

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



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

Public Hearings

Audience publique

Commissioner

L'Honorable juge /
The Honourable Justice
Bruce Cohen

Commissaire

Held at:

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

Monday, April 4, 2011

Tenue à :

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

le lundi 4 avril 2011

APPEARANCES / COMPARUTIONS

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

APPEARANCES / COMPARUTIONS, cont'd.

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

APPEARANCES / COMPARUTIONS, cont'd.

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

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1
2
3
4
5 THE REGISTRAR: Order. The hearing is now resumed.

6 MR. MARTLAND: Thank you. Mr. Commissioner, Brock
7 Martland, M-a-r-t-l-a-n-d, and I am appearing
8 along with Lara Tessaro, T-e-s-s-a-r-o, and Micah
9 Carmody, C-a-r-m-o-d-y, and the first name is M-i-
10 c-a-h. This is with respect to the hearings that
11 begin today on Habitat Management. I will perhaps
12 take a few moments at the outset to offer you some
13 comments about the hearings that are coming, and
14 then we'll begin with our panel today.

15 We are leading evidence in these hearings,
16 Mr. Commissioner, really at an overview level with
17 respect to Habitat Management by the Department of
18 fisheries and Oceans. We will be following -- we
19 have two days with this panel, one day with the
20 second, with the witness who is testifying alone
21 on Wednesday, Dave Carter, and then on Thursday,
22 Friday, and concluding on Monday, we turn to
23 Habitat Enforcement.

24 These are not hearings that focus on
25 particular habitat impacts. As I say, they are
26 general and they are at an overview level. And I
27 say that simply to alert participants to the fact
28 that there may well be questions that arise in the
29 context of a particular habitat issue, for
30 example, gravel extraction or aquaculture, which
31 do tie to the management or overview part of this,
32 and I think that's appropriate. On the other
33 hand, once we veer more and more into detail on
34 particular habitat topics, and especially those
35 for which we have dedicated hearing time planned
36 ahead, I may be looking to object or at least try
37 to curtail us departing from the management
38 overview approach, if you will.

39 I should also say that I'm heartened by the
40 response from participants' counsel with respects
41 to their estimates and approach from the estimates
42 I've received. This is a panel where, without
43 trying very hard, I could spend three days
44 covering points in direct. No doubt participants
45 could spend a great many hours or days with their
46 questions, as well. And the simple fact is we
47 need to conclude this evidence in the two days

1 that we have.

2 As a result of that imperative, I have cut
3 down my questions and certainly the number of
4 documents that I'll be referring to. I'll be
5 asking participants to follow the same course.
6 Again, I will make myself somewhat of a pest in
7 reminding people of the remaining time for their
8 questions. As I say, though, from the estimates
9 that have been provided, Mr. Taylor, for example,
10 for Canada indicating in the range of an hour, I
11 think we're in good shape and I'm optimistic that
12 if my questions and Mr. Taylor's, and perhaps
13 those of one other or two other participants
14 conclude today, we should be in good shape to
15 conclude this.

16 As a procedural matter at the outset, I
17 would like to have the Policy and Practice Report
18 that has been prepared in relation to these
19 hearings and is before you on the screen. It's
20 the Department of Fisheries and Oceans Habitat
21 Management Policies and Practices dated March 8,
22 2011. I would ask that please be filed as a PPR
23 in these proceedings.

24 THE REGISTRAR: That will be marked as PPR number 8.

25
26 PPR8: Department of Fisheries and Oceans
27 Habitat Management Policies and Practices
28 dated March 8, 2011
29

30 MR. MARTLAND: In terms of the exhibit list that's been
31 provided to participants, I'll be making reference
32 to that exhibit list and the numbers on it as I go
33 to particular documents. As I say, I don't intend
34 to mark even half of those documents as exhibits.

35 Mr. Commissioner, that said, I am in position
36 to begin with the evidence of the first panel,
37 comprised of Patrice LeBlanc, Rebecca Reid, and
38 Jason Hwang. If they could be affirmed, please,
39 Mr. Registrar.
40

41 PATRICE LeBLANC, affirmed.

42 REBECCA REID, affirmed.

43 JASON HWANG, affirmed.
44
45

46 THE REGISTRAR: State your name, please.
47

3
PANEL NO. 27
In chief by Mr. Martland

1 MR. HWANG: Jason Hwang.
2 MR. MARTLAND: I'm sorry, the microphone.
3 THE REGISTRAR: Oh, I'm sorry, we'll do this again.
4 State your name, please.
5 MR. HWANG: Jason Hwang.
6 MS. REID: Rebecca Reid.
7 MR. LeBLANC: Patrice LeBlanc.
8 THE REGISTRAR: Thank you. Counsel.
9 MR. MARTLAND: Thank you.

10
11 EXAMINATION IN CHIEF BY MR. MARTLAND:
12

13 Q I will begin simply with biographies, and, Mr.
14 Bisset, if you could please bring up number 2 on
15 the exhibit list.

16 Mr. LeBlanc, I'll ask this of you. I hope
17 you recognize your c.v. on the screen there; is
18 that correct?

19 MR. LeBLANC: Yes.

20 MR. MARTLAND: I would ask that be marked as an
21 exhibit, please.

22 THE REGISTRAR: Exhibit 645.

23
24 EXHIBIT 645: *Curriculum vitae* of Patrice
25 LeBlanc
26

27 MR. MARTLAND:

28 Q And I will ask a remarkably awkward and long
29 question, but I think it's an efficient way for me
30 to try and cover your background. I would ask you
31 to please alert me if I've got anything wrong.
32 And I should indicate these are descriptions that
33 are from the witness summaries. The witness
34 summaries, Mr. Commissioner, are not being filed
35 in the hearings, but they have been provided to
36 participants.

37 In a brief way, Mr. LeBlanc, you have degrees
38 from l'Université de Moncton, University of
39 Toronto, and additional graduate work in
40 Environmental and Resource Studies from Dalhousie
41 University; is that correct?

42 MR. LeBLANC: Correct.

43 Q You joined DFO in 1982 as Chief, Habitat and
44 Resource Development Research Division, after
45 previously having worked in academia and spending
46 14 years in senior positions in environmental
47 management, both with consulting firms and

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1 provincial electrical -- I'm sorry, provincial
2 electricity utilities?

3 MR. LeBLANC: Correct.

4 Q In 1988 you left the Department and joined the
5 Canadian Environmental Assessment Agency, and in
6 1995 you took a two-year assignment to head the
7 newly established Environmental Management
8 Authority of the Republic of Trinidad and Tobago,
9 and I'm sure that last position is one we're all
10 jealous of on a dark day like this. And you
11 returned to the Department of Fisheries in 1998 as
12 Director, Habitat Operations Branch; is that
13 correct?

14 MR. LeBLANC: That's correct.

15 Q In the last 14 years, I understand, you served as
16 the National Director of the DFO's Habitat
17 Management Branches, apart from a six-month
18 assignment, again or at least in that case, acting
19 as a Special Advisor to the Government of the
20 Bahamas.

21 MR. LeBLANC: Correct.

22 Q And you currently serve as the Director of the
23 Habitat Management Policy Branch in the Program
24 Policy Sector based in the National Capital
25 Region?

26 MR. LeBLANC: Correct.

27 Q Thank you. If I could ask, Mr. Bisset, for number
28 3 on the list to be brought up.

29 Ms. Reid, I think you'll recognize your c.v.
30 when it appears there; is that correct?

31 MS. REID: That's right.

32 MR. MARTLAND: And I'd ask that be marked as the next
33 exhibit, please.

34 THE REGISTRAR: Exhibit 646.

35
36 EXHIBIT 646: Resume of Rebecca Anne Reid
37

38 MR. MARTLAND:

39 Q Ms. Reid, you have degrees from the University of
40 Saskatchewan and from UBC, and began your career
41 with DFO in 1990 as a Fish/Shellfish Quality
42 Specialist, and from 1996 to 2000 you worked on
43 Aboriginal Fisheries issues, and after that served
44 as Area Director, Central Coast Area, as Regional
45 Director, Policy and Economic Analysis, and as
46 Regional Director, Treaty and Aboriginal Policy;
47 is that correct?

1 MS. REID: That's right.

2 Q In 2007 you became the Regional Director in OHEB,
3 Oceans Habitat and Enhancement Branch, assuming
4 responsibility for the Habitat Management Program;
5 is that correct?

6 MS. REID: Yes, I just noticed a mistake on my resume,
7 where I've got that noted as my substantive
8 position. That's not correct.

9 Q Okay. And, sorry, the mistake on the resume
10 refers to the substantive, the last entry under
11 "Experience"?

12 MS. REID: Where it says "Regional Director, OHEB.

13 Q Okay.

14 MS. REID: And it says "substantive position", but
15 that's an error.

16 Q Thank you for that correction. In 2007 you became
17 the Regional Director, I'm sorry, I just asked you
18 that. From June 2010 to January 2011, you served
19 as the Acting Associate Regional Director General;
20 is that correct?

21 MS. REID: That's right.

22 Q And then your current position is Regional
23 Director, Fisheries Management.

24 MS. REID: That's right, yes.

25 Q Thank you. Mr. Hwang, I'll ask Mr. Bisset to
26 bring up number 4 on the list. Sir, that's your
27 c.v., and if I could ask you to push the button on
28 the mike, so the red -- the trick is the red light
29 there, and I'll remind you of this if I note it.
30 That's your c.v.?

31 MR. HWANG: Yes.

32 MR. MARTLAND: Thank you. I'd ask that be marked as
33 the next exhibit.

34 THE REGISTRAR: Exhibit 647.

35

36 EXHIBIT 647: *Curriculum vitae* of Jason Hwang

37

38 MR. MARTLAND:

39 Q Mr. Hwang, you obtained a Biology B.Sc. from Simon
40 Fraser University 1994 and previously had a BCIT
41 Technical Diploma in Fisheries, Wildlife and
42 Recreation; is that correct?

43 MR. HWANG: Yes.

44 Q You serve as Area Manager, OHEB, for the B.C.
45 Interior Area, and in that capacity oversee both
46 the Habitat Program and the Salmonid Enhancement
47 Program for the BCI, the B.C. Interior Area?

1 MR. HWANG: Yes.

2 Q You have been in that position since 2006 and
3 previously from the years '99 to 2006 held a
4 similar position as Area Chief for the B.C.
5 Interior North, and that was before, as I
6 understand, the North and South Areas were united
7 under one Area Manager?

8 MR. HWANG: That's right.

9 Q Before that you spent five years with the
10 Department as a Habitat Biologist based in Prince
11 George ?

12 MR. HWANG: Yes.

13 Q And you're currently based in Kamloops?

14 MR. HWANG: Right.

15 Q Thank you. I'll begin with questions about the
16 1986 Habitat Policy, and I'll do this without
17 asking for an explanation of the policy. Mr.
18 LeBlanc, I'll be directing these questions, I
19 expect, your way.

20 We have in the Policy and Practice Report,
21 and indeed an exhibit already in these proceedings
22 is the Habitat Policy itself. I won't be turning
23 to those for these questions. Rather, if I might
24 request, though, that you describe to us the
25 central -- what I have understood to be a central
26 feature of the Habitat Policy, the no net loss or
27 protective capacity principle, and if you could
28 please explain that in particular, we'd appreciate
29 it.

30 MR. LeBLANC: Okay. let me situate the no net loss in
31 terms of the Habitat Policy of 1986, providing a
32 comprehensive framework for the administration of
33 provisions of the **Fisheries Act** to manage impacts
34 of human activities on fish and fish habitat. The
35 net gain objective is the broad policy objective
36 and conservation, restoration and development
37 goals underpin that net gain policy objective.

38 The no net loss is situated as one of the
39 guiding principles, or is the main guiding
40 principle in the policy to support the
41 conservation goal, and it is a guiding principle
42 which allows for offsetting losses to fish habitat
43 when there is no ability to mitigate or reduce the
44 impact to a minimum. So it is intended to offset
45 losses. There is a procedure in the policy
46 document that allows for guiding people on how to,
47 or staff on how to apply the no net loss

1 principle.

2 Q In terms of the use of an area, or an area
3 footprint as a surrogate for calculating the
4 impact on productive capacity, could you explain
5 how that is used and what other approach could be
6 used, hypothetically or realistically?

7 MR. LeBLANC: There are a number of scientific models
8 that can be used to assess, to help assess a no
9 net loss or the productive capacity I should say
10 of fish habitat. However, these are fairly
11 complicated and usually fairly difficult to apply
12 by practitioners in the field. What we use as
13 sort of as a surrogate is a footprint. So if you
14 have, just for an example, ten units of spawning
15 habitat being harmed, harmfully altered or
16 disrupted or destroyed, mostly destroyed, you
17 would then offset that ten units of habitat
18 somewhere, or an equivalent of that habitat
19 somewhere else near to the project.

20 Q And could you comment on how that, whether that
21 sort of use of an area footprint model works or
22 doesn't work in a situation where you're not
23 dealing with an impact that is area specific, and
24 the example that springs to mind is the degraded
25 water quality situation.

26 MR. LeBLANC: Well, the no net loss applies to both the
27 deposit of deleterious substances and to harm to
28 habitat. The compensation doesn't allow us to use
29 it in the case of water quality degradation.

30 Q What sort of an approach would be used in that
31 context?

32 MR. LeBLANC: The only approach is to try to regulate
33 the deposit of deleterious substance to the lowest
34 level possible. We do have a set of regulations
35 that allow for standards to be established for
36 major industries, but not for the smaller
37 industries that deposit deleterious substances
38 into fish-frequented waters.

39 Q Now, this Habitat Policy, and just for the sake of
40 the record, it's Exhibit 260 already in these
41 proceedings. I don't think I need it brought up
42 on screen. But the -- and the proper name is the
43 "Policy for the Management of Fish Habitat", but
44 in shorthand I think people refer to it as the
45 "Habitat Policy" or the "1986 Habitat Policy".
46 Not every policy that we've been leading in
47 evidence dates to the mid-'80s, and I think that

1 suggests that this is a policy that has stood the
2 test of time over many years. I take it you were
3 involved, Mr. LeBlanc, in preparing this original
4 policy in the '80s?

5 MR. LeBLANC: That's correct. One of the members of
6 the team that finalized the policy for Minister
7 Siddon to table in Parliament in 1986.

8 Q And there has been some discussion in recent years
9 of a move towards a new or a revised, I'm not sure
10 what the right word, if it's "revised" or a
11 "revision" or a "revamping", I don't know.

12 MR. LeBLANC: There's many words that have been used,
13 "modernized" and "renewable", of the policy. Yes,
14 there has been a number of discussions, given the
15 fact that it is a fairly old policy.

16 Q And I'll just identify that there's a question
17 around -- well, I'll preface my questions by
18 saying this. We understand that some part of this
19 revising or renewal of the policy may involve
20 materials going to the Minister and under
21 consideration by the Minister. And I'm not
22 looking to go behind the curtains on what the
23 Minister is doing at this point, although it may
24 be more related to the election than anything
25 else. But let me ask you instead, if you could
26 offer us with the benefit of your involvement,
27 your understanding and your sense of the timing,
28 the progress, the work that has been done and is
29 yet to be done towards a renewal of the policy.

30 MR. LeBLANC: Significant amount of internal
31 consultation has taken place over the last four or
32 five years to identify some areas that could be
33 improved in the policy, and it's all been
34 internal. Some policy research has been done.
35 The Minister has been briefed, however, there is
36 no decision taken as yet to move outside to do
37 some external -- both internal and external
38 consultation.

39 The proposal, if it does go forward, in terms
40 of renewal policy, would be to provide a
41 discussion paper that would allow for discussion
42 internally and externally with stakeholders and
43 partners to get their feedback on potential
44 improvements to the policy. And once that is
45 achieved, that would take, we approximated, about
46 six months. Then we would write a draft policy
47 and also then go back to internal and external

1 consultations on the draft policy and finalize it.
2 The estimated time we provided for the Minister
3 was about a year before we could go back to her
4 with a final draft of a policy.

5 Q And has there been an external consultation work
6 with whether it's the province or their
7 stakeholders in particular, has that occurred to
8 this point?

9 MR. LeBLANC: No. No, no, no.

10 Q So the consultation you've referred to is entirely
11 internal at this point?

12 MR. LeBLANC: That is correct.

13 Q And the one-year period, what does that, just so
14 I'm clear about it, what is that, does that take
15 us to the notional end release date of a new
16 policy, or does that refer to this initial work?

17 MR. LeBLANC: That is correct. It would take one year
18 to provide for the initial dialogue on the
19 discussion paper, draft a new policy, and get
20 ministerial approval and release of the policy
21 within a year.

22 Q If I might move to number 30 on the exhibit list,
23 please. Mr. LeBlanc, I think, well, you'll see
24 your name there. I take it this is a presentation
25 that you presented in Halifax in October of 2008.
26 And if I could just confirm that I have that
27 correct.

28 MR. LeBLANC: That's correct.

29 MR. MARTLAND: I'd ask this be marked as the next
30 exhibit please.

31 THE REGISTRAR: Exhibit 648.

32

33 EXHIBIT 648: Fish Habitat Management
34 presentation by Patrice LeBlanc to CCFAM
35 Inland Fisheries Committee, October 27, 2008
36

37

MR. MARTLAND:

38 Q And I don't know that I need to go to particular
39 parts, but I take it the context for this is that
40 in 2008 already at that point you're providing an
41 update, I take it, that's internal to DFO, but
42 providing an update on the modernization of the
43 Habitat Policy?

44 MR. LeBLANC: Yes, an update on where we were in terms
45 of internal discussion.

46 Q And in fact I said internal, but I notice for the
47 CCFAM, could you describe for us what the CCFAM is

1 and who may have been part of receiving this
2 presentation, please?

3 MR. LeBLANC: The Canadian Council of Fisheries and
4 Aquaculture Ministers are all the ministers of
5 provinces and territories and our Minister who
6 chairs or she chairs, sorry, that chairs the
7 committee. Under that committee there is an
8 inter-governmental working group and a committee
9 of deputy ministers. The Inland Fisheries
10 Committee is one of the committees that reports to
11 the deputy ministers' committee, and it's
12 provincial fisheries officials and DFO staff that
13 -- at the director level.

14 Q In terms of a renewal of the Habitat Policy, I'd
15 appreciate your thinking and your own views as to
16 where the new Habitat Policy should go, and in
17 particular any comments on the principle of no net
18 loss of productive capacity, whether that should
19 be maintained or changed in some way.

20 MR. LeBLANC: I believe there are some very strong
21 parts of that policy that should be retained,
22 including the no net loss principle, guiding
23 principle. It is at the heart of the policy.
24 There will be some need to update some of the
25 policy, especially the new legislation that have
26 been introduced since the policy has been
27 introduced in '86, such as the **Canadian**
28 **Environmental Assessment Act**, environmental
29 assessment processes in the north, the duty to
30 consult aboriginal peoples, and the **Species at**
31 **Risk Act**.

32 The other is, I think, this is my view in
33 terms of introducing the notion of an ecosystem-
34 based approach, and results based regulation, that
35 concept in terms of strengthening the policy
36 itself. But the basic one would be applying an
37 ecosystem-based approach to habitat management,
38 where we would move away from individual, although
39 not eliminate the project review, we would provide
40 a greater context in terms of assessing the
41 impacts of human activities on fish and fish
42 habitat by establishing standards, thresholds,
43 identifying key priority habitats that need
44 protection and conservation.

45 Q Ms. Reid, I'd like to ask you a similar type of
46 question, picking up on the last point. There is,
47 as we've heard, a move to modernize or renew the

1 Habitat Policy. Could you offer us your
2 perspective on whether there is a need and what
3 the need is to change the existing Habitat Policy,
4 please.

5 MS. REID: Well, similar to Patrice, I think that the
6 principle of no net loss is one that's fundamental
7 to the policy and something that should be
8 continued. I do agree that there are aspects of
9 the policy that are out of date, and need to be
10 updated, similar to what Patrice has already said.
11 So that would be my summary.

12 Q Thank you. Mr. Hwang.

13 MR. HWANG: Similar to the others, I think the no net
14 loss principle is essential, and there is
15 certainly room to provide for some updating to the
16 policy. And I think the important thing from an
17 on the ground kind of practitioner's level is to
18 ensure that that guidance is clear and enabling,
19 and also to ensure that ultimately it's getting
20 the results that are going to provide for
21 sustainability for the resource long term.

22 Q As the Habitat Policy has been so central a
23 document, as I take it in the work of the HMP, the
24 Habitat Management Program, for so many years and,
25 Mr. Hwang, I'll perhaps start with you this time
26 and go the other direction. Are there particular
27 things, having worked with the Habitat Policy, in
28 the formulation, the offsetting approach, the no
29 net loss principle, do you have particular, if
30 there were to be a revamped Habitat Policy, are
31 there particular things that you want to see or
32 are afraid of seeing in the new policy?

33 MR. HWANG: Well, on the room for change side, I think
34 some of the strict interpretation of the way the
35 hierarchy of preferences for offsetting or
36 compensation are laid out, are at times
37 restrictive, and sometimes will compel a certain
38 project to choose a compensation option that isn't
39 necessarily as useful as other measures, but
40 either proponents or staff will be compelled to
41 sort of go to the first preference in the
42 hierarchy first. So some adjusted guidance that
43 provides for maybe choosing the most effective
44 offset as opposed to always rigorously following a
45 hierarchy would be useful, I think.

46 On the side of things that operational staff
47 may be concerned about, I think ultimately would

1 be what you would generalize as something that
2 would lower the bar for habitat protection. It's
3 a very challenging thing to implement and a strong
4 policy is very, very helpful in terms of trying to
5 carry that forward operationally.

