

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



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

## Public Hearings

## Audience publique

**Commissioner**

L'Honorable juge /  
The Honourable Justice  
Bruce Cohen

**Commissaire**

**Held at:**

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

Thursday, April 7, 2011

**Tenue à :**

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

le jeudi 7 avril 2011

## APPEARANCES / COMPARUTIONS

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

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

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

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

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

**TABLE OF CONTENTS / TABLE DES MATIÈRES**

|                             | PAGE   |
|-----------------------------|--|
| PANEL NO. 28                |  |
| MANON BOMBARDIER (Affirmed) |  |
| In chief by Mr. Martland    | 6/10/15/17/19/21/24/25/29/30/31/<br>32/35/38/39/42/44/45/54/56/63/72/76/<br>78/80/83/84/89         |
| Cross-exam by Mr. Taylor    | 91/92  |
| PAUL STEELE (Affirmed)      |  |
| In chief by Mr. Martland    | 5/8/13/16/18/20/22/24/28/30/40/44/<br>46/50/51/55/56/58/60/65/71/79/81/84/89                       |
| Cross-exam by Mr. Taylor    | 91/92/95   |
| RANDY NELSON (Affirmed)     |  |
| In chief by Mr. Martland    | 6/9/12/14/15/18/20/22/25/26/29/30/<br>33/36/38/42/49/51/53/54/55/57/59/61/<br>64/67/71/75/78/84/86 |
| Cross-exam by Mr. Taylor    | 91/92  |

**EXHIBITS / PIECES**

| <u>No.</u> | <u>Description</u>  | <u>Page</u> |
|------------|---|-------------|
| PPR9       | Enforcement of the Habitat Protection and Pollution Prevention Provisions of the <b>Fisheries Act</b>   | 2           |
| 682        | High and Dry - an Investigation of Salmon Habitat Destruction in BC, David Suzuki Foundation (formerly W for ID)  | 2           |
| 683        | Memo for the Minister re the David Suzuki Foundation Report on Habitat Enforcement - October 12, 2007   | 2           |
| 684        | Email dated July 25, 2007 enclosing the briefing note for the deputy minister and two appendices  | 3           |
| 685        | Memo for deputy minister re DFO response to David Suzuki Foundation report on habitat enforcement with appendices   | 4           |
| 686        | <i>Curriculum vitae</i> of Paul Steele  | 5           |
| 687        | <i>Curriculum vitae</i> of Randy Nelson   | 6           |
| 688        | <i>Curriculum vitae</i> of Manon Bombardier   | 7           |
| 689        | Memorandum of Understanding between DFO and the Department of the Environment on the subject of the administration of s. 33 of the <b>Fisheries Act</b>       | 16          |
| 690        | Regional Working Agreement between the Department of the Environment and DFO for administration of s. 33 of the <b>Fisheries Act</b> in B.C. and Yukon - 1987 | 17          |
| 691        | Interim Operational Working Arrangement on Enforcement of s. 36(3) Between Environment Canada and DFO for Pacific and Yukon - 2006                            | 18          |
| 692        | MOU Between B.C. Conservation Officer Services and DFO C&P Pacific Region Respecting Mutual Assistance, Revised July 17, 2007                                 | 35          |
| 693        | MOU Between B.C. Conservation Officer Services and DFO C&P Pacific Region Respecting Mutual Assistance, Revised July 17, 2007                                 | 44          |
| 694        | Draft National Enforcement Policy for Conservation and Protection   | 47          |

**EXHIBITS / PIECES**

| <u>No.</u> | <u>Description</u>  | <u>Page</u> |
|------------|---|-------------|
| 695        | C&P Priorities Statement F2010-11 National and Pacific Region   | 68          |
| 696        | Overall EED Workplan Template (Overarching) EB Priorities for 2009-10   | 74          |
| 697        | Environmental Enforcement Directorate, Enforcement Branch, Environment Canada, National Enforcement Plan 2010-2011  | 75          |
| 698        | EED's Internal Decision-Making Process (IDMP), December 2010  | 78          |
| 699        | Audit of the Conservation and Protection Program, June 18, 2009   | 81          |
| 700        | Status Report on the Implementation of the Management Action Plan, December 17, 2010                                | 81          |
| 701        | Pacific Region C&P Habitat Effort [% of All Work Elements FEATS] with Occurrences and Violations [DVS#] 2000 - 2010 | 96          |
| 702        | Distribution of Effort (by Work Element)  | 96          |

Vancouver, B.C./Vancouver  
(C.-B.)  
April 7, 2011/le 7 avril 2011

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

6 THE COMMISSIONER: Mr. Martland?

7 MR. MARTLAND: Mr. Commissioner, we have present today  
8 Paul Steele, Randy Nelson and Manon Bombardier,  
9 who will be part of a panel giving evidence for  
10 three days, today, tomorrow and Monday, on the  
11 topic of habitat enforcement. If I might, I would  
12 like to take a few moments to cover some initial  
13 matters and offer you a few remarks to preface  
14 this part of our hearings.

15 As with previous hearings, I'll be making  
16 reference to commission counsel's exhibit list as  
17 I move through my questions. I won't be  
18 introducing every single document on that list but  
19 I'll move through it and, thanks to Ms. Grant's  
20 excellent organization, for once largely in the  
21 order they appear on the list. The other initial  
22 point I'll make is that as was the case for  
23 habitat management, these are not hearings that  
24 focus on particular habitat or habitat enforcement  
25 issues, which is to say the subtopics of, for  
26 example, aquaculture, mining, other topics for  
27 which there is hearing time later on, so we're  
28 trying to keep it at a general level, but  
29 appreciating that there may be areas where we need  
30 to zero in on a particular topic.

31 Ms. Bombardier, we're making arrangements for  
32 her to appear on Monday by video because she'll be  
33 back in Ottawa or Gatineau at that point, so I'll  
34 advise that and we'll speak to that further likely  
35 towards the end of the day tomorrow.

36 One of the preliminary matters I'd like to  
37 address is the Policy and Practice Report, if Mr.  
38 Bisset can bring that up on the screen. This is a  
39 Policy and Practice Report entitled Enforcement of  
40 the Habitat Protection and Pollution Prevention  
41 Provisions of the **Fisheries Act**. It's on our  
42 exhibit list as number 4. This is, to be clear, a  
43 different Policy and Practice Report or PPR than  
44 was used and entered as Exhibit -- or, sorry, PPR  
45 number 8. That was the habitat management PPR.  
46 This is the habitat enforcement PPR and I'd ask at  
47 this juncture to have that marked as a PPR in the



1 proceedings, please.

2 THE REGISTRAR: That will be marked as PPR number 9.

3

4 PPR9: Enforcement of the Habitat Protection  
5 and Pollution Prevention Provisions of the  
6 **Fisheries Act**

7

8 MR. MARTLAND: Another preliminary matter which is  
9 really just to clean up a matter outstanding from  
10 hearings over the past few days on habitat  
11 management, you may recall that Mr. Harrison put  
12 to the panel, I think on Tuesday, a David Suzuki  
13 report called High and Dry and to have that  
14 perhaps at hand, it was marked as Exhibit W for  
15 identification, I believe. I've spoken with  
16 counsel for Canada, as well as counsel for the  
17 Conservation Coalition and we have some agreement  
18 that it's appropriate to do two things. The first  
19 is to have Exhibit W for identification marked as  
20 an exhibit proper in these proceedings. I'd like  
21 to do that now, please.

22 THE REGISTRAR: That will be marked as Exhibit number  
23 682 and caveat W for identification will be  
24 removed.

25

26 EXHIBIT 682: High and Dry - an Investigation  
27 of Salmon Habitat Destruction in BC, David  
28 Suzuki Foundation (formerly W for ID)

29

30 MR. MARTLAND: Thank you, Mr. Registrar. The second  
31 part to this is to ask that some documents  
32 provided by Canada also be entered as exhibits in  
33 order to complete the documentary record in  
34 relation to the High and Dry report and, as I say,  
35 Mr. Harrison is in agreement that that's  
36 appropriate in the circumstances.

37

38 The first document I'll have brought up  
39 please is an October 12, 2007 memorandum for the  
40 minister. I'd ask that to be marked as the next  
41 exhibit, please.

42 THE REGISTRAR: Exhibit 683.

43

44 EXHIBIT 683: Memo for the Minister re the  
45 David Suzuki Foundation Report on Habitat  
46 Enforcement - October 12, 2007

47

MR. MARTLAND: Next there is an email July 25, 2007

1 from Ed Woo.

2 THE COMMISSIONER: I'm sorry, what was the last exhibit  
3 again? Could you just bring that back up on the  
4 screen? Thank you very much.

5 MR. MARTLAND: Yes. I'm sorry, Mr. Commissioner,  
6 that's the -- it's a memorandum for the minister.  
7 You'll see in the title of that it refers  
8 specifically to the David Suzuki Foundation report  
9 on habitat enforcement.

10 THE COMMISSIONER: I'm sorry, and who is the author of  
11 this document?

12 MR. MARTLAND: I'd have to flip to the -- I think the  
13 end to tell you that. You'll see -- Mr. Taylor  
14 may be able to assist.

15 MR. TAYLOR: Michelle d'Auray. I apologize if I  
16 mispronounced the last name. She was the deputy  
17 minister before Ms. Dansereau was the deputy  
18 minister, so she signed it, but the authors are  
19 variously Mr. or Ms. Winfield, Pierre -- Patrice  
20 LeBlanc, who you of course remember from earlier  
21 this week, a D. McBain, S. Kirby and these are  
22 what Mr. Martland is going to come to.  
23 Essentially they are responses and briefings on  
24 responses to Exhibit W, that has now become  
25 Exhibit 682.

26 THE COMMISSIONER: Thank you.

27 MR. MARTLAND: And thank you for that clarification.  
28 The next part of this is an email from Ed  
29 Woo, as I say dated July 25, 2007 and it provides  
30 some context for the document I'll put forward in  
31 a moment, as well as describes a meeting that's  
32 going on in relation to this David Suzuki  
33 Foundation report and I'd ask that that email  
34 please be marked as the next exhibit.

35 THE REGISTRAR: Exhibit number 684.

36  
37 EXHIBIT 684: Email dated July 25, 2007  
38 enclosing the briefing note for the deputy  
39 minister and two appendices  
40

41 MR. MARTLAND: And Mr. Giles, I may have missed a  
42 number, 683 was the memorandum from minister and  
43 684 is this one?

44 THE REGISTRAR: That's correct.

45 MR. MARTLAND: Thank you. And finally, there's a  
46 memorandum for the deputy minister that has a 2007  
47 date on it, DFO response to David Suzuki

4  
PANEL NO. 28  
In chief by Mr. Martland

1 Foundation DSF report on habitat enforcement,  
2 that's now on the screen. And this, on the third  
3 page of that document it has, again, the name S.  
4 Kirby and Dr. Bevan as the people signing that.  
5 There's a number of authors who are listed on the  
6 page afterwards. And this document has some  
7 appendices again that would be put in for the same  
8 purpose of completing the documentary record in  
9 relation to the David Suzuki report. I'd ask that  
10 this document, including appendices be 685 as  
11 exhibit, please.

12 THE REGISTRAR: So marked as Exhibit 685.

13  
14 EXHIBIT 685: Memo for deputy minister re DFO  
15 response to David Suzuki Foundation report on  
16 habitat enforcement with appendices  
17

18 MR. MARTLAND: Mr. Commissioner, those points having  
19 been addressed, these panel members can now be  
20 affirmed and I'll commence my questioning, please.

21  
22 MANON BOMBARDIER, affirmed.

23  
24 PAUL STEELE, affirmed.

25  
26 RANDY NELSON, affirmed.  
27

28 THE REGISTRAR: State your name, please?

29 THE COMMISSIONER: I don't think their mikes are on,  
30 Mr...

31 THE REGISTRAR: Oh, I'm sorry. We'll have to do this  
32 again.

33 MS. BOMBARDIER: Yes.

34 THE REGISTRAR: Sorry. State your name, please.

35 MS. BOMBARDIER: Manon Bombardier.

36 MR. STEELE: Paul Steele.

37 MR. NELSON: Randy Nelson.

38 THE REGISTRAR: Thank you. Counsel?

39 MR. MARTLAND: Thank you.  
40

41 EXAMINATION IN CHIEF BY MR. MARTLAND:  
42

43 Q Panel members, I'll begin with your backgrounds  
44 and I'll do this in a fairly quick manner and I'll  
45 begin, Mr. Steele, if I might, with you. And I'll  
46 ask Mr. Bisset to please draw up number 1 on  
47 commission counsel's list of exhibits and I'll

April 7, 2011

1           just, when that comes up, I expect, Mr. Steele,  
2           you'll see that's your resume; is that correct?

3       MR. STEELE: Yes, it is.

4       Q     I'm sorry. We'll need to pay attention. There's  
5           a red light on these mikes -- so, thank you.

6           You've confirmed that that's your resume?

7       MR. STEELE: Yes, it is.

8       MR. MARTLAND: Thank you. I'd ask that be marked as an  
9           exhibit, please.

10      THE REGISTRAR: Exhibit 686.

11

12                   EXHIBIT 686: *Curriculum vitae* of Paul Steele

13

14      MR. MARTLAND:

15      Q     And I'll just ask a long-winded question to cover  
16           your background. I take it you, Mr. Steele, have  
17           a degree in Political Science and Economics from  
18           Acadia University; that you began working for the  
19           DFO in 1980 initially in the area of economics and  
20           statistics; and then joined the Conservation and  
21           Protection Program or C&P Program in 1985 as a  
22           staff officer. And I understand that in 1992 you  
23           became Chief of Enforcement Programs at the C&P  
24           directorate; is that correct?

25      MR. STEELE: Yes.

26      Q     In 2001 you became director of the Enforcement  
27           Branch of C&P and, in turn, in 2005 Director  
28           General of the directorate on a national level; is  
29           that correct?

30      MR. STEELE: Yes, it is.

31      Q     And in that position, which you held, I  
32           understand, until very recently, until 18th of  
33           March 2011, you were responsible for C&P's  
34           national program budgets, providing functional  
35           direction to the regional directors, coordinating  
36           the development of national policies and  
37           procedures relating to the Fisheries Enforcement  
38           Program, directing the establishment of strategic  
39           priorities for the program nationally and  
40           overseeing the recruitment and training of fishery  
41           officers and other C&P staff; is that all  
42           accurate?

43      MR. STEELE: Yes, it is.

44      Q     Mr. Nelson, I'll have next Mr. Bisset draw up  
45           number 2 on our list of exhibits, please. Mr.  
46           Nelson, you recognize that as your c.v.; is that  
47           correct?

6  
PANEL NO. 28  
In chief by Mr. Martland

1 MR. NELSON: It's correct. Somewhat dated, but it is.

2 MR. MARTLAND: All right. And I'll ask that be marked  
3 as Exhibit 687 please, Mr. Giles.

4 THE REGISTRAR: It will be so marked, 687.

5

6 EXHIBIT 687: *Curriculum vitae* of Randy  
7 Nelson

8

9

MR. MARTLAND:

10 Q Mr. Nelson, you have some 34 years of experience  
11 working for DFO in protection and conservation  
12 enforcement and management of fisheries and  
13 habitat resources. I understand you began your  
14 work with the department as a fisheries officer  
15 and have continued in that role, working up to the  
16 ranks of area chief and ultimately to your current  
17 position of Regional Director of C&P; is that  
18 correct?

19 MR. NELSON: That's correct.

20 Q I understand in that role as regional director  
21 from 2006 to 2008 you were acting in that  
22 capacity. You then competed for and were  
23 appointed into that position in 2008?

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

25 Q And I understand that you spent some 20 years in  
26 the B.C. Interior Region developing habitat  
27 enforcement expertise and indeed in the course of  
28 that at one point spending one and a half years on  
29 a single hydro investigation.

30 MR. NELSON: That's correct.

31 Q Currently you are in charge of all C&P's fishery  
32 officers in this province?

33 MR. NELSON: Yes. This province and the Yukon.

34 Q Thank you. And Mr. -- I'm sorry, Ms. Bombardier,  
35 I'll look to number 3 on our exhibit list. Do you  
36 recognize that as your c.v.?

37 MS. BOMBARDIER: Yes.

38 Q And formally I suppose I should be saying Dr.  
39 Bombardier. I think you'd indicated to us that  
40 you were -- I don't know if you prefer "Doctor" or  
41 "Ms." Bombardier for today's purposes?

42 MS. BOMBARDIER: Ms. Bombardier is fine.

43 MR. MARTLAND: Thank you. And I put that document on  
44 screen and confirmed it without having that  
45 marked. If that could please be marked as an  
46 exhibit.

47 THE REGISTRAR: 688.

April 7, 2011

1 EXHIBIT 688: *Curriculum vitae* of Manon  
2 Bombardier  
3

4 MR. MARTLAND:

5 Q Ms. Bombardier you have a Ph.D. in Environmental  
6 Toxicology from the Université de Metz in France  
7 and in the 1990s held various positions as a  
8 researcher or biologist and then from 2000 to 2003  
9 I understand that you worked with Environment  
10 Canada's Environmental Science and Technology  
11 Centre in Ottawa and in that role building  
12 departmental capacity in relation to soil  
13 toxicology and biotechnology?

14 MS. BOMBARDIER: Yes, that's correct.

15 Q In 2003 you became head of the Risk Evaluation  
16 Section of the New Substances Division of  
17 Environment Canada and in 2006 you took on the  
18 role of director of the headquarters office for  
19 the Environmental Enforcement Directorate or EED;  
20 is that correct?

21 MS. BOMBARDIER: Yes. I was deputy director, yes.

22 Q And in that capacity, you were responsible for  
23 overseeing and coordinating environmental  
24 enforcement operations, including functional  
25 direction to the five regional offices across  
26 Canada?

27 MS. BOMBARDIER: That's correct.

28 Q From late 2009 until early 2010 I understand you  
29 served briefly as the director of the National  
30 Support Program for the CEAA, the Canadian  
31 Environmental Assessment Agency and that since May  
32 of 2010 you've been in the position of national  
33 director of Environment Canada's Environmental  
34 Enforcement Directorate, and in that capacity  
35 overseeing the operations and functions of the  
36 directorate?

37 MS. BOMBARDIER: Yes, that's correct.

38 Q I'll begin, and the context for my questions and  
39 the evidence we're leading includes the Policy and  
40 Practice Report or PPR which I know you've been  
41 provided and I understand have all read and so to  
42 some extent I may ask questions that presume a  
43 collective understanding of some material that's  
44 covered in that report. As the PPR sets out, the  
45 responsibilities for the administration of the  
46 habitat, the main habitat protection provisions in  
47 the **Fisheries Act**, which is to say ss. 35 and 36

1 of the **Fisheries Act** is split between DFO  
2 administering and enforcing s. 35 and Environment  
3 Canada administering and enforcing s. 36. The PPR  
4 really sets out some of that background and I  
5 understand that developed through the 1970s, was  
6 formalized through ultimately a prime ministerial  
7 directive and then an MOU between the two  
8 departments.

9 The question I have with all of that is the  
10 background for this split responsibility  
11 arrangement, if you will, and I'll begin -- for  
12 these questions I'll begin, Mr. Steele, with you  
13 and then move to the other panel members. Could  
14 you please comment generally on how well that  
15 arrangement works and if it's helpful or  
16 appropriate to do so, how well does this split in  
17 responsibility work for on-the-ground officers,  
18 for policy-makers, for enforcement officers and  
19 Enforcement Branch for scientists, for ministers,  
20 if you can comment to that effect? How well does  
21 the split work?

22 MR. STEELE: Generally speaking I think it would -- I  
23 would say that the split works reasonably well the  
24 closer you are to the field level. From my  
25 experience and from what I hear from our own field  
26 staff, I think generally the working arrangements  
27 are quite good and clear arrangements are in place  
28 in terms of an understanding of roles and  
29 responsibilities, good interaction at the field  
30 level between our officers and DOE officers. I  
31 think it's, from my perspective, as you move  
32 higher up probably in both -- or at least on the  
33 DFO side, I can't really speak for Environment  
34 Canada, but I think there's probably more room for  
35 improvement as you move higher up in the  
36 organization, speaking at the Ottawa level. There  
37 are, I think, some shortcomings in terms of lack  
38 of regular contact and communication at the higher  
39 level, my own level, and even director level, for  
40 example, at -- in Ottawa. A lot of reasons for  
41 that, but I think it's pretty apparent that there  
42 is room for improvement in that respect.

43 And the other comment I would make generally,  
44 I can't really speak about the -- how well the  
45 arrangement works for the science program. I'm  
46 not familiar enough with the workings of the  
47 science program to be able to comment on that.

1 But generally speaking I would say that there does  
2 tend to be some confusion, I would say, on the  
3 part of probably the public, but also within  
4 government, certainly within our organization.  
5 I've heard accounts of that from field staff and  
6 others, some confusion as to who should handle  
7 particular files, respective roles and  
8 responsibilities. Both organizations, I would  
9 say, are faced with workload and resource issues,  
10 so sometimes I think there may be a tendency to  
11 rely on the other party to take responsibility for  
12 certain files. So I think that's an issue, as  
13 well.

14 But from my perspective, from my  
15 understanding, at least, at the field level the --  
16 and Mr. Nelson can probably speak better about the  
17 regional headquarters, from the regional  
18 headquarters' perspective, but my understanding at  
19 least at the field level there is a good working  
20 relationship and a good -- a reasonably good  
21 understanding of roles and responsibilities.

22 Q Mr. Nelson, why don't I pick up on that suggestion  
23 and ask for your views on this, please?

24 MR. NELSON: Yes, I would agree with what Mr. Steele  
25 has said on the arrangement. I'll speak more to  
26 the Pacific Region, starting from the field level,  
27 which is the most important, I think officers do  
28 have a very good understanding of who plays what  
29 role.

30 Certainly in the eyes of the public, it can  
31 be confusing at times, because there is not just  
32 Environment Canada and DFO, there's a provincial  
33 role to play in this sometimes where it's not in  
34 anadromous waters. There's sometimes links to  
35 Coast Guard and to Transport Canada, as well, but  
36 as far as the field officers, we as in  
37 Conservation and Protection, our fishery officers  
38 are much more decentralized. We're located in 35  
39 offices throughout B.C. and the Yukon whereas  
40 Environment Canada are more of a centralized  
41 group. They have recently received some more  
42 officers and are starting to become more  
43 decentralized.

44 So that's important to understand because  
45 when an issue comes up for Environment Canada,  
46 they may call on us to be the first responders to  
47 a situation and we do do that and gather initial



1 information, then contact Environment Canada to  
2 take over the case if it's one of theirs involving  
3 s. 36 issues.

4 So as far as moving up at the regional level  
5 here, my counterparts, as a manager at my level  
6 with Environment Canada, we're in the same  
7 building. They've gone through a number of  
8 turnover, actors coming through the role, and the  
9 current person occupying that person, I've had  
10 initial discussions with, we're going to be  
11 getting together to discuss how we can work more  
12 together.

13 Q And Mr. Steele described confusion. From your  
14 point of view, is that the case?

15 MR. NELSON: From the public point of view? I would  
16 say, yes, that sometimes we do field complaints  
17 from the public. They are confused as to who  
18 might respond to it. But I think internally our  
19 staff are well-informed and know whose role it is.

20 Q Ms. Bombardier, I'd like to ask you the very same  
21 question, which at a general level is simply how  
22 well does this split work from your perspective?

23 MS. BOMBARDIER: I would agree with what Mr. Steele  
24 said in terms of at the field level. It seems to  
25 be working fairly well. I'm not in the region.  
26 I'm in the national headquarters, but talking with  
27 my staff in the region, I'm of the opinion that it  
28 works fairly well. Staff understand the  
29 responsibilities under 36(3) and they understand  
30 the responsibilities of DFO under 35(1), so  
31 they're well-trained and experienced and we have  
32 -- and when they're in doubt, they will seek  
33 guidance from senior officers or managers in terms  
34 of determining who should be the lead agency.

35 There's been a significant turnover, as  
36 Randy, Mr. Nelson, indicated. In the B.C.,  
37 Pacific and Yukon office of Environment Canada in  
38 the past two years, we've had significant  
39 retirements in senior officers. We've had  
40 retirement of our previous regional director. We  
41 have a new regional director that's been with  
42 Enforcement Branch for a long time, but he's new  
43 to the environmental pollution side, so we have to  
44 rebuild those partnerships that existed before  
45 with DFO.

46 At the national level, I would agree again  
47 with Mr. Steele that there's room for improvement

1 in terms of improving communication, sharing of  
2 information, perhaps joint planning of activities  
3 in the area of **Fisheries Act**.

