

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.

Friday, April 8, 2011

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

le vendredi 8 avril 2011

APPEARANCES / COMPARUTIONS

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

APPEARANCES / COMPARUTIONS, cont'd.

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

APPEARANCES / COMPARUTIONS, cont'd.

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

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1 Vancouver, B.C./Vancouver
2 (C.-B.)
3 April 8, 2011/le 8 avril 2011
4

5 THE REGISTRAR: Hearing is now resumed.

6 MR. TAYLOR: Mitchell Taylor for the participant
7 Government of Canada, and with me is Jonah
8 Spiegelman.

9 THE COMMISSIONER: Good morning, Mr. Taylor.

10 MR. TAYLOR: Good morning. I believe that I took 10
11 minutes yesterday afternoon, and estimated an hour
12 and a quarter, so I think I've got an hour and
13 five minutes, by my calculations. I'll start, if
14 I may, with Exhibit 701 and 702, and probably for
15 ease of reference, let's have one on the screen at
16 a time. Thank you, Mr. Bisset, 701 is fine.

17
18 MANON BOMBARDIER, recalled.

19
20 PAUL STEELE, recalled.

21
22 RANDY NELSON, recalled.
23

24 CROSS-EXAMINATION BY MR. TAYLOR, continuing:
25

26 Q Mr. Nelson, can you explain what is this?
27 Actually, just for a moment, if you don't mind,
28 bring up 702 beside it, if you could, Mr. Bisset.
29 These are the two documents that were made
30 exhibits at the end of yesterday.

31 Mr. Nelson, you're familiar with these
32 documents, aren't you?

33 MR. NELSON: Yes.

34 Q And, in fact, you either prepared them or they
35 were prepared under your direction?

36 MR. NELSON: They were prepared for me, yes.

37 Q Can you explain what they are and what's important
38 about the information on them?

39 MR. NELSON: Okay, what this shows is this is
40 information derived from our data, or fishery
41 enforcement data system that we track our time
42 with. So this represents the entire region's
43 efforts towards habitat enforcement, and it's a
44 percentage of our overall patrol time.

45 So for maybe, to give an example, if you look
46 at the year 2003, it's 24 percent of fishery
47 officers' patrol time in the year 2003 was spent

2

PANEL NO. 28

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

1 on habitat.

2 Q And that's the yellow triangle at the top of the
3 black line, is it?

4 MR. NELSON: No, the green bar. The green bar is the
5 percentage.

6 Q Okay.

7 MR. NELSON: I'll explain the two lines on here
8 after --

9 Q All right.

10 MR. NELSON: -- after a minute.

11 Q That's fine. So we're looking at the bars at the
12 moment?

13 MR. NELSON: We're looking at the green bars. Now, if
14 you go to 2010, which is last year, you'll see
15 that represents about 10 percent of fishery
16 officers' patrol time was -- or field time was
17 spent on habitat. So the trend is down over that
18 time period. And it coincides with around the
19 year 2005, when EPMP came in. We were -- maybe
20 one other thing I should -- like to point out. In
21 2003, that 24 percent, if you were to convert that
22 into how many fishery officers would it take to do
23 that amount of time, that would equate to about 36
24 fishery officers.

25 Q Sorry, which bar is the 36?

26 MR. NELSON: The green bar for the year 2003.

27 Q All right.

28 MR. NELSON: I could explain how that's derived, if you
29 wish, but if we just follow through with it, I can
30 come back to it.

31 Q I'll leave it to my friends to ask that. I'll
32 just accept you.

33 MR. NELSON: Okay. So in 2003, that was approximately
34 36 fishery officers' time. In other words, 36
35 fishery officers working continuously on their
36 patrol activities would have produced the green
37 bar for 2003.

38 For 2010 -- sorry, I'll use the 2009 bar,
39 which is slightly less than the 2010 bar. That
40 would represent about 12 fishery officers.

41 Q Okay. All right.

42 MR. NELSON: So that gives you an idea of the change,
43 and the change from 2005 to 2009/10 is about 20 --
44 24 fishery officers.

45 Q All right. Now, you've got some lines on here
46 that you're going to explain?

47 MR. NELSON: Yes. The blue line, which goes across the

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1 top of the diagram, shows the number of
2 occurrences by year, the yellow triangle
3 representing the exact amount in that year. And
4 if you go to the far right, the column, you'll see
5 the numbers. So if you draw a line across say,
6 for example, again, the year 2003, you'll see that
7 that is about 1,800 occurrences in the year 2003.

8 Q Okay. And about 1,800 for 2010?

9 MR. NELSON: That's correct.

10 Q And then you have the red line.

11 MR. NELSON: The red line is the amount of violations
12 by year. And again, if you follow a line across
13 from the right column, you'll see that in the year
14 2000 there were 273 violations, is what it
15 actually is, and in the year 2010 there were about
16 118 violations.

17 Q And can you explain what's meant by each of
18 occurrence and violation?

19 MR. NELSON: Occurrence is something that's reported to
20 us. It can come from the public, it can come from
21 Habitat, it can come from our own officers. It's
22 something that is brought to our attention that we
23 then make a decision to respond to it based on our
24 priorities. And if we do -- occurrence -- we try
25 to respond to as many occurrences as we can. We
26 don't respond to them all. But those that we do,
27 we make an assessment on them, and if they become
28 violations, that's how they're tracked.

29 So in using the example again, in 2003, of
30 the nearly seventeen -- or 1,800 violations -- or
31 sorry, of the 1,800 occurrences, about 300 were
32 violations, so approximately one in six
33 occurrences resulted in a violation.

34 Q Now, in the PPR, and I don't need to take you to
35 it at the moment, but in the PPR, at paragraph 36
36 -- sorry, 33, it refers to there being about six
37 percent of C&P's efforts put towards habitat,
38 nationally. So I take it, then, from what you've
39 just shown us, the region here in Pacific has a
40 higher percentage effort than the national
41 average?

42 MR. NELSON: Yes, that's correct. And for the Fraser
43 River, going back pre-2005, because it has a
44 larger amount of habitat, staff maintain about a
45 50 percent of their time on habitat enforcement
46 activity. The Lower Fraser was less than that. I
47 don't know the number off the top of my head, but

1 of a deleterious substance of any type in
2 water frequented by fish...

3
4 and so on. Mr Steele or Mr. Nelson, is there,
5 nonetheless, a residual aspect that Fisheries
6 still handles in terms of 36(3)?

7 MR. NELSON: Yes, the portion of 36(3) that fishery
8 officers handle is sediment-related activity or
9 cases. It's often associated with the HADD, the
10 harmful alteration situations that we come into,
11 and so anything to deal with sediment release into
12 fish-bearing waters is a DFO responsibility. All
13 of the other chemicals and sort of things are
14 Environment Canada.

15 Q All right. Thank you. Now, Ms. Bombardier, am I
16 correct that Environment - and you've alluded to
17 some of this, I think - administers and deals with
18 a number of other statutes to do with chemical-
19 based spills or leaks or whatever, other than
20 36(3) of the **Fisheries Act**?

21 MS. BOMBARDIER: Yes, that's correct, Environment
22 Canada is responsible for the administration and
23 enforcement of the **Canadian Environmental**
24 **Protection Act**, which is the primary statutes of
25 the Federal Government for toxic substances, for
26 regulating toxic substances. So there are about
27 50 or so regulations that have been -- that came
28 into force under that specific legislation.

29 We also have the wildlife legislations that
30 are enforced by our wildlife enforcement
31 directoriate in the Enforcement Branch. Those deal
32 with migratory birds, species at risk, and there
33 are some, like oil spills that effect migratory
34 birds and species at risk would be regulated as
35 well under those wildlife legislations.

36 Q And is the work that you do under these other
37 statues and regulations involve, at least in part,
38 chemical spills or pollutants, and so forth?

39 MS. BOMBARDIER: Yes. We have, for instance, the
40 disposal at sea regulations that regulate any
41 disposal of chemicals, toxic substances, at sea.
42 So there's a permitting program in place under
43 **CEPA**, so regulatees have to have a permit before
44 they dispose of those substances.

45 We have pulp and paper, for instance, pulp
46 and paper regulations that deal with dioxins and
47 furans, wood chip, the foaming substances. So

1 there's a monitoring system in place under those
2 regulations, and companies have to report on a
3 regular basis to Environment Canada.

4 So yes, sectors covered by the **Fisheries Act**
5 are also covered under **CEPA**.

6 Q Now, am I correct that over the years and decades
7 Environment Canada has built up considerable
8 expertise in chemical-based pollutants and spills?

9 MS. BOMBARDIER: Yes, I can speak for Enforcement for
10 sure. We do have training in terms of taking
11 samples, so our officers are properly trained to
12 enforce 36(3) in release type of incidents.

13 We have a number of labs across the country
14 that perform those analysis for us, toxicity
15 testing, chemical analysis, whether it's air,
16 soil, water, so we have that expertise as well and
17 we have scientific knowledge in our programs, the
18 programs of Environment Canada administer those
19 regulations. We have scientists and engineers in
20 those programs that provide us with scientific
21 advice as required under our enforcement cases.

22 Q Is one of those labs here in Vancouver?

23 MS. BOMBARDIER: Yes, we have the Pacific Environmental
24 Science Centre, what we call the PESC, is the main
25 lab in B.C. that performs those analysis for us.

26 Q And would it also do the analysis for the Yukon
27 gathering of evidence as well?

28 MS. BOMBARDIER: I believe so, yeah.

29 Q Is it the case that even apart from s. 36(3) your
30 department, Environment, would still need to have
31 the expertise you've just spoken of and do the
32 work that you've just spoken of?

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

34 Q All right. Now, Mr. Steele, I want to turn to
35 you, if I may, for a few moments, and take you to
36 Tab 1 of Canada's Book of Exhibits. This is a
37 briefing note, as I understand it, seeking
38 approval of the revised habitat -- or National
39 Habitat Compliance Protocol, which has now been
40 marked as Exhibit 657; that is to say, the revised
41 national protocol is Exhibit 657. And now I have
42 put before you, and it's up on the screen, if Mr.
43 Bisset could turn to the next page, please? Thank
44 you. This is a briefing note. You're familiar
45 with this, are you?

46 MR. STEELE: Yes, I am.

47 Q Just dealing with the summary for the moment, do

1 the fourth and fifth bullets, which are halfway
2 down the page and beginning, "The intent," and the
3 other one is, "The integration," do they
4 accurately set out the intent of the 2007 protocol
5 and then the 2010 revision?

6 MR. STEELE: Yes, they do.

7 Q It seems to set out that there's three purposes,
8 and I'll sum it up and then let you comment on
9 this. Firstly, to integrate habitat compliance
10 activities. Secondly, to be clear as to roles and
11 responsibilities between Habitat and C&P. And
12 thirdly, to focus on high risk habitat
13 occurrences.

14 Is that the nub of what the revised protocol
15 is about?

16 MR. STEELE: Yes, I would say that's accurate.

17 Q Is there anything you would like to add to that?

18 MR. STEELE: No, I think that clearly describes it.
19 The main focus was to accurately describe roles
20 and responsibilities so that especially field
21 staff would be clear as to how they relate to each
22 other and what their respective roles would be.

23 Q All right. Now, under the current organizational
24 structure of the Department of Fisheries and
25 Oceans, as I understand it, both habitat from the
26 operational side of Habitat, and C&P are under the
27 same ADM, are they?

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

29 Q And when did that organizational arrangement come
30 about, roughly?

31 MR. STEELE: It would be last year, 2010.

32 Q Okay.

33 MR. STEELE: Exact dates I'm not sure.

34 Q Now, Mr. Nelson, in the region, you said you
35 report to Sue Farlinger.

36 MR. NELSON: Yes.

37 Q And there is a director, a regional director of
38 habitat, who also reports to her as well; is that
39 right?

40 MR. NELSON: Yes.

41 Q And that's currently Greg Savard, is it?

42 MR. NELSON: That's correct.

43 Q And the two of you and other regional directors
44 sit on the Regional Management Committee, do you?

45 MR. NELSON: Yes.

46 Q And that meets regularly and deals with various
47 things as they come up for the region?

1 MR. NELSON: Yes.

2 Q Now, if you turn to the next page, Mr. Steele, it
3 is the background section, and you are familiar
4 with the contents of this briefing note, I think,
5 aren't you?

6 MR. STEELE: Yes, I am.

7 Q Do bullets one and two accurately set out the
8 genesis and the purpose of the Habitat Compliance
9 Modernization, that being the sixth element of
10 EPMP, or is there anything that you think is
11 important to add to what's in the first two
12 bullets there?

13 MR. STEELE: Well, maybe just to clarify, the second
14 sentence of the first bullet refers to 35 fishery
15 officer positions being eliminated. That was not
16 in the Pacific Region; that would have been in the
17 Central and Arctic Region.

18 Q All right.

19 MR. STEELE: But other than that, I think -- that's
20 just a clarification point. Other than that, I
21 would say it's accurate, yes.

22 Q All right. Thank you. And this is setting out
23 that there's a strategic integrated risk-based
24 approach to the habitat compliance activities, in
25 bullets one and two. If you move to bullets three
26 and four, do they set out the origin and purpose
27 of the 2007 protocol?

28 MR. STEELE: Yes, they do.

29 Q Now, from bullet five, it appears that there was
30 an internal audit or evaluation done of C&P, and
31 they made certain recommendations, did they? And
32 that was in 2008?

33 MR. STEELE: That's correct yes.

34 Q And more specifically, they recommended that there
35 be a distinction made between administrative and
36 law enforcement functions, you'll see it there.
37 And then it seems to have two reasons set out for
38 why that distinction was to be made: one, to
39 facilitate a common collaborate approach; and,
40 secondly, to mitigate potential health and safety
41 risk to Habitat officials, and we heard about some
42 of that yesterday. But are those the two reasons
43 why there was to be a distinction made between
44 administrative matters on the one hand and law
45 enforcement on the other?

46 MR. STEELE: Yes, I think that's probably a direct
47 quote from the -- from the report, the audit

1 report at the time.

2 Q And then, as I understand it, and we've seen this
3 report before, but in 2009, the Commissioner of
4 the Environment and Sustainable Development
5 prepared a report and it says here that he or she
6 recommended accelerating the work towards risk-
7 based monitoring of projects. Is that what led to
8 the 2010 revision? Or one of the main impetus
9 that led to it?

10 MR. STEELE: Yes, I think that was one of the factors.
11 The other was the fact that the original protocol
12 was for a two-year period, in effect for two
13 years, and was due for -- it was overdue,
14 actually, by 2010, for review and revision.

15 Q All right. You'll see at the end of this briefing
16 note, on the third page, which will come up on the
17 screen, I think -- sorry, it's on the fifth page;
18 my mistake. You'll see that there's some
19 attachments to this briefing note, a fair number
20 actually. The second one is the National Habitat
21 Protocol, which is Exhibit 657.

22 I just want to run through these attachments
23 and see if you can identify them and put them in
24 as exhibits. If you can turn to -- maybe the
25 easiest thing to do at the moment, Mr. Bisset,
26 would be to keep the left side of the screen with
27 what you have and then bring up, if you don't
28 mind, Tab 2 of Canada's binder. I'm sorry, Mr.
29 Spiegelman correctly reminds me; before we move
30 on, the briefing note we've been discussing be
31 marked as an exhibit please?