6 Q Are there things that you're afraid of seeing? Do
7 you have...

8 MR. HWANG: Well, certainly, I think, I spoke quite
9 directly to the importance of having that no net
10 loss principle carried forward, and I think
11 something that would adjust that or make that less
12 clear or certain would introduce potentially a
13 challenge to making decisions forward for long-
14 term sustainability of the habitat base.

15 Q Ms. Reid, are there things in this work towards a
16 revised or renewed policy, are there particular
17 things you'd like to see there, or particularly do
18 not want to see there?

19 MS. REID: Well, one of the things that I think is
20 important from an operational perspective, when I
21 look at in my job working with habitat
22 practitioners and trying to make decisions around,
23 you know, mitigation or compensation measures, is
24 this balance between, you know, conservation and
25 economics, and the policy speaks to that and talks
26 about the need for that balance. But it is in
27 many ways left to the practitioner, to the
28 program, to come up with the right balance, and
29 it's often a challenge.

30 In the case of environmental assessments,
31 particularly the more complex ones, there are
32 methods to sort of allow for that balance to be
33 found. But in the case of the Habitat Policy
34 itself, I think that it would be useful to have
35 more direction on that question.

36 The other aspect that is already incorporated
37 into the policy, but I think is extremely
38 important, is that aspect of partnerships, whether
39 it be with local or provincial governments, or
40 with First Nations. I think that strengthening
41 that part of the policy would be very helpful, as
42 well.

43 And as far as things I wouldn't want to see
44 lost, again I would go back to the not wanting to
45 see the loss of the no net loss principle.

46 Q Mr. LeBlanc, anything to add on this question of
47 the work towards a new policy?

1 MR. LeBLANC: I think one of the considerations is that
2 the Habitat Policy is a framework policy, and I
3 think it needs a set of other principles which
4 might line up with some of the things that Rebecca
5 has mentioned, such as risk based, best placed,
6 who is best placed to help deliver on some of
7 these functions that we have to carry out.
8 Whether it's provinces, territories, conservation
9 groups, industry, or what have you. But also
10 principle of accountability that who takes on some
11 of this work is accountable to deliver on it, and
12 there's some mechanisms to audit these.

13 I would also say that one of the things is
14 that while the policy has remained since 1986, we
15 have developed a series of operational policies
16 that hang from that policy, and maybe for a
17 framework policy that you've got to be careful
18 that you add too much in it and you align it with
19 some more operational policies that provide the
20 kind of guidance that Jason and Rebecca mentioned.

21 Q If I could just clarify, please, Mr. LeBlanc, in
22 terms of understanding the current status of this
23 work towards the new policy, could you just advise
24 me, is it the case that this is at the point where
25 the Minister has to say yes or no, you're waiting
26 for a ministerial direction or decision on whether
27 this work continues?

28 MR. LeBLANC: The Minister has been briefed on this and
29 her decision was to seek some input from her
30 cabinet colleagues that was to happen in a few --
31 in a month or this month, and unfortunately some
32 other democratic event has occurred and has sort
33 of delayed that.

34 Q All right. So stay tuned, we'll have to wait and
35 see.

36 MR. LeBLANC: That's exactly right.

37 Q I'm going to next turn to a few questions on
38 whether Canada's achieving no net loss. Why don't
39 we simply start with that, Mr. LeBlanc. Is Canada
40 achieving no net loss of the productive capacity
41 of fish habitat?

42 MR. LeBLANC: I think my answer would be yes and no. I
43 think yes in some cases we do in individual
44 project, but overall when we assemble all of the
45 projects that we assess, and what have you, we may
46 be losing more than we are protecting. So
47 generally speaking we may be losing habitat

1 overall in some cases, in some projects. We are
2 able to attain a no net loss productive capacity,
3 but in other areas I think we do lose some
4 habitat. I am not sure whether it's ten percent
5 or 50 percent or what have you. We have no real
6 true measure to assess whether we are achieving a
7 no net loss of productive capacity, and we are
8 hoping to get some indicators, that are indicators
9 to allow us to measure this principle.

10 Q What is the work involved in getting those
11 indicators and who does that, or who should be
12 doing that?

13 MR. LeBLANC: Right at the moment we have put on a
14 priority for Science and national priorities for
15 the Canada Scientific Advisory Secretariat, CSAS
16 it's called. There's a peer review process and
17 they have been asked to develop indicators for
18 fish habitat this fiscal year.

19 Q Mr. Hwang, if you could please field the same
20 question, and if you can tie it back to Fraser
21 River sockeye habitat, that's helpful. Is Canada
22 achieving no net loss?

23 MR. HWANG: Well, certainly from the operational level
24 all the indications are no, and it's a very
25 complicated circumstance to operate in and respond
26 to. I would say Fraser sockeye habitat, at least
27 in the Interior Area that we work in is probably
28 better off than habitat for some other salmon
29 species, just because of the nature of the biology
30 and where those fish live. But there is a
31 tremendous amount of change from a natural
32 landscape going on because of human activity in
33 that watershed.

34 Some of that change DFO has a direct
35 regulatory authority for, and that comes in to us
36 and we review it. On that stuff I think we do
37 okay; not perfectly, but we're okay. And then
38 there's a whole bunch of stuff that doesn't come
39 to us for a variety of reasons, either it's got an
40 indirect effect to a fish habitat, you know, it's
41 something very upland perhaps from a river or a
42 lake, or stuff that a proponent may choose not to
43 bring to us for a variety of reasons that also
44 has, I guess, a cumulative incremental effect.

45 Q And to pick up on Mr. LeBlanc's point, what work
46 do you think is needed to measure the habitat, the
47 gain or loss of habitat?

1 MR. HWANG: Well, certainly some start at getting a
2 benchmark or a baseline, or a status of the
3 habitat base at a place in time, so that you could
4 then go back into the future and assess the same
5 measures and you would have something more
6 specific and direct to give you a determination as
7 to whether the circumstance is better or worse as
8 far as habitat goes. So the habitat indicator
9 type work that I think Patrice touched on that has
10 been, I guess, touched on, or started through the
11 Wild Salmon Policy type work is very useful, and
12 if it was completed and we had that benchmark,
13 would be very helpful in managing now and into the
14 future.

15 Q From your work in the Interior Area, can you give
16 an example of a particular type of challenge to
17 achieving no net loss, in particular for Fraser
18 River sockeye habitat?

19 MR. HWANG: Well, a simple example would be something
20 like development in the Shuswap area, outside of
21 Kamloops, which is subject to a range of
22 pressures. There are things that I would call
23 historic pressures from traditional land uses like
24 agriculture and forestry. There are linear
25 developments from railways and hydro right-of-
26 ways, and things like that, highways. And more
27 recently there's been a really significant
28 increase in property development, recreational,
29 residential, as well as recreational type activity
30 out on that lake. So it's a very significant
31 salmon producing lake, and there are a number of
32 changes that are occurring day-to-day and year-to-
33 year in that lake, most of which are not positive
34 for fish and fish habitat.

35 Q Ms. Reid, I haven't asked you questions on this
36 point. Do you have comments or answers to
37 provide.

38 MS. REID: Well, just with respect to habitat indicator
39 work. I would say that in Pacific Region we have
40 done some of that work under the rubric of the
41 Wild Salmon Policy, the Strategy 2, which is all
42 around habitat monitoring, and that Strategy 2
43 work essentially we spent a number of years coming
44 up with indicators in order to measure health of a
45 particular unit. And so that methodology has been
46 developed.

47 Q Mm-hmm.

1 MS. REID: And some of the initial habitat status
2 reports have been done, but at a preliminary
3 level. And I think that completion of that work
4 will be very helpful in moving forward in coming
5 up with the status of habitat at a conservation
6 unit level and at a more discrete level.

7 Q And when you talk about - sorry, I'll slow down
8 and get my terminology - the Wild Salmon Policy
9 doing that work under Strategy 2, that refers to
10 Heather Stalberg's work; is that correct?

11 MS. REID: Yeah, that's right.

12 Q And to pick up on the point you just offered, is
13 it the case that the Habitat Status reports that
14 have been done, have been done as pilot projects
15 and that that's not ongoing work at this stage?

16 MS. REID: Well, I would characterize it as so the
17 methodology has been developed and we are
18 beginning to do those status indicator, status
19 reports. They're not pilots. They're simply
20 picking watersheds to start with and then the
21 intent is to carry on.

22 Q And who is and who should be responsible for the
23 science advice on that sort of strategy to
24 monitoring work?

25 MS. REID: Well, we worked -- so the work that Heather
26 did was in concert with the Science Branch.

27 Q Mm-hmm.

28 MS. REID: And so I would see a cooperative
29 relationship on that work.

30 Q I'll come back to some questions on the Wild
31 Salmon Policy, and I thank you for raising that in
32 this context.

33 MR. LeBLANC: Could I just add a point of
34 clarification, and I think in terms of no net
35 loss. One of the key items in the no net loss and
36 in terms of an authorization that is issued by the
37 Department under the authority of the **Fisheries**
38 **Act**, is the condition that we can place under the
39 authorization, although it's not enforceable,
40 there is a follow-up monitoring.

41 What we need, I think, is, and we are working
42 on that this fiscal year, is a rigorous
43 methodology for doing two things. One is to
44 verify the actual HADD that's occurred, harmful
45 alteration disruption or destruction of habitat,
46 and the other one is the effectiveness of the
47 compensation measure. That is important to have

1 that so there's a standardized methodology used
2 across a country, a scientifically rigorous
3 methodology. And the other part of that is for
4 having the results of these monitoring programs
5 undergo a strict peer review process, whether it's
6 through the Canadian Scientific Advisory
7 Secretariat or other mechanism, there is a peer
8 review, a scientifically peer reviewed, and then
9 we can learn from that and use the results of
10 those evaluations to feed back and change the
11 compensation measures that we use, or methodology
12 that we may adopt it for, for a certain project.

13 Q And I wonder if I might try and approach some
14 further questions on this question of habitat
15 compensation by turning to the Quigley and Harper
16 work in particular. I'll do that first with
17 number 8, please, Mr. Bisset, on the list. And
18 I'll just -- you'll see this come up on the
19 screen. It dates to March of 2006. It is out to
20 "Distribution", is who it's addressed to. I take
21 it that suggests that it's going out at a fairly
22 broad level, and indicating that:

23
24 ...the recently published results of a
25 national evaluation program to assess the
26 performance of compensation projects in
27 achieving No Net Loss of fish habitat
28 productivity...

29
30 Are being circulated out to people, I take it, in
31 the Habitat Group nationally?

32 MR. LeBLANC: Yes.

33 MR. MARTLAND: If I could ask this be marked as the
34 next exhibit, please.

35 THE REGISTRAR: Exhibit 649.

36
37 EXHIBIT 649: Memorandum to Distribution re
38 National Evaluation of Fish Habitat
39 Compensation to Achieve No Net Loss; Final
40 Publications for Circulation, dated March 8,
41 2006

42
43 MR. MARTLAND:

44 Q And in fact what I will, for the benefit of
45 participants, the Quigley Harper papers were
46 included in our exhibit list. I won't turn to
47 them now, but for the reference of people here,

1 it's numbers 9 through 14 on our list of exhibits.
2 Given the limited time I have, I don't propose to
3 go to the source materials and instead I'll take a
4 shortcut if I might, by referring to the Policy
5 and Practice Report, or PPR, and in particular I
6 think it will be page 26 for you, Mr. Bisset, and
7 page 22 and paragraph 52 on the printed page.

8 Just under paragraph 52, there's a graph that
9 sets out a summary that we've prepared of the
10 Quigley/Harper work, and to review that quickly,
11 and I'll just take a moment to do this.

12 The "Literature review" that's cited there
13 refers to the authors having located and reviewed
14 ten studies from the literature that was existent.
15 The "Results" listed at the bottom of the second
16 column:

17
18 Over half of the projects were determined to
19 have had smaller compensation areas than HADD
20 areas, and over one third clearly did not
21 achieve No Net Loss.

22
23 The next piece to this work was a "File
24 review", you'll see it described there, it
25 analyzed files for 124 HADD authorizations, 105 of
26 which were from this province in the range of 1994
27 to 1997.

28
29 Results: 25% had smaller compensation areas
30 than HADDs. Determination of No Net Loss
31 could only be made for 14% of authorizations
32 due to poor compliance with monitoring
33 requirements and because the performance
34 criteria used by DFO does not assess
35 effectiveness / No Net Loss.

36
37 The "Compliance audit" listed next involved
38 site visits to 52 of the 124 authorizations that
39 were randomly selected. And on the next page
40 under "Results" you'll see that:

41
42 86% of authorizations had larger HADD or
43 smaller compensation than authorized, or
44 both. Two thirds resulted in net loss of
45 habitat area.

46
47 And the fourth point, the "Effectiveness

1 study" evaluating 16 of the 52, seven of those
2 being in this province, the "Results" described
3 there:

4
5 63% of authorizations resulted in net losses
6 of habitat *productivity*.

7
8 So that's a cumbersome question, I suppose,
9 but I do that to have in our minds the Quigley and
10 Harper work in the mid-2000s. If you could
11 please, Mr. LeBlanc, why don't I start with you
12 and then ask the other panellists. If you could
13 comment, please, on the importance of the work
14 done by Messrs. Quigley and Harper, in particular,
15 and the influence of that work, and also what has
16 been done since that time.

17 MR. LeBLANC: I believe that this was an important
18 piece of work that sort of revealed several sort
19 of weaknesses with the application of the no net
20 loss principle of compensation, and as well
21 compliance regime that is really important in
22 terms of making sure people are following the
23 compensation measures and authorization.

24 Very little has been done since in terms of
25 doing another evaluation of this kind to see
26 whether we have improved, although we have
27 provided further guidance to staff, as well as
28 others in terms of ensuring that there is
29 compliance. And we have now a monitoring unit,
30 compliance monitoring group in each of the regions
31 that is to provide some audit and monitoring of
32 conformity with the requirements of authorization.
33 So I'm hopeful that we will be able to confirm
34 whether these compliance numbers are the same.

35 As well, I think, and if we can refine the
36 methodologies I mentioned before to test and
37 validate the accuracy of the predicted impacts, as
38 well as the effectiveness of the compensation,
39 that will help us. But these take time, and as
40 you can see, this was back in 2006 and it's a
41 little over six years since this report, and we
42 recognize that we do need to do some more work to
43 improve the performance of our compensation
44 measures.

45 Q Mr. Hwang, from your perspective, how important
46 was the Quigley/Harper work, and what's happened
47 since?

1 MR. HWANG: Well, the work was important on many
2 levels, I think. It certainly sent some clear
3 messaging to managers and staff as in terms of how
4 we were doing. And I think it was important for
5 managers. I count myself there, because at the
6 time I was a manager. It was important for
7 managers to understand that we had to provide some
8 clearer direction to our staff, and that we had a
9 results gap here.

10 And it was also important to staff, because
11 my impression was by and large staff felt that
12 writing the authorizations as they were was
13 effective, and then they would move onto the next
14 thing, and it's understandable, because there's a
15 significant workload train. You get one done, and
16 there's another thing waiting, and you don't
17 always make time to get out and see how the
18 project performed based on your guidance. So
19 there was a strong message for staff that we
20 probably at the operational level needed to change
21 some of our habits and practices.

22 I think one of the things that it
23 demonstrates really, though, is that no net loss
24 is quite difficult to achieve, even on a fairly
25 carefully overseen project. And you know,
26 notwithstanding the fact that this audit shows
27 that there were gaps and that no net loss wasn't
28 achieved, I think it also demonstrates that there
29 were positive things gained for the habitat of the
30 fish by DFO's engagement, and while we may not
31 have gotten to 100 percent, my feeling is that the
32 habitat and the fisheries resource was still
33 better off by way of DFO's engagement.

34 Q Ms. Reid, any comments to add on this?

35 MS. REID: Just to add that subsequent to this work, at
36 an operational level, the Habitat Program managers
37 worked hard to engage staff to make this type of
38 work and others meaningful. For example, in, you
39 know, large area meetings we would have situations
40 or case studies. So a Habitat practitioner would
41 come up and present a project and talk about the
42 mitigation, the compensation in a time series.
43 And so those types of presentations were made,
44 which I think were also sort of useful for making
45 this type of work and to inspire staff, you know,
46 in working further on those types of projects. So
47 that type of stuff is ongoing, as well.

1 Q I'd like to ask some questions that we'll use as a
2 starting point, some past reports, and in
3 particular this CESD, the Commissioner for the
4 Environment and Sustainable Development, reports,
5 which I know you're familiar with. I'll just
6 narrate for a moment to say that some of these,
7 there's been a series of significant reports that
8 speak to this topic. Mr. Commissioner, they're
9 summarized in Exhibit 14. They've been discussed
10 in your interim report. Some of those reports are
11 also listed for the benefit of participants in our
12 exhibit list as numbers 26 through 29.

13 Again, I'll try to use the shortcut of the
14 PPR rather than going to those documents, and I'll
15 focus questions on some of the points made in the
16 CESD reports in particular, the 2009 CESD report.
17 If we could please turn to page 23 of the printed
18 page, page 27 on the screen, I expect, or in
19 Adobe, paragraph 54 of this PPR.

20 I think I've been slow enough finding it in
21 my own binder that you may have read it already.
22 But paragraph 54 indicates that:

23
24 In response to the 2009 report of the CESD,
25 the Department agreed to, by March 2010,
26 determine what actions are required to fully
27 implement the Habitat Policy.

28
29 And then a description that's set out there, that:

30
31 In March 2011, DFO will table a report to the
32 CESD outlining the Department's progress made
33 on this and other commitments arising from
34 the 2009 report.

35
36 Now, I'll go back to some of the points made in
37 relation to the 2009 report.

38 Mr. LeBlanc, could you comment on the status
39 of these things, please, that are set out there.

40 MR. LeBLANC: Yes. The update on the Commissioner of
41 Environment and Sustainable Development Report on
42 Protecting Fish Habitat has been submitted to the
43 Deputy Minister for her approval and for
44 submission to the Commissioner. I am not sure
45 whether it has been signed yet, but from a week or
46 so ago it had not left the Department.

47 Q And indeed there's two documents that may assist

1 us as we move through this. So one, if Mr.
2 Bisset, if you could please keep this document
3 handy, the PPR, the other one is number 32 on our
4 list, which is a Management Action Plan and I
5 understand there may be a more recent version, but
6 I'll work from this one as much as I can. This
7 bears declassification date, I take it, is
8 Valentine's Day of this year, but it may be that
9 the document itself dates to an earlier point of
10 time. Mr. LeBlanc, maybe you could just give us
11 some quick understanding of what this document is.
12 It's a MAP or Management Action Plan, I take it?

13 MR. LeBLANC: Yes. The responses to the
14 recommendations were put into what's called a
15 Management Action Plan that would identify the
16 actions taken and measure progress against these.
17 And it identifies the various responsibility
18 centres in the Department that are accountable for
19 meeting or for implementing the actions. In this
20 case, Environment Canada has some recommendations,
21 Science or Science Sector, Conservation and
22 Protection and the Habitat Management Program
23 Group and the Habitat Policy Group. So each
24 sector has a responsibility to respond to each of
25 these.

26 This was done to give an update to a new
27 incoming Assistant Deputy Minister. There is a
28 more up-to-date version available.

29 Q Okay.

30 MR. LeBLANC: As I recall, or mentioned before, was
31 provided to the Deputy Minister to provide to the
32 CESD.

33 MR. MARTLAND: If I could ask this be marked as the
34 next exhibit, please.

35 THE REGISTRAR: Exhibit 650.

36
37 EXHIBIT 650: Management Action Plan, DFO &
38 EC Response to May 2009 CESD Audit Report and
39 Progress Made, October 28, 2010
40

41 MR. MARTLAND:

42 Q And I'll try and approach it using this document,
43 but certainly if there's different information or
44 new information that you can provide, we'd
45 appreciate that. I think we have available the
46 newer version, too, if you can tell us, Mr.
47 LeBlanc, if we should be moving to look at that.

1 The question I have first is on page 2 of
2 this. If we look at paragraph 1.80, and I'll read
3 it out, the "Recommendation", which comes from the
4 2009 CESD report summarized here:

5
6 Fisheries and Oceans Canada should determine
7 what actions are required to fully implement
8 the 1986 Habitat Policy and confirm whether
9 it intends to implement all aspects of the
10 Policy.

11
12 The "Response" in the next column:

13
14 The Department accepts this recommendation
15 and, by March 2010, will determine what
16 actions are required to fully implement to
17 Habitat Policy.

18
19 And then the "Action Taken" in the third column
20 refers to:

21
22 DFO [having] completed its review of the 1986
23 Fish Habitat Management Policy --

24
25 - and then a conclusion -

26
27 -- and will be renewing the Policy.

28
29 Has anything changed in terms of the response
30 that's set out there? Is that the Department's
31 view of the response to that recommendation from
32 the CESD?

33 MR. LeBLANC: That is consistent.

34 Q I want to try and ask you this question, just to
35 help me understand, because I wonder if there's a
36 sense in which saying that the policy will be
37 renewed is a way of not answering the question of
38 whether the Habitat Policy itself is being
39 implemented or whether it should be implemented.
40 In other words, a cynic might look at that and
41 say, "Well, that's not an answer as to whether
42 this policy is going to be implemented and what
43 steps should be done to implement it," but rather
44 sort of saying, "Well, hang on a second, we're
45 going to move to a brand new policy." I'm not
46 saying that's my view of it, but I'd like to have
47 your response to that perspective.