4 I'm new as national director. We have a new  
5 chief enforcement officer, as well, so there's  
6 been quite a number of changes, too, at the  
7 national headquarters office of Environment  
8 Canada's enforcement branch, so we have to rebuild  
9 those partnerships, but we've already started  
10 working on that.

11 Q And I'll continue with some further questions to  
12 pick up, I think, on some of the points you've all  
13 just addressed, and one of them is as follows, and  
14 I'll begin this question with you, Ms. Bombardier.  
15 It arises out of a point Mr. Steele alluded to and  
16 we've heard, in particular, through our public  
17 submission a concern or complaint that the split  
18 in responsibility between s. 35 s. 36 creates the  
19 setting for a situation where as between two  
20 departments, to use the expression, it's easy to  
21 pass the buck and that it's easy for one  
22 department to say that it's another department's  
23 responsibility to investigate or deal with a  
24 particular occurrence. The -- this arises out of  
25 a public submission but I'm not speaking about the  
26 particular public submission so much as that sort  
27 of a concern or problem or difficulty; the concern  
28 being simply that in that context there may be a  
29 perception or it may be the case that neither  
30 department ultimately steps up to the plate and  
31 addresses the problem.

32 As I say, Ms. Bombardier, if I might start  
33 with you and if you could offer a response to that  
34 criticism, what do you do to ensure that that does  
35 not happen?

36 MS. BOMBARDIER: Okay. As Mr. Nelson indicated, at  
37 Environment Canada, especially in the Pacific and  
38 Yukon, B.C. Region, we are not as decentralized as  
39 DFO is. We have six offices, so we have officers  
40 in small offices across the province. Some  
41 offices we have two officers, so we definitely  
42 have capacity limitation there, so we try to work  
43 very well with our partners and but our ability to  
44 be on site when there's a spill that triggers  
45 36(3) is limited in remote areas. That's why we  
46 have operational working agreements and  
47 arrangements with DFO and other partners so that

1 the department or the organization who's the  
2 closest to the scene is asked often to go and  
3 attend and collect samples and take statements on  
4 behalf of Environment Canada and we do the same if  
5 we are closer, as well.

6 Now, the fact that the first responder may  
7 not be Environment Canada may be perceived by the  
8 public as we are passing the buck. It's not the  
9 case. It's whoever is closest to the area where  
10 the spill is, so we try to work as -- in  
11 partnership because of our respective limited  
12 capacity and for us, it's definitely a challenge  
13 in very remote areas.

14 Q Mr. Nelson, could I ask you to comment on that  
15 concern and I'll ask some more questions in due  
16 course about the nature of resourcing or  
17 decentralization and so forth to get a fuller  
18 picture of that, but maybe I can start with one  
19 obvious question. If Environment Canada has some  
20 six -- if I understand, Ms. Bombardier, your  
21 answer if I took it correctly was that there's six  
22 offices. Is that in the province or is there a  
23 region that the Environment Canada uses?

24 MS. BOMBARDIER: There's five in the Province of B.C.  
25 and one in Whitehorse.

26 Q All right. And I don't -- maybe I should ask  
27 this. Does Environment Canada's region, is it the  
28 Pacific and Yukon? I don't know if you can  
29 comment on whether that's the same or comparable  
30 to DFO's Pacific and Yukon?

31 MS. BOMBARDIER: Our Pacific and Yukon office covers  
32 B.C. and Yukon Territory

33 Q Okay. Thank you. Mr. Nelson, if you could at the  
34 outset perhaps tell us how many offices or  
35 locations does C&P have officers in throughout the  
36 province - I'll frame the question that way - and  
37 then ask you to comment after that on this concern  
38 about so-called passing the buck.

39 MR. NELSON: Yes. Within Conservation and Protection  
40 we have 35 offices in B.C. and one in the Yukon  
41 and we have approximately 180 officers located in  
42 the region. As far as passing the buck, maybe the  
43 best way would be to describe an example that was  
44 a couple of years ago where a barge had a truck on  
45 it that had a large amount of fuel and the barge  
46 sank in an area known as Robson Bight where there  
47 was a very sensitive whale habitat.

1           This is a classic example of it involves a  
2 whole number of agencies. Coast Guard are the  
3 agency that's supposed to respond to a spill, so  
4 they're involved to help clean up any spill.  
5 Environment Canada is -- it's more likely their  
6 file, however they don't have people in the area  
7 where this was, so fishery officers responded. We  
8 had a vessel available and we immediately  
9 responded to the site, started gathering evidence,  
10 collecting information. And it also can involve  
11 Transport Canada because it is a vessel. So  
12 Transport Canada has a role to play in it, as  
13 well. And if the -- in this case it didn't  
14 happen, but had the oil got ashore and starts  
15 damaging to some of the shoreline, it could  
16 involve the province, as well.

17           So in this case, it worked very well where we  
18 did the initial investigation, turned it over to  
19 Environment Canada and generally that's how we try  
20 and do it. It is going to become more and more  
21 challenging as budgets become tighter in all  
22 agencies. The ability to make those responses is  
23 going to be more difficult in future years, but I  
24 would say as it is now, it works fairly well.

25       Q     Let me pick up on a point I think that Mr. Steele,  
26 you raised earlier or suggested in your answer  
27 which was that to some extent this may be a public  
28 perception. I'm interested in having comments and  
29 I'll ask you that, Mr. Steele, now. To what  
30 extent is this a public perception or the public  
31 -- perhaps that's a communication problem as  
32 opposed to a problem of substance in that in  
33 reality are there situations where neither agency  
34 addresses it or the file notionally bounces across  
35 the net with neither agency stepping up?

36       MR. STEELE: I can't speak about any particular  
37 situations where that occurs, but I would -- it  
38 wouldn't surprise me if there were situations like  
39 that. It's difficult -- I guess, public opinion  
40 on something like this, but it would not -- again,  
41 it wouldn't surprise me if the public perception  
42 is that the situation is somewhat worse than it  
43 actually is and I think you're right, that there  
44 probably is a bit of a communications issue there  
45 in terms of both departments getting out the  
46 message to the public as to respective roles and  
47 responsibilities, so...

1 Q Do you have any suggestions for what could be done  
2 to address that concern?

3 MR. STEELE: Nothing specific, other than to say  
4 perhaps in making announcements of enforcement  
5 actions that have been taken, perhaps as part of  
6 that press release or announcement that's made  
7 there could be an explanation given, I suppose, as  
8 to, you know, what actions were taken by which  
9 department and how that relates back to mandates  
10 and legislative responsibilities, that kind of  
11 thing. I think oftentimes we probably assume that  
12 the public is aware of those issues and that may  
13 not always be the case.

14 Q Ms. Bombardier or Mr. Nelson, any comments or  
15 suggestions following up on that question about  
16 whether there are particular suggestions that you  
17 have on how that issue can be addressed?

18 MR. NELSON: Yeah. I think always -- we can always do  
19 a better job of communicating with the public and  
20 that could be -- we had a system where when cases  
21 happen we have a very lengthy process to get  
22 approvals to release information on cases and  
23 violations and I think what I'd like to see as an  
24 agency is have a trained media liaison officer  
25 like a lot of enforcement agencies to when we have  
26 a case that comes up we're able to respond to the  
27 public and address questions immediately. I know  
28 that may be a pretty big thing to wish for, but it  
29 would certainly help improve the public awareness  
30 of what all the agencies do and what each role has  
31 to play and providing the public with more timely  
32 information on what's happening.

33 A lot of the public -- sometimes -- often we  
34 get caught in a neighbour dispute where a  
35 neighbour doesn't like a neighbour and he sees  
36 somebody throw a wheelbarrow full of grass  
37 clippings in a creek. Those are the kind of  
38 little complaints that can generate a complaint.  
39 And the neighbour isn't happy that it's -- that  
40 we're not taking the fellow to court. So there's  
41 a lot of times where it's -- the public isn't  
42 happy with that and if they're not happy with what  
43 they do, they can complain and sometimes those are  
44 what the complaints are, very minor. Sometimes  
45 they're real.

46 But generally speaking, I think that would be  
47 -- the biggest thing we could do is improve our

1           communications in how we present information about  
2           cases.

3           Q    Ms. Bombardier, anything to add to those points?

4           MS. BOMBARDIER: I agree with what was said earlier.  
5           There's always room for improvement in terms of  
6           communicating and providing more information to  
7           the general public on our roles, responsibilities.  
8           At Environment Canada we have -- like we have  
9           strong support from our Communications Branch in  
10          terms of issuing news releases or notifications on  
11          our website, Enforcement Branch website on cases  
12          that have gone to court. Unfortunately we're not  
13          there yet for administrative measures. It's only  
14          for successful prosecutions for now. But there is  
15          there, I agree, an opportunity to perhaps add a  
16          few lines to clarify what the role of Environment  
17          Canada is as opposed to DFO's role in a particular  
18          case or how we've worked together in that  
19          particular instance, so...

20          Q    And just out of interest, when you say it's -- the  
21          website is used for successful prosecutions, that  
22          suggests that the information or at least  
23          information about a case may only be posted in the  
24          event that the case concludes with a conviction or  
25          a guilty plea?

26          MS. BOMBARDIER: Yes, that's the case.

27          Q    So there wouldn't be publication of information at  
28          the charging stage in that scenario?

29          MS. BOMBARDIER: No.

30          Q    Thank you. I'll move, Mr. Nelson, to asking you,  
31          and I just clarify that I'm not asking you to act  
32          as a public survey or give us survey evidence per  
33          se, but we've heard that some DFO fishery officers  
34          perceive that Environment Canada enforcement  
35          officers, given all the competing demands that  
36          they have, do not make fish habitat work a  
37          priority. From your point of view, is that the  
38          case?

39          MR. NELSON: Well, I think the Environment Canada role  
40          is to deal -- probably has -- and I should  
41          probably let Ms. Bombardier answer this, but it's  
42          more of a focus on human health and water quality.  
43          That seems to be more the issues they address. But  
44          I'll ask her to respond to that.

45          MS. BOMBARDIER: Environment Canada has expertise on  
46          pollution type incidents, so anything that  
47          involves substance, an effluent or chemical or

1 oil, anything that can be deleterious to fish,  
2 that is, of industrial origin, that's where  
3 Environment Canada has typical expertise.

4 Q I'd like to bring up, Mr. Bisset, please, number 5  
5 on our list of exhibits. The first page is a news  
6 release but if we flip past that, I'll suggest  
7 that you'll see the memorandum of understanding --  
8 I referred to it earlier. It dates to May of  
9 1985. Do you recognize that as being the MOU  
10 addressing what was then s. 33 of the **Fisheries**  
11 **Act**, now s. 36. Mr. Steele, is that correct?

12 MR. STEELE: Yes, it is.

13 MR. MARTLAND: I'll ask this be marked as the next  
14 exhibit, please.

15 THE REGISTRAR: Exhibit 689.

16  
17 EXHIBIT 689: Memorandum of Understanding  
18 between DFO and the Department of the  
19 Environment on the subject of the  
20 administration of s. 33 of the **Fisheries Act**  
21

22 MR. MARTLAND:

23 Q This document is some 25 years old now and we have  
24 some understanding of a process underway to update  
25 this. If we set aside for a moment that question  
26 about review or renewal of the document, what I'd  
27 like to ask you about is from this document how  
28 much of this arrangement is being implemented and  
29 is followed today. And to put some flesh on the  
30 bones of that question, this document makes  
31 reference - and I won't ask them -- we won't need  
32 to go there on the screen - but amongst other  
33 things it refers to ADMs meeting on an annual  
34 basis. It refers to having annual reviews of this  
35 MOU between the two arms of government.

36 Could you comment, please, and I'll begin  
37 with Mr. Steele and then ask Ms. Bombardier, to  
38 what extent is this document being implemented?

39 MR. STEELE: In the sense of annual meetings and annual  
40 reviews, my understanding is that those do not  
41 occur on an annual basis. Not to say that  
42 meetings don't occur at the assistant deputy  
43 minister level but from the best of my knowledge,  
44 the annual -- the requirement specified in the  
45 document for annual reviews and annual meetings  
46 has not been followed through on.

47 Q And to round out that picture, I take it one of

1           the obvious major points of this document is the  
2           very arrangement splitting responsibility between  
3           the two departments. That part of it is in  
4           effect; is that right?

5       MR. STEELE: Yes, it is.

6       Q     Ms. Bombardier?

7       MS. BOMBARDIER: The MOU covers a wide range of  
8           activities that Environment Canada is involved in,  
9           administration, enforcement is there, research.  
10          So I can only speak to an enforcement component.

11       Q     Mm-hmm.

12       MS. BOMBARDIER: My understanding is that there is work  
13           being done at the departmental level to renew that  
14           MOU with DFO. On the enforcement side, as you all  
15           -- as you know, we have regional working  
16           agreements that are kind of a nexus to that MOU,  
17           that talks about how this MOU is being implemented  
18           at the regional level. So for that aspect, the  
19           enforcement aspect, except for the -- what we  
20           discussed earlier, the national headquarters  
21           office, where there's room for improvement in  
22           terms of collaboration and information-sharing, at  
23           the regional level my understanding is that it's  
24           being well-implemented.

25       Q     And perhaps I can bring up a document that I think  
26           will, indeed, be one of those regional working  
27           agreements you just referred to, number 6, I  
28           believe. This -- let me ask first of all, this  
29           dates to May of 1987, Regional Working Agreement  
30           between Department of Environment and DFO  
31           Referring to s. 33, in particular, in the B.C. and  
32           Yukon. Is that an example of one of the regional  
33           working agreements?

34       MS. BOMBARDIER: Yes. That's one, but again, this one  
35           includes more activities than just enforcement.

36       MR. MARTLAND: And I'll ask that this document please  
37           be marked. This is number 6 on our list of  
38           exhibits. If it could please be marked as the  
39           next exhibit.

40       THE REGISTRAR: Exhibit 690.

41  
42           EXHIBIT 690: Regional Working Agreement  
43           between the Department of the Environment and  
44           DFO for administration of s. 33 of the  
45           **Fisheries Act** in B.C. and Yukon - 1987  
46  
47



18  
PANEL NO. 28  
In chief by Mr. Martland

1 MR. MARTLAND:

2 Q And since I'm into these, maybe I can continue  
3 with one further document and then ask a question  
4 or two. The next tab in our -- the next number in  
5 our exhibit list number 7 is entitled Interim  
6 Operational Working Arrangement on Enforcement of  
7 s. 36(3) Between Environment Canada and DFO for  
8 Pacific and Yukon that dates to 2006; is that  
9 correct, Ms. Bombardier?

10 MS. BOMBARDIER: Yes, that's an enforcement operational  
11 agreement.

12 MR. MARTLAND: All right. I'll ask that be marked as  
13 the next exhibit, please.

14 THE REGISTRAR: 691.

15

16 EXHIBIT 691: Interim Operational Working  
17 Arrangement on Enforcement of s. 36(3)  
18 Between Environment Canada and DFO for  
19 Pacific and Yukon - 2006  
20

21

21 MR. MARTLAND:

22 Q And the question that comes out of that is to what  
23 extent are these documents being employed and  
24 followed and how often are they being referred to  
25 by C&P or the Enforcement Branch of Environment  
26 Canada? Ms. Bombardier, I'll start with you, if I  
27 may.

28 MS. BOMBARDIER: Again, that's a question at the  
29 regional level, but my understanding based on my  
30 discussions with the regional director of Pacific  
31 and Yukon and staff from that region is that  
32 arrangement is working very well. It outlines the  
33 roles and responsibilities of both departments in  
34 responding to spills, so there's a protocol. It  
35 sets out the protocol on the steps or the process  
36 for responding to spills and where DFO or  
37 Environment Canada or the province in some  
38 particular cases may take the lead.

39 Q Mr. Steele?

40 MR. STEELE: I'm not sure I would be able to comment  
41 on how they're actually put into practice  
42 regionally. I know they exist, but --

43 Q That's --

44 MR. STEELE: -- how they're actually used, I wouldn't  
45 be able to comment.

46 Q That's fine. I'll ask Mr. Nelson, please, then.

47 MR. NELSON: Yeah, this was signed several months

April 7, 2011

1 before I came into the position and I have seen  
2 the document, received the document when I was an  
3 area chief. It's been distributed throughout the  
4 region.  
5 Q I'm sorry. I just pause to confirm, which  
6 document are you referring to --  
7 MR. NELSON: Oh, sorry.  
8 Q -- when you say "this document" --  
9 MR. NELSON: Oh, the --  
10 Q -- because I've managed to put two things before  
11 you.  
12 MR. NELSON: Yeah.  
13 Q You're talking about the one that's on the screen  
14 there?  
15 MR. NELSON: The -- it's February 1st, '06. Yes, that  
16 one, the document on the screen.  
17 Q Carry on, please.  
18 MR. NELSON: Yeah. Yeah. Could we do a better job of  
19 reminding staff of it? Probably could. I can't  
20 speak for staff throughout the organization, how  
21 -- when's the last time they've looked at this or  
22 reviewed this, but you had mentioned about some  
23 officers perhaps not being -- feeling that  
24 Environment Canada had not responded to... That  
25 does happen occasionally. Some officers may feel  
26 the response time by Environment Canada isn't fast  
27 enough. There are also cases where an officer may  
28 feel it is a violation and should be acted on and  
29 it may not be a priority of Environment Canada so  
30 things aren't perfect, but this document helps  
31 direct officers to do the job as best they can.  
32 Q Mr. Nelson, prior to our work as commission  
33 counsel speaking to you and putting this document  
34 forward and asking you questions about it, to what  
35 extent were you reaching for this document and  
36 using it on a month-to-month basis in your  
37 position?  
38 MR. NELSON: Not very often.  
39 Q And are there annual reviews under either these  
40 two, whether it's the interim operational working  
41 arrangement or the document before that, the  
42 regional working agreement?  
43 MS. BOMBARDIER: Not that I have done.  
44 Q Let me ask, let me try and step back and ask the  
45 broader question, and Mr. Nelson, I'll continue  
46 with you if I may. From your perspective, on a  
47 regional level, what could be done to improve the

1           working relationship between DFO and Environment  
2           Canada on enforcement matters?  
3       MR. NELSON: Well, we have taken some initial measures.  
4           As I explained, I met initially with my  
5           counterpart several years ago and there's been a  
6           rotation of actors through. The most recent  
7           person that's in the job now, I have had initial  
8           discussions with him and we intend on getting  
9           together in the near future. It was only a couple  
10          of weeks ago where we actually contacted, 'cause  
11          he had only been in the job for a short time.  
12       Q       And from your point of view would -- are the  
13           improvements that are -- that may occur best done  
14           through new documents, new agreements or through  
15           more practical work and people meeting and working  
16           together?  
17       MR. NELSON: A combination. I mean, it's good to have  
18           a document like this as a quite -- as a fall-back,  
19           but it's more important to, I feel, to get the  
20           working staff together. And a step we tried to  
21           do, we have a -- every two years we'd have a  
22           meeting where we get all of our officers together.  
23           We invited Conservation Officer Service and  
24           Environment Canada officers to attend that and we  
25           did get attendance from a couple of them, so to me  
26           that's the most important thing, is to get them  
27           together in talking at the field level and we have  
28           to do our part at the senior level, as well.  
29       Q       Mr. Steele, from a national perspective, what do  
30           you suggest might be done to improve the working  
31           relationship between the two departments?  
32       MR. STEELE: I think the same issues that Mr. Nelson  
33           talked about apply at the national level, probably  
34           even to a greater extent. As I mentioned earlier,  
35           there has been at least since I've been in this  
36           position, there has been -- I wouldn't say a total  
37           lack of communication but lack of regular  
38           communication and a lack of a process to bring  
39           that about. So I think that that's probably an  
40           area that could be looked at is to develop a  
41           framework or a process to make sure that regular  
42           contact does occur, not to say that there's not  
43           any communication or contact between the two  
44           agencies at the Ottawa level, but it generally  
45           happens on a particular issue that comes up, as  
46           they come up, as opposed to any sort of pre-  
47           planned annual or semi-annual type meetings. So I

1 think that's an area that would need to be looked  
2 at.

3 And the other issue as Ms. Bombardier had  
4 mentioned earlier, there has been a fair amount of  
5 turnover on the Environment Canada side. Our  
6 organization is going through that currently, as  
7 well, with my replacement coming into place two  
8 weeks ago. But there have been efforts recently  
9 just in the last couple of weeks. There's been a  
10 meeting between the respective DGs on both sides,  
11 directors general, both new to the position, with  
12 their senior staff and from what I understand, a  
13 commitment from that to carry on with more regular  
14 meetings in future. So I think that's probably,  
15 if there's one thing that could be done to improve  
16 the relationship, I think that would be the one.

17 Q Who is your replacement?

18 MR. STEELE: My replacement is Trevor Swerdfager,  
19 formerly the DG of Aquaculture.

20 Q Ms. Bombardier, I'd appreciate your perspective  
21 and Environment Canada's perspective on the steps  
22 that may be taken to improve the working  
23 relationship on enforcement.

24 MS. BOMBARDIER: I think stability of staff is critical  
25 and as was indicated before, at Environment Canada  
26 there's been quite a number of turnover over the  
27 past two years. We've had actors in regional  
28 directors' position. We have new managers in all  
29 positions are occupied by new managers, who were  
30 staff of the Enforcement Branch before but they're  
31 new in their management function, so they need to  
32 be aware of those regional agreements and make  
33 sure that they apply them and they provide the  
34 training to their staff. So stability and  
35 basically training of our managers and making sure  
36 they make those regular contacts with their  
37 counterparts is key.

38 An area of improvement I think that would be  
39 worthwhile looking at is integrating those  
40 agreements into our basic enforcement training,  
41 our training to our new officers coming in;  
42 regional training, as well, and we could do that  
43 jointly with DFO. We have done also some post  
44 mortems of cases, you know, enforcement cases,  
45 having those activities, post mortems, together  
46 would be helpful, as well, in terms of sharing  
47 experience, clarifying roles, responsibilities,

1 lessons learned and that's good training for  
2 staff, as well.

3 Q And I should pick up on those two points, and Mr.  
4 Steele and Mr. Nelson, could you comment, either  
5 of you, on those two suggestions, integrating this  
6 into the training for officers and in some  
7 situations running a post mortem of cases that  
8 have been done?

9 MR. STEELE: I think both are good suggestions. My  
10 understanding, the current training that we  
11 deliver to fishery officer recruits would include  
12 at least a very general overview of the various  
13 memorandums of understanding that we have with  
14 other departments, including Environment Canada,  
15 respective roles and responsibilities. There is  
16 pretty extensive training provided on habitat  
17 issues generally, which would get into the issues  
18 of a relationship with Department of Environment  
19 and respective roles and responsibilities. But I  
20 think -- it is a good suggestion to say we could  
21 look at joint training opportunities, sharing of  
22 trainers, review of successful cases. I think  
23 those are all good suggestions, yes.

24 Q From a resourcing or cost perspective, is that  
25 within reach to -- if that were determined to be  
26 an appropriate change to make, is that something  
27 that's within reach under current resourcing or  
28 would it require more resources? If so, how much?

29 MR. STEELE: I would say it's something that's within  
30 reach. I wouldn't say it's -- I mean, cost would  
31 not be a major factor, if we're looking at  
32 training of recruits as a start. If we were to  
33 look at expanding that into ongoing training of  
34 regular officers who are out in the field and who  
35 need to be brought together for training courses,  
36 then there would be some cost involved, but to  
37 provide that initial training at the recruit  
38 level, I don't think cost would be a major factor.

39 Q Mr. Nelson, any comments on those two suggestions?

40 MR. NELSON: I think they are good suggestions.  
41 Training, I'm not familiar with the exact training  
42 that we provide. We do provide an extensive  
43 training to our new officers on habitat training  
44 and I expect the Environment Canada relationship  
45 is a part of that. Post mortem on files I think  
46 is also important. I think it could also benefit  
47 to include provincial agency, the Conservation

1 Officer Service, in this because there is a role  
2 that they play in some of these matters, as well,  
3 so I think it would be important to include them.  
4 And one thing I forgot to mention on the previous  
5 question on -- I have a staff member, Chief of  
6 Program Planning and Analysis, that did meet on an  
7 annual basis with Environment Canada to discuss  
8 our MOU. Two years ago that person has moved on  
9 and I don't know that the new person has done the  
10 same.

11 THE COMMISSIONER: Mr. Martland, I wonder if I could  
12 just, on these points you've raised, just ask a  
13 couple of brief questions. You mentioned in your  
14 discussion the example you gave earlier included  
15 Coast Guard and Transport Canada. And now you've  
16 just mentioned the province, who would have  
17 agencies as well.