32 THE REGISTRAR: Exhibit 703.

33
34 EXHIBIT 703: Memorandum for the Deputy
35 Minister re Approval of the Revised National
36 Habitat Compliance Protocol, dated December
37 21, 2010
38

39 MR. TAYLOR:

40 Q And if we go to Tab 2, you've got it in paper form
41 in front of you, I know, Mr. Steele, as well, is
42 the right side of the screen the document that's
43 referred to at Tab 1 of the briefing note
44 attachment list?

45 MR. STEELE: Sorry, could you ask that question again?

46 Q Is the document, the chart-like document on the
47 right side of the screen the document that's been

1 listed as Tab 1 to the briefing note?

2 MR. STEELE: Yes, it is.

3 MR. TAYLOR: May the right side of the screen, being a
4 summary of revised roles and responsibilities, be
5 the next exhibit, please?

6 THE REGISTRAR: 704.

7

8 EXHIBIT 704: Summary of Revised Roles and
9 Responsibilities of Habitat Management
10 Program (HMP) and Conservation & Protection
11 (C&P) in Delivery of National Habitat
12 Compliance Protocol
13

14 MR. TAYLOR:

15 Q And that's a quick compendium of the changes that
16 were being made, is it, to the roles and
17 responsibilities?

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

19 Q If we go to Tab 3 of Canada's -- sorry, Tab 4 of
20 Canada's binder, this is a memo from Claire
21 Dansereau, the Deputy Minister, to regional
22 directors general. Is that the document that's
23 referred to at Tab 3 of the list of attachments to
24 the briefing note?

25 MR. STEELE: Yes, it is.

26 Q And that's essentially saying that -- the deputy
27 is saying that, "Here is the revised protocol,
28 regional directors, and please note and pay
29 attention and pass it onto your staff," is that
30 what that is?

31 MR. STEELE: Yes, in addition to that, she's asking
32 regions or regional directors general to prepare
33 regional protocols that would accompany the -- be
34 consistent with and provide another level of
35 detail, and would be sort of companion documents
36 to the national protocol.

37 MR. TAYLOR: All right. May this memo from the deputy
38 minister, which is dated January 17, 2011, the
39 date being on the last page, be the next exhibit
40 please?

41 THE REGISTRAR: Exhibit 705.

42

43 EXHIBIT 705: Memorandum to the Regional
44 Directors General from Claire Dansereau re
45 Renewal of Regional Habitat Compliance
46 Protocols, dated January 17, 2011
47

1 MR. TAYLOR:

2 Q Then if we turn to the next tab in the book, there
3 is a document there, but we provided, last
4 evening, to everyone, a revised document. The
5 wrong document got in at Tab 5. And Mr. Bisset
6 has now kindly put the replacement document to
7 what was at Tab 5 before you. It's called
8 National Habitat Compliance Protocol
9 Communications Plan.

10 Is that the document now on the right side of
11 the screen that is what is referred to at Tab 4 of
12 the briefing note?

13 MR. STEELE: Yes, it is.

14 MR. TAYLOR: May that be the next exhibit, please?

15 THE REGISTRAR: Exhibit 706.

16

17 EXHIBIT 706: National Habitat Compliance
18 Protocol Communications Plan

19

20 MR. TAYLOR:

21 Q Continuing on, and you can see we're almost done
22 with this part, at Tab 6 there is a document
23 implementation of the National Habitat Compliance
24 Protocol. Is that the document referred to at Tab
25 5 of the briefing note?

26 MR. STEELE: Yes, it is.

27 MR. TAYLOR: May that be the next exhibit, please?

28 THE REGISTRAR: Exhibit 707.

29

30 EXHIBIT 707: Implementation of the National
31 Habitat Compliance Protocol (2010)

32

33 MR. TAYLOR:

34 Q At the bottom of the first page, it says that
35 there was some training to do with the revised
36 national protocol to be delivered, amongst other
37 places, in Kamloops, British Columbia, in October
38 2010. Do you know, Mr. Nelson, was that training
39 given?

40 MR. NELSON: I don't know. I don't remember exactly.

41 It's here, I presume it was, but I don't recall.

42 Q All right. That's fine. If you turn to the next
43 tab, and finally for this part, there is some
44 speaking points for the minister, and is that the
45 document that is being referred to at Tab 6 of the
46 briefing note, Mr. Steele?

47 MR. STEELE: Yes, it is.

1 MR. TAYLOR: May that be the next exhibit, please?
2 THE REGISTRAR: Exhibit 708.

3
4 EXHIBIT 708: Update on DFO's Integrated
5 Habitat Compliance Program - Speaking Points
6 for the Minister, 2010
7

8 MR. TAYLOR:

9 Q Now, if we turn to the national protocol itself,
10 the revised national protocol - and we're done
11 with these documents that are on the screen, Mr.
12 Bisset - which is Exhibit 657, and it's also at
13 Tab 3, I think -- 3 of Canada's binder, you'll see
14 from paragraph or section 3, which is on the next
15 page, that regional operating protocols are
16 contemplated. It's in the second paragraph under
17 that section. And as I understand it, there is
18 one for this region; that is, Pacific Region,
19 that's dated in 2007.

20 MR. STEELE: That's correct.

21 Q And that, of course, would have been under the
22 older national protocol. Now that there's a
23 revised national protocol, will you and your
24 colleagues, Mr. Nelson, be developing a revised or
25 amended regional protocol?

26 MR. NELSON: Yes.

27 Q Is that underway now?

28 MR. NELSON: I've had initial discussions, but we
29 haven't gone beyond that, yet.

30 Q All right. Using the 2007 as an example of what's
31 done, am I correct that after the 2007 original
32 national protocol was developed and passed out to
33 the regions, the regions, including yourself, then
34 developed a regional protocol, which is the one
35 done in 2007?

36 MR. NELSON: Yes.

37 Q And we don't have it before us, and I don't think
38 we need it at this time, but that's been in
39 existence for some several years now, and people
40 have been operating under it, have they?

41 MR. NELSON: Yes.

42 Q And in turn, underneath the regional protocol,
43 were there area protocols?

44 MR. NELSON: Yes. In some areas. They were developed
45 and completed in some areas; others were operating
46 under principles, but I think there were one or
47 two that had not --

1 Q All right.

2 MR. NELSON: -- actually done it.

3 Q Do you know whether B.C. Interior had one?

4 MR. NELSON: I believe they did.

5 Q And do you know about Lower Fraser?

6 MR. NELSON: I'm not sure.

7 Q Okay. What about the coast?

8 MR. NELSON: I think north coast did; I'm not sure
9 about south coast.

10 Q All right. And these are, if you like, a
11 cascading series of protocols where the national
12 one is at the broadest level and regional in the
13 middle, and then you get much more detail --

14 MR. NELSON: Yes.

15 Q -- at the area to suit the particular area's
16 circumstances?

17 MR. NELSON: Yes, but they still have to follow the
18 principles of each one above them, yes.

19 Q All right. Now, in section 5, which is on page 3
20 of the protocol, actually, it's on this page just
21 at the top of the page, though, top of 3, that is,
22 there are some definitions, including a definition
23 of "lead", and under the protocol I see that
24 "lead" means the party accountable; that is,
25 either Habitat's accountable or C&P is
26 accountable.

27 So I take it, Mr. Nelson, that accountable
28 means just that -- or, sorry, "lead" means
29 "accountable", but doesn't necessarily mean that
30 the lead is doing the work; is that right?

31 MR. NELSON: That's how I would interpret it, yes.

32 Q All right. And you as well, Mr. Steele?

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

34 Q And when it comes to inspectors' directions, as I
35 understand it, and it's further down in the
36 document here, but Habitat is the lead, but we've
37 heard this yesterday, it's actually your group,
38 Mr. Nelson, that's got the authority to issue
39 inspector certificates?

40 MR. NELSON: Under the new protocol, yes.

41 Q Now, I won't go through all of this in the
42 interests of time, and I leave it with the
43 Commissioner, but you can see that over on pages 4
44 and 5 there's a detailed setting out of roles and
45 responsibilities there, including, under section
46 5.5 there's a section 5.3 -- 5.5.3 where C&P is
47 the lead in the issuance of inspectors'

1 directions, and that Habitat management shall
2 support C&P in the development of the content of
3 those inspectors' directions.

4 Are protocols, such as the one we've been
5 looking at, are they a common tool within
6 Fisheries and Oceans to establish the respective
7 roles and relationships between different branches
8 of the Department, Mr. Steele or Mr. Nelson?

9 MR. NELSON: We have several of them; one with coast
10 guard, this with Habitat. They are common.

11 Q You agree, they're common, Mr. Steele?

12 MR. STEELE: Yes, I agree, in situations where you need
13 to work closely with another program, it's a
14 common tool that's used yes.

15 Q And sometimes you have protocols with other
16 departments or other governments, too, don't you?

17 MR. STEELE: Yes, we do. Often they take the form of a
18 more formal document, a memorandum of
19 understanding, but basically serving the same
20 purpose, yes.

21 Q Is protocol and memorandum of understanding, are
22 those synonymous terms, or is there some term of
23 art about each of them that makes one different
24 from the other; do you know?

25 MR. STEELE: I'm not sure I could comment on that. A
26 memorandum of understand is perhaps a bit more
27 formalized process --

28 Q All right.

29 MR. STEELE: -- requiring signatures at a higher level,
30 but that kind of thing, but basically, from my
31 perspective, they serve more or less the same
32 purpose.

33 Q All right. And Ms. Bombardier, from Environment's
34 standpoint, does your department use protocols and
35 memorandums of understanding, as you've heard Mr.
36 Steele and Mr. Nelson describe?

37 MS. BOMBARDIER: Yes, in situations where we need to
38 clarify rules and responsibilities, we have. For
39 instance, for Enforcement we have one with our
40 emergencies program, because we work very closely
41 with them, and it's important for our staff to
42 understand the roles and responsibilities of both
43 parties and how they have to work together. So
44 yes, it's common practice where appropriate and
45 relevant.

46 Q All right. Thank you. Now, I have a further
47 document that I want to show to Mr. Steele and Mr.

1 Nelson in particular, and it's the document that
2 was sent last evening, Mr. Bisset. This is a
3 document that we have not put in our binder, so
4 it's a new document that was distributed last
5 night. I haven't heard anyone taking any position
6 about this, so unless someone takes a position,
7 I'll proceed.

8 Mr. Steele, you're familiar with this
9 document, are you? Starting, I guess, with the
10 point halfway down the first page, where you're
11 writing an e-mail February 8, 2011. We can all, I
12 think, overlook or ignore everything above that,
13 which is simply some passing of this package back
14 and forth amongst officials. But from your name
15 downwards, February 8/11, you're familiar with
16 this?

17 MR. STEELE: Yes, I am.

18 Q What is this?

19 MR. STEELE: This was an e-mail that I sent to the
20 regional C&P directors, and as well you'll see a
21 number of other names listed there. Those are
22 basically administrative staff in the director's
23 offices.

24 Q Okay. And Mr. Nelson being one of them, I see.

25 MR. STEELE: Yes, that's right. And the purpose was to
26 provide them with -- at this point they had
27 already received the revised protocol via the DM's
28 memorandum to RDGs, but this was providing them
29 with additional background materials, a
30 presentation deck, which basically summarized the
31 implementation strategy and as well as some
32 questions and answers for staff, with the
33 intention that these would be disseminated from
34 their offices out to all staff.

35 Q All right. Mr. Nelson, you're one of the
36 recipients, as I noted. Did you, in turn, pass
37 this onto the C&P staff here in the region?

38 MR. NELSON: I passed it onto the chiefs that report to
39 me.

40 Q Yes?

41 MR. NELSON: And received feedback from them on it, and
42 said, "This is what we'll be operating under."

43 Q And did you have verbal briefings as well?

44 MR. NELSON: I have a weekly conference call with
45 staff. I believe it was raised on one of those.

46 Q All right. Now, we've spoken of the regional
47 protocol between C&P and Habitat. We don't

1 actually have it here, although I'm convinced it
2 exists somewhere. You have a fair recollection of
3 it, though, I think, Mr. Nelson, do you?
4 MR. NELSON: Depending what questions you ask about it.
5 I remember working on it and developing it,
6 helping develop it, yes.
7 Q Okay. Well, I think we'll just leave that there.
8 But in general terms, it is a protocol that is
9 designed to operationalize, at the regional
10 level --
11 MR. NELSON: Yeah.
12 Q -- what the national protocol was?
13 MR. NELSON: It's to help guide staff and to clarify
14 what roles and responsibilities each of them have.
15 Q Right.
16 MR. NELSON: To maintain consistency of how we approach
17 it throughout the region.
18 Q And in the revised regional protocol, would I be
19 right that you'll be using the 2007 regional
20 protocol and the 2010 national revised protocol as
21 your baseline to then develop a new one for here?
22 MR. NELSON: Yes.
23 Q And you will be expecting your area chiefs to,
24 after that, develop their own area protocols, will
25 you?
26 MR. NELSON: In initial discussions with the regional
27 director of Habitat, we weren't sure, depending on
28 how our regional one was developed, whether we
29 would have to further ask for area ones. We
30 haven't determined that yet. We may or may not.
31 Q All right. I want to turn to Tab 14 of the
32 Commission's exhibit binder, and this is largely a
33 question for you, Mr. Steele. It'll come up on
34 the screen in a moment, I think. You'll see here
35 that we have a document entitled, Conservation and
36 Protection Program - National Priorities 2010/11.
37 You recognize that, do you, Mr. Steele?
38 MR. STEELE: Yes, I do.
39 Q And is that a document that's produced in roughly
40 that kind of forum annually?
41 MR. STEELE: Yes, it is.
42 Q And as I understand it, this is in chart form, a
43 document that sets out the priorities of C&P and
44 assigns, essentially, 1, 2, 3, or a, b, c level of
45 priority to each one; is that right?
46 MR. STEELE: That's right, yes.
47 Q If you turn to page 3 and on, actually, page 3,

1 you'll see at the top "habitat issues", and am I
2 right, then, that the habitat issues are all
3 covered in 5a, b, and c?

4 MR. STEELE: Yes, I believe they are.

5 Q And so the habitat priorities are either an a or
6 b; one is a and two are b, and the a is responding
7 to the Auditor General's report on Habitat
8 enforcement. Can you just elaborate, briefly, on
9 what it is you're responding to when you identify
10 that priority there?

11 MR. STEELE: Yes, I think there were two
12 recommendations the we discussed, briefly,
13 yesterday, in relation to two recommendations that
14 applied specifically to the C&P program. I don't
15 have the exact wording here, but both of them
16 related to the requirement for us to develop the
17 protocol. There was also, I believe, a
18 recommendation relating to improving the
19 documentation on our recordkeeping, on our files
20 and on our recordkeeping system, the DVS system,
21 Departmental Violation System.

22 So what we're trying to capture here in the
23 priority table was the requirement to provide
24 regular updates on, well, first of all, to
25 obviously make progress on those recommendations
26 and then to provide regular updates as required on
27 the progress being made.

28 MR. TAYLOR: All right. Thank you. Could this
29 document, then, the Conservation and Protection
30 Program - National Priorities 2010/11 be the next
31 exhibit, please?