1 MR. LeBLANC: Well, in the review of the Habitat
2 Policy, what we looked at is the implementation of
3 the eight strategies, and in many cases we do
4 implement many of these, the focus being on
5 Strategy number 1, protection and compliance; mind
6 you, most of resources are dedicated to that. But
7 many of the things have now been sort of rolled up
8 in other things. So, for example, cooperative
9 action and outreach, and public education, and
10 information, and consultation has been rolled up
11 into partnering. Most of the partnering effort
12 that we do in engaging others from industry, NGOs,
13 and provinces and territories and municipalities,
14 are done under that umbrella. We do provide some
15 support for habitat improvement, but very low
16 across Canada. Science is supporting our program,
17 so that's scientific. And monitoring, we started
18 enhancing that capacity. So in many cases, we do
19 implement all of the strategies.

20 We have an estimated, and we were told by our
21 Deputy Minister and the Deputy Minister at the
22 time mentioned to the Commissioner "This is not
23 something that you can recommend that we increase
24 our resources, and it should be neutral in terms
25 of that. Just recommend where we are not doing
26 what we're supposed to do." So the level of
27 effort that we spend on each of these has not been
28 estimated, and any estimate of whether we need
29 additional resources has not been done.

30 Q And appreciating what you've just said, that there
31 hasn't been a precise analysis of, if you will,
32 the costing or the nature of the resourcing that
33 you'd need, could you give us, though, your sense,
34 is this far out of reach? Is this unattainable,
35 absent a massive shift in funding?

36 MR. LeBLANC: Well, I do believe that we can maybe
37 rebalance some of the things in the policy that we
38 should be doing some more monitoring by trying to
39 streamline the regulatory review process, while
40 maintaining the effectiveness in terms of
41 protecting and conserving the resource. But we, I
42 believe, that we've been using our resources to
43 the best that we can that are allocated, in order
44 to focus on first and foremost our regulatory
45 responsibilities, which is embedded in the first
46 strategy of the policy. But like everybody else,
47 we could use -- everybody could use additional

1 resources, so, you know, that is something that
2 would help us to implement some of the other
3 aspects. But the level of those resources, nobody
4 has made any estimate.

5 Q Mr. Hwang, from your point of view operationally,
6 have you ever seen an assessment of what would be
7 required to fully implement the Habitat Policy?

8 MR. HWANG: No, not anything that's come across my desk
9 nationally. We've undertaken a few exercises, I
10 would call them, kind of table top type exercises,
11 with some experienced staff or managers to sort of
12 estimate that out and, you know, we've created a
13 few relatively ad hoc type charts or summaries and
14 things like that to make an effort in that regard.

15 Q Mm-hmm.

16 MR. HWANG: But there's been nothing formal done.

17 Q And what's been, and I appreciate that's an
18 informal process, and I take it it's people around
19 the table doing their best to get a sense of the
20 magnitude of the work involved, could you give us,
21 though, just what conclusions you reached?

22 MR. HWANG: Well, the details are a bit fuzzy, because
23 it was a while ago now. But I could say that at
24 the time we thought we needed more resources, but
25 not infinitely more. It was, if I remember
26 correctly, in the Interior we were looking at
27 something around 30 to 35 was the number based on
28 this, again, desktop-type exercise that we had
29 done of Habitat staff.

30 But that was also with the understanding that
31 the way we currently operate in the Department in
32 this region, we also have the Salmon Enhancement
33 Program that operates under the same umbrella in
34 our region, but as a separate subprogram that
35 looks after some things that are tied very
36 directly to the Habitat Policy. An example of
37 that being we have a Habitat Restoration Unit,
38 both within our area and all the other areas in
39 our region, that do focus on that kind of work,
40 which is a Habitat Policy strategy, but that is
41 not resourced from within the Habitat Program
42 nationally.

43 Q Ms. Reid.

44 MS. REID: Well, I think on the question of whether
45 we've implemented the policy, if you look at the
46 eight strategies, at least in the Pacific Region,
47 you can certainly make the argument that over time

1 we have implemented each of those eight strategies
2 in varying degrees, and as funding becomes
3 available, we've focused on different parts. And
4 so previously when we had what we call B-base
5 money, there was a big emphasis focus on
6 stewardship type activities, which is consistent
7 with one of the strategies. You could argue that
8 some of the Science research work, indicator work
9 as part of what the Wild Salmon Policy has done,
10 as Jason has already spoken about the Salmonid
11 Enhancement Program, that's obviously a big focus
12 on not just community programs, but restoration
13 activities, as well. And so if you like, we could
14 go through each of those strategies and talk about
15 how they've been implemented in varying degrees.

16 I think what isn't happening right now is we
17 don't have an even approach to how the policy is
18 being implemented. And so in the Habitat Program
19 you've got, you know, a major focus on the more
20 regulatory aspects of it, of the conservation and
21 protection. In SEP you've got a focus on the
22 enhancement, on the stewardship pieces. And
23 there's bits and pieces.

24 And in order to make an estimate of what's
25 required in order to fully implement the policy, I
26 think it would be tough because first you'd need
27 to say, well, how much do we want to implement
28 each of those elements, and, you know, it's in
29 some degrees it could be infinite. So you need to
30 kind of make an assessment of, so for each of
31 those eight elements, how far do we want to go,
32 and then how much of a, you know, effort do we
33 want to put into each. And then kind of do that
34 evaluation. And so the numbers could be quite
35 variable depending on where you want to put your
36 focus and emphasis.

37 MR. MARTLAND: Mr. Commissioner, I note the time, and I
38 wonder if I might canvass whether we might have a
39 ten-minute break. I'm trying to see if I can
40 finish my questions before the midday break at
41 12:30.

42 THE COMMISSIONER: Certainly.

43 MR. MARTLAND: If that's agreeable. Thank you.

44 THE COMMISSIONER: Thank you.

45
46 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)
47 (PROCEEDINGS RECONVENED)

1 THE REGISTRAR: Order. The hearing is now resumed.
2 MR. MARTLAND: Thank you, Mr. Commissioner. Mr.
3 Bisset, I'd like to make reference to the PPR,
4 page 20, I think that will be page 24 of the
5 screen version. Paragraph 48 is what I'll refer
6 to at the bottom of that page to start with.
7

8 EXAMINATION IN CHIEF BY MR. MARTLAND, Continuing:
9

10 Q This, and I'll just say this, this is the part in
11 the PPR where we've really reviewed and summarized
12 some of the previous findings and recommendations
13 made in reports and, in particular, Auditor
14 General and CESD reports. So I'll review them
15 quickly and then ask for comments from any of the
16 panellists who'd care to give them on the status
17 of the recommendations that may have been made, on
18 whether, on the one hand, this is a recommendation
19 where there's been real work and the
20 recommendation or the point can be considered
21 resolved or concluded, partially resolved, or
22 whether the criticism or comment is just as valid
23 as when it was made.

24 So let me start, first, with paragraph 48:
25

26 In 1997, the Auditor General examined the
27 sustainability of the resource base for
28 Pacific salmon. He found that the department
29 had not developed an acceptable, standardized
30 measure of [fish] habitat productivity.
31 Moreover, the Auditor General's report
32 suggested an accumulation of small impacts
33 from small-scale developments "are probably
34 the source of the slow net loss of habitat
35 that is occurring."
36

37 Mr. Hwang, why don't I try starting with you with
38 this and I'll then move to the other panellists.
39 MR. HWANG: Well, to the first part of that point, the
40 habitat productivity standard measure, I think,
41 has been -- we've made some progress in that by
42 way of the Strategy 2 work in the Wild Salmon
43 Policy. I think there are measures in place and
44 we have a methodology and a series of criteria
45 that exist where if we chose to go and undertake
46 the analysis at a conservation unit level, we
47 could actually get a picture of where things stand

1 at that conservation unit kind of framework.

2 We don't really have the ability on a more
3 detailed scale to do that kind of analysis on a
4 site-specific basis, on an operational basis. It
5 is, I would say, academically or technically
6 possible. There have been a few circumstances
7 where there have been specific approaches
8 undertaken to try to get to that, but for the
9 general day to day kind of habitat development
10 referral we would get, we really still lack an
11 operationally-available methodology to go and do
12 that, and it may not be possible even to come to
13 that kind of approach.

14 On the second part of that, which is with
15 regard to the accumulation and the slow net loss
16 of habitat, I would say that that trend, by my
17 observation, is still occurring. It's occurring
18 from, I think as I spoke to earlier, a number of
19 different sources for a number of different
20 reasons, and I think the Department is aware of
21 it. We're doing what we can. We're trying to
22 prioritize the resources that we've got to the
23 most effective things.

24 But at this juncture, I would also say that
25 there are many things that are still out there
26 that you would do if you had the means or that
27 even others could do if they saw it as a priority.

28 Q Ms. Reid, do you have comments on these findings
29 from the Auditor General's report in '97?

30 MS. REID: No, I don't have anything to add on this.

31 Q Mr. LeBlanc?

32 MR. LeBLANC: Nothing more to add. I think that Jason
33 has pointed out the difficulty of operationalizing
34 a methodology for productive capacity at a site
35 specific basis.

36 There has been quite a bit of work done by
37 the researchers and there is a paper in
38 publication by Minns and Randall, Dr. Minns and
39 Dr. Randall, and co-authors in terms of trying to
40 identify some of the standard methodologies
41 measures, but they are pretty complicated and
42 usually better done at a broader, larger scale
43 level. The other thing is, on the other point,
44 and we are still struggling with finding the
45 silver bullet to allow us to better measure
46 productive capacity.

47 The other is, I think, the point on

1 cumulative impacts, and again we lack approaches
2 and methodologies for assessing accumulative
3 impacts, because we do these projects one at a
4 time and although we do look at other impacts in
5 the system, there is no standard approach or
6 methodology that can be used to apply a cumulative
7 impact assessment approach.

8 Q Let me turn to paragraph 50 of the report. In
9 2004, the CESD has a report specifically on salmon
10 habitat. The second sentence reads:

11
12 The Commissioner found "indications that
13 habitat loss is continuing" and that
14 implementation of the 1986 Habitat Policy
15 "does not seem to be working." It suggested
16 the Department "re-examine the objectives of
17 the policy and make it work."
18

19 And I think this resembles some of the 2009 report
20 and comments about the implementation of the
21 Habitat Policy and the status of that. So I'll
22 leave that and then also ask about paragraph 51 at
23 the same time.

24 This is a report in 2009 on fish habitat,
25 generally, from the CESD, and in the second line
26 you'll read that:

27
28 In the 23 years since the Habitat Policy was
29 adopted, many parts of the Policy have been
30 implemented only partially [...] or not at
31 all.
32

33 That's the point we were, in part, addressing
34 before.
35

36 The report explained that because the
37 Department "does not measure habitat loss or
38 gain[, it] cannot determine the extent to
39 which it is progressing towards the Habitat
40 Policy's long-term objective of a net gain in
41 fish habitat. There has been little progress
42 since 2001[.]
43

44 If it's of assistance to use the map, Mr. LeBlanc,
45 maybe I'll ask you first, if you'd like to use the
46 map, if that's helpful, you're welcome to, but
47 really I'd like your response to that comment from

1 the CESD report, please? Sir, sorry, your
2 microphone is --

3 MR. LeBLANC: Sorry, I apologize for that. It is true
4 that we have no indication whether we are gaining
5 or losing habitat, and to see what is -- is
6 whether things are working or not. We are
7 pressing to get, as we were mentioning before, to
8 develop some indicators that would allow us to
9 measure and collect information to indicate
10 whether we are making any progress towards a long-
11 term objective of net gain and/or to a report of
12 whether we have no net loss occurring or what.

13 And monitoring is an important part of that,
14 what we call monitoring the health of the system,
15 and again, we need to engage our science
16 colleagues to provide us the indicators and have a
17 way of collecting the data and information to be
18 able to find out some trends in terms of the
19 status of fish habitat, but progress is slow in
20 that area.

21 Q Mr. Hwang, anything to add on that?

22 MR. HWANG: Well, to the point, in general, about the
23 ongoing decline, the slow net loss, and the
24 department's reaction to it, in my view, there's a
25 really important piece of that to understand,
26 which is DFO is not an agency that walks out and
27 controls every single thing that happens on the
28 land base in the Fraser River, in the Province of
29 British Columbia, certainly.

30 We have a very defined and specific authority
31 and role that's empowered by the **Fisheries Act** and
32 the habitat provisions and the Habitat Policy, and
33 we do our best with that to influence land use and
34 water use, watershed base planning-type decisions
35 in favour of fish. But we don't have a veto or a
36 control stick for every single thing that happens
37 out on the land base, and the sort of analogy that
38 people before me have coined in this regard is
39 that fish habitat is basically composed of land
40 and water and the challenge of managing and
41 regulating fish habitat in Canada and in British
42 Columbia is that land and water are managed by the
43 provincial governments; that's where the authority
44 lies.

45 And so what we have to do to achieve the fish
46 habitat management objective is to work, ideally
47 cooperatively, with the entities that manage fish

1 and water to get outcomes that are positive and in
2 favour of sustainable fisheries management.

3 So the Department's response, I guess, to
4 these series of audits that are showing some
5 similar findings has been to recognize that
6 they're happening and to do what we can do try to
7 get to more effective ways to address some of
8 these things. The results are imperfect, I would
9 agree, and I don't dispute the findings that are
10 in the reports at all, but I would also say that
11 it's really important to understand that it not be
12 taken that the Habitat Policy or the Department's
13 habitat program is ineffective and perhaps not
14 useful, because the alternative to perhaps not
15 having a habitat program or to having a
16 substantial change in the Habitat Policy, to
17 perhaps put something out there that's achievable
18 but maybe not striving for an ideal, which is no
19 net loss, would be to the detriment of the
20 fisheries resource, in my opinion.

21 Q Maybe I can pickup on this point about cumulative
22 impact and the notion that 1,000 small cuts may
23 lead to an ultimately very big consequence. And
24 I'll do this with a move to moving into the
25 discussion about the EPMP, which stands for the
26 Environment Process Modernization Plan.

27 Mr. Hwang, can I ask you: Do you think
28 there's something inconsistent or incompatible
29 between two different things? First of all, what
30 I take from EPMP as being a focus on a risk
31 management framework that might screen out some of
32 the smaller projects and, along with that, a focus
33 on major projects and, on the other hand, exactly
34 that sort of concern about cumulative impact
35 arising from hundreds or thousands of small
36 development projects.

37 MR. HWANG: I'm not sure I would frame it as an
38 inconsistency in that the rationale for a risk
39 management approach ties directly to most
40 effective use of the resources you have at your
41 disposal. So, on one hand, one might say that it
42 would be perhaps an error to overlook the smaller
43 things, because we know the smaller things are
44 contributing to negative results for fish in fish
45 habitat. But if you have fixed resources and you
46 only go after the smaller things, there's a lot of
47 them, then you are making a trade-off against

1 going over the more significant or substantive
2 things.

3 So in my view, what the Department has been
4 trying to do under this risk management approach
5 is, "Well, with fixed resources, how do we deploy
6 them most effectively?" The cost of that is that
7 there are smaller, what are sort of framed as
8 lower-risk things, that are not getting the degree
9 or review or oversight or scrutiny that a
10 government could apply in terms of oversight. But
11 given the resources that we have at our disposal,
12 the approach is a useful way to try to prioritize
13 and choose the place where you're going to make
14 the best progress with what you can deploy.

15 Q Is it not even necessarily a question of
16 overlooking small projects as not necessarily
17 under EPMP being aware of them in the sense that
18 because it's a voluntary reporting regime, as I
19 understand it, there may be things that go on
20 which don't even come onto the radar of the
21 Department; is that true?

22 MR. HWANG: Yes, that would be a change that's
23 happened, operationally, with the deployment or
24 rollout of EPMP where there were all kinds of
25 projects that would happen on the land base that,
26 through various referral arrangements we would
27 have with other agencies, our department would
28 have an opportunity to review and consider and
29 provide feedback or guidance on those kinds of
30 projects, and there have been a number of those
31 things that have been screened out, I would call
32 it, of our review process.

33 But it's not an idea that didn't exist before
34 EPMP in our region in particular, which I can
35 speak to more directly, because in our region our
36 staff who had been working in this kind of field
37 for a long time recognized that there were certain
38 projects that were relatively routine, we saw a
39 lot of them, and there were more effective ways to
40 put the guidance out and the risk was relatively
41 low to a project proponent to say, "You know, if
42 you do it like this, you're not going to have a
43 particularly problematic effect to the resource
44 and you don't have to bring it to us if you can
45 follow these kinds of guidelines."

46 So there were guidelines and best practices
47 and things like that in place prior to EPMP. What

1 EPMP did was take that, put it into a national
2 context and, to some degree, perhaps took a few
3 things that we were looking at before off the
4 plate and also, then, I guess, created a situation
5 where we don't have a regulatory awareness of that
6 activity anymore.

7 Q I don't know if the analogy is to zooming out, but
8 we have panellists from a regional -- first of
9 all, an operational within an area, then a
10 regional, then a national level, so I'll step back
11 one step. Ms. Reid, do you have comments on these
12 points I've been asking about?

13 MS. REID: Yes, I do. And so speaking to EPMP, I think
14 that it's important that we prioritize where we
15 put our resources, from a regulatory perspective,
16 but I think you need to look at EPMP within the
17 context of the Habitat Management Policy more
18 broadly and think about those other strategies
19 that are in place.

20 And some of the other strategies include
21 aspects of planning and partnerships, and I think
22 that's a very important aspect to answering the
23 question about, "Well, what about the cumulative
24 impacts? What about those small projects?" And
25 so DFO can't do it all. DFO said, "Okay, well,
26 with the resources we have, here's how we're going
27 to spend our time and energy."

28 But in our region, we have made a very
29 explicit decision to say, "Well, we're not going
30 to spend all our time and energy on the regulatory
31 process, because we think there's other aspects
32 that are important as well." For example,
33 stewardship, partnership, those types of things.

34 We have continued to put the focus and
35 attention on them in various ways, either through
36 small outreach stewardship-type initiatives that
37 the habitat program does, or through support
38 through the Salmon Enhancement Program, through
39 work on the Wild Salmon Policy through our
40 cooperative relationships with the Province.

41 And it's that broader package, I think, that
42 you need to look at overall to say, "Well, what's
43 happening with habitat protection in B.C. or with
44 the Yukon?" You can look at EPMP and say, "Well,
45 how is DFO spending its money?" I think you need
46 to kind of look more broadly and say, "How is the
47 program being implemented overall and what is the

1 role of those other individuals?"

2 And I would say that watershed planning, at
3 whatever scale you're talking about it, is a very
4 important element of protecting habitat and really
5 addressing that cumulative impact issue.

6 Q Mr. LeBlanc, I thought I saw you nodding along?

7 MR. LeBLANC: Yes, I'm quite in agreement on the last
8 point that was raised about the EPMP -- let me
9 just put it in a context. EPMP was one of several
10 continuous improvement initiatives that we
11 undertook to make the program more effective, more
12 transparent, predictable, timely and coherent in
13 the decision-making process, and also to engage
14 others in terms of delivery of the protection of
15 fish habitat.

16 So a large effort in the EPMP was on other --
17 there's a risk management framework, but there's
18 also partnering, and we did, through that process,
19 both the blueprint and the EPMP which came after
20 that, put a lot of effort in partnering.

21 We also, in the EPMP, I mean, there was a
22 large amount of effort put on trying to address
23 the gap that we had in terms of compliance
24 monitoring, so habitat compliance monitoring
25 became one of the key elements of that. As well,
26 we had to align our resources to focus on major
27 projects, a continuing priority of the Federal
28 Government, which is now, you know, translated
29 into what they called a major project management
30 office.

31 So we did realign things, re, you know, focus
32 to the risk management, as Jason was saying, and
33 Rebecca, that we were able to prioritize what some
34 of the -- where we should put our efforts in order
35 to better protect the resource.

36 The other thing that I think Rebecca
37 mentioned is the need to work with the provinces
38 who really have the mandate for watershed planning
39 or for water and use planning and to be able to
40 integrate our requirements for maintaining the
41 sustainability of fish and fish habitat within
42 those plans and being able to develop some
43 standards and thresholds which can be used to make
44 sure that we don't -- we maintain the productivity
45 of the system.

46 Q Let me carry on with the EPMP and I should, in
47 fact, just pause to make sure I put on record the

1 dates of these different reports. The HCM is
2 added a year later. Is the EPMP 2004?

3 MR. LeBLANC: Yes, it is.

4 Q And so HCM is added to habitat compliance, and I
5 never get this right --

6 MR. LeBLANC: 2005.

7 Q -- Habitat Compliance Modernization is the
8 proper --

9 MR. LeBLANC: Yes.

10 Q -- term? 2005. Ms. Reid, there was a diagnostic,
11 I think - it's mysterious to me as to why people
12 are using diagnostic as the French pronunciation -
13 but the diagnostic is some work that you were
14 involved in. If you could please give us a quick
15 understanding of what the diagnostic coming out of
16 concerns in the region about EPMP, I take it; is
17 that correct?

18 MS. REID: Yes. So in, I believe it was, yes, the end
19 of 2006, I was taking on the new role as regional
20 director for OHEB. One of my first tasks was with
21 regard to implementation of EPMP in the Pacific
22 Region, and there was some resistance or perceived
23 resistance by staff in this region around some of
24 the elements of implementing EPMP.

25 So as a result, I worked with one of my
26 managers, who took on an assignment to essentially
27 do a diagnosis of the problem and then to come up
28 with a strategy on how to resolve it. And so
29 through that work there was a paper written which
30 describes some of the problems that were
31 experienced. It was derived, through focus
32 groups, discussions with staff. There was a
33 changed management-type approach embedded into a
34 plan by which we moved forward to implement EPMP.

35 I should say that there was an implementation
36 plan as part of EPMP nationally, and that was
37 acknowledged, but the view was, in the region,
38 that there was an extra effort required to ensure
39 complete implementation of the work.

