
14 about whether those principles are the right
15 principles or whether the way we have described to
16 implement those is the right way. But everything,
17 the sciences evolving and the policy will have to
18 evolve with it.

19 But it's a fair enough comment that we use
20 this framework as a lens through which we do our
21 work in the region.

22 Q Now, part of the Wild Salmon Policy is what we've
23 been calling "the information phase", making sure
24 that we've got the necessary science that would
25 inform the policy in terms of benchmarks for
26 conservation units, benchmarks for habitat and so
27 forth. Can you foresee an end to that
28 information-gathering phase, and if so, when can
29 we look forward to that completion.

30 MS. FARLINGER: Personally, I'm not sure that I can see
31 an end to that information phase. I think it will
32 be ongoing. I think the phased-in approach
33 reflects the fact that not only do we not have
34 available all the information we need to inform
35 every step as laid out, but that information will
36 change, and I think some of the testimony with the
37 folks on the development and implementation panel
38 spoke to some of the very technical issues and the
39 fact that they're evolving.

40 So in fact, no, I see this as being an
41 ongoing process and commitment to continue to seek
42 that information, refine it and make it better as
43 we go along.

44 Q Well, certainly I would agree with you to the
45 extent that this is an evolving policy, so that
46 it's going to build upon information and databases
47 as they become available. But I suppose that I

1 also want to reflect on isn't there some criteria
2 that will start to get factored into decision-
3 making? I'm thinking specifically about once
4 you've identified benchmarks for the conservation
5 units, are you not then in a position to make some
6 determinations that will inform decision-making
7 whether it's with respect to development on
8 habitat or some fish harvesting decisions. Isn't
9 that a lynchpin in all of this?

10 MS. FARLINGER: It is a lynchpin, and I think to go
11 back to the point that this policy is really, in
12 some ways, codifying elements that are already in
13 place, not as fully developed as any of us would
14 like in all cases, but for example, if we were to
15 look at the identification of high-risk habitat in
16 an area of the Fraser River that might be made up
17 of one or more conservation units, that is, today,
18 informing our regulatory work in habitat, the
19 identification of those high-risk habitats.

20 Now, do we have them all identified, and are
21 all the benchmarks in place? No, they're not.
22 But I guess what I'm saying to you is it is the
23 fact that we do that today, that we continue to
24 gather data and information, and so do many others
25 that we work with, to put that in place. We are
26 already using those concepts, if not detailed
27 information, to do that.

28 In the same case, if you were to look at the
29 decision framework for the management of Fraser
30 sockeye, which you will hear about when the
31 managers are here, which is very complex -- we
32 have used the example of Cultus Lake many times,
33 but we have reference points, interim reference
34 points, that are intended to provide a buffer from
35 a point of -- stock of concern or, in fact, what
36 we might consider the COSEWIC listing. If you
37 were to look at the cries this summer to harvest
38 more Fraser -- Adams River sockeye as they were
39 coming in, in every instance, whether it was that
40 harvest was constrained by the presence of summer
41 run sockeye, whether it was constrained by the
42 presence of Cultus sockeye or other ultimately
43 constrained by the presence of interior Coho, you
44 can see that in fact decisions are based on those
45 premises today. They're not as refined as
46 contemplated in the Wild Salmon Policy, but they
47 are in fact in place and explain the exceedingly

1 complex day-to-day management of Fraser sockeye.
2 Q Can you see getting there in terms of the fully
3 operationalized Wild Salmon Policy within the next
4 five years, if I can try to pin you down in terms
5 of a time frame?

6 MS. FARLINGER: Well, I do think it's pretty tough. I
7 think we're moving towards that at every possible
8 level in the annual decision-making, in the
9 preparation of the integrated management plan for
10 salmon where we identify stocks of concern in all
11 areas of B.C. and, in fact, the Yukon.

12 I simply think it's a continuum, and we can
13 only continue to proceed towards completion. I'm
14 not sure I can give you a date.

15 Q All right. I'll accept that and move on. I want
16 to now focus upon your department, the Department
17 of Fisheries and Oceans, and specifically the
18 cultural shift, as it's been described, that must
19 occur within the civil servants that work with you
20 to enable the Wild Salmon Policy to actually be
21 implemented. What assurances can you give to the
22 Commission that that cultural shift will occur or
23 has occurred?

24 MS. FARLINGER: I'll let Paul speak to it. I'll just
25 simply say that there is in fact a code of ethics
26 for being a public servant that does require us,
27 as public servants, to implement the direction
28 that comes out of the democratic process. Okay,
29 that's very high level, but what that really means
30 is if you agree or disagree with the Department's
31 policies in your job, it is your job to implement
32 those policies. And in fact, okay, that's pretty
33 Draconian. But, by and large, it is my experience
34 in Fisheries and Oceans that the people who work
35 in this organization are proud of the Wild Salmon
36 Policy and, in fact, one of the things we're
37 looking at in terms of the evaluation in Strategy
38 6 is very clearly asking people inside the
39 Department what they see as obstacles to
40 implementation, at least in part to get at if
41 there are any residual cultural issues such as you
42 refer to.

43 MR. SPROUT: I want to get at the -- what I think your
44 question implies, and then provide a further
45 response. You ask what would it take to enable
46 the WSP to be implemented, the cultural issues
47 that would -- okay, that implies to me that you

1 think that the WSP is not being implemented.
2 There are aspects of the WSP that have not been
3 implemented. If you mean what would it take to
4 get some of those aspects of the WSP implemented,
5 then I have a response to that.

6 But I want to come back to, "Is the WSP being
7 implemented?" The answer to that is, yes. Why is
8 that? Well, because I want to come and give you
9 an example again. On the conservation unit of the
10 interior Coho that was -- resulted in the
11 Department, in 1998, closing all fisheries that
12 were harvesting interior Coho. Well, interior
13 Coho, it turns out, in 2005, is a conservation
14 unit. So six years before the policy is adopted,
15 the Department has implemented fishery management
16 changes in response to a conservation unit in 1999
17 that fell to a very low level, in terms of its
18 exploitation, and the Department at the time
19 decided that no more fish could be exploited.

20 So we can point to many examples of those
21 elements of WSP that are being implemented today.

22 Q Could I just draw your attention to one other
23 example, Mr. Sprout, and perhaps you can assist
24 me. If we focus upon the conservation unit of the
25 Cultus Lake sockeye, how is the Wild Salmon Policy
26 actually being implemented with respect to that
27 particular conservation unit?

28 MR. SPROUT: Okay. So now, you bring up a different
29 question, all right? It's a different question of
30 WSP. So I'd like to expand.

31 So what the Department did in 2005 was make a
32 decision on the exploitation on Cultus, which has
33 continued since then. So, number one, is it
34 evaluated the status of Cultus exploitation. It
35 determined that the population was depressed, that
36 it was falling below levels that prompted actions
37 by the Department to control fisheries. It also
38 prompted strategies by the Department to enhance
39 portions of the Cultus population, and also to
40 remove predators and also to do habitat
41 manipulation, so strategies designed to address
42 the status of Cultus sockeye.

43 Now, if your question is the Department
44 needed to stop all activities related to Cultus
45 exploitation, zero exploitation, okay, so now
46 you're getting at a question, a philosophical
47 question: How do you determine when a population

1 is in trouble? Whether you take all measures, no
2 matter the consequences, social or economic, or
3 you take a certain number of measures that will
4 have consequences, social and economically, that
5 are a balance.

6 Now, what was decided in the Cultus is to
7 take a balanced approach. So significant
8 reductions were applied to the commercial
9 fisheries, recreational fisheries and First
10 Nations fisheries in the lower river and outside.
11 Habitat activities, enhancement activities,
12 predator removal were also applied. But the
13 decision was not made to reduce the exploitation
14 to zero.

15 The Wild Salmon Policy allows for that. The
16 Wild Salmon Policy is not a prescriptive policy.
17 It doesn't say that if a population, a
18 conservation unit falls below some point, you're
19 obligated to take all measures, no matter what the
20 consequences of that are. What it says is you
21 need to create processes to bring people together
22 to talk about the status of that population and to
23 consider what actions may be necessary to try to
24 restore that population and how far you will go.

25 So I'm arguing, and I think Ms. Farlinger is
26 arguing, is we're already doing that. Because the
27 policy is not fully implemented, that doesn't mean
28 we've suspended all activities for fisheries
29 management, habitat management. It doesn't mean
30 that at all. It just means exactly that. There
31 are aspects of Wild Salmon Policy that have yet to
32 be fully implemented. So I just want to make that
33 point clear, that there is significant progress on
34 implementation.

35 But notwithstanding that, there is actions
36 related to preservation and conservation of
37 salmon, Pacific salmon, that predate the policy
38 and continue.

39 Q Okay, we got off on --

40 THE COMMISSIONER: I'm sorry, I just note the time.

41 MR. LEADEM: Oh, I'm sorry, Mr. Commissioner. I'll
42 come back to this after lunch.

43 THE COMMISSIONER: Is this a convenient point for you?

44 MR. LEADEM: Yes, it would be.

45 THE COMMISSIONER: Okay. Thank you very much.

46 THE REGISTRAR: The hearing is now adjourned until 2:00
47 p.m.

1 (PROCEEDINGS ADJOURNED FOR NOON RECESS)
2 (PROCEEDINGS RECONVENED)
3

4 THE REGISTRAR: The hearing is now resumed.

5 MS. GAERTNER: Mr. Commissioner, if I may have just a
6 moment of your time. I wanted to start by saying
7 that I understand, given all the estimates of time
8 today, that there will not be an opportunity for
9 me to examine these witnesses or offer my
10 questions to them, and I am happy to make my
11 calendar available so that we can find a time when
12 best we can. I really was booked this afternoon
13 already in a couple of places, so it was difficult
14 for me to stay this afternoon, in any event.

15 And I also just wanted to extend season's
16 greetings and know that I will see you all in
17 January and I hope that we all have an opportunity
18 to rest and that we continue to do the work
19 together that we're doing, and I look forward to
20 that opportunity. Thank you.

21 THE COMMISSIONER: Thank you, very much, Ms. Gaertner.
22 Thank you.

23 MR. WALLACE: Brian Wallace, Commission counsel, and
24 with me is Lara Tessaro.

25 Mr. Commissioner, just on the issue of
26 timing, Mr. Leadem estimate he'll be another 20
27 minutes. Mr. Rosenbloom has estimated an hour and
28 15 minutes. Mr. Lowes and Mr. Harvey both say
29 they don't need anything, but want me to save five
30 minutes for them just in case. Mr. Butcher has
31 given us an estimate of 30 to 60 minutes, which is
32 how -- which brings us more or less to four hours
33 -- or sorry, two hours before we get to Ms.
34 Gaertner, which is why I think it's unlikely that
35 we will lose anything this afternoon if she
36 leaves. Thank you.

37 MR. LEADEM: Thank you, Mr. Commissioner.
38

39 CROSS-EXAMINATION BY MR. LEADEM, continuing:
40

41 Q Prior to the luncheon break, panellists, we were
42 discussing some of the internal cultural shift
43 that needs to be visited upon the Department in
44 order for the implementation of this Wild Salmon
45 Policy to go forward. And let me go back to some
46 of the evidence I heard from an earlier panel,
47 which you may have been privy to or may not have

1 been privy to, in case you've read the
2 transcripts. And that's the panel on Development
3 and the panel on Implementation, where some of the
4 tensions were explored within the Department that
5 led up to the actual development of the Wild
6 Salmon Policy. And the most notable tension that
7 existed was one that was between FAM, or Fisheries
8 Aquaculture Management, and Science. And so I
9 want to explore that theme with you a little bit
10 in questioning to you this afternoon.

11 There was this tension, do you acknowledge,
12 in the development phase of getting the WSP up and
13 running; is that correct?

14 MS. FARLINGER: I think it would be fair to say when
15 we're changing anything at the Policy level
16 there's lots of debate inside the Department, both
17 formally in committees that are formed and outside
18 those, about how these things will move forward.
19 In fact, I would characterize it more generally as
20 an enthusiasm for actually documenting the Policy.
21 There was a great deal of debate about individual
22 aspects of it and how they would go forward, and I
23 think that's reflected in the various versions of
24 the Policy that you probably saw from that panel.

25 Q Yes. And I'm not suggesting, Ms. Farlinger, that
26 that tension in and of itself is not necessarily a
27 good thing, because sometimes tension can be
28 productive and lead to debate and where ideas can
29 be raised. But I'm asking you, I guess, in the
30 context of implementation, is that a challenge now
31 within the sectors within DFO for full
32 implementation? Do you still have that problem
33 with convincing various sectors that the Wild
34 Salmon Policy is a good thing?

