

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



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

Public Hearings

Audience publique

Commissioner

L'Honorable juge /
The Honourable Justice
Bruce Cohen

Commissaire

Held at:

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

Wednesday, April 6, 2011

Tenue à :

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

le mercredi 6 avril 2011

APPEARANCES / COMPARUTIONS

Brock Martland Lara Tessaro	Associate Commission Counsel Junior Commission Counsel
Mitch Taylor, Q.C. Jonah Spiegelman	Government of Canada ("CAN")
Boris Tyzuk, Q.C.	Province of British Columbia ("BCPROV")
No appearance	Pacific Salmon Commission ("PSC")
No appearance	B.C. Public Service Alliance of Canada Union of Environment Workers B.C. ("BCPSAC")
No appearance	Rio Tinto Alcan Inc. ("RTAI")
Shane Hopkins-Utter	B.C. Salmon Farmers Association ("BCSFA")
No appearance	Seafood Producers Association of B.C. ("SPABC")
No appearance	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")
No appearance	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")

TABLE OF CONTENTS / TABLE DES MATIERES

	PAGE
DAVE CARTER (Affirmed)	
In chief by Ms. Tessaro	1
Cross-exam by Mr. Taylor	35
Cross-exam by Mr. Harrison	55/58
Cross-exam by Mr. Rosenbloom	62
Cross-exam by Mr. Harvey	71
Cross-exam by Ms. Brown	74
Cross-exam by Ms. Robertson	81
Questions by the Commissioner	83
Cross-exam by Mr. Taylor (cont'd)	85
Re-exam by Ms. Tessaro	88

EXHIBITS / PIECES

<u>No.</u>	<u>Description</u>	<u>Page</u>
672	<i>Curriculum vitae</i> of Dave Carter	1
673	Habitat Monitoring Update	4
674	The Pacific Regional Marine Compliance Monitoring Site Visit Form	14
675	Answering Guide for the Pacific Region Monitoring Form	14
676	Draft Habitat Monitoring Strategic Framework, 2010-2015	19
677	Draft Habitat Monitoring Strategic Framework, December 15, 2005	22
678	Pacific Regional Habitat Monitoring Framework, February 15, 2011	23
679	Habitat Monitoring Update, Presentation to Regional Managers, November 25, 2010	25
680	Habitat Compliance Decision Framework Fisheries and Oceans Canada - Version 1.1 2007	41
681	Discussion Paper: A Scoping of Aboriginal Implications of Renewal of the Fisheries Act 1985, Russ Jones, March 30, 2006	80

1
Dave Carter
In chief by Ms. Tessaro

Vancouver, B.C. /Vancouver
(C.-B.)
April 6, 2011/le 6 avril 2011

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

6 THE COMMISSIONER: Mr. Martland?

7 MR. MARTLAND: Mr. Commissioner, Ms. Tessaro will be
8 leading the next witness, Dave Carter, so I'll
9 simply pass over to her. I'm going to continue to
10 wear the hat of timekeeper for today's purpose.

11 MS. TESSARO: Good morning, Mr. Commissioner. In
12 addition to Mr. Martland, we also have Micah
13 Carmody here today with me. Today we'll be having
14 some more focused evidence on the topic of habitat
15 monitoring by DFO. I'm going to aim to complete
16 our examination of Mr. Carter before the morning
17 break.

18 Mr. Bisset, on occasion I'll be referring to
19 our habitat management PPR, so you could just
20 generally have that document at hand, that would
21 be appreciated. Also, Mr. Bisset, could I ask you
22 to pull up Mr. Carter's c.v. Before we get into
23 that...

24
25 DAVE CARTER, affirmed.
26

27 THE REGISTRAR: Would you state your full name, please.

28 A My name is David William Carter.

29 THE REGISTRAR: Thank you, sir. Counsel?

30 MS. TESSARO: Thank you.
31

32 EXAMINATION IN CHIEF BY MS. TESSARO:
33

34 Q Now, Mr. Carter, you'll see that there's a
35 *curriculum vitae* on the screen before you. Is
36 that yours?

37 A Yes, it is.

38 MS. TESSARO: Could I have that marked as the next
39 exhibit, please?

40 THE REGISTRAR: Exhibit number 671 (sic).
41

42 EXHIBIT 672: *Curriculum vitae* of Dave Carter
43

44 MS. TESSARO:

45 Q I'm going to ask you some very long and leading
46 questions about your background, and if there's
47 any detail in what I say that you feel needs

April 6, 2011

2
Dave Carter
In chief by Ms. Tessaro

1 correcting or clarifying, I'll ask you to do that.
2 A All right.
3 Q I think you'll be aware of this process because --
4 THE REGISTRAR: Counsel that should be 672 for the
5 exhibit.
6 MS. TESSARO: Thank you.
7 THE REGISTRAR: Thank you.
8 MS. TESSARO:
9 Q I think you'll be aware of this process because
10 you were here on Monday for the habitat management
11 panel's evidence and watched us zip through
12 credentials then.
13 A That's correct.
14 Q So you obtained an Honours Bachelor of Science
15 degree in zoology from the University of British
16 Columbia in 1986, and then went on to obtain a
17 Master's of Science in biology with a specific
18 focus on habitat analysis from Simon Fraser
19 University in 1990?
20 A That's correct.
21 Q And then between 1990 and 1996, you taught biology
22 at both UBC and SFU, and in 1996, you left
23 academia and joined DFO as a senior habitat
24 biologist with the Oceans, Habitat and Enhancement
25 Branch; is that correct?
26 A That's correct.
27 Q Working for DFO for the next nine years?
28 A Correct.
29 Q In 2005, you left DFO to take a position as Senior
30 Program Officer with the CEAA agency in its
31 regional office here in Vancouver?
32 A Correct.
33 Q Oh, I should note for the record that CEAA agency
34 is the Canadian Environmental Assessment Agency.
35 A Yes.
36 Q And you returned to DFO in 2008 to commence your
37 current role as Regional Team Leader, Habitat
38 Monitoring, which is a position based in regional
39 headquarters here in Vancouver.
40 A Yes.
41 Q Do you recall what month in 2008?
42 A November. November the 11th, actually.
43 Q Okay. An easy date to remember. So you've been
44 in the role of regional Habitat Monitoring lead,
45 then, for almost two-and-a-half years?
46 A Correct.
47 Q So the Habitat Monitoring Unit is the unit that

April 6, 2011

3
Dave Carter
In chief by Ms. Tessaro

1 you oversee. Could you explain how it's situated
2 within OHEB, within the Oceans Habitat Enhancement
3 Branch?

4 A The Habitat Monitoring Unit is structured much
5 like the rest of the Habitat Management Program in
6 Pacific Region where there is a regional
7 headquarters, and then there are area offices.
8 It's as Rebecca referred to it, a matrix model of
9 direct and functional reporting.

10 So I have some monitoring staff in regional
11 headquarters that report directly to me. There
12 are monitoring staff, monitoring biologists and
13 monitoring technicians in each of the areas and
14 they report to me functionally with regards to
15 monitoring. There are 12 individuals in the
16 Habitat Monitoring Unit.

17 Q And just to be clear, the fact that you have 12
18 staff in the Habitat Monitoring Unit, that's not
19 exhaustive of all the biologists or habitat staff
20 in DFO OHEB who would be doing habitat monitoring.

21 A That's correct. The Monitoring Unit, their time
22 is dedicated to monitoring. The Habitat staff in
23 general, there's been, I guess, a goal of setting
24 20 percent of their effort towards monitoring, so
25 we would have a role in coordinating those efforts
26 as well.

27 Q And as the regional monitoring lead, and the lead
28 of the HMU, could you just very briefly summarize
29 your primary duties?

30 A I guess my primary duties are to oversee the, I
31 guess, implementation and operation of habitat
32 monitoring in the Pacific Region, so developing a
33 plan for doing monitoring within the region,
34 setting work plans. I also act on a national
35 working group with my colleagues who are regional
36 team leads across the country, working on
37 developing national standards and a national
38 implementation of monitoring as well.

39 Q Do you currently have responsibility for any of
40 the other elements of what is known as DFO's
41 Habitat Compliance Modernization, or HCM
42 initiative?

43 A Well, the HCM or the Habitat Compliance
44 Modernization has three elements.

45 Q Mm-hmm.

46 A There's the protocol, which is the agreement
47 between Habitat and CMP. There is the compliance

April 6, 2011

4
Dave Carter
In chief by Ms. Tessaro

1 decision framework which is the policy document
2 that lays out how we will evaluate and respond to
3 incidents of non-compliance, and then there's the
4 monitoring component.

5 My main role is in the monitoring component;
6 however, I'm also the regional trainer on the
7 habitat compliance decision framework, as well as
8 I have been involved in, I guess, facilitating the
9 development of the regional and area operational
10 plans for the protocol, the agreement between CMP
11 and Habitat.

12 Q And on that last point of the regional and area
13 operational plans, are you currently engaged in
14 any drafting or redrafting efforts?

15 A The national protocol between CMP and Habitat has
16 been revised. There have been some meetings with
17 regards to development of a revised regional
18 protocol but, at this point, there's been no
19 redrafting done.

20 MS. TESSARO: Thanks. Mr. Bisset, can I ask that you
21 pull up Tab 7 of Canada's list of documents? If
22 you could just -- there you go.

23 Q Mr. Carter, are you familiar with this document?

24 A Yes, I am. I actually wrote it.

25 Q And who was it presented to and for what purpose?

26 A This Powerpoint presentation was developed spring
27 of 2010, and it was presented to the Regional
28 Management Committee. Now, that would be the
29 Habitat Management Committee which comprised the
30 regional manager of Habitat as well as the area
31 managers for Habitat. It was presented, I guess,
32 in advance of our field season and it sort of laid
33 out the structure of HCM and talked about some of
34 our sort of objectives for that year.

35 MS. TESSARO: Could I have this marked as the next
36 exhibit, please?

37 THE REGISTRAR: Exhibit 673.

38
39 EXHIBIT 673: Habitat Monitoring Update
40

41 MS. TESSARO:

42 Q And could we turn to page 5? Could you turn to
43 page 5? Just to confirm, Mr. Carter, this is the,
44 I suppose, governance structure that you explained
45 a few moments ago?

46 A Or this would be the organizational chart for the
47 Habitat Monitoring Unit where the, I guess, solid

5
Dave Carter
In chief by Ms. Tessaro

1 lines would be direct line reporting and then the
2 dashed lines would be functional reporting.
3 Q You mentioned that you have a few other staff in
4 regional headquarters who, outside of the area,
5 monitoring coordinators.
6 A Mm-hmm.
7 Q You have a few line staff who also report to you.
8 They're not shown on this. Could you just
9 indicate who they are and what they do?
10 A Yes. I have two other staff that report to me.
11 One is an inventory biologist, and the other is
12 the regional coordinator for the PATH, the Program
13 Activity Tracking system.
14 Q Thank you. You've also mentioned that you have,
15 as shown here, 12 HMU staff. My question is when
16 did the HMU get fully staffed?
17 A It would have been the spring/summer following
18 when I came onto the Department, so I think the
19 unit was about 50 percent staffed when I arrived
20 in November. The rest of the staffing occurred
21 sort of spring/summer of 2009.
22 Q So we've heard that the HCM, the Habitat
23 Compliance Modernization initiative was introduced
24 in 2005, and you've said that habitat monitoring
25 is the third element of that. I'm wondering why
26 it took so long to staff the HCU?
27 A Actually, I think HCM was included or added to the
28 EPMP initiative in 2006, I think, as the sixth
29 element. There was a document in 2005 sort of, I
30 guess, proposing a habitat monitoring initiative,
31 but the actual addition to the EPMP was in 2006, I
32 believe.
33 Subsequent to that, are you asking sort of
34 why it took so long? Yes.
35 Q That's the question.
36 A Part of that had to do with there were other
37 staffing changes going on at that time from 2007
38 onward. There also needed to be the development
39 of, I guess, staffing plans and then those
40 staffing plans needed to be improved, positions
41 needed to be created, and then the staffing
42 processes needed to occur.
43 I wasn't actually here for those various
44 activities, but that's my understanding.
45 Q Has there been any challenge with staff turnover?
46 A To this point, we have had a minor number of staff
47 turnovers. Technicians have changed, but we

April 6, 2011

6
Dave Carter
In chief by Ms. Tessaro

1 haven't had any difficulties with staffing those
2 positions.
3 Q And pardon me if you're already explained this,
4 but who is the manager within regional
5 headquarters that you --
6 A That I report directly to?
7 Q Right.
8 A I report to an acting manager currently, Brad
9 Fanos, who is the Acting Regional Manager for
10 Habitat.
11 Q And the final question I have around
12 organizational structure is do you have a
13 reporting relationship with national headquarters?
14 A I do. I guess I have a functional reporting
15 relationship with Chad Ziai, who is in the
16 operations side in NHQ.
17 Q And has he always been the person that you
18 functionally reported to in the last two-and-a-
19 half years, or have there been other individuals?
20 A No, prior to Chad, there was Daria Langill. So I
21 think Daria was in place for about 12 months, and
22 then Chad has been in place subsequent.
23 Q And you mentioned that there's a national habitat
24 monitoring working group that you sit on. How
25 many times has that group met approximately in the
26 last two-and-a-half years? Is it routine, is it
27 annual?
28 A Approximately twice a year, and then there's been
29 conference calls which sort of, again, two a year
30 of those conference calls as well.
31 Q Turning more now to the genesis of the Habitat
32 Monitoring Unit, if you could turn to the next
33 page of this deck. I'm only using the page of
34 this deck because of the heading, "Strengthen
35 HMP's capacity to monitor." Is that, in essence,
36 the focus of HMU?
37 A Very much so. Again, back to the HCM initiative,
38 those three elements, the third of which was
39 increasing the habitat management program's
40 ability to do monitoring and put more effort
41 towards that monitoring so, yes, the genesis of
42 the Habitat Monitoring Unit in this region would
43 be a response to that.
44 Q Are there other developments in the last decade or
45 two that strengthening monitoring capacity in the
46 region has been responsive to?
47 A Yes. I guess there's been a number of things that

April 6, 2011

7
Dave Carter
In chief by Ms. Tessaro

1 have led to a desire to increase monitoring, or
2 recognizing that doing more monitoring would be
3 worthwhile. First of all, there was a survey done
4 in 2005 prior to the development of the report
5 that we alluded to earlier which looked at sort of
6 monitoring efforts nationally.

7 There was also work done by Quigley and
8 Harper looking at sort of rates of compliance
9 associated with various projects, making
10 recommendations about doing more compliance
11 monitoring. There were the Auditor General's
12 reports suggesting that more monitoring would be a
13 good thing to do, so there've been a number of
14 things that have led to this genesis.

15 Q On that latter point of the Auditor General's
16 monitoring reports, are you including, I imagine,
17 the 2009 Commission of Environment Sustainable
18 Development Report?

19 A Yes.

20 Q And are you also including the 2004 Commission of
21 Environment and Sustainable Development Report
22 which was in the specific context of Pacific
23 salmon habitat?

24 A Yes.

25 Q Thank you. So just looking at this page here a
26 little more closely, there is a line, I believe,
27 that is very faint on our version because I
28 believe it was a colour deck --

29 A Yes.

30 Q -- and I'm wondering if you're able to fill in the
31 blank of what that line reads from your more
32 legible paper copy?

33 A Yes. A lesson learned about not using a light
34 green in a Powerpoint. I do believe it says -- I
35 think it says "monitoring", and it talks about
36 compliance monitoring underneath in the second
37 line [as read]:

38
39 Compliance monitoring, effectiveness
40 monitoring and occurrence tracking.

41
42 Q And is there a percentage assigned to monitoring?

43 A 20 percent. Now, to be clear, that is a goal that
44 was set by managers in Pacific Region for the
45 habitat program in this region.

46 Q Were you one of the managers who set that goal?

47 A No, this occurred before I showed up.

April 6, 2011

- 1 Q Okay. Are you familiar -- are you aware if that
2 is the same target for the percentage nationally?
- 3 A To be honest, I can't say for sure. I heard
4 discussions about setting something, but I haven't
5 seen something set out like this.
- 6 Q And do these percentages -- you said they're
7 goals.
- 8 A Uh-huh.
- 9 Q Are they in terms of staff time? Is that what the
10 percentage reflects?
- 11 A Staff time or effort.
- 12 Q Okay. And over the time that you've been here in
13 the last two-and-a-half years in this position,
14 what approximately is the percentage of staff time
15 that is actually spent on monitoring according to
16 your best information?
- 17 A There have been a couple of regional surveys done
18 where we've gone and asked staff about the time
19 that they've spent involved in monitoring. Best
20 estimates and observations would be more along the
21 lines of five percent.
- 22 Q And just turning very quickly to the bullet that
23 reads, "Policy and Science", five percent. Within
24 that five percent, do you know what portion is
25 targeted for the Wild Salmon Policy and what that
26 Wild Salmon Policy refers to there?
- 27 A Well, I do know what Wild Salmon Policy refers to.
28 In terms of that five percent, I'd be hard
29 pressed. I don't know that it applies to every
30 Habitat staff. I think it might be directed more
31 specifically at key individuals who are involved
32 in those things.
- 33 Q So would that be more along the lines of regional
34 headquarters' officials?
- 35 A Mostly, though, there are staff in areas who have
36 been involved in, I guess, supporting the
37 development of status reports and other things, so
38 there has been some area involvement in things
39 like the Wild Salmon Policy and in engagement with
40 Science as well.
- 41 Q Okay. Before we turn to explaining the three
42 basic types of habitat monitoring, I'm hoping you
43 can just make this discussion a little bit more
44 concrete.
- 45 A Sure.
- 46 Q What purposes do we monitor fish habitat for? Why
47 monitor fish habitat? What objectives does that

1 serve from the perspective of sustainability of
2 salmon?

3 A There's a number of really good reasons or very
4 good reasons to do monitoring. First of all, to
5 support, I guess, compliance and, you know, manage
6 compliance to ensure that when we do provide
7 conditions or advice, that those conditions or
8 that advice is adhered to. I think it's often
9 beneficial that when people expect you to show up,
10 there is, I guess, an incentive to be compliant.
11 So that's one of the reasons.

12 Another reason would be to, I guess,
13 continuously shoot for improvement, to measure
14 performance and evaluate how effective we're
15 being, and based on the information we gather,
16 look to ways that we could become more effective
17 or improve how we're doing.

18 Q Mm-hmm.

19 A So there's an element of performance measurement
20 as well.

21 Q This might be an obvious question, but can you
22 identify the link, if there is one, between
23 monitoring activities and the principle of No Net
24 Loss of productive capacity of fish habitat? How
25 do those things relate to each other?

26 A Well, one of the things with monitoring is we are
27 looking at compliance, and compliance to the **Act**
28 has a lot to do with whether there's an
29 unauthorized harmful alteration to the habitat
30 occurring. That compliance, if we are quantifying
31 how frequently those unauthorized harms to habitat
32 are happening, that does give us a window into the
33 impacts that are occurring to fish habitat.

34 Q Apart from compliance, though, is monitoring not
35 also relevant to assessing the effectiveness of
36 your -- of the advice you give aimed at achieving
37 No Net Loss? Sorry to be so leading, but I'm
38 hoping you can explain that a bit.

39 A Yes, it is. I mean, we can use this monitoring to
40 evaluate, I guess, the quality of the advice.
41 First of all, we can look to see whether somebody
42 did follow the advice, and if they did follow the
43 advice, then we can evaluate whether it avoided
44 impacts or not.