40 MR. MARTLAND: And to complete the documentary record
41 on this, and some of these are documents that are
42 not referenced in the PPR, I think one of them,
43 and maybe the two that I'm going to, Mr. Bisset,
44 there were documents provided on Friday, including
45 the EPMP diagnostic, itself. Is that the
46 diagnostic?

47 MS. REID: That's right, the diagnostic.

36
PANEL NO. 27
In chief by Mr. Martland

1 MR. MARTLAND: Okay. If that could be marked as an
2 exhibit please.

3 THE REGISTRAR: Exhibit Number 651.

4
5 EXHIBIT 651: EPMP Implementation Project
6 Phase 1 Diagnostic
7

8 MR. MARTLAND:

9 Q And accompanying that, there was an e-mail. You
10 referenced a staff member doing this work. Was
11 that Bonnie Antcliffe, whose name is there?

12 MS. REID: That's right, yes.

13 MR. MARTLAND: And this is her e-mail, and it's
14 addressed to Mr. LeBlanc, you're cc'd on it. If I
15 could ask this be marked as the next exhibit,
16 please?

17 THE REGISTRAR: Exhibit 652.

18
19 EXHIBIT 652: E-mail dated August 15, 2007,
20 from Bonnie Antcliffe to Patrice LeBlanc, cc
21 Rebecca Reid, Subject: EPMP Report
22

23 MR. MARTLAND:

24 Q Indeed, what I will do, for the purpose of these
25 questions, I'll rely, at least briefly, on the
26 PPR, because there's a summary of some of the
27 concerns arising in the course of the diagnostic
28 work. The reference in the PPR, and I should say
29 these are documents the participants were handed a
30 hard copy this morning, sent around by e-mail, I
31 think, on Friday.

32 In the PPR, the reference, I believe, is page
33 33 of the Adobe version, page 29 and paragraph 70,
34 and you'll see reference, in paragraph 70, to the
35 diagnostic making some observations, identifying
36 some barriers to habitat staff's acceptance of
37 EPMP, some of which are listed there in the middle
38 of paragraph 70, a lack of success indicators,
39 personal values conflicts, and a perception that
40 EPMP would lower the bar for habitat protection.

41 There's an indication, in the next sentence,
42 that some staff did not see a link between EPMP
43 and the 1986 Habitat Policy and did not buy into
44 the rationale.

45 Those would seem to be some fairly
46 significant hurdles to bringing staff on board
47 with an EPMP approach. Could you comment on that,

1 please, and those concerns that were identified
2 and steps that have been taken to address those?

3 MS. REID: Yes, so that certainly was the outcome of
4 the series of focus groups and discussions that we
5 had with staff. Those were some of the
6 information that they fed back. And I think that
7 the view was that EPMP had been introduced in a
8 sort of a top down approach, and staff didn't feel
9 that they'd had enough input into, essentially,
10 it's design, and so it led to sort of a classic
11 case of resistance to change.

12 And I think some valid concerns about some of
13 the particulars that we've already talked about;
14 that is, what happens to those low risk projects,
15 those types of things, you know, how does the risk
16 management framework, how can it be applied
17 properly, what does it need.

18 And so the outcome of that diagnostic was a
19 work plan. It had a number of action items broken
20 into themes, you know, an important one being
21 communication. There was a question that I've
22 already spoken to around this issue of
23 socioeconomic balance so, you know, how do you
24 balance between conservation and socioeconomic
25 considerations?

26 And there was a question around an issue
27 around kind of workload and how you manage in the
28 Pacific Region or in British Columbia where there
29 is a huge amount of work for those habitat
30 practitioners, from a referral perspective, how
31 you actually get the work done in a meaningful
32 way.

33 And so eventually the work was boiled down
34 and boiled down to a point where we could actually
35 deliver on some of those action items. And in
36 addition to a concerted effort to improve our
37 communications, we also worked, ultimately, on a
38 triage, well, a number of different products, but
39 one of them was essentially a triage methodology
40 for managing the referral workload in the region.
41 And in addition, we also developed some internet
42 tools which would allow for better communication
43 with proponents or with people who thought they
44 were going to impact on habitat if they had a
45 project. There was a place for them to go to take
46 some of the front-end workload off of staff.

47 Q And if I might shift into asking you some

1 questions about, and all of the panel, some
2 questions about the Wild Salmon Policy. We
3 touched on Strategy 2, and I'll come back to some
4 of that. But Mr. LeBlanc, if I might start with
5 you, you are working, obviously, at national
6 headquarters, and your work over time, how often
7 have you had cause to refer to the Wild Salmon
8 Policy from 2005?

9 MR. LeBLANC: Limited opportunity. I think we did,
10 just like I think, there's two sets of similar
11 policies. One is the Atlantic Salmon Conservation
12 Policy, which is a bit similar to the Wild Salmon
13 Policy, that what we saw of it we were very
14 supportive of it because it is a much broader and
15 overarching policy framework than the Habitat
16 Policy and program, but it does support the policy
17 objectives for habitat management.

18 I've been saying that it is probably one of
19 the policy frameworks that is fairly close to what
20 I would call using an ecosystem-based approach to
21 managing fisheries resource and habitat. So it is
22 well supported, it's been approved by the deputy
23 minister's policy committee, so it is a policy of
24 the Department, and we do reflect on it as being a
25 solid policy framework for managing the fisheries
26 and, as I said, in an ecosystem way.

27 Q I think your answer suggested that this isn't
28 something that you're reaching to on your
29 bookshelf every week. When is it that you do look
30 to that policy for work you're doing?

31 MR. LeBLANC: Well, right at the moment we've been
32 asked -- my assistant deputy minister has asked
33 us, or one the senior ADM's committee and through
34 our ADM, assistant deputy minister, has asked us
35 to look at how do we apply an ecosystem-based
36 approach to managing our resources in the
37 department, our fisheries resource and habitat,
38 and oceans as well.

39 So we're now collecting some of the
40 information, doing some policy research, and
41 putting together a framework and looking at how
42 different regions have applied this approach
43 through their policy framework, so one is the Wild
44 Salmon Policy, so we've been looking at that one.
45 We've been looking at some of the work in the
46 Great Lakes, which the Ontario Great lakes area is
47 doing. And Environment Canada's approach to

1 ecosystem-based approach, as well as the Maritime
2 region's ecosystem approach to managing the
3 fisheries, and trying to learn from those and
4 pulling them together to do a broader national
5 framework for the Department.

6 Q Within headquarters, do you think the Wild Salmon
7 Policy is seen as really a regional, a Pacific
8 Region document?

9 MR. LeBLANC: Yes, I would think it's seen as a
10 regional policy framework, but it is for the, you
11 know, for important fisheries. I think we are now
12 starting to recognize the fact that it is
13 consistent with a broader approach of using an
14 ecosystem-based approach to managing the resource.
15 It has a lot of the features that should be part
16 of such an approach.

17 Q And we had a brief discussion earlier and some
18 questions about Strategy 2, which is the
19 assessment of habitat status within the Wild
20 Salmon Policy. The question, I suppose, at a
21 broader level, is whether that Strategy 2 work,
22 number one, is it being implemented by the Habitat
23 Management Program; number two, should it be? Can
24 it be?

25 MR. LeBLANC: It has to be, okay? It is probably not
26 done as well as it should be, but it needs to be,
27 because one of the things that are a
28 transformation of our program is to be able to
29 establish standards and report on the status of
30 fish habitat to Canadians. As you may have seen
31 in some of our annual reports, we do report on
32 outputs: how many referrals; how many
33 authorizations; how many convictions. That's no
34 indication for Canadians to be able to understand
35 whether our work is ending up in maintaining
36 healthy and productive habitat, so we do need to
37 have some form of measurement and we need to be
38 able to assess the status of fish habitat.

39 It was a major discussion at one of our
40 forums that we held a few months ago where we
41 brought some of the U.S. experience, in terms of
42 implementing the National Fish Habitat Action
43 Plan, where they are starting to report on the
44 status of fish habitat and are committed to doing
45 that every five years.

46 Q Okay. Ms. Reid, could you offer your perspectives
47 from the regional perspective on these points,

1 please?

2 MS. REID: On the utility of the Wild Salmon Policy?

3 Q Well, let me start with the question of the
4 implementation of Strategy 2 and whether that is
5 work that does or should land squarely on the desk
6 of Habitat Management Program?

7 MS. REID: Well, clearly, I think that the Strategy 2
8 is important work that needs to be done. There's
9 always been an internal debate about who should do
10 the work, but within the Department of Fisheries
11 and Oceans clearly that Strategy 2, the status
12 indicator work, needs to be completed.

13 The question of whether it's habitat staff
14 that do it or science staff, I think, is simply a
15 matter of resourcing the activity. Once the
16 Department agrees that, yes, it's important, we
17 need to find the money, then we can simply work it
18 out between ourselves of who actually does the
19 work.

20 Q And you described that as an internal debate. I
21 take it it's an ongoing debate. To your eyes, is
22 there an answer? Has the ball stopped moving on
23 that debate?

24 MS. REID: Well, I think that there's some debate
25 around who's best placed to do that work. Habitat
26 program has been funding the work up until now.
27 We have had support from the science branch. So,
28 I mean, I do view it as sort of an internal
29 conversation, not atypical of many conversations
30 we have between branches about how activities are
31 specifically funded.

32 MR. MARTLAND: Maybe I can follow up that question.
33 Mr. Bisset, if you could please look to number 22
34 on our exhibit list?

35 Q And in a moment you'll see on the screen -- so I
36 won't read it out; that's apparent what it is.
37 This dates to November of 2008. This is a
38 presentation on the connection between HMP and the
39 Wild Salmon Policy, WSP; is that correct?

40 MS. REID: Is this the Heather Stalberg presentation?

41 Q I was hoping you could tell me.

42 MS. REID: I think it is, yeah.

43 Q We can look through it, if that's of assistance.

44 MS. REID: What number is it? What tab is it?

45 Q I'm sorry, it's number 22 in the binder there. It
46 should be.

47 MS. REID: Yeah, okay, it is.

1 Q That is?
2 MS. REID: Yeah.
3 MR. MARTLAND: Thank you. If this could be marked as
4 an exhibit, please, Mr. Registrar?
5 THE REGISTRAR: It's already marked as Exhibit 204.
6 MR. MARTLAND: Oh, it already is? I'm sorry, I
7 overlooked that. Thank you.
8 THE COMMISSIONER: What exhibit number is it?
9 THE REGISTRAR: It's already marked as Exhibit 204.
10 THE COMMISSIONER: 204, thank you.
11 MR. MARTLAND: I gather it's Exhibit 204. I almost
12 said "2004" and I'm concerned that, Mr.
13 Commissioner, that may prove true one day, but not
14 today.
15 Q If we could look to page 7 of this document,
16 please? Ms. Reid, I take it, just to narrate, if
17 I might, or see if I understand this correctly,
18 this is a presentation that was prepared under
19 your supervision, and is it fair to say it
20 represents an attempt to really making the case
21 for integrating the implementation of the Wild
22 Salmon Policy into the work that the Habitat
23 Management Program does?
24 MS. REID: Yes, so the context of this presentation was
25 in the context that we'd had a new director
26 general, a national director general for the
27 program. We were introducing the Wild Salmon
28 Policy to that individual, and also trying to
29 resource the work that was required in order to
30 complete our obligations under Strategy 2, and so
31 the deck was created in order to have that
32 conversation and, as you say, tell that story.
33 Q And is it right to say that after attempting to
34 make that case or set out that view of things,
35 that -- what did happen?
36 MS. REID: Well, the work continued. I think,
37 certainly nationally, the view was that from a
38 communication perspective we hadn't made a strong
39 case to situate the Wild Salmon Policy more
40 broadly within the Habitat Management Program.
41 But from an operational perspective, we continued
42 to do the work.
43 Q And one of the challenges, I imagine, and this is
44 why I've gone to page 7, is to ask: The sub-
45 heading there is WSP Disconnect With HMP, and it
46 talks about, in the first column:
47

1 WSP - monitoring predominantly environmental,
2 including cumulative effects, with some
3 efficacy.

4
5 Is efficacy, in that context, the same as
6 effectiveness monitoring? If you're not sure I
7 don't need you to guess at that. I just thought
8 I'd see if I --

9 MS. REID: I can't remember.

10 Q In any event, it talks about the WSP predominantly
11 looking at environmental monitoring and cumulative
12 effects and then really, in some intention to
13 that, a different thing in the second column,
14 under EPMP:

15
16 Habitat compliance modernization (HCM), [is]
17 predominantly compliance and efficacy.

18
19 So in a sense, there's a difference in terms of
20 what the work under EPMP is and the questions that
21 are being asked or the work to be done under WSP;
22 is that the case?

23 MS. REID: So what I was trying to do with the Wild
24 Salmon Policy was find a home for it within the
25 Habitat Management Program, and it seemed to be
26 that there is some logic to connect it up to the
27 HCM program. But the problem with it is
28 essentially there's a scale issue that, you know,
29 the Wild Salmon Policy, the habitat indicator work
30 is at a more of an ecosystem level broader scale
31 and the work that the habitat practitioners
32 specifically need is at a more specific scale.
33 And so that was the bit of the disconnect between
34 the two.

35 And so I don't think there's any
36 disagreement. And you heard Patrice say that it's
37 very important, from an ecosystem-based management
38 approach, to have the sorts of habitat status
39 information that the Wild Salmon Policy Strategy 2
40 provides. But that, in and of itself, is not
41 enough. You need to continue to have your HCM
42 program actually monitoring on the ground and
43 doing that type of very specific work,
44 particularly as it relates to the compensation
45 programs and that sort of thing, that I don't
46 think that the Strategy 2 work would ever get to
47 that scale.

1 Q Mr. LeBlanc?

2 MR. LeBLANC: Just to add to that, and to put it in a
3 broader context of monitoring for habitat, we see
4 a continuum of compliance effectiveness which is
5 at the project level in health monitoring or
6 ecosystem-based monitoring of the health of
7 habitat at an ecosystem level. And as you go from
8 one to the other from compliance monitoring,
9 habitat management has a significant role and a
10 major role with CNP, Conservation Protection, to
11 do the compliance monitoring and auditing that
12 feeds into, and is very important to have that in
13 terms of determining effectiveness monitoring.

14 Our role there is to provide the methodology
15 to proponents who are responsible for doing the
16 monitoring, making sure that they follow the
17 proper procedure, they report back, and we
18 evaluate that. And you have a role of science to
19 determine the scientifically, statistically-valid
20 methodology that can be applied consistently
21 across Canada so that you can compare things. And
22 also the review, as I was mentioning before about
23 the peer review.

24 When you get into ecosystem-based kind of
25 monitoring, you need indicators, you need a lot of
26 data. In the example in the U.S., is that's where
27 science takes a much more important role, and in
28 the U.S. the USGS, the U.S. Geological Service,
29 the science element of it, does the collection of
30 data based on indicators they want to use for
31 measuring the status of habitat, and they provide
32 an independent report to the American people, or
33 they will be.

34 So I see, as we go along, habitat plays less
35 of a role, but it's always involved in all of
36 these habitat management programs, but science
37 takes a much more important role as you go down to
38 the -- they don't have a role in compliance
39 monitoring, they have a role in effectiveness
40 monitoring, but they have a greater role in the
41 health monitoring.

42 Q Mr. Hwang, from your perspective, in the BCI, the
43 interior region, or area, rather, are there
44 habitat indicators under the Strategy 2 work that
45 was done by Heather Stalberg, are those habitat
46 indicators being actively used?

47 MR. HWANG: Not on a general operational basis. They

1 have been used on a couple of - I'm not sure what
2 you call them - pilot or preliminary run-through-
3 type exercises to help test and validate them.
4 But for the most part, what we see them as, at the
5 operational level, is a good idea. We can see the
6 linkage and the benefit, but at this point we are
7 not part of and are not aware of any specific
8 action to go out and undertake the indicator
9 establishing exercise.

10 And it's a big job. That's the thing. It's
11 not like, well, if we decided to do it on Monday
12 we could have it done in two weeks. Looking at
13 the scale of the geography and the complexity of
14 the indicators that are out there, it's a big job
15 and I think that's what concerns operational
16 habitat staff to some degree, is it looks like a
17 good idea, but to mobilize something like this is
18 going to take some effort, and at this point we
19 don't see the opportunity coming down the pipe
20 that is going to enable that. That's the
21 challenge.

22 Q What about the WSP habitat status report, is that
23 something that your area has been involved in
24 creating?

25 MR. HWANG: Are you talking about an actual report for
26 a conversation unit, or more broadly, the habitat
27 status indicators?

28 Q For the conservation unit.

29 MR. HWANG: Again, we've worked on, I think, one or two
30 initially as pilots, but we haven't done them
31 strategically or broadly across our area.

32 MR. MARTLAND: I'm about to move to a different topic.
33 I don't know if other panellists have comments
34 picking up on WSP issues? Then I'll simply move
35 on, then.

36 I have a few questions with respect to the
37 Province's role or involvement in habitat work.
38 Mr. Commissioner, I'd like to preface that
39 question by offering a comment to address a
40 concern the Province may hold on this front. As
41 you appreciate, Mr. Commissioner, this is a
42 Federal Commission of Inquiry and the terms of
43 reference obviously focus, in particular, on the
44 DFO and the Federal Government. As will be
45 apparent, in particular in this PPR, the focus is
46 very much on the DFO and the Federal Government.

47 I have some questions that touch on

1 agreements and work between the DFO and the
2 Province. I don't have provincial witnesses that
3 are part of this panel or part of the overview
4 hearings, although I think there's a much better
5 likelihood that there would be provincial
6 witnesses when we move into specific habitat
7 effects.

8 So I simply say that to make clear the basis
9 on which I'm asking some questions. There may be
10 at least one question which asks a witness's
11 perspective on the Province's level of involvement
12 or presence in this area. And in a situation
13 where I'm asking that sort of question for a
14 perspective, just to be clear about it, I'm not
15 asking that witness's answer to stand as the only
16 answer possible on it; there may be another side
17 to it.

18 With that as a preliminary comment, if I
19 might try and approach this through the - and I'll
20 try and do it without going to the document - the
21 CESD 2004 report. And I'll begin, Mr. Hwang, with
22 you, and then I'll ask the other panellists if
23 they have comments to add to.

24 Q The 2004 report raises some comments and
25 criticisms about the coordination between the
26 Province. Could you comment on the level of
27 coordination between the Province and the DFO and
28 then, more generally, on the Province's
29 involvement in protecting fish habitat and any
30 comments that tie us back to Fraser River salmon
31 habitat are helpful.

32 MR. HWANG: Well, that's a pretty broad-ranging
33 question, but I'll try to --

34 Q Yes.

35 MR. HWANG: -- keep it reasonably concise here. From
36 our operating level within an area, we don't see a
37 lot of guidance coming from the respective
38 headquarters in terms of how we're going to
39 coordinate between our agency, Fisheries and
40 Oceans, and the habitat program and the Provincial
41 Government and related agencies. We understand
42 that there has been an agreement sort of
43 structured in place, but it basically, you know,
44 I'll use the sort of layman interpretation, it
45 said, "We should work together. This is a good
46 idea." "Yeah, we should." "And what you should
47 do is go out and locally establish some

1 cooperative committees underneath this kind of
2 framework," and it didn't really progress past
3 there.

4 So it's a good idea and I think at the
5 practicing level staff in our agency and the
6 provincial agencies understand the value and the
7 responsibility as government to cooperate, and
8 there are many instances where we do that quite
9 effectively and usefully.

10 And example would be, say, on Shuswap Lake,
11 which I spoke to earlier, there has been an
12 initiative that the acronym is SLIPP, it's the
13 Shuswap Lake Integrated Planning Partnership. It
14 was largely the brainchild of a provincial
15 government local employee, a longstanding staff
16 member out of the Kamloops office, but what he did
17 is he went and mobilized support from our agency,
18 other agencies, local governments, First Nations,
19 some industry people, you know, within his agency,
20 and this has turned into a multi-stakeholder,
21 multi-level, multi kind of interest, I guess,
22 planning exercise to try to look at all of the
23 development, all of the habitat resource values
24 and other natural resource values on the lake, and
25 try to come to grips with what some of the
26 current, pressing problems are and look towards
27 sustainable outcomes into the future.

28 So I use that example to illustrate that at
29 the local level we have many examples where our
30 staff and provincial staff get along very
31 effectively. Sometimes our staff lead it,
32 sometimes provincial staff lead it. But there are
33 examples where things fall between the cracks as
34 well, in terms of an issue having some effect on
35 fish or fish habitat that doesn't get resolved as
36 effectively as it could, and it kind of balances
37 around between our agencies, provincial agencies
38 and local governments' development centres and
39 things like that.

40 Q Ms. Reid could you offer your perspective on the
41 relationship between the Province and your
42 department?

43 MS. REID: Sure. Because of the jurisdictional
44 complexities, it's clearly recognized both by the
45 Province and Canada, DFO, the importance of
46 working cooperatively and collaboratively, and I
47 think that you'll see there's been a number of

1 agreements struck to reflect the need to have a
2 cooperative relationship.

3 At the regional level, certainly I have been
4 involved in a number of committees with my
5 provincial counterparts in order to facilitate
6 those relationships. But I would agree with
7 Jason, is I would say that some of those broader,
8 overarching agreements, while are good in concept,
9 aren't necessarily operationalized as clearly as I
10 think someone from the area would like.

11 Q And this one example, the 2000 Canada-BC Fish
12 Habitat Management Agreement, is that an example?

13 MS. REID: That's an example, yes.

14 Q I interrupted you, sorry. Carry on.

15 MS. REID: Well, I think, just to kind of summarize,
16 that those relationships need to kind of be
17 ongoing and so that's the reason for constructing
18 those MOUs and arrangements that we do have.