32 THE REGISTRAR: Exhibit 709.

33
34 EXHIBIT 709: Conservation and Protection
35 Program - National Priorities 2010/11
36

37 MR. TAYLOR: And I'm reminded, thank you, Mr. Martland,
38 that I didn't mark as an exhibit the document that
39 we spoke of a few moments ago, which is the one
40 that we sent last night, and it may come back up
41 on the screen, and with that, yes, thank you, the
42 e-mail and attachments from Mr. Steele of February
43 8, 2011, may that be the next exhibit, please?

44 THE REGISTRAR: Exhibit 710.

45
46
47

1 EXHIBIT 710: E-mail dated February 8, 2011,
2 from Paul Steele re Implementation Strategy
3 for National Protocol, with two attachments
4

5 MR. MARTLAND: I wonder if I could just confirm, so the
6 record reflects it, that that exhibit attaches to
7 it - and Mr. Taylor may know these better than I;
8 I'm sure he does - two different attachments, what
9 seems to be a Q&A as well as this presentation
10 that just flashed onto the screen with what looks
11 to be a whale at the top.

12 MR. TAYLOR: That is correct. It's an e-mail with two
13 attachments, all as one exhibit.

14 Q Now, I'd like to ask you, Ms. Bombardier, some
15 questions about more on the work that Environment
16 does. You've already spoken of Environment's
17 focusing on chemical-based releases and that
18 Environment takes its role under s. 36 very
19 seriously and has built up significant expertise.
20 You've talked about, in your evidence yesterday,
21 that the work effort on the part of Environment is
22 in the range of 40 to 45 percent, as it applies to
23 s. 36; that is, roughly that amount of your time
24 applies to 36.

25 Now, in terms of response time, am I right
26 that there are criteria that are used to guide
27 environmental officials in terms of whether they
28 respond fast or not as fast to a particular
29 incident report that comes in?

30 MS. BOMBARDIER: There are some factors to take into
31 account in terms of priority for actions, whether
32 we go onsite and perform an onsite inspection, or
33 whether we need to get the further clarification
34 or further information on the incident, which we
35 call an offsite inspection. But in terms of
36 priority for action, it all depends what the
37 priorities of the day are when we get the
38 occurrence level of harm. So the severity of the
39 incident level of harm to the environment and
40 whether partners are involved, whether -- well,
41 first, is it under our jurisdiction? If it's not,
42 then definitely we'll make sure that other parties
43 who may have a role get the information.

44 So we need to confirm, first, whether we have
45 jurisdiction, whether we have enough information
46 to suggest that there's a potential violation, we
47 look at the degree of harm and other factors

1 related to the incident, and those factors are
2 taken into account to determine whether we look at
3 the facts offsite, so from the office, or whether
4 we need to go and conduct an inspection onsite.

5 Q All right. And so if there's a report of a fish
6 kill, does that generate -- what level of response
7 does that generate?

8 MS. BOMBARDIER: If there's a fish kill, definitely we
9 will go onsite.

10 Q And what about where you have repeat incidents
11 being reported?

12 MS. BOMBARDIER: Same thing.

13 Q Now, does Environment Canada have intelligence-
14 gathering officers?

15 MS. BOMBARDIER: Yes, we have about 15, 14 or 15
16 intelligence officers and managers across the
17 country, so each region. We have five regions, so
18 each region has one manager, one intelligence
19 officer, and we have staff, as well, in
20 headquarters.

21 Q And without -- did you say how many are here in
22 Pacific Region?

23 MS. BOMBARDIER: There's one manager and one acting
24 officer right now.

25 Q Without going into specifics and without going
26 into intelligence confidential information,
27 shortly stated, what do they do?

28 MS. BOMBARDIER: The HQ office is responsible for
29 conducting what we call strategic intelligence, so
30 gathering information on activities in a
31 particular sector of interest, looking at trends,
32 and providing kind of a risk analysis of where
33 risk of non-compliance exists, a high risk of non-
34 compliance. So that strategic intelligence helps
35 in terms of planning our activities the following
36 year or in the near future.

37 At the regional level, the focus is more on
38 tactical intelligence. So for instance, an
39 officer focusing on a particular sector needs to
40 get information on the activity of that sector,
41 the networks being involved to identify particular
42 risks for that inspection to take place. So
43 that's what we call tactical intelligence. It's
44 focused on a specific activity as opposed to a
45 larger sector.

46 Q All right. Thank you. I want to ask you a
47 question about s. 38(4) of the **Fisheries Act**, and

1 you spoke of this the other day, but I want to be
2 sure that it's clear here what this is about.
3 S. 38(4) says, in large part, that:

4
5 Where, out of the normal course of events,
6 there occurs a deposit of a deleterious
7 substance in water frequented by fish or a
8 serious and imminent danger thereof...
9

10 and so on, you're familiar with this section, are
11 you?

12 MS. BOMBARDIER: Yes, I am.

13 Q And can you explain what this is all about in
14 terms of an administrative of a statute standpoint
15 and operationalizing it, and what does Environment
16 do -- or does Environment have a role here and, if
17 so, what do they do?

18 MS. BOMBARDIER: Yes, Environment Canada has a role.
19 We have published in *Canada Gazette* one, I
20 believe, in 2009 or at least 2010, what we call
21 Environmental Occurrence Notification Regulations.
22 So those are regulations that outline contact
23 information in the regions for receiving reports
24 of occurrences.

25 We have, to implement those regulations, we
26 have entered into agreements with some of the
27 provinces. We have, I believe, a draft agreement
28 with the Province of B.C., who receives
29 notifications on behalf of Environment Canada and
30 provide us the reports on a timely -- in a timely
31 matter so we get the information in time to
32 determine whether we need to follow up.

33 In terms of deposit out of normal course of
34 events, our understanding of what this provision
35 includes, it includes accidental releases, it
36 includes releases that are covered by regulations
37 for industries that are subject to the regulations
38 but exceeds standards of those regulations.
39 Automatically, there's a reporting requirement
40 under 38(4) to report those releases. And also it
41 includes continuous releases that are not covered,
42 not subject to the pollution prevention
43 regulations. So it covers all three and there's a
44 requirement to report those releases to
45 Environment Canada.

46 Q All right. Thank you. If we may turn to Tab 8 of
47 Canada's binder, please, this is a very colourful

1 and elaborate chart. Do you recognize this, Ms.
2 Bombardier?

3 MS. BOMBARDIER: Yes, I do.

4 Q Okay. Can you explain what this is?

5 MS. BOMBARDIER: It's basically a diagram that outlines
6 the steps and identification of priorities for
7 compliance at Environment Canada, so it is an
8 integrated Compliance Promotion and Enforcement
9 effort. It starts around September/October every
10 year. We send a call letter to the programs who
11 administer the regulations under **CEPA** and the
12 **Fisheries Act**, the pollution prevention
13 regulations I'm talking about, and they provide us
14 information, new information, on the regulated
15 sector, on training level to our enforcement
16 officers that help in terms of identifying
17 priorities for the following year.

18 So it's a very comprehensive consultation
19 process that takes place at the departmental
20 level, and it identifies key priorities for the
21 following year, and that guides the development of
22 the regional work plans which are then integrated
23 into a National Enforcement and National
24 Compliance Promotion work plan.

25 Q All right. Thank you. And what you've just said
26 is what's reflected in the boxes that are centre
27 vertically on the page and about two-thirds
28 across; is that right, that is, developing
29 regional work plans, approving them, and then
30 integrating them into the National Enforcement
31 Plan; that's what you were just speaking of a
32 moment ago, is it?

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

34 Q I don't know if it has bearing on the work that
35 Environment does with s. 36, but in the upper left
36 there are some acronyms. Can you say what is EED
37 and what is CPAD?

38 MS. BOMBARDIER: EED is the Environmental Enforcement
39 Directorate, and CPAD is the Compliance Promotion,
40 I believe "A" is for Activities Directorate.

41 Q Okay. So those are two units within Environment,
42 are they?

43 MS. BOMBARDIER: It's two units. The EED, which I'm
44 responsible for reporting to Enforcement Branch,
45 and the Compliance Promotion Directorate reports
46 to the ADM of Environmental Stewardship Branch, so
47 different ADM.

1 Q All right. Do you have the Policy and Practice
2 Report before you? There's a binder of it,
3 containing it, I think, there.

4 MR. MARTLAND: And for the witnesses' benefit, it
5 should be Tab 4 of Commission Counsel's booklet of
6 materials.

7 MR. TAYLOR: Thank you, Mr. Martland. And I'll let you
8 locate that binder, and when you locate it, I'm
9 interested in paragraph 61, Ms. Bombardier.

10 MR. MARTLAND: And in that lull, I wonder if the very
11 colourful --

12 MR. TAYLOR: Oh yes, thank you.

13 MR. MARTLAND: -- diagram should be made an exhibit?

14 MR. TAYLOR: In my enthusiasm to meet the clock, I keep
15 forgetting to put the exhibits in. May the chart
16 headed Proposed Planning Process to Determine
17 Compliance for 2011-14 be marked as the next
18 exhibit, please?

19 THE REGISTRAR: Exhibit 711.

20

21 EXHIBIT 711: Proposed Planning Process for
22 Determining Compliance Priorities for 2011-
23 2014
24

25 MR. TAYLOR:

26 Q Just on that, Ms. Bombardier, and what's been
27 marked as Exhibit 711, it says it's for 2011-2014.
28 Is this an exercise you go through every year?

29 MS. BOMBARDIER: Yes, it's an exercise that we go
30 through every year, but we look at the horizon of
31 the discussion. The discussion looks at more than
32 a year, but the parties are identified for one
33 year.

34 Q All right. So it's a rolling document, if you
35 like, and next year you'll be doing one like this
36 for 2012-15, will you?

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

38 Q Okay. Do you have exhibit -- sorry, paragraph 61
39 of PPR8 (sic) before you?

40 MS. BOMBARDIER: Yes, I do.

41 Q It says there that over half the convictions under
42 36 - this is at the bottom of that paragraph -
43 over half the convictions under s. 36 have been a
44 result of recommendations for charges by DFO.
45 Now, I'm not asking you to speak to what DFO does,
46 but with regard to that comment in s. 36, have you
47 got a comment to make on that?

1 MS. BOMBARDIER: I think that has more to do with the
2 situations that are involved. DFO, as we spoke
3 earlier, is responsible for sediment-type
4 releases, so they have authority to take
5 enforcement action on sediment release under
6 36(3). Our enforcement activities under 36(3)
7 focus more on pollutant-type incidents. I don't
8 have stats in front of me, but we have done a
9 number of prosecutions under 36(3) for pollutant-
10 type incidents, and I think that statement seems
11 to focus more on DFO activities, but Environment
12 Canada has been quite active as well in this
13 regard.

14 Q All right. That paragraph, paragraph 61, could be
15 read to suggest that prosecution is about the only
16 tool or acceptable means available to your
17 department or DFO, for that matter, when faced
18 with non-compliance. Are there other tools, and
19 what are they?

20 MS. BOMBARDIER: Yes, there are a number of tools that
21 they're all outlined in our Compliance and
22 Enforcement Policy, a document of 2001. It's, as
23 I was explaining yesterday, it's an escalating
24 approach that we apply for the enforcement of
25 s. 36(3) in the pollution prevention regulations,
26 starting with warning letters, which are the last
27 stringent measures, it's more for administrative
28 type violation.

29 We also have inspector's directions that are
30 issued by our fisheries inspectors for to prevent
31 or stop releases and require that actions be taken
32 to mitigate those releases. So those are also
33 very effective.

34 We have ministerial orders, ministerial
35 requests for information, for instance, under
36 s. 37, we've used that occasionally. And, of
37 course, the prosecutions, but the prosecution is
38 the last resort. And it's only for specific
39 circumstances that are also applying in the
40 Compliance and Enforcement Policy. For instance,
41 when there's obstruction or, you know, lack of
42 collaboration from the regulatee.

43 MR. TAYLOR: All right. The 2001 document that Ms.
44 Bombardier referred to is Exhibit 693, Mr.
45 Commissioner.

46 Q Now, I know that Mr. Nelson and Mr. Steele will
47 have some comment on remedies and sanctions that

1 are available, and I'll come back to that and
2 discuss it with them before we close.

3 In terms of paragraph 14 of the PPR, that is
4 a paragraph that quotes from some writing by Otto
5 Langer. Do you have a comment on whether either
6 or both of Environment and DFO are responsible for
7 water quality and, in particular, whether the
8 division between your two departments and
9 responsibility for aspects of s. 36 would have
10 anything to do with water quality?

11 MS. BOMBARDIER: I think s. 36 is there to protect fish
12 and fish habitat from deleterious substances, so
13 there's definitely a link with water quality
14 there.

15 Q All right. The purpose, though, of your work is
16 aimed at fish habitat, is it, and water quality
17 is, if you like, flowing out of that - no pun -
18 but flowing out of that and incidental to that?

19 MS. BOMBARDIER: It's protection of fish and fish
20 habitat, yes.

21 Q All right. Now, Mr. Nelson, can I ask you what
22 sources of information Fisheries has at its
23 disposal in terms of gathering information or
24 identified occurrences that are harmful to fish
25 habitat?

26 MR. NELSON: We have our data violation system. I'm
27 sorry, I'm missing the question. Are you
28 referring to what -- where do we get our
29 information from that leads us to evidence -- or
30 to investigations?

31 Q Exactly.

32 MR. NELSON: Okay.

33 Q Well, lead you to an occurrence --

34 MR. NELSON: Occurrence, yeah.

35 Q -- that may, in turn, lead to an investigation.

36 MR. NELSON: Yes, you get them from the public. We
37 have a 24-hour line that the public can report an
38 incident to. We get them from our own officers
39 going out on patrol. We get them from Habitat
40 staff reporting occurrences to us. Anybody in any
41 government agency. Sometimes Environment Canada,
42 Conservation Officer Service. It can come from
43 any number of sources.

44 Q Does DFO have intelligence officers?

45 MR. NELSON: With funding from the PICFI program, we
46 initiated an intelligence investigation unit and
47 we have, for just over a year had an intelligence

1 analyst, and in each of our areas in the region we
2 have designated an area intelligence officer. So
3 it's a fisher officer who gathers intelligence for
4 that geographic area and feeds into the system.

5 Now, as was described by Ms. Bombardier,
6 they're more advanced, I think, than us on their
7 intelligence system, but ours is moving along, and
8 it really helps -- prior to using this, you go
9 investigate based on your instincts and your gut
10 feelings, and I think intelligence-led is
11 quantifying and using all the information that you
12 have available at hand to direct those activities.
13 It often leads to the same place, but it's more
14 disciplined and more accountable.

15 Q All right. Thank you. And Ms. Bombardier, you
16 may have mentioned this, but just to be clear in
17 case you didn't, am I correct that Environment has
18 got a telephone line that is widely advertised for
19 the public to phone to if they spot something that
20 they see as harmful to habitat?

21 MS. BOMBARDIER: As indicated earlier, there's a
22 contact information in the notification
23 regulations that provides basically all the
24 contact information where occurrences are to be
25 reported, and that's outlined in the regulation,
26 and also on our website. It differs from one
27 province to another, of course.

28 Q Now, in the Commission's binder, at Tabs 18 and
29 19, there are two documents, each of which is
30 entitled National Enforcement Plan, but they're
31 for different years. Tab 18 is 2008/2009, and
32 2010, 2011 is the next one. Do you recognize both
33 of these documents, Ms. Bombardier?