45 Q Just to make this a little bit more concrete, we
46 heard yesterday or the day before about the
47 example of Shuswap Lake, trying to find a Fraser

10
Dave Carter
In chief by Ms. Tessaro

1 River sockeye-specific example.
2 A Sure.
3 Q Can you provide the Commissioner an example of the
4 types of projects or activities on, say, Shuswap
5 Lake that might be monitored, and the types, more
6 generally, of fish habitat that OHEB staff are
7 monitoring?
8 A Right. I guess, now, the SLIPP program, or the
9 monitoring that was done on Shuswap Lake was a
10 program that some of the monitoring staff were
11 involved in. They did some shoreline inventory
12 work. They also looked at development activities
13 along the shoreline and identified those and
14 mapped those. So development of docks, shoreline
15 modifications, walls, encroachment, boat launches,
16 all of those various projects were inventoried.
17 Q Apart from SLIPP, perhaps, just in a very basic
18 way, assuming I'm a high school student, what are
19 the kinds of projects -- you've mentioned some
20 docks, foreshore development --
21 A Right.
22 Q -- that your staff monitor, and in what types of
23 Fraser River sockeye habitats across the province?
24 A Okay. In terms of how we conducted monitoring, we
25 based our monitoring on the regulatory tools that
26 the Department uses, so we looked at projects that
27 were dealt with through authorizations, projects
28 that were dealt with through letters of advice and
29 projects that were dealt with through operational
30 statements. Those various regulatory tools were
31 used on a broad range of projects both in the
32 marine environment, in the freshwater environment,
33 everything from stream crossings, bridges, through
34 docks, through log dumps, port developments, you
35 know, a very broad range of project types.
36 Q And this would obviously include monitoring in
37 areas like Georgia Strait?
38 A Yes.
39 Q Queen Charlotte Strait?
40 A I'd have to look to see where projects were
41 monitored but potentially, yes.
42 Q Is there a geographic endpoint where OHEB stops
43 monitoring?
44 A No. We looked at throughout the entire region, so
45 there was monitoring conducted throughout the
46 region.
47 Q Thank you. And, from your perspective within the

April 6, 2011

11
Dave Carter
In chief by Ms. Tessaro

1 Habitat Monitoring Unit, is habitat monitoring
2 less relevant or less important for Fraser River
3 sockeye than it is for other salmon populations or
4 other fish species?
5 A I mean, less relevant? I think that fish are
6 dependent upon habitat, so I think in all of them,
7 there are -- you know, there was relevance.
8 Different species have different levels of
9 dependence on freshwater habitat versus marine,
10 those sorts of things, so I think the relevance
11 might change depending on which fish stock and
12 which life history you're talking about. But I
13 think it's relevant for all of them.
14 Q Thank you. And I'm hoping we can turn to the PPR
15 now, which I believe is PPR number 8.
16 MS. TESSARO: Mr. Bisset, it's page 74 which I think is
17 pdf page 79.
18 Q Mr. Carter, I'm referring you to the PPR because
19 I'm hoping it'll be an efficient tool to get in
20 some evidence about the three general types of
21 habitat monitoring contemplated by the Habitat
22 Management Program.
23 A Yes.
24 Q Looking at paragraph 87 on the previous page,
25 sorry, 187 and 188. Have you had an opportunity
26 to read this?
27 A Yes, I have.
28 Q And do you agree with the general descriptions of
29 compliance monitoring, effectiveness monitoring,
30 ecosystem monitoring and do you have anything to
31 add to those descriptions?
32 A I would agree with those descriptions. I don't
33 think I have anything to add.
34 Q On the last one of ecosystem or fish habitat
35 health monitoring, we see a lot of different names
36 for this type of monitoring.
37 A Yes.
38 Q For the sake of the record, I'm going to rattle
39 off some of those type of names --
40 A Sure.
41 Q -- and you're going to, I hope, tell me if any of
42 them are not in fact akin to each other. So we
43 hear "fish habitat health monitoring"?
44 A Yes.
45 Q Environmental monitoring?
46 A I wouldn't lump that in there 'cause environmental
47 monitoring is often aimed at project monitoring.

April 6, 2011

- 1 Q Okay. Thank you. Aquatic health monitoring?
- 2 A I think that would fall in that category.
- 3 Q And again, ecosystem monitoring.
- 4 A Yes.
- 5 Q And in the context of the Wild Salmon Policy,
- 6 these types of monitorings are basically
- 7 monitoring CU habitat status. That's the
- 8 nomenclature of the Wild Salmon Policy.
- 9 A By CU, you're talking about conservation units and
- 10 the status of conservation units?
- 11 Q And the status of their habitats.
- 12 A Yes.
- 13 Q So that would effectively be akin to Strategy 2
- 14 monitoring.
- 15 A Yes.
- 16 Q Thank you. You were here on Monday and Tuesday.
- 17 Did you hear Mr. LeBlanc refer to the Compliance
- 18 Monitoring Unit?
- 19 A I don't recall him referring to it, but he
- 20 probably did.
- 21 Q Well, I'll ask it another way, sorry. Is the
- 22 Habitat Monitoring Unit described here in the
- 23 Pacific Region using that particular label?
- 24 A No, we generally refer to it as the Habitat
- 25 Monitoring Unit.
- 26 Q Do you think it's fair to say that the national
- 27 perspective is more heavily focused on compliance
- 28 monitoring than the regional perspective is?
- 29 A I think nationally there's a recognition that it's
- 30 going to be sort of a stepwise rollout of
- 31 monitoring in that initially there's a focus on
- 32 compliance monitoring but there's an expectation
- 33 that there will be development of effectiveness or
- 34 efficacy monitoring as well as fish habitat health
- 35 monitoring, but that that will come with time.
- 36 Q Just wrapping up a little bit on compliance
- 37 monitoring, can compliance monitoring serve as a
- 38 surrogate or a proxy for assessing whether there's
- 39 been a loss or gain in the productive capacity of
- 40 fish habitat? Is it suited to that task?
- 41 A As a surrogate, it would not be a particularly
- 42 strong surrogate. When you ask general questions,
- 43 you get general answers, and that doesn't
- 44 necessarily tell you a lot. By going out and
- 45 identifying whether a particular project is
- 46 compliant or non-compliant as a yes/no, that
- 47 doesn't tell you how much of an impact it may have

1 caused, so that next level of monitoring where you
2 evaluate the level of impact is important as well.
3 Q And when you say "compliance", just to be really
4 clear about nomenclature here, sometimes I hear
5 compliance monitoring described as evaluating
6 conformity, and sometimes I hear it described as
7 evaluating compliance. Are those the same things?
8 Can you explain those concepts?
9 A No, they're actually fairly distinct concepts.
10 Conformity has to deal with evaluating whether
11 somebody followed the advice or followed the
12 conditions that you provided them and to our
13 regulatory tools. That would be conformity.
14 Compliance would be whether they are, I
15 guess, compliant with the legislation. So, in
16 most cases, we're looking at s. 35 of the
17 legislation. Did they or did they not cause an
18 unauthorized harmful alteration or destruction on
19 habitat.
20 Q So a proponent could not conform with DFO's
21 advice, but that doesn't automatically mean that
22 there is a so-called compliance issue?
23 A That's exactly correct.
24 Q Okay. From the --
25 A The --
26 Q -- perspective of DFO.
27 A -- alternative too is they could conform to our
28 advice and end up non-compliant.
29 Q And would DFO deem that situation a compliance
30 issue?
31 A It would be a compliance issue, but it might have
32 more to say about the quality of our advice.
33 Q Thanks. There's a couple of field forms that you
34 use, and this may assist in demonstrating just
35 what it is that is monitored in the field by HMU
36 monitors and others.
37 MS. TESSARO: Mr. Bisset, if you could pull up Tabs 2
38 and 4 of our list, and if it's possible to put
39 them side by side?
40 Q Mr. Carter, you have them in your binder there
41 too, if you need them.
42 A These would -- Tab 4?
43 Q Tabs 2 and Tabs 4. Could you just very briefly
44 explain, if you're able to, what these documents
45 are?
46 A These are the field monitoring forms that the
47 Habitat Monitoring Unit uses when we do a site

14
Dave Carter
In chief by Ms. Tessaro

1 visit. It lays out sort of the tombstone or
2 general information about the project, where it's
3 located, what the coordinates of it are, who was
4 the proponent, what was the water body involved.
5 Then it goes through in the lower section the
6 national questions regarding compliance
7 monitoring.

8 Q When you say "the lower section", do you mean page
9 2 of Tab 2?

10 A Oh, sorry, I'm looking at the document on the
11 left.

12 Q Okay.

13 A Yes. Okay, so this would be the field form, and
14 then the document on the right is our answer guide
15 for that field form.

16 Q And were you involved in creating these two
17 documents?

18 A Yes, I was.

19 MS. TESSARO: Could we have Tab 2 marked as the next
20 exhibit, and that will be described as "The
21 Pacific Region Marine Compliance Monitoring Site
22 Visit Form".

23 THE REGISTRAR: Exhibit number 674.

24 MS. TESSARO: And then could we also have Tab 4 marked
25 as a second -- the next exhibit and that can be
26 described as the "Answer Guide for the Pacific
27 Region Monitoring Form."

28 THE REGISTRAR: Exhibit 675.

29

30 EXHIBIT 674: The Pacific Regional Marine
31 Compliance Monitoring Site Visit Form

32

33 EXHIBIT 675: Answer Guide for the Pacific
34 Region Monitoring Form

35

36 MS. TESSARO: And as a segue into effectiveness
37 monitoring, if we could, Mr. Bisset, just turn
38 back to the first page of the Marine Site Visit
39 Form, Tab 2, page 1. Thank you.

40 Q Mr. Carter, can you comment on question number 6?

41 A

42 Were the mitigation measures effective in
43 preventing negative impacts to fish habitat?

44

45 Q Does that begin to get into effectiveness
46 monitoring? Do aspects of this form begin to --

47 A There is the beginnings of it, but again, it would

1 be almost at a physical level of evaluation, you
2 know, were there impacts caused but not at an
3 ecosystem sort of response to it.

4 This question, though, one of the things
5 you'll see from the Answer Guide is we had to
6 interpret these questions very specifically in
7 order to ensure that they were answered
8 consistently. So for that particular question 6,
9 we only answered that question in relation to
10 mitigation measures that were properly installed.
11 So if we went there, identified a mitigation
12 measure that was correctly installed, then we
13 evaluated whether it was successful in preventing
14 in the negative effects or not.

15 Q So is it fair for me to say that the Department is
16 really only at the beginning stages of conducting
17 effectiveness monitoring in the Pacific Region?

18 A That would be correct.

19 Q Okay. Again, here I'm just paraphrasing, and if
20 need be, we can find the transcript reference, but
21 you were here. On Monday, Mr. LeBlanc suggested a
22 few times that before DFO Habitat staff could
23 really do effectiveness monitoring, that DFO would
24 need to devise a methodology that it would need to
25 go through a peer review. Do you recall that?

26 A I do recall mention of that.

27 Q And by methodology, I simply understand that term
28 to mean what do you monitor and how. Is that a
29 fair basic description of effectiveness
30 methodology? We're looking at what do you monitor
31 -- gauge effectiveness and how you --

32 A And how you conduct that monitoring, yes.

33 Q And isn't that quite well established? Aren't
34 there already effectiveness monitoring
35 methodologies that you would have studied in
36 university? Isn't this something that DFO knows
37 how to do?

38 A There are field protocols out there for capturing
39 different types of habitat variables. There are
40 standards out there and this year we'll be using
41 some of those standards or evaluating some of
42 those standards to see how applicable and how well
43 they work with some of the monitoring that we're
44 doing.

45 But to develop a monitoring plan associated
46 with any particular project, different projects
47 have different types of impacts that might affect

- 1 different elements of the environment, and you do
2 need to develop your monitoring plan in relation
3 to what the potential impacts of the project might
4 be.
- 5 Q Are you aware, as part of a Quigley Harper
6 evaluation in the mid-2000s, effective monitoring
7 methodologies were considered as part of that?
- 8 A They were, and I guess one of the recommended
9 methodologies was a before/after control impact
10 sort of methodology where you would establish
11 control sites prior to the impact and then
12 evaluate your impact site versus those control
13 sites, so yes, I'm aware of those.
- 14 Q And my next question goes to a question that
15 actually Mr. Harrison asked a couple of days ago,
16 and that's in evaluation before/after and control
17 sites, to really do effectiveness monitoring how
18 important is it that you have that baseline
19 information?
- 20 A That pre-information or that inventory
21 information? It's fairly key and at a number of
22 different levels. There's broad or general
23 inventory information about a watershed. There's
24 also more specific baseline information in
25 relation to a particular project. What type of
26 habitat was at that site prior to the project?
27 That's useful information as well.
- 28 Q Okay. Thank you. Is there anything else that
29 briefly we should understand about DFO's
30 effectiveness monitoring efforts before we quickly
31 look at ecosystem monitoring?
- 32 A I guess the only thing would be the BACI
33 methodology is one form of monitoring that could
34 be applied. There are other forms of
35 effectiveness monitoring such as a reference date
36 approach where you would have a general condition
37 or model that you monitored against. So there are
38 a number of different ways that you could approach
39 this effectiveness monitoring.
- 40 Q Okay, thank you. In terms of the third type of
41 monitoring, let's call it fish habitat health
42 monitoring or ecosystem monitoring --
- 43 A All right.
- 44 Q -- is this currently being done by OHEB staff?
- 45 A I guess there are circumstances where inventory or
46 baseline information is being captured. Habitat
47 monitoring staff were involved in the Shuswap

1 inventory work that was done. Similar work is
2 being proposed for Lake Ells on the north coast.
3 Work was done on the Cowichan on the Island.
4 There's a number of places where habitat staff are
5 collecting inventory information. That's part of
6 that ecosystem evaluation, you know, what's there
7 currently.

8 Then there's the other element of sort of
9 what is the status or how healthy is it? There is
10 some work being done under WSB. There are some
11 status reports - what do you want to call them? -
12 first versions or pilots that have been done in
13 the region.

14 Q Am I right, though, that neither of those two
15 types of activities that you described are
16 currently part of the HCM, Habitat Compliance
17 Modernization initiative?

18 A I guess they're not currently included in our work
19 plan as active monitoring projects. There is some
20 effort being put towards developing tools or
21 methods, but there isn't any current sort of
22 habitat status monitoring being done other than
23 the inventory work that I already mentioned.

24 Q Right. There's a very quick visual synopsis of
25 what I think you just described, page 7 of Exhibit
26 204. I'm going to ask you if this information in
27 this deck is accurate. I should ask have you seen
28 this document before?

29 A Yes, I have.

30 Q Okay. So looking at page 7 at the top there,
31 under the heading, "WSP Disconnect with HMP",
32 you've got "WSP" in one box, and "EPMP", in
33 particular, Habitat Compliance Modernization in
34 another. Does that describe the state of affairs
35 currently?

36 A In terms of the work plans, I would say that it
37 does. I mean WSP is looking at environmental
38 monitoring based on the watershed, on the status
39 of the watershed. Under Habitat Compliance
40 Modernization, we're mainly looking at project-by-
41 project monitoring.

42 However, you know, the Habitat Compliance
43 Unit, we have had some involvement in WSP. I have
44 been working with some of the folks working under
45 Strategy 2, looking at developing a monitoring
46 framework for Strategy 2, so I have been engaged
47 in that development, and that work is currently

- 1 ongoing. So again, building foundations.
- 2 Q We might return to that if I have time, but just
3 very quickly, are HMU monitoring coordinates and
4 monitoring technicians currently using the
5 Strategy 2 habitat indicators that were --
- 6 A No, they are not.
- 7 Q Okay. Maybe more importantly, could they? Would
8 habitat monitoring staff, including in your unit
9 and in OHEB generally, have the ability to monitor
10 some of those Strategy 2 habitat indicators?
- 11 A Some of those physical status indicators, things
12 like temperature, turbidity, yes, we could. And I
13 think the vision is that sometime in the future,
14 we likely would be.
- 15 Q What about things like TSS, or dissolved oxygen,
16 water quality parameters, do you have the ability
17 -- would you in the future have the ability
18 potentially to monitor those?
- 19 A Yes, we would. Capacity would be another issue.
- 20 Q Right. And we've heard evidence on that. I'm
21 wondering if anyone has -- apart from the work
22 you're doing on assisting in the development of a
23 monitoring framework under Strategy 2, have you
24 ever been asked by any regional or national
25 managers to incorporate WSP habitat monitoring
26 into the work of the Habitat Monitoring Unit?
- 27 A I've had it identified to me in the region that
28 it's likely, would be desirable if we would and
29 that it's something that would be a future
30 development. It hasn't come up at the national
31 level, though there has been recent work at the
32 national level looking at a more ecosystem-based
33 approach, much of which sounds very familiar to
34 some of the strategies within WSP. So I think
35 there is a shift at the national level as well.
- 36 Q Do you recall the WSP ever being raised in a
37 meeting with national DFO officials in the context
38 of habitat monitoring?
- 39 A I guess I was at a meeting a couple of weeks ago
40 in Montreal, and it was. That had to do with a
41 meeting between Science and Habitat. But
42 previously, no.
- 43 MS. TESSARO: Could you bring that Tab 15 of our list,
44 Mr. Bisset? I'm wondering if this might be in
45 relation to the meeting.
- 46 Q Mr. Carter, is this a document that came out of
47 the meeting a couple of weeks ago?

1 A No. This was a document that would have come out
2 of a meeting in December. This would have been a
3 meeting of that national working group of team
4 leaders in monitoring. This was a framework
5 document that was provided from national to the
6 team leaders, and it just sort of outlines, I
7 guess, goals and objectives and a path forward for
8 monitoring nationally.

9 MS. TESSARO: Could we have this marked as the next
10 exhibit, please?

11 THE REGISTRAR: Exhibit number 676.

12
13 EXHIBIT 676: Draft Habitat Monitoring
14 Strategic Framework, 2010-2015
15

16 MS. TESSARO:

17 Q And could we turn to the second page of this
18 document? So here we see that nomenclature issue
19 again. We've got something identified in this
20 schematic as you see "Compliance Monitoring", then
21 you see "Effectiveness Monitoring", and then you
22 see a large pink box that has within it a smaller
23 box called "Effects Monitoring". Is that the same
24 thing that we're talking about, ecosystem
25 monitoring, fish habitat health monitoring?

26 A My understanding would be, yes, it is.

27 Q And it is unclear to me from looking at this
28 document who is contemplated to be the lead on
29 that kind of fish habitat health monitoring.

30 A I think my understanding from this, the lead in
31 terms of developing the methodology would be
32 Science. But you can see from the sort of -
33 pointing at the screen here that you can't see -
34 the blue-dashed line, that outlines sort of the
35 role of Habitat which would include the monitoring
36 staff. We would have a role in those various
37 elements, and you can see there's a smaller box
38 with Habitat in the "Effects" monitoring or that
39 ecosystem health monitoring. So I think there's a
40 role envisioned for Habitat.

41 Q Just going back to 2005 and the genesis of HCM,
42 without questioning whether or not Science should
43 or shouldn't have a role, was it not originally
44 contemplated that Habitat, through the HCM, would
45 be the lead on fish habitat health monitoring?

46 A I'm not sure, to be honest, in terms of what the
47 expectation was. I would think there would have

- 1 been an expectation that Science would be engaged.
2 Q Thanks. This may be a stupid question, but is one
3 type of these three types of habitat monitoring,
4 in your perspective as someone who does habitat
5 monitoring work, more important or more
6 fundamental for ensuring sustainability of Pacific
7 salmon, and specifically, Fraser River sockeye
8 salmon?
9 A To be honest, I think they're interdependent. In
10 terms of sort of compliance monitoring, you need
11 to -- you know, if you're going to improve your
12 methodology, you need to go out and find out
13 whether somebody followed your advice, and then
14 once you've done that, then you need to evaluate
15 whether that advice led to the outcome that you
16 wanted with regard to that specific project, and
17 then you need to take the next step of evaluation
18 and how did the environment respond to that as
19 well. So I think all three of them are
20 interdependent. I wouldn't necessarily suggest
21 that any one was more critical than the other.
22 Q Thanks. I'm turning now to the issue of National
23 Habitat Monitoring Framework and the Regional
24 Habitat Monitoring Framework. While Mr. Bisset is
25 finding Tab 1, specifically the draft National
26 Habitat Monitoring Framework within Tab 1 of our
27 documents, I'll ask you, Mr. Carter, can you
28 explain the status, I suppose, of the National
29 Habitat Monitoring Framework at DFO and what's
30 been done with that framework?
31 A Well, the diagram or the figure that you showed
32 previously, that, in my understanding, is the
33 draft national framework that outlines kind of the
34 approach. I think it was titled as a framework.
35 Q Okay. You're talking about the last document we
36 looked at, Exhibit 676, for the record?
37 A Yes. Yes. There was some discussion of creating
38 a more fulsome sort of a framework document at the
39 national level. However, I do not know how far
40 that has progressed.
41 Q In terms of the document that's on the screen, do
42 you use this document? Does it provide guidance?
43 What do you understand to be this document's
44 purpose?
45 A Yes, we use this document on a very regular basis.
46 Oh, sorry, okay, you're looking at the 2005
47 National Habitat Monitoring Framework. We use

1 this document as a bit of a guide for the
2 development of a regional document.
3 Q In terms of the National Habitat Monitoring
4 Framework on the screen, do you understand -- it
5 says "Draft December 15th, 2005".
6 A Right.
7 Q Do you understand this to have been finalized
8 since 2005?
9 A No, that's not my understanding. Sorry, I may
10 have been a bit confusing there for a moment.
11 Yeah, sorry, this is the early document that was
12 developed in 2005 prior to the implementation of
13 HCM.
14 Q Right.
15 A This document was sort of a proposal or suggestion
16 as to how things could go. Subsequent to that,
17 this document has not been revised. The other
18 document we were talking about previously, the
19 picture --
20 Q Right.
21 A -- it also has been referred to as a framework and
22 it's titled as a framework. Sorry for the
23 confusion. But it does lay out sort of a set of
24 objectives and an approach.
25 Q Is there any formal guidance from the National
26 Habitat Monitoring Program offered to the regions
27 on how to conduct habitat monitoring
28 operationally?
29 A Operationally, there was the previous document
30 that we looked at, those sort of goals and
31 objectives. There has been some work done. If
32 you look at the PATH system, the Program Activity
33 system, there is some guidance with regards to
34 answering of those compliance questions. That is
35 captured there and that was developed at a
36 national level with input from regions.
37 Beyond that, in terms of how to implement a
38 regional sort of monitoring initiative, there's
39 been a tremendous amount of flexibility offered.
40 The reality is monitoring as a regional initiative
41 is being rolled out in somewhat different fashions
42 in the different regions.
43 MS. TESSARO: We're going to turn to the regional
44 approach in a moment, but first I should probably
45 mark this document here, the National Habitat
46 Monitoring Framework draft, December 15th, 2005,
47 as the next exhibit.