19 I would say, at a working level, I think we
20 do have very positive working relationships with
21 the Province. At times where disconnects occur,
22 we have different directions, different mandates,
23 different responsibilities, and so we do need to
24 work cooperatively to make sure we match up our
25 respective interests.

26 Q Mr. LeBlanc, I don't know to what extent you're
27 intimately following or involved in BC/Canada
28 questions or if you have a national sense, vis-à-
29 vis other territories and provinces and the
30 relationships. Do you have any comments on these
31 questions?

32 MR. LeBLANC: Yes, I could. In the early 2000, the
33 ministers of the Council of Fisheries and
34 Aquaculture ministers that I spoke about made a
35 commitment to collaborate on habitat management
36 among provinces. The previous MOU that had been
37 written in B.C. was in 2000, and I think the
38 commitment was made in 2001/2002 with other
39 provinces. Since that time, we've only signed
40 four agreements: Nova Scotia; PEI; and Manitoba,
41 and one pending for Saskatchewan. It's been
42 pending for four or five years.

43 The complexity of it is even bigger, because
44 the ministers of fisheries that are around the
45 CCFAN, the Canadian Council of Fisheries and
46 Aquaculture Ministers, may not represent those
47 ministries that we deal with on a daily basis on

1 all provinces. For example, and I'm not aware if
2 it's the same in B.C., I can't recall because
3 there's so many reorganizations occurring in the
4 Province of B.C. that it's hard to keep up with
5 it, but in, for example, in New Brunswick, the
6 Minister of Fisheries I represent is responsible
7 for aquaculture and fish, plants and what have
8 you, but the ones that we deal with on a daily
9 basis for permitting is the Ministry of the
10 Environment or the Ministry of Natural Resource,
11 and they're disconnected from the CCFAN. So these
12 agreements are usually done with the
13 representative leading it from the CCFAN process.

14 These relationships are important, because
15 the MOU establishes sort of the scope of the work
16 that we would do together as well as establishes a
17 governance structure which allows for some, you
18 know, better accountability. However, we've been
19 criticized over the years, as you know, and as
20 you've seen in some of the CEFD reports, with
21 respect to accountability. It's fairly difficult
22 for provinces to agree to report back to the
23 Federal Government on how they've performed and
24 what have you, and that's been a sensitivity in
25 any of these agreements, reporting back to the
26 Federal Government.

27 But in many cases, as Jason was mentioning as
28 well, individuals in the field make it happen even
29 without having the formal agreement. It's the
30 leadership of certain individuals that take on
31 these tasks. It happens. It happens in many
32 provinces I see across Canada. Somebody garnishes
33 the resources of others, they leverage, they bring
34 people together, and they make things happen
35 irrespective of whether having an agreement or
36 not.

37 Q Ms. Reid, I had asked you a question about the
38 Canada-BC Fish Habitat Agreement. I don't propose
39 to go to that in any detail. It is number 21 on
40 our list. It's also discussed in the PPR. But
41 there are a number of things that are set out as
42 being contemplated in that agreement which I
43 understand by and large aren't presently
44 happening. And maybe I'll just run through one or
45 two of them and see if you can tell me if I'm
46 correct that those things are not occurring.

47 I understand it referred to a director level

1 Federal-Provincial Habitat Management Committee.

2 Is that something that's presently active?

3 MS. REID: Well, what we have right now is under the
4 PCFAM, Pacific Council of Fisheries and
5 Aquaculture Ministers, there's a working group,
6 Pacific Fisheries and Aquaculture Committee, PFAC,
7 and that is intended to be the director-level
8 committee between DFO and the Province.

9 Q So it plays a similar role; is that the thinking?

10 MS. REID: Yes.

11 Q Okay. Annual reporting on the status of
12 implementing the agreement?

13 MS. REID: I'm not aware of any reporting.

14 Q It's also referenced to a working group on data or
15 information sharing as well as a formal fish
16 habitat working group. Are those things, to your
17 knowledge, that are underway now?

18 MS. REID: There are terms of reference that have been
19 written for a habitat working group, but it hasn't
20 been enacted. And there have been a number of
21 working groups with relation to data sharing
22 information management, but they, for the most
23 part, have been run through different MOUs, so the
24 MOU, oceans MOU that also exists, there's data
25 sharing committees under there, which it's all
26 essentially the same data, and so that's the
27 forum.

28 And so as I said, there's been a number of
29 agreements made over time and certainly things
30 have evolved, and so DFO and the Province have
31 found ways to work cooperatively together, but not
32 necessarily under the rubric that was originally
33 designed under this agreement.

34 Q Do you think this agreement is defunct?

35 MS. REID: Well, I think this agreement could do with
36 an update.

37 MR. MARTLAND: I'm surprisingly on track to finish my
38 questions. Yes, Mr. Commissioner?

39 THE COMMISSIONER: Mr. Martland, is this document now
40 an exhibit?

41 MR. MARTLAND: I'm sorry, I'm not sure which document
42 you have before you.

43 THE COMMISSIONER: Well, you referred to number 21 on
44 your list, is what I believe you were questioning
45 the witness about?

46 MR. MARTLAND: Yes. Number 21 on the list I mentioned
47 in passing and I haven't referred to it in detail.

1 I don't know that we need to have this entered as
2 an exhibit. I have no difficulty with it being
3 made one.

4 THE COMMISSIONER: Given that you've asked some
5 questions on it, I think it might be appropriate.

6 MR. MARTLAND: That's fine. If that could please be
7 marked?

8 THE REGISTRAR: Exhibit 653.

9
10 EXHIBIT 653: Canada-British Columbia Fish
11 Habitat Management Agreement
12

13 MR. MARTLAND: Panel members, you may be relieved to
14 hear I'm almost at the conclusion of my questions.
15 It doesn't mean you're finished, because there's
16 lots of other people in the room.

17 Q One question I have is whether you have comments
18 on the Policy and Practice Report that's been
19 provided to you?

20 MR. HWANG: I think, as DFO, we had a bunch. We
21 reviewed the report, we made some sort of
22 summaries as to what we thought were important
23 points and, I think, to some degree, counsel for
24 Canada is going to walk us through some of those
25 things later.

26 Q All right. And I appreciate Mr. Taylor and I will
27 be having a conversation about how we best address
28 this. Let me ask it a little differently. Are
29 there any broad points, in terms of the emphasis
30 of this report or the way it describes the work of
31 the Habitat Management Program that you think
32 you'd like to offer us, or the big picture
33 comments about emphasis of the approach in the
34 PPR?

35 MR. HWANG: I think the one substantive point at that
36 high level to the PPR is that it's certainly my
37 impression, and I think that of a few of my
38 colleagues that have looked at it, that the report
39 substantially focuses on the habitat regulatory
40 functions that our department undertakes, and as
41 we've touched on earlier, the National Habitat
42 Policy has eight strategies attached to it. Not
43 all of those are necessarily primarily resting
44 with the habitat program.

45 But in operational function, the branch in
46 this region really does work much more broadly
47 than just on the regulatory portfolio. We

1 participate when there's opportunities linked to
2 fish habitat in various planning initiatives. We
3 do community outreach and engage with community
4 groups on restoration, on baseline data
5 collection, and things like that. We work on
6 education issues with the public, with school
7 kids, things of that nature, as well as do
8 monitoring and other things.

9 So the program is fairly broadly applied and
10 the PPR tended to focus primarily on the
11 regulatory elements of the program. So that would
12 be my overarching comments.

13 Q So I take from that comment the approach in
14 focusing on the regulatory function leaves other
15 parts of the story untold?

16 MR. HWANG: Yes.

17 Q Ms. Reid?

18 MS. REID: Yes, well, I would just add to that, and I
19 think you may have addressed it in a different
20 way, but through watershed planning, that whole
21 aspect of integrated planning is a very important
22 element of how we deliver the habitat program that
23 needs to be considered. And also, OHEB branch
24 also has responsibility for the **Species at Risk**
25 **Act**, and certainly there's critical habitat
26 elements involved with that, that the habitat
27 program takes into account as well.

28 And just further on this report, I would say,
29 for the most part, it's well written, it's done
30 well. There are some minor areas, particularly
31 around kind of money and organization that aren't
32 particularly well explained or a little bit
33 confused, but that's not surprising and it doesn't
34 take away from the report.

35 Q Okay. Mr. LeBlanc?

36 MR. LeBLANC: Similarly, we did review it and we have
37 some comments. Overall, a very good report. It
38 could probably, maybe, providing the context of
39 the complexity of the environment that we work in,
40 I mean "environment" in the broader sense than by
41 physical environment, but the fact that the
42 legislation, the policy frameworks, the governance
43 institution and the constitutional aspects of our
44 role is fairly complex and we work with a complex,
45 biological system.

46 It did spend a lot of time, I thought, quite
47 a bit, it was fixated a bit on the EA,

1 Environmental Assessment Process. It maybe spent
2 a little bit too much time on that, which is one
3 of the processes that we have to go through in
4 terms of prior to making a regulatory decision or
5 an authorization, as well as the duty to consult
6 Aboriginal it could have spent maybe a little bit
7 more time. And the **Species at Risk Act**, which is
8 another element that is super -- added
9 responsibility for the program as it goes along
10 doing its business of managing impacts on human
11 activities. Superimposed on that is a whole
12 series of other hoops that we have to go through,
13 adding to the workload and the complexity by which
14 we do our work.

15 MR. MARTLAND: Thank you for those points. And indeed
16 I can just tell you, and I don't think we'll be
17 sending them to read, unless you want them, but we
18 do have other PPRs, indeed, that will pick up, for
19 example, on **Species at Risk** and other topics.

20 This may be an opportune time, Mr.
21 Commissioner, our approach, where there's a
22 correction of the PPR, is just to make sure that
23 we identify that, and there's one that I'd like to
24 just simply really read into the record.
25 Paragraph 99, which should be page 103 -- sorry,
26 it's paragraph 99 and I don't have the page number
27 handy, so it's not page 103. I don't know if
28 anyone will --

29 MR. ROSENBLOOM: Page 41.

30 MR. MARTLAND: Thank you, page 41. And I'll just
31 simply read this in, it's highly detailed, but the
32 practitioners -- there's a reference at footnote
33 211 to a document. This is meant to provide the
34 citation for the Practitioners Guide to Writing an
35 Authorization for the Habitat Protection
36 Provisions of the **Fisheries Act**. The correct cite
37 to that guide, what was intended to be referenced,
38 is at footnote 212. So in other words, footnote
39 211 and footnote 212, footnote 212 should be given
40 as well as footnote 211. That's the one
41 correction I just wish to place on record.

42 Q Finally, panellists, if I might ask you, at a
43 broad level, appreciating that Mr. Taylor will be
44 asking you questions, you've heard the questions
45 I've gone through, and without repeating points
46 you've already made, with some understanding of
47 this Commission's work focusing on Fraser River

1 sockeye in particular, are there particular
2 recommendations or points that you would wish to
3 make to the Commissioner and draw his attention
4 to?

5 MR. HWANG: Well, I've got a couple that are related,
6 and I think it speaks to some of the material
7 we've touched on this morning, but the habitat
8 management and habitat protection function that we
9 undertake within Fisheries and Oceans is, in my
10 opinion, a tremendously important one. It's one
11 that works oftentimes at odds with broader social
12 desires or priorities, but it is for the common
13 public good.

14 And I think it's vitally important that the
15 government demonstrate and continue with the
16 leadership that government has in terms of setting
17 a very high bar for maintaining habitat and
18 habitat protection, for maintaining the no net
19 loss policy for fish and fish habitat, which is,
20 as far as wildlife species in Canada go, a
21 relatively unique position that we were able to
22 advocate and, at times, insist on considerations
23 that work in favour of fish and the public
24 interest in that regard.

25 And notwithstanding the fact that there have
26 been shortcomings in terms of the Department's
27 ability to deliver on and meet that very, very
28 ideal and hard to reach mandate, it is still an
29 important one to strive for, and that would be
30 something that, carrying forward, hopefully we can
31 maintain.

32 Q Thank you. Ms. Reid or Mr. LeBlanc?

33 MS. REID: I have nothing to add.

34 MR. LeBLANC: I guess the only recommendation that I
35 could -- and I do agree with, I think, what Jason
36 has mentioned, the important role that we play as
37 a department in ensuring that the resource is
38 maintained for all people of Canada and here in
39 B.C., and we do need -- and because of the
40 overlapping jurisdiction, it's critical that there
41 is a close collaboration and cooperation between
42 the two levels of government, and that we engage
43 all stakeholders and partners in terms of
44 advancing the agenda and supporting the
45 implementation of any policies that are developed
46 for the protection of the resource.

47 MR. MARTLAND: Mr. Commissioner, I'm hoping I might

1 keep my paddle in the water and I'd like to
2 reflect over the lunch break if I think of another
3 question or two, but I think I'm virtually at the
4 conclusion of my questions.

5 If we could now adjourn for lunch, please?

6 THE REGISTRAR: The hearing is now adjourned until 2:00
7 p.m.

8

9 (PROCEEDINGS ADJOURNED FOR NOON RECESS)

10 (PROCEEDINGS RECONVENED)

11

12 THE REGISTRAR: The hearing is now resumed.

13 MR. MARTLAND: Mr. Commissioner, I'm just going to take
14 a moment to read out the estimates I've obtained
15 from counsel and I hope that brings some moral
16 suasion to people sticking to their estimates.
17 Mr. Taylor has indicated 60 minutes. Mr. Tyzuk
18 and Mr. Prowse for the Province have indicated
19 they don't expect any questions. Mr. Harrison for
20 the Conservation Coalition, 60 minutes. Ms.
21 Glowacki for the Aquaculture Coalition, 30
22 minutes. For both Mr. Buchanan and Mr. Hopkins,
23 they don't expect questions; likewise, Mr. Harvey
24 doesn't expect to have questions. Mr. Rosenbloom
25 indicates 50, five zero, minutes. Ms. Brown for
26 the First Nations Coalition, 60 minutes. Ms.
27 Robertson for MTTC, ten minutes. And I haven't
28 totalled all of that up. I do expect it leaves us
29 in a position to finish on schedule tomorrow. Mr.
30 Taylor's next. Thank you.

31

32 CROSS-EXAMINATION BY MR. TAYLOR:

33

34 Q Panellists, you've given evidence already on key
35 elements of the Habitat Management Branch work in
36 your answers to Mr. Martland. And --

37 THE REGISTRAR: Name, please?

38 MR. TAYLOR: Mitchell Taylor. I'm sorry. Thank you,
39 Mr. Registrar. Mitchell Taylor for the
40 participant Government of Canada. And with me is
41 Jonah Spiegelman.

42 Q You've given evidence already about Habitat
43 Management, some of the work and I know you've
44 read the Policy and Practice Report that the
45 Commission counsel has prepared and has now been
46 entered. But to be sure that we've got some
47 foundational points and principles clear, I'm

1 going to ask you some questions and without
2 repeating what you've said needlessly, I'd ask if
3 -- and I'll start with you, Ms. Reid, can you set
4 out very briefly the key objectives of the Habitat
5 function within DFO?

6 MS. REID: The Habitat program within DFO has two key
7 objectives. First, is a conservation and
8 protection of fish and fish habitat. And we do
9 that through the Habitat Management policy and the
10 strategies that it entails. We also have a
11 responsibility to undertake environmental
12 assessments for the purpose of ultimately making a
13 regulatory decision.

14 Q And under what statutes would you be making a
15 regulatory decision?

16 MS. REID: So our primarily responsibility is with the
17 **Fisheries Act**. We also have responsibilities
18 under the Canadian **Environmental Assessment Act**
19 and the **Species at Risk Act**.

20 Q All right. Speaking generally, or at a fairly
21 broad level, how is the branch structured in order
22 to achieve what you've just set out? And as I
23 understand it, there would be both the Ottawa and
24 the regional component, and I'll turn to you for
25 the regional component and then we can look to Mr.
26 Leblanc for the other.

27 MS. REID: Okay. Well, to speak more broadly about the
28 branch, in the Pacific region, we have four
29 programs. The Habitat program is one of them. We
30 also have a Species At Risk program, an Oceans
31 program and the Salmonid Enhancement program.
32 Within the Habitat Management -- and I should say
33 that, particularly the Salmonid Enhancement
34 program and aspects of the Species At Risk program
35 directly relate to delivery of the Habitat
36 Management program. The Oceans program does as
37 well in a more peripheral way.

38 With respect to the Habitat Management
39 program, the program is organized in a manner that
40 has a few key sub-programs. The first is the
41 Habitat Management Group, which has the primary
42 regulatory responsibility for delivery of response
43 to referrals primarily and also other types of
44 activities. There's a Habitat Monitoring Group,
45 which does compliance monitoring-type activities.
46 There's also a Major Projects Environmental
47 Assessment Group which focuses on certain aspects

1 of the environmental assessment work, the major
2 project work.

3 From a geographical perspective, there's a
4 regional headquarters with staff there and then
5 there's five area offices. Each of those area
6 offices has an OHEB, Oceans Habitat Enhancement
7 Branch, manager, and staff that report to that
8 manager. Within our HQ, there's a manager as well
9 for the Habitat program and a number of staff that
10 report to that person.

11 Within the Pacific region more broadly, we
12 have a matrix-type organization where areas and
13 region both report line to the regional director
14 general. And how that impacts on the Habitat
15 Management program is that I have line
16 responsibility for the staff in the regional
17 headquarters and functional responsibility for the
18 Habitat staff that are elsewhere in the five
19 areas.

20 Q All right. Thank you. And Mr. LeBlanc, turning
21 to the Ottawa side, what is the structure there as
22 to habitat?

23 MR. LeBLANC: Due to a recent reorganization, we split
24 the Habitat Management directorate into two parts.
25 One is reporting to an assistant deputy minister
26 of program policy. In my position of director of
27 Habitat Management Policy is under a director
28 general of Ecosystem Program Policy that reports
29 to the ADM. And then the other side is the
30 Ecosystem and Fisheries Management senior ADM, who
31 has a DG of Ecosystems program. And under that
32 there's two directors that really support the
33 Habitat program, one a director of Operations and
34 then a director of Information, Training and
35 Quality Assurance. So we're split among three
36 directors in two different sectors at headquarter,
37 one directed at program policy, and the other at
38 more operational. And we're joined with the
39 regions through a national committee that is
40 called National Ecosystems Management Oversight
41 Committee. And that takes care of both Species At
42 Risk and Habitat.

43 Q All right. Thank you. And I'll stay with you,
44 Mr. LeBlanc. Can you state in outline terms the
45 respective roles and responsibilities of
46 headquarters and the region with respect to
47 Habitat?

1 MR. LeBLANC: The headquarter group is really providing
2 the policy frameworks and tools that are used in
3 the region. So the development of policy,
4 frameworks and tools that can be used, such as the
5 Habitat Policy and any operational policies that
6 we have and you have a list of those. We also
7 provide advice to regions on major project
8 development. And that's mostly on the operational
9 side. The role of the Operations Group is to
10 provide that advice to the region and the regions
11 do the implementation of the policies.

12 Q All right. Which takes us back to you, Ms. Reid.
13 What do you have to add to the respective roles
14 and responsibilities of the region and
15 headquarters?

16 MS. REID: So yeah, the difference between national and
17 regional headquarters' responsibilities really is
18 with regard to policy development versus policy
19 implementation. And so we take our direction from
20 national headquarters. We also get our funding
21 from them and our staff numbers. And we get that
22 direction and those resources and it's our
23 responsibility to implement the program
24 accordingly. And so there's an equivalent
25 relationship with the areas that, regionally, I
26 hold the Habitat funding and staff compliment
27 numbers and then that money is sent out to the
28 areas for delivery. So whereas, nationally they
29 have, you know, a broad overarching policy
30 direction, regionally, we develop guidelines,
31 operational practices and we work very closely
32 with our area colleagues in the delivery and
33 implementation of the program.

34 Q Okay. If you look in a binder you have at Tab 13
35 of Canada's documents.

36 MR. TAYLOR: And I'm sorry, Mr. Bisset, I didn't pass
37 you a note in advance about the order that I might
38 go to these. Thank you. That's the one.

39 Q Ms. Reid, do you recognize that?

40 MS. REID: Yes.

41 Q Is that a document that was prepared at your
42 direction?

43 MS. REID: Yes.

44 Q And does that set out, in general terms, what
45 you've been outlining in terms of the regional
46 structure and set-up and work that's done by
47 Habitat?

1 MS. REID: That's correct.

2 MR. TAYLOR: All right. And I won't, in the interests
3 of time, go through it but I'd ask if that could
4 be the next exhibit, please.

5 THE REGISTRAR: Exhibit Number 654.

6

7 EXHIBIT 654: Pacific Region - Oceans,
8 Habitat and Enhancement Branch

9

10 MR. TAYLOR:

11 Q I'd like to turn now to some key themes that shape
12 the environment that Habitat within DFO operates
13 under and with and the environment, in turn,
14 affecting the work done. I'll start with you, Mr.
15 Hwang, if I may, and ask you to comment on what I
16 put to you and expand upon it. Some of this
17 you've spoken to earlier this morning but I
18 believe that there would be more to say. You
19 mentioned this morning that DFO doesn't control
20 land use planning and development. Can you say
21 what the significance of that is in terms of the
22 work you do and the environment you operate within
23 and the challenges you have as a unit?

24 MR. HWANG: Certainly. To expand on what I had touched
25 on this morning, the function of trying to manage
26 fish habitat is entirely dependent upon how you
27 manage water and land use because water use and
28 land use activities or actions are what have a
29 direct bearing on what ultimately creates habitat
30 for fish. So it creates an administrative
31 challenge when the federal agency, Fisheries and
32 Oceans, has a mandate to manage, protect and
33 administer regulatory decisions around fish
34 habitat. But we do not have the mandate to make
35 specific decisions around land use and water use.
36 Those authorities lie with the Provincial
37 government and/or local governments.