18 MR. MARTLAND: Yes.

19 THE COMMISSIONER: Can I ask you just from the  
20 enforcement side, whether there's any even  
21 informal arrangements with any of these other  
22 agencies or is this just something that happens on  
23 an *ad hoc* basis?

24 Something else that you might address for me  
25 is whether there's differences between the marine  
26 and freshwater side of your roles and working with  
27 others. Something else that came to mind, and I  
28 think one of you mentioned it, but I'm not sure  
29 where you go with this, but police and fire at the  
30 local level today are engaged not just in  
31 protection but also in prevention and do you have  
32 any role at all in modern times becoming engaged  
33 in those areas? And I'm thinking as we sit here  
34 today in one of North American's most major  
35 harbours, how do you address these issues from the  
36 point of view of Environment Canada and Department  
37 of Fisheries and Oceans?

38 MR. MARTLAND: There's a few topics that come out of  
39 those questions and so I invite witnesses to  
40 proceed in the sequence you'd like and I'll try  
41 and make sure we do come back to all three. I  
42 think the first question relates to the question  
43 of other government departments and the province  
44 in particular and whether there are informal or  
45 formal, for that matter, working arrangements.

46 Mr. Nelson, why don't I start with you for  
47 that, please?

1 MR. NELSON: Yes, there is a similar type MOU with the  
2 province. With Transport Canada, I can't say for  
3 sure. Coast Guard are part of the department, so  
4 obviously working closely with them is a given, so  
5 just -- that's the only comment I have on that  
6 question.

7 Q And I should narrate for a moment to say I will  
8 return, because we have some documents on our  
9 list, numbers 8 and 9, that pick up on the  
10 province in particular. But let's -- let me ask  
11 to follow up, are there -- apart from formal  
12 agreements, are there practical working  
13 arrangements with, for example, Transport Canada  
14 or other federal agencies?

15 MR. NELSON: I think there has been with Transport  
16 Canada, but I honestly don't know if there is  
17 right now.

18 Q On a day-to-day level, though, are there -- do you  
19 know who to phone? Would an officer know who to  
20 phone at Transport Canada or they -- would they  
21 have a contact? Is there --

22 MR. NELSON: Yeah, the officers know who to get hold  
23 of. They deal with Transport Canada on a number  
24 of issues dealing with vessels, so they know who  
25 to get hold of.

26 Q Ms. Bombardier?

27 MS. BOMBARDIER: With regards to Transport Canada,  
28 Environment Canada has a formal MOU with Transport  
29 on the marine pollution from vessels. Usually  
30 Transport will take the lead under the **Canada**  
31 **Shipping Act** but Environment Canada does have a  
32 role to play under s. 36(3). We also have  
33 enforcement responsibilities on their wildlife  
34 legislations, **Species at Risk**, migratory birds,  
35 that may also be impacted by oil spills, so  
36 wildlife enforcement, environmental enforcement,  
37 we work and DFO and Coast Guard, as well, we work  
38 together but Transport, we have a formal MOU with  
39 them, specifically relating to oil spills in the  
40 marine environment.

41 Q Mr. Steele, anything to add on those points?

42 MR. STEELE: Nothing in particular. I'm not aware that  
43 we have an MOU at the national level with  
44 Transport Canada, particularly on the issues that  
45 we're discussing here, but I'm not sure that there  
46 are any MOUs on habitat or fisheries enforcement  
47 issues with Transport Canada.

1                   With the Coast Guard, of course, we work very  
2 closely on the fisheries enforcement side of the  
3 house, but not so directly on the habitat issues,  
4 and no formal arrangements or documents between us  
5 and the Coast Guard that I'm aware of either,  
6 relating specifically to fisheries habitat issues.  
7 On the fisheries enforcement side, yes, we do have  
8 those arrangements in place.

9                   Q    Mr. Commissioner, I think your second question  
10 asked about the marine and freshwater work and the  
11 difference between the two, why don't I start  
12 again with Mr. Nelson on that question, please.

13                  MR. NELSON:  Yeah, there would be a difference in the  
14 freshwater.  If it's not dealing with a salmon,  
15 then it becomes more of a provincial matter for  
16 the Conservation Officer Service.  And it can  
17 involve provincial on coastal issues, as well, but  
18 not as likely.

19                  Q    Ms. Bombardier or Mr. Steele, anything to add on  
20 that distinction between freshwater and marine  
21 environments and the enforcement work that's done?

22                  MS. BOMBARDIER:  No, I would agree with Mr. Nelson that  
23 if it's freshwater, the province would probably  
24 take a larger role, but for us, in terms of  
25 Environment Canada, it's the same.  Our role  
26 doesn't change whether it's freshwater or marine.  
27 36(3) would apply if there's deleterious substance  
28 had been released into fish-bearing water.

29                  Q    The other -- and I'll just mention this so it's  
30 clear, the other part to this question had to do  
31 not simply with other federal agencies, but the  
32 province.  I'll plan to come back to that topic  
33 for both agencies in a short while, because I have  
34 some documents to take you to to cover that point.  
35 I believe the third question the commissioner  
36 asked you in the context of work, for example,  
37 that police and fire departments do, it's not  
38 simply a matter of waiting for the 911 call.  
39 There's a preventative or a proactive aspect to  
40 that.  And again, we may pick up on that theme a  
41 bit further down the road, but let's go to that  
42 now.

43                               And I suppose the question is really at a  
44 broad -- well, it's your question, Mr.  
45 Commissioner, but one aspect of the question, it  
46 seems to me, is that at a broad level to have  
47 people conduct themselves responsibly and not have



1 negative impacts on fish habitat, there is a range  
2 of things that a government can do to try and  
3 accomplish that aim and they run the gamut from  
4 encouraging and proactively promoting compliance,  
5 I think is the language the Environment Canada  
6 often uses, compliance promotion and, two, on the  
7 other side of the spectrum of policing type of  
8 response when someone has done something that's  
9 offside; how do you look to strike the balance  
10 between the two?

11 Why don't I start, Ms. Bombardier, with you,  
12 please?

13 MS. BOMBARDIER: I can only speak on enforcement,  
14 because compliance promotion falls under the  
15 Environmental Stewardship Branch in Environment  
16 Canada, so under another ADM. We do work very  
17 closely together though in terms of joint  
18 planning, but if I understand the question is  
19 about how we work with police organizations and  
20 I'll focus on enforcement.

21 We occasionally call RCMP for assistance.  
22 Our officers don't have -- don't carry sidearms.  
23 If we're aware of a situation that may become  
24 challenging in terms of health and safety for our  
25 officers, we will call the RCMP to assist us or  
26 accompany us for search warrants, for example, if  
27 we're expecting some resistance, the RCMP may be  
28 asked to assist. We also ask them -- ask for  
29 their assistance in terms of having access to  
30 their databases on criminal records, so before we  
31 do inspections, we always check if regulatees have  
32 a criminal record and again, we ask for assistance  
33 from the RCMP for that.

34 Q Mr. Nelson?

35 MR. NELSON: Yes. On the topic of prevention, within  
36 this region we try and set a goal of having about  
37 ten percent of our fishery officers' time worked  
38 on what's called education stewardship activities,  
39 and I just wrote down a few here that relate to  
40 all fisheries but tried to, where they do include  
41 habitat enforcement, working with the media,  
42 taking the media out on a boat ride to do an  
43 article about what's happening on the Fraser  
44 River, we've done that in a number of areas and  
45 it's really benefited to get the word out to the  
46 public.

47 We've had cases in Kamloops, where I work,

1 for example, we put a joint letter together with  
2 our habitat staff and sent it to all property  
3 owners along the Thompson River, just to get them  
4 aware of hey, we're here, this is what you should  
5 be doing, if you have questions give us a call.  
6 We have officers attend trade shows, boat shows to  
7 put -- to answer questions from the public, have  
8 pamphlets on -- we have a number of pamphlets on  
9 how to -- not developed by C&P but developed by  
10 habitat staff on how to do works near waters.  
11 Schools, school talks, we've had a Crimestoppers  
12 program at one time. We have a rewards program,  
13 we work with the B.C. Wildlife Federation on  
14 whereby public are encouraged to report violations  
15 and can get a reward for that.

16 And one very good example of working together  
17 was the Shuswap Lake integrated planning process  
18 which was on the Shuswap Lakes where fishery  
19 officers and habitat staff worked jointly to go  
20 out and identify problem sites on the Shuswap  
21 Lake, which are a lot of small, little incremental  
22 encroachment on fish habitat.

23 So I think overall, we try and do about ten  
24 percent of our work in prevention role.

25 Q And just to clarify, because we recently, I should  
26 advise you, had a panel of witnesses from habitat  
27 within DFO, Jason Hwang, Patrice LeBlanc and  
28 Rebecca Reid. In the course of some of their  
29 evidence, they touched on that program. Is that  
30 known as SLIPP, the Shuswap program?

31 MR. NELSON: That's correct.

32 Q Let me ask a further question to go back to this  
33 question of s. 35 and s. 36, the DFO aligned -- or  
34 having responsibility for s. 35, Environment  
35 Canada having that responsibility for s. 36. My  
36 last and general question on that topic, I'll try  
37 and offer a few comments to invite your comments  
38 and your views on this.

39 To an outsider, that sort of an arrangement  
40 with two what would appear to be closely-related  
41 provisions in the *Fisheries Act*, in some cases  
42 provisions which may overlap or you may have one  
43 incident or one occurrence, if you will, that  
44 gives rise -- that would give rise to a  
45 prosecution or investigation under both offences,  
46 appreciating that there are arguments for and  
47 against having the two different departments and

1 the split in responsibility, the question is  
2 should those provisions continue to be  
3 administered as they are by separate departments,  
4 or should they -- should that be changed? Should  
5 s. 36, for example, be brought back to the  
6 Department of Fisheries and Oceans?

7 Mr. Steele, if I might please start with you,  
8 sir?

9 MR. STEELE: I think in terms of clarity for the public  
10 and in terms also of having clear accountabilities  
11 resting with one department and one minister, from  
12 the parliamentary perspective I think there's a  
13 lot of arguments to be made to have it rest with  
14 one department or the other. I think where you  
15 run into difficulties, though, would be in looking  
16 at the -- when it gets down to looking at the  
17 practical aspects of how it would be applied in  
18 that scenario, you run into issues of resource  
19 levels, capacity within whichever organization was  
20 to take on those added responsibilities. You  
21 would still need, I think, the close working  
22 relationship between the two, because I wouldn't  
23 -- I wouldn't see a scenario, for example, where  
24 all -- full responsibility for s. 36 was given  
25 over to Environment Canada, including all of the  
26 accountabilities at the ministerial level, all the  
27 rest of it, where they would just go off and  
28 implement that unilaterally. There would still  
29 be, you know, the resource considerations that I  
30 referred to earlier in terms of the -- how it  
31 would actually play itself out at the working  
32 level, on the grounds, and I think there would  
33 still need to be very close working relationship  
34 and a continuing role for fishery officers under  
35 that scenario to be able to take the initial  
36 enforcement action when they come across  
37 violations.

38 Or failing that, I guess the other scenario  
39 if one department was to take on full  
40 responsibility, you would need to look at a  
41 shifting of resources between the two agencies,  
42 which is never something that's easy to accomplish  
43 and usually runs into lots of debates and  
44 discussion, usually leads nowhere from my  
45 experience. So I think --

46 Q It's difficult -- I think you're saying that it's  
47 difficult to effect that sort of change in --

1 MR. STEELE: Yes. I think, looking at it at the higher  
2 level, there -- you know, there are a lot of  
3 arguments in favour of having it rest with one  
4 agency or the other, but the practical aspects  
5 would be difficult to work out to make that  
6 effective in practice.

7 Q Ms. Bombardier, what is your view on that  
8 question? Should these s. 35 and 36 be brought  
9 together for one -- with one department enforcing  
10 and having responsibility for both provisions?

11 MS. BOMBARDIER: I can only offer my own opinion, and  
12 again it's only from the perspective of my  
13 experience with enforcement, because 36(3)  
14 involves many more activities than enforcement -  
15 research, compliance, promotion, developing  
16 regulations under 36(4). From an enforcement  
17 perspective, I can say that it's been working  
18 quite well.

19 I know there's areas for improvements in  
20 terms of communicating our roles to the public, to  
21 our partners, so there's room for improvement  
22 there. There's room for improvement in terms of  
23 collaboration in joint planning, in sharing  
24 assets, equipment, those kind of things, but in my  
25 own opinion it's been working well.

26 Environment Canada has developed significant  
27 expertise, especially on the enforcement side, in  
28 pollution interventions. Practical aspects would  
29 need to be considered in terms of transferring  
30 that knowledge, that expertise, to DFO if DFO was  
31 to decide to repatriate 36(3).

32 Q Mr. Nelson, anything to add on that question?

33 MR. NELSON: I'd say any kind of arrangement can work  
34 if it's properly resourced. As far as would it be  
35 better under one, I would say from the public's  
36 point of view it probably would be easier. My  
37 personal view is it would warrant being looked at,  
38 but as Mr. Steele's indicated, it's a pretty  
39 dramatic change in the way, how the two agencies  
40 would work and it would be a difficult thing, but  
41 it's worth looking at.

42 Q Mr. Steele, I'd like to, if I might, just sort of  
43 pick up on the question of at a broad level what  
44 the cost implications would be, for example, of a  
45 move to bring s. 36 back to DFO and I appreciate  
46 I'm not calling you as a budgeting expert, but at  
47 a very simplistic level, it would seem that if

1           there's -- if the same work is being done, whether  
2           it's done under two agencies or one, there may be  
3           some cost involved in the transition to having one  
4           agency do it, but that if it's a matter of  
5           reallocating rather than changing the amount of  
6           work done, that would seem to be cost-neutral.  
7           Now, sometimes the simplistic is simple, as well,  
8           and wrong. Can you comment on that at a broad  
9           level? Would it change the amount of resourcing  
10          involved to have responsibility for s. 36 moved to  
11          the Department of Fisheries and Oceans?

12       MR. STEELE: Difficult to answer without having done  
13          any real analysis on the question. I know that  
14          from past experience, whenever there's a  
15          discussion between two departments about a  
16          transfer of resources at any significant level,  
17          that that usually runs into a lot of  
18          complications. The department that would be the  
19          potential people transferring resources will  
20          usually find numerous arguments to say that, you  
21          know, other activities still need to be continued,  
22          that the people that are subject to a potential  
23          transfer are carrying out other roles which would  
24          still be required within their department. People  
25          don't give up resources easily, generally  
26          speaking, and the negotiations on that kind of  
27          thing can become quite complicated and quite  
28          lengthy and protracted and often don't lead into a  
29          successful conclusion unless, of course, you know,  
30          if it comes down from in this case I guess it  
31          would almost be a cabinet-level decision.

32       Q       Mm-hmm.

33       MR. STEELE: Or even perhaps prime ministerial level,  
34          you know, as was done back in the late '70s to say  
35          that this will happen, and obviously then it will  
36          happen. If it's left to departments to negotiate  
37          between themselves, then oftentimes the  
38          negotiations don't come to fruition to my  
39          experience.

40       Q       Ms. Bombardier, do you agree with those comments?

41       MS. BOMBARDIER: I'm sorry, I cannot really comment.  
42          It's beyond my level.

43       MR. MARTLAND: Mr. Commissioner, this may be a  
44          convenient point --

45       THE COMMISSIONER: I think Mr. Nelson had --

46       MR. MARTLAND: I'm sorry. I overlooked that.

47       MR. NELSON: Yeah, just one additional comment.

1           Something -- that would be a difficult thing to do  
2           but something that we could probably move toward  
3           sooner rather than later would be if Environment  
4           Canada with some of their newer staff were to  
5           decentralize some of those and put them in joint  
6           offices with fishery officers, there might even be  
7           some cost savings. Just a suggestion. We talked  
8           about it briefly, but having them decentralized  
9           and working with our officers might be something  
10          to consider too.

11       MR. MARTLAND:

12       Q     Ms. Bombardier, I'll give you the option, if you'd  
13           like to take the break to reflect on that  
14           question, we could -- I can ask that after the  
15           break or if you'd like to address that now, before  
16           the break.

17       MS. BOMBARDIER: No, I can address it. We are very  
18           well-aware of our limitations in terms of our  
19           footprint in the -- across the country. It's a  
20           very large country and we have 180 officers  
21           approximately to cover not only **Fisheries Act** and  
22           the six regulations, pollution prevention  
23           regulations, but also all the **Canadian**  
24           **Environmental Protection Act** with its 50 or so  
25           regulations and there's more coming up, you know,  
26           on a weekly basis, so it's quite a challenge for  
27           Environment Canada to best allocate the resources  
28           where to address the most significant issues, and  
29           so our capacity to respond in remote areas has  
30           traditionally been very limited.

31           It has improved over the past four years  
32           approximately with the allocation of new  
33           resources, so as indicated earlier, we have opened  
34           new offices before. We had an office in  
35           Vancouver, we had an office in Whitehorse. Now we  
36           have five offices to cover B.C. which is an  
37           improvement. It's not -- we're not in our best  
38           situation, I would say. We have to rely on our  
39           partners, but it's better than it used to be.

40       Q     And the question of having Environment Canada  
41           enforcement people housed in the same place or  
42           near to the C&P fisheries officers, is that  
43           something you can comment on?

44       MS. BOMBARDIER: Yeah. And that we have already in a  
45           few locations like in Prince George, I know we are  
46           in the same building in Vancouver, we are  
47           together, so -- and we have -- we are in the same

1 buildings in other areas across the country, so  
2 that's also something that we keep in mind when we  
3 look at our opening new offices where our partners  
4 are. It's a key consideration.

5 MR. MARTLAND: Mr. Commissioner, this may be a  
6 convenient point for the break.

7 THE REGISTRAR: Hearing will now recess for 15 minutes.

8

9

(PROCEEDINGS ADJOURNED FOR MORNING RECESS)

10

(PROCEEDINGS RECONVENED)

11

12 THE REGISTRAR: The hearing is now resumed.

13 MR. MARTLAND: Mr. Commissioner, I'm going to move to  
14 asking some questions about something we touched  
15 on only in passing, coming out a question you had,  
16 which is to say the question of relationships and  
17 dealings between DFO and, for that matter,  
18 Environment Canada and the Province of British  
19 Columbia on fish habitat enforcement issues and  
20 work.

21

22 EXAMINATION IN CHIEF BY MR. MARTLAND, continuing:

23

24 Q Perhaps I should ask at the outset, Ms.  
25 Bombardier, is there, to your knowledge, an  
26 Environment Canada/province type of a working  
27 protocol or MOU?

28 MS. BOMBARDIER: There is, I believe, a draft. I'm not  
29 sure if it's finalized, but formal agreement  
30 between the Emergencies Group of Environment  
31 Canada - so between Environment Canada and the  
32 Province of B.C. - for notifications of releases.  
33 This is to basically implement the new regulations  
34 on the disposal under normal course of events  
35 under 38(4), s. 38(4) of the **Fisheries Act**.

36 The public regulatees, while in 38(4),  
37 applies to those who own or have control of a  
38 deleterious substance. They need to report to  
39 Environment Canada releases under s. 38(4) so that  
40 agreement implements that provision through those  
41 regulations that are about to come into force.

42 Q Mr. Nelson, maybe I can start with you for this  
43 question. Could you describe, at a general level,  
44 what is the province's role in dealing with fish  
45 habitat enforcement issues, and how closely do  
46 your fishery officers in the province and in the  
47 region work with their provincial counterparts?

1 MR. NELSON: There is an MOU between the province and  
2 DFO on dealing with fisheries habitat matters, and  
3 it essentially means that if there is a fish  
4 habitat issue in waters where there are not  
5 anadromous fish - in other words, no salmon, a  
6 lake where there is only trout as an example -  
7 that will be a provincial matter.

8 As far as how closely we work with, that  
9 varies throughout the region. In small office  
10 locations where there's one or two officers and  
11 one or two conservation officers, they rely  
12 heavily on each other and work very closely  
13 together. In larger centres like in Vancouver  
14 here, not as much so. I'd say overall at the  
15 field level, the working relationship between the  
16 conservation officers and fishery officers is very  
17 good.

18 Q And you referred to an MOU.

19 MR. MARTLAND: I wonder, Mr. Bisset, if you could  
20 please bring up number 8 on our list which is  
21 already an exhibit. I understand it's Exhibit  
22 653.

23 Q When you refer to an MOU between Canada and B.C.,  
24 is that what you're referring to?

25 MR. NELSON: Yes.

26 Q That document refers to a director level committee  
27 that would meet on compliance and enforcement  
28 issues. To your knowledge, is there such a  
29 committee that's active presently?

30 MR. NELSON: Not a committee, per se. I have met with  
31 my counterpart with the Conservation Officer  
32 Service, but as far as Habitat staff and the  
33 province, I'm not sure.

34 Q Do you have a view on -- or could you tell us from  
35 your point of view how actively used is this  
36 agreement? How current is it, or is it not  
37 current?

38 MR. NELSON: I'd have to look at the signature on it.

39 Q If I recall, we have to scratch our political  
40 memories to do this. It has Herb Dhaliwal's  
41 signature.

42 MR. NELSON: It's a while.

43 Q I don't think it has a date on it.

44 MR. NELSON: Yeah, it's a while ago.

45 Q Mr. Tyzuk is advising around 2000. Indeed, Ms.  
46 Grant has a note of July 2000. So I don't know if  
47 that sounds -- does that sound --



1 MR. NELSON: That sounds about right for the  
2 signatures, yes.

3 Q So it's 11 years old.

4 MR. NELSON: Yes.

5 Q Perhaps the easy part to that. But is this  
6 something that, to your mind, is active? Is  
7 it...?

8 Let me ask you a different question. How  
9 often do you look to this document, check that  
10 you're working under it or rely on it in your  
11 work?

12 MR. NELSON: I don't look at the document very often.  
13 I don't think that many officers do. They know  
14 what the relationship is. They're taught that  
15 when they're trained, and they make it work at the  
16 field level.

17 Q That's really the other part to the question, is  
18 apart from the document, could you please describe  
19 to us at the field level, the practical level,  
20 working relationships, arrangements between  
21 federal and provincial fisheries and conservation  
22 officers respectively.

23 MR. NELSON: Yeah, again, if it's relating to fisheries  
24 habitat, if we get a call or complaint about a  
25 habitat issue and it's clearly a provincial  
26 matter, our officers will contact them and relay  
27 it to them.

28 On occasion, if it's something imminent and  
29 needs to be responded right away, our officers  
30 have and their officers will do the initial  
31 response, gather immediate information, evidence,  
32 and then turn it over to the other agency.

33 Q Now, I'll go to one other document to continue in  
34 this vein, and then after I have asked these  
35 questions of Mr. Nelson, I'll turn to the other  
36 panel members.

37 Number 9 on our list of documents is an MOU  
38 on mutual assistance between B.C. Conservation  
39 Officer Service and the DFO C&P Pacific Region.  
40 Is that correct, Mr. Nelson?

41 A That's correct. The example I just described is  
42 probably more relevant to this particular document  
43 here.

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

46 THE REGISTRAR: Exhibit 692.

47

1 EXHIBIT 692: MOU Between B.C. Conversation  
2 Officer Services and DFO C&P Pacific Region  
3 Respecting Mutual Assistance, Revised July  
4 17, 2007  
5

6 MR. MARTLAND:

7 Q I'm sorry, you said the example you just described  
8 is more relevant to this document. Could you  
9 explain that, please?

10 MR. NELSON: Yes. Like conservation officers taking  
11 the initial response in some cases for DFO and  
12 vice versa.

13 Q All right. And similar type of question, how much  
14 or how often do you, or do your officers, look to  
15 this document in your work?

16 MR. NELSON: Again, I don't know how often officers  
17 refer to this. This one is more relevant as far  
18 as I'm concerned. It's more regional in nature,  
19 and it's one that I'm aware of. I can't answer  
20 for how much all the officers know about it.

21 Q Okay.

22 MR. NELSON: Other than they're following the  
23 principles of it, and I don't hear anything  
24 otherwise.

25 Q Ms. Bombardier, I asked you about the agreements  
26 part to this with respect to Environment Canada  
27 Enforcement and provincial counterparts. But  
28 stepping back from documents, at a practical  
29 level, do you have any comments or any description  
30 you can give us on the working arrangements  
31 between Environment Canada Enforcement and  
32 provincial B.C. conservation officers?