22
Dave Carter
In chief by Ms. Tessaro

1 THE REGISTRAR: Will be marked as 677.

2
3 EXHIBIT 677: Draft Habitat Monitoring
4 Strategic Framework, December 15, 2005
5

6 MS. TESSARO:

7 Q Would DFO benefit from a National Habitat
8 Monitoring Framework?

9 A There's pros and cons to that. It's always, I
10 guess, the pull between national level direction
11 versus regional flexibility. So a certain amount
12 of national direction would be useful and would be
13 helpful. But the reality is at the regional
14 level, often you need to be able to tailor your
15 program to your specific circumstances. So being
16 overly prescriptive could make things difficult.

17 Q So turning, then, to the regional approach --

18 MS. TESSARO: Mr. Bisset, this is Tab 19 -- or, sorry,
19 Tab 18 of the Commission's documents.

20 Q Mr. Carter, you're familiar with this document?

21 A I am familiar with this document.

22 Q And did you draft it?

23 A I did.

24 Q And is this Pacific Region Habitat Monitoring
25 Framework finalized in the region?

26 A It is very close to final. Regionally we held a
27 workshop with all of the monitoring staff as well
28 as all of the area managers and the regional
29 managers, running through this document in order
30 to ensure everybody's understanding was the same.
31 There was a general consensus towards the content
32 of this document. It has been revised moderately
33 but only to make the statements a little bit
34 bolder and to make it more concise.

35 Q Has it gone to the Regional Management Committee
36 yet?

37 A It has not.

38 Q It has...?

39 A It has not.

40 Q Okay.

41 A Well, excuse me. I should say the Regional
42 Managers Committee was the committee that provided
43 the direction on making it bolder and making it
44 more concise, so they have seen this document,
45 obviously.

46 Q I think we might be talking about different
47 things. When you say the Regional Managers'

April 6, 2011

1 Committee, you're talking about within OHEB?

2 A Yes.

3 Q It hasn't yet gone to the --

4 A To the Greg Savard --

5 Q -- Operations Committee? I'm getting things
6 wrong, sorry.

7 A Yes. No, it has not.

8 Q Okay. And maybe just if you could describe very
9 generally the purposes of your Pacific Region
10 Habitat Monitoring Framework, what it's intended
11 to achieve, what it's intended to guide.

12 A A number of things. It lays out goals,
13 objectives, governance, basically how we would go
14 about doing monitoring in this region and why we
15 would do that monitoring. So it talks about our
16 development of priorities, our work planning, our
17 timing during the year, who would be involved,
18 what our linkages with the rest of the program
19 would be. So it really does lay out how we would
20 do monitoring in this region.

21 Q Does it differ in any material way from the Draft
22 National Monitoring Framework?

23 A The 2005 document?

24 Q Right.

25 A Not in any dramatic fashion that I can think of,
26 'cause we did use that 2005 document as a guide,
27 so...

28 Q Does it envision a different role for Science, for
29 DFO Science and DFO Habitat management program, or
30 does it --

31 A I think the regional document assumes an
32 engagement with Science and perhaps that wasn't
33 necessarily identified in the 2005 document, but
34 is identified in the regional document.

35 MS. TESSARO: Okay. I know that a lot of work's gone
36 into this, and I'm sorry to skip over it, but if I
37 could just mark it as the next exhibit and move on
38 to the 2010 --

39 A Sure.

40 MS. TESSARO: -- field season.

41 THE REGISTRAR: Exhibit number 678.

42

43 EXHIBIT 678: Pacific Region Habitat
44 Monitoring Framework, February 15, 2011

45

46 MS. TESSARO:

47 Q So my understanding is that 2010 was the very

1 first complete full field season conducted by the
2 HMU?

3 A Yes.

4 Q And I will take you to a couple of documents that
5 we've received recently to pin some of your
6 results down, but maybe, before we do that, could
7 you just describe, in summary, what were the
8 results of the 2010 field season? What were some
9 of the observations that were made?

10 A All right. I would say that this field season was
11 very much a learning opportunity. There were a
12 number of observations made, observations that we
13 will take to try and improve the monitoring that
14 we do in the future, or to enhance the monitoring
15 we do in the future.

16 We identified a number of issues, some of
17 which were sort of outstanding issues. The
18 availability of information to do monitoring upon
19 was identified as an issue. Sometimes how
20 carefully conditions were worded as to whether
21 those conditions are measurable or not was
22 identified. So some recommendations with regards
23 to clarity and wording of conditions, and that
24 those conditions include measurable sort of
25 indicators of success.

26 So there were a number of things that we
27 learned. I think we learned that from the
28 compliance side -- like I said before, when you
29 ask general questions, you get general answers.

30 Q Right.

31 A We also learned that there's a lot of work to be
32 done when it comes to the impact evaluation side
33 of it to ensure that there's consistency in how
34 those impacts are quantified and how they're
35 measured or estimated so that it can be done
36 consistently across the region.

37 Q Just to follow up on one thing you just said, you
38 mentioned the necessity, I think, for clear
39 authorization, so that was a --

40 A Clear conditions.

41 Q Clear conditions. And you're talking about
42 conditions there in s. 35 authorizations?

43 A Authorizations or advice provided in letters of
44 advice or even conditions included in operational
45 statements.

46 Q And is that because if the advice that's given
47 isn't clear, then you can't actually monitor and

1 assess whether or not it was conformed with?
2 A Whether somebody successful met that condition.
3 Q Okay.
4 A I can give -- you know, I can pose a good example.
5 Q Sure.
6 A We ran into a lot of circumstances where a
7 particular condition said, minimize this effect,
8 or minimize the amount of riparian clearing.
9 Well, from a monitoring perspective, it's
10 difficult to determine what was the minimum that
11 should have been met.
12 Q And that problem of the need for advice to be
13 measurable, is that a recent observation that DFO
14 has learned, or is that -- has that problem been
15 recognized for some time?
16 A I think there's a balance between trying not to be
17 overly prescriptive and give proponents
18 opportunities to come up with creative solutions
19 to issues, versus being prescriptive and including
20 very measurable sort of outcomes. So it's been
21 seen as an issue to be balanced, but with the
22 onset of doing more dedicated monitoring -
23 especially from the Monitoring Unit's perspective
24 - it's been identified as a fairly key issue.
25 MS. TESSAR: This is largely to get these documents on
26 the record, but if we could pull up Tab 16.
27 Q Do you recognize this document?
28 A Yes, I do.
29 Q And did you create this?
30 A Yes, I did.
31 Q And it was presented to whom and for what purpose?
32 A Again, it would have been presented to the Habitat
33 Managers' Committee which would have been the
34 regional manager of Habitat as well as the area
35 managers.
36 MS. TESSARO: Could we mark this as the next exhibit,
37 please?
38 THE REGISTRAR: Exhibit 679.
39
40 EXHIBIT 679: Habitat Monitoring Update,
41 Presentation to Regional Managers, November
42 25, 2010
43
44 MS. TESSARO:
45 Q And could we turn to page 6 very quickly?
46 A Actually, can I just -- this presentation was
47 provided in November.

- 1 Q Right.
- 2 A Right at the -- sort as the field season was
3 beginning to wrap up. But in terms of data entry
4 and other things, there was still a lot of data
5 going into the database, so this was a very
6 preliminary sort of update on how the field season
7 went.
- 8 Q I think if we turn to page 6, preliminary -- very
9 preliminary results.
- 10 A Yes.
- 11 Q I just want to understand one thing about this
12 table that I don't understand. You've got
13 "Conformed to Advice" - you may have addressed
14 this already - but "Conformed to Advice", 36
15 sites.
- 16 A Mm-hmm.
- 17 Q Is that right?
- 18 A Okay, yes.
- 19 Q That seems --
- 20 A And that's actually a percentage, 36 percent.
- 21 Q 36 percent?
- 22 A Now, to be clear, though, the answer to that
23 question, there were a number of possible answers.
24 There was a yes, a no, a partial or not
25 applicable.
- 26 Q So roughly half of the sites that you monitored
27 had partial conformity to DFO's advice?
- 28 A Exactly. So in terms of total conformity to
29 advice, 36 partial. If you combined partial with
30 total, you're up somewhere around, I think, almost
31 80 percent.
- 32 Q How would you assess that rate? Is that good? Is
33 that expected? Is that surprising?
- 34 A Not surprising. I think partial conformance to
35 advice was expected.
- 36 Q Okay. In the interest of time, I'm going to skip
37 ahead. If we could just really quickly go to page
38 8. Now, I think this is the point that you were
39 making already about the need for authorizations
40 to be clear and measurable.
- 41 A Yes.
- 42 Q So turning to page 9, then, we've got a second
43 observation here about a lack of consistency in
44 DFO and proponent documents. And my question is
45 actually about one of the blue comments at the
46 bottom, "ROS were easy". Regional operational
47 statements?

1 A Yes.

2 Q And why were they easy?

3 A Regional operation statements were relatively easy
4 to monitor because the conditions were specific
5 and they were the same because we were looking at
6 one type of project, so you had a set of
7 conditions that you could go out and evaluate
8 against. The point above had to do with the fact
9 that -- especially with authorizations where
10 you've got our authorization document where there
11 may be a series of conditions included.

12 Q Mm-hmm.

13 A You would also have proponent documents and plans
14 that might include a series of, I guess,
15 commitments and sometimes there was difficulty
16 because the commitments that the proponent was
17 making versus the conditions that were included in
18 the DFO document didn't line up or, in some cases,
19 weren't even compatible.

20 It was also sometimes very difficult to know
21 when a particular condition was in play. Was that
22 a condition that applied to construction or was
23 that a condition that applied post-construction?

24 So the clarity of the regional operational
25 statements, one type of project, one set of
26 conditions, made the monitoring of those projects
27 relatively simple. So, I guess, the observation
28 or the recommendation that sort of came out of
29 here was we need to see about trying to be more
30 consistent in how we format and pose those
31 conditions.

32 Q Thank you. Just turning to the final observation
33 in this deck which is the next page:

34
35 File management/data entry is still a problem
36 - too much time had to be allocated to
37 finding the information necessary to conduct
38 monitoring and in many cases it limited the
39 number of projects that could be monitored.

40
41 Is this a surprising observation or one that you
42 expected?

43 A No. As it's come out previously, observations
44 from Quigley and Harper and others, there was an
45 expectation - the Auditor General reports as well
46 - that records management is a difficult issue and
47 that there are, I guess, issues and what we were

1 pointing out is that records management also had
2 implications on the effectiveness and the
3 monitoring capacity.

4 Q You just mentioned the Commissioner's report.
5 You're talking about 2009?

6 A Yes.

7 Q Do you know, since that report, what has been done
8 to bring more rigour, if I could dare use that
9 word, more rigour to national file management
10 protocols?

11 A I know there's been work done on the PATH, the
12 Program Activity Tracking system to try and make
13 it more user friendly, to increase the capacity.
14 I know there's been a lot of capacity added to the
15 system in terms of uploading of documents so that
16 those documents can be available electronically.
17 So there has been work done to our tracking system
18 to help support that. However, it hasn't
19 addressed all of the issues.

20 Q I'll read you the very specific recommendation and
21 response from the 2009 report without taking you
22 there, because I have about 15 minutes left here.

23 A Sure.

24 MS. TESSARO: So the recommendation -- and for the
25 record, this is Exhibit 35, ringtail page 16, and
26 if Mr. Bisset has time to pull that up, that would
27 be great.

28 Q The recommendation is:

29
30 In order to make consistent decisions on
31 project referrals in accordance with
32 Departmental expectations, Fisheries and
33 Oceans Canada should ensure that an
34 appropriate risk base quality assurance
35 system is in place for the review of these
36 decisions.

37
38 And then DFO's response, in part, is as follows:

39
40 Although much progress has been made, the
41 Department recognizes that there is still
42 much work to be done with respect to
43 documentation standards. With that in mind,
44 by 31st of March, 2010, DFO will implement a
45 risk-based quality assurance system to verify
46 that documentation standards are being
47 applied consistently by staff.

1 A Mm-hmm.

2 Q Are you aware of any such implementation of a new
3 risk-based quality assurance system to verify
4 documentation standards?

5 A I'm sorry, I'm not.

6 Q Regionally, however, I understand that there's
7 been some effort made through your Unit to come up
8 with file management protocols. Can you explain a
9 little bit about that?

10 A Well, out of Monitoring, I guess there were a
11 number of documents that were identified as being
12 fairly key to allow monitoring to occur, and to
13 support monitoring, things like project designs,
14 the set of conditions, the commitments from the
15 proponent, those necessary documents were
16 identified.

17 In one of the areas in the south coast area,
18 that area, the area manager took it upon
19 themselves to develop a bit of a file management
20 protocol that included not only the necessary
21 information from monitoring, but also other
22 information that they felt was important to be
23 included in the file. They laid out, I guess, an
24 approach or a method to capturing that
25 information, whether it was captured
26 electronically or through centralized filing.

27 Q And has that file management protocol done by the
28 south coast area office, have there been any
29 discussions about trying to adopt that as a
30 regional file management protocol?

31 A There have been and there has been some work done
32 at the RHQ level to see about taking that and
33 developing it into a more regional type of a
34 document. The reality, though, is there are, I
35 guess, different capacities amongst the areas in
36 terms of that document management. So I can give
37 an example: On south coast, their protocol refers
38 to particular files being stored on a share drive
39 that could just be linked to in PATH. That
40 capacity isn't necessarily the same in all of the
41 areas, so you would have to have a somewhat
42 different solution to that issue for some of the
43 areas.

44 Q Who's responsible for improving file management
45 within the Habitat Management Program?

46 A Well, it would be Dale Paterson's group, but I'm
47 trying to think of what that support -- I think it

30
Dave Carter
In chief by Ms. Tessaro

1 would fall on the administration side, but I'm not
2 sure exactly of the name.
3 Q Is it a national responsibility, a regional
4 responsibility?
5 A I know it's being worked on at the regional level.
6 I suspect it's being worked on at the national
7 level as well.
8 Q I understand that you are the supervisor of the
9 PATH coordinator.
10 A I am.
11 Q So if there were national initiatives underway,
12 would you be made aware of those?
13 A Yes, I would. And, to be clear, there is
14 continuously work being done on the PATH program,
15 so there are continuous improvements that are
16 occurring on that program. So it is involving
17 (sic) and improving. However, document management
18 goes beyond just project documents. There's a lot
19 of other documents that this department generates
20 that would be included in that document management
21 issue as well.
22 Q Have you read s. 6.1.1 of our PPR regarding
23 information management?
24 A I suspect I have, since I read the document,
25 but...
26 Q Do you recall any -- do you have any reactions to
27 our discussion in that document of information
28 management challenges or file management
29 challenges? It may be that you go over this with
30 your counsel as well, but --
31 MR. TAYLOR: Well, maybe you could point the witness to
32 it --
33 MS. TESSARO: Fair enough.
34 A Please.
35 MS. TESSARO: Fair enough. It's the PPR and starting
36 at paragraph 213, which, I'm sorry, is around page
37 84, I believe.
38 Q I think in fact we've covered some of this. My
39 question is more about the next page. There's a
40 discussion in the PPR about the PATH database.
41 A Mm-hmm.
42 Q Did you have any comments or clarifications or
43 corrections to make to the discussion of the PATH
44 database, having read this document?
45 A No. I would concur with what's stated there.
46 Q There was a comment yesterday or the day before
47 from Monsieur LeBlanc about species specific

April 6, 2011

1 information in the PATH database. My question is
2 can PATH be searched directly for species-specific
3 information?

4 A My understanding is that you can do keyword
5 searches on some of the comment boxes and some of
6 the fields within PATH, so if that information was
7 included, I expect that you could do a search
8 along those lines.

9 Q Okay. I think that's it on information management
10 and record management. Let me just quickly check
11 here.

12 I have just a couple of questions about
13 arrangements with the province on habitat
14 monitoring side.

15 A Sure.

16 Q Ms. Reid was asked if the BC/Canada Fish Habitat
17 Management Agreement is defunct, and I'm going to
18 ask you if the agreement has ever informed your
19 habitat monitoring work.

20 A I guess in terms of some of the principles within
21 the agreement. We've made efforts to contact
22 provincial agencies that we know do monitoring in
23 various forms, and we have had conversations and
24 meetings with them to look at integrating our
25 monitoring. So I guess the spirit would be there.
26 The specifics, I would have to say no.

27 Q How often would you have had cause to refer to it
28 in the last two-and-a-half years?

29 A Once or twice.

30 Q Are you aware of any joint DFO/BC habitat
31 management groups or joint committees that have a
32 specific mandate around habitat monitoring?

33 A Well, there's things like the SLIPP program where
34 inventory work is being done. That is occurring
35 in a number of places. There are a number of sort
36 of area-based committees looking at compliance
37 monitoring or monitoring that Habitat staff in the
38 various areas are party to or could be party to.
39 So there is some engagement. I would sort of
40 categorize it more ad hoc.

41 Q Do you sit on any committees with the Province of
42 B.C. that look at collaborating on habitat
43 monitoring?

44 A No, though I have had meetings with the bio-
45 monitoring group out of what used to be Ministry
46 of Environment talking about for our next field
47 season how we might collaborate.

1 Q And maybe I'll just leave it at that, and turn to
2 my very last area of questioning.

3 A Sure.

4 Q That's turning back to the Commissioner of
5 Environment and Sustainable Development's 2009
6 report, which is Tab 22 of our binder there, if
7 that assists, and Exhibit 35.

8 A Sure.

9 Q Now, of course I don't have the document in front
10 of me, sorry. If I could ask you to turn to
11 ringtail page 16, and that's 16 at the bottom of
12 the document as opposed to the real pagination.
13 Actually, I think we've already covered this, so
14 skipping ahead, there's a heading, "There's little
15 monitoring of compliance and evaluation of
16 effectiveness," halfway down the page on ringtail
17 page 16, and the discussion continues. Have you
18 had the chance to review this document and this
19 discussion?

20 A Yes, I have.

21 Q So turning to the recommendation that's made which
22 is at page 19, I'm going to just read part of the
23 recommendation which is the last sentence in
24 paragraph 1.4.1:

25
26 The Department should also determine whether
27 the required mitigation measures and
28 compensation are effective in meeting the no
29 net loss principle.
30

31 My question is does that language suggest that the
32 No Net Loss principle is a performance standard to
33 be met?

34 A Well, I think as was mentioned yesterday, I think
35 it was more of a goal that was outlined in the
36 policy as opposed to a performance measure. I
37 think the No Net Loss principle, if you're talking
38 about productive capacity, is a fairly difficult
39 thing to measure dependent upon a number of
40 things. I can think of performance measures that
41 might be more easily measured and evaluated.

42 Q Just to make sure we're all clear about what is
43 meant when we talk about performance measures, how
44 does that differ from a goal? It's a way of
45 achieving that goal or...?

46 A It would be an indicator associated with how you
47 were doing towards that goal.

1 Q Okay, thank you. Looking at DFO's response to
2 that recommendation, in particular the last
3 sentence of the first paragraph of the response,
4 it says:

5
6 ...the Department commits to fully implement
7 the Habitat Compliance Decision Framework and
8 report on the results of project monitoring
9 activities by the 31st of March, 2010, and
10 annually thereafter.

11
12 Has your Unit submitted a report prior to March
13 31st, 2010, on the results of project monitoring?

14 A My understanding is that the reporting done in
15 relation to this would be gathered from data
16 that's contained within the PATH system. So all
17 of our results from the compliance monitoring were
18 put into the PATH system so that reporting would
19 be done at a national level, and that they would
20 be basing it upon the data that's included in the
21 PATH system.

22 So we didn't write the report, per se, but we
23 did provide data that would be utilized at the
24 national level for development of that report.

25 Q And have you, yourself, seen that report that
26 you're talking about, and do you know what its
27 title is?

28 A No, I have not.

29 Q Are you working -- apart from simply reporting
30 into PATH and expecting that the national
31 headquarters are going to take out that data and
32 report on it, are you, in Pacific Region in the
33 HMU working specifically on implementing that
34 recommendation, that response in any way?

35 A In terms of developing a regional report on our
36 monitoring results?

37 Q Right.

38 A Yes, we are currently working on a regional report
39 and, to be honest, if I wasn't sitting here,
40 that's what I would be working on right now.

41 Q We'll get you back to it as soon as we can.

42 A Thank you.

43 Q In that spirit, I think I have two last questions.
44 One is page 25 of this document. This is a fairly
45 important recommendation, I think, in light of the
46 habitat management hearings. The top of this page
47 says, "Habitat loss or gain is not being

1 measured." The recommendation made at paragraph
2 1.7.4. is that:

3
4 Fisheries and Oceans Canada should develop
5 habitat indicators to apply in ecosystems
6 with significant human activity.
7

8 DFO's response is that it accepts and agrees with
9 this recommendation.

10 Do we not have those indicators for salmon in
11 Pacific Region already?

12 A Under the WSP?

13 Q I'm asking you.

14 A Yeah, under WSP, there have been a set of
15 indicators that have been developed and have gone
16 through a peer-review process, so those indicators
17 would be specific to salmon habitat in this
18 region, so yes.