38 Q All right. And is it an interdependent
39 relationship, if you like, then that there's a
40 number of actors that each have an influence and
41 some of them are having a greater influence than
42 others?

43 MR. HWANG: Yes, that would be correct. In particular,
44 with provincial agencies, there are some that have
45 a much more significant bearing on fish and fish
46 habitat decisions or more sort of overlap with
47 things that are also related to fish habitat.

1 What used to be called the Ministry of Environment
2 until the recent reorganization in the province,
3 would be an example where, within that agency,
4 they had a Water Stewardship Division that would
5 make decisions on licensing water for consumptive
6 or non-consumptive use. And any water allocation
7 decision will typically have some degree of
8 bearing on fish because fish live in water.

9 Q It's probably quite basic to say but nonetheless I
10 will, that different provincial agencies and local
11 governments will have interests and priorities
12 that are competing both with what Habitat is
13 trying to do and amongst each other. I take it
14 that's the case, is it?

15 MR. HWANG: Certainly, in some circumstances with some
16 agencies, whether it be provincial agencies or
17 local governments, there's, what would you call
18 it, an administrative sort of tension between
19 competing priorities where an agency, say, like
20 Ministry of Forests, for example, has a mandate to
21 manage forest harvesting and generate economic
22 benefits for the Province and there is a challenge
23 there in terms of managing and optimizing that
24 forest resource while at the same time protecting
25 and trying to ensure that we don't cause any
26 negative effects to fish and fish habitat. So I'm
27 not suggesting by using that as an example that
28 forestry is inherently bad. It's just that the
29 mandate for forest development and forest economic
30 activity does not necessarily align perfectly well
31 with an ideal management strategy for fish and
32 fish habitat.

33 Q In the environment that you operate in, how
34 important is the 1986 Habitat Policy as a tool and
35 how valuable is it?

36 MR. HWANG: Well, as I touched on this morning, it's
37 tremendously valuable because it gives the
38 Fisheries agency and even people that are --
39 Fisheries agency being Fisheries and Oceans and
40 even other entities like the Provincial Ministry
41 of Environment, something to point to when there
42 is a trade-off or a value issue on the table that
43 will pit an economic development circumstance
44 against a circumstance that would potentially have
45 an impact to fish and fish habitat. And my
46 observation is that, as Fisheries and Oceans, we
47 have a very strong and powerful opportunity to

1 bring the Fisheries' interest to the table when
2 those kinds of decisions or trade-offs are being
3 considered from a regulatory perspective. And
4 that's much different than many other wildlife
5 species in the Province of British Columbia. Many
6 other things, you know, using an example, say,
7 like mountain caribou, don't have a no net loss
8 policy sitting in the background to enable the
9 managers of that species to go to a table where a
10 land use decision is being made and present
11 arguments and some compelling rationale to ensure
12 that any impacts from the development are offset,
13 whereas with Fisheries we have that ability and
14 that compelling policy behind the fish habitat
15 decisions.

16 Q So you're getting in earlier?

17 MR. HWANG: Not just getting in earlier but it's on the
18 table right from the outset but all the way
19 through to a final decision. And it's also
20 supported very strongly by the **Fisheries Act**,
21 which ultimately gives the Department the
22 authority to authorize or not a proposed impact to
23 fish habitat.

24 Q Okay. At a local level, which is what you're most
25 familiar with, is habitat, as a branch, constantly
26 evaluating what it's doing and what changes to
27 make and, if so, can you elaborate some on that?

28 MR. HWANG: Certainly in my time both as an operational
29 biologist, as well as a manager with the branch in
30 the area, it's an ongoing thing to look at the
31 work that is out there, look at the regulatory
32 context that we're trying to represent fish and
33 fish habitat interests in and to try to look to
34 ways to use our time, energy and authorities most
35 effectively. Frequently, we try to do that in
36 partnership with others. There is a list, I
37 think, that was prepared in preparation for today
38 that presented as an example. I didn't total it
39 up. I think it might be 50 or 60 different things
40 that, over time, the Habitat Branch of our
41 Department has been largely involved with, that
42 have looked to various partnership or
43 collaborative agreements, to work with other
44 agencies, jurisdictions and at times even with
45 industry partners to work cooperatively in a way
46 that allows us to favourably represent fish and
47 fish habitat interests.

1 Q If you look at Tab 14.
2 MR. TAYLOR: And Mr. Bisset, if that may be brought up
3 in the book of Canada documents.

4 Q Is that what you're referring to?

5 MR. HWANG: Yes, it is.

6 MR. TAYLOR: All right. I wonder if that could be the
7 next exhibit, please?

8 THE REGISTRAR: Exhibit 655.

9
10 EXHIBIT 655: Inventory of Integrated
11 Planning Initiatives and Intergovernmental
12 Cooperation Processes the Habitat Management
13 Program Supports
14

15 MR. TAYLOR:

16 Q What can you say, Mr. Hwang, about the impacts of
17 ongoing new planning decisions and development
18 that occur day-by-day, week-by-week, and relate
19 them to what's already gone on before?

20 MR. HWANG: Well, the challenge there, and I think it's
21 spoken to largely in the previous Auditor General
22 reports that were mentioned earlier, is that the
23 effects to fish and fish habitat that have
24 happened already are already there on the land
25 base and they have already taken whatever measure
26 of, I guess, reduced productive capacity out of
27 the resource base. And what happens when
28 something new comes along is that if that does
29 have another negative effect, it adds up
30 cumulatively. And that's what the previous audits
31 have found and that's what continues on today.

32 So it creates a challenge whereby any single
33 development proponent in their mind, when they
34 look at their project in isolation, it seems
35 reasonable an effect that they are proposing may
36 not be particularly significant or large and they
37 will propose that it be reasonable that they be
38 allowed to proceed with that development. And
39 Fisheries and Oceans, we find ourselves often
40 trying to represent the interests of fish, both in
41 the specific circumstances of that site, as well
42 as over time in terms of the cumulative results of
43 other development activities in that area.

44 Q Ms. Reid, do you have anything that you want to
45 add to what Mr. Hwang has been speaking to in
46 terms of the environment and so forth that you, as
47 a branch, operate within?

1 MS. REID: Sure. I think what's important to highlight
2 is that the Habitat Management Program is facing
3 an increasingly complex environment. And I mean
4 environment both from a biologic, social,
5 political, regulatory one. And so as the Habitat
6 practitioners go about doing their work, they need
7 to consider a number of changing and evolving
8 factors at all times. And so it's not a simple
9 process, that it takes time and consideration. It
10 takes experienced people to be able to do the type
11 of work that's required in order to make
12 regulatory decisions and were consistent with the
13 Habitat Management Policy.

14 Q All right. Mr. Leblanc, anything to add?

15 MR. LeBLANC: No, nothing at all.

16 MR. TAYLOR: Thank you. If we might turn next to,
17 either separately or together, if they can be
18 brought up together, Tabs 1 and 12 of the Canada
19 book of documents. These are two agreements, or
20 two MOUs, I guess they are. And I think we have
21 12 on the right and one on the left. I think the
22 one on the left is 2007 or thereabouts, I think,
23 and the one on the right is 2010.

24 Q Do you recognize those, Mr. LeBlanc?

25 MR. LeBLANC: Yes, I do.

26 Q And have I got the dates right?

27 MR. LeBLANC: Yes, approximately. I think one was in
28 2007, started in 2007 and the one on the right is
29 2010.

30 Q Right.

31 MR. LeBLANC: Recently signed under the new
32 organizational structure.

33 Q Now, is one the successor to the other?

34 MR. LeBLANC: Yes, it is.

35 Q And so the right is the successor to the left?

36 MR. LeBLANC: Yes, correct.

37 Q What are these?

38 MR. LeBLANC: These are protocols between the Habitat
39 Management Program and the Conservation and
40 Protection Directorate. They're to outline roles
41 and responsibilities in terms of implementing
42 compliance management regime in the Department
43 under the Habitat program.

44 Q And is that so as to achieve clarity in roles and
45 responsibilities?

46 MR. LeBLANC: Exactly right.

47 Q And in a nutshell, what are the respective roles

1 and responsibilities between those two parts of
2 DFO then?

3 MR. LeBLANC: First and foremost, they're shared. And
4 in some cases, there's a lead with Habitat and
5 then a lead with Conservation Protection. The
6 lead in the monitoring and auditing function is
7 with the Habitat program. The determination of
8 risk associated with the non-compliance is joint
9 work. And where there is an enforcement action to
10 be taken based on a decision to proceed with the
11 prosecution and conservation and protection, the
12 Fishery officer take the lead with the support of
13 Habitat biologists or staff.

14 MR. TAYLOR: All right. May the two documents be
15 marked as exhibits, the one on the left being
16 National Protocol between Oceans and Habitat and
17 Fisheries Aquaculture Management 2007 be the next
18 exhibit?

19 THE REGISTRAR: That's item number 1 on your list --

20 MR. TAYLOR: Yes.

21 THE REGISTRAR: -- which will be marked as 656.

22
23 EXHIBIT 656: National Habitat Compliance
24 Protocol between Oceans and Habitat and
25 Fisheries Aquaculture Management, 2007
26

27 MR. TAYLOR: And item number 12 on our list, which is
28 the right side of the screen, being a National
29 Habitat Compliance Protocol between Habitat and
30 Conservation Protection within Fisheries.

31 THE REGISTRAR: 657.

32 MR. TAYLOR: Thank you.

33
34 EXHIBIT 657: National Habitat Compliance
35 Protocol between Habitat Management Program
36 and Conservation and Protection Directorate,
37 2010
38

39 MR. TAYLOR:

40 Q If you'd turn now, Panel, to Tab 5 in Canada's
41 book. This is a regional document seemingly from
42 July 2009. I'll ask either or both Ms. Reid and
43 Mr. Hwang if you want to, one of you, identify
44 this?

45 MS. REID: So this is a document that was created -- I
46 actually referred to it briefly this morning as a
47 document intended to help Habitat Management staff

1 with triaging or prioritizing their workload as it
2 relates to referrals.

3 Q And what specifically does it achieve?

4 MS. REID: So what it does is it essentially sets out a
5 decision algorithm. So previous to this document,
6 as referrals are received into area offices, or
7 into offices. They, in some cases, were treated
8 in a kind of first in/first out type of approach
9 and there was a view that it was important to make
10 sure that referrals were reviewed more from a risk
11 basis, meeting certain criteria and that
12 proponents would know in a timely manner, you
13 know, when their referral was going to be
14 reviewed, what kind of timeframe, what was the
15 likely outcome and so this document essentially
16 set out the method by which that could be done.

17 Q All right. Do you have anything to add, Mr.
18 Hwang?

19 MR. HWANG: No.

20 MR. TAYLOR: May that document then, Tab 5 of Canada's
21 book, be the next exhibit please, being the
22 Regional Habitat Regulatory Decision Framework
23 from July of '09?

24 THE REGISTRAR: Number 658.

25
26 EXHIBIT 658: Regional Habitat Regulatory
27 Decision Framework
28

29 MR. TAYLOR:

30 Q If you'd turn to Tab 7 in the binder, this appears
31 to be a PowerPoint presentation, which I expect is
32 right there. Are you familiar with that document,
33 Ms. Reid?

34 MS. REID: I'm not particularly familiar with it.

35 Q Okay.

36 MS. REID: I mean I understand what it is but I don't
37 believe I've reviewed it.

38 Q Okay. Does any of the Panel have a familiarity
39 with this?

40 MR. LeBLANC: I do not recognize the document
41 (indiscernible - overlapping speakers).

42 Q Okay. No, that's fine. We're going to have Mr.
43 Carter here later so we can deal with it through
44 him, I think. If you'd turn to Tab 9, there's a
45 two-page document there. Is that an extract from
46 the Fisheries and Oceans website that sets out the
47 modernization program in a nutshell?

1 MR. LeBLANC: Yes, it is. I think that's pretty
2 correct, yes.

3 MR. TAYLOR: All right. Could that be the next
4 exhibit, please?

5 THE REGISTRAR: Did you wish item number 7 to be
6 marked, Habitat Monitoring Update?

7 MR. TAYLOR: Is that the deck that I was referring to?

8 THE REGISTRAR: Yes, I think so. We've got a mix up in
9 lists here.

10 MR. TAYLOR: What's Tab 7 in Canada's binder, which is
11 a deck dated April 18, 2010, I think we will not
12 mark and we'll simply leave it to a witness that's
13 going to come later this week. The exhibit that
14 was before that one was the one at Tab 5, which is
15 the Regional Habitat Regulatory Framework.

16 THE REGISTRAR: That's correct. So you're now
17 referring to Tab 9, is it, Modernizing the
18 Program?

19 MR. TAYLOR: Correct.

20 THE REGISTRAR: Okay. That'll be marked as 659. Thank
21 you.

22

23 EXHIBIT 659: Modernizing the Program

24

25 MR. TAYLOR:

26 Q I think we're almost through the documents that I
27 wanted to take you to, Panel, but on that, I would
28 like to turn to Tab 8. Now, this is a document
29 that refers to Habitat Conservation and
30 Stewardship Program. And subject to the
31 Commissioner's thoughts, I don't think we need to
32 mark this as an exhibit but I'm using it to turn
33 our attention to that program. Is this one that
34 you're familiar with, Mr. Hwang?

35 MR. HWANG: Yes.

36 Q And am I correct that this no longer exists, this
37 program?

38 MR. HWANG: Yeah, it was what's called a "Sunset
39 Program" or a "B-based Program", and, as the
40 document shows, it ended at a fiscal year in 2003.

41 Q Can you outline briefly what was it, when it
42 existed and whether it's left any lasting effects?

43 MR. HWANG: Sure. I'll summarize it fairly briefly.
44 It was a program that came about with an intent to
45 provide for a couple of different functions. One
46 was to help to foster, facilitate or grow the
47 stewardship base from, in particular, non-

1 government entities, non-government or at least
2 non-provincial and non-federal entities where the
3 focus for the most part towards management and
4 stewardship of fish and fish habitat. So through
5 that function, there were DFO staff that were
6 brought in or we hired new staff -- or we created
7 new positions.

8 They weren't necessarily new staff but we
9 created new positions and put staff into them to
10 liaise with potential stewardship partners,
11 community organizations, some of them which had
12 been long established, and to try to, I guess in a
13 nutshell, work cooperatively with them and through
14 access to some funding resources help to provide
15 funding, as well as support, towards projects,
16 programs and activities that were for the benefit
17 of fish and fish habitat.

18 There were also some additional positions
19 brought directly within the Habitat program for
20 DFO during the duration of the program that were
21 called "Habitat Auxiliaries" and they worked quite
22 specifically on -- well, I guess it depended where
23 you were at the region but they were an
24 augmentation to the Habitat program with the idea
25 being that it would create capacity within the
26 program itself to develop some new measures,
27 tools, procedures, guidelines, participate in
28 planning and things like that, that the core
29 program didn't necessarily have the capacity to
30 do, the idea being that if we got some of these
31 things done, we could move past some of the
32 stumbling blocks we had in terms of advancing some
33 new ideas and be further ahead when the program
34 had ended.

35 Q And did that work?

36 MR. HWANG: To some degree. I think it would depend
37 who you asked and where you were looking. In some
38 places, as soon as the resources were over, pretty
39 much all the program results dried up and went
40 away. But in other places, there was a very
41 effective and useful long-lasting effect. An
42 example that I could use to illustrate that would
43 be with the agricultural sector. There's an
44 organization called the B.C. Cattlemen's
45 Association. And agricultural ranching often has
46 a fairly potentially big influence on fish and
47 fish habitat where ranches will have streams

1 flowing through them and things like that. And
2 the Cattlemen's Association nowadays have their
3 own stewardship people and they work with ranchers
4 to help them implement best practices on their
5 ranches. They help ranchers access funding from
6 government and non-government organizations
7 towards implementing improved stewardship on their
8 properties. And things like that have come out of
9 some of the things that were initiated through the
10 HCSP.

11 Q Is there anything you want to add to that, Ms.
12 Reid?

13 MS. REID: Well, I think just to point out that so this
14 was a discrete program but it does speak to the
15 relevance of stewardship programs in support of
16 Habitat. And I think also important to point out
17 that this was a limited-funding program. It was
18 very successful during its time and, as Jason
19 said, the hope was, I think, that there would be
20 continuity, that there would be enough capacity
21 put into the communities to allow continuation of
22 some of these stewardship groups and to some
23 limited extent there has been. But I think that
24 one of the lessons we've learned from it is the
25 continued necessity to provide at least some base
26 seed money to support those community-driven,
27 grass-level groups. And so to some extent, the
28 Salmonid Enhancement Program does that. But this
29 program simply had a whole bunch more capacity in
30 order to support those groups.

31 Q Listening to both of you, would I be correct that
32 one of the things that comes out of stewardship
33 programs is some lasting relationships in certain
34 cases and lasting commitment on the part of those
35 outside of DFO to fish and fish habitat and
36 protecting it?

37 MR. HWANG: Yes, I can certainly say that's accurate
38 from Area perspective.

39 MS. REID: Yeah, and just to add to that, I mean I
40 think that the important point is that protecting
41 habitat is not simply a regulatory responsibility
42 or a compliance activity. In order to protect
43 fish habitat, you need to educate the public, you
44 need to get by and you need to get that broad-
45 based support, eyes and ears on the ground and
46 boots doing work. And these types of stewardship
47 programs are very effective to support that.

1 Q All right. Now, the Policy and Practice Report
2 that's been entered as an exhibit earlier today
3 refers at paragraph 17, and I don't need to take
4 you to this at the moment unless you need to, but
5 it refers to 80 percent of resources in Habitat
6 being directed to referrals. Is that accurate in
7 terms of the regional perspective?

8 MR. LeBLANC: I think from a national perspective, the
9 amount of resources that are spent on regulatory
10 reviews, including environmental assessment, which
11 are driven by referrals that are brought into the
12 Department for review, together with a lot of the
13 other activities we do, in general, range between,
14 you know, around 70 to 80 percent. And it varies
15 by region. But on a general level, that's
16 approximately what it is. It's reducing in terms
17 of that level of effort as people are streamlining
18 the regulatory review processes and undertaking
19 other activities, such as integrated planning,
20 outreach and monitoring.

21 Q And so bringing that to the regional level, is
22 that, and Mr. LeBlanc has referred to regional
23 differences, but is that a reflection of the
24 regional percentage here or is it different here?

25 MS. REID: There's sort of two elements to the answer
26 to that. So as we heard under EPMP, we created a
27 special group, Major Projects Environmental
28 Assessment Group, and that group is entirely
29 focused on regulatory process-type activities.
30 The rest of the program, the Habitat Management
31 Program, is focused on other non-major project
32 activities. And within that group, we have made a
33 conscious effort under, you know, work planning to
34 not spend all of our time on regulatory activities
35 and, in fact, try and work towards 45, 50 percent
36 of the time on regulatory activities, 20 percent
37 of the time on monitoring, other elements on
38 stewardship and other types of activities so that
39 we try to achieve a more balanced approach. But I
40 should say there's always pressure, a lot of
41 pressure to focus more and more effort on the
42 regulatory work simply because of the workload and
43 that's one of the reasons for that triage document
44 that you referred to earlier, was to try and allow
45 staff to prioritize their efforts so that we could
46 have a more balanced program.

47 Q All right. In reference to referrals and

1 regulatory work, am I correct that proponents of a
2 project come to DFO on a voluntary basis, as
3 distinct from a compulsory basis?

4 MR. LeBLANC: That is correct. There is no affirmative
5 regulatory duty under the **Fisheries Act**, which
6 means that proponents do not require to come and
7 seek an authorization or approval from the
8 Department or advice or an authorization.

9 Q And as I understand it, most of the work in this
10 area that Habitat does is under sections 35 or 32
11 perhaps and maybe a bit of 36 in the **Fisheries**
12 **Act**; is that right?

13 MR. LeBLANC: Much of our work is focused around 35
14 but, as you said, 32. There is two authorizations
15 that can be issued under -- and we've combined
16 those into a guide. But section 36 is
17 administered by Environment Canada. They're
18 responsible for the -- for that provision of the
19 Act.

20 Q Now, I'm not asking you to give a legal
21 interpretation to Acts at all or statutes, but the
22 statute, 35 in particular, seems to be a
23 prohibition. Is that a fair assessment, as you
24 understand it?

25 MR. LeBLANC: Oh, 32, 35 and 36 are prohibitions.
26 They're different prohibitions but they're all
27 under the same heading.

28 Q And shortly stated under 35, no one shall do
29 certain things, which essentially boils down to an
30 undertaking that would result in harm to fish or
31 fish habitat unless authorized.

32 MR. LeBLANC: Just to fish habitat, 35; 32 is the
33 section that prohibits the killing of fish by
34 means other than fishing and 36 prohibits the
35 deposit of a deleterious substance.

36 Q Yes, thank you. So is it the case that proponents
37 come to Fisheries on a voluntary basis because
38 they'd like to check out and get advice and/or
39 some indication from Fisheries whether you see or
40 don't see what is loosely called a "HADD", as I
41 understand it, or something that would be a danger
42 to fish habitat?

43 MR. LeBLANC: Yes, I think most people are afraid not
44 to comply with the Act, especially the larger
45 companies, that have the incentive of their
46 certification under ISO and as well as some of
47 their investors. So they need to be assured that

1 they're in compliance with the Act.

2 Q Does Habitat have an ongoing relationship and
3 working arrangement with what are called NGOs, or
4 non-government organizations?