35 MS. FARLINGER: I would say no. The -- I think the
36 Policy, having been announced by a Minister and
37 having been around for five years, is -- is well
38 accepted within the Department as a guidance
39 document and a framework for going forward. I
40 think we make all kinds of regulatory decisions on
41 a day-to-day basis and we continue to debate those
42 internally.

43 MR. LEADEM: I want to ask Mr. Lunn to pull up Exhibit
44 109 for me.

45 Q This is a document that some of you -- I think
46 both of you may have seen before. It's a Wild
47 Salmon Policy Implementation Workplan. You'll

1 note that it's in draft format, and I have not
2 ever seen this in finalized format. And I'm going
3 to take you, not in any great detail with the
4 policy, but if we can just scroll slowly through
5 so the witnesses have an opportunity to understand
6 what's at stake here. If we look at the index,
7 you'll see that there's a number of topics
8 covered.

9 And then if we look down further at
10 "Introduction", the timing of this is that it's
11 post-release of the Policy. The date is September
12 2005.

13 Under the heading 1.2, "Integration" you'll
14 note that the author of this paper says:

15
16 The WSP provides an impetus for integration
17 not just within the Department but also
18 across federal departments, First Nations,
19 the Province of BC, the Yukon Territory and
20 municipalities.

21
22 And I understood your evidence, Mr. Sprout, to be
23 somewhat along that theme, as well, that you can't
24 simply engage -- it's not just a Departmental
25 policy if you want it to be effective, but you
26 have to engage the other parties, you've got to
27 engage other levels of government, and you've got
28 to engage First Nations and in fact the
29 stakeholders. Is that a fair approximation of
30 your evidence?

31 MR. SPROUT: Yes, and I added that I didn't think the
32 Policy itself gets at that ability to be able to
33 look across other governments. We could only
34 consider federal jurisdiction, and I could
35 elaborate on that if you want.

36 Q No, I think we've got your evidence pretty well on
37 that point. This paper goes on to say:

38
39 The policy is nested within a broader
40 initiative of Fisheries Reform and
41 complementary to major Departmental
42 initiatives...

43
44 And you talked at length in your evidence in
45 direct examination through Mr. Timberg about some
46 of those policies. Some of them are itemized
47 there: the Oceans Action Plan, the Habitat

1 Modernization, AAROM, and the **Species at Risk Act**
2 implementation.

3 And I want to just stop with that **Species at**
4 **Risk Act** implementation, because when you were
5 going through your recital of policies, I did not
6 hear mention made of **SARA**, the **Species at Risk**
7 **Act**, and how, if at all, WSP is a factor where
8 there's a linkage to **SARA**. Is there a linkage,
9 Ms. Farlinger, to **SARA**?

10 MS. FARLINGER: There is indeed a linkage, and as I
11 understand it in terms of the development and my
12 personal experience in the development, there was
13 considerable discussion about how we would link
14 our definition of conservation units to the kind
15 of designations that appear under **SARA**. And I
16 would probably leave it to the scientists to
17 elaborate that discussion, but I was certainly
18 present at a number of those discussions. Yes.

19 Q Does the linkage go this far, and I understand
20 what you're saying because it -- in the early
21 inception of the Policy I think the term
22 "designatable unit" was used, as opposed to
23 "conservation unit", which informs me that we're
24 talking about **SARA** designatable unit, correct?

25 MS. FARLINGER: Yes, that's my understanding, as well.

26 Q All right. So does the linkage go this far that
27 if you establish benchmarks at the lower level,
28 that presumably you would not then need to resort
29 to -- to **SARA**, to COSEWIC designations and COSEWIC
30 determinations; is that fair?

31 MS. FARLINGER: I think that we understood when we were
32 developing this Policy that we were doing it in
33 the context of the **Species at Risk Act**. They --
34 the level of designatable unit or conservation
35 unit as it's set, and the -- the reference points
36 that are contemplated, are intended - even the
37 ones we use now - to provide a significant buffer
38 between what we think might be potentially
39 designated as problematic under **SARA**. So it
40 certainly is a -- to use a colloquial term, or an
41 overused term here, a reference point for this.

42 Q Right. So the theory, at any rate, is that
43 presumably you won't get to the stage of the Wild
44 Salmon Policy as being implemented and
45 operationalized to the way it's meant to be, you
46 won't get to the state where you're going to have
47 a **SARA** designation under COSEWIC. Is that fair to

1 say?

2 MS. FARLINGER: It might be a little optimistic. I
3 don't think -- I think this was designed to
4 complement and potentially avoid those kinds of
5 conservation issues. But that's not to say that
6 that might not happen at some point.

7 Q Turning back to Exhibit 109, if I can now ask you
8 to look at 1.3, under the heading "Overall Risk
9 Assessment". The first sentence says:

10
11 The most significant challenges to
12 implementation and the success of the policy
13 will be attitude and resources.

14
15 And then under the heading "Attitude", I see a
16 number of bullets that I think encapsulates what
17 you've been saying to us all along, Mr. Sprout:

18
19 DFO managers and staff to work in an
20 integrated fashion across sectors and
21 departments.

22
23 First Nations, other Departments and other
24 levels of government to work collaboratively
25 and in partnership.

26
27 And:

28
29 Canadians to place a high enough value on
30 fish and their habitat to support steps that
31 will ensure their continuance.

32
33 Do you agree with that statement?

34 MR. SPROUT: I do. I think we do have to work with
35 other governments, other organizations, and so
36 forth, but I'm also again arguing that the WSP
37 alone won't get us there. We can only apply
38 federal jurisdiction, obviously in WSP and the
39 issues that I have raised, frankly are outside of
40 that authority. But in general I do agree we need
41 to work with other parties to realize the
42 aspirations of sustainability.

43 Q Right. And I understood your evidence to be that
44 DFO -- both of your evidence was that DFO
45 collectively was assuming a leadership role in
46 trying to bring together all the various
47 stakeholders, the levels of government, the

1 municipalities, the province, in order to make
2 this actually function and make it work. Is that
3 a fair approximation of what you were saying?
4 MR. SPROUT: Again under federal jurisdiction the
5 answer to that I think would be yes. And I'll
6 give you an example, is on the fisheries
7 management side where management of Pacific salmon
8 is a federal responsibility. The Department can
9 point out to the processes it set up to work with
10 the various constituencies, First Nations,
11 recreational, NGOs, and other parties, to develop
12 fishery management plans that ultimately get
13 implemented by the Department. We've made
14 significant progress in this area. It's a federal
15 jurisdictional area, and we've made progress as a
16 consequence.

17 In areas that are multi-jurisdictional, where
18 the Department is a participant, not a -- not a
19 leader, and I'm referring to watershed management
20 in particular, we've made progress through various
21 initiatives. I spoke of the, for example, the
22 watershed basins initiative that the Department
23 contributed significant new monies to. But in
24 those instances we really require the support and
25 active leadership of other agencies and interests.

26 Q In the earlier panel I received a deferral from
27 them with respect to engagement of the province.
28 And you're -- you have addressed many of the
29 questions I was going to put to you in cross-
30 examination through your evidence in direct. The
31 one area that was not addressed was an area
32 specifically dealing with information sharing
33 between the Department of Fisheries and Oceans and
34 the province, and I'm wondering if you can address
35 that with me. I understand that there's a
36 memorandum of understanding between the province
37 and the federal government for information
38 sharing; is that correct?

39 MR. SPROUT: What year is that that you're referring
40 to? And do you have the memorandum with you?

41 Q No, I don't have it with me, I'm sorry.

42 MR. SPROUT: We do have, we've got several agreements
43 with the province, and I can't recall the
44 information sharing one specifically. But we do
45 have a number -- well, several that I'm aware of.

46 Q And the information sharing in particular I think
47 relates to habitat information so that the

1 province has access to a number of -- of watershed
2 information through its habitat management plans
3 and its departments, and also obviously has a vast
4 database with respect to the **Water Act**, and water
5 licences and so forth. And so that's the kind of
6 thing I'm driving at. Is that information that's
7 routinely shared and readily available without
8 cost to the federal government from the province,
9 to your knowledge?

10 MR. SPROUT: Ms. Farlinger may be able to speak to this
11 in more detail. I know -- I know that we are
12 sharing information on habitat and I know that in
13 the -- I believe in the Developmental panel,
14 Implementation panel or session, you did actually
15 have some discussion by our Habitat expert at that
16 point who talked about that information sharing.

17 Q Right.

18 MR. SPROUT: Ms. Farlinger may be able to expand on it.
19 But this is an important aspect. I'm aware of
20 some sharing that's going on. I'm not sure in
21 fact whether in fact -- I'm not sure to what
22 degree to that, that it's a -- that level of
23 sharing has been expanded, at least recently.

24 MS. FARLINGER: I think what I could say is the -- we
25 have for many years and we're continuing to work
26 on that with the province, the geographic
27 information system I think you heard something
28 about in Habitat, which we maintain. We do have
29 free access to layers of information from the
30 provincial FIS, Fish Information System - I might
31 not have the exact name right - and that the
32 information from that system specifically is
33 layered into our system on a free access basis.

34 With respect to your question about the **Water**
35 **Act** and authorizations under the **Water Act**, I do
36 not believe we have access to that information at
37 this point.

38 Q Would that be something that you would find
39 invaluable to have if you're dealing with
40 fisheries, particularly in the freshwater aspect
41 of the salmonids?

42 MS. FARLINGER: I could certainly imagine situations in
43 which it might be helpful.

44 Q Because obviously water licences are going to
45 dictate the flow regime, and so you would -- if
46 you're looking at the habitat, you're not just
47 looking at riparian zones, I would submit, in the

1 freshwater, but you're also looking at water
2 flows, are you not?

3 MS. FARLINGER: Indeed we are, and we do have developed
4 a -- a set of water flow requirements. We use
5 those regularly in terms of reviewing various
6 projects under the Habitat program.

7 Q Now, I just want to finish up with Exhibit 109,
8 and going back to 1.3, the "Overall Risk
9 Assessment". The author of this says:

10 The most significant challenges to
11 implementation and the success of the policy
12 will be attitude and resources.
13

14
15 Do either or both of you agree with that
16 statement?

17 MR. SPROUT: Again, from my perspective, I think there
18 are resource issues. I spoke to those previously.
19 I have indicated that I -- that I believe that in
20 terms of my assessment of implementation of the
21 WSP, the Department has made significant progress.
22 That's -- those aren't my words, those are in
23 documents that in fact you yourself have submitted
24 as exhibits. But having said that, I believe the
25 area that we still struggle is the Habitat area,
26 and I believe in part that's related to capacity
27 issues. And I spoke to that briefly, and I think
28 it would be helpful if resources were provided in
29 that directed way. I don't think they'd be
30 extensive resources, but I think they'd be
31 helpful.

32 In terms of attitude, again I come back to
33 the perspective that I've provided and I want to
34 expand on it and go back to your point on tension.

35 Again, my view is that WSP implementation
36 involves both federal jurisdiction, and I think to
37 realize the issue of sustainability, you need to
38 go beyond federal jurisdiction. You need to go to
39 provincial jurisdiction, regional jurisdiction.
40 You need to get at the issues of do we decide for
41 development to occur in this lake, on this water
42 -- in this watershed or not, and do we need to
43 plan that development, and what do we do about the
44 issue of water use when the water is limited, when
45 it's scarce? How do we decide what to appropriate
46 to fish versus humans? These are very difficult
47 decisions and I believe can't be dealt with by the

1 Department. And I've explained that already.

2 On the issue of attitude and tension, I am
3 much more of the view that you expressed that
4 attitude -- tension can be very productive. I
5 retired from the Department after 34 years in the
6 Department, and I have to tell you, I can't recall
7 a time where we didn't have tension on issues.
8 And so why is that? Well, it's because the
9 Department is comprised of individuals from our
10 society, and we have different views on
11 perspectives. And those views come together in --
12 through committee processes and we make decisions.
13 But because we have different views, the decisions
14 the Department tends to make then are well-
15 informed decisions. And the tension under those
16 circumstances is productively handled and managed.

17 I would argue that that's the same thing in
18 the WSP, that, yeah, there are tensions from time
19 to time, but we have processes for those tensions
20 to be examined and considered and decisions taken
21 that are -- that are thought to be the best under
22 the circumstances.