33 MS. BOMBARDIER: I'm not familiar with how it's working  
34 at the field level in terms of -- there's no  
35 formal arrangements or agreements between  
36 Enforcement Branch and the Province of B.C. for  
37 enforcement purposes. As I said, there's one at  
38 the departmental level for responses to spills,  
39 but my understanding is that when there is an  
40 incident, we get the information from the  
41 province. If we suspect that the province may  
42 have jurisdiction, we will ask them what their  
43 intentions are. They may have issued licences to  
44 the regulated facility, in which case they would  
45 likely take the lead if it's a violation of the  
46 licence. We would stand by and we could intervene  
47 if we see that nothing has been done in terms of

1 pollution prevention. We could take the lead  
2 under 36(3).

3 But it's all case-by-case and it's in  
4 discussion with the province and other partners.

5 Q I'd like to turn to some questions that aim to  
6 provide the Commissioner and all of us with some  
7 understanding at a practical level of the sorts of  
8 things we're talking about. We've been talking  
9 about s. 35 and 36 and the different -- the HADD  
10 and the pollution sorts of occurrences.

11 I wonder if we could try and put that in more  
12 practical concerns, so these are questions where  
13 I'd invite you to give us examples and details  
14 and, in particular, any that tie to Fraser River  
15 sockeye habitat.

16 Mr. Nelson, if I could start with -- and let  
17 me also try and -- maybe I'll put something on the  
18 screen through Mr. Bisset. On the PPR number 9,  
19 page 31, I noticed, having worked with different  
20 junior counsel, that Ms. Grant's pagination works  
21 very well for these purposes. When Mr. Bisset  
22 hits 31, it goes to 31, so that's helpful. Page  
23 31 at the top, there's a graph that lists off  
24 different descriptions of types of occurrences,  
25 Mr. Nelson; is that correct?

26 MR. NELSON: That's correct.

27 Q And whether you do so using this or not, I leave  
28 to your discretion, but I'd ask you to please  
29 describe to us the common occurrences under either  
30 s. 35 or s. 36, in particular those that have an  
31 impact on Fraser sockeye habitat.

32 MR. NELSON: Well, I guess all of them could and would  
33 have impact on Fraser River habitat if these  
34 occurrences or violations happen within the Fraser  
35 watershed. It represents what I would have said  
36 is that the bulk of violations or occurrences that  
37 are reported to us relate to smaller activity.  
38 Like a property owner along a stream, everybody  
39 likes to live by a stream and have access to the  
40 stream and will tend to destroy the riparian  
41 vegetation along those shores to make their  
42 waterfront property more appealing to them.

43 This matches -- nearly 300 of these 700  
44 incidents here are related to rural/urban  
45 development so that makes sense. Each of those on  
46 their own aren't that large, but you add them all  
47 together and you have a very big cumulative

1 effect.

2 The next one, it talks about  
3 industrial/commercial. That could be related to  
4 things like -- it could be pulp mills, could be  
5 any number of things fall into that category.  
6 Forestry is quite low on this one, and I think  
7 that's reflective of -- sorry, when is this  
8 information from again?

9 Q Well, if we go up to one page before, you'll see  
10 how this is introduced at paragraph 72. I'll read  
11 it.  
12

13 For the 2009-10 fiscal year, fishery habitat  
14 occurrences entered by C&P field staff in the  
15 Pacific Region were as follows:  
16

17 MR. NELSON: Yeah, so that does match with -- if you  
18 had five, ten years ago, the forestry numbers  
19 might have been higher. Road development is a --  
20 any linear development is quite significant, has  
21 quite significant impacts on fish. Now, the  
22 linear development is probably spread throughout  
23 all of these various categories. So oil and gas  
24 development, for example, it's a lot of road-  
25 building, and same with -- mining is more  
26 centralized, but all of them require road access.

27 Q And indeed, I wonder if, to some extent, the  
28 number of occurrences is only one barometer, that  
29 there may be something of significant impact that  
30 may be a single occurrence, but a big one.

31 MR. NELSON: Yes.

32 Q So maybe moving away from simply looking at the  
33 last column and the number of occurrences, could  
34 you give us your sense of importance - not simply  
35 most common - but most significant habitat  
36 occurrences from an enforcement perspective?

37 MR. NELSON: Well, in my experience, they range from a  
38 wheelbarrow full of grass clippings into a creek  
39 to the largest one I've been involved in was a  
40 hydro dam facility that resulted in a total  
41 destruction of about 30, 40 kilometres of a  
42 salmon-bearing stream. So that's the largest case  
43 that I've ever dealt with. It was very  
44 significant damage.

45 Q Ms. Bombardier and Mr. Steele, I'll put to you the  
46 same sort of a question to provide your  
47 understanding, appreciating that you're both from

1           headquarters and I'm asking a B.C. or Fraser River  
2           sockeye perspective. Is that a question you're in  
3           a position to give a sense of, or does that take  
4           us beyond your familiarity?

5       MS. BOMBARDIER: Well, in terms of 36(3) issues, what  
6           we've observed - and that's not particular to B.C.  
7           but across the country - agriculture is definitely  
8           an issue. That's non point-source pollution, so  
9           cows in streams. It's a violation of 36(3). We  
10          have taken action in some cases in that respect.  
11          Aquaculture is also the use of pesticides, could  
12          be a violation of 36(3) although Health Canada has  
13          jurisdiction over the pesticides. So there are  
14          other departments that have a role to play in  
15          there.

16                 Industrial/commercial includes things like,  
17                 on the B.C. coast, fishing lodges, boat haul  
18                 cleaning activities in a marine environment, so  
19                 contaminants. Sometimes a boat is contaminated  
20                 with oil that goes in the water, 36(3) issues  
21                 there.

22                 Industries that are not regulated by  
23                 regulation, so we have pulp and paper mills, we  
24                 have mining facilities that are not covered by  
25                 regulation because they were an activity before  
26                 the regulations came into force, so those are  
27                 subject to 36(3), so we look at those as well.  
28                 Metal mining, of course, I think there's two in  
29                 the B.C. area, in the Fraser River, that have  
30                 effluent into the Fraser River or tributaries.  
31                 Oil and gas is also another area that may have  
32                 36(3).

33                 Recreational, it's all dependent on the type  
34                 of activity, but if there's an accident and  
35                 there's a spill of a product or substance that  
36                 could be deleterious, it would trigger 36(3).  
37                 Transportation spills from vessels, that's another  
38                 area. But again, Transport Canada would have a  
39                 role to play if it's a ship.

40       Q       Mr. Nelson, is there a particular type of  
41                 occurrence or case that is more or less likely to  
42                 lead to eventual investigation and/or prosecution?

43       MR. NELSON: A type that's more or less? Not that I  
44                 can think of offhand. I mean, obviously if it's  
45                 impacting fish habitat, it's near water, but I'm  
46                 not sure I understand the question.

47       Q       The question, to pick up on the chart, for

1 example, are cases involving roadwork more likely  
2 to lead to an eventual charge than, for example, I  
3 don't know, a foreshore development in a  
4 recreational lake setting?

5 MR. NELSON: Not necessarily. You don't know how  
6 significant it is until you go have a look at it.  
7 A seemingly small area could have a significant  
8 impact. If somebody's in a creek with a Cat and  
9 there's salmon spawning there, that's very  
10 significant to somebody in a creek beyond any  
11 upstream, beyond any fish-bearing waters. You  
12 don't know till you really have a good close look  
13 at it.

14 Q How many cases do go to prosecution in this  
15 region? How common is that?

16 MR. NELSON: The numbers that actually go to  
17 prosecution is not that great. I don't have the  
18 numbers in front of me, but it's, I think, by  
19 looking at information from -- there's a graph  
20 that is in the documents that I think could speak  
21 to this better than I can off the top.

22 Q Okay. And we'll try to pull that up and then I'll  
23 bring that to your attention a little later on if  
24 I can.

25 MR. NELSON: Yeah.

26 MS. BOMBARDIER: Can I respond to this?

27 Q Yes.

28 MS. BOMBARDIER: For 36(3), the public focus is often  
29 on prosecutions, but under **Fisheries Act** as we had  
30 under **CEPA**, we have a toolbox, so a series of  
31 tools at the disposal of our officers.  
32 Prosecution is only one of them, and it's the most  
33 stringent measure that we can take, because it  
34 involves legal procedures.

35 Under the Compliance and Enforcement Policy  
36 for **Fisheries Act**, the approach is more of an  
37 escalating approach, so depending on their  
38 circumstances, warning letters could be issued  
39 that may have significant deterrence effect  
40 depending on the circumstances. Inspectors'  
41 directions is another tool that our fisheries  
42 inspectors use and those have been quite effective  
43 in achieving deterrence and achieving good  
44 environmental outcomes because it does sometimes  
45 involve significant investment from the regulatee  
46 to take action to prevent or stop a release. So  
47 inspectors' direction are very effective.

1 Ministerial orders as well, although we haven't  
2 used them too much.

3 So prosecution is the most strict measure,  
4 and we try to use other tools before we go there  
5 'cause it's a lengthy trial, it's also fairly  
6 costly. The Compliance and Enforcement Policy has  
7 specific circumstances where prosecution will be  
8 used, if it's a deliberate release, if there's  
9 obstruction. So those are the types of  
10 circumstances that will lead to prosecution, but  
11 it's not always the best or most effective tool to  
12 achieve compliance.

13 Q Mr. Steele, does the DFO have a similar sort of  
14 toolbox or a similar sort of view of the role of  
15 prosecutions among the different responses?

16 MR. STEELE: Yes, we do. I would say it's consistent  
17 with what Ms. Bombardier has described. The  
18 Compliance and Enforcement Policy applies -- it  
19 was developed jointly by the two departments, DOE  
20 and ourselves and as she's described, generally  
21 the approach that's come into both departments,  
22 prosecution would be more or less the last resort  
23 when other options under the continuum have -- or  
24 either not likely to succeed or have not been  
25 successful, they've been tried and not been  
26 successful. So prosecution would be sort of the  
27 far end of the continuum in terms of the actions  
28 available to us.

29 Q And why is it a last resort?

30 MR. STEELE: Well, again, because I guess at the end of  
31 the day, the objective is to achieve compliance in  
32 the most effective way possible, and in a lot of  
33 cases, there are other options less costly, less  
34 time-consuming, of achieving compliance short of  
35 actually laying a charge and bringing a case to  
36 court. So if those options are feasible, then I  
37 think it's everyone's preference that they would  
38 be used.

39 Q This gets us into really a question of balancing  
40 compliance, promotion and things like compliance,  
41 perhaps compliance monitoring, other approaches to  
42 this, than a pure enforcement type of a response.  
43 Could you comment on how the C&P and perhaps, more  
44 broadly, the Department tries to strike a balance  
45 between the two or approach this issue?

46 MR. STEELE: Well, speaking for the C&P organization,  
47 we did a national review of our program a few

1 years ago and came up with what we called a three-  
2 tier approach to achieving compliance. The review  
3 was titled, actually, "The Compliance Review,"  
4 recognizing that at the end of the day the  
5 compliance is the end goal; enforcement if  
6 necessary, but at the end of the day, the key  
7 objective is to achieve compliance in the best way  
8 possible.

9 So what we came up with at the end of the day  
10 was sort of a three-tiered approach to doing that,  
11 Tier 2 being sort of the traditional methods that  
12 we use for enforcement activities on the fisheries  
13 side as well as habitat enforcement, regular  
14 patrols, that kind of thing including warnings and  
15 prosecutions and all of what that entails.

16 The Tier 1 type activities which we had been  
17 somewhat involved in up until then, and that  
18 refers to things as we spoke about earlier, public  
19 relations activities, stewardship, working with  
20 communities and user groups on a more proactive  
21 type basis, trying to prevent problems down the  
22 road, educate and stewardship activities, that  
23 kind of thing. All of that came under what we  
24 term Pillar 1 (sic) and, as Mr. Nelson referred to  
25 earlier, he said that in Pacific Region, I think,  
26 there's a general target of ten percent of fishery  
27 officer time is sort of the overall objective in  
28 terms of activities related to Pillar 1, and  
29 that's a national approach that we've taken with  
30 the program across the country.

31 I'm not sure that we're exactly at ten  
32 percent everywhere, but there's been a definite  
33 increase, I'd say, over the last five to six years  
34 in terms of effort devoted towards those general  
35 Pillar 1 type activities to promote and achieve  
36 compliance in ways other than laying charges and  
37 bringing cases to court.

38 Pillar 3, not related so much to the habitat  
39 files, but more on the fisheries enforcement end  
40 of things, Pillar 3 refers to major case  
41 investigations, intelligence gathering. The  
42 intelligence gathering, I guess, could have some  
43 application to the habitat world, but more  
44 strictly applied in the fisheries enforcement  
45 realm.

46 So we've made an effort to shift our focus  
47 into those two new pillars of activity, 1 and 3,



1 and away from the more traditional approaches to  
2 enforcement.

3 Q Ms. Bombardier, how does the Enforcement Branch of  
4 Environment Canada try and strike a balance or  
5 address this question of proactive and reactive  
6 types of approaches?

7 MS. BOMBARDIER: You mean in terms of how we work with  
8 compliance promotion partners?

9 Q Yes.

10 MS. BOMBARDIER: Compliance promotion, as I was  
11 indicating before, is part of the Environmental  
12 Stewardship Branch so it does not report to the  
13 same ADM as Enforcement. It's separate, but we do  
14 work very closely together. It is a very  
15 effective tool in terms of achieving compliance as  
16 was mentioned earlier. Educating regulatees of  
17 their responsibilities is a key step in terms of  
18 achieving compliance.

19 So we try to align our activities, especially  
20 in new sectors when there's a new regulation  
21 coming. We let Compliance promotion do their  
22 activities and inform, education the regulatee  
23 community of their responsibilities, and then we  
24 go and monitor a particular sector where we think  
25 that there may be significant non-compliance. So  
26 we work closely with compliance promotion and we  
27 try to rely on our activities so that they go  
28 first. They educate, have information sessions  
29 and then we go and monitor compliance after that.

30 Q Mr. Nelson, fisheries officers, of course, don't  
31 only work on habitat. Indeed they may not mainly  
32 work on habitat as opposed to other **Fisheries Act**  
33 types of cases. Could you please help us  
34 understand, are habitat cases distinguishable or  
35 special as contrasted with other fisheries cases?

36 MR. NELSON: Well, they generally are more complicated  
37 than the average fisheries violation. This  
38 involves a whole lot of more expertise. You have  
39 to have Habitat staff that can, first of all, deem  
40 that it is fish habitat. There's much more  
41 requirements -- it's not something you would give  
42 to a brand-new officer and expect them to proceed  
43 through with it. They're very time-consuming,  
44 very lengthy, and so we generally have our more  
45 experienced officers deal with them.

46 Q Are there challenges in terms of the identity of  
47 the malfeasor?

1 MR. NELSON: Not always. I guess, in larger cases,  
2 yes, there can be. You can have a company that,  
3 okay, they're responsible for this logging  
4 operation, per se. But there could be a  
5 subcontractor who's running some equipment,  
6 another contractor running something else, so  
7 there's generally more parties involved in a  
8 habitat violation.

9 Q With respect to the practical level, the officers  
10 doing this work, do they have the specialization  
11 to do habitat work or do they acquire -- those who  
12 don't, you suggested, I think, that more junior  
13 officers may not have experience or expertise.  
14 Can they acquire that?

15 MR. NELSON: They can acquire that. We don't have  
16 specialized habitat officers. We did for a short  
17 period at one time, but generally there are  
18 officers throughout the region who have a high  
19 degree of aptitude and interest in dealing with  
20 habitat cases, so we have a number of officers  
21 throughout the region although they aren't  
22 "habitat specialists". They are more adept at  
23 handling a habitat violation, because they are so  
24 complex, often.

25 Q Mr. Nelson, carry on in this vein. One criticism  
26 that is sometimes made of fisheries officers is  
27 they may have a disinclination to become involved  
28 in a fish habitat case because it's difficult,  
29 because of the things you've suggested. It's  
30 difficult, it's complex for an individual officer.  
31 It may take that officer outside the realm of  
32 their ordinary experience or their more  
33 conventional fishing enforcement type of work.  
34 Could you comment on that concern and whether  
35 that's a problem?

36 MR. NELSON: I don't think it's a problem. As far as  
37 officers, they will develop expertise on a number  
38 of different topics, but every officer is capable  
39 to assist in any type of violation, whatever it  
40 may be. We don't have specialists of any kind.  
41 So I wouldn't say there's a concern that they  
42 might not want to get involved, although obviously  
43 there are staff who need to be directed sometimes  
44 to do investigations that they may not be  
45 interested in. They are very time-consuming and  
46 take a lot of work.

47 So there are occasional staff who are

1           reluctant to take them on, absolutely.

2           Q     Mr. Steele or Ms. Bombardier, anything to add on  
3           this point? I'll take your silence as a no, and  
4           that's just fine.

5           MR. MARTLAND: Let me move to a document to frame the  
6           next set of questions, if you will. Mr. Bisset,  
7           number 10 on our list of documents.

8           Q     You'll recognize this, I think, all of you, as the  
9           Compliance Enforcement Policy and perhaps, Ms.  
10          Bombardier, if I might start with you, could you  
11          please identify and describe for us what this  
12          document is?

13          MS. BOMBARDIER: This policy document is a document  
14          policy that guides the work of our fisheries  
15          officers and enforcement officers in the field, so  
16          it talks about the principles of how we do our  
17          work, enforcement. Enforcement is one of the  
18          compliance measures. There's also compliance  
19          promotion activities, so again, it doesn't only  
20          cover enforcement. It covers other aspects of  
21          departmental responsibilities under s. 36(3) and  
22          the Regulations.

23          Q     And am I right to say this, although I think if we  
24          scroll down even further, we may see the  
25          Environment Canada logo at the bottom left. But  
26          this is in fact a jointly developed policy,  
27          jointly developed by DFO and Environment Canada?

28          MS. BOMBARDIER: Yes, that's my understanding.

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

31          THE REGISTRAR: Exhibit 693.

32  
33                   EXHIBIT 693: Compliance and Enforcement  
34                   Policy for the Habitat Protection and  
35                   Pollution Prevention Provisions of the  
36                   **Fisheries Act**, November 2001  
37

38          MR. MARTLAND:

39          Q     Am I right to say this is an important policy and  
40          that it provides significant guidance to this day,  
41          Ms. Bombardier?

42          MS. BOMBARDIER: Yes, it is.

43          Q     Mr. Steele, could you comment on that?

44          MR. STEELE: Yes, I would agree with that. It is a  
45          policy that was jointly developed by the two  
46          departments. It's still valid and it is more or  
47          less the go-to document if people wanted to refer

1 to a compliance policy type framework document.  
2 This is it for the habitat-related activities.  
3 Q I wonder - and I'm not suggesting this is the case  
4 - but we've heard evidence about EPMP, the  
5 Environmental Modernization -- I may get this a  
6 bit wrong -- Process. I've already lost at least  
7 one letter there. But the EPMP initiative from  
8 2004, or 2005, and whether that sort of a change  
9 with respect to the compliance regime, has that  
10 had any effect on the relevance or continued  
11 applicability of this policy?  
12 MR. STEELE: I wouldn't say it impacts directly on the  
13 policy. At the same time, it probably would be a  
14 good idea to do a thorough review of the current  
15 policy to make sure that it at least makes  
16 reference to that particular initiative.  
17 But without having done that thorough review,  
18 I think most, if not all, of what's currently here  
19 would still apply. But it would be useful, I  
20 think, to do that review, to make updates as  
21 required to make reference to the EPMP initiative.  
22 For the most part, this is at a high enough level,  
23 you know, it's sort of guiding principles. Rules  
24 and responsibilities, I guess, might be one  
25 section that could reviewed in light the EPMP, but  
26 the range of activities and responses that are  
27 available, that probably wouldn't change so much.  
28 So generally speaking I think the policy  
29 still flies, is still valid, but would probably  
30 benefit from a review in light of EPMP and  
31 adjustment if required.  
32 Q Is there review underway to your knowledge?  
33 MR. STEELE: Not to my knowledge at the moment, no.  
34 Q Okay. Ms. Bombardier?  
35 MS. BOMBARDIER: Not to my knowledge either.  
36 MR. MARTLAND: I wonder if I could ask Mr. Bisset to  
37 please go to page 26 of the document itself. I  
38 don't know if that will align with the ringtail  
39 number on the screen. It should be six pages down  
40 from there, please.  
41 Q Ms. Bombardier, I'll ask this of you. You'll see  
42 that this refers to using s. 42 of the **Fisheries**  
43 **Act** and the government launching a civil suit in  
44 order to recover costs that would arise from an  
45 unauthorized deposit. I'm interested to learn is  
46 that -- it exists under s. 42, but the question I  
47 have is that a measure that is used much or at all

1 to your knowledge?

2 MS. BOMBARDIER: To my knowledge, it has not been used,  
3 but again, my experience only dates till 2006, so  
4 it may have been used in the past but, according  
5 to my knowledge, it hasn't been used at least  
6 recently.

7 Q Mr. Steele, I don't know if there's anything along  
8 these lines in terms of a sort of cost recovery  
9 civil suit, response of the DFO, C&P uses in the  
10 course of enforcement work?

11 MR. STEELE: No, I'm not aware of it being used either.

12 MR. MARTLAND: If I might move to Tab 11 on our list of  
13 exhibits, please. This document that you see  
14 before you, it begins with a table of contents.  
15 You'll then see on the second page it's entitled  
16 the National Enforcement Policy for Conservation  
17 and Protection. I'll note just for the record  
18 this is also described at paragraph 92 of the  
19 Policy and Practice Report number 9. I don't need  
20 you to go there, Mr. Bisset.

21 Q Mr. Steele, could you please describe for us what  
22 exactly this document is?

23 MR. STEELE: This is a draft national policy document  
24 that's currently under development. We have a  
25 draft that you see as the exhibit here. The  
26 intent of it was to provide a similar framework  
27 piece to what we just talked about in the realm of  
28 the habitat program.

29 This draft, once approved, would apply to the  
30 Conservation and Protection Program generally at  
31 the national level which would include, of course,  
32 the habitat activities as well as enforcement we  
33 do under other legislation, **SARA**, the fishery --  
34 all of the fisheries enforcement work we do in  
35 commercial, recreational fisheries, et cetera.

36 So it's following the same sort of model as  
37 the compliance policy document but applying on a  
38 wider basis to all the full range of activities  
39 that we're engaged in, and it was something that  
40 had -- some work had been done some years ago, but  
41 never came to a conclusion, was never formally  
42 approved, so we've recently resurrected that  
43 project and did some updating and redrafting, et  
44 cetera, to bring it up to date, and it's currently  
45 being reviewed by our Legal Services Unit, and  
46 it's out with our regional directors for comment  
47 as well and we're hoping to bring it to conclusion

1           and have it signed off some time in the next few  
2           weeks or month, sometime in the near future at  
3           least.

4       MR. MARTLAND: Before I forget to do this, I wonder,  
5           Mr. Registrar, if this might be marked as the next  
6           exhibit.

7       THE REGISTRAR: Exhibit 694.

8  
9                       EXHIBIT 694: Draft National Enforcement  
10                      Policy for Conservation and Protection  
11

12       MR. MARTLAND:

13       Q     When you say that this document has been provided  
14           out for comment and is in the process, so to  
15           speak, is it this -- I don't know if you can say  
16           and I don't know if I need you to do a forensic  
17           examination, but is this the draft, the version of  
18           the document that is out for consideration at this  
19           point?

20       MR. STEELE: I believe it is, yes.

21       Q     And I don't see a date, but I haven't studied this  
22           in enough detail, or maybe I've overlooked it.  
23           Can you comment on when this dates to, or is this  
24           the most recent version?

25       MR. STEELE: I can't say for certainty, but I'm quite  
26           sure that it's the most recent version. In terms  
27           of dates, it would be, I believe, two to three  
28           months ago that it was produced.

29       Q     And assuming that this document is ultimately  
30           finalized, what will it accomplish? What use will  
31           it be put to?

32       MR. STEELE: Well, it will fill a gap that's been  
33           identified in terms of C&P policies and procedures  
34           that are available nationally. There was an audit  
35           done, an internal audit done on our program in  
36           2009, I believe, that we may refer to later. I  
37           think there's documentation in the binders on  
38           that.

39           But one of the shortcomings that they  
40           identified was a lack of national policy direction  
41           from the C&P office in Ottawa. I'm not sure if  
42           they made a specific reference to this particular  
43           policy, but it has been a gap that we've  
44           identified for some time. Most other enforcement  
45           agencies would have a document like this to point  
46           to. It provides a general framework. It's not  
47           something that people are going to refer to on a

1 day-to-day basis as Mr. Nelson explained, but it's  
2 particularly valuable, I think, for new recruits  
3 and also for others outside the organization who  
4 will be able to basically see what the program is  
5 all about, what sort of powers and authorities  
6 fishery officers have and what sort of options  
7 they have at their disposal in order to deal with  
8 violation type situations.