34 MS. BOMBARDIER: Yes, I do.

35 Q And are they exactly what they're titled, National
36 Enforcement Plan?

37 MS. BOMBARDIER: Yes, they're National Enforcement Plan
38 for the Environmental Enforcement Directorate, as
39 opposed to wildlife.

40 MR. TAYLOR: All right. And may those be the next two
41 exhibits, please? We'll have the National
42 Enforcement Plan of 2008/09 as the next exhibit.

43 MR. MARTLAND: There may only be one, because I believe
44 the one to the right, 2010/2011, is Exhibit 697.

45 MR. TAYLOR: Thank you.

46 THE REGISTRAR: Exactly.

47 MR. TAYLOR: So we'll put 2008 in as the next exhibit.

1 THE REGISTRAR: That's at Tab 18?

2 MR. TAYLOR: Yes.

3 THE REGISTRAR: Will be 712.

4

5 EXHIBIT 712: Environmental Enforcement
6 Directorate, National Enforcement Plan 2008-
7 2009
8

9 MR. TAYLOR: 698, did you say, Mr. Martland?

10 THE REGISTRAR: 697.

11 MR. TAYLOR:

12 Q At Commission's Tab 15, and this is a question of
13 you, Mr. Nelson, there is a document entitled, C&P
14 Priority Statement for 2010-11, National and
15 Pacific Region. This is Exhibit 695, now. And
16 there's been some evidence about this document
17 before. Is this a routine operational planning
18 document that's done annually?

19 MR. NELSON: Yes, it is.

20 Q And at page 5 of that document, it sets out - I
21 think it sets out - yes, one-third down the page,
22 operational commitments. Can you comment on the
23 importance of setting out area-level operational
24 plans? I'm not sure if that's the section of this
25 document that deals with that. Are you familiar
26 with area-level operational plans?

27 MR. NELSON: I think you're referring to the lower
28 section on Habitat management; is that correct?

29 Q Probably.

30 MR. NELSON: Yeah. This document was prepared prior to
31 the new habitat protocol, so it comments in here
32 about the area protocols which you'd asked about
33 earlier, and it does confirm that we did have one
34 in North Coast, and South Coast and Lower Fraser
35 were in draft form. And I believe B.C. Interior
36 had one as well.

37 So this refers to those area protocols for
38 prior to the current national protocol. And as I
39 stated, I will have this -- I have had initial
40 discussions with my counterpart of Habitat and we
41 may or may not have area protocols like this,
42 depending on how the regional one goes.

43 Q All right. I'm mindful of the time, so I'm going
44 to move along. Mr. Steele, in the PPR, at
45 paragraph 68, there's a reference to fishery
46 officer positions and the comings and goings. Do
47 you have a comment on what's written there, Mr.

1 Steele?

2 MR. STEELE: Yes, I do. It's in relation to the
3 sentence in parenthesis, or in brackets, which
4 states that 12 of the 24 fishery positions in the
5 -- yes, I think that's meant to say "fishery
6 officer positions", were eventually returned to
7 C&P. This is referring to the EPMP process and
8 the reductions that were proposed, or that were
9 announced under the expenditure review exercise
10 back in 2005.

11 And I think we talked a bit about it
12 yesterday, but the initial intention and what was
13 announced in press releases as the Department's
14 approach to meeting the ERC reductions was
15 initially to reduce by 24 positions in the Pacific
16 Region, fishery officer positions.

17 What's stated here is that 12 of the 24 were
18 eventually returned, but in actual fact the
19 reductions of 24 were never actually implemented.
20 There was a reversal of that decision early in
21 2006. So the actual reduction of the 24 positions
22 as planned never occurred, so there wasn't a case
23 of taking 24 and returning 12. The 24 were never
24 -- were never actually cut. So that's just a
25 point of clarification there.

26 Q All right. Thank you. Next, and almost finally,
27 at Tab 11 in Canada's Exhibit Book, has a document
28 that's a risk profile document from 2009. Mr.
29 Steele and Mr. Nelson, do you recognize that
30 document? Sorry, 2011.

31 MR. STEELE: Yes, I do.

32 MR. NELSON: Yes.

33 Q All right. And I think it's common ground, Mr.
34 Commissioner, but for reasons that I don't know,
35 there's a glitch in the dating of this document in
36 different parts of it. It is a 2011 document,
37 even though it says, at different parts of the
38 document, that it's 2009. I think they used some
39 template in this company and forgot to update
40 their data or something.

41 With that, Mr. Steele, this is a document
42 that's used by Fisheries and Oceans to develop
43 risk profiles, is it? Or assess risk to the work
44 you do, is it?

45 MR. STEELE: Well, this is the end product, basically,
46 of a risk assessment process that we went through
47 with the assistance of the consultants in

1 Terrace --

2 Q All right.

3 MR. STEELE: -- to basically identify what are the key
4 risks facing the program at the corporate level,
5 and determining the potential impact of those
6 risks and then developing mitigation strategies to
7 deal with them.

8 Q Okay. And on page 5 there's a colourful matrix
9 that is called a Risk Heat Map. Now, this is
10 similar in appearance to one that Mr. Nelson was
11 asked about yesterday by Mr. Martland. The one
12 that Mr. Nelson was asked about and this one, are
13 they both using the same methodology to get at the
14 end point of putting on the matrix where certain
15 things lie in terms of risk level?

16 MR. STEELE: Yes, basically the same methodology. It's
17 a voting exercise and consensus --

18 Q All right.

19 MR. STEELE: -- as to what the level of risk should be
20 and the likelihood and impacts.

21 MR. TAYLOR: May this document be the next exhibit,
22 please.

23 THE REGISTRAR: Exhibit 713.

24

25 EXHIBIT 713: Fisheries and Oceans Canada
26 Conservation and Protection - Risk Profile
27 2011
28

29

MR. TAYLOR:

30 Q Now, Mr. Nelson, you heard a bit from Ms.
31 Bombardier, or some evidence from Ms. Bombardier,
32 about sentencing. You're familiar with something
33 called creative sentencing process, are you?

34 MR. NELSON: Yes.

35 Q And can you just explain, in the context of
36 habitat compliance, what creative sentencing is
37 used and maybe given an example?

38 MR. NELSON: Well, it's been used for quite a number of
39 years in habitat cases in DFO and it stems from, I
40 think it's, s. 72 of the **Fisheries Act**. Rather
41 than give -- and it's more prevalent in larger --
42 no, in -- larger fines in larger -- say dealing
43 with a larger company, rather than levy a large
44 fine, there will sometimes be a substantial amount
45 of money put aside for habitat restoration, in
46 other words, to restore the damage that might have
47 been done.

1 And an example, a recent example, in Shuswap
2 Lake system where a marina development destroyed a
3 bunch of fish habitat. I'm not exactly sure of
4 the number, but it was in the range of \$350,000 to
5 \$375,000 was put towards a fund to restore the
6 damage, and a much smaller fine was levied against
7 the individual.

8 Q All right. Final question, then, and Mr. Martland
9 asked each of you this as well, but I offer you
10 the opportunity, if you have anything more to say,
11 whether you have any recommendations or
12 suggestions in relation to Fraser sockeye as it
13 relates to the work of your respective department
14 or unit in habitat compliance, whether you have
15 anything that you think is important to pass onto
16 the Commissioner.

17 And I'll start with you, Mr. Steele, if I
18 may. Anything that you want to add to what you've
19 already said?

20 MR. STEELE: Well, I think the only point I'd like to
21 mention is the fact that resource -- resourcing
22 issues departmental resourcing issues, have come
23 up a fair bit so far in the last day and a half,
24 and notwithstanding what I just said about the 24
25 positions that weren't actually cut in Pacific
26 Region, I wouldn't want to give the impression
27 that I'm downplaying the fact that the program in
28 this region and nationally does have some
29 significant issues with regard to budgets and
30 resourcing, so I would -- you know, I wouldn't
31 want to leave the impression that I'm downplaying
32 that, and it is an issue, I think, that the
33 Commission may want to have a close look at as you
34 continue with your discussions and deliberations.
35 Thank you.

36 Q All right. Mr. Steele (sic), do you have
37 suggestions or recommendations, your top two or
38 three that you might think important to leave with
39 the Commissioner?

40 MR. NELSON: Well, I had a list yesterday that I read
41 off.

42 Q Yes.

43 MR. NELSON: I think those are important. But a point
44 I'm struggling with is this national protocol, and
45 I'm concerned that, Mr. Commissioner, I might be
46 leaving the impression that we're going to leave
47 here and get this together real quickly. I

1 expressed some concerns I have with how we're
2 going to achieve this, and this morning, reviewing
3 some of the information that it was based on in
4 our C&P audit, there's just some -- there's some
5 discrepancies that I have to understand before I
6 can move this forward.

7 The roles and responsibilities in here
8 conflict with some of the things that are in our
9 C&P audit. As an example, it states in the C&P
10 audit that C&P will play a security role for
11 Habitat staff. And I only read that this morning,
12 and that's not our mandate. If Habitat staff have
13 an issue with civil disobedience, it's a police
14 matter. So it's a clarification thing, I guess,
15 that I have to have worked out with the
16 Department.

17 We will follow this. I am a loyal employee
18 and I enjoy doing my job, but -- and I will carry
19 forward, as best I can, whatever we do. But this,
20 coupled with what I see on the horizon with
21 challenges on salary dollars and so on for
22 operating funds, we have, I consider, one of the
23 most dedicated work forces anywhere with our
24 officers. And just the expectations continue to
25 pile up, and the ability to deliver is --
26 continues to fall.

27 Q All right. Thank you. Ms. Bombardier, last word
28 in terms of my questions. Anything you want to,
29 beyond what you've already said, underline for the
30 Commissioner?

31 MS. BOMBARDIER: No, nothing. I think I've -- I think
32 we've covered --

33 Q All right.

34 MS. BOMBARDIER: -- for Environment Canada, thanks.

35 MR. TAYLOR: Thank you. Mr. Commissioner, I had some
36 more questions about the PPR, but I think in the
37 interests of time I'll have to leave that and I'll
38 discuss with Mr. Martland how I might impart that
39 information to him and, through him, to you,
40 involving the other participants, of course.
41 Thank you, those are my questions.

42 THE COMMISSIONER: Thank you very much, Mr. Taylor. I
43 just have two very quick questions. If Mr. Bisset
44 could bring up Exhibits 701 and 702 that were at
45 the beginning of the session this morning.

46 I just wanted to ask Mr. Nelson whether there
47 were any similar -- well, I guess it's the graph

1 I'm looking at, Mr. Nelson, whether there's
2 anything similar that has been done for the Fraser
3 Watershed, because I take it this is for the
4 Pacific Region?

5 MR. NELSON: This is for the Pacific Region. I can
6 check. It would be very easy to produce, if we
7 don't have one.

8 THE COMMISSIONER: All right. Thank you. And I just
9 want, just for clarification, Mr. Taylor, because
10 different terms were used, in the documents, C&P
11 is Conservation and Protection, and the HMP is the
12 Habitat Management Program, but I note there's
13 other language, like habitat compliance and
14 compliance management. Do I take it that
15 references to habit compliance and compliance
16 management would fall under the HMP part, not the
17 C&P part?

18 MR. STEELE: That's my understanding, yes.

19 THE COMMISSIONER: All right, thank you very much.

20 MR. TAYLOR: On your first question, Mr. Commissioner,
21 Mr. Nelson has indicated that it would be easy to
22 prepare a chart of this kind for the Fraser
23 Watershed. So we'll take that on and get back to
24 Mr. Martland and pass something into him and he
25 can then deal with the participants' counsel and
26 through to you.

27 THE COMMISSIONER: Thank you very much, Mr. Taylor.
28 Shall we take the morning break, Mr. Martland?
29 Thank you.

30 THE REGISTRAR: The hearing will now recess for 15
31 minutes.

32
33 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)
34 (PROCEEDINGS RECONVENED)
35

36 THE REGISTRAR: The hearing is now resumed.

37 MR. MARTLAND: Mr. Commissioner, Mr. Harrison's
38 estimate is 60 minutes. Our lunch break is 12:30.
39 I've encouraged him and others, of course, to
40 speed or to be fast, but he may not be able to
41 conclude his questions before the lunch break.
42 Mr. Taylor had another initial matter to address
43 before Mr. Harrison.

44 MR. TAYLOR: I don't have a questions, but we did find
45 the Regional Protocol between Habitat and
46 Compliance for Conservation Protection. So
47 certainly Mr. Martland's agreed, I don't know

1 about others, but I'd like to put it in as an
2 exhibit, and it is up on the screen now.
3 THE REGISTRAR: Exhibit number 714.
4 MR. TAYLOR: Thank you.

5
6 EXHIBIT 714: Pacific Region Habitat
7 Compliance Protocol
8

9 MR. HARRISON: Good afternoon, Mr. Commissioner, and
10 panel. My name is Judah Harrison, H-a-double r-i-
11 s-o-n. I'm representing the Conservation
12 Coalition, which is a group of six non-
13 governmental organizations and Mr. Otto Langer as
14 an individual.
15

16 CROSS-EXAMINATION BY MR. HARRISON:
17

18 Q I would like to start, please, with document
19 number 11 from my list, if you can bring that up,
20 please. This is a document entitled "The Will to
21 Protect". It's a report drafted by one of my
22 clients, the David Suzuki Foundation, in 2006.
23 Are any of you familiar with this document?

24 MR. NELSON: Yes, I am.

25 Q Okay, thank you. And I would like to take you to
26 a specific part of this document, specifically
27 page vii. And I would just like to read this out,
28 a couple of points out to you and ask whether you
29 agree or disagree and get some comments from you,
30 if you feel they are warranted. So right under
31 "Restore the will to protect", the first statement
32 says:
33

34 First, governments, industry and the public
35 must admit we have a serious habitat
36 protection problem. The DFO and the
37 provincial government must acknowledge that
38 current habitat conservation protection
39 strategy is resulting in widespread and, in
40 many cases, permanent loss of fish habitat.
41

42 My question to each panel member is whether you
43 agree generally that we are, as we speak,
44 permanently losing fish habitat and specifically
45 within the Fraser River Basin, are we, as we
46 speak, permanently losing fish habitat?
47

47 MR. NELSON: In my experience, through working on the

1 Fraser River for 20 years and through staff who
2 continue to work there, there is a loss of fish
3 habitat. I don't know that I would -- the part I
4 would not agree with is, is it permanent. Some of
5 it is, some of it probably could be restored, some
6 of it is being restored. We have Habitat staff
7 that do work on projects to help restore some of
8 it. But generally I would say there has been
9 probably a slow net loss of fish habitat in many
10 areas.

11 Q Mr. Steele, or Ms. Bombardier?

12 MR. STEELE: I would say I generally agree with what
13 Mr. Nelson has said, but understanding as well
14 that my direct knowledge of the situation on the
15 Fraser Basin is quite limited. But from what I've
16 heard and what I understand, I would generally
17 agree with what he had to say.

18 Q Thank you. Ms. Bombardier.

19 MS. BOMBARDIER: And I must say that I don't have the
20 expertise nor the knowledge to comment on that
21 from Environment Canada Enforcement perspective.

22 Q Okay, thank you. Right underneath this passage
23 the report makes a number of suggestions, and
24 that's right under "Improve habitat protection
25 policies and regulations". I would just like
26 comments from each of you on these suggestions and
27 whether you think they are good suggestions or not
28 practical, and I guess I'll go over each very
29 briefly for you, but the first one would be to:

30
31 Clarify government responsibilities.
32

33 Do you feel that that's a need? And I guess
34 particularly with respect to s. 35 and 36, does
35 anyone on the panel feel that there's a need, that
36 we need additional clarification on that.