19 Q But those are not yet being used?

20 A Well, are you asking are they being used at a
21 national level, or are they being...?

22 Q No, I'm asking you if they're being used by
23 Pacific Region in monitoring habitat?

24 A My understanding is from the work of the
25 Monitoring Unit, we are not gathering that data
26 currently.

27 Q And, my apologies, I think I've asked you that
28 question already.

29 A Yeah.

30 Q So my final question, unless you have anything
31 else to say about how the DFO in the Pacific
32 Region is responding to that response and
33 recommendation. Out of fairness, is there any
34 other thing that you're aware of that DFO here is
35 doing?

36 A I think it's key to point out that we are
37 implementing a monitoring program in this region.
38 There are people actively out doing compliance
39 monitoring now. We did conduct, I think, 614
40 compliance monitoring site visits this year, so
41 monitoring is -- at least compliance monitoring is
42 being conducted and we are working towards
43 developing effectiveness and longer term goals
44 with regards to ecosystem health monitoring as
45 well.

46 Q Thank you. My last question is simply whether you
47 have any comments or corrections to make upon

35
Dave Carter
Cross-exam by Mr. Taylor (CAN)

1 reading our Policy and Practice Report
2 specifically with respect to habitat monitoring.

3 A Not right now, no.

4 MS. TESSARO: Thank you.

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

6

7 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)

8 (PROCEEDINGS RECONVENED)

9

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

11 MR. MARTLAND: Mr. Commissioner, I have Mr. Taylor with
12 a 45-minute estimate.

13 MR. TAYLOR: Mitchell Taylor for the participant
14 Government of Canada and with me is Jonah
15 Spiegelman.

16

17 CROSS-EXAMINATION BY MR. TAYLOR:

18

19 Q Mr. Carter, let me begin by turning your
20 attention, if I may, to Exhibit 35, which is the
21 209 report of the Commissioner for Sustainable
22 Development. That's Tab 22, which has come up on
23 your screen there.

24 MR. TAYLOR: And if you, Mr. Bisset, would be so kind
25 as to turn to a page that I can't give you but it
26 has "Recommendation 1.41" on it. Actually, I can,
27 25 in the real page numbering on the document.

28 Q Now, Mr. Carter, you'll see, and I think Ms.
29 Tessaro took you to this as well, "Recommendation
30 1.41" at the top, which says that, as a
31 recommendation:

32

33 Fisheries and Oceans should accelerate
34 implementation of its Habitat Compliance
35 Decision Framework to ensure there is an
36 adequate risk-based approach to monitoring
37 projects and providing assurance that
38 proponents are complying with the Act and all
39 terms and conditions of Departmental
40 decisions.

41

42 And you're familiar with that recommendation, of
43 course?

44 A Yes, I am.

45 Q And that recommendation is similar to
46 recommendations that had been made prior to that,
47 isn't it?

April 6, 2011

- 1 A Yes, it is.
- 2 Q Now, you're the team leader for the Habitat
3 Monitoring Unit. Is your role and your unit
4 essentially a response to that recommendation?
- 5 A Yes, I would say that it is.
- 6 Q And others like it as well?
- 7 A Yes.
- 8 Q And what can you say about the Department's
9 approach and response to that recommendation and
10 whether they embraced it and took it seriously?
11 And what have they done, just at an overview level
12 for the moment?
- 13 A At an overview level, the Habitat Compliance
14 Decision Framework, as a Policy document, has been
15 created and it does exist. And it lays out the
16 Department's approach to when an identified
17 occurrence or a non-compliance is found, how to
18 respond to it in a risk-based approach, and also
19 there has been the implementation of habitat
20 monitoring staff across the country. So I think
21 the response has been fairly substantive.
- 22 Q Summing up then, is it fair to say that your unit
23 and the work that you do is in the Pacific region
24 and there's others like you elsewhere in the
25 country, is operationalizing the recommendation
26 that we just looked at?
- 27 A I would say so, yes.
- 28 Q Now, the Monitoring Unit that you have in the
29 Pacific region is something that's part of a
30 national initiative to achieve improved monitoring
31 and some national consistency, is it?
- 32 A Yes, it is.
- 33 Q And why is it that national consistency is
34 important?
- 35 A I think it's important to have the consistency so
36 that information that's gathered across the
37 country can be combined or compared and can be
38 used and also the opportunity that when you learn
39 something in one region it can be applied to other
40 regions as well. So I think that consistency is
41 important.
- 42 Q And at the same time, what's your assessment as to
43 whether you've got, speaking at an overview for
44 the moment, sufficient flexibility to do in this
45 region what you think needs to be done to adapt to
46 local circumstances?
- 47 A I would say we are being provided with an adequate

- 1 amount of flexibility to try and tailor the
2 monitoring that we're doing in this region to
3 what's been identified as the priorities of this
4 region. So we are being afforded a certain amount
5 of flexibility.
- 6 Q You've outlined for Ms. Tessaro, in answers to her
7 questions, something of the structure in the
8 Pacific region and where and how your unit
9 situates within the regional structure and your
10 reporting relationships with headquarters and your
11 role and the number of staff, which essentially is
12 12 staff in your unit?
- 13 A That's correct.
- 14 Q And in addition to your 12 staff, you have a
15 certain directive function with regard to other
16 habitat staff who are doing monitoring; is that
17 right?
- 18 A I think I would call it a coordination function
19 rather than a directing function.
- 20 Q Okay.
- 21 A You know, but yes, we do coordinate the efforts
22 that are being done by other Habitat staff as well
23 as the Monitoring staff.
- 24 Q And that would be other staff in the five area
25 offices?
- 26 A That's correct.
- 27 Q And am I correct that your 12 staff, some of
28 those, are in the five area offices, aren't they?
- 29 A Yes, most of them are.
- 30 Q All right. And do those 12 or the number of those
31 12 in the area offices, do they work alongside
32 with these other habitat officers, who are also
33 doing some habitat work --
- 34 A Yes, they do.
- 35 Q -- or doing some monitoring work?
- 36 A Yes, they do. They work actively with the other
37 staff and, you know, they are actually conducting
38 monitoring jointly very often. And part of that
39 is beneficial because it ensures that, you know,
40 the standards and the approaches that are being
41 used by the Monitoring staff can be conveyed to
42 the Habitat staff in general so that the
43 monitoring, when it's done, is done again in a
44 consistent fashion within the region.
- 45 Q Do you have a sense of the number of staff in
46 addition to the 12 that report directly to you?
47 Do you have a sense of the number of Habitat staff

- 1 in addition that do monitoring work and how much
2 of their time is spent on that?
- 3 A I don't know that I could pull out an exact number
4 for the Habitat staff in the region. I'd have to
5 look at an org chart for that. It's, you know,
6 going to be in the neighbourhood of 60, 70, above
7 that probably.
- 8 Q Did you say "six or seven" or "six zero and --
9 A Six zero. But to be honest, I would have to look
10 at the org chart to be sure of that number.
- 11 Q But that's kind of a range you're talking about,
12 is it?
- 13 A Yes.
- 14 Q All right. And do you know how much of their
15 time, that staff time, is spent on monitoring?
- 16 A The goal is 20 percent. What we have found is
17 that the number tends to be lower. I think more
18 in the neighbourhood of 5 percent, somewhere in
19 there, but there are continuing efforts to try and
20 increase the amount of monitoring that's done by
21 Habitat staff and we're trying, as part of the
22 Monitoring Unit, to facilitate that.
- 23 Q Can you explain for the Commissioner the
24 qualifications or skill sets that your 12 staff
25 have and any further training that they're given
26 internally to do the work that's underway?
- 27 A The Habitat biologists that are involved, most of
28 them are experienced Habitat biologists that have
29 been conducting referrals and reviewing projects
30 for a number of years. So they have field
31 experience in evaluating impacts, evaluating
32 projects, quantifying habitat variables. And then
33 there are a number of Monitoring technicians, who
34 are experienced in field skills, doing the
35 measurements, capturing samples, those sorts of
36 skills. So they are a fairly skilled group,
37 though we have a range. We have some staff who
38 are relatively new to it, some staff who are very
39 experienced. Most of them have been involved in
40 project reviews.
- 41 Q Now, are you speaking of the 12 that report to you
42 or both those --
- 43 A Yes.
- 44 Q Okay. And is there a different skill set in the
45 Habitat staff who also do monitoring in addition
46 to the 12, or are they largely the same kind of
47 skill set?

- 1 A I would say very similar skill sets. Within the
2 Monitoring Unit, we did a lot of work this year as
3 a group where we went out and did case studies as
4 a group and looked at how we would evaluate a
5 particular situation or condition and how we would
6 capture the information in order to build sort of
7 consistency. So internally, we did a lot of work
8 together. The intent is that then that work or
9 the benefits of that work would be conveyed to
10 Habitat staff in the areas through the Monitoring
11 staff in the area.
- 12 Q When you say biologist and technician, am I
13 correct that those are words that relate to
14 federal government classifications?
- 15 A That's correct.
- 16 Q And biologists, I take it, have biology degrees?
- 17 A Yes.
- 18 Q Am I also correct, though, that technicians, some
19 or all of them have biology degrees?
- 20 A Currently for the technicians working in the
21 Habitat Monitoring Unit, most have degrees. There
22 are some that just have diplomas or certificates.
- 23 Q And what kind of diploma or certificate would that
24 be?
- 25 A Would be a college diploma or certificate in
26 environmental studies of one form or another.
- 27 Q All right.
- 28 THE COMMISSIONER: Mr. Taylor, I apologize for
29 interrupting but before I forget, you mentioned to
30 the witness the Habitat Compliance Decision
31 Framework has been created. Has that already been
32 marked as an exhibit?
- 33 MR. MARTLAND: I don't believe that has been marked. I
34 think it was referred to but not brought up on the
35 screen. It's one of the documents I think we have
36 in our list of exhibits.
- 37 MR. TAYLOR: Is this what Mr. Carter at one point
38 referred to as the picture? I don't recall myself
39 speaking of it so that's why I might sound...
- 40 THE COMMISSIONER: Well, I apologize, sir. At the very
41 outset of your questions, you took him to Exhibit
42 35 and 1.41 on page 25. And you read him the
43 Habitat Compliance Decision Framework that's
44 mentioned.
- 45 MR. TAYLOR: Oh, right, yes. I'm being told it's Tab 2
46 of our binder. Let me just see what that is.
- 47 A I do believe I mentioned that it was a Policy

1 document that had been created.

2 MR. TAYLOR: Mr. Bisset, are you able to bring up Tab 2
3 of -- thank you.

4 Q Mr. Carter, I see what Mr. Commissioner is
5 speaking of now. In 1.41, that recommendation
6 from the Commissioner of Sustainable Development,
7 it says:

8
9 To implement the Habitat Compliance Decision
10 Framework.

11
12 Is that the document that's now on the computer
13 screen?

14 A Yes, it is.

15 MR. TAYLOR: That is not an exhibit, Mr. Commissioner.
16 I'm happy to have it marked as an exhibit.
17 Recommendation 1.41 keeps coming up and since it
18 does refer to it, it's probably useful to have the
19 document that the recommendation is referring to
20 put in as an exhibit.

21 THE COMMISSIONER: All right. And if I may just impose
22 on you just for a moment, and I apologize again
23 for interrupting, but I just want to make sure I
24 understand. There was Exhibit 677. I'm just a
25 little confused as to how these documents relate,
26 if they do at all.

27 MR. TAYLOR: And this is 677 up on the screen now. Can
28 you, Mr. Carter --

29 A I can probably explain the relationship between
30 the two.

31 THE COMMISSIONER: All right.

32 A And there is a little bit of confusion caused by
33 the wording of that 1.41 because the wording of
34 1.41 suggests that the Habitat Compliance Decision
35 Framework will sort of lay out the Monitoring
36 initiative but in reality, the Habitat Compliance
37 Decision Framework is a Policy document that lays
38 out sort of a risk-based approach to an incident
39 of non-compliance.

40 So when non-compliance is identified, the
41 Compliance Decision Framework lays out an approach
42 to evaluating the risk associated with that non-
43 compliance and then coming up with a response from
44 the Department, whereas the National Habitat
45 Monitoring Framework was a document talking more
46 about developing a habitat and monitoring
47 initiative and what would be involved in

41
Dave Carter
Cross-exam by Mr. Taylor (CAN)

1 monitoring. So I guess, you know, the results of
2 habitat monitoring would then feed into a
3 Compliance Decision Framework where, when you
4 identified non-compliance, now what do you do
5 about it.

6 MR. TAYLOR:

7 Q I think you're saying that the monitoring work and
8 the left side of the computer screen is a document
9 relating to that?

10 A Yes.

11 Q The monitoring work is done and feeds into
12 allowing compliance decision-making to occur?

13 A Yes.

14 Q And compliance decision-making is within the
15 context of the right side of the computer screen?

16 A That would be correct.

17 Q The left side of the screen is currently an
18 exhibit, although the number escapes me --

19 MR. BISSET: 677.

20 MR. TAYLOR: 677. And the right side of the screen is
21 not yet an exhibit so I think it should be an
22 exhibit at this point, if it could be the next
23 one, that is, the Habitat Compliance Decision
24 Framework.

25 THE REGISTRAR: Marked as Exhibit Number 680.

26

27 EXHIBIT 680: Habitat Compliance Decision
28 Framework Fisheries and Oceans Canada -
29 Version 1.1 2007
30

31

MR. TAYLOR:

32 Q And that is a 2007 document, isn't it?

33 A That's correct.

34 Q And then just further on this, hopefully to assist
35 the Commissioner, I'm getting the sense, and I'll
36 put it to you but you correct it, or correct what
37 I say, that Recommendation 1.41 in the 2009 Report
38 of the Commissioner of Sustainable Development,
39 Exhibit 35, when Recommendation 1.41 uses the term
40 "Habitat Compliance Decision Framework", he or
41 she has not quite got it right because that's not
42 exactly the framework that is speaking to
43 monitoring?

44 A That's correct.

45 MR. TAYLOR: Okay. Does that assist, Mr. Commissioner?

46 THE COMMISSIONER: It's very helpful, Mr. Taylor, thank
47 you. And there's just one other, and I apologize

April 6, 2011

1 again but I take you back to 1.41.

2 MR. TAYLOR: No, that's fine.

3 THE COMMISSIONER: Under the Fisheries and Oceans
4 Canada's Response, there's just another reference
5 there to something. I just want to make sure I
6 understand. The Habitat Compliance Modernization
7 Initiative, is that something that the witness
8 could just explain in terms of its relationship to
9 these other exhibits?

10 A Yes, I can.

11 MR. TAYLOR:

12 Q Yes, can you outline for that and meanwhile, while
13 you're explaining it, I'll see if we find it.

14 A Okay. The Habitat Compliance Modernization
15 Initiative, which has been referred to as HCM
16 fairly repeatedly, that was the sixth initiative
17 under EPMP.

18 THE COMMISSIONER: Oh, okay.

19 A It was the last initiative that was added and
20 under that HCM Initiative there are three elements
21 and they mainly have to do with compliance
22 management. The first element was the protocols,
23 which is the working relationship between C&P and
24 Habitat, the roles and responsibilities document.
25 The second element of HCM was the compliance
26 management or the compliance decision framework,
27 and that was how you would make decisions about
28 how to respond to non-compliance, the Policy
29 document. And then the third element of HCM was
30 increasing capacity to do monitoring. And you
31 know, my main role falls in that third initiative
32 of doing the monitoring.

33 MR. TAYLOR: All right. Thank you.

34 THE COMMISSIONER: Thank you very much.

35 MR. TAYLOR:

36 Q We hear a fair bit about modernization in the
37 context of Habitat work. Can you briefly say what
38 you understand to be meant by "modernization"?

39 It's both something to be done and it seems to be
40 a term of art as well but what's your
41 understanding of what it's all about?

42 A Well, with regard to, I guess, the Habitat
43 Compliance Modernization, the main element with
44 regards to compliance had to do with the Habitat
45 Compliance Decision Framework in that it basically
46 includes risk-based approach to compliance
47 management where, depending on the level of risk

1 associated with a non-compliance, it would
2 influence sort of the level of response. So in
3 that Compliance Decision Framework, there's what's
4 been called the "Compliance Continuum" where at
5 one end of the spectrum there's assist, you know,
6 educate, those forums trying to get somebody into
7 compliance, tending towards the other side of the
8 spectrum where you might be compelling or
9 enforcing, as the risk of non-compliance gets
10 higher. So that would be the modernization would
11 be applying a risk-based approach where you're
12 putting your emphasis where the greatest risk
13 would be.

14 Q All right. Now, if I could take you, please, to
15 Tab 7 in Canada's book of documents, which is
16 Exhibit 673 now, which is up on the screen, this
17 is something that Ms. Tessaro asked you some
18 questions about. And I'd just like to flush out a
19 couple of things, if I may. First, as we turn to
20 page 2 of the document, there's reference under
21 the second bullet to the role of both Habitat
22 Management and C&P in Habitat Compliance
23 Activities and Decisions. And I realize we're on
24 monitoring at the moment but it's there. This is
25 a document you wrote, as I recall?

26 A Well, I wrote this PowerPoint presentation, yes.

27 Q That's what I mean.

28 A Yes.

29 Q Yeah. Can you just, in brief, say and explain the
30 role of Habitat Management and C&P in compliance?

31 A Sure. Within the national protocol, in terms of
32 roles and responsibilities, the national protocol
33 identifies who would be the lead under those
34 various compliance management activities. For
35 many of the activities, such as education,
36 promotion, evaluation, most of those, the lead
37 falls to Habitat. The clear, I guess, separation
38 is that when it comes to compel and enforce, that
39 would be the role of C&P.

40 Q All right. And there is a national protocol about
41 that as well, which has been now made Exhibit 657
42 and is also at Canada's Tab 12. And I may come
43 back to that. Continuing with the document we're
44 in, though, Mr. Carter, if you look at page 3 of
45 this deck, the second bullet there says:

46
47 Modernizing the approach really doesn't

1 change the manner in which DFO approaches
2 compliance.
3

4 Can you just elaborate on that? There are some
5 changes but at the same time that's saying it's
6 not completely different from what was before.

7 A That's correct. And I mean this deck was
8 presented within this region sort of explaining
9 things or pointing things out and in this region
10 there has been a good working relationship between
11 the C&P staff and the Habitat staff in terms of
12 collaborating on these. And you know, I think as
13 the previous Panel put out, that this region
14 already has been trying to emphasis and work on
15 issues of greatest concern or higher risk. So
16 there's already been some of that approach
17 incorporated into sort of compliance management in
18 the region. So this document, I think, put in
19 black-and-white some of those things that were
20 already occurring in this region.

21 Q All right. If you turn to page 7, it there sets
22 out the kinds of monitoring, the types of
23 monitoring and --

24 A Well, two of the three, yes.

25 Q Yes, right. So it doesn't include the fish
26 habitat health monitoring?

27 A That's correct.

28 Q And there's the three types: compliance,
29 effectiveness and fish habitat health?

30 A That's correct.

31 Q Can you explain and we can also at the same time,
32 if it's possible to bring up on the screen
33 alongside this, Tab 15, I think it is, of the
34 Commission's binder, yes, 15, which is now Exhibit
35 676, can you explain how and in what stage fashion
36 DFO in this region is going about developing its
37 monitoring strengths?

38 A Well, I think you can see from the PowerPoint
39 presentation on the left that in terms of
40 compliance monitoring that's currently what we're
41 doing and that was the emphasis of last year.