9 MR. MARTLAND: I wonder if, indeed, the first page Mr.  
10 Bisset, gives us, on the table of contents -- I  
11 don't know if that's a handy shortcut to having  
12 some understanding of what those possible  
13 responses are.

14 Q But we see there under:

15  
16 Detecting Violations:

17  
18 Inspections  
19 Search  
20 Seizure

21  
22 Responses to Alleged Violations:

23  
24 Officer Discretion.

25  
26 And then under:

27  
28 Choosing an Enforcement Response:

29  
30 And I'll list them off:

31  
32 Consistency in Enforcement  
33 Incidence Involving Children and Young  
34 Persons  
35 Warnings  
36 Ticketing  
37 Alternative Measures or Restorative  
38 Justice  
39 Prosecutions  
40 Appearance Notice  
41 Arrest

42  
43 Those are some of the responses and issues that  
44 officers need to be aware of and can consider?

45 MR. STEELE: Yes, that's right. They're described in  
46 very general terms here. Of course their training  
47 would provide a much greater level of detail but,

1           yes, that's the intent.

2 MR. MARTLAND: If I might please go to number 12 on the  
3 exhibit list. This is also Exhibit 657.

4 Q Mr. Steele, perhaps I'll continue asking you these  
5 questions. This is the National Habitat  
6 Compliance Protocol between HMP, the Habitat  
7 Management Program, and C&P.

8           My question is - this is already in evidence  
9 - what impact, if any, will this protocol, which I  
10 understand dates to December of 2010, have on  
11 enforcement roles?

12 MR. STEELE: Well, we're hoping that it will help to  
13 clarify respective roles and responsibilities  
14 between ourselves and Habitat staff. This  
15 document is an updated version of a previously  
16 existing protocol that was signed in 2007, and  
17 when the initial protocol was signed, it was for  
18 the duration of -- it was in effect for two years  
19 or at least there were provisions for it to be  
20 reviewed and updated after two years. So that was  
21 done. It took a bit longer than two years, but it  
22 was completed in late 2010 and was signed off at  
23 that point and distributed out to staff.

24           The general intent is to describe there  
25 clearly the respective roles and responsibilities  
26 of our officers in relation to Habitat staff at a  
27 working level.

28 MR. MARTLAND: Mr. Bisset, page 7 if you might.

29 Q I think that'll indeed give us the signatures and  
30 the date stamps beside the respective signatories  
31 including your name, Mr. Steele, there I see.

32 MR. STEELE: Yes, that's right.

33 Q As well as the Acting Senior Assistant Deputy  
34 Minister for Ecosystems and Fisheries Management,  
35 David Balfour, and Director General, Ecosystems  
36 Management, Steve Burgess; is that correct?

37 MR. STEELE: Yes, that's right.

38 Q Mr. Nelson, do you have any comments on the impact  
39 this protocol will have on enforcement work and  
40 enforcement roles?

41 MR. NELSON: Well, it will have an impact on what  
42 officers do. We have to -- I had an initial  
43 meeting with my counterpart in Regional Director  
44 of Habitat because there are a few sections in  
45 here that raise questions that I have to  
46 understand what the direction we're going to give  
47 is. As an example, the 5.3.1 refers to Habitat



1 staff taking the lead in developing and delivering  
2 of habitat compliance monitoring activities.

3 Well, Habitat compliance monitoring  
4 activities have been the role of C&P, so what --  
5 we'll have to define those, what they're going to  
6 be doing.

7 Also, the inspectors' powers for Habitat  
8 staff have been removed with this, and that's a  
9 significant change from before. So there's a  
10 number of things that we have to determine how  
11 we're going to handle.

12 Q Let me try and separate out the two and deal with  
13 those each *seriatim*. Firstively (sic), you have  
14 referred as paragraph 5.3.1, that HMP will lead in  
15 development and delivery of habitat compliance  
16 monitoring activities, and expressed a concern.

17 Mr. Steele, could you comment on that, or do  
18 you have a response to that?

19 MR. STEELE: Well, I think the intent -- what's  
20 referred to here as habitat compliance monitoring  
21 activities is referring to the new program that  
22 was, I believe, discussed earlier this week,  
23 possibly yesterday, the new habitat compliance  
24 program that was brought into place as part of the  
25 EPMP initiative.

26 Q And if I can just clarify that I'm understanding  
27 or guessing correctly, is that the Habitat  
28 Compliance Modernization, which is the sixth  
29 element of the EPMP?

30 MR. STEELE: That's correct, yes.

31 Q All right.

32 MR. STEELE: Yes. So what's referred to here is  
33 basically the activities under that program, as I  
34 understand it, at the regional level, which would  
35 be led by the habitat program in the region.

36 It wasn't intended to mean that fishery  
37 officers would not have a role in habitat  
38 compliance monitoring but for the activities that  
39 that particular program, the -- I believe they're  
40 actually titled Habitat Compliance Monitors, then  
41 the lead role for the delivery of that program  
42 within the region rests with Habitat management.

43 So that's what was intended, I believe, with  
44 that s. 5.3.1.

45 Q Is that, to your eye, a change then in the work  
46 that C&P officers would do?

47 MR. STEELE: I would not see it as a change, no. That

1 monitoring program has been in place for some  
2 time, although I understand it's only recently  
3 that it's completely up and running. But it's  
4 something that was initiated, I think, in 2000 --  
5 or at least announced initially 2005 and '06, and  
6 has taken some time to roll itself out, but it's  
7 not a new concept, I don't think.

8 Q Mr. Nelson, the second point that you raised when  
9 I asked you about this document had to do with the  
10 designations as fisheries officer, is that -- or,  
11 sorry, the inspector power; is that correct?

12 MR. NELSON: That's correct.

13 Q And I take it, just to provide some context - but  
14 I'd welcome you to correct me, I may not have this  
15 quite right - that there are different categories  
16 or different types of designations including,  
17 first, fisheries officers; secondly, fishery  
18 inspectors; and thirdly, fishery guardians?

19 MR. NELSON: That's correct.

20 Q And some of that is described in the Policy and  
21 Practice Report. I take it you're referring to  
22 the question of who will have "inspector"  
23 designation?

24 MR. NELSON: Yes. Well, it's clear who will have  
25 "inspector" direction, but it raises some  
26 concerns.

27 Q Tell me more, please, about those concerns.

28 MR. NELSON: Prior to this, Habitat staff -- again,  
29 I'll use the example that's usually the easiest to  
30 describe. A Habitat staff member would go out and  
31 say they encounter what appears to be a violation,  
32 somebody operating a bulldozer in a creek.

33 As an inspector, Habitat inspector, they  
34 could order that work to stop. By removing the  
35 inspector powers from them, they can no longer  
36 perform that duty. They would have to call on a  
37 fishery officer and, in some cases, could be hours  
38 away, may not be able to even contact the officer  
39 and, in the meantime, that potential violation  
40 could continue.

41 So it's a significant change from my point of  
42 view. I have spoken internally about that, but in  
43 the end, this is what we have to deal with so we  
44 have to now make inspector directions will only be  
45 done by fishery officers with the new policy.

46 Q Mr. Steele, could you comment on that?

47 MR. STEELE: I would agree with what Mr. Nelson has

1 said in describing the change. That's probably --  
2 well, there are a couple, but this is probably the  
3 key change from the 2007 version of the protocol  
4 to this version. There are a few reasons why it  
5 came about that way.

6 Primarily, the Habitat Management Program had  
7 concerns about health and safety issues for their  
8 staff. It was also highlighted in a couple of  
9 audit reports that were done. One was an internal  
10 audit report done on the Habitat Enforcement  
11 Program in -- I'm trying to remember the year,  
12 now.

13 Q That's not the 2009 one, that's an earlier audit?

14 MR. STEELE: I believe an earlier one. 2009 was the  
15 audit of the C&P program specifically, but there  
16 was a separate audit on the habitat program.

17 One of the issues that was raised there, and  
18 also in a later audit by the Auditor General's  
19 office, the CESD, Commissioner for Environment and  
20 Sustainable Development, both commented on the  
21 need for clear roles and responsibilities, clear  
22 distinctions between enforcement-related  
23 activities versus more compliance-related  
24 activities.

25 I'm not sure if both audits stated it, but  
26 certainly the internal one, I'm sure, commented on  
27 the fact that there were health and safety  
28 concerns for Habitat staff engaged in what they  
29 saw as enforcement-related activities, basically  
30 activities aimed at compelling compliance. Under  
31 that category, they included issuance of  
32 inspectors' directions. So there was clear --

33 Q Is there concern there that an individual, let's  
34 say - I don't know if I have this right - but is  
35 the concern that a fish biologist, who doesn't  
36 have the training to act in a more enforcement-  
37 type of a mode, if you will, may be put in a  
38 difficult position or an unsafe position if  
39 they're issuing inspectors' directions? Is that  
40 your understanding of the concern?

41 MR. STEELE: That was the concern expressed to us, yes,  
42 yeah. As I mentioned, it came forward in the  
43 audit reports - or at least one of the two, maybe  
44 both - and that point was picked up on by the  
45 Habitat Management managers at the Ottawa level,  
46 who took the position basically that they didn't  
47 want their staff involved in enforcement-related

1 activities. They took the health and safety issue  
2 seriously.

3 The solution that they put forward to that  
4 was to basically remove the inspector authority  
5 from their staff and to have the arrangement that  
6 Mr. Nelson described, basically where they would  
7 have to call upon a fishery officer to do the  
8 actual delivery of an inspector's direction. They  
9 would still be involved in the front-end work, the  
10 preparation, the actual drafting of the direction.  
11 They would assist C&P with that role, but when it  
12 came to actual execution or delivery of the  
13 direction, then that would be a C&P responsibility  
14 and that's how the protocol ended up being  
15 written.

16 MR. MARTLAND: Mr. Commissioner, we're basically at the  
17 lunch point.

18 Q And I haven't -- just to close off this point, if  
19 I might canvass whether Ms. Bombardier or Mr.  
20 Nelson has any further comment on this topic.

21 MR. NELSON: Yeah, health and safety, of course, of  
22 staff has to be paramount, and the public. When I  
23 inquired into this, the concern for health and  
24 safety I was told came from an incident in Central  
25 & Arctic Region. I contacted my counterpart, and  
26 they said, in his view it was an over-reaction by  
27 a Habitat person. So there was one incident that  
28 I'm aware of that this change occurred on.

29 Also regarding if that is indeed the concern,  
30 that health and safety for Habitat staff is there,  
31 it's still going to be there when they have  
32 guardian status and show up at some of the same  
33 sites. So it's a difficult line to walk as to  
34 who's doing compliance work and who's not.

35 There is a section in here relates to that  
36 Habitat staff will be the people who will  
37 determine what risk before calling C&P. That's  
38 determining the risk to Habitat, but they won't be  
39 able to assess the risk to health and safety  
40 without visiting the site and knowing who's on  
41 site and perhaps looking into the background of  
42 these people.

43 So if the concern is truly about health and  
44 safety related to the inspector status, in my  
45 view, the concern is still going to be there as  
46 guardians.

47 MR. MARTLAND: Mr. Commissioner, I may indeed have a

1 further question, so I wonder if we could move to  
2 lunch break and I'll ask that afterwards.

3 THE COMMISSIONER: How much longer do you think you'll  
4 be, Mr. Martland?

5 MR. MARTLAND: Indeed, Mr. Commissioner, I was going to  
6 advise I expect I may be much of today, and that  
7 Mr. Taylor after me may or may not be on his feet  
8 towards the end of today.

9 THE REGISTRAR: The hearing is now adjourned until 2:00  
10 p.m.

11  
12 (PROCEEDINGS ADJOURNED FOR NOON RECESS)  
13 (PROCEEDINGS RECONVENED)

14  
15 THE REGISTRAR: Order. The hearing is now resumed.

16  
17 EXAMINATION IN CHIEF BY MR. MARTLAND, continuing:

18  
19 Q When we broke for lunch, I was asking some  
20 questions to learn about this question of  
21 inspector's orders and the ability, who should  
22 have that power to give an inspector's direction  
23 or order. Ms. Bombardier, I didn't direct that  
24 question to you. I wonder if I could ask if you  
25 have any comments with respect to who should have  
26 the designation as an inspector.

27 MS. BOMBARDIER: At Enforcement Branch and Environment  
28 Canada, our officers have both designations,  
29 fisheries officers and fisheries inspector,  
30 because they have different powers. So our  
31 officers need both to undertake their activities  
32 under 36(3), so we don't have a split as we see on  
33 the DFO side.

34 Q And the arrangement presently in place works well,  
35 I take it?

36 MS. BOMBARDIER: Yes, it works very well.

37 Q Mr. Nelson, I was going to ask a follow-up  
38 question, and I'll ask you and then I'll ask Mr.  
39 Steele to address this. Could you give us a sense  
40 on this point about the inspector's powers. How  
41 practical or impractical is it to require that it  
42 is a fishery officer who is there to give the  
43 inspector's direction?

44 MR. NELSON: How practical is it that it be a fishery  
45 officer? Well...

46 Q Is it impractical to require it to be a fishery  
47 officer?

1 MR. NELSON: It can be done by officers if the manpower  
2 is there. But this is as a result, from my  
3 understanding, as one of the steps of the EPMP  
4 process, which removes fishery officers from doing  
5 habitat compliance work, and the move is toward  
6 more operational statements and having Habitat  
7 staff do that role. So this kind of puts us back  
8 towards doing more of the work that they were  
9 taking on.

10 Q Mr. Steele, anything to add on that topic?

11 MR. STEELE: Not a great deal to add. I think time  
12 will tell in terms of practicality. I think there  
13 probably are some issues that need to be looked at  
14 there. The new protocol has only just recently  
15 been distributed, and early stages of  
16 implementation, and I think we would need to be  
17 vigilant as to whether it is practical or not, but  
18 it is something definitely to keep an eye on. In  
19 theory it makes sense. Whether it works in  
20 practice, I think we'll have to judge at a later  
21 date.

22 Q I'd like to ask some questions to focus and  
23 understand about the capacity and resources that  
24 are available both to C&P and to Environment  
25 Canada Enforcement Branch for habitat and  
26 protection work. To do this I will plan to lead  
27 you, expecting that any counsel will raise if they  
28 have a difficulty. Mr. Nelson, do you agree that  
29 C&P is a largely decentralized organization,  
30 indeed in its national headquarters that there are  
31 less than 30 people working there?

32 MR. NELSON: That's correct, yes.

33 Q I take it the number of Pacific Region offices is  
34 34 offices in the Pacific Region, totalling  
35 approximately 161 fishery officers?

36 MR. NELSON: Currently it's a little more than that,  
37 probably 175 with the additional fishery officers  
38 for aquaculture, but in that ballpark.

39 Q With respect to the reporting relationships, Mr.  
40 Steele, is it the case that there's a functional  
41 reporting relationship between national  
42 headquarters and the regions?

43 MR. STEELE: That's correct, yes, in the C&P program,  
44 functional reporting.

45 Q And am I right that regionally C&P has implemented  
46 line reporting whereby a Fishery Officer reports  
47 to a Field Supervisor, the Field Supervisor in

1           turn reports to a Detachment Supervisor, that  
2           person reports to a C&P Area Chief, who then  
3           reports on to the Regional Director, which is Mr.  
4           Nelson, who in turn reports to the Regional  
5           Director General, Ms. Farlinger?  
6   MR. STEELE: Yes, that's right. The line reporting  
7           change is in relation to the last part of what you  
8           just read, the reporting relationship between Mr.  
9           Nelson and the Regional Director General. All of  
10          the other reporting relationships were in place  
11          before line reporting was implemented, four to  
12          five years ago now, I guess. But the line  
13          reporting change that went in place related to Mr.  
14          Nelson's reporting relationship upwards, which  
15          went to Regional Director General.  
16   Q    Ms. Bombardier, for the Enforcement Branch of  
17          Environment Canada, is it fair to say that the  
18          Enforcement Branch is less decentralized than DFO  
19          C&P?  
20   MS. BOMBARDIER: Definitely, yes. We have across the  
21          country on the environmental enforcement side, we  
22          have 24 district offices. So our staff are  
23          distributed across 24 offices, that's across  
24          Canada.  
25   Q    And within the Enforcement Branch staff in B.C.  
26          and the Yukon, I have a note that it's  
27          approximately 29 enforcement officers for B.C. and  
28          the Yukon, 19 of whom are in the Vancouver office?  
29   MS. BOMBARDIER: Yeah, I don't have the exact numbers,  
30          but that sounds right.  
31   Q    That sounds right?  
32   MS. BOMBARDIER: Actually, we have two officers in  
33          Whitehorse, and a number of vacant positions that  
34          we are trying to fill. So most of our staff is in  
35          B.C. and we have two officers in Whitehorse.  
36   Q    Okay. Mr. Steele, did you have a point?  
37   MR. STEELE: Yes. Just to clarify what I just said. I  
38          think I said that the only change was the Director  
39          to the RDG. It's actually two changes. The Area  
40          Chief position reporting directly to Mr. Nelson's  
41          position, and then him reporting in turn to the  
42          RDG. So just to clarify what I said earlier.  
43   Q    Thank you. Ms. Bombardier, to pick up on that  
44          point about reporting relationships, I'll do this  
45          fairly quickly. Am I right that the Enforcement  
46          Officers report to three District Managers, that  
47          being Coastal District, Southern Interior

1           Districts, and Central and Northern Region.

2 MS. BOMBARDIER: For B.C., yes.

3 Q For this province, thank you. And the Operational  
4 Managers report to the Regional Director, who in  
5 turn reports to you as National Director?

6 MS. BOMBARDIER: That's correct.

7 Q And in turn you report to the Chief Enforcement  
8 Officer, who reports to the Deputy Minister of  
9 Environment Canada?

10 MS. BOMBARDIER: Yes, that's correct.

11 Q Mr. Nelson, the Pacific Region branch or part of  
12 C&P has proposed that fishery officers receive a  
13 Provincial Special Constable designation. Could  
14 you please explain why it is that you're seeking  
15 that designation and how, and whether it ties in  
16 to habitat work in particular.

17 MR. NELSON: Well, it does tie into habitat work. In a  
18 lot of our field inspections we encounter things  
19 other than natural vegetation sometimes. Grow-ops  
20 can be located out in the woods, and when fishery  
21 officers encounter those, we are only peace  
22 officers when enforcing the **Fisheries Act**. So if  
23 you come across something like that, you now have  
24 to switch, by our policy, to perform the duties as  
25 a citizen. If you're in uniform and you're armed  
26 and you encounter somebody at one of these  
27 locations, it could be very difficult to convince  
28 them you're a citizen, and you would be expected,  
29 I feel, to act upon it.

30           There are other situations which we  
31 encounter. Impaired boat operators or people  
32 driving vehicles in our checks, and again by our  
33 policy, we can only act as a citizen. We can  
34 contact police authorities and try and keep  
35 somebody until they arrive, but if we had Special  
36 Provincial Constable status, it would help reduce  
37 the doubts that an officer might have to be able  
38 to deal with the situation right in front of them.

39           You know, it can be debated back and forth  
40 whether we have or have not the powers of a  
41 citizen and would be protected if we were to act  
42 on the situations, but in all the people I've  
43 discussed it with, it's unanimous in that this  
44 would help clarify it and reduce the risk.

45           We do not want fishery officers to become  
46 police officers. We do not want that to happen.  
47 It just would give them another means to help



1 protect themselves and the public when they  
2 encounter some of these -- in the exigent  
3 circumstances where they encounter some of these.

4 Q The premise for that, am I right to say, is the  
5 distinction between the private citizen and the  
6 citizen's power of arrest as it stands, as opposed  
7 to a police officer's power of arrest. Likewise  
8 perhaps the justification for use of force by a  
9 police officer which may differ from the citizen's  
10 use of force?

11 MR. NELSON: That's correct.

12 Q Mr. Steele, with respect to funding for the C&P,  
13 we understand, is it the case that C&P has a  
14 salary shortfall?

15 MR. STEELE: Currently we do, yes.

16 Q How does that impact on the ability to conduct  
17 habitat enforcement work nationally?

18 MR. STEELE: I wouldn't say that there's been a direct  
19 impact to date. The salary shortfall is an issue  
20 that we've been dealing with for the last, I  
21 guess, three to four years. We have been able to  
22 find solutions internally in terms of taking money  
23 from other programs department-wide, or within the  
24 C&P program. For the first couple of years it was  
25 a department-wide issue. For the last two years  
26 it's been addressed within the C&P program.

27 So what we've done is basically to access  
28 funds from some of our national programs that are  
29 managed at the Ottawa level and provided  
30 additional salary dollars to the regions to help  
31 them basically top up salary budgets to pay the  
32 people that are currently on staff without  
33 impacting any more than necessary on the  
34 operational funding, which would have an impact on  
35 patrol activity, day-to-day field work.

36 So up until now I would say the impacts have  
37 been -- there have been some impacts, but they  
38 have been minimized in that respect. Going  
39 forward though, the availability of that national  
40 funding is becoming more limited each year, and  
41 this particular year that we have just -- the  
42 fiscal year we have just entered, the amount of  
43 funding that was provided to regions is  
44 significantly less than previous years. So there  
45 will be impacts this year that will be seen, most  
46 likely, and the same situation going forward from  
47 there.

1 Q Mr. Nelson, you've been outspoken, at least within  
2 the Department, about the effect of cuts to C&P.  
3 Could you explain how cuts in your view over the  
4 last few decades have impacted on C&P's habitat  
5 work?

6 MR. NELSON: Well, I've been around a long time, right  
7 back to the '82 Pearse Commission report, and seen  
8 many reports and reviews conducted since. And  
9 each and every one that has dealt with enforcement  
10 work has recommended to the Department some  
11 improvements or some increases in funding and  
12 manpower. And in many cases it has resulted in  
13 some increases, albeit temporary.

14 One example is in '93 when there was a major  
15 reorganization. A bunch of Fishery Officer  
16 positions were converted to be Habitat Technicians  
17 and Fisheries Managers. And then the year after  
18 that, the '94 Fraser Review done by John Fraser  
19 recognized that as a concern. Some more resources  
20 were added to C&P, and gradually over time some of  
21 that money and some of those positions were  
22 reduced. And go forward to 2005, where the  
23 Williams Review happened. Some money was added  
24 and a few positions were added at that time.

25 But now we're seeing some serious challenges  
26 in our shortfalls. And this existing year, which  
27 April 1st, the fiscal year we've just started,  
28 we're starting off hundreds of thousands dollars  
29 short in salary. And the other looming thing,  
30 looming on the horizon, is something called the  
31 PICFI initiative, which is the Pacific Integrated  
32 Fisheries -- correct me here.

33 Q Commercial Fisheries Initiative?

34 MR. NELSON: Yes. Yes.

35 Q It's not always the case that I know the acronym,  
36 but for once.

37 MR. NELSON: That provides some funding, and that is  
38 scheduled to sunset about a year from now. Those  
39 two combined together -- and this is outside of  
40 the new additional workload things that have come  
41 at us, many, many things. There's a long list of  
42 other things that have been added onto our  
43 workload. But if we, just with the existing  
44 number of officers we have, to stay within our  
45 budget as of April 1st, 2012, we could have to cut  
46 as many as 30 or 40 of our fishery officers from  
47 our existing numbers, and that's outside of the

1 added responsibilities that have brought us  
2 through things like **Species at Risk Act**, changes  
3 in patrol coverage on our vessels. There's just a  
4 whole host of things.

5 So that's why I'm very concerned when related  
6 to this habitat protocol where it appears some of  
7 these tasks and duties, the expectation is, well,  
8 C&P will be there. We'll be part of this. We  
9 will help along. And we want to be, but I just  
10 can't see how, if things stay as they are and  
11 unfold as they look like they would, we won't be  
12 able to do an effective job.

13 Q Mr. Steele, I'd like to ask you to respond to  
14 that, and indeed I suppose the overall question is  
15 whether on the current or anticipated resourcing  
16 for the program, can the C&P program ultimately  
17 meet its obligations for habitat?

18 MR. STEELE: Well, I would agree with what Mr. Nelson  
19 has said. There's no question that the program is  
20 facing some serious budget issues. We, as I  
21 mentioned earlier, we've been facing them for a  
22 number of years now. But the flexibility to deal  
23 with those shortfalls centrally and to access  
24 funds in other programs is becoming much more  
25 restricted. So there is no question that there's  
26 a tightening of budgets in this region, and other  
27 regions across the country are facing the same  
28 budget issues.