37 MR. NELSON: I think within agencies there's clarity,
38 but from some feedback I get, I think the public
39 is sometimes not as informed. So I think
40 providing information and communications and
41 education with the public could help improve that.
42 So I would say internally, I would say it is
43 fairly clear, perhaps publicly it's not.

44 Q Okay, thank you. And actually I'll just focus on
45 three of these suggestions. The first one is:

46
47 Establish enforceable conservation

1 objectives.

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If each of you can give your opinion on whether you feel that that is a valid and helpful suggestion or not, and if you don't understand what that means, then perhaps you can say so.

MR. NELSON: Yeah, it's a pretty broad statement. You know, a lot of what we have is enforceable already. So I wouldn't feel proper in commenting further than that.

Q Does anyone else feel that conservation objectives must be established and enforceable?

MR. STEELE: Yes, I would agree with that, obviously it would be a good idea to have clear conservation objectives and from a practical sense, those would have to be enforceable. I think often where we run into problems is not necessarily the enforceability so much as the capacity to achieve a credible level of enforcement. But the statement itself I would have no difficulty with.

Q Thank you. Ms. Bombardier.

MS. BOMBARDIER: I would agree that to achieve objectives for protection, conservation, enforcement is key, enforceable provisions definitely, yes.

Q Thank you. Two more of these that I would like to specifically put your attention to, is one is:

Implement a formal audit process for self-regulating industries.

We've heard repeatedly that EPMP is moving towards a more self-regulated state of regulatory affairs, and I would like each of your views on implementing a formal audit process of this.

MR. NELSON: I would agree that that would be a good process to follow, and I've promoted the ideas of some kind of a formal audit on a number of other areas of the Department as well. So I think when we make these operational statements and provide them for habitat protection, in my view it would improve our compliance if we had a clear formal process that would take a sample and check up on those areas. Not just ones that have been identified, but random areas, take a geographic area and randomly do an inspection of it to determine people who are working in there that we

1 have knowledge of, and those that we don't have
2 knowledge of.

3 Q Sorry, I just want to go further with that. I
4 mean, yesterday we heard you say various things,
5 including that you're in the field less and
6 generally fisheries officers are in the field less
7 and just walking around as they used to be, was
8 one of the primary deterrents. Would you agree
9 with that?

10 MR. NELSON: Yes. As I said yesterday officer presence
11 is a primary tool in compliance, and the new
12 approach has reduced that aspect, but it has
13 increased in other areas, such as the operational
14 statements and working, the push towards working
15 more with industry on compliance.

16 Q Thank you. Mr. Steele, Ms. Bombardier, do you
17 have any comments on the need to establish a
18 formal audit system of self-regulating industries?

19 MR. STEELE: Well, I would agree that self-regulation
20 should go hand-in-hand with an audit process and
21 there has to be a certain level of formality to
22 that process for it to function properly. I would
23 agree with that.

24 Q Ms. Bombardier?

25 MS. BOMBARDIER: What I could add is that under current
26 regulations that we have, there's monitoring and
27 reporting requirements, and so that provides
28 industry the ability to monitor, to audit,
29 basically to audit their procedures, their
30 processes, but we're there to check and make sure
31 that it's done and the objectives of the
32 regulations are being met.

33 Q Your last statement that you're there to check
34 that the regulations and what they've said is
35 being met. I guess it's my understanding that a
36 formal audit system would meet that need and I
37 guess make it more random and make the checking of
38 such statements more often, and such information,
39 they would do -- is that your understanding? That
40 was not a very clear question, so I apologize for
41 that. But basically what I'm asking is, so do you
42 feel that there's a formal audit process now
43 that's sufficient for what you just said, the
44 reporting of these industries?

45 MS. BOMBARDIER: The self-audit process is included in
46 the regulations. But as I said, because the
47 provisions are enforceable, we do our proper

1 verification to make sure that the standards are
2 being met.

3 Q And my question then is, is the verification being
4 done by DOE, or the Department of Environment
5 right now, is this sufficient to ensure that self-
6 reporting industries are meeting what they say
7 they are meeting?

8 MS. BOMBARDIER: Yes, I believe so. Yes.

9 Q Okay, thank you. The last suggestion in that note
10 that I wanted to just bring your attention to was
11 there's a comment that we should:

12
13 Make those that destroy habitat pay for
14 recovery.
15

16 I would like to just hear, that's often called the
17 "polluter pays" principle, and there's various
18 documents and laws for Canada states that this is
19 one of the principles that guides us. Do you, the
20 three of you panel members, agree that this is a
21 principle that should guide habitat management?

22 MR. NELSON: Yes. Maybe I'll start by saying any
23 proponent, whether they be a habitat or a fisher,
24 they're doing risk versus reward assessments on
25 their own, as well. A logging company, for
26 example, who is pushing a road into an area, if
27 their risk is very low that it will ever be found,
28 they might take that chance a little more. So,
29 and when they are caught, I think it is important
30 to hold them accountable through whatever means it
31 be, court being one solution, but there are many
32 others that can get you to the same place. As far
33 as making it easier to hold them accountable,
34 again I think we have the tools; perhaps not
35 enough tools.

36 Q Thank you. And, Mr. Steele and Ms. Bombardier,
37 the principle of the person who, or the entity
38 that destroys habitat being forced to pay for the
39 recovery of that habitat, would the two of you
40 agree that that's a principle that should guide
41 habitat management?

42 MR. STEELE: I would say it's a reasonable principle,
43 but it would have to be applied in consideration
44 of the circumstances in each individual case. It
45 may or may not be appropriate, depending on the
46 level of the damage, the intent of the individual,
47 those kind of considerations. I think it would

1 have to be looked at on a case-by-case basis.

2 Q Ms. Bombardier.

3 MS. BOMBARDIER: I believe that it's a key principle in
4 environmental protection legislation, including
5 the **Fisheries Act** and the **Canadian Environmental**
6 **Protection Act**, yes.

7 Q Thank you very much. And is this a principle that
8 we are currently implementing, is my question. I
9 mean, currently in the Fraser River Basin, if
10 someone destroys habitat, are they forced to pay
11 for recovery of that habitat?

12 MR. NELSON: Yeah, in some cases, yes. A case I
13 mentioned earlier today about in the Shuswap
14 Lakes, with through creative sentencing under s.
15 79(2) of the **Fisheries Act**, often sentences are
16 levied that will hold the person accountable and
17 help restore the habitat. In a few cases that
18 we've had using restorative justice, we've also
19 achieved the same goal, whereby the habitat was
20 restored and funds were put towards -- substantial
21 funds were put towards habitat restoration.

22 MR. HARRISON: Okay, thank you. I believe it would be
23 appropriate to mark that document as an exhibit.

24 THE REGISTRAR: Exhibit 715.

25

26 EXHIBIT 715: Report, Jeffrey Young and John
27 Werring, 2006, The Will to Protect -
28 Preserving B.C.'s Wild Salmon Habitat
29

30

30 MR. HARRISON:

31 Q Mr. Nelson, yesterday you mentioned, you gave an
32 example of an oil spill, and you said in the case
33 of an oil spill this would be a deposit of
34 deleterious substances and it would be an
35 Environment Canada matter. In my view, an oil
36 spill would most certainly result in violations of
37 both s. 35 and s. 36, often. And my question to
38 you is how often do proponents get charged under
39 both sections of the **Act**?

40 MR. NELSON: In just an oil spill, or in -- okay.

41 Q No, generally how often -- yes.

42 MR. NELSON: For clarity, oil spill is Environment
43 Canada's responsibility. Once it's determined
44 that it could impact fish habitat, then we get
45 involved, as well, if it's a harmful, you know, if
46 oil gets on the beach, et cetera. So there are
47 many cases where persons are charged under both s.

1 35 and 36. Was that...

2 Q That's the thrust of my question.

3 MR. NELSON: That's the question.

4 Q Thank you.

5 MR. NELSON: Yes.

6 Q And then I guess if there's many cases where that
7 -- if that is often the case, in your view is it
8 efficient to have two separate agencies
9 administering those two separate sections?

10 MR. NELSON: In the many cases I'm talking about, I'm
11 talking about DFO's, where we often -- when you
12 have under s. 36 are silt, sediment deposits,
13 often those are directly related to a HADD under
14 s. 35. As far as oil spills or chemicals
15 impacting fish habitat, in my experience those
16 haven't been as frequent. There have been a
17 couple or three in my career, but they're not that
18 common.

19 Q I guess I would like to ask Mr. Steele and Ms.
20 Bombardier the same question. Do you feel that if
21 it's the case that many violations would be --
22 many occurrences would be a violation of both s.
23 35 and s. 36, is it efficient to have them
24 enforced through two different agencies.

25 MS. BOMBARDIER: I think it's working quite well the
26 way it is now. I mean, we've had cases, one in
27 Alberta where there was a major oil spill of
28 bunker C oil in fish-bearing water. And there
29 were charges under both 35 and 36, and you know it
30 was successful conviction.

31 Q Mr. Steele.

32 MR. STEELE: I would agree that it works generally
33 quite well under the current arrangement. As we
34 discussed yesterday, I think sometimes there is at
35 least some confusion on the part of the public and
36 others as to who is responsible. But for the most
37 part, I think the current arrangement works
38 reasonably well.

39 Q And I guess I would ask you on that answer, in
40 your view, would it be more efficient for the two
41 sections to be administered under a single agency?

42 MR. STEELE: Would it be more efficient? It's
43 difficult to say without doing a real detailed
44 analysis of the practical aspects of the issue,
45 how it actually would be rolled out under one
46 agency, what sort of transfers of resources would
47 be required from one agency to another and what

1 the impacts of that would be on the agency that
2 would be giving up resources. So I think without
3 having done that analysis, it would be premature
4 to make a comment on that.

5 MR. HARRISON: Okay, thank you. Mr. Registrar, can you
6 bring up Exhibit 691, please.

7 MR. MARTLAND: Mr. Commissioner, when I forgot to
8 simply make a remark for these hearings that I
9 ought to, which was to request that as counsel ask
10 questions, if they're in a position to direct the
11 witness, to direct their question to a particular
12 witness, that may be of some assistance and it
13 avoids the witnesses conferring to determine who
14 should answer a question. So I'll simply make
15 that, and that's not particular to Mr. Harrison,
16 that's for all counsel. Thank you.

17 MR. HARRISON:

18 Q So this question is for Ms. Bombardier, This
19 document, which was made an exhibit earlier this
20 week is the Interim Operational Working
21 Arrangement of s. 36(3). Are you familiar with
22 this document?

23 MS. BOMBARDIER: Yes, I am.

24 Q Now, within this document, and unfortunately I
25 don't know exactly where, but within it, it says
26 that Environment Canada has agreed to take
27 enforcement of 36(3) but they will only do so in
28 cases where there has been an identified and
29 significant deposit of deleterious substances.
30 And I emphasize the words "identified and
31 significant". Ms. Bombardier, is there a defined,
32 is there a definition, is there any clarification
33 on what is termed or what is meant by significant?

34 MS. BOMBARDIER: Not that I'm aware of.

35 Q And in your understanding, does the **Fisheries Act**
36 use the term "significant" when it speaks about
37 violations for the deposit of deleterious
38 substances?

39 MS. BOMBARDIER: Sorry, can you repeat the question,
40 please?

41 Q The **Fisheries Act** itself, are you aware of whether
42 it prohibits the deposit of deleterious substances
43 or prohibits the deposit of significant
44 deleterious -- or prohibits the significant
45 deposit of deleterious substances. Is the word
46 "significant" in the actual **Act** itself?

47 MS. BOMBARDIER: Not under 36(3), no.

1 Q And in your view, and am I right to understand,
2 then, that this is policy of the Department of
3 Environment to not enforce many incidents that
4 would otherwise be a deposit of deleterious
5 substances?

6 MS. BOMBARDIER: No. We look at all incidents, but the
7 priority for action depends on a number of
8 factors, including other partners, roles,
9 jurisdiction in the situation at hand, the level
10 of harm or the risk of harm to the environment, in
11 fact, like a number of factors that are taken into
12 account before a decision is made to go on site or
13 to perhaps look at the partners and see what their
14 intentions are.

15 Q And I guess it's fair to say, then, that only once
16 it's determined that significant harm has taken
17 place would any of that investigation or
18 compliance occur, or compliance monitoring occur;
19 is that fair?

20 MS. BOMBARDIER: No, there are other factors including
21 repeating offences. So it's not because it's a
22 minor spill that it means that we won't go. If
23 there's, you know, if there's a fish kill, if it's
24 a repeat offence, if we have experience with the
25 offender in the past that suggests that there's a
26 chronic problem, we will definitely go on site and
27 check.

28 Q Okay, thank you. Mr. Registrar, can you bring up
29 document number 3 of my list, please. Now, this
30 document is an e-mail between various DFO staff,
31 including Sue Farlinger and Allison Webb, who was
32 then Director of the Aquaculture Division. The e-
33 mail stems from 2005, March 10th, 2005, and the
34 earlier exchange from March 9th, 2005. is anybody
35 on the panel familiar with this document? And I
36 note that none of you were included in this e-mail
37 exchange.

38 MR. NELSON: On the portion I can see, I'm not familiar
39 with it. This is before I was in my position, so
40 I wouldn't have been included in it if it's from
41 another area.

42 Q Okay, thank you. I actually didn't expect anybody
43 to be familiar with this document. But I bring it
44 up for the purposes, because I think it shows a
45 manner of acting that is disconcerting, to say the
46 least, and I would like to hear your opinion on
47 that. In the March 9th portion of the e-mail,

1 this is from Patty Menning, she discusses visiting
2 Shaw Point. And near the end of her e-mail she
3 says a couple of things, including [as read]:

4
5 I am somewhat uncomfortable conducting
6 compliance sampling with the province for
7 this renewal site without senior level
8 support and direction.
9

10 MR. MARTLAND: Mr. Commissioner, I raise the concern,
11 and other participants may have views on this,
12 that this would seem to speak to a particular site
13 and also to get us into the territory of
14 aquaculture on the particular example. I also
15 raise the concern that I don't expect these
16 witnesses have familiarity with the topic, or in
17 particular the compliance sampling that's referred
18 to there, 2005 Shaw Point. So those are a few
19 reasons why this may be a difficulty. I don't
20 know if there's perhaps a way for Mr. Harrison to
21 step back from the particular and approach at a
22 broader level of the subject matter or the
23 question that he's looking to raise.

24 MR. HARRISON: And in response I will just say that I
25 only intend to focus on the principle expressed in
26 this e-mail.

27 Q And that is my question is before conducting
28 compliance sampling and the need to obtain
29 direction from senior level, is this a common
30 occurrence? Is this a common situation? Is it
31 often the case that people, your staff, Mr.
32 Nelson, would seek permission or direction from
33 upper level senior management to do compliance
34 sampling?

35 MR. NELSON: Honestly I'm not familiar with the name
36 Patty Menning. The name Barrie Kanester is a
37 fishery officer and I know Allison Webb. So the
38 person who's writing this, it's not an officer,
39 but it could be a DFO employee. I'm not even sure
40 of that.

41 Q And picking up on Mr. Martland's concern, I am not
42 interested in putting this to you for the actual
43 incident that took place.