23 So for me in answering this question, I
24 believe the issue, there is some capacity, I
25 explained that, and but I believe the broader
26 issues here are about activities that frankly the
27 Department alone can't get at.

28 Q Right. And you spoke at length to those, Mr.
29 Sprout. I'm not going to go over those again.

30 You spoke, I thought rather eloquently about
31 some of the new governance objectives and some of
32 the new governance mechanisms. And I appreciate
33 that you're coming from the perspective of that
34 holy place of retirement where you can make those
35 pronouncements, and I'm wondering to what extent
36 Ms. Farlinger also ascribes to those views that
37 you espouse.

38 MS. FARLINGER: I certainly think that we have some
39 significant challenges in terms of the breadth of
40 the issues we're trying to cover in the Wild
41 Salmon Policy, and then more broadly in the whole
42 sustainability issue of salmon.

43 And one of the great challenges for us is
44 processes. We have fishery planning processes we
45 participate in, and in some instances lead, but
46 mostly are participants in watershed level
47 processes. And we essentially have everything in

1 between. And so there is a significant challenge
2 in terms of bridging the kind of information that
3 you get from watershed type processes to fishery
4 management type processes, and that really is the
5 whole issue of linking productivity to the
6 harvesting side of things. And so certainly one
7 of the things we've been doing through the Fraser
8 Basin Council and also with the Integrated Salmon
9 Dialogue, is really trying to push hard out and
10 explore those issues about how -- how can we
11 bridge between those processes?

12 For example, First Nations' interests on the
13 watershed, which are often very local and
14 holistically based, are a very different thing
15 than talking to a group of harvesters, and that's
16 a big gap. The interests of the environmental
17 community versus the interests of miners or
18 developers, you know, are very different. And so
19 it is the bridges between these processes. And if
20 there is something in -- in what Mr. Sprout
21 suggests that will help us to build the bridges
22 between those processes and actually have people
23 talking together in a constructive way, that is
24 not about -- and I know this sounds a little self-
25 serving, but I think it goes beyond that. It's
26 not just about blaming the government when you
27 can't agree, but it's actually about having people
28 reconcile those very hard issues.

29 And so in that -- Mr. Sprout's suggestions
30 may get at that problem, that is certainly -- it's
31 big gap in terms of putting this into place.

32 Q I have one more matter that was deferred from
33 another panel, and then I'll be finished. And
34 that is we heard some evidence about a pause in
35 which scientists were told that they were not to
36 attend conferences and workshops that were
37 established. For example, there was one last
38 December by -- hosted by SFU, a think tank, and
39 another one hosted, I believe, by SFU in March of
40 2010, it's a think tank. And I wanted to get some
41 idea of whether that pause has been lifted or
42 whether there's still -- whether there's still the
43 necessity for scientists not to attend some of
44 these workshops where the issues about the decline
45 of Fraser River sockeye and some of these
46 incredibly important scientific issues are going
47 to be debated. Is there still some sort of

1 negation of their ability to attend?

2 MS. FARLINGER: The issue around the meetings that you
3 reference there, really were focused on the
4 Department as it prepared for the inquiry and
5 participating in the inquiry, really focused our
6 work down on our regular work. So there was a
7 question I had heard raised about why scientists
8 would participate in the Pacific Salmon Commission
9 workshop and not in an external workshop, and it
10 really is focusing on getting our business done as
11 usual, and also participating, getting ready and
12 participating in the inquiry.

13 So you know, as we go along, this is not a
14 prohibition on attendance. This is really a
15 balancing on a case-by-case basis of where people
16 can put their energy and resources.

17 MR. LEADEM: Thank you. Those are my questions, Mr.
18 Commissioner.

19 THE COMMISSIONER: Mr. Rosenbloom, just before you
20 start, and, Mr. Leadem, while you're still on your
21 feet, I just -- I don't know that this was put to
22 the witness by you, and I apologize to Mr. Sprout
23 if he's answered it. I just wanted to go back
24 just for my clarification so I understand what
25 these witnesses are saying.

26
27 QUESTIONS BY THE COMMISSIONER:

28
29 Q And 1.3 is on the screen. Mr. Sprout, I've just
30 forgotten, what was the date that you retired from
31 your position?

32 MR. SPROUT: I left in end of May of this year.

33 Q Okay. Just -- and I think you came to this under
34 the -- under the words "Attitude" on the screen,
35 it says:

36
37 The WSP is --

38
39 - and I apologize for reading it to you, but I
40 just want to ask a question -

41
42 -- a process that represents a fundamental
43 change in the way DFO conducts its business
44 in the Pacific Region. In addition to
45 internal change it also calls on DFO to
46 provide leadership in influencing other
47 governments and interests to take steps in

1 areas outside DFO control that are necessary
2 to sustain wild salmon.
3

4 I believe the date on this document, and I
5 apologize if I don't have it, is 2005. But my
6 question - and perhaps you've answered, if you
7 have, I apologize for missing it - can you -- can
8 you tell me what internal change is being
9 addressed there and if it has happened, and also
10 what's been done by DFO "to provide leadership in
11 influencing other governments and interests to
12 take steps in areas outside DFO control". In
13 other words, I don't know if you've specifically
14 addressed this or not. You gave some views that
15 you had about a change in governance. But what
16 I'm more interested in here is just any specifics
17 that you or Ms. Farlinger can provide to me, both
18 on internal changes and influencing other
19 governments and interests. And I ask that now
20 because Mr. Leadem might have a follow-up question
21 to your answer.

22 MR. SPROUT: Mr. Commissioner, I'd like to speak to the
23 second part first, which is what leadership
24 examples did the Department -- has it adopted or
25 encouraged to try to deal with other -- other
26 levels of responsibility, governments and so
27 forth.

28 The example that I introduced earlier this
29 morning was the Fraser River Watershed's -- Fraser
30 Salmon Watershed's program that the Department
31 implemented in 2007. So that program, as I
32 mentioned, was a \$5 million fund provided by the
33 federal government, and a \$5 million work-in-kind
34 that DFO would contribute, that matched a \$20
35 million -- a \$10 million contribution by the
36 province. This combined program then was then
37 provided to the administration by the Pacific
38 Salmon Foundation and by the Fraser River Basin
39 Council, and these two bodies then developed
40 project proposals which were ultimately undertaken
41 by various groups on the Fraser River in support
42 of sustainability of Fraser salmon in general, Mr.
43 Commissioner.

44 And the reason that I brought it forward is
45 the leadership example is, is that in the Wild
46 Salmon Policy itself it does talk about the need
47 to build partnerships and to work beyond the six

1 strategies. So that's a clear example of the
2 federal government providing significant new
3 resources, working with other parties, in this
4 case the province, the Pacific Salmon Foundation,
5 Fraser Basin Council, and many other groups to try
6 to put into place some of the elements that the
7 Wild Salmon Policy aspires to realize.

8 Now, that's a specific example.

9 I also gave another example of the Integrated
10 Salmon Dialogue Forum. Again, this was initiated
11 by the Department, when the Department approached
12 consultants in this case, conflict specialists,
13 and said that would you facilitate a process to
14 bring together Native and non-Natives to talk
15 about integrated fisheries, that we need to manage
16 our fisheries as one -- as a complete fishery,
17 involving all fishing interests, and we need to
18 work with all those parties, and we would like you
19 to play a facilitation role where the Department
20 is a participant, along with others. So that
21 process went into place in 2008 and continues.
22 And various products are coming out of those
23 processes, Mr. Commissioner, catch monitoring,
24 decision -- decision guidelines and so forth, that
25 are informing other fisheries outside --
26 throughout the Region.

27 Those are two specific leadership examples
28 that I'd like to bring to your attention in
29 response to your question on what kind of
30 leadership in response to the -- how we've
31 responded to this direction.

32 On the issue of attitude, what I think was
33 being got at in 2005 was in fact doing what I've
34 just described, building alliances with other
35 parties. Having the -- having the view that
36 you're not going to do it alone, that you need to
37 bring in other parties and you need to take
38 advantage of other parties' capacity and attitude
39 to actually promote your own -- your own
40 interests, in this case WSP. And so what I saw in
41 this particular phrase here is reinforcing, in
42 fact, the actions that I've just spoken to.

43 And the second element, Mr. Commissioner, I
44 think that I believe is present in this reference
45 to attitude, is within the Region we need to think
46 about the WSP on a day-to-day basis. So whether
47 we're a scientist or a policy maker or we're

1 fishery manager or a habitat manager, we need to
2 think about our actions relative to the Wild
3 Salmon Policy, and so that it's culturally
4 embedded in the system. And arguably we still
5 have a way to go with that aspect, and we spoke
6 about that in a previous session. And in fact
7 we've argued that one of the ways of assessing how
8 well we're doing in the WSP implementation is our
9 cultural attitude toward implementation.

10 But, Mr. Commissioner, I think that would be
11 my response to your two observations.

12 Q Thank you very much.

13 MR. SPROUT: Thank you.

14 Q Ms. Farlinger, did you have anything you wanted to
15 add?

16 MS. FARLINGER: I think I would just make a comment on
17 attitude that is represented in the -- in the
18 third bullet:

19
20 Canadians to place a high enough value on
21 fish and their habitat to support steps that
22 will ensure their continuance.

23
24 And I think that we've talked a lot about
25 conflicting and competing objectives here, and we
26 perhaps haven't talked about that in the context
27 of Habitat. We've worked a lot in the program
28 over the last four or five years since the
29 implementation of the Wild Salmon Policy to
30 improve our relationship with folks who want to do
31 development on or around water. And that has to
32 do with taking away the idea that once a proposal
33 goes into DFO, it goes into a black box and
34 developers can't make any progress, and our
35 Habitat process tends to hold up economic
36 development.

37 And in fact that's a theme we hear. We hear
38 from industry communities, we hear complaints
39 about it, and you know, we hear from time to time
40 that these things are -- are talked about at sort
41 of the -- you know, a high level or a high
42 political level. But nonetheless, this is a
43 challenge on the ground, and gradually as we see
44 that education improving with the development
45 community, whatever it might be, whether it's the
46 farming community, or the urban development
47 community, or the mining community, or forestry

1 community, as those -- as that education with
2 those groups improves, then we begin to see
3 actually people understanding in the development
4 or their projects how it is that they can place
5 that value on habitat. Now, this is a work in
6 progress, and it is not yet perfect, I should say.

7 THE COMMISSIONER: Thank you. Mr. Leadem.

8 MR. LEADEM: Just one supplemental, if I may, Mr.
9 Commissioner.

10

11 CROSS-EXAMINATION BY MR. LEADEM, continuing:

12

13 Q Mr. Sprout, you mentioned the Fraser River Salmon
14 Watershed Program, the one where there was the
15 infusion of money. Can you tell me when that
16 initiative started?

17 MR. SPROUT: In 2007.

18 MR. LEADEM: All right, thank you.

19 MR. ROSENBLOOM: Thank you, Mr. Commissioner. My name
20 is Don Rosenbloom and again I represent Area D
21 Gillnet and Area B Seiner.

22

23 CROSS-EXAMINATION BY MR. ROSENBLOOM:

24

25 Q I have a number of questions for you and I'd first
26 like to follow-up with the exchange you just had
27 with the Commissioner and Mr. Leadem in respect to
28 the other interests that are outside of the
29 federal realm that have a contribution to make to
30 many of the decisions that are critical to fulfill
31 your jurisdiction.

32 Mr. Sprout, in the morning session you said,
33 and I quote, "To get to go where we have to go, we
34 have to go well beyond DFO," and you have
35 elaborated on that point repeatedly.

36 During the last day of sitting of this
37 inquiry with respect to your panel, which was on
38 December the 9th, the Commissioner, and I'm happy
39 to just give the reference for the record, and if
40 for any reason you wish to review the record of
41 that day, Mr. Lunn will put it up on the screen.
42 But at page 6 -- page 88, I should say, of the
43 transcript of that day, the Commissioner posed a
44 question to you in particular, Mr. Sprout, in
45 respect to the evidence you had been giving
46 leading up to that moment about the other
47 interests, provincial, other bodies that had

1 stakeholder interests and so on, that really
2 should be brought into the fold in a more
3 comprehensive way. And the Commissioner said in
4 part at line 29:
5

6 Am I correct to think that all of the points
7 you just made, and you've made them during
8 the course of today, would have been as
9 applicable at the time of the birth of the
10 policy, let's say around the year 2000 or
11 1999, was it ever a consideration to try and
12 create something that was a joint initiative,
13 a policy?
14

15 And then the Commissioner went on, and then you
16 replied. And frankly, in reading your reply, I
17 think you stated that you were -- it was really
18 beyond your experience and work with the DFO to be
19 able to respond in a fulsome way to that question.