42 Q So that's the leftmost set of columns there?

43 A Yeah, under "Types of Monitoring".

44 Q Yeah.

45 A And then in terms of effectiveness monitoring,
46 that's something that we are building foundations
47 and tools to do but that wasn't our main focus in

- 1 that we're working with Science on that.
- 2 Q And that's the medium --
- 3 A Yes.
- 4 Q The middle column on the right side of the screen?
- 5 A Exactly.
- 6 Q And then next?
- 7 A Then in the longer term, and this is in the
- 8 national document, you're looking at Science
- 9 Development of Ecosystem Indicators to Determine
- 10 whether Communal Effects or Other Ecosystem Issues
- 11 are being Addressed. So that's in the sort of, I
- 12 guess, the four or five-year term as identified in
- 13 the national document.
- 14 Q All right. And you just referenced, we can see
- 15 the years when you're going to be doing the
- 16 various monitoring. You're doing the compliance
- 17 monitoring now and you're starting to move to the
- 18 effectiveness monitoring, are you?
- 19 A Well, or development of the tools to do it.
- 20 Q All right.
- 21 A Right. And then obviously there has to be a fair
- 22 amount of engagement with Science in the
- 23 development of those tools.
- 24 Q All right. And we can probably, without losing
- 25 the left side of the screen completely because
- 26 we'll come back to it, but we can focus on the
- 27 right side of the screen and there's a second page
- 28 to the right side of the screen, Exhibit 676. And
- 29 Ms. Tessaro took you to this as well. Am I
- 30 correct that what this page is trying to do is
- 31 show pictorially the level of involvement of
- 32 different branches within Fisheries in the various
- 33 stages or steps in your monitoring rollout?
- 34 A Yeah, the three groups, the C&P, the Habitat and
- 35 the Science, yes.
- 36 Q And it appears from this that Science has got a
- 37 very heavy component when it comes to
- 38 effectiveness monitoring and fish habitat health?
- 39 A That would be correct.
- 40 Q And can you briefly describe what is underway now
- 41 to ready things so that Science will have the time
- 42 and the resources to do this big pink box that's
- 43 here?
- 44 A Well, a couple of things. There are things going
- 45 on regionally. There have been a set of
- 46 guidelines developed for a specific type of
- 47 project that Science is being asked to peer

- 1 review, the monitoring methodology outlined in
2 those guidelines. So there is some regional work
3 being done on developing effects monitoring or
4 effectiveness monitoring that would be done by
5 proponents mainly. So there is some engagement
6 with Science there regionally. And at the
7 national level, there have been meetings that have
8 gone on between Habitat and Science looking at
9 what the sort of Science priorities for the next
10 five years might be. And my understanding is that
11 some of those indicators or standards have been
12 identified as a priority for Science.
- 13 Q All right. If we turn now to Tab 12 in Canada's
14 binder, which is Exhibit 657, this is the national
15 protocol as between Habitat and Conservation and
16 Protection. And you're familiar with this
17 document, are you?
- 18 A Yes, I am.
- 19 Q Are there any aspects of this document that are
20 important to point to as they bear on your work
21 and the work of your Unit?
- 22 A Well, I guess the one piece in this document does
23 identify that monitoring is the responsibility of
24 Habitat, though there is support from C&P in that.
25 Beyond that, there's not a lot because this
26 document mainly refers to compliance management.
- 27 Q Okay. Ms. Tessaro asked you early on in her
28 questions about why monitor. And you gave an
29 answer, which I took to be the start of an answer,
30 and then the questions and answers moved on to
31 some other points. And in answering Ms. Tessaro's
32 question, you said that, in answer to why monitor,
33 one thing is to support compliance. And you also
34 said to continuously shoot for improvement. Are
35 there other reasons that you think are important
36 to list for the Commissioner as to why monitor
37 habitat?
- 38 A Well, I mean those two are the main ones, I think.
39 You're supporting the compliance to ensure or
40 elevate the levels of compliance and avoid impacts
41 to habitats. So I guess through higher rates of
42 compliance, the hope is that you're avoiding
43 impacts to fish habitat, which would be in tune
44 with the policy. And then yes, I mean the
45 continuous improvement and evaluation of the work
46 that we're doing and how effective it is and how
47 can we improve the effectiveness. I think those

- 1 really are the two key issues.
- 2 Q Okay. If we could turn now to Exhibit 679, which
3 is Tab 16 in the Commissioner's binder, this is
4 another PowerPoint presentation. It's from
5 November of 2010. And in answering Ms. Tessaro's
6 questions, I understand that this is something you
7 authored?
- 8 A Yes.
- 9 Q And this is a PowerPoint that sets out some of the
10 preliminary findings of your 2010 fieldwork?
- 11 A Yes, very preliminary findings, yes.
- 12 Q And as I understand it, 2010 was your first
13 operational year, if I could put it that way?
- 14 A Where there was staff in all areas doing
15 monitoring, yes.
- 16 Q So you've now got a region-wide set of data that
17 you are taking in hand, assembling and analyzing,
18 I gather?
- 19 A That's correct.
- 20 Q And I think you indicated that there will be a
21 final report on the results of your 2010 work?
- 22 A There will be a regional report, yes.
- 23 Q And that's at the point where you indicated, if
24 you weren't here, you'd be doing that?
- 25 A Yes.
- 26 Q With that, though, do you have an estimate when
27 that will be done and available?
- 28 A It will be done this spring, I would hope within
29 the next couple of months.
- 30 Q All right. So by summer, roughly?
- 31 A Yes.
- 32 Q Now, on page 6, you've got percentages there for
33 the findings, the results by yes/no in terms of
34 compliance?
- 35 A Yes.
- 36 Q "Partial", "unknown" and the last one's "not
37 applicable", I take it?
- 38 A Right.
- 39 Q What's meant by "partial"? Does partial mean they
40 met it a little bit or complied a little bit, or
41 does it mean substantial compliance, or can you
42 just elaborate on what's referred to?
- 43 A We answered those questions in a very specific
44 fashion in order to ensure that people were
45 answering them in a consistent manner. So you
46 know, there might have been a series of conditions
47 associated with a particular project. If they met

1 one of those conditions and they didn't meet the
2 rest, we would have said "partial". If they met
3 all of the conditions, we would have said "yes".
4 If they met none of the conditions, we would have
5 said "no". So we were very specific in how we
6 approached the answering to those questions.

7 Q All right. So we know then from this information,
8 recognizing it's very preliminary data, but as it
9 stands, we know that, for example, in terms of
10 "built as proposed", about 44 percent complied?
11 A Well, sorry, this is "were built as proposed".
12 Q Yes.
13 A Yes, okay.
14 Q If I said something different, you've kindly
15 corrected me.
16 A Yes.
17 Q But 44 percent built as proposed, and then another
18 16 percent had some level of compliance but we
19 don't know what level of compliance.
20 A Again, I'm going to direct you away from using the
21 term "compliance". Yeah, they were basically, I
22 guess it would have been, what is it, almost 70
23 percent were built as proposed? But because they
24 were built as proposed or not built as proposed,
25 that's somewhat distinct from whether they were
26 compliant with the Act or not.
27 Q Yes.
28 A Right.
29 Q Yes, I take your point from earlier. Now, I think
30 it's been said but to be clear, all of the work
31 that you're doing is monitoring of projects,
32 right?
33 A Yes.
34 Q So it's project-based?
35 A That's correct.
36 Q And at the very end of questioning from Ms.
37 Tessaro, she asked you about the links or
38 connection between WSP indicators and work there
39 or whether they were using any of that
40 information. As I understand it, the WSP work is
41 watershed-based, as opposed to project-based?
42 A Or conservation unit-based --
43 Q Yes.
44 A -- so stock-based. I should clarify, I guess
45 there is some work that we were doing, some
46 inventory work that is somewhat distinct from
47 project assessment so things like the shoreline

1 monitoring that was done on the Shuswap and things
2 like that but the bulk of it is all project-
3 directed. And you're correct, that WSP is more of
4 a conservation unit approach.

5 Q So you're doing something different?

6 A Well, we're doing more project monitoring as
7 opposed to ecosystem or conservation unit
8 monitoring.

9 Q Right.

10 A That doesn't mean that that couldn't be
11 incorporated into our monitoring efforts in the
12 future but currently the main focus of our
13 monitoring efforts are project-based.

14 Q All right. And with the projects that you do
15 monitor, and I gather you looked about 614 last
16 year?

17 A Yes.

18 Q How do you select --

19 A Well, actually 614 site visits. The number of
20 actual projects would be lower because some of the
21 projects involved more than one site visit.

22 Q Okay. And how do you select which sites to go to?

23 A We actually looked at sort of selection of sites
24 in three different approaches. We did some
25 monitoring that we referred to as "routine
26 monitoring" where we did random samples. We did
27 random samples of authorizations, random samples
28 of letters of advice regionally. And then we also
29 did some monitoring that we would have termed as
30 "strategic monitoring" where we directed
31 monitoring efforts at specific types of projects
32 or specific activities. So we did monitoring on
33 seawall developments and we would have done a
34 sample of seawalls. We did monitoring of docks in
35 the Interior. We did monitoring of clear span
36 bridge crossings. And those would have been
37 strategic projects.

38 So for a particular project type, we would
39 have done a random sample but within that project
40 type, so a stratified sample. And then, thirdly,
41 we did a certain amount of targeted monitoring,
42 which was strictly risk-based monitoring where
43 somebody identified a concern or identified an
44 issue where they felt monitoring should be applied
45 more from maybe a compliance management
46 perspective where we did some targeted monitoring
47 as well. So three different approaches to

1 monitoring.
2 Q In terms of that last group, the targeted
3 monitoring, would that be based on one or both of
4 the particular project or activity has a high
5 risk, sort of a well-known high risk to it, and/or
6 the particular proponent has a reputation or --
7 A It could have been compliance risk or it could
8 have been impact risk, you're right.
9 Q And in terms of the strategic monitoring, how did
10 you pick the particular kinds of things you looked
11 at? You mentioned stream crossings and seawalls
12 and so forth. How did you pick those versus
13 others?
14 A Prior to doing our work planning for last year, we
15 identified a number of priorities and we tried to
16 integrate national priorities, regional priorities
17 and priorities that were identified in the various
18 areas. So we actually met with staff or section
19 heads and looked for them to provide us with
20 things that they felt monitoring efforts should be
21 directed towards. Those priorities were
22 identified and then we used those priorities to
23 include specific projects within our work plan.
24 So things like clear span bridges and docks were
25 identified as priorities and that's why there was
26 monitoring effort directed towards those.
27 Q Was there a conscious determination made to divide
28 up the sites that you looked at between what I'll
29 call large projects and small projects?
30 A No, we broke it down more by regulatory tool. So
31 we looked at authorizations, which might involve
32 large projects or small projects. We looked at
33 letters of advice. Again, they might be large or
34 small. So it was more by the regulatory tool
35 rather than the size of the project.
36 Q And that end result, you have in your data
37 collected monitoring information on a range of
38 size of projects?
39 A Yes.
40 Q And do you know what the split between large and
41 small is in rough terms?
42 A I'm sorry, I don't.
43 Q That's fine.
44 A That would be something I could look up but it's
45 something I don't have on the top of my head.
46 Q That's fine. Now, we've already covered that
47 there are the three kinds of monitoring: the

1 compliance, the effectiveness and the fish habitat
2 health. And you're at the first stage --
3 A Mm-hmm.
4 Q -- the compliance monitoring and that's what we've
5 just talked about for the last few moments. Are
6 you on target to move along that time continuum
7 that we saw in the picture chart that we went to?
8 A We're definitely working on building some of the
9 tools to do the effectiveness monitoring. I think
10 we're dependent on some support from Science and I
11 expect that support will come but I can't say for
12 sure. So I think we're moving in that direction.
13 I think that timeline of fully implementing
14 effectiveness monitoring in the ecosystem is
15 ambitious, just knowing how much effort is
16 involved in getting solid information that's
17 gathered consistently.
18 Q And that's up to 2013, is it?
19 A Yes.
20 Q Mm-hmm.
21 A So I think we're moving in the right direction.
22 Q All right. Are steps being taken to have Science
23 become available to do what you need of them?
24 A Yes, they are.
25 Q And that's that?
26 A There is a liaison or a person involved in sort of
27 working with Science within Pacific region that I
28 have opportunity to communicate with and get
29 priorities to. There is also national engagement
30 between Habitat and Science that has been ongoing.
31 There have been meetings that have occurred
32 between the two groups.
33 Q What sort of work will Science be doing? What's
34 needed of them?
35 A We definitely need support when it comes to
36 effectiveness monitoring in terms of, you know,
37 number of sites, how many replicates, how to
38 sample, which specific variables to gather, which
39 would be the most indicative of change. So
40 there's definitely support from Science in the
41 design of the sampling regime or the monitoring
42 regime. And you know, in Pacific region because
43 of WSP when it comes to the ecosystem health
44 indicators, a number of those have already been
45 developed. So those indicators have been
46 developed but again there's the need to develop
47 sort of a framework for applying those indicators.

- 1 You know, you might have a specific indicator but
2 how many sites within a watershed do you need to
3 sample to accurately represent what's going on in
4 that watershed? Do you need to look at a hundred
5 or do you need to look at a thousand?
- 6 Q Returning for a moment to WSP, are you involved in
7 developing a framework for how monitoring may be
8 done in relation to WSP?
- 9 A I have been involved in the development of that
10 framework, which is ongoing.
- 11 Q And what is your involvement?
- 12 A I've just been a reviewer. That is work that's
13 being done by an outside contractor so I have been
14 asked to review the work that's been done
15 currently and to provide some advice.
- 16 Q Okay. Does compliance monitoring play a role in
17 identifying habitat violations that might warrant
18 enforcement action?
- 19 A Yes, it would.
- 20 Q And can you elaborate on that?
- 21 A Well, through compliance monitoring, we would
22 identify occurrences, which are circumstances
23 where an unauthorized harm to fish habitat has
24 occurred. Those occurrences are basically non-
25 compliance with the **Fisheries Act**. Then the next
26 question comes how do you respond to that
27 occurrence? And that's where that Compliance
28 Decision Framework comes into play. If it was
29 deemed that the compliance risk was high, i.e.,
30 maybe the cooperation of the proponent was low or
31 there was a previous history of non-compliance and
32 the level of impact was high, that would be
33 something that would likely be, if you followed
34 the direction with that Compliance Decision
35 Framework, something that would be recommended for
36 enforcement action.
- 37 Q So if there is something found that's identified
38 as a problem and a recommendation made, who does
39 that go to? Who sends what to who?
- 40 A Well, through the Monitoring Unit, we would do the
41 monitoring. If we identified an occurrence, we
42 would then refer that information to the Habitat
43 biologist involved in that file and then they
44 would work with their C&P staff in their area to
45 make a decision about the level of compliance risk
46 and how to proceed with that.
- 47 Q All right. If we could turn to Tab 18 in the

1 Commission's binder, I think we might have
2 mentioned this earlier, this is now Exhibit 678.
3 You're familiar with this document?

4 A Yes, I am.

5 Q And I think you said you wrote it?

6 A With a lot of help.

7 Q All right. And it sets out, does it, the way that
8 habitat monitoring in the region will work and the
9 goals and the objectives of it?

10 A It does.

11 Q Okay. Is there anything in this document that you
12 think important to underline for the Commissioner?

13 A I think the goal is fairly key. And the primary
14 goal of habitat monitoring in Pacific region is to
15 increase the amount and quality of information
16 available through compliance effectiveness and
17 fish habitat monitoring to support the continuous
18 improvement in current habitat management
19 approaches.

20 Q And that's in aid of what?

21 A That's in aid of meeting, I guess, the Habitat
22 Policy of avoiding or minimizing losses of fish
23 habitat.

24 Q All right. Have you got any recommendations to do
25 with monitoring or suggestions that you think are
26 important to leave with the Commissioner for his
27 consideration?

28 A I guess a key thing is it will be important to
29 build a solid foundation that all of these various
30 forms of monitoring are important to do and the
31 compliance monitoring, the effectiveness
32 monitoring and the ecosystem health monitoring. I
33 think it's key that a strong foundation gets built
34 so that the information that's gathered is sound
35 and that good decisions can be made based upon
36 sound and defensible information. I think it's
37 also important to recognize that there's a number
38 of parties potentially involved in that.

39 There's follow-up monitoring from proponents
40 that, if gathered in a very standard fashion and
41 under a certain set of parameters could be used to
42 support that, as well as entities outside the
43 Department such as non-governmental organizations,
44 streamkeepers. There's a number of parties that
45 could play a role in this. But it's key that a
46 strong foundation be built and that, as I said,
47 that the information gathered is sound.

1 Q And I take when you say "foundation", you mean a
2 collection of data and information that's kept and
3 can be used as a baseline and for reference?

4 A Exactly. And that it's gathered in a consistent
5 and defensible manner.

6 Q All right. Are there other suggestions that you
7 have?

8 A No, I think that's the main one.

9 MR. TAYLOR: All right. Thank you. Those are my
10 questions.

11 THE COMMISSIONER: Mr. Taylor, I just have a couple of
12 quick points that came out of the evidence that
13 you elicited from the witness during your
14 examination. You asked him about how much staff
15 time was spent and he said the goal was 20 percent
16 on monitoring. But he said, in reality, it's in
17 the neighbourhood of 5 percent. I wonder if he
18 could just explain what is happening with staff
19 when they're not monitoring. In other words, if
20 they're doing 5 percent instead of 20 percent what
21 makes up the difference?

22 A Sure. The reality is, and I think it came out in
23 the discussions with the previous Panel, a lot of
24 work is drawn up into the referral side of it and
25 the project review side of it. And there's been a
26 lot of effort done by the program to triage those
27 referrals to try and prioritize them and ensure
28 that time is being spent on the most important.
29 Part of the reason for doing that triage and that
30 prioritization is to try and free up time to do
31 other things such as monitoring. But the
32 referrals do chew up a lot of time.

33 MR. TAYLOR:

34 Q Well, just summing up on that. So is this part of
35 the age-old saying that the immediate overtakes
36 the important sometimes?

37 A Yes.

38 Q All right.

39 THE COMMISSIONER: And just one other question that
40 came out of the evidence. You talked about
41 Science developing ecosystem indicators.

42 A Yes.

43 THE COMMISSIONER: And you also talked about the Wild
44 Salmon Policy and the ecosystem-based approach
45 there.

46 A Yes.

47 THE COMMISSIONER: Are you talking about national

Dave Carter

Cross-exam by Mr. Taylor (CAN)

Cross-exam by Mr. Harrison (CONSERV)

1 Science developing indicators for ecosystem that
2 would be used within the Wild Salmon Policy, or
3 are you talking about two different sets of
4 indicators?

5 A Hopefully not. I think, you know, if you look at
6 that national framework diagram, it does talk
7 about indicators. I guess one key thing to point
8 out is that the indicators under Wild Salmon
9 Policy are specific to salmon populations, whereas
10 at a national you might be developing indicators
11 that would have to deal with more species under
12 different situations.

13 THE COMMISSIONER: I see. Thank you.

14 MR. TAYLOR: All right. Those are my questions.

15 MR. MARTLAND: Mr. Commissioner, I have Mr. Harrison
16 with a 30-minute estimate.

17 MR. HARRISON: Thank you. Good morning, Mr.
18 Commissioner. Good morning, Mr. Carter. My name
19 is Judah Harrison, for the record,
20 H-a-r-r-i-s-o-n, and I represent the Conservation
21 Coalition, which is a group of non-governmental
22 organizations, and Mr. Otto Langer, who I believe
23 you know. I will be sticking to my time estimate
24 this time for certain so I have actually only a
25 few questions for you.

26
27 CROSS-EXAMINATION BY MR. HARRISON:

28
29 Q Over the last two days, which I believe you were
30 here for, the witnesses, including Ms. Reid,
31 discussed the fact that Habitat staff were losing
32 their investigative powers or there was a decision
33 taken to remove investigatory powers from Habitat
34 staff and to place them only with C&P staff. Am I
35 right in that?

36 A Are you referring to inspector's designation?

37 Q Well, yes, I guess so because I thought -- yes,
38 inspection powers is what I understood it to be so
39 if it is inspection designation, that could be it.

40 A I am aware of that. It does relate to the
41 national protocol that has been revised, sort of
42 clarifying the role of C&P and Habitat with
43 regards to enforcement. Inspector's designation
44 has to do with section 36 in terms of deleterious
45 substances. And having inspector status, one of
46 the things that it does provide is the opportunity
47 to provide an inspector's direction. The national

1 protocol, as it's been revised, has identified
2 that C&P would be the body that would issue those
3 inspector's directions rather than Habitat staff.

4 Q So has it had any impact on the ability of your
5 staff to collect evidence, for instance?

6 The intent under the national protocol, my
7 understanding is that staff would still be
8 designated as Fisheries guardians. So under the
9 Fisheries guardian status you would still have the
10 opportunity to trespass, if necessary. You would
11 have that protection and to gather information in
12 support of monitoring. So with guardian status,
13 the monitoring staff or staff would still be able
14 to gather that sort of information.

15 Q Okay. And I guess, do you have an opinion as to
16 whether removal of those powers from Habitat or
17 clarifying those powers only belong to C&P? Do
18 you have an opinion of whether that's a good thing
19 or a bad thing?

20 A I do have an opinion. I think that taking the
21 inspector's status from Habitat staff does have
22 the potential to create some challenges because
23 one of the things about being able to issue an
24 inspector's -- if you have inspector's status, one
25 of your authorities is the ability to issue an
26 inspector's direction. And that would be under
27 section 38 of the Act where you could direct
28 somebody to take action to avoid the deposition of
29 deleterious substance.

30 If C&P officer are the only ones empowered
31 with issuing those directions, I guess there is
32 the potential where using that as a preventative
33 measure could become a little bit more
34 challenging. Though, I think it could be dealt
35 with, it would just mean there'd have to be more
36 collaboration between Habitat staff and C&P staff
37 to ensure that the right person was on-site when
38 that kind of a direction needed to be provided.
39 So there's potential for some workload issues and
40 some challenges.

41 Q And on that note, can you describe generally the
42 working relationship and collaboration between
43 Habitat staff and C&P. And I guess specifically
44 is there the equivalent of joint work plans or is
45 there meetings to discuss collaboration and stuff
46 like that?

47 A Yes, there is. There do tend to be meetings

1 discussing sort of joint efforts, working
2 together, collaboration on compliance management,
3 identifying priorities, you know, Habitat
4 identifying priorities for C&P. So that type of
5 working relationship does exist. One of the
6 things, though, in this region is the working
7 relationship between C&P and Habitat, I guess
8 there is some flexibility amongst the areas
9 because the activities of C&P staff vary between
10 the areas. And that's why, if you look at the
11 protocol, there's a national protocol, there's a
12 regional protocol, which is that roles and
13 responsibilities and then within this region
14 there's also area operational plans, and the
15 reason for those area operational plans was
16 there's differences in C&P's responsibilities.
17 Some areas have year-round fisheries, other areas
18 have seasonal fisheries. So the availability of
19 C&P staff to be involved in Habitat issues can be
20 changeable amongst the areas so that's why there's
21 the area operation plans. But the working
22 relationships generally are pretty good.