44 MR. NELSON: Okay.

45 Q But it's more for --

46 MR. NELSON: Yes.

47 Q -- to me it was disconcerting to see DFO staff not

1 willing to take compliance sampling, absent
2 direction from senior levels management.

3 MR. NELSON: Yes.

4 Q And I would like to ask you first if that's
5 common, and second if that's appropriate.

6 MR. NELSON: Not in any of my experiences. Staff
7 certainly should be assured they have proper
8 training to take sampling, because there's some
9 pretty nasty things out there that we encounter,
10 and they have to have proper sampling training. I
11 don't know if that's partly to do with this. I
12 have no idea what the case is about.

13 As far as requiring, do I believe an employee
14 should require senior management approval to
15 gather samples. In staff that report to me, if
16 they have the training, there's an occurrence
17 reported and they can approach the site safely and
18 conduct their investigation, they do. I don't
19 know that I've ever been asked by any staff that
20 "Should I go out and do some sampling?" It hasn't
21 happened to me.

22 Q Okay, thank you. Mr. Steele and Ms. Bombardier,
23 would you think it appropriate that in order to do
24 compliance sampling, staff members should attain
25 permission or directions from senior level
26 management?

27 MS. BOMBARDIER: In the case of Environment Canada, as
28 we discussed briefly yesterday, we have an
29 internal decision-making process that outlines who
30 needs to seek what level of approval before they
31 conduct enforcement duties. When we plan our
32 inspections, that's done at the manager's level.
33 So the managers need to approve the inspection
34 plan, because of health and safety reasons, make
35 sure we're consistent with the national
36 priorities. So the planning itself is done at the
37 management level, but once the plan has been
38 established, staff, they have the training, they
39 have health and safety equipment, and they go and
40 take, do their own, the activities, as it was
41 agreed.

42 Q So my understanding of your answer is that DOE
43 staff will require senior management direction or
44 permission to do any compliance sampling; is that
45 correct?

46 MS. BOMBARDIER: No. Once the plans are established,
47 the targets have been identified, the staff go and

1 perform their activities. It's at the planning
2 stage that it's approved, but then staff then
3 conduct their own activities and including
4 sampling.

5 MR. NELSON: I should add, I just thought of one case
6 where I was contacted, not about a sampling
7 procedure, but it was an area of the province
8 where we don't have fisheries officers located,
9 and I was contacted by staff to confirm that they
10 could go conduct an investigation. So that's
11 somewhat related, but not really. Because it was
12 outside of what their priority should have been.

13 MR. HARRISON: Okay, thank you. I would like to mark
14 this as an exhibit, if that's appropriate.

15 MR. TAYLOR: Well, I'm not agreeable to that. None of
16 the witnesses can identify this document. None of
17 the witnesses were involved; deals with a
18 particular point called Shaw Point. That's not --
19 I don't know where it is, but even if it's within
20 the Fraser watershed, it's not relevant to this.
21 And we now have a document that's part of a story
22 that no one knows anything about that has nothing
23 to do with this, other than it was used as a
24 springboard to get evidence about whether staff do
25 or don't go to their superiors to get
26 authorization to sample, and the witnesses have
27 given evidence about that. We don't need the
28 document, and it's inadmissible, as well, in my
29 view.

30 MR. HARRISON: In response I would say that this
31 document shows a trend that is clearly relevant to
32 enforcement, and I put this to them and asked
33 them, and it is therefore relevant to the
34 proceedings.

35 MR. TAYLOR: Well, there's no trend shown and they
36 refuted it.

37 THE COMMISSIONER: Yes. I think Mr. Taylor's points
38 are well taken. But in the interests of ensuring
39 the record is kept straight, let's just mark this
40 with a letter for identification purposes. If Mr.
41 Harrison can come back later with sufficient
42 groundwork to establish some direct relevance of
43 this document, it may then be marked.

44 THE REGISTRAR: This document will be marked as letter
45 X for identification.

46
47 MARKED X FOR IDENTIFICATION: E-mail exchange

1 between various DFO staff, March 2005, re
2 Shaw Point
3

4 MR. HARRISON: Thank you. Mr. Registrar, can you bring
5 up Exhibit 693, please.

6 Q This is the 2001 Compliance and Enforcement Policy
7 for Habitat Protection and Pollution Prevention
8 Provisions of the **Fisheries Act**. Are the panel
9 witnesses familiar with this document?

10 MS. BOMBARDIER: Yes.

11 Q Thank you.

12 MR. STEELE: Yes, I am.

13 MR. NELSON: Yes.

14 Q We've heard talk, repeated mention of the toolbox
15 of responses and potential responses that both DOE
16 and DFO has with respect to enforcement or
17 whatever the term be. Is it your understanding
18 that this document is the genesis of that toolbox,
19 in listing out the toolbox?

20 MS. BOMBARDIER: The tools such as directions, actually
21 legislative tools in the **Fisheries Act**, that
22 policy outlines how it is to be used.

23 Q Sorry, my question was off target. What I would
24 like to -- there's been repeated talk of, I guess,
25 the approach that is taken by both DOE and DFO, to
26 the toolbox, including that prosecutions will be
27 brought as a last resort, if that's fair, and I
28 would like to know if this document is the genesis
29 of that approach to the toolbox.

30 MS. BOMBARDIER: For Environment Canada, yes, it is.

31 Q And, Mr. Steele, do you know if for the Department
32 of Fisheries and Oceans if this document is the
33 genesis of the approach to the toolbox to use
34 enforcement as a last resort?

35 MR. STEELE: I'm not really sure what you mean by the
36 term "genesis". Are you asking whether that
37 approach was in effect before this document was
38 created?

39 Q I am asking if this is the first time that a
40 written policy was taken with respect to using
41 prosecutions as a last resort.

42 MR. STEELE: I'm not sure if there may have been pre-
43 existing policies that stipulated the same general
44 principle. I'm not really sure if this was the
45 first time that that was stated or not.

46 MS. BOMBARDIER: Now that I understand your question,
47 under **CEPA** there's a Compliance and Enforcement

1 Policy for the **Canadian Environmental Protection**
2 **Act**, and that policy, I believe, existed before
3 the **Fisheries Act** existed, and that approach is
4 similar.

5 Q Okay, thank you. If you could turn to page 6 of
6 this document. This is a question for Mr. Nelson,
7 and the bottom of page 6 and to the middle of page
8 7. I guess it's better to go to the middle of
9 page 7. There's a list of powers of inspection
10 that a fishery officer and guardian has. And I'm
11 wondering, we've heard repeated reference to
12 certain powers, inspector designation, being taken
13 away from Habitat staff. Are these the powers
14 that are being removed?

15 MR. NELSON: I'd have to look at the section of the
16 **Fisheries Act** but these may be powers under what a
17 fishery officer has. I'd have to look at the
18 exact section.

19 Q So again we've heard repeated reference to
20 inspector designation being removed from, and
21 being given only to C&P and removed from various
22 Habitat staff; is that correct?

23 MR. NELSON: The inspector's powers of non-fishery
24 officers is being removed, yes.

25 Q So my question, then, of the list below, are these
26 the powers that are being removed, will -- and I
27 see Mr. Taylor shaking his head, so maybe I'm
28 wrong in this. But my question is, are these
29 powers that the staff had and will no longer have?

30 MR. NELSON: I'd have to have the **Fisheries Act** in
31 front of me, but I think some of these are regular
32 fishery officer powers. Mr. Steele may be able to
33 answer.

34 MR. STEELE: No, I think what's laid out here are the
35 powers of either fishery officers or fishery
36 guardians under the **Act**. The intent is to remove
37 the inspector designation from the Habitat staff,
38 but that would be removed, but they would be given
39 fishery guardian status. So those powers that are
40 listed there, they would still retain. The
41 difference is that they would not be authorized to
42 issue inspector's directions under the new
43 scenario.

44 Q Thank you for that clarification. Sticking with
45 the toolbox, this is a request or a question for
46 Mr. Steele and Ms. Bombardier. Is there any
47 policy or direction with respect to when you move

1 from one tool to the next. You know, as we see
2 there's a policy that clearly lays out the tools,
3 but is there any further direction or
4 clarification of, you know, there's been this many
5 occurrences, there's been this many directions and
6 we will therefore go to this next step.

7 MR. STEELE: I'm not aware of any directions like that
8 on the DFO side.

9 MS. BOMBARDIER: There's principles are listed in the
10 policy, like consistency, national consistency.
11 So our officers before they take an enforcement
12 action, like issuing an inspector's direction to
13 address particular violation, they will look at
14 the similar incidents that occurred across the
15 country and what enforcement action was taken for
16 similar circumstances to make sure we're
17 consistent.

18 Q So would you agree, then, that there is no
19 direction anywhere that a certain number of
20 violations of the **Fisheries Act** will necessarily
21 result in prosecution under the **Fisheries Act**?

22 MS. BOMBARDIER: Prosecution is one tool, and we don't
23 control what the prosecutors will want to take
24 forward. So there's different, there's a number
25 of factors involved and some cases will lead to
26 prosecution, as I explained earlier. If there is
27 obstruction, you know, there is circumstances that
28 are listed in the policy that will lead to
29 prosecution. Other circumstances, it's officer
30 discretion, and again consistency and whether the
31 prosecutor feels that there's public interest and
32 sufficient evidence to proceed.

33 Q Am I correct that among the principles that would
34 lead to prosecution are repeat violations and
35 repeat offenders.

36 MS. BOMBARDIER: That's one consideration, but it's not
37 one of the guiding principle of the policy.

38 MR. NELSON: In relation to your earlier question about
39 inspector status, on page 9 near the bottom,
40 those, I believe, are the powers that would be
41 lost. There's four bullets there.

42 Q Thank you for that, Mr. Nelson, that's very
43 helpful.

44 What I'm trying to get at here is, and I'll
45 ask this directly: If there was a repeat and
46 chronic violation of the **Fisheries Act** ongoing,
47 would this eventually lead to prosecution

1 necessarily, or not?

2 MR. NELSON: It may or may not.

3 MS. BOMBARDIER: As I was explaining, if you look at
4 page 18 of the policy, it talks about the criteria
5 for responses. One of them is the nature of the
6 violation, which include repeated occurrence. So
7 definitely that is a key factor that's taken into
8 consideration. But as I said, prosecutions have
9 to be taken by prosecutors. So we can lay the
10 charges, but ultimately it's the prosecutor who
11 decides where there's sufficient evidence and it's
12 the public interest to prosecute.

13 Q And are you aware of the Iona Wastewater Plant on
14 the Fraser River Basin?

15 MS. BOMBARDIER: To some degree, yes.

16 Q Would it be fair to categorize this plant as among
17 the primary polluters of the Fraser River? In
18 other words, is the Iona Wastewater Plant, does it
19 repeatedly put out deposits of deleterious
20 substances into the Fraser River Basin?

21 MS. BOMBARDIER: I'm sorry, I know there has been some
22 incidents, but I'm not sure I have the statistics.
23 I don't have the numbers in front of me to confirm
24 that.

25 Q Okay. There was a document that I want to bring
26 up in that respect, but I'm not going to do that
27 now, as I fear too many objections and fear that
28 they will be valid. So I will move on.

29 Mr. Nelson, a very specific question. Do you
30 feel that you have sufficient technical -- or
31 access to technical expertise to do your job? And
32 in that regard I'm thinking of hydrologist,
33 geomorphologist, do you have access, sufficient
34 access to such technical expertise when it is
35 required?

36 MR. NELSON: For when it's required. At one point we
37 used to have our own Water Quality Unit with
38 experts within the Department. They have not been
39 replaced, and now we must rely more on experts
40 from outside the Department to be hired on to
41 provide us that testimony often. We have people
42 that internally that can give expert testimony
43 that it is fish habitat, but when you get into
44 some of the chemicals, some of the sediment
45 issues, we have lost some of that expertise.

46 Q And I was not thinking just for prosecution
47 purposes, obviously. I'm talking just generally

1 when you go out into the field, am I correct that
2 you may want access and assistance from technical
3 experts?

4 MR. NELSON: Yes, we do, and we rely, where there are
5 departmental staff that have that expertise, we
6 use them. And where we don't have staff with that
7 expertise, we contract it out.

8 MR. HARRISON: Okay, thank you.

9 THE COMMISSIONER: I'll just ask - sorry, I apologize,
10 Mr. Harrison - just one thing. Mr. Nelson, is
11 there a current survey of fish habitat within the
12 Fraser Watershed so that if a member of the public
13 is about to embark upon a project, they could get
14 information about where fish habitat may be in the
15 area in which they are planning their project.

16 MR. NELSON: This is more of a question for our Habitat
17 staff, but there is a mapping system that shows
18 where fish habitat is in most places. Like I
19 think in the Shuswap Lake, for example, there are
20 maps available that lay out where spawning areas
21 are, which are very critical, and there are areas
22 that show where habitat is. But I'm not the real
23 expert on that, but I believe they are available.

24 THE COMMISSIONER: We may have that in evidence, I
25 don't know, or it may be in Ringtail. You used
26 that term to determine whether or not it is fish
27 habitat.

28 MR. NELSON: Yes.

29 THE COMMISSIONER: And I didn't know what it was you
30 would go to.

31 MR. NELSON: Ah.

32 THE COMMISSIONER: Or what your staff would be going to
33 in order to make the determination.

34 MR. NELSON: To determine it's fish habitat, it's a
35 very important part before we proceed in an
36 investigation. Sometimes a simple thing like
37 setting a fry trap and catching fry, fish in the
38 water where the violation occurred, or personal
39 knowledge that fish have spawned there, that's
40 another thing. If we know that fish spawn in an
41 area year after year, we don't need to get an
42 expert to begin our investigation. We'll need to
43 bring an expert in if we got to the prosecution,
44 but it varies in area to area.

45 THE COMMISSIONER: I note the time, Mr. Harrison.
46 Would this be a good time?

47 MR. HARRISON: Yes.

1 THE COMMISSIONER: Thank you very much.

2 MR. MARTLAND: Mr. Commissioner, I wonder if I might
3 simply canvass through you with and also counsel
4 in the room. My math is Mr. Harrison has 15
5 minutes remaining, and here's the way our day is
6 shaping up. Mr. Rosenbloom's time estimate is 45
7 minutes, Mr. Harvey's is 15 minutes, Ms. Brown's
8 estimate is 60 minutes, and if I've done my math
9 correctly, if collectively counsel are amenable to
10 Commission counsel really policing their time
11 estimates and working on that set of time
12 allocations, on my math if we return at 1:30 and
13 do have an afternoon break, we would conclude by
14 four o'clock with the panel's evidence. I'm in
15 the Commission's hands whether we run for the
16 finish line or not.

17 THE COMMISSIONER: Yes, running to the finish line has
18 often meant stumbling towards it, and so I would
19 only be inclined to cut the time short if in fact
20 those times can be adhered to. I don't know how
21 firm those times are. I'm content to come back at
22 1:30 if all counsel agree that we'll be finished
23 off this afternoon by four o'clock, otherwise I...

24 MR. MARTLAND: I'll try and frame that as a negative
25 proposition. If any counsel has a difficulty with
26 that, this is your opportunity to make that point.
27 Otherwise, I will expect that we'll be looking to
28 hold to those times and conclude by 4:00. We do
29 have two witnesses that are here from Ottawa or
30 Gatineau, and so I'm mindful of that. And if
31 there's a way for us to do this, completing today,
32 I think that's preferable to coming back for a
33 half hour or an hour on Monday.