29 There's still a bit of uncertainty involved.  
30 We don't have all of the information available,  
31 because there are budget review exercises that are  
32 still ongoing and we don't have the full picture  
33 yet. But even just given what we currently know  
34 about the salary shortfall that we've discussed,  
35 combined with the 1.5 percent salary increases  
36 that are not being funded centrally, that  
37 departments are required to cover internally, that  
38 will have an impact as well. So it will impact  
39 the Fisheries program generally, and the Habitat  
40 Enforcement program, as well.

41 The impacts are not clear. Things may  
42 change. There will be a review that's getting  
43 underway currently of the C&P program itself at  
44 the national level. A large part of that will be  
45 looking at budgets and financial issues, workload  
46 issues. Unfortunately, you know, the objective of  
47 that review is not to access at this point in time

1 at least. It's not to put a case forward for  
2 additional funding, because that's not in the  
3 cards currently. It's to basically find a way to  
4 work within the current budgets that we have.

5 So I would agree with what Mr. Nelson has  
6 said. There will be, unless things change,  
7 unless, you know, conditions change, new money is  
8 found, a decision could be made internally to  
9 reallocate potentially. But failing that, I would  
10 say that yes, there will be impacts on the Habitat  
11 program, on the Fisheries Enforcement program  
12 generally, in this region and across the country.

13 Q When you refer to a national review, is that a  
14 strategic review? Is that the same thing?

15 MR. STEELE: No. A strategic review is another  
16 exercise, government-wide. When I was referring  
17 to a process that we don't yet know the results  
18 of, that's what I was referring to there. The  
19 other is a review, an internal review to the C&P  
20 program, basically looking at how we conduct our  
21 business, our workloads, doing a bit of a  
22 comparison, region-to-region across the country,  
23 looking for potential efficiencies, basically, you  
24 know, uses of new technology that might help  
25 reduce costs and improve efficiencies, that kind  
26 of thing. Also looking at basically where we  
27 spend our money. Are there ways that we could get  
28 out of certain things that we're currently doing  
29 that are costing a lot of money. You know, I  
30 don't think there's a large list of those items,  
31 but there could be efficiencies to be gained in  
32 how we're conducting business. But that's an  
33 internal process to C&P.

34 THE COMMISSIONER: Mr. Martland, you may be coming to  
35 this so I apologize if I've jumped the gun, but  
36 would it be possible to have these witnesses be a  
37 bit more specific about Fraser River sockeye and  
38 to describe, if they can, either historically or  
39 currently, how what they just said about resources  
40 and the application of those resources bear upon  
41 Fraser River sockeye. And if they can give  
42 examples, that will be helpful.

43 MR. NELSON: Okay. I'm going to start with where I  
44 talked about in '93 some changes that happened in  
45 the upper part of the Fraser watershed, which I  
46 was responsible for at the time. We had eight  
47 fishery officers left to deal with the whole Upper

1 Fraser. That was found to be an issue. The  
2 numbers were brought up to as high as -- they were  
3 as high as 29 at one time in the Upper Fraser.  
4 The Lower Fraser had about 40, low 40s, is the  
5 most number of officers they have ever had.

6 And when the Williams Review happened, there  
7 was some serious funding shortfalls and the  
8 Williams Review focused on the Fraser River as far  
9 as the funding sources. And there was about \$1.8  
10 million came to C&P to shore up some of our  
11 shortfalls at that time. That money came from  
12 deputy's reserves. I'm not exactly sure where,  
13 but it wasn't permanent funding. So it was funded  
14 out of Ottawa on an interim basis until the PICFI  
15 program came along. And then the funding required  
16 for the Fraser River through Williams was rolled  
17 into PICFI, if that makes sense. I didn't think  
18 that was a wise thing, because I knew that PICFI  
19 would sunset and I said, "Down the road, we're  
20 going to -- this money's going to end," and it's  
21 coming next year.

22 So for the Fraser River, next year, and  
23 partly this year, there is about -- I think the  
24 number has been reduced, about \$1.2 million will  
25 no longer be available to C&P, and that would  
26 essentially eliminate overtime, a lot of operating  
27 money, and require us to cut back on positions.  
28 And for rough calculation purposes, \$100,000 will  
29 purchase you a fishery officer and all the  
30 associated costs. That's a ballpark idea. So on  
31 the Fraser River could be 10 to 15 fishery  
32 officers, if we did on a prorated basis, the  
33 shortfalls that we currently have.

34 MR. MARTLAND:

35 Q Ms. Bombardier, I wonder if I could ask you with  
36 respect to Environment Canada Enforcement Branch  
37 funding. I had a note that there was additional  
38 funding in the recent stretch from 2008 to the  
39 effect of \$21 million or \$22 million in funding.  
40 You may be able to assist me in clarifying those  
41 numbers. But I understand there is money to  
42 increase the capacity of the Enforcement Branch,  
43 and indeed that there was some portion of that. I  
44 have a note of 5.5 million was to go specifically  
45 towards **Fisheries Act** administration and  
46 enforcement. Could you help me clarify first in  
47 terms of the picture on funding, and more

1 generally what that means for fish habitat work  
2 and tying back to the Fraser River sockeye  
3 habitat, if possible.

4 MS. BOMBARDIER: Okay. The Enforcement Branch was  
5 given \$22 million from 2007-2008, and that  
6 actually that amount from Treasury Board covered  
7 two years, and there's ongoing commitments with  
8 regards to that Treasury Board submission. So \$22  
9 million over two year, and we hired 106  
10 enforcement officers, both on the Wildlife side  
11 and Environment, so 106 total. Environmental  
12 Enforcement got 68 of those 106 officers. Nine of  
13 those officers were located in Pacific and Yukon,  
14 mainly in B.C. Province. The following year  
15 Environment Canada got an additional 21 million  
16 because to introduce 106 officers at the time was  
17 a 50 percent increase in our workforce. That's  
18 quite significant. So we got additional resources  
19 to build up the program to support management, so  
20 management functions and creation of a new  
21 directorate planning policy and coordination at  
22 the same time with this new funding.

23 The 5.5 million that you've indicated in the  
24 -- that's in the CESD report, refers to money that  
25 that Environment Canada allocates to **Fisheries**  
26 **Act**, it's not only enforcement. In Enforcement we  
27 don't budget by regulation or by instrument. We  
28 have our annual budget, and we identify our  
29 priorities and we make sure that we cover all our  
30 salaries. And our own aim is to support the  
31 activities in the field mainly, equipment  
32 purchases and that sort of thing. But we don't  
33 budget by instrument, so I don't have a number in  
34 terms of how much we spend specifically on  
35 **Fisheries Act** enforcement.

36 Q And just so we're clear, that when you refer to  
37 the CESD, that's the 2009 CESD report?

38 MS. BOMBARDIER: Yes, that's the one.

39 Q And I'll just put on record my note is Exhibit 34,  
40 page 17, is where that point arises. Mr. Nelson,  
41 I think you at least touched on the notion of  
42 specialized habitat officers as opposed to  
43 fisheries officers who do habitat, but also other  
44 work. Were there specialized habitat fishery  
45 officers, when did that stop and if it did, and in  
46 your view should there be such officers with a  
47 specialty.

1 MR. NELSON: For a short period of time, and I might  
2 not have the exact years, but it was around from  
3 1999 to 2003 there were as part of the Habitat  
4 Stewardship Program, I think there were three or  
5 four fishery officers located in the Fraser River  
6 watershed, specifically for habitat. That was  
7 sunset money, and it dried up.

8 Plus in the B.C. Interior we also took one of  
9 our fishery officer, a regular fishery officers'  
10 positions, and made him a specialist in habitat  
11 enforcement, and to oversee and help mentor new  
12 officers on how to do habitat investigations, and  
13 kind of peruse their files to be a bit of -- to  
14 checklist and provide checklists for the system.  
15 That worked very well, in my view, but that person  
16 retired and due to funding concerns we didn't  
17 replace that position. And of course the Habitat  
18 Stewardship program, once the funding stopped,  
19 those positions stopped as well. I think they're  
20 a very effective way to deal with it, but we  
21 couldn't do it -- well, we could do it from the  
22 existing resources, but with the shortfalls we  
23 have, it's going to mean some drastic cuts on some  
24 of the other priority programs we have to deal  
25 with, enforcement of fisheries on the Fraser  
26 River, for example.

27 Q Mr. Nelson, EPMP, if I have the dates right, is  
28 about 2004 or 2005 that EPMP is introduced. Did  
29 that have an effect on the role of fishery  
30 officers working on habitat, and in particular did  
31 EPMP send a signal to fishery officers or a  
32 message about the importance of habitat work  
33 versus other priorities for fishery officers?

34 MR. NELSON: It sent -- it came in a very clear signal  
35 that there was a move to have fishery officers not  
36 doing habitat enforcement work. That was clear.  
37 It came out in a number of avenues, including the  
38 Speech from the Throne and a direction from the  
39 Deputy Minister of the day, Larry Murray, provided  
40 a very clear explicit direction that nationally  
41 for habitat there would be a reduction of I think  
42 it was around 80 fishery officers. Within this  
43 region there was about 24 fishery officers that  
44 were supposed to be reduced. And it was very  
45 clear that the new direction was going to be  
46 providing users with operational statements, more  
47 education, more stewardship, which I agree are

1 very, very important programs and we do a lot of  
2 that within our existing program.

3 But in my view, removing, reducing the amount  
4 of fishery officers out doing any enforcement  
5 work, but including habitat enforcement, reduces  
6 our effectiveness. Officer presence is one of the  
7 best deterrents we have. The presence of a  
8 uniformed fishery officer in any fishery and in  
9 habitat cases, really it's the best tool we have.

10 And having said that, the direction was  
11 reduce this. We followed that direction and have  
12 reduced the amount of work we're doing on habitat  
13 enforcement throughout the region and on the  
14 Fraser River.

15 Q Mr. Steele do you agree with those comments and do  
16 they apply at a national level, as well?

17 MR. STEELE: I'm not sure what you mean "apply", do the  
18 comments apply to the --

19 Q Do the comments to those concerns or comments  
20 about a message to fishery officers and a change  
21 in their focus apply at a national level, in your  
22 view?

23 MR. STEELE: Well, I would say the impacts of the EPMP  
24 were felt more in this region, Pacific Region, and  
25 the Central and Arctic Region. In the other  
26 regions of the country, I would say the impacts  
27 were minimal. The focus for the reductions that  
28 Mr. Nelson talked about were here in Pacific  
29 Region, with 24 positions that were initially  
30 proposed for being cut, and in the Central and  
31 Arctic region it was, I believe 56 positions for a  
32 total of 80. That was the initial proposal.

33 There was a change, of course, though, before  
34 implementation actually occurred. There was a  
35 change, of course, a new Minister was in place and  
36 the decision to reduce the 24 positions in this  
37 region was reversed. So the reductions never  
38 actually took place in terms of positions actually  
39 coming off the books.

40 But what Mr. Nelson's referring to is the  
41 message that came out in the Speech from the  
42 Throne at the time and probably some subsequent  
43 communications internally within the Department,  
44 before the decision was made to reverse the cuts.  
45 Definitely, I think people took the message from  
46 that, regional staff, that, you know, that they  
47 were expected to change their focus more towards



1 the fisheries enforcement end of the business,  
2 because at the same time, of course, we had the --  
3 this was shortly after the Williams Commission,  
4 and a lot of focus on Fraser River salmon at that  
5 time, as well. So definitely there was, the  
6 message was taken to shift focus from habitat work  
7 into -- into the fisheries enforcement field, and  
8 that's what's occurred. And I think, you know,  
9 the trend over the last five to six years in terms  
10 of percentage of time spent on habitat work would  
11 reflect that, as well.

12 Q And let me turn to that point about the time and  
13 the emphasis put on habitat work. My  
14 understanding is that C&P uses an integrated risk  
15 management or IRM process and what I'm hoping you  
16 can help me understand is the IRM, the integrated  
17 risk management process integrated with or tied to  
18 the setting of priorities for C&P, are those  
19 different things, or are they part of the same  
20 thing?

21 MR. STEELE: They're part of the same process, yes.

22 Q And is that, if you could in a two-minute way,  
23 give us an understanding of how that process  
24 operates, whether it's done on an annual basis and  
25 how that process unfolds.

26 MR. STEELE: Yes, it is done annually. It's done at  
27 both the national level and the regional level.  
28 Mr. Nelson will be able to give much more detail  
29 on the regional process. At the national level we  
30 get together each year with the regional directors  
31 from six regions across the country, including Mr.  
32 Nelson. We look at -- we go through, well, first  
33 of all, we have a risk profile that's developed  
34 for the organization as a whole. It's looking  
35 more at corporate as opposed to operational type  
36 risks. But we do review that from time to time.  
37 The most recent updating was in December of 2010.

38 So we look at basically have a discussion  
39 generally about priorities for the coming year,  
40 review work that was done last year, what was on  
41 our list from the previous year, what's been  
42 completed, what new initiatives are coming down  
43 the pipe. But at the Ottawa level it's looking  
44 more at the corporate issues, and budgets, of  
45 course, being a large issue at play there.

46 But through a consensus process with the  
47 regional directors we develop a list of priorities

1 for the coming year. The last couple of years  
2 we've tried to, because it turns out to be quite a  
3 long lengthy list, so we've made an effort to kind  
4 of prioritize those between "A", "B" and "C"  
5 priorities. We generally produce that early in  
6 the year, send it out to the regions, and they  
7 then use that as a guide to go through their own  
8 integrated risk management process, which is  
9 focused much more on the day-to-day management of  
10 the fisheries in setting priorities as to where  
11 the fishery officer effort should be spent, and  
12 where resources should be spent during the coming  
13 year. And that includes looking at individual  
14 fisheries, the risks to compliance that are in  
15 those particular fisheries. The risks to  
16 compliance, but also the likelihood of non-  
17 compliance and the impacts of non-compliance of  
18 the resource. The risks of non-compliance in some  
19 cases might be high but the impacts are low, so  
20 that would be all taken into consideration in  
21 deciding where you're going to devote your  
22 resources for the coming year.

23 So that's a regional process that would work  
24 its way into regional work plans that would then  
25 be tied in with the budget allocations obviously,  
26 and we've developed some systems nationally that  
27 assist in making that connection between budgets  
28 and the work planning process. So those work  
29 plans are developed regionally, rolled out, and  
30 then the process renews itself at the end of each  
31 year.

32 Q And, Mr. Nelson, through that process, could you  
33 help us understand where does habitat fit in the  
34 list of priorities and in particular if you can  
35 tie that to Fraser River sockeye habitat.

36 MR. NELSON: Yeah. The integrated risk management  
37 process, as described, is we get together with all  
38 my direct reports, about 12 people, and we take  
39 the national priorities, the regional priorities,  
40 and we actually do a voting device and come up  
41 with what's called a heat map, and it points which  
42 are the things that we should really focus our  
43 attention on, and habitat is one of those. Having  
44 said that, the amount of time we're able to  
45 dedicate it has been reduced because that's been  
46 the direction that we're supposed to go.

47 So it is a priority, but it does not get the

1 attention that it used to, nor could we easily go  
2 back, given all the other things that have been  
3 added onto our agenda: just a couple, like  
4 wastewater treatment plants and not on the Fraser  
5 River, but it takes resources that prevents us  
6 from allowing to put people on the Fraser River  
7 when we actually need them.

8 So, you know, something I do want to touch  
9 on, too, is some of the things we've done to try  
10 and mitigate some of these reductions. Moving to  
11 intelligence-led policing has really helped us.  
12 Line reporting has probably been the biggest  
13 thing, biggest most positive thing for C&P in my  
14 career. It helped us focus our attention. We  
15 approach compliance work regionally. We're more  
16 efficient, we can move things around easier, and  
17 the morale has increased dramatically under line  
18 reporting. It just has made us a better  
19 organization.

20 But, you know, getting back to the issue of  
21 habitat here on the Fraser, we've reduced our  
22 amount of work we do on habitat.

23 Q You've referred to a heat map. I wonder, Mr.  
24 Bisset, if you could please bring up document 15  
25 on our list, and I'll just look at the first page  
26 to confirm. This is the C&P Priorities Statement  
27 F2010-11 National and Pacific Region; is that  
28 correct, Mr. Nelson?

29 MR. NELSON: That's correct.

30 MR. MARTLAND: I'd ask that be marked as the next  
31 exhibit, please.

32 THE REGISTRAR: Exhibit 695.

33  
34 EXHIBIT 695: C&P Priorities Statement F2010-  
35 11 National and Pacific Region  
36

37 MR. MARTLAND: If I can trouble you to please go to the  
38 last page, Mr. Bisset. If you could do your best  
39 to zoom in on the graph at the top, or the chart  
40 at the top, I'm going to try and do this with a  
41 red laser pointer, so we'll see.

42 Q You can help me to direct, and you can even take  
43 control of this, Mr. Nelson --

44 MR. NELSON: Yes.

45 Q -- if you'd prefer. But is this the heat map you  
46 were describing?

47 MR. NELSON: This is. And the legend on the 1 to 11 on

1 the right-hand side there, those aren't in any  
2 particular order or priority.

3 Q Okay.

4 MR. NELSON: Those are just numbered. And when we  
5 enter our information and vote on it, we come up  
6 with a numerical point on this achievability and  
7 importance matrix. And you'll see number 4 being  
8 "Habitat".

9 Q Right. There we see "Habitat Management", we see  
10 that in the upper right under relatively low on  
11 the achievability, and yet high on importance; is  
12 that correct?

13 MR. NELSON: Yes. It's about four out of ten on  
14 achievability and roughly six or seven out of ten  
15 on importance.

16 Q And although I'm doing my best to avoid the word  
17 aquaculture, "Aquaculture", number 2 on the list,  
18 shows up on low achievability, high importance, as  
19 well?

20 MR. NELSON: Yes.

21 Q What does low achievability refer to or capture  
22 there?

23 MR. NELSON: Well, on the habitat, are we able to  
24 deliver on it? And when this was done, we hadn't  
25 hired any of our staff for aquaculture so it  
26 stands to reason that we're not likely going to be  
27 able to achieve it in that year because we don't  
28 have the staff in place yet.

29 Q And just to be clear, March 2010 is the date at  
30 the top there and Canada, the federal government,  
31 at least, assumes conduct of that brief, so to  
32 speak, end of the year in 2010.

33 MR. NELSON: December 18th of 2010.

34 Q I'd like to turn to the PPR and to paragraph 53,  
35 pages 23 to 24 is where that paragraph appears.  
36 In fact, I'm sorry, Mr. Bisset, if you could  
37 instead go to page 47 of the PPR, which is  
38 Appendix B. And this may be another challenge in  
39 terms of us seeing what's on the screen there.  
40 But am I right to say, Mr. Nelson, this, what's  
41 provided at Appendix B to the PPR is something  
42 that indeed you prepared in response to a request  
43 that Commission counsel made of you, to get an  
44 understanding of the work that is put into habitat  
45 and in particular relevant to the Fraser River  
46 sockeye habitat area, broadly speaking?

47 MR. NELSON: That's correct. There's four sections on

- 1 this, and the top two refer to Pacific Region, and  
2 the bottom two, "LF" refers to Lower Fraser and  
3 "BCI" is BC Interior, so those two areas encompass  
4 the Fraser River watershed. And "I&I" is  
5 Intelligence and Investigation" and they're  
6 included because they do some work there, as well.
- 7 Q And at a broad level, and appreciating that these  
8 lines in terms of the years, if we scroll a little  
9 to the right, that the 2004 -05 line may be in a  
10 different column, depending on the particular  
11 chart. I won't do this in any detail, but I'll  
12 suggest, and I'll see if you agree, that if one  
13 were to draw a line between 2004 and 2005 on these  
14 different tables, that you'd see that there seems  
15 to be a marked decrease in the work effort put  
16 towards habitat in the Pacific Region and in the  
17 Lower Fraser and the area you've just described;  
18 is that fair to say?
- 19 MR. NELSON: Yes. The big reduction is in 2004-2005,  
20 and that trend continues downward slightly right  
21 through until today.
- 22 Q Why?
- 23 MR. NELSON: That's to follow the direction of the  
24 EPMP, and that fishery officers would not be doing  
25 as much compliance work on habitat enforcement.
- 26 Q In terms of --
- 27 MR. NELSON: And, you know -- oh, sorry.
- 28 Q Go ahead.
- 29 MR. NELSON: Also, you know, with the EPMP when it came  
30 out, it was very clear to fishery officers that  
31 the Department wanted less work done on habitat.  
32 And around that time in 2005, of course, was the  
33 Williams Review, which also focused a lot of  
34 attention on Fraser River sockeye, and then our  
35 perceived lack of ability to conduct enforcement  
36 on fisheries on the Fraser River. So if you were  
37 to see the rest of the picture, it would show a  
38 big increase on patrol activity on the Fraser  
39 River, to address the concerns.
- 40 Q And just so I'm clear about it, the unit of  
41 measurement here is hours, and these refer to  
42 enforcement officer hours put in that are tracked  
43 through, I forget the name of the acronym.
- 44 MR. NELSON: It's called the --
- 45 Q Is it FEATS?
- 46 MR. NELSON: FEATS program, yes. It tracks our effort.  
47 We have a very detailed account of our officers'

1           time. We're the only part of DFO I'm aware of  
2           that we have such a detailed accounting program.  
3           We can tell you how much time we spent, it's done  
4           in -- officers track it in 15-minute intervals and  
5           put it into this computerized system. That's how  
6           these are generated.  
7           Q     And the FEATS, F-E-A-T-S, is the abbreviation,  
8           which is summarized in the PPR; is that correct?  
9           MR. NELSON: Yes.  
10          Q     Thank you. Mr. Steele, do you agree is EPMP a big  
11          part of why there would seem to be significantly  
12          less effort put towards habitat enforcement work,  
13          post-2004-05?  
14          MR. STEELE: Yes, I think the two factors Mr. Nelson  
15          described are both valid. The EPMP combined with  
16          the focus at the time on fisheries enforcement on  
17          the Fraser River would be the two key factors, I  
18          think.  
19          THE COMMISSIONER: Mr. Martland, I wonder, again I  
20          apologize for interrupting, I just want to make  
21          sure that I have a picture of what all of these  
22          statistics are telling us. What I need to have,  
23          Mr. Nelson, if you could help me, is just some  
24          fundamental understanding of what the folks who  
25          work under you and under other departments,  
26          habitat, for example, monitoring, and perhaps with  
27          Environment Canada, are actually doing. And I'm a  
28          city slicker, so my impression of enforcement is  
29          people riding around in squad cars or on a beat,  
30          keeping an eye out. But it must be very different  
31          between marine and freshwater. And I'm thinking  
32          in terms of what the evidence we've heard up to  
33          this point around monitoring, it's a voluntary  
34          process. People come to the DFO with regard to a  
35          project, for example. And we've heard evidence  
36          that most of the time is spent on project  
37          referrals.  
38          MR. NELSON: Yes.  
39          THE COMMISSIONER: But you have a role as well, I  
40          assume --  
41          MR. NELSON: Yes.  
42          THE COMMISSIONER: -- in connection with that process.  
43          So if you could just give me a bird's-eye view of  
44          what the folks are doing in DFO, both on how  
45          monitoring enforcement relate to each other, and  
46          what your officers are actually doing on a daily  
47          basis.

1 MR. NELSON: Okay. Actually, it doesn't differ much  
2 from what a beat officer does, other than the mode  
3 of transportation we use may be a boat, it may be  
4 a vehicle, it may be a helicopter. And that the  
5 area we patrol is much larger. And we go out into  
6 the Fraser River watershed and, you know, up until  
7 2005 we did a lot more let's go check this  
8 watershed out today. We would drive out there,  
9 look, look under rocks, look wherever you can, and  
10 look for problems. That capacity is diminished  
11 now, and we don't go looking for it as much as we  
12 have to work with -- and when we did that, we also  
13 worked very closely with the Habitat staff,  
14 because they have an idea on the referrals, where  
15 things are likely to happen. So they would bring  
16 that information to us and say "We've got a whole  
17 lot of activity going on in this area. Could you  
18 go have a look at it," and we would do that. But  
19 we might also look in other places where we don't  
20 have referrals, and you will find things. If  
21 you're out there, you will find them. In 2005,  
22 now we work under EPMP and with this new protocol,  
23 we're going to rely more on Habitat staff to  
24 determine where we're going to go.

25 THE COMMISSIONER: I see.

26 MR. NELSON: Does that make sense?

27 THE COMMISSIONER: Yes. Thank you.

28 MR. MARTLAND:

29 Q Ms. Bombardier, I'd like to ask you about similar  
30 sort of questions about the relative priority of  
31 fish habitat and s. 36 work that is done within  
32 the Environment Canada Enforcement Branch. As  
33 well, if you're able to give us a picture of the  
34 time and resources put towards that work, as  
35 opposed to other sorts of work that Environment  
36 Canada Enforcement Branch addresses, please.