23 Q Okay. Thank you. In your earlier evidence this
24 morning, you said that compliance monitoring is
25 limited to project that have obtained the HADD
26 authorization or that have obtained letters of
27 advice. Is that correct?

28 A Or that provided a notification under an
29 operational statement.

30 Q So using a term that Ms. Tessaro used, for a high
31 school student, on the level of a high school
32 student, if one of your staff came across a
33 blatant occurrence of habitat destruction that has
34 not been authorized and no advice has been given
35 with respect to that, what would they do?

36 A Obviously, they would act as a Habitat biologist
37 and they would collect information about that
38 particular situation. And one of the things they
39 would do is, I think, initially identify whether
40 it was a project that had been reviewed and was
41 acting under a regulatory instrument or whether it
42 was not and then they would likely make the area
43 biologist of that area aware of the situation. So
44 collect the information and make the correct
45 individual aware of it. They may well even refer
46 it to C&P if it was something where they felt an
47 investigation was warranted.

1 Q So it's really about at the front end to choose
2 where you go. You're only going to choose to go
3 to spots that have been authorized or obtained
4 letters of advice; is that correct?

5 A Well, when it comes to the monitoring that we have
6 been doing where we're looking at, you know,
7 evaluating our activities then, yes, we're basing
8 that monitoring on where we've provided advice or
9 provided direction, yes.

10 THE COMMISSIONER: Mr. Harrison, we'll take the noon
11 break now.

12 MR. HARRISON: Oh, excuse me. Thank you.

13 THE COMMISSIONER: Thank you.

14 THE REGISTRAR: The hearing will now adjourn until two
15 o'clock.

16

17 (PROCEEDINGS ADJOURNED FOR NOON RECESS)

18 (PROCEEDINGS RECONVENED)

19

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

21 MR. HARRISON: Good afternoon. Mr. Harrison, for the
22 Conservation Coalition, continuing.

23

24 CROSS-EXAMINATION BY MR. HARRISON, continuing:

25

26 Q Mr. Carter, I was hoping to just get some very
27 brief sort of clarifications on the ground on what
28 staff actually does when they get to sites. And I
29 asked you about this before, about inspection
30 powers and the like, but I'm wondering, your
31 staff, your monitoring staff, while they're doing
32 monitoring, or compliance monitoring, would
33 collecting evidence be a forefront in their minds
34 and in their purposes for later investigation?

35 A All of them are habitat biologists and, I guess,
36 have had experience with or potentially with
37 gathering evidence in terms of enforcement
38 activity. And some of that monitoring information
39 they were gathering in terms of the project, how
40 it was built, what the effects might have been,
41 all could potentially be evidence. So the
42 information they are gathering has the potential
43 to be evidence, as opposed to making the decision
44 to gather evidence in support of an investigation.
45 That would be something that would occur once an
46 occurrence was identified.

47 And it would depend on the situation as to, I

1 guess, the timeliness with which that information
2 would need to be gathered. So if it was something
3 where there was an ongoing situation they could
4 well gather that information. If it was something
5 that maybe wasn't time dependent, they might
6 actually contact the biologist in the area and,
7 you know, ask them to be involved in gathering
8 that type of information.

9 So it would depend on the circumstance. But
10 yes, they could.

11 Q Okay. So in cases of occurrences, if one of your
12 staff members saw what they deemed to be a clear
13 HADD violation, would they need an official --
14 officially to claim that to be an occurrence, or
15 from that point forward would they start
16 collecting evidence on that?

17 A Okay, well, I guess, the thing is, when we do our
18 monitoring, we could identify that there was a non
19 compliance where an unauthorized impact to habitat
20 has occurred. Then, in terms of how that
21 occurrence is responded to, we could speak about
22 that compliance decision framework and the
23 evaluation that would need to be done to determine
24 sort of what level of response was appropriate,
25 and that compliance decision framework lays out an
26 orderly approach to doing that, based on
27 compliance risk and the impact to the habitat.

28 So if you're asking if the impact to the
29 habitat was significant enough and it appeared
30 that the compliance risk was high enough, would
31 they gather information that could then be used as
32 evidence? Yes, they would.

33 Q Yes, and I guess my question was, in the majority
34 of circumstances, if they came across what they
35 determined was likely a HADD, would that then lead
36 to collecting evidence of that and taking samples
37 and photographic evidence or, it seems to me, as
38 you're saying, it wouldn't; instead, they'd go
39 back and make determinations on what level of risk
40 it fits into, or is that wrong?

41 A There would still be information gathered, though,
42 that could be deemed as evidence, if it was
43 decided that an investigation needed to be
44 followed up on. So, you know, they would be
45 collecting pertinent information about the site,
46 what was done there, what the project was, you
47 know, whether it was built as proposed, gathering

1 that sort of site information, including
2 photographic information that could become
3 evidence.

4 Q Okay.

5 A It would depend on, you know, there would need to
6 be a decision made as to whether this was
7 something that needed to be investigated or not.

8 Q Okay, thank you.

9 A Yeah.

10 Q Before the break, I asked you about your staff
11 only going out to places where an authorization
12 has been issued or where letters of advice have
13 been given with respect to a project. My
14 understanding of EPMP is that it has reduced,
15 significantly, the amount of referrals that
16 Habitat staff will receive so that there would be
17 a lot less projects that actually do obtain an
18 authorization or letters of advice; is that right?
19 Or I see you --

20 A Well, I guess, you know, I'm not the expert in
21 EPMP or that policy. My understanding of it is
22 that under EPMP there was some attempt made to, I
23 guess, identify some lower risk projects and have
24 them enter into the process through another means,
25 being the operational statements, where projects
26 could be dealt with, with an operational
27 statement, would be done that way and with a
28 voluntary notification.

29 I'm not sure, and I guess that may have
30 reduced maybe the number of letters of advice,
31 because some of those letters of advice could have
32 been converted to being dealt with by operational
33 statements. But in terms of authorizations if,
34 you know, harmful impact to habitat could not be
35 avoided, I wouldn't see the number of those being
36 changed by EPMP.

37 Q Okay. I won't belabour that point, I'll just move
38 on. Earlier today you said that last season was a
39 learning year.

40 A Mm-hmm.

41 Q And one of the largest lessons that you learned,
42 according to your words, was there was an
43 insufficiency in the availability of information.
44 I would just like you to elaborate upon that and
45 tell us, you know, what information do you not
46 have and how that can be remedied.

47 A I guess what I was speaking to was information

1 available in the project files.

2 Q Okay.

3 A And that would be a lot of the information that we
4 would base our monitoring upon. So, you know, what
5 was the project design, what were the conditions,
6 what was the state of the habitat at the site
7 prior to the project, you know, was there
8 photographic information or other habitat
9 information about what was there prior to the
10 project going on?

11 You know, if we're going to compare what was
12 there before versus what was there after, unless
13 we know what was there before it makes it
14 difficult. So that sort of information being
15 available in project files.

16 We found, you know, sometimes that
17 information just wasn't available; other times, it
18 was difficult to obtain.

19 Q Okay. Thank you for that. And this will be my
20 last question. You spoke about, just now, about
21 the status of habitat or baseline study and how
22 that would be a good thing. Earlier this morning
23 I heard you say that this was fairly key, to
24 paraphrase what you said. My question to you is:
25 Is there a risk that the longer that we wait to do
26 such a baseline study the more habitat is lost in
27 the interim?

28 A Of course. I mean, if there is habitat loss
29 occurring now, which I think, now, a number of the
30 people who have testified before me have suggested
31 that there is, the longer you wait to gather that
32 inventory or establish that baseline, the
33 incremental losses are occurring. So yes. And
34 the earlier we have that baseline to compare with,
35 the more useful it might be.

36 Q Okay. And related in the document that was made
37 an exhibit, and it was a 2011 document that you
38 were working on, the Regional -- excuse me --

39 A Our framework? Our Habitat Monitoring Framework?

40 Q Thank you for that.

41 A Yeah.

42 Q Within that document you say that you hope to do
43 fish health -- habitat health monitoring within
44 the next five years, to implement that. Do you
45 feel that that is an adequate timeline?

46 A The date that was included in the regional
47 framework was taking a cue from the national

1 direction. You saw that national document --

2 Q Yes.

3 A -- with sort of a five-year horizon? To meet that
4 five-year horizon, obviously we would have to be
5 doing a lot of upfront work establishing the
6 tools, the methodologies and the means to do that.
7 So, you know, it wouldn't be suggesting that we
8 wouldn't be making efforts in that direction, but
9 in terms of having it fully established and up and
10 operational, I don't think that's a necessarily
11 unreasonable timeline to get it right.

12 MR. HARRISON: Okay, thank you. And the document I was
13 referring to is Exhibit 678, and I apologize for
14 not saying that beforehand. Those are my
15 questions, thank you.

16 MR. MARTLAND: Mr. Commissioner, next on the list is
17 Mr. Rosenbloom. My note is 30 minutes or less.

18 MR. ROSENBLOOM: Thank you very much. My name is Don
19 Rosenbloom. I appear on behalf of Area D Gillnet,
20 Area B Seiner. Mr. Carter, thank you for
21 answering my questions.

22

23 CROSS-EXAMINATION BY MR. ROSENBLOOM:

24

25 Q I have only two areas of focus in terms of my
26 cross-examination of you. The first area of focus
27 relates to the level of completeness or
28 incompleteness in the monitoring regime that is
29 currently being pursued by DFO regionally. And
30 the second area of my focus will relate to
31 budgetary issues and how the budgetary situation
32 restricts the capacity of your group to carry out
33 what might be said to be a statutory
34 responsibility.

35 I'd like to go to the first of my two areas
36 of focus. I want to focus not so much on what you
37 have been able to complete in terms of analysis of
38 compliance, monitoring and compliance, but,
39 rather, I want to focus on what is left as the
40 unknown; in other words, what is left that is not
41 being monitored, and obviously leave it to others
42 and ourselves to argue, at the end of the day,
43 whether there should be a more complete initiative
44 in terms of monitoring.

45 Before us is Exhibit two-sixty -- excuse me,
46 679, and I believe, if I'm following the evidence,
47 this is the interim work you did in 2010 --

- 1 A Mm-hmm.
- 2 Q -- to give some sense of to what extent there is a
3 compliance being test -- a compliance that, in
4 fact, you are satisfied is meeting standard or,
5 indeed, isn't meeting standard. And if you could
6 go to page 10 of that document. I thought it was
7 page 10. Actually, what I'm looking for, and
8 counsel can assist me, is, I thought, that
9 document, but it's --
- 10 A Are you looking for the table?
- 11 Q Yes, the table.
- 12 A I think it's --
- 13 Q There we go. Thank you. Now, I want to
14 understand this table. As I understand your
15 testimony, firstly, let's put on record, and I
16 think it's clear already, that your focus, in
17 terms of monitoring, is limited in the sense that
18 you're not doing -- you're not even speaking to
19 environmental monitoring or ecosystem monitoring,
20 you have made clear you are speaking to a focus in
21 monitoring that relates to project initiatives,
22 could I put it that way? You might have a better
23 term of phrase.
- 24 A I guess, you know, in terms of the monitoring that
25 we're conducting currently, it is project-based
26 monitoring, and initially we are looking at
27 compliance in relation to those projects --
- 28 Q Precisely. I'm sorry, yes, go ahead.
- 29 A But with the expectation that there is going to be
30 the addition of effectiveness monitoring in
31 relation to those projects and the effects of
32 those projects and then future into looking at
33 ecosystem level monitoring, but those are future
34 goals.
- 35 Q Yes. And so let's speak or focus on the status
36 quo of what you're doing now and what this table
37 represents that is before us on the screen. As I
38 understand it, and again, please correct me --
- 39 A Sure.
- 40 Q -- this table speaks to an initiative to monitor
41 either projects that were subject to referral, in
42 other words, where the voluntary regime took place
43 and somebody filed, or, as I understand it,
44 alternatively, they are projects where notice came
45 to you and that notice came to you because of
46 operational statements that your region has put
47 out that has encouraged parties initiating certain

- 1 projects to at least give notice; is that correct?
2 A That is correct.
3 Q And just so we spoon feed here for a moment, I'm
4 led to believe that the operational statements are
5 -- the areas where operational statements apply
6 would be found at page 115 of the PPR Number 8.
7 Let me just put it up --
8 A Could be.
9 Q -- so we have it as a matter of record.
10 A Yeah.
11 Q Page 115 of PPR8. Sorry, maybe my numbering's
12 different than --
13 A Well, this would be the operational statements
14 specific to clear span bridges.
15 Q Yes. And let me, if I may, just show this to you,
16 and if you would identify it and then we'll put it
17 on the screen. I'm looking at this document here,
18 which is part of the notification form, is it not?
19 A Correct, yes, it is.
20 Q And I have --
21 A And these --
22 Q Yes?
23 A And these are the operational statements that are
24 applicable in British Columbia.
25 Q That is correct.
26 A Right.
27 Q And it is now on the screen, thank you very much.
28 Now, have I now --
29 MR. MARTLAND: I'm just going to preserve the record by
30 saying this is Appendix 6 to the PPR8.
31 MR. ROSENBLOOM: Thank you.
32 Q Now, so am I right in stating that the analysis
33 you did, which was just on the screen a moment
34 ago, was an analysis limited to the areas we've
35 just spoken about?
36 A Yes, you would be correct.
37 Q All right. I want to focus on the areas that you
38 have failed to do monitoring - I'm not criticizing
39 you in the slightest - but that aren't part of the
40 record of your work with DFO. Can I assume that
41 all projects or initiatives where individuals have
42 chosen not to file referrals with the Department
43 are off the radar screen unless they have given
44 notification under this document now before you?
45 A I guess I need clarification. Off of the habitat
46 monitoring units --
47 Q Yes.

- 1 A -- that are screened?
- 2 Q Yes.
- 3 A That would be a reasonable assessment, but not
4 necessarily off the radar screen of the rest of
5 the habitat program nor C&P.
- 6 Q All right. But in terms of a study to determine
7 the extent to which the public are complying with
8 your regulations and statute, can I assume the DFO
9 has to rely, regionally, at least, solely on the
10 2010 document that is before us?
- 11 A So in terms of the monitoring study I would say
12 yes.
- 13 Q And so --
- 14 A In terms of -- yeah.
- 15 Q Yes. And so to speak of the fear of the unknown,
16 is it fair to say that we don't know, or more to
17 the point, you don't know, as DFO, to what extent,
18 let's say, firstly, individuals or companies are
19 failing to comply and have chosen not to file
20 voluntary referral, nor have they -- and they've
21 failed to give notification to you?
- 22 A I think there are a couple of avenues where that
23 kind of information could be gathered or is being
24 gathered. We made reference to the shoreline
25 inventory program that was being done on Shuswap.
26 That would have identified a lot of projects that
27 didn't go through any formal permitting or
28 referral process but were identified, as well as
29 regular patrols either by C&P staff or Habitat
30 staff. But in terms of the monitoring staff, you
31 would be correct, we're not out there looking for
32 those, currently.
- 33 Q And is it appropriate to term the voluntary system
34 of filing for referral almost an honour system?
- 35 A I guess much like a speeding ticket in that there
36 is a risk inherent in not referring, that if you
37 did do something and you did end up out of
38 compliance with the **Act**, there might be the
39 potential of being prosecuted.
- 40 Q Right.
- 41 A So I guess, yes, I mean, it is voluntary, but
42 there is, you know, a knowledge that, or there
43 should be a knowledge that if you don't adhere to
44 the rules you might be.
- 45 Q Yes. And you happen to have the good fortune of
46 being here yesterday and hearing the exchanges in
47 cross-examination about the possibility there was

- 1 only one conviction in British Columbia last year.
2 A Yes.
3 Q You heard that evidence?
4 A I did, yes.
5 Q That's the deterrent you're speaking about?
6 A Yes.
7 Q Thank you. Now, I want to continue to focus on
8 the second prong of the voluntariness of this
9 program, the first one being to file for a
10 referral; the second one to give notice if one is
11 pursuing one of these initiatives as set out on
12 the screen right now. In respect to the
13 obligation on the second prong, there is no
14 statutory obligation, it, too, is a voluntary --
15 A Yes.
16 Q -- discretion?
17 A Yes. The notifications with regard to the
18 operational statements are voluntary.
19 Q All right. Now, to what extent should the public
20 be concerned of the unknowns here? In other
21 words, the initiatives that individuals or
22 companies are taking that are choosing not to seek
23 referral, that are choosing not to give
24 notification from a policy operational basis, what
25 does the Department know of what they're missing?
26 A I think, as you posed it, it is somewhat of an
27 unknown, so I would hazard to put a number to that
28 or to put an estimate to it.
29 Q I'm sorry, I didn't hear the last part.
30 A It would be a hazard for me to try and put a
31 number or an estimate to that. As you've
32 correctly phrased it, it is somewhat an unknown.
33 Q Doesn't that keep you up at night?
34 A It's definitely a concern.
35 Q Isn't it also a concern to your colleagues within
36 the habitat monitoring field?
37 A I think it would be a concern, though there are
38 other avenues for that information to be made
39 available to the Department.
40 Q Well, when you say there are other avenues to
41 allow this information to be made available, is it
42 being made available? What are those avenues, and
43 why, if those avenues are available, why is it not
44 being obtained by DFO so that you could come here,
45 today, and answer --
46 A Yeah.
47 Q -- the simple question, to what extent are we

1 missing it?

2 A Well, I think, you know, where you'll be able to
3 get an answer to the question would be probably in
4 the next couple of days when you're talking to the
5 compliance side of it. There are, I guess, things
6 in this region, such as we do have a report line,
7 there is a 1-800 number where people who see
8 things going on in their area, in their
9 neighbourhood, they can phone in and report that
10 they've seen an incident that they think might be
11 a violation of the **Fisheries Act**.

12 So there is information on how many of those
13 incident reports occur within the region, which
14 would probably give a feel for, you know, you
15 could evaluate how many of those are associated
16 with projects that have been reviewed versus how
17 many of those are on projects that have not been
18 reviewed. So I guess that would be a way of
19 getting a handle on some of that information.

20 Q But we have a large sea of unknowns here, don't
21 we?

22 A I would say there are some unknowns.

23 Q And I appreciate you're not a legislature, you
24 obviously didn't pass the **Act** and **Regulations**.
25 Can you explain to me the motive behind DFO
26 choosing to approach this area of compliance in a
27 totally voluntary schematic?

28 A I think you phrased it well: I'm not a
29 legislature. I didn't write the legislation as to
30 how it's written, so I don't know that I'm the
31 right person to pose that question to.

32 Q Do you and your colleagues within Habitat
33 Monitoring, regionally, complain to headquarters
34 that there isn't the teeth that there should be in
35 the statute so that you could feel comfortable
36 that you're catching -- the radar's catching most
37 of these incidents?

38 A I don't know that I've personally made that
39 complaint. I think there's a recognition that
40 there are a lot of things going on out there that
41 we're probably not aware of that we -- would be
42 beneficial if we were or that should have come
43 through the referral process.

44 Q And sadly, if you had more staff, you might become
45 aware of more than -- more incidents than
46 obviously you can possibly investigate?

47 A Yes, though I think it's also important to go back

1 to some of the things that were discussed
2 previously under the Habitat Policy, in that
3 there's a number of different, you know, I guess,
4 strategies under that policy that could address
5 some of these issues, such as education,
6 promotion, some of those other things as well, so
7 there are tools, as well, that could be used in
8 this.

9 Q Mm-hmm. I want to now come to the second area of
10 my focus, which relates to budgetary issues, and
11 again, yesterday you had the opportunity to hear
12 exchanges about budgetary problems and how it
13 causes a consequence in the field of monitoring
14 and compliance. You would agree with me, would
15 you not, that the budgetary restrictions that DFO
16 is facing year by year is obviously to the
17 prejudice of the monitoring program within your
18 branch?

19 A I mean, budgetary restrictions that effect
20 operational funding obviously will influence how
21 much time we can spend in the field, you know, the
22 resources towards that, so it does have
23 implications on monitoring and how much monitoring
24 can be done, yes.

25 Q And you also heard testimony yesterday, and I'm
26 sure you were well aware of this, that there's no
27 reason to be optimistic, certainly for this
28 present fiscal year, correct?

29 A Yes.

30 Q And you've had no information to cause you to be
31 optimistic in terms of the next year or two?

32 A In terms of there being an increase? No, I've
33 not.

34 Q No. And that being the case, is it fair to say
35 that your prognosis, in terms of what can be
36 accomplished in the way of monitoring of
37 compliance over the next couple years, we can't
38 look forward to an aggressive increase in your
39 surveillance of this area of your
40 responsibilities?