20 I want to follow up on that question for a
21 moment. As I listen to you over the days, one
22 detects a frustration, or more to the point, a
23 recognition that in implementing your mandate and
24 in implementing the Wild Salmon Policy, there are
25 so many complex parties that are outside of the
26 direct realm of your responsibility as DFO.
27 Appreciating that the Wild Salmon Policy has not
28 brought into the fold all these other parties,
29 including provincial jurisdiction, and so on, and
30 appreciating that the Wild Salmon Policy really
31 does not come to grips with the multifaceted
32 nature of all of these outside groups, do you have
33 recommendations to the Commissioner in terms of
34 the report that will eventually be written wherein
35 the Wild Salmon Policy will be implemented with a
36 strong statement from this Commission as to how to
37 bring these other groups into the fold in a more
38 cooperative way?

39 MR. SPROUT: Well, I do, and I wouldn't -- first of
40 all, let me just correct your impression of how
41 I'm feeling. I feel passionate about Pacific
42 salmon and about the Wild Salmon Policy. And this
43 is an opportunity for me to express that. I'm not
44 frustrated. This is an opportunity and I am here
45 to express as well as I can my understanding of
46 how well we're doing, and I will provide advice,
47 where I am able to, in areas that I think I have

1 expertise.

2 And so with regard to your question on
3 recommendations relative to this, I have suggested
4 a couple of areas. One is -- and these are along
5 the lines of dealing with others that are outside
6 the Department that I think are relevant in the
7 sustainability of Pacific salmon. And my view is,
8 is that we need to create watershed processes that
9 are led by those agencies who have responsibility
10 and the legal responsibility for management of
11 water and the use of land, and that those
12 exercise, those watershed processes need to look
13 at planning human development. We need to
14 confront the issue of where we want to live, how
15 many of us want to live there, how much water we
16 want to extract, what kind of land we want to
17 develop.

18 Regrettably the federal policies don't get at
19 those issues, and therefore I have suggested that
20 one of the things in terms of going forward, would
21 be developing watershed-based processes that are
22 led by those that have jurisdictional
23 responsibility. The Department would obviously, I
24 believe, want to participate in those and bring
25 its policies and actions and regulations to them,
26 but as a participant, contributing. And I believe
27 that's one area that I have described.

28 Q Is a Commissioner's recommendation in respect to
29 this matter going to, in your opinion, assist or
30 drive that process to implementation?

31 MR. SPROUT: I think a Commissioner's recommendations
32 would be influential. At the end of the day, what
33 I have -- I am recommending in terms of a
34 watershed management process, will have to be
35 looked at by parties who are not federal and they
36 will have to decide what their views will be on
37 advice, were the Commission to provide that. So I
38 do think it will be influential, but at the end of
39 the day I believe, particularly if it's
40 jurisdictional matters outside of the federal
41 government, other interests will have to consider
42 those perspectives.

43 Q Thank you. Does that complete your answer?

44 MR. SPROUT: Well, I also offered counsel a
45 recommendation on what DFO could do within its own
46 jurisdiction, and I will stop there unless -- and
47 to elaborate, unless -- I will stop at that point,

1 unless you wanted me to elaborate. I thought you
2 were just asking what -- me to comment on things
3 that are outside of DFO jurisdiction.

4 MR. ROSENBLOOM: That is correct, I have. And as I
5 carry on my exchange with you, Mr. Sprout, if Ms.
6 Farlinger wishes to add anything, feel free to do
7 so.

8 Mr. Commissioner, earlier on in Mr. Sprout's
9 testimony, in fact just before lunch, he spoke of
10 a -- what I will call a radical change in
11 governance in terms of DFO siphoning off much of
12 its responsibility for management to a board, and
13 the word "board" was used, and this all came
14 following a comment by Mr. Sprout acknowledging
15 that DFO was not the most popular ministry or
16 department of government and he spoke of siphoning
17 things off, and this is my own language. Mr.
18 Commissioner, that matter could frankly be a whole
19 day of cross-examination. My clients take a very
20 strong view in respect to responsibilities of DFO
21 to be the party responsible for the ultimate
22 decisions, be they popular or unpopular, at the
23 end of the day.

24 And the dilemma that I'm in, Mr.
25 Commissioner, in terms of that evidence - I don't
26 in any way deprive Mr. Sprout of giving his
27 testimony - is that it doesn't really relate to
28 obviously Wild Salmon Policy. It relates to a new
29 concept or schematic in terms of governance. And
30 if hopefully there will be another day during this
31 process where if that is being seriously reflected
32 upon, my clients obviously want an exhaustive
33 cross-examination on those issues and the
34 opportunity to call evidence.

35 MR. WALLACE: Mr. Commissioner, this actually sounds
36 like a submission, but in any -- in any event,
37 there will be opportunities as we progress, and at
38 the very end we have an executive priorities and
39 wrap-up session when I think this would be a more
40 appropriate time to address this issue. As Mr.
41 Rosenbloom points out, this has very little, if
42 anything, to do with the Wild Salmon Policy.

43 THE COMMISSIONER: Mr. Rosenbloom, I have heard for the
44 first time today, perhaps like you, Mr. Sprout's
45 views with respect to governance, and perhaps all
46 I have to say is that I had not considered whether
47 it is within the Commission's mandate to direct

1 our minds to that topic. And I would certainly
2 want some advice from counsel, my Commission
3 counsel, on that.

4 So I am not in a position to give you any
5 assurance one way or the other, because I haven't
6 had any advice on whether the kinds of points
7 raised toady by Mr. Sprout are in fact within the
8 Commission's mandate. I think that's something I
9 would ask Commission counsel to advise me upon.
10 So I respect fully Mr. Wallace's view that there
11 might be an opportunity at some point, but I'm not
12 so sure at this stage just exactly how far my
13 mandate would go. I know we're to consider the
14 practices and policies of the DFO, but I think Mr.
15 Sprout's evidence goes down a different track,
16 which is different governance models, and I just
17 don't know at this point whether that's within my
18 mandate.

19 MR. ROSENBLOOM: Thank you. And, yes, I did -- it
20 crossed my mind the very issue of your mandate and
21 whether it was even before the Commission. All
22 that I ask is a courtesy, I think on behalf of all
23 the parties, is that if this is within mandate,
24 and if the Commission is seriously going to
25 reflect upon what I'll call radical changes in
26 jurisdiction and responsibility, that all the
27 participants be given notice so that we can
28 actively participate both in cross-examination and
29 in calling evidence. And I leave it at that,
30 thank you.

31 THE COMMISSIONER: Thank you.

32 MR. ROSENBLOOM:

33 Q I would like to move on and speak to the issue of
34 funding of the WSP, and much has been said about
35 this already, and Mr. Sprout and Ms. Farlinger.
36 We, of course, have been -- we're aware that the
37 drafting of the Policy embedded within that
38 Policy, that there would be no additional funding
39 provided to the region for purposes of
40 implementation of the WSP. My questions arise as
41 a result of that -- that fact.

42 My first question is, as architects, and you,
43 Mr. Sprout, being one of the architects, what, if
44 I may ask, was in your mind to believe that a WSP
45 could be effectively implemented with such a
46 provision embedded within the Policy, i.e., that
47 there wouldn't be additional funding for

1 implementation.

2 MR. SPROUT: So let me -- let me start at a high level
3 and then work my way down in my response. The
4 first thing is I need to set the context for this.

5 The policies come along in various federal
6 departments. And -- and federal governments are
7 trying to ensure that budget increases are
8 minimal, or not provided for at all, because they
9 have a broad mandate that they're trying to
10 respond to. And in the same -- and in 2005, when
11 this policy was developed, there were constraints
12 about budget increases. So it's not a question of
13 me as a -- as an RDG having a view that we can
14 implement this policy without any new resources.
15 What it is, is we are operating under the view and
16 understanding that we need to work within the
17 resources we have. And this would be a common
18 statement, I think, from any senior official in
19 any department who is trying to manage within
20 their existing resources, because the government
21 is trying to manage within a broader budget. And
22 so that was the context under which we found
23 ourselves in 2005.

24 Now, having said this, I want to come back to
25 the cultural issues.

26 The Pacific Region has a very -- has a
27 significant budget. We have 1,300 staff in the
28 Pacific Region in the Department of Fisheries and
29 Oceans. We have several hundred scientists who
30 are in the Science Branch, fishery managers and so
31 forth. So we have a significant resource level in
32 this Department, in this Region.

33 So the issue, I think, that was before us in
34 2005 is how best can we utilize the resources we
35 already have, which are substantial, to try to put
36 into effect this Policy as best we can under the
37 conditions that we are faced with. And I think
38 that gets back to the issue of the cultural
39 embeddedness that we spoke of earlier.

40 The reality is that we do have significant
41 resources, and we have to use those in a way that
42 is most efficient and effective, given we have
43 many other priorities besides WSP, but we do have
44 resources and we can take advantage of the fact
45 that we do have resources to focus those -- those
46 resources to the extent we can to achieve WSP
47 objectives and other activities that we also have

1 as -- as priorities. And so that's also a
2 consideration in how we can put into effect this
3 budget.

4 And then the final thing is that there's no
5 question, I think, that in retrospect you could
6 see that the complexity of the policy makes
7 delivery of it, implementation of it, really
8 challenging. And I have spoken already that, you
9 know, some additional incremental resources would
10 have been helpful in advancing aspects of it.
11 Now, we did get some new resources and we've
12 spoken about that in the previous session. But
13 I've also said that some additional resources,
14 particularly in Habitat, would be helpful.

15 So that's how I respond to your -- your
16 question.

17 Q Well, let me respond to you by making this
18 suggestion. I suggest to you that the financial
19 -- you keep referring to the substantial
20 resources, substantial funding of the -- of the
21 Department of Fisheries. I'm going to suggest to
22 you in the years leading up to the announcement of
23 the policy, 2000, up to 2005, that you never had
24 surplusage funds, you never had surplus funds in
25 your Department that were not allocated because
26 you had no purpose for them. I am informed, and
27 please respond to this, that the financial
28 situation of the Department leading up to the WSP
29 was very, very tight and limited in terms of the
30 resources, that there were numerous things that
31 the Department wanted to do but couldn't do,
32 because it lacked resources. Your response?

33 MR. SPROUT: Yes, of course. I need to explain
34 something about the way institutions in the
35 federal government work. If you're saying are
36 there times in the past where we didn't have -- we
37 would have wanted more money to implement the
38 things that we're wanting to implement. Of
39 course. Yes. You're always, in large
40 organizations, you're struggling with the budget
41 and all the list of priorities and activities you
42 would like to implement. That's -- that's not
43 news.

44 What I'm saying, though, in response to your
45 question is, is the Region has a significant
46 budget. That budget, a high proportion of that
47 budget is directed at Pacific salmon. And I think

1 the argument that was being made in 2005 is that
2 the Region needs to think about how it does its
3 fundamental business within its existing budget,
4 because there is a significant fund available to
5 do that. And so that was one aspect.

6 Now, having said that, I've also indicated
7 that because of the complexity of the Policy,
8 because of some of the challenges that were
9 present, that it would have been helpful to have
10 received an increment, particularly for Habitat.
11 Because I believe the capacity there is very
12 curtailed, and I believe our -- our progress in
13 that area has been less than in the other areas as
14 a consequence.

15 Q Well, let me give you the perception of my clients
16 in respect to the funding crisis, and I suggest to
17 you it is a funding crisis. We have already been
18 told that the Policy dictates there will be no
19 additional funds. Then we know how much -- the
20 funds that were provided and have been
21 incrementally dropping year by year to the
22 present. It is the perception of my clients that
23 the funds that have been allocated for the
24 implementation of WSP has been at the expense of
25 other programs that were subsisting and were
26 important to the public interest between 2005 and
27 the present. Do you agree with that?

28 MR. SPROUT: Okay. So that suggests a couple of
29 things. That suggests that you don't see the Wild
30 Salmon Policy as a fundamental change in the
31 Department of Fisheries and Oceans. In other
32 words, the Department needs to think about the
33 Wild Salmon Policy as a direction, and that is the
34 argument the Department made when the Policy was
35 announced. And in fact, the Commissioner has just
36 pointed out that in the RMAF that we previously
37 had on our screen, that that is in fact the
38 direction of the Department.