37 MS. BOMBARDIER: For Environment Canada, for the  
38 Enforcement Branch, Environmental Enforcement  
39 Directorate, **Fisheries Act** has been at least for  
40 the past seven years a top priority for  
41 enforcement, and that includes s. 36(3) and the  
42 pollution prevention regulations, the six  
43 regulations pursuant to 36(4).

44 We don't track the time that our officers  
45 spend on a particular regulation. We track our  
46 level of effort by the number of inspections.  
47 That's not the best method and there are different

1 pros and cons of that. But that's how we  
2 currently do that, so we measure our level of  
3 effort based on the number of inspections.

4 So in a normal, like, in over a year, we can  
5 do approximately 8,000 inspections under **CEPA** or  
6 the **Fisheries Act**, but over the past, since 2007,  
7 as far as I had checked, 2007 to now, we have done  
8 40 percent, 40 to 45, 46 percent of our  
9 inspections have been done on 36(3) and the  
10 pollution regulations under the **Fisheries Act**. So  
11 it is quite significant in terms of effort.

12 Our approach is sometimes proactive when you  
13 know there's a sector that is problematic, and we  
14 identify a sector in the particular region, or  
15 across the country, we target that sector and we  
16 conduct inspections to monitor compliance. So we  
17 have a proactive approach, and we also have the  
18 reactive approach due to incidents, occurrences,  
19 referrals that we get or complaints. So we  
20 allocate a certain amount of our effort to be  
21 reactive so we can respond to those incidents.

22 Q I wonder if I could bring up two documents  
23 quickly, just because they'll help to complete the  
24 picture if we need a better understanding. Number  
25 16 on the list of exhibits, could you please  
26 briefly describe, Ms. Bombardier, what this  
27 document is.

28 MS. BOMBARDIER: That's our work plan. it's a new  
29 template that we tried in 2009-2010 to look at.  
30 At the time around March 2009 the Enforcement  
31 Branch has developed a strategic enforcement  
32 framework, so we've identified our mission and  
33 some immediate and intermediate and long-term  
34 outcomes so we can measure performance against  
35 those outcomes. So that framework came into place  
36 around March 2009. So our work plan was adjusted,  
37 the format was adjusted to align our activities to  
38 be able to measure whether we are meeting our  
39 immediate outcomes. So in the document that you  
40 have in front of you, we have the intermediate  
41 outcome, which is enforcement activities, our aim  
42 to prevent environmental damage and bring  
43 offenders into compliance.

44 So in terms of immediate outcome that pertain  
45 to **Fisheries Act** and **CEPA**, unlawful releases of  
46 harmful substances which includes deleterious  
47 substances into the environment, are prevented or



1 minimized. So by our actions we're minimizing or  
2 preventing those substances from reaching the  
3 environment. And then we have our business  
4 function. So we conduct intelligence activity.  
5 We have intelligence officers, about 15 across the  
6 country that conduct intelligence activities. We  
7 have inspections, of course, and investigations.  
8 And then in terms of targets, we identify what we  
9 want to achieve in terms of what sector we want to  
10 look at.

11 So we have different instruments listed in  
12 the work plan, and for each we identify a target,  
13 let's say under the **Fisheries Act** it could be fish  
14 processing plants. So in that sector, we identify  
15 targets in each region where there's a sensitive  
16 habitat, where the volume of release is important,  
17 so we target the facilities where we believe the  
18 highest risk of non-compliance are. And that's  
19 based on information we have in our database, but  
20 also in intelligence activity as well.

21 We have tried in 2009 to allocate FTEs to  
22 those efforts, but we haven't measured whether  
23 those resources have actually been spent, because  
24 we don't have a mean of tracking FTEs or level of  
25 effort time of our officers.

26 Q There's nothing equivalent to the FEATS tracking  
27 hour-by-hour in terms of enforcement officers'  
28 time; is that correct?

29 MS. BOMBARDIER: No, we have a database and it's called  
30 NEMESIS.

31 Q Okay.

32 MS. BOMBARDIER: But that looks at -- we have all the  
33 files that are listed and filed there, but it  
34 doesn't track time.

35 MR. MARTLAND: Understood. If I could ask this be  
36 marked as the next exhibit, please.

37 THE REGISTRAR: Exhibit 696.

38  
39 EXHIBIT 696: Overall EED Workplan Template  
40 (Overarching) EB Priorities for 2009-10  
41

42 MR. MARTLAND: Some of these are documents that were  
43 received after the PPR, so for counsels' benefit,  
44 they're not included, or at least they're not  
45 referred to in the PPR.

46 Q Number 19 on the list of exhibits for Commission  
47 counsel is the Environmental Enforcement

1           Directorate National Enforcement Plan 2010-2011;  
2           is that correct?

3       MS. BOMBARDIER: Yes, that's correct, for the  
4           Environmental Enforcement Directorate, yes.

5       MR. MARTLAND: And I'll ask this be marked as the next  
6           exhibit, please.

7       THE REGISTRAR: Exhibit 697.

8

9

          EXHIBIT 697: Environmental Enforcement  
10           Directorate, Enforcement Branch, Environment  
11           Canada, National Enforcement Plan 2010-2011

12

13       MR. MARTLAND:

14       Q     Does this National Enforcement Plan likewise speak  
15           to the priority that is given to s. 36 of the  
16           **Fisheries Act**?

17       MS. BOMBARDIER: Yes. It speaks to the priorities of  
18           the Environmental Enforcement Directorate, so it  
19           includes **Fisheries Act**.

20       Q     Mr. Nelson, I'll begin with you on this question.  
21           When there is a potential violation, could you  
22           give us some understanding of the toolbox, I  
23           suppose, the potential responses that an officer  
24           might take, running from warning letters,  
25           inspector's directions, Minister's orders,  
26           injunctions, and ultimately prosecutions, and in a  
27           quick way, how would an officer make an assessment  
28           as to which tool to reach for, which approach to  
29           take.

30       MR. NELSON: Well, just follow an example through. An  
31           officer gets a complaint from somewhere, it could  
32           be from our radio room, from Joe Public, a Habitat  
33           person, DFO staff, gets a complaint about a  
34           habitat occurrence and first of all, has to  
35           decide, you know, is it in -- has to give it a  
36           little bit of a lens, working with the Habitat to  
37           determine are they going to go out and have a look  
38           at it.

39

          Let's assume they're going to go out and have  
40           a look at it. The fishery officer will travel out  
41           to the site and try and ascertain is it a  
42           violation? Is it still happening? If there is a  
43           violation, immediately start gathering as much  
44           evidence as possible, pictures, samples,  
45           interview, people are on site, get as much of the  
46           information you can. And all the time they're  
47           also thinking of what can you do, your immediate

1 concern would be to try and stop the violation  
2 from continuing. So that's where your inspector  
3 powers will come in and assist you. If somebody's  
4 got a Cat in a creek, the simplest example, you  
5 have the ability to stop that activity right then  
6 and there.

7 And assuming everything, everybody's  
8 cooperative, everything, you get things aside, now  
9 you have to decide how to deal with this. You  
10 can, if the proponent, or the violator is very  
11 cooperative and, you know, you can tell when  
12 talking to people, do they know what they're  
13 doing, try to get an assessment of what they were  
14 doing, and then decide can they fix this. And you  
15 may have to -- will likely have to rely on a  
16 habitat expert to come in and have a look at it as  
17 well.

18 If the person follows through and gets  
19 everything back in order and on and on, you may be  
20 satisfied with a verbal warning or a written  
21 warning, depending on the situation. If it's  
22 serious or they're not cooperative, you escalate  
23 right up to prosecution.

24 And all of the things you mentioned are  
25 options: an inspector's direction, a warning,  
26 charging the person, dealing it through a  
27 restorative or alternative dispute resolution way.  
28 We've had some very good success. We're the first  
29 resource agency in North America that we have used  
30 restorative justice as a means to dealing with  
31 Fisheries offences, and it's been very effective  
32 in a couple of quite serious habitat cases, as  
33 well.

34 Q And, Ms. Bombardier, from an Environment Canada  
35 perspective, is that a similar, at a broad level,  
36 are there different tools or differences in  
37 approach for Environment Canada enforcement  
38 officers on habitat?

39 MS. BOMBARDIER: No, and under the **Fisheries Act** we  
40 have the same tools, we have the same designation,  
41 fisheries inspectors, fisheries officers. So at  
42 the bottom of the pyramid you have warning letters  
43 for more administrative type violations. Then we  
44 have inspector's direction that we've used quite a  
45 bit to stop or prevent a release, and the good  
46 thing about those directions is you can actually  
47 indicate measures that are required to be taken by

1 the regulatee or the offender. And then you can  
2 ask to have regular reports back to the  
3 enforcement officer to monitor progress, and with  
4 the final report. So it is a very effective tool  
5 and the last resort is prosecution.

6 Q And I have a question about who it is in  
7 Environment Canada how these decisions are made  
8 and where the responsibility lies to make a  
9 decision. One document we were provided that may  
10 assist you in answering that is Tab 17, the IDMP,  
11 which is the EED's internal decision-making  
12 process.

13 MS. BOMBARDIER: Yeah, that's a document that was  
14 developed many years ago, basically to clarify  
15 who, what level we need to seek approval, or the  
16 officer needs to seek approval, or needs to  
17 inform, or needs to seek guidance before he makes  
18 -- he or she makes a decision on a particular  
19 enforcement activity or response to a violation.  
20 So you have at the regional level, you have the  
21 officer and then you have the operations manager,  
22 and the regional director, and depending on the  
23 type of action or activity, depending if it's a  
24 routine case, if a routine means -- I'll go with  
25 the non-routine, it's perhaps easier to.

26 Non-routine is an action against another  
27 federal government, against a province or against  
28 another level of government. It could be a  
29 measure that is in line with compliance with an  
30 international convention or international  
31 protocol, so we have international obligations.  
32 So those are considered non-routine and  
33 automatically the level of approval is increased  
34 or oversight on the enforcement action.

35 In headquarters for some of those actions,  
36 the officer needs to inform up and has done  
37 through our NEMESIS database, so we are aware that  
38 those actions are being taken. And there's also  
39 consultation with our legal services.

40 And the last column on the right is EAB, it's  
41 titled "EAB", that's our Enforcement Action  
42 Briefing. So it's the document that is filed in  
43 NEMESIS that provides all the details on the case  
44 and the enforcement action. So we get a file that  
45 is in NEMESIS. And for **Fisheries Act**, actions  
46 taken under the **Fisheries Act**, we send a copy of  
47 those EABs to C&P and DFO, so they're aware of the

1 activities that we're conducting under the  
2 **Fisheries Act.**

3 MR. MARTLAND: I'll ask this be marked as the next  
4 exhibit, please.

5 THE REGISTRAR: Exhibit 698.

6  
7 EXHIBIT 698: EED's Internal Decision-Making  
8 Process (IDMP), December 2010  
9

10 MR. MARTLAND:

11 Q Mr. Nelson, this would seem a helpful way to  
12 structure decision-making. Is there something, is  
13 there a comparable document or guidance for DFO  
14 C&P?

15 MR. NELSON: No, there is not one like this. No.

16 Q Would it be useful?

17 MR. NELSON: Yeah, I think it would be useful, could be  
18 useful. A couple of things I didn't mention, that  
19 I should go back to the scenario. One of the  
20 first things you have to do, of course, is it our  
21 responsibility? I forgot, that's the first step.  
22 If it was an oil spill, for example, it might be  
23 go to Environment Canada. And one other option  
24 you do consider is, do you respond? In some cases  
25 we do not respond.

26 Q Yes.

27 MR. NELSON: I forgot those. But this looks like a  
28 useful document. We have something similar. But  
29 I've got to admit it's been a long time since I've  
30 been in the field, and I do know officers have  
31 something like a checklist, but I'd have to find  
32 out about it. I'm not familiar with it.

33 Q You referred to alternatives to prosecution and  
34 restorative justice as one possible alternative to  
35 the full-blown prosecution. Ms. Bombardier, is  
36 that an approach that similarly Environment Canada  
37 may take in s. 36 cases?

38 MS. BOMBARDIER: Yes, we do. In some of our  
39 convictions there is an order, court order to  
40 allocate or to direct funds to conservation or  
41 protection of habitat. So that is in some of our  
42 cases we've had that under s. 79(2) of the  
43 **Fisheries Act.** Under **CEPA** we have similar  
44 provisions, as well. So that is something that  
45 we've done. We have other tools under **CEPA** that  
46 are not available under the **Fisheries Act**, and in  
47 terms of alternative dispute resolution,

1 alternatives to court proceedings.

2 Q What are those. Could you give us a sense of what  
3 it is that **CEPA** has and the **Fisheries Act** doesn't?

4 MS. BOMBARDIER: One of those tools is the  
5 Environmental Protection Alternative Measure, it's  
6 called EPAM. So basically it's an agreement  
7 between our prosecutor and the defence, and it  
8 includes actions that the regulatee -- first you  
9 have to lay the charges, but instead of going to  
10 court, there's kind of an agreement outside of  
11 court.

12 Q Mm-hmm.

13 MS. BOMBARDIER: And that is a public document, and it  
14 includes measures that the regulatee is going to  
15 undertake in order to correct the situation,  
16 mitigate the violation. So it's called an EPAM.  
17 And those are public documents, so there's public  
18 scrutiny, and we've used that in the past under  
19 **CEPA**.

20 Q Do you think something like that -- I appreciate  
21 none of us is here to write the laws of the  
22 country, but were it handed to you, would  
23 something comparable in the **Fisheries Act** context  
24 be useful, in your view?

25 MS. BOMBARDIER: I think so, because prosecution, as I  
26 said earlier, is something, it's our last resort  
27 option. It's very costly, lengthy, and the fines  
28 are not always very deterrent.

29 Q Mm-hmm.

30 MS. BOMBARDIER: The level of fine is -- sometimes is  
31 low, and it doesn't -- if there's no court order  
32 to take certain measures, the actions, there's no  
33 action required to mitigate a situation. And EPAM  
34 allows that, so it includes, it could include a  
35 fine. But also measures to stop or to correct a  
36 situation, which is very effective in terms of  
37 environmental outcome.

38 Q Mm-hmm. Mr. Steele, do you, I don't know if  
39 you've given thought to this question of whether  
40 conceptually something like an EPAM under the  
41 **Fisheries Act** would be a useful tool for C&P?

42 MR. STEELE: Just based on the description I just  
43 heard, I would say it has potential to be useful,  
44 yes.

45 Q And on a similar note, as I understand it, but  
46 please let me know and I'll ask this of you, Mr.  
47 Steele. I understand that there's really nothing

1 as between on the one hand a direction and then  
2 leaping all the way to a full-blown prosecution.  
3 In other words, that there's nothing much in the  
4 way of an intermediate step. And I'm thinking in  
5 particular of the notion of administrative  
6 ticketing sort of a response to fish habitat  
7 violations, (a) is that the case, and (b) should  
8 there be an intermediate ticketing sort of  
9 approach, in your view?

10 MR. STEELE: It is the case that we don't have the  
11 option of ticketing currently. It's been, it  
12 comes up for discussion from time to time as a  
13 potential tool. I think it's something that  
14 should be further explored, yes. We don't have,  
15 as you can tell, a long list of options currently.  
16 So ticketing, I think, would have potential. The  
17 risk with ticketing, I guess, is that you wouldn't  
18 want to -- it has the risk of giving the  
19 perception that we're sort of trivializing the  
20 offence. That's sometimes the argument against  
21 it. Ticketing in the Fisheries context is seen as  
22 a very minor administrative type thing that is...  
23 Q Quote/unquote, the cost of doing business sort of  
24 a concern.

25 MR. STEELE: Yes. Yes, so you wouldn't want to send a  
26 message by adopting ticketing that you're  
27 downplaying the importance of habitat violations,  
28 but I think that's probably something that could  
29 be worked around if some thought was put to it.

30 Q Ms. Bombardier, I saw you nodding. Do you agree  
31 that that would be a useful thing under the  
32 **Fisheries Act**?

33 MS. BOMBARDIER: I believe so. We use that under **CEPA**  
34 for some type of ticketable offences. Not all  
35 offences are ticketable. They're in largely  
36 administrative type violations, so non-reporting  
37 or not maintaining a log, that sort of violation,  
38 as opposed to a release. So a ticket under **CEPA**  
39 would not be applicable to a release type  
40 situation. It's more providing a report or  
41 maintaining logs.

42 Q Let me move to the topic of audits, and on my very  
43 last topic, Mr. Commissioner, you'll be relieved  
44 to hear. I'll move through this by first  
45 referring to document number 22 on our list of  
46 exhibits. And, Mr. Steele, why don't I ask this  
47 of you. First I'll confirm this is what it says

1           it is, the Audit of the Conservation and  
2           Protection Program from 2009; is that correct?

3       MR. STEELE: Yes, it is.

4       Q     And I'll just need you to have a mike at hand.

5       MR. STEELE: Yes, it is.

6       MR. MARTLAND: Thank you. If this could be marked as  
7           the next exhibit, please.

8       THE REGISTRAR: Exhibit 699.

9

10                   EXHIBIT 699: Audit of the Conservation and  
11                   Protection Program, June 18, 2009

12

13       MR. MARTLAND:

14       Q     And there's a list of recommendations that I won't  
15           take you to specifically. There's also a MAP or a  
16           Management Action Plan, which is Tab 23 of our  
17           binder and number 23 on our list. It's entitled  
18           "Status Report on the Implementation of the  
19           Management Action Plan". It seems to date to  
20           December 17, 2010; is that correct?

21       MR. STEELE: Yes, December 17th would have been the  
22           most recent update.

23       Q     All right.

24       MR. STEELE: These things come, I think, every six  
25           months or so; they require updating as to progress  
26           against the recommendations.

27       Q     It's an evolving document that's updated over  
28           time?

29       MR. STEELE: Yes.

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

32       THE REGISTRAR: Exhibit 700.

33

34                   EXHIBIT 700: Status Report on the  
35                   Implementation of the Management Action Plan,  
36                   December 17, 2010

37

38       MR. MARTLAND:

39       Q     If it's helpful for you refer to either of the two  
40           documents I've just put before you, please do.

41           But if you could give us a sense of the progress  
42           made to date in response to some of the concerns  
43           raised in that audit.

44       MR. STEELE: I can do that in a general sense. I don't  
45           have the -- the audit was looking mainly at our  
46           national program in the sense of some of our  
47           corporate responsibilities, as opposed to our



1 operational effectiveness, which was covered in a  
2 separate review and evaluation that was done at a  
3 later date. But the audit was looking more at the  
4 national level in terms of corporate  
5 responsibilities, in terms of training,  
6 development of policy documents at the national  
7 level, compliance with government regulations,  
8 that kind of thing, and also our relationships  
9 with other agencies in terms of MOUs that are in  
10 place with Environment Canada and others. Looking  
11 at issues like designations of officers from other  
12 enforcement agencies, what sort of controls we had  
13 in place in terms of giving out designations and  
14 then in terms of keeping them up to date in  
15 compliance with the DFO Code of Conduct for  
16 officers that from other organizations that we  
17 would be designating. Those types of issues. So  
18 there was quite a lengthy list of recommendations.

19 There were a number of shortcomings that were  
20 found as part of the audit process. And largely I  
21 think because we talked earlier about the  
22 decentralized nature of the program, the level of  
23 resources that we have available for us to perform  
24 these types of functions at the national level is  
25 quite limited. And I think the findings of the  
26 audit certainly highlighted that issue for us.

27 But generally speaking, I'm not sure if  
28 you're expecting a point-by-point summary, or...

29 Q No, I wasn't asking for that, but that's a helpful  
30 overview.

31 MR. STEELE: Right.

32 Q I wonder if I might turn, then, to number 25 on  
33 our list, which is already an exhibit. It's  
34 Exhibit 650, and I'll just indicate that I  
35 understand that this relates as well to 655. I  
36 won't bring up 655, but this is in evidence  
37 already, the MAP which describes the DFO and  
38 Environment Canada response to the 2009 CESD  
39 report. This document, if I have it correctly,  
40 Mr. Steele, describes for both DFO and Environment  
41 Canada the response and the actions taken with  
42 respect to those recommendations from the 2009  
43 CESD report; is that correct?

44 MR. STEELE: That's right, yes.

45 Q And we can read it for what it is, but have you  
46 worked on this on the input that goes into this  
47 document, and is it an accurate description of the

1 work and progress made?

2 MR. STEELE: Yes, it is.

3 Q Are there particular things that keep you up at  
4 night - to borrow Mr. Rosenbloom's phrase from the  
5 other day - with respect to parts of this work  
6 that have not been done, that loom large?

7 MR. STEELE: Well, I can only speak for the portions of  
8 the action items that relate directly to us. And  
9 those two sections would be on page 3 of the  
10 progress report, items 1.48 Part A and Part B, and  
11 those are the two that our organization, the C&P  
12 organization nationally, you'll see the  
13 "Responsibility Centre" is listed as the "EFM" -  
14 Ecosystems Fisheries Management - "Sector". We  
15 are part of that.

16 Q Mm-hmm.

17 MR. STEELE: So those two items would be the ones that  
18 we're responsible for, for actioning. I would say  
19 that I'm reasonably comfortable with the progress  
20 we've made, although, as we've talked about  
21 earlier, the operational protocol is basically the  
22 response to those two action items.

23 Q Mm-hmm.

24 MR. STEELE: And as I mentioned earlier, the protocol  
25 has been developed. It's out there now for  
26 implementation, but the jury is still out, I  
27 guess, as to its effectiveness. Time will tell.  
28 There are some issues, as we've heard earlier, as  
29 to how it will roll out and we'll have to judge at  
30 some later date as to whether it's effective or  
31 not. But in terms of producing the protocol and  
32 getting it out there in the field and starting to  
33 implement it, that has been actioned.

34 Q Ms. Bombardier, just before the break, if I could  
35 ask you the same question. And in particular,  
36 without going through this in any detailed way,  
37 but welcoming you to go to the document, if that  
38 assists, are there particular points of concern  
39 for Environment Canada? I think Environment  
40 Canada recommendations start on about page 3 and  
41 continue.

42 MS. BOMBARDIER: Unfortunately I can only speak to  
43 1.126, which is the recommendation that pertains  
44 to the Enforcement Branch.

45 Q On page 5, yes.

46 MS. BOMBARDIER: Yes. It talks about ensuring that  
47 enforcement quality assurance and control

1 practices are sufficient to demonstrate the  
2 actions. What we've done as a result of that  
3 recommendation is we've created and filled a  
4 position in headquarters office. So we have an  
5 officer who looks at the NEMESIS files and  
6 identify inconsistency issues. We have NEMESIS,  
7 we have guidelines for officers that outlines the  
8 process for entering data in NEMESIS, to  
9 facilitate the search, and also do QA/QC  
10 activities. So we have an officer dedicated to  
11 just doing that. And we have guidelines that are  
12 being applied across the country. So we monitor  
13 that.

14 MR. MARTLAND: Mr. Commissioner, this may be a good  
15 time for the break.

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

18  
19 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)  
20 (PROCEEDINGS RECONVENED)  
21

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

23  
24 EXAMINATION IN CHIEF BY MR. MARTLAND, continuing:  
25

26 Q My last two points, or questions are really these.  
27 The first is to ask if you have any comments,  
28 feedback, corrections, with respect to the Policy  
29 and Practice Report, the PPR? And we can  
30 certainly bring that up on screen, and I think you  
31 have it in the binder in front of you as well.

32 Mr. Nelson?

33 MR. NELSON: Go with somebody else, first. I have a  
34 page in here somewhere.

35 Q Certainly. I'll move down the line. Mr. Steele?

36 MR. STEELE: Not at this time, no.

37 Q Thank you. Ms. Bombardier?

38 MS. BOMBARDIER: Just a few things. I think one aspect  
39 of the enforcement of the pollution prevention  
40 provisions of the **Fisheries Act** we are active on  
41 is section 38(4) in terms of notification of  
42 releases, which I haven't seen any mention in the  
43 document, so I think it's something that would  
44 need to be part of the report, because it is  
45 considered enforcement activity.

46 The focus of the enforcement activities as  
47 they report in this report seems to be on

1 prosecution, and as we've heard since this  
2 morning, prosecution is only one of the tools that  
3 our officers have at their disposal. There are  
4 many other tools and, you know, out-of-court tools  
5 that our officers use that are more effective in  
6 achieving compliance. So I think that these tools  
7 have their place in that report. I think they  
8 have a significant contribution in achieving  
9 compliance and protecting the environment.