34 MR. ROSENBLOOM: I'm going to attempt to do my best in
35 terms of 45 minutes, and I'm very happy to return
36 at 1:30. My question is in case it takes longer,
37 do we also have the safety valve of going to 4:30
38 as opposed to 4:00. Because all of us would
39 obviously prefer not to show up on Monday, and if
40 we could complete it today, all the better. Is
41 there a problem there?

42 THE COMMISSIONER: There's a bit of a problem there,
43 Mr. Rosenbloom, so my suggestion is why don't we
44 come back at 1:30, do our very level best to
45 complete these witnesses by four o'clock and go
46 from there.

47 MR. ROSENBLOOM: Thank you.

1 THE COMMISSIONER: Thank you.
2 THE REGISTRAR: The hearing will now adjourn until
3 1:30.
4

5 (PROCEEDINGS ADJOURNED FOR NOON RECESS)
6 (PROCEEDINGS RECONVENED)
7

8 THE REGISTRAR: The hearing is now resumed.
9 MR. MARTLAND: Thank you, Mr. Commissioner. I have Mr.
10 Harrison with 15 minutes remaining. I should also
11 advise I have to leave to a different engagement,
12 I apologize. That may mean I'm simply deputizing
13 Ms. Grant to serve the timekeeper function at some
14 point in the afternoon. Thank you.
15

16 CROSS-EXAMINATION BY MR. HARRISON, continuing:
17

18 MR. NELSON: Mr. Commissioner, I had a couple of points
19 I thought would help clarify just before I
20 continue. One relates to a question from Mr.
21 Harrison. Just in regards to inspector status,
22 the one key point, by removing inspector status,
23 Habitat staff members would not be able to take
24 action or direct action to stop a violation.
25 That's the key difference by taking the status
26 away.

27 In other words, if a person with inspector
28 officer status encounters a violation that is
29 continuing to occur, they can take that direction,
30 direct it to stop. A guardian will not be able to
31 do that.

32 The second point I had was -- and I obtained
33 a copy of the **Fisheries Act** from Mr. Bisset and
34 looked up the inspector on that.

35 The second point related to when I was
36 describing the experts on fish habitat. I focused
37 on the water, but it's also very important to
38 understand that the vegetation along the banks of
39 the river, the riparian zone it is called, is also
40 game fish habitat. There is case law that
41 determines that. So that's something that's a
42 common thing that we come across is people say,
43 "Well, I didn't do anything in the water." Well,
44 you can destroy the vegetation on the bank and
45 that is destroying fish habitat as well.

46 So in those cases where that occurs, we often
47 rely on our Habitat experts, or experts as well.

1 MR. HARRISON: Thank you for those clarifications. Mr.
2 Harrison again, for the record.
3 Q Mr. Nelson, one thing you said this morning, and I
4 just want to get your clarification on, is you
5 spoke about occurrences. Potentially --
6 MR. HARRISON: Actually, Mr. Registrar, can you bring
7 up the PPR and paragraph 74 of the PPR? I'll
8 continue my question.
9 Q You spoke about occurrences this morning, and
10 included in that you said that basically anything
11 brought to the attention - this is my
12 understanding of what you said - was anything
13 brought to the attention of your staff, including
14 calls from the public, would go into what's called
15 an "occurrence" and would be tracked as an
16 occurrence; is that correct?
17 MR. NELSON: It should be received and entered in our
18 data violation system as an occurrence.
19 Q So just looking at this chart, we see in the year
20 2000 there was 1500, over 1500 occurrences, and in
21 2010 there was 360. If occurrences include
22 members of the public and just referrals of that
23 nature, it's difficult for me to understand the
24 discrepancy between those two numbers, or the
25 differences. Do you have any insight into why
26 there's such a difference?
27 MR. NELSON: Well, I don't know what percentage of
28 these are reported by the public, but as I stated
29 earlier, a lot of our occurrences are generated by
30 officers going out and by staff members going out.
31 Q So thank you for that. So what you're saying is
32 the fact that fisheries officers or guardians
33 being out in the field less has resulted in less
34 occurrences being tracked; is that correct?
35 MR. NELSON: It's one factor, yes.
36 Q Thank you. Mr. Steele, do you have something to
37 comment on?
38 MR. STEELE: Just to perhaps clarify it. I think in
39 the heading it refers to habitat occurrences
40 responded to by C&P, so I'm thinking that it may
41 not be the full number of occurrences --
42 Q You have poked --
43 MR. STEELE: -- received.
44 Q -- a remarkable hole in my line of questioning.
45 Thank you for pointing that out, and you're right.
46 I withdraw my question because you are right. I
47 apologize for that.

1 Ms. Bombardier, maybe I'll change my question
2 as well, but do you have a similar sense of
3 occurrences, both the number that have been
4 tracked and responded upon with respect to the
5 Department of Environment?

6 MS. BOMBARDIER: I have some numbers based on previous
7 discussion with my staff in Pacific and Yukon
8 Region for last fiscal year. I believe we got in
9 the range of 2500 occurrences or notifications
10 under the **Fisheries Act**, 36(3). And, of those,
11 about ten percent led to actual onsite inspections
12 and enforcement actions.

13 Q Okay, thank you. This is a question, I guess, for
14 each of you, so no one in particular. But I
15 believe it was you, Mr. Steele, who mentioned that
16 in your view, often fines are too low. Excuse me
17 if I put words in the wrong mouth, but there has
18 been evidence in the last two days that generally
19 there was a feeling that fines are potentially too
20 low for effective deterrence.

21 I guess I'm looking -- I'm not thinking about
22 maximum fines but more about fines actually
23 imposed. Does anyone have opinions or comments as
24 to the level of deterrence from -- or the
25 sufficiency of fines imposed when prosecutions do
26 take place?

27 MR. NELSON: In my experience, sometimes fines are
28 perhaps felt too low by the officers, maybe
29 because they didn't do a good enough job with the
30 prosecutor to present all the information. If
31 good impact statements are presented to the courts
32 and good evidence, generally you'll get much more
33 favourable fines.

34 It's a matter of educating a lot of times the
35 courts about the importance of fish habitat. In
36 my experience, if you emphasize on that and focus
37 on that, fines will be higher.

38 MS. BOMBARDIER: I would agree with that. Educating
39 the courts in terms of the environmental impacts
40 of violations is a key factor. Environment Canada
41 has proposed -- there's actually a new legislation
42 that came into force, I believe in 2009,
43 **Environmental Enforcement Act** which amends nine
44 other **Acts**, including the **CEPA, Canadian**
45 **Environmental Protection Act**. It doesn't amend
46 the **Fisheries Act**, but it does provide an
47 administrative monetary scheme -- administrative

1 penalty monetary scheme, actually through another
2 **Act, the *Environmental Violations Administrative***
3 ***Monetary Penalty Act.*** So there will be a scheme
4 of penalties for individual offenders and
5 corporations that will take into account the
6 economic benefit of violations.

7 Q Okay. Thank you for that. I've circulated a
8 couple of documents, one which will be
9 contentious, and one less so. The first is - and
10 this is the less contentious one I hope - but, Mr.
11 Nelson, yesterday in your evidence you mentioned a
12 direction or the equivalent of from Deputy
13 Minister Larry Murray with respect to EPMP and the
14 notion that there was a direction to not focus on
15 habitat enforcement. I've circulated this
16 document. Is that the document you were
17 referencing in that testimony?

18 MR. NELSON: The one that has a picture on the front?

19 Q That's correct.

20 MR. NELSON: Yes. Yes, this is one of the items I was
21 referring to, yes.

22 Q So, sorry, there are additional items that you
23 were referring to? Was there any internal
24 memorandum of any kind from Deputy Minister Murray
25 that gave the direction of which I speak?

26 MR. NELSON: There may have been, but I know there was
27 some directive from a Paul Cuilleriere as well
28 internally.

29 Q Okay. Thank you.

30 MR. HARRISON: I would like to mark this as an exhibit,
31 if that is appropriate.

32 MR. MARTLAND: There isn't an objection, but there's no
33 registrar at this very moment. I think that makes
34 sense. It was referred to by the witness, and I
35 don't know, Mr. Bisset if we can -- if you can
36 assign the number or if we can simply await.

37 MR. BISSET: Exhibit 694.

38 MR. MARTLAND: Thank you.

39 MR. HARRISON: Thank you.

40 MR. TAYLOR: Well, I don't think it can be 694. I
41 think we're at 715. Oh, Mr. Registrar.

42 MR. MARTLAND: It's probably the only two minutes he's
43 ever been out of the courtroom, and of course we
44 picked that moment.

45 MR. HARRISON: I know.

46 MR. BISSET: Exhibit 716.

47 MR. TAYLOR: While we're doing this, I'd just like to

1 make a point of clarification. This is a document
2 from an internet site and the link to this
3 particular document is in CAN 128180.

4 THE COMMISSIONER: So was that 716?

5 MR. BISSET: 716.

6 THE COMMISSIONER: Thank you, 7-1-6, thank you.

7

8 EXHIBIT 716: DFO Intranet - Oceans Extra,
9 February 2005

10

11 MR. HARRISON:

12 Q Next I'd like to -- excuse me.

13 MR. MARTLAND: I'm not yet objecting, but I'm going to
14 raise that Mr. Harrison has five minutes
15 remaining.

16 MR. HARRISON: Thank you. I only have two more matters
17 that I want to get to.

18 Q The first is, in the toolkit that's been
19 mentioned, it's quite clear that both the DFO and
20 the Department of the Environment has put
21 prosecutions as a last resort. I think that's
22 been stated in evidence. I represent persons who
23 are concerned about ongoing destruction of fish
24 habitat generally, and in the Fraser River basin
25 in particular. Many of my clients, if not all of
26 them, believe that the lack of enforcement is
27 among the primary causes of the loss of habitat.

28 My question to you is there any -- first, is
29 there either unwritten or written policy with
30 respect to private prosecutions under the
31 **Fisheries Act**? Do you, despite your toolkit, and
32 putting enforcement at the bottom, do you feel
33 that it's appropriate for members of the public to
34 engage in a private prosecution for violations of
35 the **Fisheries Act**?

36 I would just like to put a tiny bit of
37 context and also say that if you are aware that
38 the **Fisheries Act** does have a provision with
39 respect to fine-splitting which, from our point of
40 view, and it has been said that this is actually
41 indirect encouragement of private prosecutions,
42 but my original question stands. With respect to
43 the toolkit and DOE and DFO's view on putting
44 enforcement or prosecutions at the bottom of the
45 list, do you feel it would be appropriate for
46 other members of the public to take over that role
47 if we believe that the **Acts** are being violated

1 chronically and repeatedly?

2 MR. STEELE: Well, I'm not sure that I could speak for
3 a DFO position on that issue, and I'm not sure
4 that I agree with the description of prosecution
5 being put on the bottom of the list in terms of
6 importance or priority. I think it's better
7 characterized as saying that prosecution is one of
8 the options in the toolkit, and that it's the
9 Department's policy to examine other options short
10 of prosecution, but it's not ruling out
11 prosecution by any means. You're saying that
12 having it at the bottom of the list means that
13 it's a less important tool than any others and --

14 Q Well, I guess on that note, can you tell me how
15 many prosecutions were brought in the past year,
16 let's say, and how many convictions were obtained?

17 MR. STEELE: Not off the top of my head, but I think
18 the numbers are --

19 Q Ten?

20 MR. STEELE: -- in the documentation. Are they under
21 ten? Most likely, yes.

22 Q So if there was no explicit policy to rely on
23 convictions -- or, sorry, prosecutions as the last
24 resort, I would say that there's been clear
25 evidence that this is a preference, and in fact, I
26 would say that there's a number of policies
27 reference that preference. Do you agree with
28 that?

29 MR. STEELE: I would agree with that, but with the
30 condition that the preference is to use other
31 options, if feasible and if appropriate under the
32 circumstances. But again, it doesn't rule out
33 prosecution. It's certainly one of the tools in
34 the toolbox and the expectation is that it would
35 be used in appropriate circumstances.

36 MR. NELSON: I'd say on it that I'm also concerned, as
37 every -- as a citizen as well as a fishery
38 officer, with habitat damage. But as far as
39 prosecutions, it's -- if we were to go to the
40 letter of the law and charge everybody for every
41 tree that they cut down in a riparian zone or
42 spilling a couple of fuel (sic) when they're
43 fuelling up their boat -- a cup of fuel can look
44 like a massive oil slick and technically it's a
45 violation. So you've got to really assess the
46 size and the impact of it. You have to look at
47 every case as if in the public interest as well.

1 If you were to fill the courtrooms with all
2 kinds of habitat violations and bog the system
3 down, I don't think that is the answer either. I
4 think what we have to do is do a better job of
5 using the full range of our tools, including the
6 education and stewardship part, and relying and
7 working with the environmental groups as well as
8 all user groups to better educate the public. I
9 fully accept other groups holding us accountable
10 and responsible as an agency, because of the job
11 we have to do.

12 As far as this section that would allow the
13 public to prosecute, it is there. I don't know
14 that it's been used very often. I'm aware of the
15 provision that half the fine money generated from
16 any outcome could go to that person that lays the
17 violation. Is it good or bad? I guess it's up to
18 the public to decide whether they should do that
19 or not. But if we saw a large increase in that, I
20 think we would have to pay more attention to it
21 and decide what we have to do about it.

22 Q I want to pick up on something. Are we running
23 near the end?

24 MR. MARTLAND: Well, we are at the point, and if we
25 were to hold to the plan of completing this
26 afternoon, we will need to hold to those
27 estimates, I'm afraid.

28 MR. HARRISON:

29 Q So I will finish up with this question: I wanted
30 to pick up on something you said in your response.
31 You said we obviously would want to avoid flooding
32 the courts with every cup of gas spilled and grass
33 clippings that went out there. But if there was
34 chronic repeated violations of the **Fisheries Act**
35 and chronic non-enforcement by DFO and DOE, in all
36 of your views, is this an appropriate way, is this
37 an appropriate time for the public to come in and
38 bring private prosecutions? And related, are
39 there any policies, either written or unwritten
40 with respect to private prosecutions brought under
41 the **Fisheries Act** and how ministries or
42 departments will respond?

43 MR. NELSON: There's no policy that I'm aware of in DFO
44 that reflects that public prosecution section.

45 MS. BOMBARDIER: I'm not sure I would agree with the
46 statement that there's no enforcement under the
47 **Fisheries Act**, but to answer your question, it's

1 no, I'm not aware either of a policy in
2 Environment Canada that talks to private
3 prosecutions.

4 MR. STEELE: And I'm not aware of any such policy
5 either.

6 MR. HARRISON: Okay. Based on Mr. Martland's warning I
7 will leave my questions there. Thank you very
8 much.

9 MR. MARTLAND: Thank you. Mr. Commissioner, I have Mr.
10 Rosenbloom at 45 minutes.

11
12 CROSS-EXAMINATION BY MR. ROSENBLOOM:

13
14 Q Thank you very much, panel. My name is Don
15 Rosenbloom. I appear on behalf of Area D Gillnet
16 and Area B Seiner. Thank you for answering my
17 questions.

18 I want to focus a good part of my cross-
19 examination on one issue, and one issue alone.
20 That relates to budgetary restrictions that we're
21 all facing down or you're facing down, and how it
22 impacts upon the public interest.