39 So the Department is implementing the
40 direction of the Wild Salmon Policy, which is that
41 we are to consider this as a fundamental policy,
42 that we need to reflect this in our behaviour and
43 our actions.

44 Q And do you say in doing so, in the implementation
45 of the Wild Salmon Policy, that it has not been to
46 the prejudice of other programs within the
47 Department. Is that your evidence?

1 MR. SPROUT: Can you be specific what you mean by
2 "other programs"?

3 Q I'm happy to. I'm happy to give an example. I'm
4 going to suggest to you that in 19 -- excuse me,
5 in 2004 the DFO raised the threshold for
6 enumeration of sockeye stocks from 25,000 to
7 75,000. Do you know what I'm speaking of?

8 MR. SPROUT: Yes, I do.

9 Q Yes. I'm going to suggest to you that it has been
10 stated by DFO that the reason why they increased
11 that threshold for the enumeration of stock was
12 because of shortage of funds. Do you agree with
13 that?

14 MR. SPROUT: No, I don't disagree with that.

15 Q Pardon me?

16 MR. SPROUT: I don't disagree with that.

17 Q You don't disagree with that.

18 MR. SPROUT: No.

19 Q All right.

20 MR. SPROUT: I think funds were -- were a factor, yes.

21 Q All right. And would you not agree with me that a
22 decision by DFO to change the threshold for
23 enumeration from 25,000 to 75,000 is clearly
24 against, contrary to the whole direction of the
25 Wild Salmon Policy in terms of protecting stock?

26 MR. SPROUT: Okay. So let me point out one thing. You
27 had argued before that it was the Wild Salmon
28 Policy implementation that was redirecting funds
29 into other activities. Well, the Wild Salmon
30 Policy was adopted in 2005. The example you've
31 just given is 2004.

32 So I want to go back to your earlier point.
33 If what you're saying is the Department for a long
34 period of time, certainly since I've been in the
35 Department, has always struggled with trying to
36 match its budget to its priorities, you're
37 correct. We would always love more money. That
38 is true. But if what you're saying is the Wild
39 Salmon Policy has redirected resources away from
40 other activities, that it somehow compromised
41 those activities, that's not clear to me. You'd
42 have to give me some other examples.

43 Q Well, I'm going to suggest to you with the example
44 that I gave you, that if there had been proper
45 funding for the WSP by the government for
46 implementation, that possibly you would have had
47 the sufficient money to do proper enumeration and

1 not change your policy from 25,000 to 75,000 fish.
2 You understand.

3 MR. SPROUT: No, I don't see the linkage between what
4 you're -- one event occurred in 2004 and the
5 Policy happened in 2005, okay, a year after. I
6 want to go back to the 75/25,000 just to explain
7 that.

8 So, Mr. Commissioner, what this is about is
9 that there are obviously many Fraser River sockeye
10 conservation units, stocks, individual
11 populations. So the Department assesses those
12 populations, stocks and conservation units. And
13 as its budget, its stock assessment budget, and I
14 spoke to this in a previous submission, its budget
15 for stock assessment has been more or less frozen
16 for a long period of time and has not kept pace
17 with inflationary adjustments and increases in
18 contracts, and so forth.

19 So to adjust to the fact that the budget has
20 more or less remained relatively constant, but in
21 terms of spending power, has declined because of
22 these inflationary increases, and so forth, the
23 Department looked in 2004 at ways of being able to
24 continue at its stock assessment function but in a
25 way that would be within the budget it had at that
26 time.

27 And so what it looked at was a risk
28 assessment on doing a certain kind of methodology
29 that was for population sizes in the Fraser River,
30 and decided to raise the level of a certain
31 methodology for investigating population sizes
32 from 25,000 to 75,000 sockeye. So the 75,000
33 sockeye was the level at which it would institute
34 a methodology that is relatively expensive for
35 assessing sockeye from the previous level of 25.
36 And the reason that it did that, is because it was
37 trying to grapple and stay within the stock
38 assessment budget that it had at that moment in
39 time, again a year in advance of the
40 implementation of the WSP.

41 Q And it was counter-productive to where we all want
42 to go with the conservation of fish, is it not?

43 MR. SPROUT: I'm not sure what you mean by that. You'd
44 have to explain what you meant by "counter-
45 productive".

46 Q Well, surely, surely it's more in the interest of
47 DFO and the harvesters and the industry generally

1 if there is enumeration done at a 25,000 fish
2 level, than at a 75,000 fish level.

3 MR. SPROUT: Okay. So let's just explore this for a
4 moment, because there are 39 -- 37 Fraser River
5 sockeye conservation units in the Fraser River
6 watershed, but there's many more smaller
7 populations that make up those units. So some of
8 the units have multiple stocks. Now, the issue is
9 how much assessment do you do on those multiple
10 stocks. Because now if you talk about the stock,
11 at the stock level you're talking 50, 60, 70
12 stocks.

13 So for example, do you put a -- do you put a
14 fish fence across every tributary on the Fraser
15 River and count each sockeye as it goes by that
16 fence? Okay. That is the most comprehensive way
17 of estimating numbers of fish on the spawning
18 grounds. It's also the most expensive. Or, do
19 you do a foot observation, where you walk along
20 the bank, you observe the fish in the river, and
21 you make an estimate of how many you see visually.
22 The least sophisticated, the least comprehensive,
23 the least expensive.

24 So what the Department is doing is trying to
25 find a way between the least expensive and the
26 most expensive that makes sense, given the size of
27 the population, its importance to the productivity
28 of the Fraser River as a whole, and doing that
29 within the budget it has. So technically you
30 could argue that the Department should have a
31 fence on every stock in the Fraser. Now, if we
32 did that, you would increase the Department's
33 stock assessment budget many, many fold.

34 Now, but would it be -- would our scientists
35 like to do it? Sure. Give us an unending supply
36 of money, or the Department, and allow us to do
37 that. But at the end of the day, though, that
38 supply of money all comes from the same source,
39 the taxpayers' pocket.

40 So I go back to the earlier observation I
41 made. The reality is, is the Department of
42 Fisheries and Oceans does not act in a vacuum.
43 We have to respond to appropriations that
44 Parliament ultimately provides us to do the work
45 as best we can. Would we like more resources?
46 Yes. But we have to deal with what we have. So
47 the question is, is how best do we deal with that?

1 And in the case of Fraser sockeye, given the
2 budget that was available at the time, a decision
3 was made to change the methodology -- change the
4 number of -- to change the level at which we would
5 promote a more sophisticated methodology and more
6 expensive from 25,000 to 75,000, given the budget
7 that we had at the time. If we had more, we could
8 -- we could have -- we could have had more types
9 of intensive surveys that are more comprehensive.
10 But we did -- we did what we could with the
11 resources we had and taking into consideration the
12 risk that would pose to those Fraser River
13 sockeye.

14 Q Yes. But being mindful of the fact, Mr. Sprout,
15 that we are before a Royal Commission and a
16 Commissioner that is mandated to provide
17 recommendations to the Government of Canada in
18 respect to these issues, do you not agree with me
19 that -- that it would be advisable if the Wild
20 Salmon Policy was rewritten to the extent that
21 there was not a limitation where the
22 implementation had to take place within the
23 existing funding that DFO currently has for the
24 Region.

25 MR. SPROUT: You'd have to be a lot more specific than
26 that. In my view, as I've already said, I think
27 there's two areas that I've talked to about
28 funding. One was stock assessment. Mr.
29 Commissioner, when I first appeared in front of
30 this process, I spoke to the issue of stock
31 assessment. I said that this is a budget that we
32 want to -- we want to look at very carefully.
33 It's a budget that has largely been fixed, but its
34 effectiveness has been affected by increases in
35 inflation, contractual costs that aren't reflected
36 in the budget being augmented. It's an area there
37 where you'd really want to be careful that the
38 Department does not reduce it any more than it
39 currently is. So I've already spoken to that.

40 I have said more specifically with respect to
41 WSP implementation that resources directed, in my
42 opinion, at Habitat would be very constructive in
43 advancing some of the key elements of the WSP at a
44 pace that's more rapid than they had been realized
45 right now. That's what I would recommend.

46 Q Okay. Ms. Farlinger, would you agree with me that
47 the Science programs, the departments, the

1 projects, the stock assessment, the stream
2 enumerations, et cetera, are not adequately funded
3 at this point in time within your region?

4 MS. FARLINGER: I think the question of adequacy is a
5 subjective one. As Mr. Sprout said, there are
6 always more things you can do. I think that when
7 we take a look at our programs and what we can do
8 with the resources we have, what we are trying to
9 do is mitigate against any bad outcomes. So a
10 stock doesn't get evaluated, that will in some way
11 affect an outcome of whether it could be a harvest
12 or protecting the stock, right through the
13 spectrum of things we do with the fishery.

14 So I think it's a very difficult question to
15 put to a public servant about whether they have
16 enough money to do their job. The fact is the --
17 we are asked to do the job we're asked to do with
18 the resources we have and could we use more? We
19 certainly could.

20 And then there is a question about if you had
21 someone, or a fence, for example as Mr. Sprout
22 said, on every stream, would -- what would it
23 improve? And so we really have to look at the
24 balance there in terms of how much improvement,
25 where would it improve things and what would it
26 do. And I just think that's the kind of balancing
27 act where we're in the -- that's what we have to
28 do.

29 Q Should the Commissioner be concerned about the
30 evidence that has been given here, and it's the
31 evidence of Dr. Holt, and I'll just refer to the
32 date of December the 2nd, to page 58, and I'm
33 happy if any of you want it on the screen, to put
34 it on, at line 5. Dr. Holt said, and I quote:

35
36 So not only is the data missing for a lot of
37 the distributional [matrix], but also the
38 ecological foundations, our understanding of
39 how the distribution affects the
40 sustainability of a CU, that's also missing,
41 which has made it difficult to identify [a
42 matrix] and benchmarks.
43

44 Now, should the Commission be concerned when a
45 scientist of her seniority within the Department
46 is carrying out the responsibilities as mandated
47 and testifies to that effect before the

1 Commission. Is that not a concern?

2 MS. FARLINGER: I think it is a concern, and the
3 concern, although it may be somewhat related to
4 resources, is also related to the complexity.
5 This is a developing science. The work that our
6 scientists and others are doing in this area is
7 evolving and, quite frankly, I think some of the
8 questions that she goes to there are questions of
9 just where the science is at. But certainly the
10 question of resources would help do more studies.
11 And more studies, if correctly designed and put
12 together, could go more quickly to answering those
13 questions. But I also think it is a question of
14 the evolution of the science.

15 Q Well, part of the focus here is with respect to
16 habitat issues, and both of you have spoken about
17 the habitat issues. Should this Commission, and
18 should the Commissioner be concerned with other
19 evidence that's been given before this tribunal,
20 and in particular by Ms. Stalberg, regarding stock
21 -- excuse me, habitat assessment studies. A
22 question was asked of her during both in chief and
23 cross-examination whether there has ever been a
24 habitat assessment report prepared in respect to
25 Cultus Lake, and her evidence was to the best of
26 her knowledge there has never been. You agree
27 with that, do you not?

28 MS. FARLINGER: I don't think I can agree with that. I
29 know there was work done on -- when we were
30 looking at the problems in Cultus Lake with
31 respect to the sockeye and the contribution that
32 habitat was making to those -- to those problems.
33 So while the assessment may not have been in the
34 form of an assessment of the indicators that we've
35 developed through the Wild Salmon Policy. I
36 certainly think there has been some work done to
37 assess the habitat issues that are of particular
38 importance with respect to Cultus sockeye.

39 Q Well, I don't want to argue with you to a degree
40 in terms of some work may have been done. Would
41 you agree with me that there has never been a
42 Cultus Lake habitat assessment report prepared for
43 your Department?

44 MS. FARLINGER: To my knowledge there has not been a
45 habitat assessment report using the indicators
46 developed under the Wild Salmon Policy for Cultus
47 lake. That's -- to my knowledge that's the best I

1 can do on this one, I think.

2 Q Can you explain to me how we have been constantly
3 educated here at this Commission about the crisis
4 of Cultus Lake, that the weak stock situation at
5 Cultus Lake, why has DFO failed to prioritize a
6 habitat assessment of that particular watershed in
7 light of what we all know to be a crisis
8 situation?