41 A I guess I have to address that, you know, last
42 year was the first year where the monitoring unit
43 was out actively doing compliance monitoring, so
44 there were, you know, in the neighbourhood of 600
45 visits conducted that weren't conducted the
46 previous year, so there has been an increase. But
47 in terms of whether there will be subsequent

- 1 increases in the future years, I would agree with
2 you that it's not likely that that, you know, that
3 level is going to increase.
- 4 Q And that's a very unfavourable situation for you
5 in your area and your mandate, is it not?
- 6 A I guess it does cause me concerns when we have a
7 plan of not only implementing compliance
8 monitoring but also effectiveness monitoring and
9 into ecosystem health monitoring. I think all of
10 those endeavours would involve increased levels of
11 field time, which would be a challenge.
- 12 Q Appreciating what you have just said, you were
13 here yesterday and probably heard an exchange
14 between myself and Monsieur LeBlanc and, indeed,
15 Ms. Reid, about whether their recent budgets as
16 advanced to Treasury Board included an increased
17 line item for -- or an increase for funding for
18 monitoring; did you hear that exchange?
- 19 A I did hear a discussion, yes.
- 20 Q And you heard both these witnesses indicate, if my
21 memory's right of the testimony, that to the best
22 of their memory no -- the region nor the national
23 headquarters had applied for increased funding for
24 Habitat Monitoring; do you remember?
- 25 A Yeah, I'm not aware of an increase -- a request
26 for increase --
- 27 Q Okay.
- 28 A -- no.
- 29 Q Was there an application for an increase in
30 funding by your group, to Region, asking Region to
31 fight the good battle with Treasury Board through
32 headquarters?
- 33 A Not formally, not in writing, but there have been
34 conversations indicating that there were -- there
35 would be operational funding necessary to conduct
36 the field monitoring. So there's been
37 discussions, but no formal request.
- 38 Q Please, without it in any way being interpreted to
39 be critical of you, sir, can you explain to me why
40 your group would not be taking a more assertive
41 initiative with Region to top up your funding so
42 that you would be able to sleep at night?
- 43 A Ah. Hmm. I think the expectation is that, you
44 know, we've been made aware that, you know,
45 increases in funding were unlikely and that, you
46 know, there was an expectation you were going to
47 have to make do with what was available, so that

- 1 would be, I guess, the impetus for not pursuing
2 that avenue.
- 3 Q Appreciating how your initiatives are limited by
4 the funding problems, do you think the public
5 interest is being well served at this time in
6 terms of DFO carrying out its monitoring program?
- 7 A It comes down to an issue of, you know, doing the
8 best you can with the resources available.
- 9 Q It doesn't --
- 10 A No?
- 11 Q -- quite answer my question. I appreciate your
12 response.
- 13 A Yeah.
- 14 Q Do you think the public interest is being well
15 served right now?
- 16 A I think we could do more with more, which is -- I
17 may be -- I'm not trying to hedge the response
18 there. Would it be beneficial to do more
19 monitoring? Of course it would. Would more
20 resources being available facilitate it? Yes, it
21 would. I think that probably answers your
22 question.
- 23 Q Do you ever have the opportunity to meet American
24 colleagues and discuss matters relating to
25 monitoring of the fishery resource?
- 26 A Not since I've been back with DFO, no.
- 27 Q And so you cannot bring to this inquiry any
28 knowledge of whether the Americans are doing a
29 more effective job in monitoring their fish
30 habitat?
- 31 A I'm aware of some of the programs that are ongoing
32 in the United States, because obviously we're
33 looking at some of those as potential things that
34 we could apply here, things that are being done by
35 the EPA, things that are being done by the U.S.
36 Geological Survey, so I'm aware of some of those
37 initiatives, but I haven't had direct discussions
38 with...
- 39 Q I appreciate that, and the fact that you are
40 looking at this American experience, is it fair to
41 say, from your perspective, that they are
42 discharging more effectively the monitoring of
43 habitat in the U.S. than we are here?
- 44 A I haven't done a thorough evaluation of their
45 methodology or of the approach they're taking and
46 the results that they're getting, so I don't think
47 I would be qualified to answer that question.

Dave Carter

Cross-exam by Mr. Rosenbloom (GILLFSC)

Cross-exam by Mr. Harvey (TWCTUFA)

1 MR. ROSENBLOOM: I appreciate that. Thank you very
2 much for your questions -- answers, I should say.
3 Thank you.

4 MR. MARTLAND: Mr. Commissioner, I have, next, Mr.
5 Harvey, at 10 minutes.

6 MR. HARVEY: Chris Harvey, for the Area G Trollers and
7 the UFAWU.

8

9 CROSS-EXAMINATION BY MR. HARVEY:

10

11 Q Mr. Carter, as you know, this commission is
12 mandated to investigate the causes for the decline
13 of the Fraser River sockeye fishery?

14 A Yes.

15 Q And your work, I take it, covers all fisheries-
16 related habitat issues throughout the province?

17 A And the Yukon.

18 Q Yes, all right. But with respect to sockeye, and
19 Fraser River sockeye in particular, do you have
20 priorities for your monitoring and compliance
21 work?

22 A Well, there are a number of priorities I think I
23 mentioned earlier that we use to develop our work
24 plans, and some of those were national, regional,
25 as well as area specific priorities.

26 Q Yes, I didn't mean in the sense of policies, I
27 mean in geographic location. We've heard a lot of
28 evidence here about the importance of the spawning
29 grounds, of course, but also the rearing lakes,
30 because the juvenile sockeye spend almost half the
31 lifespan of sockeye in the lakes, and lakes have a
32 certain carrying capacity that's critical to their
33 future survival and growth.

34 Has somebody come to you, ever, and said,
35 "Look, we've got to focus on the Shuswap," or,
36 "We've got to focus on the Cultus," or, "The
37 Quesnel system is very important," that sort of
38 thing?

39 A You know, there have been, as I said, some
40 regional priorities identified, one of them, you
41 know, being sockeye and this, I guess, commission.
42 Some of that priority did influence some of the
43 projects that were included in our monitoring work
44 plan, so we actually were involved in the
45 shoreline monitoring initiative that was done in
46 the Shuswap. So I guess it would influence some
47 of the projects that were included in our work

1 plan.

2 Q All right. Now, with respect to that shoreline
3 inventory program in the Shuswap, I think you said
4 that's -- is that going to be part of the report,
5 the regional report that will be developed from
6 the Habitat Monitoring update?

7 A There was, actually, through the SLIPP Program,
8 there was already a report generated regarding the
9 Shuswap shoreline monitoring initiative. That has
10 already been published, is my understanding, and
11 it was published as a joint venture between mainly
12 the Province, the Regional District, DFO. So that
13 report already exists.

14 Q All right. Well, I'm sorry, I haven't seen it,
15 but maybe you can tell me this: Is there any
16 connection or any analysis in that work, any
17 analysis in that work of the effect of habitat
18 changes on the carrying capacity of the lake?

19 A To be honest, I can't -- couldn't tell you whether
20 that analysis was included in the report or not.

21 Q I see. I'm going to just refer to the transcript
22 of February 10th for a moment, page 56. There was
23 a short discussion here, and there's been
24 discussion elsewhere, on the Cultus, because that
25 really seems to be one of the bottlenecks that's
26 causing problems in the sockeye fishery. And this
27 is part of cross-examination of Dr. Walters, one
28 of the eminent population dynamics scientists in
29 the area, starting at line 13, he says:

30
31 The stock -

32
33 -- he's referring to the Cultus stock here --

34 A Mm-hmm.

35 Q
36 - was relatively healthy. It was relatively
37 stable in abundance, so it didn't show cyclic
38 patterns. It wasn't until the '70s that it
39 started the decline and moved into a cyclic
40 pattern. At least according to the
41 escapement records of the Salmon Commission.

42
43 And he's asked:

44
45 Fairly heavy population pressure on Cultus
46 Lake; is that fair to say?

47

1 He agrees.

2

3 Recreational development, such as boating,
4 cabins?

5

6 He agrees.

7

8 Docks, a boat-launching site right next to
9 one of the preferred beaches for the sockeye?

10

11 And he agrees. And he says there's:

12

13 ... a whole bunch of other things impacting
14 them...

15

16 Now, this lake system is one in which the sockeye
17 actually spawn in the lake, as well as the lake
18 also supports the fry as a rearing habitat. Can
19 you describe what work your section does with
20 respect to monitoring and compliance in the
21 Cultus?

22

A If there were projects proposed that were
23 reviewed, there is a good potential that they
24 would come up and be identified for monitoring in
25 relation to the Habitat Monitoring Program, so I
26 can't, off the top of my head, you know, recall
27 any projects that were done in Cultus Lake last
28 year that were monitored, but if they did, you
29 know, apply for a **Fisheries Act** authorization or
30 received a letter of advice, they -- there is a
31 good potential that we would go out and monitor
32 them.

33

Q Yes. So no one in the Department's come to you
34 and said, "Look, the habitat conditions in the
35 Cultus are causing millions of dollars of loss to
36 the economy in the province. We've got to focus
37 on it as a priority," that sort of thing is not
38 happening?

39

A That has not happened, no.

40

MR. HARVEY: No, all right. I have no further
41 questions, thank you.

42

MR. MARTLAND: I have Ms. Brown, for First Nations
43 Coalition, at 30 minutes.

44

MS. BROWN: Thank you. For the record, Anja Brown and
45 with me is Leah Pence. We're counsel for the
46 First Nations Coalition. And the Coalition is
47 made up of First Nations from the Lower to the

1 Upper Fraser, as well as the Council of Haida
2 Nation, and we also represent a number of Fraser
3 River aboriginal organizations.
4

5 CROSS-EXAMINATION BY MS. BROWN:
6

7 Q Mr. Carter, a few minutes earlier you made
8 reference to 600 visits that your unit engaged in
9 last year, and I'm wondering if you're able to
10 break that down into at least an approximate
11 number of projects that that represents.

12 A I would be, I mean, I'd have to look at the number
13 and identify it. I would say in the neighbourhood
14 of 400 --

15 Q And are you able --

16 A -- individual projects or projects that had
17 specific PATH numbers in our file system.

18 Q Are you able to give us an idea how many of those
19 would have been located on the Fraser River?

20 A Based on the number that occurred, either through
21 the Lower Fraser group or through the BCI group,
22 I'd say 40 to 50 percent.

23 Q So around 200.

24 A 200 projects.

25 Q Possible.

26 A So, yes.

27 Q All right. Now, you've testified that you have 12
28 staff that are dedicated to monitoring.

29 A Mm-hmm.

30 Q And can you tell us the number of those 12 staff
31 that work out of Fraser River area offices, either
32 on the Lower or the Interior offices.

33 A That would be four.

34 Q And can you tell us which office they're working
35 out of?

36 A Well, actually it would be five, now that I think
37 about it. There's two in the Annacis Island
38 office in the Lower Fraser, there's two in
39 Kamloops, and one in Prince George.

40 Q And what about the 60 to 70 additional staff that
41 you estimated provided about five percent of their
42 time to support your 12 staff. Are you able to
43 give us an idea of how many of those are from
44 Fraser River offices?

45 A In terms of organizational structure, it would be
46 better to ask somebody else, to be honest. I'm
47 not sure exactly how many staff are in each of the

1 individual offices, so...

2 Q Are you able to give us an idea of full-time
3 equivalents, or anything like that?

4 A Not one that I would rely on.

5 Q All right. Now, you've talked about the field
6 season, and I'm curious, does the field season
7 stop and start on a specific date regionally, or
8 is that something that is determined on an area
9 basis?

10 A It's determined on an area basis. Obviously, it's
11 somewhere like the Yukon, the field season is
12 going to be relatively short because of ice and
13 snow. Whereas in the Lower Mainland or in South
14 Coast the field season actually may run for most
15 of the year, because they have access to the
16 sites.

17 Q All right. And when you were referring to your
18 field season earlier in testimony, what were the
19 specific dates that you were referring to there?

20 A I guess the approach is we do our planning and our
21 work planning right now in the spring, usually
22 field programs sort of start April into May, run
23 May through the summer into September/October, and
24 then we would be moving, you know, after October
25 we would be moving more into the analysis and
26 starting to write up the results.

27 Q So there's a good chunk of the year, then, where
28 there's no monitoring at all taking place; is that
29 right?

30 A It would vary by area and accessibility. So in
31 some areas you might have monitoring going on most
32 of the year, like I said, in the Lower Fraser. In
33 other areas where there's ice and snow and there
34 isn't the access, you're right, there would be a
35 winter season where it wouldn't be very reasonable
36 to be attempting to do monitoring.

37 Q Right. Now, is the actual level of monitoring
38 dependent on the nature of a particular project.
39 And what I mean by that is --

40 A Yes.

41 Q -- the number of visits that a particular project
42 might be subject to.

43 A There is the potential, especially with very large
44 projects, or linear projects, where there might be
45 multiple site visits involved. There are also
46 smaller projects where a single site visit might
47 be adequate to evaluate the situation. So, yes,

1 it's going to vary by the nature of the project as
2 to how many site visits are involved.

3 Q And are those visits unannounced, or is the
4 proponent aware of scheduled visits?

5 A Somewhat variable. I would assume a number of
6 them are, you know, on Crown land. We would just
7 factor that into our work planning. Others that
8 might be on private property or, you know, if we
9 needed to gather some information from the
10 proponent, we might contact the proponent in
11 advance of the site visit to confirm that, you
12 know, the work was actually ongoing and that the
13 work was being done.

14 You know, one of the things we found with the
15 notification processes, often we received
16 notifications, we went into the field to go
17 monitor the project and it hadn't been
18 constructed. So obviously, you know, adding an
19 element of contact the proponent in advance to
20 confirm they'd actually done the work, was useful.

21 Q Now, this morning in answer to one of the
22 questions posed by Ms. Tessaro in her questions
23 was "Why monitor?" Your answer was that it was
24 important to ensure that when DFO provides
25 conditions or advice, that that advice is adhered
26 to, and that obviously this creates an incentive
27 on the proponent to be compliant. And later when
28 speaking with Mr. Taylor, you said that effects
29 monitoring is something that would be undertaken
30 by proponents. Did I understand your evidence
31 correctly in that regard?

32 A Well, that if some of the effects monitoring could
33 be done by proponents, so I think there's an
34 expectation that some of that effects monitoring
35 could be done by Habitat staff, and some of that
36 effects monitoring could be done by proponents or
37 people working for proponents as part of their
38 follow-up program.

39 Q So where there's an aspect of effects monitoring
40 that's undertaken by a proponent, what happens to
41 the incentive to comply where you have a proponent
42 who's doing essentially monitoring itself?

43 A Well, first of all I guess a lot of that
44 monitoring is third party monitoring where they
45 actually hire a consulting company or a
46 professional to do that monitoring on their
47 behalf. There's also the other side of it, too,

1 is just because a proponent has a monitor on site,
2 that doesn't necessarily remove or negate us going
3 out and doing monitoring on that project and sort
4 of verifying that information that's being
5 gathered.

6 Q And what would determine whether there would be
7 that additional layer of monitoring by the
8 Department taking place?

9 A We would do that when we establish our samples.
10 So most of the authorizations that we monitored
11 this year also had a follow-up monitoring that was
12 being done by a third party monitor hired by the
13 proponent. So when those projects were identified
14 in our sample, we went out and monitored them as
15 well. So it's determined by how we choose the
16 sample.

17 Q Now, in the evidence you gave earlier today in
18 response to questions posed by Mr. Taylor, you
19 indicated that one of the ways that DFO chooses
20 its priorities for strategic monitoring is based
21 on integrating national regional and area
22 priorities. And if I heard your evidence
23 correctly, is this an internal exercise, then?

24 A Yes.

25 Q All right. And some of the priorities that you
26 mentioned were seawall developments and docks and
27 bridges. And we noted that you didn't mention
28 dams or hydro developments as a priority, and my
29 question is why projects such as that wouldn't --
30 because such projects affect fish, why wouldn't
31 those sorts of projects be identified as strategic
32 priorities?

33 A I guess we should be careful, in terms of
34 something being a priority, it might be a
35 particular issue that was identified as a
36 priority, and then we would identify particular
37 projects to go out and monitor, to speak to that
38 issue. So it wasn't necessarily the particular
39 project types were identified as a priority. It
40 might have been shoreline development or stream
41 crossings, and then we would go out and look at
42 something like bridges.

43 In terms of hydro facilities or dams, are you
44 talking about IPP projects, like independent power
45 projects, or BC Hydro projects?

46 Q Well, I'm just talking about larger scale projects
47 that we didn't hear you --

- 1 A Oh, okay.
- 2 Q -- make mention of.
- 3 A Oh, okay. I mean, there were a number of large
4 scale projects that monitoring was conducted on,
5 things like the Sea to Sky Highway, the Deltaport
6 development, you know, a number of large projects
7 that were also included in the monitoring. And
8 again there was a potential if there had been an
9 authorization in place for one of the hydro
10 projects, they could have come up as part of the
11 monitoring. I'm not aware of any of the hydro
12 facilities that did, but could well have.
- 13 Q And is part of the project or part of the process,
14 rather, for determining these strategic
15 priorities, is part of that process receiving and
16 responding to concerns, perhaps, from First
17 Nations, or NGOs and then your Area staff bringing
18 that to the table's attention?
- 19 A Yes. I think that it would be, yes.
- 20 Q Mr. Bisset, could you turn up number 5 from our
21 list of documents, please.
- 22 Mr. Carter, this is a Discussion Paper that
23 was prepared by one of our clients, Russ Jones,
24 and it's entitled "A Scoping of Aboriginal
25 Implications of Renewal of the **Fisheries Act**
26 1985". Mr. Jones prepared it for the Assembly of
27 First Nations in March of 2006. So first of all,
28 I'll ask you if you've seen this document before?
- 29 A No, I'm sorry, I have not.
- 30 Q All right. I'm just going to take you to a couple
31 of parts of the document. Do you know Mr. Jones,
32 or have you had occasion to work with him?
- 33 A I don't believe that I do.
- 34 Q All right. Just by way of explanation, Mr. Jones
35 is one of our clients. He's also a council member
36 from the First Nations Fisheries Council. He's a
37 Haida hereditary chief, a member of the Council of
38 Haida Nation, and he's also a member or a
39 commissioner, rather, from the Pacific Salmon
40 Commission.
- 41 A Oh, okay.
- 42 Q So that's his background. And I'll bring you
43 first of all, please, to page 35, which lays out
44 the context for this part of his paper, which he
45 identifies as "Priority Habitat Management
46 Issues". And then on the next page, page 36,
47 heading "4", in his view one of the priority

1 habitat management issues is to "Promote enhanced
2 First Nations roles in habitat monitoring and
3 enforcement." And I'm wondering if you agree that
4 an enhanced role for First Nations to work with
5 DFO with monitoring would be a useful thing, a
6 positive thing.

7 A I think it would be a positive thing. You know,
8 as mentioned before, you know, doing some of this
9 work in partnership with other entities only
10 increases the capacity and the opportunity for
11 doing things well. So I think it would be
12 beneficial.

13 Q Right. And I would think that particularly in
14 light of the evidence that we've heard about the
15 staffing and resourcing challenges that the
16 Department faces, having participation from First
17 Nations could be beneficial.

18 A Yes.

19 Q And just flipping over to page 34, we note there
20 that Mr. Jones makes reference to:

21
22 Some First Nations in the Atlantic and
23 Pacific regions have been involved in habitat
24 monitoring through AFS.

25
26 The Aboriginal Fisheries Strategy, and I'm
27 wondering if you're aware of any First Nations in
28 the Pacific Region that are currently or perhaps
29 have been in the recent past engaged in habitat
30 monitoring activities.

31 A I know instances where First Nations have been
32 involved in the monitoring associated with
33 specific projects. So but I don't know whether
34 that occurred through the AFS or not. But I do
35 know of First Nations being involved in the
36 monitoring of projects.

37 Q All right. And are you able to speak to any
38 specifics?

39 A I'd be hard-pressed, I do believe First Nations
40 were involved in some of the monitoring on the
41 Toba Montrose independent power project, that
42 would be one instance, but beyond that...

43 Q I'll leave it at that. Thank you.

44 A Sure.

45 MS. BROWN: If that document could be entered as the
46 next exhibit, please.

47 THE REGISTRAR: Exhibit 681.

1 EXHIBIT 681: Discussion Paper: A Scoping of
2 Aboriginal Implications of Renewal of the
3 **Fisheries Act** 1985, Russ Jones, March 30,
4 2006
5

6 MS. BROWN:

7 Q And finally, then, I just have a few questions in
8 respect of ecosystem monitoring and these arise
9 from some of your answers earlier today, and we've
10 heard about how ecosystem monitoring is on DFO's
11 horizon in the future, and you estimated that the
12 work plan, that you hoped that that work might be
13 completed or in place perhaps around 2013. And we
14 also heard from you earlier that developing the
15 indicators and the sampling and monitoring regime
16 is something that's going to be primarily on the
17 Science Branch's plate.

18 A Mm-hmm. I think there is an expectation that
19 Science will take the lead in providing a lot of
20 the guidance for the development of that.

21 Q Right.

22 A Habitat will be involved, as well, obviously, but
23 you know, taking, leaning to the expertise of
24 Science in terms of the development of those
25 programs.

26 Q Right. And in terms of developing those programs,
27 do you see any room there for collaboration or
28 partnering with academic institutions, or
29 environmental groups and First Nations, to move
30 this ecosystem monitoring work ahead and perhaps
31 be able to do so within that somewhat optimistic
32 timeframe?