10 And there's some reference to the division of  
11 the, you know, it seems that some of the  
12 statements seem to be overstatement in terms of  
13 not very well substantiated. One e-mail between  
14 one staff member with a DG in terms of the split  
15 of the responsibilities don't work. I think  
16 that's an overstatement. I don't see a lot of  
17 argument to support that statement in the report.

18 THE COMMISSIONER: What paragraph is that?

19 MR. MARTLAND:

20 Q Maybe I can simply, to pick up on the point you  
21 just alerted us to, try my best to find that part  
22 of the PPR that contains that. I think it's an  
23 area where it discuss --

24 MR. TAYLOR: 13.

25 MR. MARTLAND: Pardon me?

26 MR. TAYLOR: Paragraph 13.

27 MR. MARTLAND: 13, thank you, Mr. Taylor.

28 Q Now, I'm just trying my best to make sure I've got  
29 my finger on the right thing. Footnote 10 at the  
30 bottom of page 9 refers to a memorandum to the  
31 Director General, and it also refers to the CESD  
32 chapter 1, 2009 report, to the point that it's  
33 been a source of concern for some observers and  
34 within government. And then Ms. Grant's drawn my  
35 attention, as well, to paragraph 23 of the report.  
36 That may be where the e-mail is set out. Again,  
37 we can see reference to a memorandum, footnote 24,  
38 memorandum to the Director General.

39 Are those some of the -- I take your point,  
40 though, simply that in the articulation of that  
41 concern about the arrangement between section 35  
42 and 36, that the documentary record would seem to  
43 be more in the nature of a memorandum or e-mail  
44 than in the nature of a considered analysis that  
45 takes into account all the right considerations.  
46 Is that a fair description of the concern you've  
47 just raised?

1 MS. BOMBARDIER: Yes. I think that drawing that  
2 conclusion from an e-mail or a memo from a staff  
3 member to an ADM or DG is kind of going to the  
4 extreme without having done that analysis.

5 Q Thank you for that point. Any other comments or  
6 points you'd wish to raise with respect to this  
7 PPR?

8 MS. BOMBARDIER: No, that's it.

9 Q Thank you. Mr. Nelson?

10 MR. NELSON: Yes, I have a few here. First, was on  
11 page 5. And, sorry, it says - just my note here -  
12 4(i) says enforcement is -- enforcement is  
13 achieved through -- the comment respecting  
14 inspections -- sorry, under the new national  
15 protocol between Habitat and C&P, it states:

16  
17 HMP shall be the lead in development and  
18 delivery of habitat compliance monitoring  
19 activities.  
20

21 So that's kind of changed a little bit since this  
22 was written.

23 Q Okay.

24 MR. NELSON: There's a few items like that.

25 Q Okay.

26 MR. NELSON: So this is right for at the time.

27 Q So that quotes the -- you'll see, at the top if  
28 the page it quotes from the bottom of the page  
29 before, the Canada 2001 Compliance and Enforcement  
30 Policy for the Habitat Protection and Pollution  
31 Prevention Provisions --

32 MR. NELSON: Right.

33 Q -- of the **Fisheries Act**? If I have it right, that  
34 what you're reading from in the middle of page 5  
35 is --

36 MR. NELSON: Yes.

37 Q -- an indented quotation from that document?

38 MR. NELSON: Okay. Right. Okay, so it's all right.

39 Q Okay.

40 MR. NELSON: I think I'm going to just have a quick  
41 check here.

42 Q Is the point of the policy, itself, out of date in  
43 some respect?

44 MR. NELSON: Well, the new protocol is going to change  
45 some of what's in here.

46 Q Okay. Thank you.

47 MR. NELSON: On page 18, similarly, item 38. Again, a

1 similar thing. It's okay as is, because it's  
2 referring to 2009, but that will change under the  
3 new protocol.

4 Q Okay.

5 MR. NELSON: And there was a couple of other -- they  
6 were just clarification points, but they're not --  
7 that's fine for now.

8 Q All right. Thank you. My final question is  
9 whether each of you, in addition to -- without  
10 repeating points you've already made through the  
11 course of your testimony today, are there further  
12 points or are there specific recommendations that  
13 you would wish to draw to the Commissioner's  
14 attention? And I'll begin, perhaps, with Mr.  
15 Nelson, then Mr. Steele, and then Ms. Bombardier.

16 MR. NELSON: There's a number that's already touched  
17 on, as talked -- mentioned about ticketing, and I  
18 think ticketing for small violations would be a  
19 real good asset and make things easier to work  
20 with, as long as it comes with some method of  
21 payment of fines, because it's within the  
22 province, and some method of recovery on unpaid  
23 fines. In our ticketing system now, we have quite  
24 a large outstanding amount of unpaid fines.

25 The second one I mentioned, Special  
26 Provincial Constable status. What I didn't  
27 mention is a second item, called investigative  
28 body status, and that's something that, if given  
29 to fishery officers, would allow them to exchange  
30 information better with other enforcement  
31 agencies, getting information from police, and  
32 just being able to do our job a little better if  
33 we had investigative body status.

34 Q Can I interrupt you there to just confirm. When  
35 you talk about investigative body status, C&P, as  
36 the whole, would be analogous to a police  
37 department, I suppose, in that you could exchange  
38 information with other --

39 MR. NELSON: That's correct.

40 Q -- agencies departments?

41 MR. NELSON: Yes, that's correct. The habitat  
42 stewardship program that we had, I think something  
43 similar to that with field staff, fishery officers  
44 and technicians would be useful. And I've  
45 expressed my views on the inspector powers. I  
46 think returning those to Habitat staff would be  
47 important. And that view was shared by the

1 regional director of Habitat at the time. Rebecca  
2 Reid expressed concerns about the loss of that  
3 power, making things more difficult to work with.

4 Habitat enforcement specialist, you'd asked  
5 on that. That was another one. Restorative  
6 justice, expanded use of that.

7 The tracking system for Habitat and the  
8 tracking system for C&P aren't compatible, and  
9 something that would really improve our ability to  
10 do compliance work throughout the region and on  
11 the Fraser would be if the two systems were more  
12 interactive.

13 Q And that's PATH and DVS; is that correct?

14 MR. NELSON: That's correct yes. Program Activity  
15 Tracking Habitat -- no, I'm not sure. The other  
16 item, whatever recommendations are made, and maybe  
17 this is just because I'm old, but the  
18 recommendations are made and we, as a department,  
19 follow up on them pretty good the first year.  
20 Second year we forget about some. And after a few  
21 years we seem to have let them slip. And I would  
22 like to see some way that, I don't know how it  
23 would be done, but maybe some independent group  
24 that would follow these recommendations through on  
25 an annual basis.

26 I'd mentioned about having a media-trained  
27 fishery officer. I think that would be useful in  
28 all things, including habitat.

29 Some recovery system for outstanding fines  
30 that's not really related -- well, it is related  
31 to habitat. We have some large fines that are  
32 there that haven't been paid. And there's a  
33 couple of other seemingly smaller things that  
34 should be able to be fixed easily, but we have a  
35 computer system, called CITRIX, that has been a  
36 nightmare, and our radio system. Both of those  
37 things are valuable tools in working in some  
38 remote areas doing habitat work.

39 We've talked about the funding issues and  
40 line reporting is an important -- and I think it  
41 might be useful if other programs had some sort of  
42 a tracking timing system, similar to what we did.  
43 When we introduced the tracking system, we thought  
44 we were doing our job efficiently and effectively,  
45 and we found out everybody wasn't actually doing  
46 what they said they were. And I think it is an  
47 onerous task, but accountability is important and

1 I think the tracking system really helps us set  
2 out priorities and make sure we're working in the  
3 right directions.

4 Q Mr. Steele?

5 MR. STEELE: I guess it's more of a point of  
6 clarification, or to elaborate on some of the  
7 discussion earlier about budget issues. We talked  
8 a bit about the PICFI funding, how the Williams  
9 money had been rolled into PICFI, which would then  
10 be sunsetting at the end of this fiscal year. And  
11 a lot of the discussion sort of assumed the fact  
12 that there would be no continuation of PICFI  
13 funding. So I just wanted to make it clear that  
14 the Department is aware of that issue and is  
15 looking at options that could hopefully provide  
16 for a continuation of PICFI funding into the  
17 future. There's nothing guaranteed, of course, in  
18 that respect, but it's not a given that the PICFI  
19 funding will -- well, as it stands currently, it  
20 will expire, but efforts will be made between now  
21 and a year from now to seek continuation of that  
22 funding in that forum or some other. So I just  
23 wanted to -- I think in some of the discussion  
24 earlier we sort of assumed that the PICFI funding  
25 was another to add on their list of funding  
26 pressures. We do have other funding pressures  
27 which are clear and they're current and real, and  
28 PICFI may well be real a year from now, but we're  
29 not quite there yet, and all hope is not lost yet,  
30 let's say. So I just wanted to clarify that.

31 Q That's a helpful point, thank you. Ms.  
32 Bombardier?

33 MS. BOMBARDIER: I just want to reinforce the fact that  
34 Environment Canada is taking its role very  
35 seriously under the **Fisheries Act**. We are  
36 investing significant resources. We are being  
37 proactive as opposed to what's being indicated in  
38 the report. We are reactive to some level, but we  
39 also have a proactive approach, targeting and  
40 using our intelligence capacity.

41 Just to go back on the ticketing, because the  
42 policy calls for consistency, national consistency  
43 and enforcement, achieving compliance, ticketing  
44 is challenging because it requires agreement  
45 between federal and provincial jurisdictions for  
46 administrate -- because the province administers  
47 those tickets, and we don't have agreement, at



1           this time, with all the provinces on their **CEPA**  
2           for ticketable offences. So that would be the  
3           challenge in terms of achieving national  
4           consistency under a ticketing scheme.

5           Q     Just to pick up on that. I don't understand,  
6           there's a need for the province to basically put  
7           the muscle behind enforcement of the tickets for  
8           to collect --

9           MS. BOMBARDIER: To collect the funds from the tickets,  
10          yes. And to administer the process of ticketing.

11          MR. MARTLAND: Mr. Commissioner, that concludes my  
12          examination. I note it's 10 minutes to 4:00. Mr.  
13          Taylor's next on the list. I'm not sure what the  
14          Court's preference is.

15          THE COMMISSIONER: It would just be helpful if I had  
16          some sense of how long he might be and --

17          MR. MARTLAND: Yes, and I --

18          THE COMMISSIONER: -- if others have any idea, they  
19          could indicate as well.

20          MR. MARTLAND: I've been loathe to say this, Mr.  
21          Commissioner, because I don't want to sound  
22          optimistic if I don't quite know. Our math on the  
23          total examination by Mr. Taylor plus cross-  
24          examination is totalling four and a half hours.  
25          Some counsel said they may be under their  
26          estimate, but they're not prepared, yet, to commit  
27          to that. That raises the possibility we could  
28          even conclude tomorrow. I was going to canvass  
29          with you, as the day progressed, whether we might  
30          reconvene at 1:30, if that made a difference,  
31          tomorrow. So that's in basic terms where we  
32          stand.

33          THE COMMISSIONER: Mr. Taylor has been sitting  
34          patiently, and I don't mind him using the next 10  
35          minutes, if he can do so productively.

36          MR. TAYLOR: I'm happy to use the next 10 minutes, and  
37          in that four and a half hours that's not all me.  
38          I'm one and a quarter hours of that, I think.

39          THE COMMISSIONER: Right.

40  
41          CROSS-EXAMINATION BY MR. TAYLOR:

42  
43          Q     I'll start, if I may, with you, Ms. Bombardier,  
44          and the point about ticketing that you just  
45          raised, and ask if you would elaborate on the  
46          point you were making, that there needs to be  
47          provincial involvement to have ticketing work.

1                   There isn't, now, but potentially, and this  
2                   is the hypothetical discussion here, might be a  
3                   legislative, or could be a legislative change that  
4                   would allow for ticketing, and just on that, am I  
5                   right that there isn't an ability, at the moment,  
6                   to have ticketing, at least under the **Fisheries**  
7                   **Act**, because of the way the statute's worded, as  
8                   you understand it?

9                   MS. BOMBARDIER: That's my understanding.

10                  Q     All right. And is that the same understanding you  
11                   have, Mr. Steele and Mr. Nelson?

12                  MR. NELSON: Yes, it is.

13                  MR. STEELE: Yes.

14                  Q     In other words, you need a legislative base to  
15                   have a ticket before you go out and do it. So  
16                   that's point number one.

17                             Point number two, taking us to the province,  
18                   can you just elaborate on what you mean by needing  
19                   the provincial cooperation and an arrangement with  
20                   the province. What is it that the province would  
21                   be doing and engaged in that requires an agreement  
22                   with them in order to operationalize any ticketing  
23                   program that the parliament might put in place?

24                  MS. BOMBARDIER: I'm not familiar with all the details  
25                   of the process, but first you need to have  
26                   ticketable offences under the **Contraventions Act**,  
27                   and when you have, then you need an agreement with  
28                   the province. The federal officers would issue  
29                   the tickets, but those tickets would be  
30                   administered by the provincial courts, so the  
31                   funds collected from those. So the administrative  
32                   process of the ticketing is done by the  
33                   province --

34                  Q     All right.

35                  MS. BOMBARDIER: -- not by Environment Canada.

36                  Q     So you're saying that, in short, before the  
37                   Federal Government does something that loads up  
38                   the provincial court system, which is a provincial  
39                   operational, well, it's independent, of course,  
40                   but the administration is through the province,  
41                   before the Federal Government does something to  
42                   load up the provincial court system, there would  
43                   need to be arrangements put in place with  
44                   attendant understandings and funding in order to  
45                   have the availability and access and so forth so  
46                   that tickets can be dealt with both in terms of  
47                   the administration of the ticket and disputes and

1 anything else that arises?

2 MS. BOMBARDIER: Yes, that's correct.

3 Q All right. And in addition, do you agree with Mr.  
4 Nelson, who I think was underlining that there  
5 needs to be an efficient means to actually collect  
6 on the tickets once you have all of what we've  
7 just discussed in place?

8 MS. BOMBARDIER: Yes.

9 Q Would I be right that one of the reasons that  
10 there's a lot of outstanding fines is that it's  
11 not economic to spend two times the amount of a  
12 fine to try and collect a fine through civil  
13 process?

14 MS. BOMBARDIER: Yeah, I would see that as inefficient.

15 Q Right. And is that one of the problems that  
16 exists right now, Mr. Steele, or Ms. Bombardier?

17 MR. STEELE: Yes, I'm aware that there are difficulties  
18 collecting fines, yes, and what you described is  
19 an issue.

20 Q Okay. Ms. Bombardier, anything to add?

21 MS. BOMBARDIER: No, nothing to add.

22 Q Now, Mr. Nelson, just before Mr. Martland finished  
23 his questioning of you, you were listing off some  
24 things that you thought would be important for the  
25 Commissioner to consider. I just want to canvass  
26 two I think that would be quite short.

27 You referred to the computer system and you  
28 referred to the radio system as being important  
29 tools, but I'm not sure that I heard you say  
30 anything that you were wanting to leave with the  
31 Commissioner about those points.

32 MR. NELSON: Just the fact that there are some issues  
33 that will impact and are impacting our ability to  
34 do our compliance and enforcement work is the  
35 radio system that is -- has to be brought into the  
36 digital age, and with our computer system there's  
37 some serious glitches with the system that we  
38 currently have, and it's taking a whole lot of  
39 officers' time to try and deal with it. It sounds  
40 so simple to fix, but it's not. And it was just a  
41 time-consuming matter on the computer part.

42 Q Right. And I fully realize that you're not asking  
43 the Commissioner to engage in the details of all  
44 of this or --

45 MR. NELSON: No.

46 Q -- fix the computers, and that's not his role, of  
47 course.

1 MR. NELSON: No.  
2 Q But do I take your point to be that there needs to  
3 be some updating of the radio system to the  
4 digital age; is that one of the --  
5 MR. NELSON: That's correct.  
6 Q -- points you're making?  
7 MR. NELSON: Yes.  
8 Q And that's a money issue, I take it?  
9 MR. NELSON: That would be, yes.  
10 Q Yeah. And on the computer side, similar point,  
11 that there needs to be some money spent with  
12 regard to updating it?  
13 MR. NELSON: Yes.  
14 Q And you have already given evidence, as has Mr.  
15 Steele and Ms. Bombardier, and we've heard from  
16 others, that budgets are a challenge in today's  
17 era?  
18 MR. NELSON: Yes.  
19 Q Is that your point on that?  
20 MR. NELSON: That's correct, yeah.  
21 Q Now, you also mentioned line reporting, and you  
22 mentioned that earlier today, and you've clarified  
23 that you have a number of people report to you,  
24 essentially, well, all of the C&P people in the  
25 Pacific Region, which is B.C. and the Yukon for  
26 fisheries, and you report to Sue Farlinger, the  
27 Regional Director General, hierarchically; is that  
28 right?  
29 MR. NELSON: That's correct.  
30 Q And you report, functionally, to Mr. Steele, soon  
31 to be - and I'm going to use his first name simply  
32 because I have trouble and I don't want to, I  
33 guess, embarrass myself - you also have a  
34 functional report to Mr. Steele and now Trevor?  
35 MR. NELSON: That's correct.  
36 Q Now, can you explain -- and before, your position  
37 reported to a regional director who, in turn,  
38 reported to Sue Farlinger or --  
39 MR. NELSON: Yes.  
40 Q -- Paul Sprout before her?  
41 MR. NELSON: Yes.  
42 Q Can you explain what is the importance of that  
43 line reporting, as you call it?  
44 MR. NELSON: Well --  
45 Q And the change that was made where you don't  
46 report through a regional director?  
47 MR. NELSON: Yes. There's two parts to it. The

1 fishery officers in each of the five areas in the  
2 region used to report to a position called an area  
3 director. Those area directors were generally  
4 people with biology backgrounds, science  
5 backgrounds, and even though had good intentions,  
6 sometimes didn't understand the complexities of  
7 enforcements. And because it's five different  
8 people, it evolved into sort of five different  
9 types of way which C&P was approaching their job  
10 out in the field, and in some cases our officers'  
11 decisions would be made by biologists that didn't  
12 take into account the health and safety of an  
13 officer.

14 An example would be, "We're going to open  
15 this fishery but, you know, we're not really sure  
16 if we get the grounds for it. Well, let's give it  
17 a go and try." That actually happened in the  
18 past. And with line reporting, all those officers  
19 report to myself, and I'm able to table concerns  
20 from the field up to the regional director  
21 general, when these kind of issues arise.

22 And it just reduces -- it makes us more  
23 efficient, all reporting to one. It makes us more  
24 accountable. It makes our enforcement more  
25 consistent throughout the region. And it was a  
26 recommendation, actually, back in 1982, in the  
27 Pearse Commission Report, and in the Williams  
28 Report and the Fraser Report, and every report in  
29 between that looked at it.

30 After 30 years, it happened, and it really  
31 improved things in the region and it was -- a side  
32 -- a good side effect was it improved officer  
33 morale. Everybody was happy reporting to somebody  
34 with an enforcement background.

35 Q Would I be right, then, in summing up what you're  
36 saying, that there are distinct advantages in  
37 terms of efficiency and knowing what the job is  
38 about and getting the job done and, in turn, in  
39 morale, to have people who are engaged in  
40 enforcement reporting to an enforcement person,  
41 which is yourself, and it makes it all run much  
42 better?

43 MR. NELSON: Yes, it does. And an audit that was  
44 conducted on it showed that as well. One of the  
45 other huge benefits of it was the integration. It  
46 sounds -- how can you be integrated when you're  
47 reporting up one -- one group? But it has. We've

1 directed and are directing officers to be more  
2 integrating with other programs. And that's also  
3 been a benefit that was recognized in the audit.

4 The auditor that did the review of it said in  
5 his 25 years he had never seen -- he had never  
6 done an audit on anything that had -- was so much  
7 heavily weighted on the positive on one side.  
8 There really wasn't anything negative that he  
9 found in it.

10 Q Now, with everyone reporting to you, would I be  
11 right that you, then, have the ability to move  
12 people into different regions within the Pacific  
13 Region --

14 MR. NELSON: Yes.

15 Q -- within different parts of British Columbia and  
16 Yukon, as you see the need, for the work you do,  
17 without having to deal with and address competing  
18 concerns that area directors or any of their  
19 former managers might have in terms of workload?

20 MR. NELSON: That's correct. And you can also  
21 implement new programs and ideas, like restorative  
22 justice, which we would have had great -- much  
23 greater difficulty trying to introduce that with  
24 five different people.

25 Q Now, you said there were two reasons, and we went  
26 into what we've just discussed. Have we covered  
27 off your second reason in that discussion, or is  
28 there a second prong, if you like, to why line  
29 reporting is beneficial?

30 MR. NELSON: I think you've covered it off.

31 MR. TAYLOR: Okay. Now --

32 THE COMMISSIONER: Mr. Taylor, I note the time. Would  
33 this be a convenient point for you to --

34 MR. TAYLOR: May I enter two documents --

35 THE COMMISSIONER: Yes.

36 MR. TAYLOR: -- quickly?

37 THE COMMISSIONER: Yes.

38 MR. TAYLOR: And then I'll leave them with --

39 THE COMMISSIONER: Yes.

40 MR. TAYLOR: -- you, Mr. Commissioner, and everyone  
41 else, and then we can adjourn.

42 I'd like to turn, if I may, to Canada's Book  
43 of Documents, Tab 9, and we will turn to Tab 10 in  
44 a moment, Mr. Bisset. Thank you.

45 Q Mr. Steele, do you recognize that document?

46 MR. STEELE: Yes.

47 Q Or sorry, sorry. Mr. Nelson. I'm sorry.

1 MR. NELSON: Yes. This document --

2 Q Mr. Steele may, as well, but I meant Mr. Nelson.

3 MR. NELSON: This document is information from the  
4 table, the next -- the other item that you just  
5 entered, and it describes a fishery officer's  
6 effort for habitat.

7 MR. TAYLOR: Okay. And what we'll do right now, I  
8 think, is we'll just enter these documents as  
9 exhibits and then we'll come back and discuss  
10 them.

11 Q So this is fishery officer's effort for a period  
12 of time in habitat work, is it?

13 MR. NELSON: Yes. I didn't prepare this. If I  
14 prepared it, it would probably be graph paper and  
15 pencil, but I had one of my staff do it.

16 MR. TAYLOR: Okay. May this document, at Tab 9, which  
17 is headed, Pacific Region C&P Habitat Effort 2000  
18 to 2010, be the next exhibit, please?

19 THE REGISTRAR: Marked Exhibit 701.

20

21 EXHIBIT 701: Pacific Region C&P Habitat  
22 Effort [% of All Work Elements FEATS] with  
23 Occurrences and Violations [DVS#] 2000 --  
24 2010  
25

26

26 MR. TAYLOR:

27 Q And then one more document, quickly, which is at  
28 the next tab, Tab 10. And I think you just  
29 explained that this is data that was then used to  
30 make the graph we just looked at; is that right?

31 MR. NELSON: That's correct.

32 MR. TAYLOR: And this is simply called, at the top,  
33 Distribution of Effort by Work Element. And if  
34 this could be the next exhibit, please?

35 THE REGISTRAR: Exhibit 702.

36

37 EXHIBIT 702: Distribution of Effort (by Work  
38 Element)  
39

40

40 MR. TAYLOR: And with that, Mr. Commissioner, if you  
41 want to adjourn, that's fine, thank you.

42 THE COMMISSIONER: Thank you very much.

43 THE REGISTRAR: The hearing is now adjourned for the  
44 day and will resume at ten o'clock tomorrow  
45 morning.  
46

46

47

1 (PROCEEDINGS ADJOURNED TO FRIDAY, APRIL 8,  
2 2011, AT 10:00 A.M.)  
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7

8 I HEREBY CERTIFY the foregoing to be a  
9 true and accurate transcript of the  
10 evidence recorded on a sound recording  
11 apparatus, transcribed to the best of my  
12 skill and ability, and in accordance  
13 with applicable standards.  
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19 Susan Osborne  
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21 I HEREBY CERTIFY the foregoing to be a  
22 true and accurate transcript of the  
23 evidence recorded on a sound recording  
24 apparatus, transcribed to the best of my  
25 skill and ability, and in accordance  
26 with applicable standards.  
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32 Diane Rochfort  
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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.  
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45 Pat Neumann  
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I HEREBY CERTIFY the foregoing to be a true and accurate transcript of the evidence recorded on a sound recording apparatus, transcribed to the best of my skill and ability, and in accordance with applicable standards.

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Karen Hefferland