9 MR. SPROUT: Can I just clarify, what do you mean by a
10 habitat assessment? Are you quoting Heather?

11 Q Yes, I will. I'm happy to. She said in part, and
12 I quote -- just give me one moment, please.

13 When she first testified, she was asked to
14 make any corrections to her will-say, and at that
15 time she stated that to the best of her knowledge
16 there was not a habitat status report prepared, in
17 fact, I will refer you to December the 2nd. Yes,
18 I will refer you to page 25 of the transcript of
19 December 2nd, line up at the top of the page, and
20 this is out of context. I don't have the previous
21 page in front of me. In fact, Mr. Lunn, if you
22 will start at page 24. And it's reading from her
23 will-say, reading from her will-say page 24, down
24 at the bottom, and going up to the top of page 25
25 where she is quoted in the will-say as saying:

26
27 -- the only Fraser River sockeye
28 conservation units that she believed to
29 have partial habitat status reports were
30 Trembleur Lake sockeye and Cultus Lake
31 sockeye.
32

33 Then Ms. Stalberg says:

34
35 And I note here that the -- there was not a
36 habitat status report generated for Cultus
37 Lake sockeye.
38

39 And it goes on from there. That's her evidence.

40 Now, my question to you is, assuming she
41 would know better than anybody why has DFO failed
42 to do that level of habitat investigation with a
43 proper assessment report for purposes of
44 protecting that very stock?

45 MR. SPROUT: Okay. So now this is making more sense
46 with the context. You talked about a habitat
47 assessment report. What is referred to here is a

1 habitat status report. So you mean a habitat
2 status report; is that correct?

3 Q I apologize if that is the language of the
4 Department. That's fine, yes.

5 MR. SPROUT: Okay. And I think Ms. Farlinger responded
6 to that. And this is in the context of WSP. So
7 in the context of WSP, as Ms. Farlinger said,
8 there has not been a habitat status report in
9 Cultus. There have been status reports for other
10 -- other watersheds, but not Cultus in the context
11 of WSP.

12 Now I want to go outside of WSP to answer
13 your question. So this is not related to WSP.

14 So I'm going back to prior to 2005, prior to
15 the adoption of the Policy. The problems with
16 Cultus didn't materialize in just 2005. So this
17 is a population that's been declining for -- for a
18 number of years. So it's a Fraser River sockeye
19 population. It comingles with other very
20 productive Fraser populations that are moving
21 further up the river, and concerns were raised
22 about the status of this population. This is all
23 predating 2005. And these concerns led to a
24 series of actions.

25 One was a reduction in the exploitation of
26 Cultus sockeye in the mixed stock sockeye
27 fisheries. And the argument that was made at the
28 time, and continues to be, is that that population
29 could not cope with an exploitation rate above 20,
30 25 or 30 percent, whatever that number is. It
31 varied -- it has varied.

32 The second thing that was applied was looking
33 at the habitat in Cultus, and which the habitat
34 was assessed and evaluation was made that milfoil
35 contamination in the lake was actually potentially
36 affecting habitat that sockeye would rear in.
37 That led to a milfoil removal program to help
38 reduce the presence of milfoil to potentially
39 effect better habitat for Fraser sockeye.

40 The third component that was instituted by
41 the Department was a strategy of enhancement. And
42 what that involved was taking a proportion of the
43 adult returning Cultus sockeye, collecting the
44 eggs from these adults and putting them into brood
45 stock program where those fish were raised and
46 then -- and eventually reintroduced into the
47 Cultus Lake to give them an advantage in order to

1 return them as a greater number of adults.

2 So all three of those strategies, harvest,
3 habitat and predator control, were instituted and
4 were developed in activities leading up to 2005.

5 And I think if your question is around the
6 lines of what else have we done in Cultus, then I
7 recall significant processes that were put into
8 place that involve stakeholders. There were
9 reports that were produced that would probably be
10 very helpful in expanding on what I've just said,
11 that we could bring and bear evidence on this
12 question of habitat.

13 Q I'm going to suggest to you that the only habitat
14 restoration that DFO has done of recent time in
15 respect to Cultus Lake is in fact the Pikeminnow
16 Program that is funded by the commercial fishery.
17 Do you agree with that?

18 MR. WALLACE: Mr. Commissioner, as Mr. Sprout pointed
19 out, this has nothing to do with the Wild Salmon
20 Policy. I understand clearly how we got into
21 this, it was -- it was a relationship between
22 what's ongoing and the Wild Salmon Policy. But
23 now, with respect, it appears that Mr. Rosenbloom
24 is going well down the road of investigating the
25 circumstances in Cultus Lake and what has been
26 done, what hasn't been done. This will all be
27 canvassed quite thoroughly in a few weeks.

28 MR. ROSENBLOOM: Well, what is very interesting is, and
29 I refer my learned friend to a number of portions
30 of transcript and I can cite them, where I asked
31 these very questions to Mr. Saunders during that
32 panel, and Mr. Saunders, as an example, deflected
33 it, saying that's probably a question best left
34 for the RDG. I have Madam Stalberg, Ms. Stalberg,
35 testifying that again about shortage of money for
36 Habitat. In her case she said the habitat status
37 report issues best be directed to Corino Salomi -
38 forgive me if I don't pronounce her name correctly
39 - obviously not RDG.

40 I want these answers from somebody, and if my
41 friend tells me that there's somewhere better to
42 direct them, that's fine. I don't want to close
43 this inquiry without a full canvassing for the
44 Commissioner's sake of exactly what is the
45 financial situation with DFO in respect to habitat
46 studies and in respect to restoration programs.

47 MR. WALLACE: Mr. Commissioner, I can assure Mr.

1 Rosenbloom that we will be going down into the
2 details of these programs with respect to Cultus
3 Lake, but this is not the place and these are not
4 the witnesses, in my submission.

5 THE COMMISSIONER: Both the Commission counsel and Mr.
6 Rosenbloom, in fairness to these witnesses what I
7 want to ensure is that in the general sense that
8 these witnesses have an opportunity to address
9 these points that you are raising with them. It
10 may be the drilling down and the greater detail
11 will come through other witnesses. But I want to
12 ensure that Mr. Sprout, former RDG, and the
13 current RDG have an opportunity, if they wish.
14 Now, if there are others that they think better
15 address these topics, then I think they can say so
16 and they can identify who those persons are. But
17 I wouldn't want to remove the opportunity. So I'm
18 asking you to balance this, Mr. Rosenbloom,
19 between giving them an opportunity to answer your
20 questions in terms of the resources of the
21 Department that were assigned to the areas you
22 were talking about. In terms of the details of
23 those particular reports that Mr. Sprout has
24 mentioned, I think Mr. Wallace is suggesting that
25 that's going to come later.

26 So I am content to allow you to proceed on
27 the understanding that we're not trying to drill
28 down now into areas where other witnesses are
29 going to address specific documents or processes
30 that were followed.

31 MR. ROSENBLUM: I was trying to keep it at 30,000-foot
32 elevation.

33 THE COMMISSIONER: I thought so.

34 MR. ROSENBLUM: Thank you. I don't know if, Mr.
35 Commissioner, you plan to take a break?

36 THE COMMISSIONER: Yes, thank you very much.

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

39
40 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)

41 (PROCEEDINGS RECONVENED)

42
43 THE REGISTRAR: Order. The hearing is now resumed.

44 MR. ROSENBLUM: Thank you, Mr. Commissioner.
45
46
47

1 CROSS-EXAMINATION BY MR. ROSENBLOOM, continuing:
2

3 Q Carrying on, I was at the point where I was
4 focusing on the Cultus Lake situation and the lack
5 of what I will suggest to you is a proper habitat
6 assessment, and I was directing your attention to
7 whether or not the DFO had carried out any
8 mitigation program in respect to Cultus Lake,
9 other than the Pikeminnow Removal Program that's
10 been funded by the commercial industry through the
11 salmon table. Your answer to that?

12 MR. SPROUT: Well, I think this is getting down into an
13 area that I'm not as knowledgeable but --

14 Q If you're not --

15 MR. SPROUT: But again --

16 Q -- I'm happy if you don't answer --

17 MR. SPROUT: -- as I recollect --

18 Q -- as long as somebody does.

19 MR. SPROUT: -- the events leading up to Cultus Lake
20 and the adoption of the reduction in exploitation
21 rate, the mitigation program dealing with
22 pikeminnow, the hatchery program that I spoke to,
23 all of that was discussed in a process, and I
24 believe there's a paper or a document that is a
25 recovery plan for Cultus sockeye, and I believe it
26 would be useful for that document to be considered
27 by those experts that were involved and
28 participated in producing that particular recovery
29 plan.

30 Q Does your -- oh, your counsel's not present at the
31 moment. Have you sufficiently identified the
32 document so that Commission counsel will be aware
33 of it?

34 MR. WALLACE: The Commission counsel is aware of it,
35 Mr. Commissioner. It's part of the future
36 program.

37 MR. ROSENBLOOM: Thank you. That's fair enough.

38 Q But I'm asking either of you: Are you aware, just
39 for the record, whether DFO has carried out any
40 mitigation program on site at Cultus Lake, other
41 than the pikeminnow program? That's all I'm
42 asking.

43 MR. SPROUT: Well, I think I did respond to this, and
44 I'd just like to go back over it again. I also
45 referred to the hatchery program that the
46 department has committed to.

47 So Mr. Commissioner, this is a significant

1 program. Again, to set the stage, the Cultus
2 sockeye are depressed. The population could not
3 withstand the exploitation that it was under, and
4 so a decision was made after due consideration of
5 all the views, First Nations, non natives, to
6 reduce the exploitation rate in the order of
7 between 20 and 30 percent. And additional to
8 that, the department instituted a program of
9 hatchery production in which brood stock was
10 collected from the Cultus, indicated in DFO
11 hatcheries and then returned to the Cultus system
12 to enhance the productivity of the population.

13 That, in addition to the predator removal, I
14 think is the core of the activity, and I believe
15 in the broader issues on habitat, whether or not
16 there's been an assessment of some kind of
17 another. That would have to be referred to the
18 other experts that would speak to this matter.

19 Q Thank you. Any response from Ms. Farlinger? No?
20 Thank you.

21 MS. FARLINGER: No, that's fine.

22 Q Moving on. Again, in respect to habitat and the
23 issue of funding or lack of funding for DFO's
24 initiatives with restoration -- habitat assessment
25 and restoration, Mr. Saunders stated in his
26 evidence, on December 2nd, at page 60, in part, at
27 line 40 -- and again, ask Mr. Lunn if you wish the
28 transcript before you. This is Mr. Wallace in
29 chief with Mr. Saunders:

30
31 Q Yeah. In your Summary of Evidence, you say
32 that OHEB, Oceans and Habitat -- what's the
33 acronym -- Enhancement?

34 MR. SAUNDERS: Oceans Habitat Enhancement Branch.

35 Q Branch. Thank you. That it's a struggle to
36 get national support for Strategy 2. Can you
37 explain that?

38
39 So he's referring to the will say of Mr. Saunders,
40 how it was difficult to get national support for
41 Strategy 2, the habitat program. Mr. Saunders
42 said:

43
44 MR. SAUNDERS: Probably, the -- I'm not the best
45 person to truly understand the nature of
46 that. That's probably a question best left
47 for the RDG, but my general understanding is

1 that it has been a struggle to get
2 recognition of the national -- a linkage
3 between the national regulatory -- habitat
4 regulatory program direction and whether or
5 not the Wild Salmon Policy is sort of a
6 recognized component and compatible with that
7 overall program, but I'm not the -- that's
8 just an understanding that I have. I'm not
9 the best person to confirm that.

10
11 The question to you is, first of all, do you
12 reaffirm Mr. Saunders' perception of the problems
13 of region with the national office in respect to
14 Strategy 2, the habitat issues with Ottawa and the
15 funding?

16 MS. FARLINGER: I think the challenges and issues
17 around the habitat program I made some reference
18 to earlier, when I was talking about the habitat
19 policy, then the habitat modernization, which is a
20 key element of the Wild Salmon Policy and, in
21 fact, the current review of the Habitat Policy
22 going on right now, which is the approach we have
23 been taking, which is a project-by-project habitat
24 review, the best way, in fact, to carry out the
25 habitat protection elements under the **Fisheries**
26 **Act**.

27 And there are some projects, let me say high
28 risk projects, where that clearly is the best way
29 to do that, but there are other strategies which
30 involve parallels and, in fact, the same thing is
31 the Wild Salmon Policy Strategy 2, which has to do
32 with focusing on monitoring, looking at the
33 status, responding with respect to the status.