5 MR. LeBLANC: Yes, we have the Canadian Environmental
6 Network, which is a combination of a national
7 organization, an umbrella organization for about
8 700 local environmental organizations, we have a
9 National Fish Habitat Coordinating Committee with
10 four members from these groups in DFO and we
11 collaborate on enhancing communication and
12 consultation on both the development of policies
13 and/or implementation and some collaborative
14 initiatives to work together in certain areas of
15 priority. We also have a coalition agreement with
16 a coalition of nine, what we call, conservation
17 non-government organizations, including the
18 Pacific Salmon Foundation, the Canadian Wildlife
19 Federation, the Atlantic Salmon Federation and
20 several other, Nature Canada, Wildlife Habitat
21 Canada and groups like that, that we collaborate
22 with.

23 Q And these are national in scope, I take it, are
24 they?

25 MR. LeBLANC: National and, to some extent, regional,
26 too, the major regional ones being Atlantic Salmon
27 and the Pacific Salmon Foundation.

28 Q What is the objective and what is achieved through
29 these working arrangements?

30 MR. LeBLANC: Well, I think it's got several
31 objectives. One is to ensure there's clear
32 communication and also that we use a forum for
33 consultation on policies and then we can leverage
34 the resources that they have to help us in some
35 areas where we're not able to dedicate any
36 resources. Some of these organizations have a
37 large capacity in terms of to do habitat
38 improvement work, monitoring, science, like Nature
39 Canada, Nature Federation. So these are the
40 groups that we can depend on to do some work that
41 can support our objectives.

42 Q And is there similar working relationships at the
43 regional level, Ms. Reid or Mr. Hwang?

44 MS. REID: Yeah, I'd just like to add another
45 organization. Patrice has spoken to a number of
46 them. But there's also the Salmon Enhancement
47 Habitat Advisory Group, which provides advice.

1 It's a Pacific region constituted body, which
2 provides advice, works with OHEB directly and on
3 habitat enhancement-type activities.

4 Q Anything to add, Mr. Hwang, on that?

5 MR. HWANG: I could just add that there are lots of
6 these kinds of relationships that also occur at
7 the more local levels. So there is the national
8 kind of more formal relationship, at the regional
9 level, it's kind of in between, and then locally
10 in areas we have relationships with, you know,
11 sort of local agriculture user groups or something
12 like that or local watershed roundtable bodies and
13 things so there's quite a range of NGO contacts or
14 associations that will have.

15 Q And can you elaborate on that? What local
16 relationships, in your experience, in the B.C.
17 Interior, have you seen to exist and what do they
18 achieve?

19 MR. HWANG: Well, they're quite variable. They can go
20 from a group that is very environmentally-oriented
21 and advocating for conservation and sustainable-
22 type development. They can be partners with
23 entities that are doing some degree of development
24 and they're looking for ways to, I guess, align
25 more efficiently or effectively with the Fisheries
26 and Oceans mandate and regulatory agenda. They
27 can be multi-stakeholder kind of bodies that have
28 a whole bunch of interest in a local area all
29 coming together at what are often called
30 roundtables to discuss multi interests and
31 multiple priorities so that there are quite a
32 range of things.

33 Q At the local level and dealing with projects
34 perhaps, are there consultations with and
35 engagements of First Nations?

36 MR. HWANG: Yeah, there's lots of that. That's a bit
37 of a departure from the sort of non-government
38 organizational cooperation that we were describing
39 earlier. But certainly there's a fair amount of
40 consultation with First Nations groups, various
41 levels of that. Could be the band level, could be
42 a tribal association level or perhaps even more
43 broadly. It somewhat depends on the nature of the
44 issue and the context of the situation. But there
45 is a fair amount of that going on.

46 Q Is there a planning process of some description
47 involving the Bridge River First Nation to do with

1 the hydro project, or was there at one time?

2 MR. HWANG: Yeah. Well, I can't remember the formal
3 title of it but it's with the Stl'atl'imc First
4 Nation in the Lillooet area. They work with the
5 British Coastal Compensation Program as well, but
6 it's a group that Fisheries and Oceans sits with,
7 that B.C. Hydro sits with, that includes, I think,
8 two or three local First Nations Bands and they
9 talk in general about issues that are affecting
10 fish and fish habitat in that area, primarily in
11 that circumstance because of the B.C. Hydro
12 operations and the Bridge and Skeena Rivers. But
13 the table is fairly rounded. It has fishery
14 management parts of it, it's got enforcement parts
15 of it, as well as it's got a Habitat table. So we
16 have staff that sit with that and the meetings are
17 generally regularly scheduled about, I think, four
18 or six times a year.

19 Q All right. Now, there is going to be a panel on
20 habitat enforcement. It's starting at the end of
21 this week. But there won't be any Habitat
22 officials on it. There will be Conservation and
23 Protection officials but not Habitat. So with
24 that, I've got a few questions that I'd like to
25 ask you, as Habitat officials, about it. And
26 first, if I could turn to you, Mr. LeBlanc.
27 Inspector powers were recently removed from
28 Habitat technicians, I understand. Is that so?
29 And can you say when and why that happened?

30 MR. LeBLANC: There's approximately over a hundred-and-
31 some-odd biologists and technicians in the Habitat
32 program that were designated --

33 Q That's across Canada, is it?

34 MR. LeBLANC: -- across Canada as inspectors.
35 Conservation and Protection, the enforcement arm
36 of the Department, had advised us that any
37 functions related to enforcement would reside
38 within their program. And inspector designated as
39 an inspector, Habitat staff have enforcement
40 powers under section 36, and there was a decision
41 made at the senior level in Ottawa that inspector
42 powers, that is, enforcement powers would not be
43 provided to Habitat staff. The only exception
44 would be fishery guardian status, which would
45 allow them to have trespass. But no enforcement
46 powers would be provided to our Habitat staff for
47 a number of reasons, including safety and the fact

1 that Fisheries officers are specially trained for
2 enforcement purpose and totally dedicated to that
3 function.

4 Q Now, with that, can you explain briefly from a
5 national perspective how it is that Habitat and
6 C&P work together then to inspect and carry out
7 Habitat enforcement?

8 MR. LeBLANC: The start is you're going to hear from
9 Dave Carter, I think, on Wednesday about the
10 Habitat Compliance Modernization. It's a group of
11 Habitat staff that do monitoring and auditing of
12 compliance. And there's also occurrence that
13 occur so there's complaints that come in. Both of
14 those, there is a review to see if there is an
15 issue of non-compliance and a determination is
16 made between C&P and Habitat to see what the risk
17 is associated with the non-compliance. And if
18 there is an enforcement action required or an
19 investigation followed by an enforcement action,
20 then C&P is responsible for leading that with
21 support from Habitat biologists and staff.

22 Q All right. And some of that is dealt with in the
23 document that we referred to earlier that is a
24 protocol at the national level, is it?

25 MR. LeBLANC: Correct.

26 Q Thank you. Is there anything, Ms. Reid or Mr.
27 Hwang, that you want to add on C&P and Habitat
28 working together from your regional perspective?

29 MS. REID: Well, just with regard to the inspector
30 powers, certainly from a region we saw a benefit
31 of inspectors maintaining those powers because
32 from an efficiency perspective, if a practitioner
33 or a biologist was out and about and saw an
34 incident where they could take immediate action,
35 they wouldn't have to wait for a C&P officer to
36 arrive; however, we do understand that there is
37 other reasons to remove those powers. So there
38 was a bit of a conversation about that. And then
39 just with respect, I think I've already spoken to
40 it, certainly the enforcement aspect of the
41 Habitat Management Program overall is an important
42 element. But I think that from a focus
43 perspective there's a lot of other things that
44 need to happen and we can't rely simply on
45 enforcement to ensure effective habitat management
46 program.

47 MR. HWANG: If I can just add to that?

1 Q Yeah.

2 MR. HWANG: Something that is perhaps useful for the
3 Commission to have a clearer understanding of is
4 the relative role that the Habitat staff play in
5 conjunction with the Fishery officer staff in
6 undertaking a Habitat enforcement procedure or
7 activity. One of the impressions we have, and I
8 say "we" lumping myself in with Habitat program
9 staff, is that the Fishery officers are very
10 publicly known. They have a uniform, they have a
11 presence, they are out there in marked vehicles
12 and it's not necessarily clear, I think, to the
13 general public that the Habitat staff and the
14 Conservation and Enforcement staff, or the Fishery
15 officers, work very closely together. The Fishery
16 officers are the experts in procedures, in
17 prosecution, in laying information, in
18 specifically collecting evidence in a way that's
19 admissible in court, but all of that has to be
20 supported very carefully and very specifically by
21 Habitat staff, who can appreciate what the impacts
22 are to fish habitat, how do they collect their
23 evidence in a way that they can provide it to a
24 Fishery officer in a way that's admissible, how
25 can they know what was there before so they can
26 tell a Fishery officer that, yes, indeed that site
27 has been affected or perhaps not affected. So the
28 sum of all this is that there's a very significant
29 role in the background when we have a Habitat
30 enforcement circumstance for Habitat staff in
31 cooperation with the Conservation and Enforcement
32 staff at the Department.

33 Q All right. Thank you. Mr. Martland, at the end
34 of his questioning, asked each of the panel
35 members if you had suggestions that you wanted to
36 make to the Commissioner or thought important to
37 make to the Commissioner. And he asked you if you
38 would do that without repeating what you'd already
39 said. But if I alter the question slightly to ask
40 if you have suggestions or recommendations that
41 perhaps include and underline what you might have
42 said, are there one, two or three that you might
43 want to leave with the Commissioner, thoughts that
44 you might want to leave with the Commissioner,
45 that he should consider? Ms. Reid first?

46 MS. REID: Sure, thank you. What I'd like to say is
47 that the Habitat Management Program is certainly a

1 regulatory program and a very important one, but I
2 think it's important to emphasize the need to
3 focus on broader strategies and not simply on the
4 entirely regulatory aspect of the program.
5 Certainly, collaboration is important, not just
6 with local and provincial governments, but with
7 stakeholders in First Nations. And resources, I
8 think, are an issue for any program. And I'd say
9 with the Habitat program certainly the delivery of
10 the program is always with a mind to how we best
11 effectively use those resources available. If
12 there were more resources, I think that what you
13 would see the response would be, would be sort of
14 a broader approach to how we deliver the program
15 and, I would suggest, a more effective one.

16 Q All right. Mr. LeBlanc, do you want to go next?

17 MR. LeBLANC: I would. One of my suggestions would be
18 that we look down south. Sometimes we can see
19 what the Americans have done. And one of the
20 things I'm fascinated by in structuring our
21 program in the future would be to use the National
22 Fish Habitat Action Plan as a model where there's
23 an immense amount of collaboration and leveraging
24 of resource among all sectors of society, a more
25 integrated approach at a watershed level and some
26 monitoring and reporting. And it is a
27 collaborative effort. They're all working towards
28 the conservation and protection of fish habitat.

29 Q Mr. Hwang, do you have things to add?

30 MR. HWANG: I'll just underline a couple that I think I
31 touched on this morning. One is that we spoke a
32 fair bit about the Habitat status indicators under
33 the Wild Salmon Policy. And it's my opinion the
34 idea is good, the tool seems reasonable and
35 functional and an important next step would be to
36 action and implement gathering that baseline
37 habitat data so that we can, from here on out,
38 chart and measure the performance so that it
39 wouldn't be speculative as to whether we're
40 meeting our objectives or not. And a second point
41 would be to emphasize the linkage between fish
42 habitat management and land use and water use
43 decisions and priorities.

44 And if there is anything that we can do as an
45 outcome from proceedings like this to better
46 align, link and, I guess, organize the priorities
47 federally, provincially and with local

1 governments, such that we don't have a Fisheries
2 agency or maybe Fisheries agencies, counting the
3 Ministry of Environment in there, as pitted as
4 adversaries against development interests but
5 instead it's more a cooperative and collaborative
6 kind of approach where it's not conservation or
7 development but something that's more along the
8 lines of something sustainable.

9 MR. TAYLOR: All right. Thank you. Mr. Commissioner,
10 I see it's 3:05 and I know my time. By my
11 calculation, I started about 12 after so I think
12 I've got a few minutes. I don't know if you want
13 the break now or...?

14 THE COMMISSIONER: No, you can continue.

15 MR. TAYLOR: Just carry on for now. My next line of
16 questions, and I won't have enough time to do all
17 of these, have to do with the PPR and some
18 identified corrections that should be made and
19 gaps and clarifications that need to be made. I'm
20 going to ask some questions of the Panel, Mr.
21 Commissioner, but as I say, I won't get through
22 them all. And I will be submitting later, and
23 I've alerted Mr. Martland to this, an affidavit,
24 that we'll be seeking to file. As you may know,
25 with the PPRs, the Commission counsel has directed
26 the participants that the PPRs go in as evidence
27 and if we have anything that we want to do about
28 that PPR, we should bring it up in evidence. But
29 the practicalities are we can spend a lot of time
30 on a lot of detail. So me running out of time
31 will probably make for that detail going into an
32 affidavit that we'll seek to put in.

33 MR. MARTLAND: And I just would indicate from our point
34 of view, as Commission counsel, we'll have that
35 conversation with Mr. Taylor as to how we address
36 any questions that we're not able to complete
37 through the conventional way. I think at a
38 general level we've been slow to move to follow-up
39 questions or to written responses to the PPR in
40 writing and we've made that clear throughout. So
41 we'll have a conversation about that and see where
42 we stand on it. Thank you.

43 THE REGISTRAR: Mr. Taylor, before you move on, did you
44 wish to mark number 8 on your list to which you
45 have referred?

46 MR. TAYLOR: Thank you, Mr. Registrar. And the fact
47 that you've raised it, I suspect I do, if I could

1 remind myself what it is. Oh, that's the one that
2 I said that I don't need to but I have questioned
3 on it and I noticed this morning, Mr.
4 Commissioner, if counsel questioned, you'd like to
5 have it as an exhibit so I'm happy, if that be the
6 case here.

7 THE COMMISSIONER: Right.

8 MR. TAYLOR: So we'll make it an exhibit then. Thank
9 you, Mr. Registrar.

10 THE REGISTRAR: Item number 8 will be marked as Exhibit
11 Number 660.

12

13 EXHIBIT 660: Habitat Conservation and
14 Stewardship Program
15

16 MR. TAYLOR: By the way, that was the document that is
17 now Exhibit 660, I think you said, is a program
18 that has come and gone and one of the witnesses
19 spoke to it earlier. So now with the PPR, I've
20 got some questions of you, Panel members, and I'm
21 going to prioritize them and just hit on a few
22 ones in the time available. I'm going to go first
23 to paragraph 36 in the PPR. And I think that Ms.
24 Reid or Mr. Hwang has a comment on that particular
25 paragraph. And just to assist you, let me see if
26 I can be of assistance. Oh, yes, I'm sorry.
27 Paragraph 36 is a long paragraph. It's setting
28 out the strategies in the 1986 Policy.

29 Q And if you'd turn to page 17, under number 8,
30 Habitat Monitoring, there's a reference there to
31 DFO Monitoring Chemical Contamination and
32 Consulting with Environment on Monitoring Plans.
33 Is that pertinent anymore?

34 MR. LeBLANC: No, it isn't. Environment Canada has
35 been assigned a response for any chemical
36 monitoring. DFO, Fisheries and Oceans Canada, has
37 reduced its capacity in that area and Environment
38 Canada has undertaken that as a responsibility
39 under section 36 of the **Fisheries Act**.

40 Q All right. If we turn next to paragraph 69, which
41 is on page 29, there is reference there to some
42 new positions and offsetting or not of other
43 positions. Is there a comment that any of the
44 Panel members want to make about that in terms of
45 the accuracy there?

46 MR. LeBLANC: My understanding is at this stage that
47 there was a reduction, a loss of 24 Fishery

1 officers dedicated to Habitat, and it appears that
2 it was linked to the Expenditure Review
3 Committee's decision where that was overturned.
4 And there was ten positions in Habitat that were
5 reduced in the Expenditure Reduction Committee
6 review, and that the reduction in Fishery officers
7 dedicated to Habitat was due to a reallocation to
8 other priorities within the Department.

9 Q I won't take you to a particular paragraph about
10 this comment but there are a number of paragraphs
11 in the PPR that refer to DFO Habitat approving
12 projects. Is that right or wrong when it says
13 that DFO approves projects?

14 MR. LeBLANC: Under the authority of the **Fisheries Act**,
15 we either approve harm to fish or fish habitat.
16 We do not approve a project that's in the purview
17 of the provincial authorities under their
18 legislation.

19 Q All right. Thank you. If we turn to paragraph
20 155, one or more Panel members may have a comment
21 about that. This paragraph is referring to
22 triggers for major projects. And if you have a
23 look at that paragraph, is there anything that you
24 want to correct or clarify about it, any of you?

25 MR. LeBLANC: From what I saw from that paragraph is
26 that the Early Triggering Policy is not accurately
27 reflected in this paragraph. That policy was put
28 in place to apply the in-until-you're-out
29 principle of DFO. It does not indicate that DFO
30 triggered a CEAA assessment as early as possible
31 rather than waiting for a proponent to provide
32 information that the project will not harm fish
33 habitat. So there is some correction that needs
34 to be made on that statement.

35 Q Okay. Anything to add on that point, Ms. Reid or
36 Mr. Hwang?

37 MR. TAYLOR: All right. I think my time is up. Mr.
38 Martland has indicated that he'd be amenable to
39 speaking with myself and Mr. Spiegelman about how
40 we deal with the rest of the identified errors or
41 corrections that we propose and so we will do
42 that. And with that, Mr. Commissioner, those are
43 my questions of the Panel.

44 THE COMMISSIONER: Thank you, Mr. Taylor.

45 MR. MARTLAND: And I'd suggest we go to break now.
46 Thank you.

47 THE COMMISSIONER: All right. Thank you.

1 THE REGISTRAR: The hearing will now recess for ten
2 minutes.
3

4 (PROCEEDINGS ADJOURNED)
5 (PROCEEDINGS RECONVENED)
6

7 THE REGISTRAR: The hearing is now resumed.

8 THE COMMISSIONER: Mr. Martland?

9 MR. MARTLAND: Mr. Commissioner, Mr. Taylor and I had
10 the opportunity to speak further about this
11 question of corrections and clarifications to the
12 PPR. He's kindly agreed to the suggestion that he
13 take the time now. Our line-up of cross-
14 examination permits that. I don't have -- I
15 wouldn't tell you if I thought otherwise, but we
16 will be, I expect, fine to complete tomorrow in
17 normal hours with this panel's evidence. So on
18 that footing, rather than the route of an
19 affidavit, Mr. Taylor will continue with questions
20 clarifying PPR points. Thank you.

21 MR. TAYLOR: And I've said that I'll take 20 minutes,
22 Mr. Commissioner, so whoever is next up can get up
23 and I'll try to stick to the high points or
24 important points that we really want to deal with.
25

26 CROSS-EXAMINATION BY MR. TAYLOR, continuing:
27

28 Q So, firstly, panel, so I'm back at the PPR for
29 another 20 minutes or so. Do you have a binder of
30 the PPR up there? If you do, it might be useful
31 to have it available in case you need it. Mr.
32 Bisset will be bringing up the documents as we go,
33 I think.

34 MR. MARTLAND: Just to help the panel, it should be Tab
35 1 of the biggest binder, which will be the
36 Commission's list of documents.

37 MR. TAYLOR: You've got it?

38 MR. BISSET: Yes.

39 MR. TAYLOR: Okay.

40 Q Paragraph 12 near the beginning -- I'm just trying
41 to figure out how I get this hand, the microphone,
42 both within reach.

43 Paragraph 12 says that s. 36 of the **Fisheries**
44 **Act:**
45

46 ...prohibits the unauthorized deposit of a
47 deleterious substance into the water

1 frequented by fish.
2

3 And then it goes on and says:
4

5 Environment Canada, rather than DFO,
6 administers and enforces aspects of pollution
7 control arising from sections 36...
8

9 Now, I think there's one aspect of s. 36 that's
10 still with DFO, is that not correct? Sediment?

11 MS. REID: Yeah, so DFO retains responsibility for
12 administration and enforcement of sediment-based
13 pollution.

14 Q All right. So that's a qualification, if you
15 like, or a correction to paragraph 12.

16 Then if we go to paragraph 36 of the PPR,
17 there is a reference there to -- sorry, 26, I
18 meant. There's a reference there to some of the
19 staff and is that just the Habitat Management
20 Branch, or is that the entire OHEB staff that's
21 being referred to when it says "61" in the latter
22 part of that paragraph.

23 MS. REID: So 61 would refer -- probably refers to all
24 the RHQ OHEB people. If you'd like a breakdown of
25 the staff of -- the deck that you referred to
26 earlier has the actual breakdown across programs,
27 I believe. I think it does.

28 Q All right. So the accurate numbers would be in
29 that deck, then, as distinct from here.

30 MS. REID: That's right.

31 Q Okay. Then if we go next to paragraph 123, it
32 says therein that:
33

34 DFO does not conduct an environmental
35 assessment under the CEAA where it uses non-
36 statutory tools to manage fish habitat.
37

38 Is there anything about that paragraph that needs
39 to be clarified or corrected, any of you, and
40 specifically whether DFO maintains engagement in
41 an environmental assessment even where it has no
42 statutory responsibility?

43 MR. HWANG: So there will be times when DFO will stay
44 engaged in an EA -- or become engaged in the EA
45 that isn't triggered by the habitat revisions of
46 the **Fisheries Act**, and so an example of that could
47 be something triggered by transport regulations.