33 A I think there's opportunities for it, yes, and I
34 think, you know, in terms of the development,
35 having some discussion and, you know, I guess
36 consultation about how to involve others.

37 Q Right. And that actually leads into my last
38 question, which is whether you can offer a
39 recommendation on how such collaborative efforts,
40 and let's say with First Nations, could best move
41 ahead.

42 A I guess that I'm scratching my head a little bit
43 on that. I think when it comes to the development
44 of the Wild Salmon Policy, and developing some of
45 the initiatives under that, that might be a good
46 forum to have some of those discussions. And, you
47 know, whether they be workshops or some way of

81

Dave Carter

Cross-exam by Ms. Brown (FNC)

Cross-exam by Ms. Robertson (MTTC)

1 gathering people from different areas together to
2 discuss what are the opportunities, and what the
3 roles that various entities could play. But
4 beyond that, not really my area of expertise.

5 MS. BROWN: All right, thank you. Those are my
6 questions.

7 MR. MARTLAND: Thank you. Mr. Commissioner, I have Ms.
8 Robertson at ten minutes now.

9 MS. ROBERTSON: Krista Robertson for the Musgamagw
10 Tsawataineuk Tribal Council.

11

12 CROSS-EXAMINATION BY MS. ROBERTSON:

13

14 Q Just a very few questions for you, Mr. Carter.
15 I'm wondering if your branch ever monitors salmon
16 aquaculture sites.

17 A Currently we are not monitoring aquaculture sites.
18 My understanding is that the monitoring of the
19 aquaculture sites is being conducted by staff
20 working in the Aquaculture office, so...

21 Q And have you ever been -- there's been a fair bit
22 of discussion today about the assessment and
23 priorities. Have you ever been involved in any
24 discussions where there was a consideration as to
25 whether your branch should be considering that as
26 a priority, or has it...

27 A I was involved in one meeting with staff from the
28 Aquaculture office discussing sort of monitoring
29 and approaches to monitoring, and the discussion
30 about trying to ensure that the standards and the
31 approaches were similar. But that would be the
32 only discussion.

33 Q And what of that, are the standards and approaches
34 similar as far as you know, or...

35 A I'm really not aware of the standards and
36 approaches that are being applied, so...

37 Q So they may or may not be similar.

38 A Yes.

39 Q And another question just generally. Do you find
40 when you're working with a letter of advice, as
41 opposed to when you're working with a HADD
42 mitigation agreement?

43 A By an authorization?

44 Q A HADD authorization.

45 A Yes.

46 Q Or an agreement whereby the proponent undertakes
47 to do certain things to avoid a HADD.

April 6, 2011

1 A Okay. Yes.

2 Q Do you find that an adaptive management approach
3 is -- is better facilitated by a letter of advice
4 or by an actual HADD agreement in terms of your
5 ability to monitor?

6 A Oh, okay. Well, I'm not familiar with the term
7 HADD agreement. I'm assuming that that would be
8 an authorization under the **Act**, under s. 36.
9 Normally authorizations do include conditions
10 directly associated with monitoring, so there's
11 some required monitoring under the authorization
12 which isn't normally the case under a letter of
13 advice. So there is, I guess, an increased effort
14 in monitoring in association with authorizations
15 on the proponent side.

16 In terms of adaptive management and whether
17 one is more effective on one or the other, again
18 normally letters of advice don't include
19 conditions associated with adaptive management.
20 But I have seen a number of authorizations where
21 there are conditions associated with adaptive
22 management.

23 Q Okay.

24 A So, yes.

25 Q So generally, then, you're saying when there's a
26 letter of advice issued with respect to a project,
27 it's more difficult on the monitoring end of
28 things to engage in adaptive management, meaning
29 the ability to make kind of changes as the work
30 progresses, and in the operational phase, to make
31 changes where assessments determine that, you
32 know, there's uncertainty, at least with respect
33 to fish habitat impacts.

34 A I haven't seen a lot of adaptive management in
35 association with letters of advice, so I think I
36 would, you know, agree with your statement that it
37 doesn't tend to occur with letters of advice.
38 Whereas I have seen it with authorizations, so,
39 yes.

40 Q Okay, thank you. And my final question is in
41 terms of doing the assessments, do you ever engage
42 with First Nations in terms of traditional
43 ecological knowledge around their insights, as to
44 whether or not advice is working, monitoring is
45 working, in terms of impacts you're seeing on
46 fisheries.

47 A There's been some discussion with regards to

Dave Carter

Cross-exam by Ms. Robertson (MTTC)

Questions by the Commissioner

1 particular projects where First Nations have been
2 involved in those projects, and that there have
3 been some discussions. But as a general
4 principle, not regularly, not that that wouldn't
5 necessarily be something that would be worthwhile.

6 Q And would that be a capacity issue, or a policy
7 issue, or both, or what would be the barriers to
8 taking that...

9 A I think part of it we're still building the
10 toolbox. So that's part of it, as well, in terms
11 of what to incorporate in here. There is still a
12 lot of work going on in developing the monitoring
13 initiative. So as to who will be our, you know,
14 who will collaborate with us, or how we will
15 collaborate with different groups, that's still
16 developing, so...

17 Q But you do think that would be a helpful tool.

18 A I think it, you know, bears consideration, yes. I
19 think there's a potential for it to be beneficial,
20 yes.

21 MS. ROBERTSON: Thank you, those are my questions.

22 MR. MARTLAND: Mr. Commissioner, I believe Ms. Tessaro
23 has one point to cover in re-examination. Mr.
24 Taylor has two, but otherwise that should conclude
25 our evidence for the day.

26 THE COMMISSIONER: I wonder if I could just raise just
27 a couple of quick points, Mr. Martland, and then
28 Ms. Tessaro or Mr. Taylor may want to include that
29 in their questions. And I am not sure quite how
30 to articulate this, Mr. Carter, so I apologize in
31 advance if the questions seem a little convoluted.

32

33 QUESTIONS BY THE COMMISSIONER:

34

35 Q Insofar as DFO is concerned and the different
36 elements of DFO responsible for management of the
37 fishery, do you meet from time to time with all of
38 your colleagues to, for example, we have heard
39 evidence since January on harvest management,
40 including the commercial fishery and the
41 recreational fishery, and we will be having a
42 panel on the aboriginal fishing, as well. And so
43 they have dealt with different elements of their
44 responsibility.

45 A Right.

46 Q Be it escapement strategy or whatever. You're now
47 talking about the area of monitoring, for example,

1 and compliance. But do you and your colleagues
2 come together and share your experiences and the
3 information that's available in sort of an
4 overarching management discussion as to how the
5 different parts of the puzzle fit together within
6 management? And obviously this Commission is
7 concerned about salmon and Fraser River sockeye.
8 So I should be really, in fairness to you, really
9 addressing this question to within Fraser River
10 sockeye issues, do you have an opportunity to come
11 together and have those kinds of discussions?

12 A There are discussions that have occurred where
13 various elements of the Department or the various
14 branches do meet, whether it be **SARA** or Oceans or
15 FAM with Habitat, over, you know, discussing
16 various issues. So those kind of discussions do
17 happen. An overarching discussion of sort of
18 management of a particular stock, I'm not aware of
19 a discussion like that occurring, other than maybe
20 under the framework of the Wild Salmon Policy
21 where, you know, you've got those different stages
22 within, or, you know sections within the Wild
23 Salmon Policy and various groups are engaged in
24 those, those various strategies, and there are
25 discussions that occur under that banner where I
26 think, you know, along those lines that may or has
27 been happening.

28 Q I see. So it would be a matter of someone
29 inviting you to come to a particular meeting to
30 address an issue like that under the Wild Salmon
31 Policy?

32 A Yes. And I do know that there have been
33 discussions like that under the Wild Salmon
34 Policy, where FAM and Habitat and **SARA** have been
35 meeting to discuss, you know, implementation of
36 the Wild Salmon Policy.

37 Q Okay. And my other question, again I apologize in
38 advance, I may not be articulating this very well,
39 but I understand that policies are developed at
40 the national level. There is input from the
41 regional level, there may even be drafts done at
42 the regional level, and so on. But in that
43 process, you've had a lot of questions put to you
44 by these lawyers with regard to staffing issues
45 and that sort of area, and funding issues. Do you
46 get an opportunity during the lead-up to a
47 discussion paper being published or a strategy

1 document or a framework document being published,
2 to have a thorough analysis of what the impacts
3 will be from adopting that particular discussion
4 or policy or framework to your staff resources,
5 your human and financial resources? In other
6 words, is that part of the mix in the lead-up to
7 these kinds of documents being adopted by DFO?

8 A I can only speak from my personal experience.

9 Q Of course. Of course.

10 A There have been instances where we have been asked
11 to engage on policy under development or, you
12 know, to provide our sort of two cents worth.
13 There have also been other instances where things
14 have rolled out in relatively short order and
15 maybe there hasn't been as much opportunity. So
16 it varies.

17 Q I see.

18 A Yes.

19 THE COMMISSIONER: Thank you very much.

20

21 CROSS-EXAMINATION BY MR. TAYLOR, continuing:

22

23 Q I'm first? I've now got three and a half
24 questions of you.

25 You answered a question of Mr. Harvey as to
26 monitoring to do with Cultus Lake in 2010. You'll
27 recall that, and I think what you said was that if
28 there was a project, it would likely have been
29 caught, but you don't recall there being a project
30 last year.

31 A Well, it would have had the potential to have been
32 caught, yes.

33 Q Yes. In terms of monitoring by certainly your
34 unit.

35 A Mm-hmm.

36 Q When you answered that question of Mr. Harvey,
37 were you referring to the work that your unit
38 would or would not have done, or were you
39 including all of Habitat and all of the Habitat
40 staff in your answer?

41 A Yeah, good point. I mean, my answer would have
42 been framed around the work that was being done by
43 the Habitat Monitoring Unit. So but you're right,
44 there are other Habitat staff that may have been
45 involved in monitoring.

46 Q And more specifically there are Habitat staff
47 assigned to the Cultus area, to your knowledge?

- 1 A Yes, there are.
- 2 Q And would I also be correct, then, that your
3 answer was not speaking to what the Enforcement
4 Branch might or might not be doing?
- 5 A That's correct, as well.
- 6 Q That then leads to a related question. Where you
7 have larger projects, would it be the case that a
8 Habitat biologist is going to have a file open on
9 it?
- 10 A Yes, it is.
- 11 Q And that Habitat biologist will be looking at it
12 and monitoring that particular larger project?
- 13 A The reality is they would have, I guess, a
14 responsibility with regards to follow-up
15 monitoring of a project that they may have
16 reviewed. But the Habitat Monitoring Unit might
17 be looking at doing monitoring in association with
18 that project, as well.
- 19 Q So you might both be doing it.
- 20 A Exactly. And, you know, obviously we were trying
21 to do that monitoring jointly.
- 22 Q But my question was really going to whether on a
23 larger project, no matter what, you're going to
24 see a Habitat biologist on it.
- 25 A You're going to see a Habitat biologist involved
26 in the review of it, and whether there is, you
27 know, whether that Habitat biologist goes out and
28 conducts monitoring on it, that might depend.
- 29 Q Okay. Mr. Rosenbloom pointed out that there has
30 been one conviction, and no doubt we're going to
31 hear a lot more about that in the next couple of
32 days, or over the next couple of days. Apart from
33 conviction, well, firstly it almost goes without
34 saying, but one conviction presumably means
35 there's at least one prosecution and probably more
36 than one prosecution. Some prosecutions don't
37 result in a conviction.
- 38 A That's correct.
- 39 Q But besides the prosecution tool and convictions,
40 are there other compliance tools that can be
41 employed by Fisheries staff, or Habitat staff?
- 42 A Well, I think that's a good point. You know, if
43 we were to consider in that compliance decision
44 framework the various responses of the Department
45 that are laid out in that framework, or that
46 policy document, you know, it speaks about a
47 continuum of actions in relation to compliance,

- 1 and, you know, on one end of the spectrum,
2 promotion, education, advice, all of those can be
3 used as tools to bring about compliance with the
4 **Act**. Moving through the continuum to shifting
5 more and more towards the compel side, where you
6 might, you know, issue an inspector's direction,
7 or a warning, or the enforce side where you might
8 conduct an investigation and do an enforcement
9 action. So there's a broad range of tools that
10 can be brought to bear to try and ensure that if
11 habitat is being impacted, that that impact is
12 addressed.
- 13 Q Now, do inspector's directions offer the
14 opportunity for the monitoring Habitat official to
15 give a direction that then allows them to have an
16 ongoing review and clout, if you like, over that.
17 In other words, the direction is to do something
18 and to do it within a certain time, or stop doing
19 it, and then there's further checks on that and
20 maybe ongoing even beyond that.
- 21 A There would be a follow-up, and I guess the
22 conditions or, you know, the directions provided
23 in that inspector's directions are in themselves
24 enforceable.
- 25 Q And is it your understanding that a conviction
26 would simply result in a fine and/or jail
27 potentially, I suppose, but a fine that's then
28 paid, perhaps as a cost of doing business, and
29 that's the end of the clout.
- 30 A There is that potential, yes.
- 31 Q Now, the Commissioner asked you a couple of
32 questions a moment or so ago about meeting or
33 consultation or dialogue as between the various
34 units or branches within Fisheries in B.C., and
35 you gave an answer. You've referred already to
36 area staff.
- 37 A Mm-hmm.
- 38 Q And those are Habitat staff, and then there's
39 other section or unit staff in those area offices,
40 isn't there?
- 41 A Absolutely, yes.
- 42 Q And do you have knowledge whether they dialogue
43 amongst each other?
- 44 A I have knowledge that yes, they do, and, you know,
45 expectation is that it happens on a fairly
46 frequent basis.
- 47 Q They're all working in an office together.

Dave Carter

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

Re-exam by Ms. Tessaro

1 A Exactly.

2 Q For the same common goal.

3 A Hopefully, yes.

4 Q And at the other level of the hierarchy, but still
5 within the region, are you aware -- well, firstly,
6 you report to a Regional Director, correct?

7 A Through a Regional Manager, yes.

8 Q And all staff except C&P report to a Regional
9 Director, don't they?

10 A They would, the C&P staff would report to their
11 own Regional Director, but yes. Yes.

12 Q Well, C&P report to Sue Farlinger, the Regional
13 Director General, right, through --

14 A Yes, though Randy Nelson falls there in that chain
15 of command somewhere, too. Yes.

16 Q Well, what I mean is through Randy Nelson.

17 A Yes.

18 Q And all other staff report through someone to a
19 Regional Director.

20 A Yes.

21 Q And then am I correct that Randy Nelson is the
22 head of C&P, and the Regional Directors and Sue
23 Farlinger, they all get together regularly, don't
24 they?

25 A Yes.

26 Q And you don't know what they talk about, but you
27 know they talk about Fisheries business.

28 A I would assume so, yes.

29 MR. TAYLOR: Thank you.

30

31 RE-EXAMINATION BY MS. TESSARO:

32

33 Q So my area of redirect is simply to be clear on
34 the issue of anticipated timelines for
35 incorporating fish health habitat or ecosystem
36 monitoring into the habitat management program,
37 because I fear the record may not actually be
38 clear on that point. And to aid this effort, Mr.
39 Bisset, if you could pull up what was Tab 15 of
40 our materials, and is now Exhibit 676. And my
41 questions, Mr. Carter, focus on this first page,
42 under the heading "Longer Term (2013-15)", I'd
43 like to have you clarify what the anticipated
44 timeline is for implementing these elements. And
45 I have heard you say, in response to a question
46 from Mr. Taylor, that the timeline for
47 implementing the -- and correct me if I'm wrong,

1 for implementing the final box, which is a box
2 that reads:

3
4 Science development of ecosystem indicators
5 to determine whether cumulative effects and
6 other ecosystem level issues are being
7 addressed.

8
9 Is four to five years.

10 A Yes.

11 Q Is that correct?

12 A When you look at this national document,
13 developing those national indicators, and looking
14 at that longer timeframe of four to five years,
15 yes, you are correct, but those are the national
16 indicators. I think you are also correct in
17 assuming, though, that under the Wild Salmon
18 Policy there are regional indicators that have
19 been developed and that already exist.

20 Q And on that point, do you know how the National
21 Habitat Management Program's timeline for
22 developing ecosystem indicators for monitoring
23 fits with the Wild Salmon Policy indicator
24 timeline, and maybe, Mr. Bisset, just so that Wild
25 Salmon Policy timeline can be on the screen, as
26 well, if you could pull Exhibit number 8. And
27 it's page 23 in the real document, which I think
28 is about 31'ish - go back, there we go - and it's
29 under Step 3.1.

30 So when you refer to the regional ecosystem
31 indicator timeline, are you talking about the line
32 here, Mr. Carter, where it says:

33
34 Within two years, an ecosystem monitoring and
35 assessment approach will be developed and
36 integrated with ongoing assessments...

37
38 A So you're reading this paragraph 3.1?

39 Q Yes. Under the heading "Identify indicators to
40 monitor status of freshwater ecosystems".

41 A Okay. And my understanding is those indicators
42 have already been developed, that they already
43 exist.

44 Q Who do you understand did that work?

45 A That would be the report that was generated by
46 Heather Stalberg.

47 Q So you understand Ms. Stalberg's work to be under

1 Strategy 3?
2 A I thought that was under Strategy 2 with regards
3 to developing sort of habitat indicators, or
4 status indicators.
5 Q So here, I think, we are under "Action Step 3.1".
6 A Okay.
7 Q Under "Strategy 3".
8 A
9 ...key indicators (biological, physical and
10 chemical) of the current and potential state
11 of lake and stream ecosystems...
12
13 So whether they fall under Strategy 2 or Strategy
14 3, I'm not -- I would say that I know that there
15 have been a suite of indicators that have been
16 developed and have gone through a peer review
17 process.
18 Q On the point of the degree to which, and the
19 processes by which --
20 A Yes.
21 Q -- Habitat Management and Science Branch
22 coordinate on Wild Salmon Policy implementation,
23 particularly with respect to monitoring.
24 A Mm-hmm.
25 Q Do you have a counterpart or contact at Science
26 that you speak to about, for example, action step
27 3.1, do you yourself engage in that kind of inter-
28 branch consultation?
29 A There is a colleague that I work with that is
30 taking the lead on Wild Salmon Policy on behalf of
31 Habitat, and I do have, you know, a significant
32 amount of discussion with her. There are specific
33 scientists that, you know, are engaged with, but I
34 am not the Science liaison between Habitat and
35 Science. There's another individual who plays
36 that role that I again have interaction with,
37 so...
38 Q And you're talking about Melody Farrell?
39 A Melody Farrell, on the Wild Salmon Policy side,
40 and Derek Nishimura when it comes to the Science
41 liaison.
42 Q And I suppose I guess my last question, just on
43 this same theme, your evidence is that you
44 understand that this ecosystem monitoring and
45 assessment approach referred to here, is
46 already...
47 A Well, the indicators have been identified. How

1 those indicators will be applied, that is work
2 that is still ongoing. So developing a framework
3 under which those indicators would be monitored
4 and that information would be gathered is still
5 ongoing work.

6 MS. TESSARO: Okay. Unless you have any questions for
7 the witness, Mr. Commissioner, I think that that
8 concludes the evidence of this witness, and we'll
9 adjourn to 10:00 a.m. tomorrow morning.

10 THE COMMISSIONER: Yes, thank you, Ms. Tessaro, I
11 appreciate that. And thanks to the witness for
12 appearing here today and for answering the
13 questions of counsel. Thank you very much.

14 A You're welcome.

15 THE COMMISSIONER: We are adjourned, then, until ten
16 o'clock tomorrow morning, and that is to commence
17 the panel on enforcement; is that correct?

18 MR. MARTLAND: Yes. Our panel commencing tomorrow,
19 continuing Friday and Monday is habitat
20 enforcement.

21 THE COMMISSIONER: Thank you very much.

22 THE REGISTRAR: The hearing is now adjourned for the
23 day and will resume at ten o'clock tomorrow
24 morning.

25
26 (PROCEEDINGS ADJOURNED TO APRIL 7, 2011 AT
27 10:00 A.M.)
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

1 I HEREBY CERTIFY the foregoing to be a
2 true and accurate transcript of the
3 evidence recorded on a sound recording
4 apparatus, transcribed to the best of my
5 skill and ability, and in accordance
6 with applicable standards.
7

8
9 _____
10 Diane Rochfort

11
12 I HEREBY CERTIFY the foregoing to be a
13 true and accurate transcript of the
14 evidence recorded on a sound recording
15 apparatus, transcribed to the best of my
16 skill and ability, and in accordance
17 with applicable standards.
18

19
20 _____
21 Karen Acaster

22
23 I HEREBY CERTIFY the foregoing to be a
24 true and accurate transcript of the
25 evidence recorded on a sound recording
26 apparatus, transcribed to the best of my
27 skill and ability, and in accordance
28 with applicable standards.
29

30
31 _____
32 Karen Hefferland

33
34 I HEREBY CERTIFY the foregoing to be a
35 true and accurate transcript of the
36 evidence recorded on a sound recording
37 apparatus, transcribed to the best of my
38 skill and ability, and in accordance
39 with applicable standards.
40

41
42 _____
43 Pat Neumann
44
45
46
47