34 Now, my recollection, when I left the
35 position of the regional director of habitat in
36 2005, is -- and I do understand that this program
37 came into play, is that there were additional
38 resources provided to the habitat program
39 nationally, in fact, to support the monitoring
40 aspect of habitat, and some of that went -- there
41 was some discussion about whether fishery officers
42 would do it or habitat officers would do that.

43 And in spite of the fact that that funding
44 was provided, habitat monitoring continues to be a
45 challenge. And I think it continues to be a
46 challenge perhaps from the funding and resource
47 perspective, but also really from this broader

1 perspective, which is, are we approaching the
2 implementation of this habitat program in the best
3 possible way.

4 So I think there are two elements to that.
5 One, is the reason we're reviewing the habitat
6 policy; and the other, certainly as people have
7 said, we can always use more resources, although
8 during that period, 2004/2005/2006, there were
9 additional resources given to the region for
10 habitat monitoring. Perhaps not enough to
11 implement the entire policy, but there were
12 additional resources for monitoring.

13 Q "Perhaps" not enough? Surely, Ms. Farlinger,
14 you're prepared to say "obviously" not enough?

15 MS. FARLINGER: Well, I think the one thing we haven't
16 done, and this is something we need to set
17 priorities on, internally, in terms of the support
18 we get from science, or from science outside the
19 department, is developing that monitoring
20 framework.

21 We do support, as you know, a large
22 stewardship community. We do work with the
23 Pacific Salmon Foundation. We do work with others
24 who can certainly help with that monitoring. But
25 probably one of the biggest pieces that we have
26 not developed that habitat monitoring framework,
27 and that is certainly something we need to do.

28 The resources that were provided during that
29 time were intended to augment the monitoring
30 capacity of the habitat program, and I think, once
31 again, we're back to the issue of how do we engage
32 -- how do we look at our own program, in terms of
33 how we're implementing it, and how do we engage
34 others, because there's a lot of salmon habitat
35 out there.

36 Q Is it envisaged that if there are recognized
37 habitat problems in the CU's, that remedial
38 programs will be immediately implemented as a
39 primary mitigation?

40 MS. FARLINGER: The concept of mitigation, as it's
41 currently used, which is one of the issues, in
42 this program is before a project can take place in
43 or around water any potential habitat loss is
44 intended to be mitigated by plans that go into
45 that project development. SO mitigation after the
46 fact is something that is occasionally addressed
47 when charges are laid and fines are applied

1 through the courts for habitat charges, when those
2 funds go back into a fund of some kind, which
3 could be a local fund or otherwise, to go towards
4 the restoration of habitat.

5 But the DFO Habitat Restoration Program is
6 relatively limited, and we provide advice,
7 generally, to others who are doing habitat
8 restoration.

9 Q Is it your testimony that habitat -- remedial
10 steps for habitat restoration will only take place
11 after charges are laid?

12 MS. FARLINGER: No, I wouldn't say it is limited to
13 those circumstances, but that is -- that is one of
14 the situations when remedial actions for habitat
15 will be taken.

16 MR. WALLACE: Excuse me, Mr. Commissioner, we're now
17 into enforcement, monitoring, habitat,
18 enhancement, we're all over the place, but I don't
19 see the connection to WSP. I --

20 MR. ROSENBLOOM: In any event, I got my answer and I'm
21 prepared to move on.

22 MR. SPROUT: What was the answer? I wasn't sure what
23 answer that you -- I'm sorry, what answer did you
24 thought you got? Could you just explain it?

25 MR. ROSENBLOOM: It's a matter of record. The witness
26 on your panel just responded to a question that I
27 had in respect to whether remedial steps for
28 restoration of habitat would necessarily only take
29 place after charges were laid.

30 MR. SPROUT: And what did you understand her answer to
31 be?

32 MR. ROSENBLOOM: Oh, I'm not testifying here. You --

33 MR. SPROUT: You said you got her answer. I'm trying
34 to understand --

35 MR. ROSENBLOOM: Yeah.

36 MR. SPROUT: -- what your answer is -- what did you
37 think she said?

38 MR. ROSENBLOOM: Well, it's not for me to testify here.
39 If you want the record to be read --

40 MR. SPROUT: Then I would like to speak -- I would like
41 to answer the question, or at least allow Ms.
42 Farlinger and I to answer the question. The
43 answer is, "No." We've just talked about the
44 example of Cultus, that there's no charges, but
45 yet we're taking remedial measures. What are
46 those remedial measures? Predator removal. We've
47 talked about a hatchery program. We've talked

1 about other activities.

2 We could go on and talk about the
3 department's Salmon Enhancement Program that has a
4 sub program within it that's called Habitat
5 Restoration. That program goes in and works with
6 spawning channels that are silted, it works with
7 habitat activities, like log jam removal,
8 obstruction removal. None of those are
9 necessarily related to legal issues or court-
10 imposed decisions. This is all proactive.

11 So I just want to make sure that that was the
12 answer you appreciated.

13 MR. WALLACE: Perhaps we can move on.

14 Q Ms. Farlinger, in your will say you say, in part -
15 and your will say is Exhibit 245, I believe - and
16 you say in part, and again, if you wish to be
17 directed directly to it, I'm happy to do it:

18
19 She will also say that any change in how DFO
20 does business requires the injection of new
21 financial resources.

22
23 And I think if there's anything we've learned this
24 afternoon, the Wild Salmon Policy will cause DFO
25 to do business in a different way and so,
26 therefore, one leads to conclude that there has to
27 be an injection of new capital.

28 We have heard testimony that the region has
29 never prepared a comprehensive budget for
30 implementation of the Wild Salmon Policy. My
31 question to you is: In light of your comments in
32 your will say, are you in the process of preparing
33 proper budgets to Ottawa will get a sense of what
34 they're really facing into the future?

35 MR. TIMBERG: Mr. Commissioner, could I just ask my
36 friend to provide the cite on the will say?

37 MR. ROSENBLOOM: Happy to.

38 MR. TIMBERG: Thank you.

39 MR. ROSENBLOOM: Yes, I refer you to Exhibit 245, to
40 page 3, although they're not numbered, to mid-
41 page, headed, "Implementation of WSP Strategies 1-
42 3 to date", then the third bullet down:

43
44 She will also say that any change in how DFO
45 does business requires the injection of new
46 financial resources.

1 MR. TIMBERG: Thank you.

2 MR. ROSENBLOOM: No problem.

3 MS. FARLINGER: I do believe that last week I
4 referenced that particular bullet and I said that
5 it requires new resources. These may be through
6 reallocation of existing resources or any other
7 process. I think I put that correction in
8 clarification.

9 Q You may have. Last week's a long time ago. And
10 if that was your response, or is your response
11 today, again, at the risk of money being drawn off
12 from other programs within DFO; is that not fair
13 to say?

14 MS. FARLINGER: DFO, as all federal departments do, and
15 now in a formal process, once every four years
16 reviews all the programs and priorities every year
17 and this is certainly part of that. And when, in
18 the DFO business plan we saw for the region the
19 priority was identified -- Wild Salmon Policy
20 implementation was identified as a priority. That
21 means that we will be, when we have choices,
22 making resources available to the implementation
23 of the Wild Salmon Policy.

24 Now, I think I'll repeat that there were
25 resources made available for the implementation of
26 the policy, notwithstanding the statement in the
27 policy that it would be made within existing
28 resources.

29 Q I want to move on to the issue of
30 federal/provincial relations in respect to our
31 focus, and in particular, Mr. Sprout, in your will
32 say, and again, I'm happy to lead you right to it,
33 if necessary, you spoke of the province having
34 lost capacity, and this is your very words and
35 it's been spoken about in testimony, I believe,
36 today or last day, "...to partner with DFO on fish
37 habitat conservation," what do you believe should
38 be the Commissioner's recommendation to ensure
39 that the provincial side of this appreciates its
40 jurisdictional responsibility and funds the
41 program appropriately?

42 MR. PROWSE: Yes, Mr. Commissioner, I fail to see how
43 this question, as framed, can be within the
44 mandate of the Commission, as mandated. Sorry,
45 maybe that's not clear enough. This is a federal
46 commission that's specifically charged with
47 looking into the Federal Department of Fisheries.

1 It's not a federal commission that's specifically
2 charged into the provincial mandate. So the
3 question, as framed in Mr. Rosenbloom's fashion, I
4 submit, can't be within the Commissioner's
5 jurisdiction. There may be other questions that
6 can be asked that will be helpful, but I don't
7 think that one can be.

8 MR. ROSENBLOOM: Well, in the Wild Salmon Policy there
9 is reference to provincial matters, and to the
10 extent that the Wild Salmon Policy speaks to
11 provincial matters, and I refer you in particular
12 to page 13, that says, in part:

13
14 In order to effectively manage and protect --

15
16 I'm sorry, Mr. Lunn, if you wish to put it up,
17 page 13 of Exhibit 8, if my memory's right -- yes,
18 Exhibit 8, midway down the page on page 13:

19
20 In order to effectively manage and protect
21 aquatic systems where the productive capacity
22 of habitat is at highest likelihood of loss,
23 DFO must integrate its work with that of
24 Provincial and other federal agencies, First
25 Nations...

26
27 And it goes on from there. Now, it's in the
28 policy. We have evidence from you, Mr. Sprout,
29 that they have lost their capacity to the extent
30 that it's in this Wild Salmon Policy and,
31 therefore, a matter of concern to this commission.
32 What do you believe should be your recommendation
33 to the commission to ensure that there is that
34 cooperation in future?

35 MR. SPROUT: Okay, just to go back to my will
36 statement, what I said is it is my perception that
37 the province has lost its capacity, and then I
38 expanded on this when questioned, and I indicated
39 that in the Interior of B.C. I had been told by my
40 staff, when I was the former RDG, that there were
41 instances in the past of a lot of cooperation
42 between DFO and the province in sharing workload
43 when it came to habitat development proposals, and
44 that increasingly over time the province is unable
45 to do that, they've got less resources to
46 contribute to that sharing. And so that was an

1 example of a capacity issue that I raised.

2 Now, to deal with the other aspect of your
3 question about the role of the province, and I
4 think in the context of the policy, I want to come
5 back to the previous points I've made. First of
6 all, I think on the issue of water management, the
7 use of water, how you allocate water, to what
8 purpose and how, this is where I believe the
9 province can play a lead role. And the federal
10 government, the DFO, would be a participant in
11 this process. We would obviously be
12 enthusiastically participating, because of our
13 interest of Pacific salmon, but we really would
14 look to the province to lead this, and this gets
15 back to the watershed processes that I referred to
16 previously.

17 The further areas of cooperation we've
18 already started on, data exchanges, for example.
19 This was raised earlier. But this is where the
20 department and the federal -- the province and the
21 Federal Government need to share their databases
22 in a way that's efficient, effective, and we take
23 advantage of each other's information that can
24 help us better examine the habitat questions
25 related to Pacific salmon. So that's a broader
26 response to your question.

27 Q Yes. With respect to federal/provincial
28 relations, questions were asked of Mr. Saunders
29 during his presence on the panel, and to Dr.
30 Irvine, and both of them deflected the questions
31 to you, to your panel, for obvious reasons.

32 What initiatives has the Federal Government
33 been taking of late, with the province, to try to
34 reach some sort of accord to ensure full
35 provincial cooperation?

36 MS. FARLINGER: As I think was mentioned earlier today,
37 we do have a number of agreements within the
38 province and, in particular, one around the
39 management of habitat. We do share data. We are
40 working together on the planning -- oceans
41 planning activities. There are a number of
42 operational issues in which we work regularly with
43 the province day-to-day, for example, fishery
44 planning and planning for steelhead as, for
45 example, steelhead conservation problems may
46 affect other salmon fisheries.

47 So there's a variety of ways in which we do

1 it. Some are operational, and some are specific
2 agreements with the province.

3 We did, for example, work at a fairly
4 significant level with the province as they were
5 developing the riparian area regulations for
6 habitat, so that's another example.

7 Q There was an exchange - I believe I was part of it
8 - in cross-examination regarding a suggestion that
9 I floated out that a facilitator might be
10 appointed to facilitate federal/provincial
11 dialogue in respect to your respective
12 jurisdictions. Do you believe that would be of
13 benefit and in the public interest?

14 MS. FARLINGER: I'm not sure I'm qualified to answer
15 that question. The federal/provincial relations
16 change on an ongoing basis, but I think the basis
17 of the jurisdictions are pretty clear and stay
18 clear. I think we could improve our working
19 relationship.