1 It would be involved in fish habitat issues, like
2 a marina. DFO would be providing advice as a
3 federal authority to the regulator to say that
4 there may or may not be issues that are pertinent
5 to fish habitat, and we'd try to provide advice
6 that would either avoid or minimize potential
7 effects from something like that.

8 Q All right. In relation to the next paragraph,
9 124, even if a project is exempt from a CEAA
10 assessment, are there still implications to the
11 proponent in that there would nonetheless be a
12 review of potential impacts to fish and fish
13 habitat?

14 MR. HWANG: I think that would probably speak to
15 things, circumstances such as urgent emergency
16 where there may not -- there is an exclusion for
17 emergency works in CEAA and if those circumstances
18 exist, it's possible not to go through, I guess,
19 the process of an environmental assessment under
20 CEAA, but Fisheries and Oceans could still issue
21 an authorization for harm to fish habitat and
22 would use our authority to either minimize or
23 reduce that harm as well as to require
24 compensation for that.

25 Q All right. The next paragraph, 125, uses the word
26 "rigour" in the second line:

27
28 ...four levels or types of assessment under
29 the CEAA, with increasing levels of rigour...

30
31 Do any of you have any comment on the use of that
32 word "rigour" there in the PPR?

33 MR. LeBLANC: I think it may be misused in this term,
34 in terms of screening/comp studies. There's
35 rigour in each of those levels. There's probably
36 a different scope in terms of the kind of projects
37 that are covered from each of those, but the
38 rigour that goes into each of those, to me, is
39 equivalent.

40 Q Then if you turn to paragraph 195 and 198 as well,
41 is there anything that any of you want to say
42 about the Compliance Decision Framework providing
43 guidance to both habitat management and C&P? It
44 seems to speak to habitat management or compliance
45 modernization, rather, and doesn't speak to any
46 other part of the organization.

47 MR. HWANG: Yeah, I think the point there is that the

1 Compliance Decision Framework provides guidance
2 not only for the Department's habitat staff, but
3 it's also a collaborative piece with the
4 compliance and enforcement staff, and there's
5 guidance in there that pertains to that function,
6 and that side of the Department as well.

7 Q Paragraph 223, if we could go to that next. Mr.
8 LeBlanc, is there a comment that you have on that
9 paragraph?

10 MR. LeBLANC: Yes. **SARA**-listed species are in the
11 program activity tracking for habitat system and
12 are recorded. So I think we do not yet identify
13 other non-**SARA** species. But that is in the plan
14 in the next few years to establish that. So we do
15 have a science table in terms of the requirements
16 for species that have been identified under **SARA**.

17 Q And backing up a paragraph from that, in paragraph
18 222, do you have a comment or clarification about
19 that one?

20 MR. LeBLANC: I guess in a sense that PATH itself, the
21 Program Activity Tracking for Habitat does not
22 contain information to assess program performance
23 related to No Net Loss. So since no one yet has
24 determined what the data would look like in order
25 to put that into the system.

26 Q All right. Paragraph 194, if we could turn to
27 that next, which is on page 76, there's a
28 reference in that paragraph to Habitat Compliance
29 Modernization being driven by - somewhere in here
30 - being driven by ERC, I think, Expenditure Review
31 Committee. It's the first sentence. Do you have
32 a comment on that?

33 MR. LeBLANC: Yes. Habitat Compliance Modernization
34 was not driven by the Expenditure Review
35 Committee. Actually, through the Expenditure
36 Review Committee, while we did lose some resources
37 in the habitat program through the reallocation
38 that was done through that process, we did gain
39 some 23 or 24 new resources for Habitat Compliance
40 Modernization.

41 Q Thank you. Now, you can see we're backing up
42 through the PPR again. If you turn to page 70,
43 there is a section about halfway down that page,
44 4.3.6, "DFO practice of limiting access to the CEA
45 Registry...". Do you have a comment on that, Mr.
46 LeBlanc, on that section of the PPR?

47 MR. LeBLANC: Yeah, my comment, I guess, was it's not

1 clear, the rationale for including this section,
2 and its influence on Fraser River sockeye.
3 Further, the section is currently out of date with
4 respect to the approach that the Canadian
5 Environmental Assessment Agency advocates, and it
6 should be updated accordingly.

7 Q All right. Now, at paragraphs 159 through 162,
8 there's a number of statements made in the PPR as
9 to whether DFO is doing what should be done, and
10 it's under a heading, "Scope of the Project under
11 CEAA."

12 I understand that you've got some comments,
13 Mr. LeBlanc, about these paragraphs and what
14 they're saying, and whether what's being suggested
15 is correct.

16 MR. LeBLANC: Yeah, I would object to making the
17 statement that the DFO scoping approach was
18 improper and unlawful. I would suggest that that
19 be redrafted, you know, that our scoping to
20 trigger is essentially the approach used by
21 virtually all departments, and the "Scope of
22 Project" varied based upon the nature and scope of
23 the triggers.

24 Q All right. This being an exhibit, I don't think
25 the Commission will be redrafting, of course, but
26 it is important to get your points that you're
27 making about the corrections. I understand you to
28 be saying essentially that you view this paragraph
29 as containing some inaccurate comments and some
30 comments that you're taking some exception to.

31 MR. LeBLANC: Correct.

32 Q And do I understand that you're also saying that
33 the scoping that's done is in line with general
34 scoping practice that has occurred and continues
35 to occur by a number of agencies?

36 MR. LeBLANC: Yes, and it has -- since the **MiningWatch**
37 Supreme Court decision, you know, we are now
38 following a new approach based on that decision.

39 Q All right. And that's a decision of about a year
40 ago from the Supreme Court?

41 MR. LeBLANC: Correct.

42 Q All right. If you turn to paragraph 138 which is
43 on page 57, there's a reference there to "major
44 project" and not being a statutory term under
45 CEAA. It seems to be a suggestion that DFO has
46 organized itself around major projects in relation
47 to CEAA. Do you have a comment on that paragraph

1 or what I just said?

2 MR. LeBLANC: Yes. Our definition of major projects
3 wasn't around in relation to CEAA. It's built
4 around the higher risk to fish and fish -- or
5 projects that have a higher risk to fish and fish
6 habitat, which in most cases tends to be a major
7 project, and it's really not related to the
8 application of CEAA.

9 Q All right. Ms. Reid?

10 MS. REID: I just wanted to add that there are other
11 risks that could apply to a major project such as
12 process risk, or socioeconomic considerations as
13 well.

14 Q Then if you look at paragraph 134, there's a
15 suggestion - and this is, I suppose, one of the
16 paragraphs that I was referring to earlier that
17 this doesn't directly say it as I read it - but it
18 alludes to DFO approving things, but with that
19 paragraph and 133, do any of you have any comment
20 on that insofar as it's suggestive of issuing a
21 licence authorizing a project? Is there anything
22 more to say beyond what you've already said?

23 MR. LeBLANC: No, I think we've already made the
24 comment that the Department, under the **Fisheries**
25 **Act**, doesn't authorize a project or licence a
26 project to proceed. It just authorizes the harm
27 to fish or fish habitat.

28 Q Okay. If you turn to paragraph 128 -- and I've
29 been asking these questions of Mr. LeBlanc, but if
30 others on the panel have something to add, jump
31 in. We're almost at the end.

32 Paragraph 128 refers to DFO no longer
33 conducting comprehensive studies. Do you have any
34 comment on that?

35 MR. LeBLANC: I guess just a minor correction is that
36 we do not conduct the environmental assessment.
37 We ensure that an environmental assessment is
38 conducted. That's our responsibility as a
39 responsible authority under CEAA. We are still
40 responsible for -- you know, even though there is
41 a decision for comp studies to be led by the
42 Canadian Environmental Assessment Agency, we still
43 have some responsibility for a number of comp
44 studies, and some that were already in the process
45 prior to the June 2010 CEAA amendments.

46 Q All right. And almost finally, if you look at
47 paragraph 123, and in particular the last sentence

1 there, is there a comment that you have about
2 that? It seems to suggest that DFO chooses an
3 option rather than applying the appropriate tool.
4 Is that an accurate statement or is there any
5 clarification to make?

6 MS. REID: Yeah, I think that's the point, that we
7 apply the appropriate tool depending on whether
8 impacts have been mitigated. So then the choice
9 is either no authorization being acquired versus
10 the need for an authorization if impacts cannot be
11 avoided.

12 Q All right. And then finally, and I think I can
13 leave it there for the PPR, if you turn to
14 paragraph 113 - and you can have a moment to look
15 at it if you want - the first sentence might be
16 suggestive that there is a direct linkage between
17 CEAA and the Department's authority in managing
18 Fraser sockeye. Is there any comment to make
19 about that?

20 MR. HWANG: I think our perspective there is that there
21 are circumstances where a project could be exempt
22 or otherwise not requiring an EA under CEAA. So
23 it's not to say that it would always apply. It
24 would usually apply but there may be circumstances
25 where it doesn't. There are exclusion regulations
26 or there may be -- or exclusion list or there may
27 be regulations that exempt a particular activity
28 or project from CEAA.

29 Q All right. Is there an explicit relationship or
30 direct linkage between CEAA and DFO's authority?
31 I may be confusing you.

32 MR. LeBLANC: Well, I would say that CEAA is inclusive
33 of the determination of impacts on fish and fish
34 habitat. So the areas that we look at and we can
35 control under the environmental impact assessment
36 are those that are within the purview of the
37 federal government's responsibility, and habitat
38 is one of these areas. Irrespective of whether
39 CEAA would proceed, the **Fisheries Act** applies. So
40 it's -- an integral part of the environmental
41 assessment process is the determination of impacts
42 on fish and fish habitat, so...

43 Q But you're not dependent on CEAA?

44 MR. LeBLANC: No.

45 MR. TAYLOR: All right, thank you. I think I can leave
46 them there. Thanks very much. Those will be my
47 questions, then, Mr. Commissioner.

1 THE COMMISSIONER: Thank you.

2 MR. MARTLAND. Thank you. I have Mr. Harrison for the
3 Conservation Coalition. I expect he will not
4 finish before 4:00, but can at least use that time
5 to cover some ground. Thank you.

6 MR. HARRISON: Good afternoon. Mr. Martland is right,
7 I will not finish today. For the record, my name
8 is Judah Harrison, H-a-r-r-i-s-o-n, and I'm here
9 on behalf of the Conservation Coalition which is
10 six not-for-profit non-governmental organizations,
11 and one individual sitting in the audience, Mr.
12 Otto Langer, who worked for you guys for 25 years
13 and finds this topic to be very important. So I'm
14 here representing him and I hope to do my best in
15 that capacity.

16
17 CROSS-EXAMINATION BY MR. HARRISON:
18

19 Q I wanted to start very briefly and very -- you
20 know, take a step back a little bit. I'll start
21 with you, Mr. Hwang.

22 It's quite clear from all these documents
23 that there has been changes, pretty significant
24 changes in the last 10 to 15 years. I'm thinking
25 with respect to staff numbers, with respect to
26 enforcement numbers, a lot of these things. I
27 understand that you've been working for the
28 Department for over 15 years; is that correct?

29 MR. HWANG: Yes, that's correct.

30 Q So I just wanted to generally - or maybe I'll even
31 give you some particulars - but I'd like you to
32 discuss changes in the last 15 years that you've
33 noticed. A couple of particulars I'd like you to
34 get at would be, number one, do you have more or
35 less staff now to do enforcement or monitoring or
36 all of the above? Number two, do you have more or
37 less managers overseeing you?

38 So when I'm thinking of asking you to compare
39 staff, I would like, you know, within your on-the-
40 ground staff. I don't want to rush through and
41 give you a bunch, so let's just start there.

42 MR. HWANG: Sure. So the first question, as I
43 understood it, was do I have more or less staff
44 now than I've had in the past. It depends when
45 you want to draw your line from the past, because
46 our staff numbers vary over the years since the
47 time, I guess, first of all, when I started

1 working for the Department as an operational
2 biologist and then when I became a manager.

3 But, in general, I would say -- I'll give you
4 this response, and if you want more detail, feel
5 free to ask for more.

6 The numbers we have now are roughly the
7 numbers we had when I first started with the
8 Department, in our area. There are probably a
9 little bit more than when we first started, but in
10 between then, we had an expansion where we had
11 quite a few more staff, and so we kind of started
12 at a level that's close to where we're at now,
13 went up to quite a few more and then we've come back
14 down to where we're at now. I might be able to
15 dredge up some specifics, but that's a rough
16 indication.

17 Q Yeah, that's fine, and in fact I think there are
18 specifics in the PPR which I do not have in front
19 of me now, but that's fine. The second question
20 was with respect to management. Do you feel -- I
21 mean, I guess you are a manager now, I've heard,
22 in the regional area, but in general, is there
23 more management staff now than there was 15 years
24 ago?

25 MR. HWANG: I'm not sure. Earlier in my career, I paid
26 less attention to what was going on above because
27 I was really more operationally oriented and field
28 oriented. I would say it's my impression that
29 there is more management oversight, and more
30 direct need for us to explain and rationalize our
31 decisions. There's less independence, I'll call
32 it. Whether that translates to more managers or
33 not, I'm not sure.

34 Q Okay. Thank you. And I guess the third, in the
35 same vein, do you feel that there's a significant
36 difference or a noticeable difference in the
37 amount of time that, not management, but your
38 employees spend in the field as opposed to in
39 front of a computer, let's say? Do you feel that
40 10 to 15 years ago, there was much more people
41 with boots on their feet and in the fields?

42 MR. HWANG: Yes, that's my impression. I'm just trying
43 to think back. I bet you 15 years ago, not
44 everybody even had a computer.

45 Q They were playing Pong.

46 MR. HWANG: Yeah, but the program, in terms of the
47 operational habitat side of the program, has

1 become much more accountable to process, and there
2 has been process added on to the program in the
3 years since I first started. For instance, when I
4 very first started, there was no **Canadian**
5 **Environmental Assessment Act**, and then that came
6 along and it brought with it a regulatory and
7 process workload that we had to add on into the
8 program.

9 Nowadays there is the **Species At Risk Act**
10 which isn't brand new, but the species are just
11 starting to get listed and the prohibitions are
12 starting to be put into place, and that's another
13 thing that we have to add on.

14 During that time the consultative obligations
15 and expectations, both public in general and First
16 Nations specifically, have been evolving almost
17 constantly and very rapidly at times. So all of
18 this has brought much more I'll call it process
19 obligation to our actual habitat management
20 biology work.

21 Q Thank you. And I guess we have heard comments to
22 that and the increasing complexity under which you
23 operate. I wondered if maybe you can attach some
24 numbers to that? I think anecdotally we hear that
25 80 percent now of staff's time is dealing with
26 regulatory compliance, I guess they say, or
27 referrals of the major projects. Is there a
28 chance you can put the numbers -- I mean, the
29 percentage of your staff now that are out in the
30 field versus percentage that they would have been
31 15 years ago? Are we talking half the time?

32 MR. HWANG: I'm not sure I can relate it that way. We
33 do undertake some what we call work planning
34 within our operating unit where we had recognized
35 that there was this increasing pressure to attend
36 to these process issues, and the result of it was
37 that our staff were less and less available to be
38 in the field. So we intentionally brought out
39 these work planning principles that looked at the
40 work roughly along the lines of the strategies in
41 the habitat policy, and said, okay, we should do
42 some regulatory work and that will necessarily
43 probably be the biggest portion of our work plan,
44 but we're going to do some monitoring, we're going
45 to do some education and outreach, we're going to
46 do some basic even administrative stuff that you
47 have to do as part of the bureaucracy.

1 So we tried to set up a plan that had some
2 balance with roughly 45 percent of our idealistic
3 work plan being tied to regulatory things. But
4 even that regulatory work doesn't just mean
5 sitting at your desk typing on a computer. That
6 includes doing the field visit to look at a site
7 beforehand. It includes looking at a site perhaps
8 during or after the works are conducted. So it's
9 a bit hard for me to extract how much are our
10 staff in the field versus how much -- compared to
11 what it was 15 years ago.

12 Q Okay, thank you. I will not push you then.

13 MR. HARRISON: I'm hoping, Mr. Registrar, that you can
14 bring up a Commission document, and this is the
15 1986 policy itself. It's Exhibit 260, I think.

16 THE REGISTRAR: Exhibit 260.

17 MR. HARRISON: If you could turn to page -- oh, the
18 page is cut off. Chapter 4 of this document,
19 yeah, one page before that, please. That's the
20 one, so number 4. If you can highlight number 4
21 there, please? Thank you.

22 Q I mean, I guess I'll just read out the first line
23 of number 4, but it says:

24
25 In jurisdictions where Fisheries and Oceans
26 manages the fisheries and in recognition of
27 the need to avoid cumulative habitat losses
28 caused by small projects, the Department will
29 participate with the provinces, territories
30 and other federal departments in reviewing
31 plans for activities regulated by other
32 levels of government --
33

34 We're almost getting to the point that I wanted
35 to. Well, I guess the point that I wanted to get
36 at was cumulative impacts with respect to smaller
37 projects.

38 The point that I wanted to say was, I mean,
39 would you all agree that the 1986 policy itself
40 recognizes that cumulative impacts is a serious
41 concern and that small projects have a known
42 tendency to lead to cumulative impacts of fish
43 habitat?

44 MR. HWANG: I would agree with that. I wouldn't say
45 necessarily that all small projects cause an
46 impact, but there's certainly the possibility that
47 they can, and when you get a lot of them, the

1 probability that some of those will have an impact
2 increases. It's been my observation and
3 experience that that is the result that's
4 happening now.

5 Q And I guess along the same lines, would it be
6 accurate to say that some major projects - and I
7 put quotations around that - would have a less
8 harmful impact on fish habitat than some smaller
9 projects? The size of the project does not
10 necessarily determine the amount of habitat
11 destruction. I see some nods and I'd
12 appreciate --

13 MR. HWANG: Certainly I can say that operationally,
14 like as an example a major project could be a
15 windfarm, and the windfarm could be in an
16 absolutely upland area, and it may have
17 environmental consequences but they're not
18 particularly related to fish and fish habitat.

19 Q Mr. LeBlanc, you were nodding in agreement?

20 MR. LeBLANC: Correct.

21 Q Thank you. I mean, I only have four minutes left
22 and so I'm hesitant to start on a subject of EPMP,
23 but I guess just generally right now, EPMP we've
24 heard focuses on major projects. You know, put in
25 other words, not only does it focus on major
26 projects, is it fair to say that it will not
27 address smaller projects, that under the EPMP, DFO
28 will not address the vast majority - I'll put a
29 small qualifier there - will not assess the
30 majority of projects that impact habitat?

31 MR. LeBLANC: First of all, the EPMP wasn't just
32 focused on major projects. It had habitat
33 compliance, modernization, partnering, the
34 application of a risk-based approach to either
35 large major projects or small projects. We
36 developed a series of operational statements to be
37 used to streamline the regulatory process, but we
38 still do quite a large number of small referrals a
39 year across the country. The number is
40 approximately 7,000. We've reduced it over the
41 last number of years, but we still review a large
42 number of projects and we have a large number of
43 smaller projects reviewed through agreements with
44 provincial agencies that have standards that are
45 equivalent to the requirements we have.

46 Q So then I guess the question directly would be
47 would you say that there are more smaller projects

1 that are assessed or more smaller projects that
2 are not assessed by DFO currently under the EPMP?
3 MR. LeBLANC: The EPMP was part of a continuous
4 improvement initiative and we are now, because of
5 the risk management framework and the tools that
6 we developed such as I mentioned, operational
7 statements, we do review less projects than we
8 did, let's say, five or six, seven years ago.
9 Q Okay, thank you. And, then, I guess, is it fair
10 to say that the majority of smaller projects,
11 projects not deemed major projects, are not
12 assessed in any capacity by DFO? Is that a fair
13 statement?
14 MR. HWANG: I'm not sure I followed your question.
15 Could you reframe that?
16 Q Is it fair to say that the vast majority of
17 smaller projects that impact habitat are not
18 assessed by DFO in any manner currently?
19 MR. HWANG: I'm not sure I would agree with that. What
20 DFO has done is taken what you might consider the
21 lowest of the low end of the risk category of
22 projects and said we're going to try to deal with
23 those in - I'll generalize it - more streamlined
24 way through things like operational statements.
25 But there are still lots of projects that
26 come in that you would classify as relatively
27 small that DFO staff still review and make some
28 assessment of. So I'm not sure that it would be
29 accurate to frame it as most small projects don't
30 get looked at now. There are certainly some, and
31 there are definitions for what those are. Some of
32 those do bring some risk to the resource, and some
33 of them probably don't, and they're dealt with
34 through these streamlining tools.
35 But there is still a review of things that I
36 think the Department thinks pose some degree of
37 risk for a negative consequence. So we're looking
38 at less stuff than we used to --
39 Q Yes.
40 MR. HWANG: -- but I don't think we --
41 Q You still think you're catching most.
42 MR. HWANG: Well, I'm not sure I'd say that either,
43 'cause one of the corresponding challenges has
44 been over, say, the last three to five years, a
45 tremendous increase in economic development
46 activity, and that has brought more bigger
47 projects, more medium projects, and more smaller

1 projects through, so there is some concern that
2 even to the scale of projects that we're not
3 looking at, there are more of those coming through
4 just by way of more economic development activity.
5 MR. HARRISON: Okay. That's fair.
6 Mr. Commissioner, I note the time. Thank you.
7 THE REGISTRAR: The hearing is now adjourned for the
8 day and will resume at ten o'clock tomorrow
9 morning.

10
11 (PROCEEDINGS ADJOURNED AT 4:00 P.M. TO APRIL
12 5, 2010 AT 10:00 P.M.)
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19 I HEREBY CERTIFY the foregoing to be a
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21 evidence recorded on a sound recording
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Diane Rochfort