20 Q And to that end, a facilitator might improve the
21 relationship? You don't know?

22 MR. SPROUT: Could you just clarify what you meant by a
23 "facilitator"? What would a facilitator do? What
24 do you mean by that?

25 Q Well, what I mean by that is somebody appointed
26 independent of either Crown that would assist the
27 parties in looking at matters of common interest,
28 seeking focus of that common interest, and seeking
29 commitments from both Crown that there be
30 effective cooperation to ensure the implementation
31 of the Wild Salmon Policy?

32 MR. SPROUT: That's what I thought. Okay, my answer
33 would be, "I don't think so."

34 Q I see.

35 MR. SPROUT: I'm not sure that facilitation is the
36 issue. From my perspective, the -- I think the
37 challenge is, if we do want to get at some of the
38 fundamental threats I think that are facing
39 Pacific salmon, particularly human population
40 growth and climate change, which I think leads,
41 inevitably, to issues of water management, the
42 province will have to decide, and the regional
43 districts, whether they're interested and want to
44 lead processes that ultimately can coordinate use
45 around water and human population growth, where it
46 goes and how much.

47 The Federal Government, I think, can only be

1 a participant in those exercises; it's not going
2 to be able to lead. So I'm not sure what a
3 facilitator would do to actually breach what I've
4 just described and bring that perspective.

5 I think possibly a recommendation from the
6 commission, and we've already talked about that,
7 would that be influential? The commissioner has
8 said he would want to reflect on that.

9 So I am uncertain that a facilitator is what
10 is really required here, because the reality is
11 the province and the Federal Government, at the
12 DFO level, in my view, work relatively well
13 together. My view is a relationship that has
14 substantially improved over the time that I've
15 been around. We have much better coordination.
16 So notwithstanding capacity issues that I've
17 flagged in the case of the province, in one
18 instance, I believe there has been a lot of
19 cooperation.

20 The issue, though, I think, is in some of the
21 big strategic questions: water management; human
22 population growth; is there an interest in
23 advancing that? And I'm not quite sure how a
24 facilitator could get at that.

25 Q Moving to another topic very briefly - hopefully I
26 can squeeze this in before four o'clock - in the
27 Wild Salmon Policy there are many references to
28 the socioeconomic component that has to be
29 considered by the managers when dealing with CU's
30 and weak stock and so on and so forth, and I can
31 refer you to a number of passages, but as an
32 example, Exhibit 8, the Policy, page 14 speak in
33 part, and I quote:

34
35 DFO has a responsibility to provide
36 sustainable harvesting opportunities that
37 will best meet its obligations to First
38 Nations, contribute to social well-being, and
39 provide employment and other economic
40 benefits to individuals and fisheries-
41 dependent communities.

42
43 And it goes on from there.

44 MR. WALLACE: With respect, Mr. Commissioner, this,
45 again, is a question of the -- the application of
46 the policy in the integrated management. It's --
47 Strategy 4 questions of how the socioeconomic

1 issues are dealt with and how those judgments are
2 made, are not the focus of this session on the
3 Wild Salmon Policy. It's the information-
4 gathering piece that we're here to canvass.

5 MR. ROSENBLOOM: Let me pose my question and let
6 counsel object if he feels that it is
7 inappropriate. A simple question.

8 Q Do you understand that there are any socioeconomic
9 studies that are being done or planned in respect
10 to the implementation of that component of the
11 Wild Salmon Policy?

12 MR. WALLACE: Mr. Commissioner, this will be -- this
13 clearly is not within the information-gathering
14 scientific piece of Strategies 1, 2, 3 and 6.

15 MR. ROSENBLOOM: I'm in your hands, Mr. Commissioner.

16 THE COMMISSIONER: I'll allow the witnesses to answer
17 your questions, Mr. Rosenbloom.

18 MR. ROSENBLOOM: Thank you.

19 MS. FARLINGER: There are two ways in which I can
20 respond to this. One, is if I were to take the
21 Barkley Sound - that's the west coast of Vancouver
22 Island - example of the "pilot process", there is
23 a socioeconomic study being done as part of that
24 process.

25 Secondly, I would say in the list you saw
26 this morning with respect to the implementation of
27 the national policy, that checklist that was
28 referred to, an economic analysis as it pertains
29 to each and every fishery now is required, as part
30 of that checklist, as part of the integrated
31 management plan for each fishery. We do not have
32 all of those done for all of the IFMP's for all of
33 the fisheries, but they are underway on a priority
34 basis.

35 Q So staying at a 30,000-foot altitude, we can
36 anticipate, as there is implementation of this
37 program, that there will be the socioeconomic
38 studies carried out in respect to the CU's that
39 you may be focusing on because there is concern as
40 to where they land on the colour zone, correct?

41 MS. FARLINGER: That's true.

42 MR. SPROUT: Could I add to that? I just want to
43 explain the process for how fishing plans get
44 determined, because I think, in part, it does
45 allow for this input on the social-economic as
46 expressed by the people that are affected directly
47 by it.

1 So the IFMP planning process, the Integrated
2 Fishery Management Planning Process brings
3 together First Nations, commercial, recreational
4 and NGOs, the province and the Department of
5 Fisheries and Oceans to develop fishing plans that
6 then take into consideration the stocks or the
7 issues that are identified at that time.

8 So we have a south coast integrated fishery
9 arrangement, and we have a north coast integrated
10 fishery arrangement. So all fisheries in the south
11 coast get rolled up under the south coast IFMP;
12 all the fisheries in the north get rolled up into
13 the north IFMP. So those processes are designed
14 to promote discussion from the constituents,
15 themselves, on the implications economically,
16 socially, and from a conservation perspective, of
17 the fishing plans that are being considered.

18 And it's important to emphasize that, because
19 it's the social-economic elements of this are
20 being raised by the participants, themselves.

21 Now, there may well be separate studies,
22 particularly in conservation units that are of
23 concern, like the Cultus, or others that may be
24 identified in the future, where you will carry out
25 even more comprehensive studies of a social-
26 economic nature.

27 And I just wanted to clarify that. But to
28 make the point that these processes are robust,
29 they have the participants there, and if you think
30 about it, you have a table where a commercial
31 fisherman can raise the perspectives that they
32 have on implications of a conservation decision.
33 You have First Nations that can raise the concern
34 from a rights and title perspective. You have
35 recreational fisheries interest that can raise it
36 from a value perspective. NGOs can raise it from
37 a conservation perspective. You have a very
38 robust, integrated process that really allows
39 these social-economic perspectives to be
40 discussed, at a minimum.

41 MR. ROSENBLOOM: Mr. Commissioner, I'm not finished,
42 sadly. I would think I'm another 20 minutes,
43 possibly.

44 THE COMMISSIONER: Well, we'll adjourn, then, and
45 you'll have to continue, Mr. Rosenbloom, when we
46 come back. We'll remember your 20-minute
47 estimate, not to worry about that.

1 Before we adjourn, just a couple of matters
2 of housekeeping. I think Mr. Sprout may have
3 heard me say this before, I'm not sure, and Ms.
4 Farlinger, but in court we respectfully ask
5 witnesses who are under cross-examination not to
6 discuss their evidence with any person until
7 they've concluded their cross-examination. It's a
8 little bit problematic here, because we don't know
9 when you're coming back. So what I would ask is,
10 again, respectfully ask you not to discuss your
11 evidence, but should something come up that you
12 feel you would like to address, I would ask that
13 you speak with Mr. Timberg, and he'll hear what it
14 is you want to discuss, and if he thinks it's a
15 matter that can be resolved without coming back
16 before me to seek leave, I trust his judgment in
17 that regard. But if he feels it's a matter that
18 ought to be raised with Commission counsel, I
19 trust him to do that.

20 So I regret that that much time will go by,
21 but I would prefer that you not discuss your
22 evidence until we've concluded our cross-
23 examinations here.

24 MR. ROSENBLOOM: For whatever it's worth, Mr.
25 Commissioner, and speaking only for myself, I have
26 no problems, whatsoever, in lifting the normal
27 protocol in respect to witnesses communicating
28 with counsel, in light of the fact that such a
29 duration of time between now and when we'll resume
30 proceedings, but I'm only speaking for myself. I
31 have no problem, whatsoever.

32 THE COMMISSIONER: Well, I think what I've suggested is
33 perhaps a compromise in that regard. They can
34 raise it with Mr. Timberg, and I'll trust his
35 judgment as to whether it's something that ought
36 to be pursued with Commission counsel and myself.

37 MR. ROSENBLOOM: Thank you.

38 MR. TIMBERG: And Mr. Commissioner, just for
39 clarification, that we'll not speak about their
40 cross-examination, but we will need to get
41 instructions from Ms. Farlinger on other matters.

42 THE COMMISSIONER: Well, that's why I said I trust your
43 judgment.

44 MR. TIMBERG: Thank you.

45 THE COMMISSIONER: I think where it falls with the
46 realm of a "need to" basis for the purposes of
47 carrying forward, I trust you to do that, but if

1 there's something you think ought to be raised
2 with Commission counsel or myself, I will hear
3 from you in that regard.

4 MR. TIMBERG: Thank you.

5 THE COMMISSIONER: Mr. Prowse?

6 MR. PROWSE: Yes, Mr. Commissioner, I somewhat
7 reluctantly get up, but I'm just concerned that
8 there may be a need for me to seek clarification
9 from the Commissioner on the Rule 19 application,
10 and I'm wondering if there's a -- if there's a
11 mechanism that might make that possible.

12 THE COMMISSIONER: All right. Which Rule 19
13 application are you speaking of, Mr. Prowse?

14 MR. PROWSE: Pardon?

15 THE COMMISSIONER: Which Rule 19 application?

16 MR. PROWSE: I'm sorry; the fish health data, so --

17 THE COMMISSIONER: I see.

18 MR. PROWSE: -- there's an order that we produce data
19 by January 21st, which up until minutes ago,
20 anyway, I was very confident that we'd be able to
21 do, and so there may be questions about fine-
22 tuning that or something.

23 If that were to come up, would it be possible
24 to deal with it in writing or something --

25 THE COMMISSIONER: Yes. I would respectfully suggest
26 to you that you communicate with Commission
27 counsel in writing. It might be something that,
28 between yourself and Commission counsel can be
29 sorted out; if not, they would bring it to my
30 attention --

31 MR. PROWSE: Thank you.

32 THE COMMISSIONER: -- and I would be pleased to deal
33 with it.

34 MR. PROWSE: Thank you, Mr. Commissioner.

35 THE COMMISSIONER: Thank you for raising it. Thank
36 you.

37 The other matter I wanted to raise with all
38 of you, today is our last day before the break.
39 We resume on January 17th. It seems that from all
40 walks of life, whatever faith or whatever beliefs
41 we have, it's a time of the year when we wish each
42 other good wishes and good health, so I do that to
43 each and every one of you and to the members of
44 the panel who were here, today, and who will
45 kindly return another day.

46 And I want to express my appreciation for the
47 cooperation counsel have shown with Commission

1 counsel, and to Commission counsel, who have
2 worked so hard to keep this train moving along the
3 track as best we can, so I'm grateful to all of
4 you. I regret that Ms. Gaertner's not here; I
5 would wish her the same thing. And Ms. Pence,
6 perhaps you could pass it along to her. And to
7 all of your colleagues who are not here, today, I
8 wish them well, and wish you all a very happy and
9 restful break, and I'll see you back here on
10 January 17th. Thank you very much.

11 THE REGISTRAR: The hearing is now adjourned until
12 Monday, January 17th, at 10:00 a.m.
13

14 (PROCEEDINGS ADJOURNED TO MONDAY, JANUARY 17,
15 2011, AT 10:00 A.M.)
16

17 I HEREBY CERTIFY the foregoing to be a
18 true and accurate transcript of the
19 evidence recorded on a sound recording
20 apparatus, transcribed to the best of my
21 skill and ability, and in accordance
22 with applicable standards.
23

24
25 _____
26 Karen Hefferland

27 I HEREBY CERTIFY the foregoing to be a
28 true and accurate transcript of the
29 evidence recorded on a sound recording
30 apparatus, transcribed to the best of my
31 skill and ability, and in accordance
32 with applicable standards.
33

34
35 _____
36 Diane Rochfort

37 I HEREBY CERTIFY the foregoing to be a
38 true and accurate transcript of the
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.
43

44
45 _____
46 Pat Neumann
47