23 Mr. Nelson, this morning in response, I
24 believe, to Mr. Taylor, you said, in part, that in
25 terms of monitoring and enforcement of the **Act**,
26 that expectations continue to increase, an ability
27 to deliver continues to fall. You remember saying
28 something of that sort?

29 MR. NELSON: Yes.

30 Q Now, focusing on that predicament, if I can
31 describe it as a predicament, I've sat here for
32 two days and I have, as the rest of us have, heard
33 testimony regarding revision protocols, new flow
34 charts, coloured flow charts, arrows here and
35 there. Would you not agree with me that unless we
36 solve the paramount issue of funding to your
37 Department to carry out the responsibilities under
38 the **Act**, all the rest of your initiative, quite
39 frankly, is window dressing. Do you agree with
40 that?

41 MR. NELSON: I think all the measures we take help us
42 to try and achieve our goal. The fact that
43 budgets are reducing and appear to be reducing to
44 a fair bit over the next year, or after the next
45 year, we're going to only be able to do a lot
46 less.

47 Q And I want to make something very clear, I'm not

1 faulting anybody in this room, and I'm certainly
2 not faulting you, the three of you, in terms of
3 your position. But as I sit here and listen to
4 the efforts that you're making in terms of what
5 I'll call new schematics, in terms of monitoring,
6 in terms of enforcement and so on, aren't we not
7 in fact left with the dilemma that unless there is
8 an infusion of capital into the Department for
9 purposes of discharging your statutory
10 responsibilities, we aren't going very far in
11 terms of improving the situation.

12 MR. NELSON: I would say that's a fair statement.

13 Q Thank you. I only invite comment if anybody
14 wishes to disagree with what has been said by Mr.
15 Nelson. Hearing nothing, let me carry on.

16 In terms of the budgetary issues, I heard at
17 one point testimony - and forgive me, I don't
18 recall which of you spoke of this - that there
19 would be, I believe, this fiscal year a 1.5
20 percent salary increase that's got to be embedded
21 within the budget. Do I have that correct?

22 MR. NELSON: That's correct.

23 Q So that is indeed obviously a collective agreement
24 requirement?

25 MR. NELSON: Yes.

26 Q And did I also understand from the testimony that
27 the Treasury Board is expecting you to meet
28 obviously those contractual obligations without in
29 fact increasing budget to accommodate for that
30 negotiated settlement?

31 MR. NELSON: That's my understanding.

32 Q Can I assume from that, that as a result, that 1.5
33 percent that is obviously, as a priority,
34 allocated for salary increase, is at the expense
35 of the rest of the budget, and in particular,
36 operational side of budget?

37 MR. NELSON: It could come from keeping -- not filling
38 vacancies, overtime or operating money.

39 Q We have heard evidence some time ago from a Dr.
40 Riddell, who's obviously well known to most of you
41 in terms of fishery experience and work with DFO,
42 and he spoke about the budgetary restrictions. He
43 made the point that when there is, for example, a
44 five percent cut in budget as dictated by Treasury
45 Board, that five percent is in fact reduced down
46 to a 15 or 20 percent reduction in the operational
47 side of DFO because obviously you can't intrude

1 into what are collective agreement clauses,
2 correct?

3 MR. NELSON: I'm not sure I follow that.

4 Q Okay. Sorry, I may not have done a very good job.
5 Basically, what Dr. Riddell said to the best of my
6 -- and I actually could refer you to the
7 transcript, but we don't have much money -- is
8 that when there is, in the case of this current
9 fiscal year, a five percent reduction in overall
10 DFO budget, because the salary component of budget
11 cannot be tampered with because of collective
12 agreement, that it means that there is in fact a
13 far greater than five percent reduction in the
14 operational side of budget.

15 MR. NELSON: I think I get your question now. Yes, if
16 you have a five percent salary reduction, either
17 -- and you don't take it from keeping positions
18 vacant to shore it up. It would have to come from
19 other sources over time and operating funds. But
20 perhaps Mr. Steele would like to...

21 Q Yes, Mr. Steele.

22 MR. STEELE: I think I'm not sure about the
23 percentages, if it's 15 or 20 percent, but
24 generally speaking, if a salary increase like that
25 of five percent had to be taken strictly from
26 operating money because there's no flexibility to
27 take it from your salary budget if you're fully
28 staffed. People have to be paid according to
29 contracts, so if there's no flexibility to take
30 that five percent from your salary budget, it
31 would necessarily have to come from, as Mr. Nelson
32 said, either overtime or operations. The impact
33 on operations would most likely be higher, whether
34 it be 15 or 20 I'm not sure, but it would be more
35 than five percent most likely.

36 Q Right. And we're left with evidence from Dr.
37 Riddell in terms of his estimate of 15 to 20
38 percent. But putting that aside for a moment,
39 what I'm hearing today and yesterday in terms of
40 this 1.5 percent increase in salary, which has
41 also got to be accommodated for in this budget, is
42 that there is in fact a further challenge to the
43 operational side of budget by the fact that
44 there's an overall five percent reduction in
45 budget, but also a legal commitment under the
46 collective agreement to increase salaries by 1.5
47 percent. Do you agree?

1 MR. STEELE: I agree with the 1.5 percent. That's a
2 given for our program for the rest of the
3 Department, and it's government-wide. It's an
4 issue government-wide. It's over a three-year
5 period that -- negotiated settlements of 1.5
6 percent per year. So I think we're into year 2
7 now, I believe, of that three-year period. The
8 five percent reduction that you refer to, I'm not
9 so sure about what that's referring to.

10 Q Well, there's been evidence given by your Deputy
11 Minister, Ms. Dansereau, early on in these
12 proceedings last year, speaking to the fact that
13 it was notice given to her that for this upcoming
14 fiscal year that just commenced, that, as I
15 understood it, DFO was facing down a five percent
16 reduction. You understand that, sir?

17 MR. STEELE: Yes, I do.

18 Q Yes. Now, recognizing that the budgetary
19 restrictions are impairing the effectiveness of
20 the monitoring and enforcement of your branch, and
21 you would all agree with that principle, would you
22 not, that statement? You're shaking your head in
23 the affirmative, Mr. Steele?

24 MR. STEELE: Yes. Yes, I would.

25 Q Accepting that for a moment, how can the Canadian
26 public, with these circumstances, have any
27 confidence that the Department of Fisheries and
28 Environment Canada will be able to effectively
29 carry out their statutory obligations over the
30 next couple of years? What light is there at the
31 end of the tunnel if the status quo in funding
32 remains for the next few years? Mr. Steele?

33 MR. STEELE: Well, as far as lights at the end of the
34 tunnel, I'm not quite sure what form that might
35 take. There's always possibilities of decisions
36 to reallocate internally within the Department.
37 The other option, of course, in normal times,
38 would be submissions for funding from the centre
39 of government, from Treasury Board, et cetera.

40 Now, given the current fiscal climate, it
41 appears though, that that latter option is
42 probably not all that likely. That's what we're
43 being told at least.

44 So, given those circumstances, we need to try
45 to make the most effective use of resources that
46 we do have. Assuming no internal reallocation or
47 prospects of new money, then the options available

1 to us are to try to make best use of the resources
2 that are available, make sure that we're
3 eliminating any unnecessary expenses, that we're
4 looking at new ways of doing business to the
5 extent that we can, use of new technologies, that
6 kind of thing, and to try to maintain, as best we
7 can, effective delivery of the program. That's
8 basically the options that we have available to
9 us.

10 Q You're facing down a real predicament, aren't you?
11 MR. STEELE: There's serious challenges in terms of
12 budget levels, yes.

13 Q Mr. Carter, your predecessor, who testified on
14 Wednesday of this week, spoke of sleepless nights.
15 Do both of you, and I'm looking first to you, Mr.
16 Steele, and then to the other witnesses, does this
17 lead to sleepless nights, that the public interest
18 is not being properly protected in light of these
19 circumstances?

20 MR. STEELE: Oh, I think that might over-dramatize it
21 slightly. I've had some sleepless nights since I
22 got here, but I attributed it more to the time
23 change than anything else.

24 Q No, I wasn't speaking of sleepless nights since
25 you arrived in Vancouver.

26 MR. STEELE: Right.

27 Q I'm speaking of the day-to-day responsibilities
28 that you're empowered to discharge under the
29 **Fisheries Act.**

30 MR. STEELE: There are concerns, yes, for anyone, I
31 think, at the management level. There's stress
32 involved in that and, yes, I think everybody
33 involved in the program that wants to ensure that
34 the program is delivered effectively has concerns
35 about budget issues in these times, yes.

36 Q And your response, Mr. Nelson?

37 MR. NELSON: Yes. Yes, it's a challenging job. I have
38 had sleepless nights wondering about how we're
39 going to be able to do this. I would say anything
40 else wouldn't be right. I'm concerned about the
41 load that is placed on our field staff
42 particularly. The field technicians, the fishery
43 officers who are out there, who are the face
44 meeting the public and have to answer these
45 questions to the public and carry on and do their
46 job, knowing what's around the corner is likely
47 more cuts.

1 Q Thank you. Madam Bombardier?

2 MS. BOMBARDIER: What I can say for Environment Canada
3 is we have been fortunate to have increased
4 funding since 2007, so our situation has been the
5 opposite in terms of additional funding provided
6 specifically to the Enforcement Branch and support
7 groups within Environment Canada to help us do our
8 job better, so we've increased our capacity and
9 we've increased our geographical coverage, not to
10 the same level as DFO obviously, but there's been
11 an improvement there.

12 Q We have heard evidence over this week that the
13 region, this region, has not sought increased
14 funding for monitoring, and I believe their
15 evidence included enforcement. Could I ask you,
16 Mr. Nelson, have you fought the battle with the
17 region to influence the region to seek from the
18 national office, from DFO, an increase in budget
19 because of the critical situation that you've been
20 testifying about?

21 MR. NELSON: Yes, I have raised it with a number of
22 senior staff.

23 Q But to no avail.

24 MR. NELSON: Not yet.

25 Q Thank you. Now, also in the PPR for this topic,
26 PPR-9, it refers to the Commissioner of the
27 Environment and Sustainable Development Report,
28 the CESD of 2009. It's found at page 44 of the
29 PPR. On the fourth line down, it says:

30
31 In brief, the 2009 CESD Report found, in
32 part, as follows:

- 33
34 • "Fisheries and Oceans Canada and
35 Environment Canada cannot demonstrate that
36 fish habitat is being adequately protected
37 as the **Fisheries Act** requires...
38

39 Let me stop there. Hearing you in the last two
40 days, and in particular in your response to my
41 questions this afternoon, can I assume that what
42 was said there in that report in 2009 presumably
43 still has application today.

44 MR. NELSON: Yes.

45 Q Thank you.

46 MS. BOMBARDIER: Can I just respond to that? There's a
47 specific recommendation, I believe, to the effect

1 that Environment Canada should develop a risk-
2 based approach to **Fisheries Act** pollution
3 prevention, and we've been working on that.

4 Our partners in the Department, Strategic
5 Policy Branch has worked on the regulatory
6 accountability framework for the activities of
7 Environment Canada on their **Fisheries Act** to make
8 sure that we are aligned to meet the desired
9 results of the **Fisheries Act**.

10 Q Speaking of Environment Canada, in your will-say,
11 Madam Bombardier, if you would go to page 1 of
12 that document. It's the practice of this
13 Commission counsel not to file these will-says, so
14 I would like to just refer you to one paragraph
15 and then ask for your comment.

16 MR. ROSENBLOOM: Are the will-says -- can they possibly
17 be put on the screen even though I'm not tendering
18 them as evidence? I'm happy to read it out, and
19 then if you want it on the screen, we'll discuss
20 it with Commission counsel.

21 Q [As read]:

22
23 Under responsibilities for s. 35 and 36 of
24 the **Fisheries Act** --

25
26 The bullet, there it goes, mid-page.

27 Dr. Bombardier - and I'm sorry, you are a
28 doctor and I apologize, I haven't been referring
29 to you as a doctor.

30 MS. BOMBARDIER: Ms. Bombardier is fine. Don't worry.

31 MR. ROSENBLOOM: Thank you.

32 Q [As read]:

33
34 Dr. Bombardier will comment on the current
35 state of communications between EC's
36 Environmental Enforcement Director and DFO's
37 with respect to enforcement, s. 36 of the
38 **Fisheries Act**.

39
40 Then it goes down to the next heading:

41
42 Common Habitat Violations:

43
44 Dr. Bombardier will describe how most of the
45 work done by enforcement officers in relation
46 to s. 36 of the **Fisheries Act** touches
47 directly or indirectly on Fraser River

1 tributaries. Current priority areas are
2 sewage, storm water, non-point sources,
3 train, vehicles, agriculture, discharges from
4 shipyards, groundwater from contaminated
5 sites, non-regulated mining sites, spills,
6 fish kills, fishing lodges, fish processing
7 plants and the cement industry.
8

9 What I want to ask you is what seems surprisingly
10 ignored in this paragraph is the aquaculture
11 industry, fish farming. Do I have that correctly
12 that it's not stated there as a priority, or am I
13 missing something?

14 MS. BOMBARDIER: By fish farming, you mean the fish
15 processing plants?

16 Q No, I --

17 MS. BOMBARDIER: What exactly?

18 Q I'm speaking of the actual farms and the issues,
19 environmental issues that relate to the farms, not
20 to the fish packing.

21 MS. BOMBARDIER: Those farm activities -- those farms,
22 PMRA Health Canada has key jurisdiction in terms
23 of the use of pesticides for the protection of
24 fish in those fish farms. So the main Department
25 responsible for aquaculture activity is PMRA, but
26 we work in close collaboration with them with
27 regards to our responsibilities under 36(3).

28 Q Well, I may not have a complete grasp of this, but
29 I thought the provincial powers had been handed
30 over to the federal government in light of
31 litigation. Have I misunderstood? In other
32 words, are you saying even as of now, the
33 Environment Canada will not have responsibility
34 for environmental enforcement at the fish farms?

35 MS. BOMBARDIER: We do. We do have responsibilities
36 for pollution prevention in the aquaculture
37 industry. Now, in B.C., I believe there's the
38 jurisdiction on fish farms and the licensing of
39 those activities, and perhaps my colleague from
40 DFO can better talk to that. It's not related to
41 pollution per se, it's more the activities of the
42 farms.

43 Q Well, again, I may not be grasping something, but
44 when I have directed your attention to this
45 habitat violation issue and the listing of current
46 priority areas, why is the aquaculture industry
47 and the farms themselves not on the priority list?

1 MS. BOMBARDIER: It's something that we will react to
2 if we get a complaint, but we're not doing
3 proactive -- what we call priorities where we are
4 very proactive.

5 Q And can you tell us why you're not being
6 proactive?

7 MS. BOMBARDIER: Mainly because of the role of Health
8 Canada in that particular sector. We work very
9 closely with them and we respond to complaints
10 should there be a potential violation under 36(3).

11 So the key legislation is the **Pest Control**
12 **Products Act** that regulate that sector at the
13 federal level.

14 Q So does Health Canada have inspectors doing
15 enforcement at the farm locations?

16 MS. BOMBARDIER: That's their responsibility, yes.

17 Q And are they doing it to the best of your
18 knowledge?

19 MS. BOMBARDIER: I believe they are, yes.

20 Q Thank you. Moving on, again, listening to the
21 evidence of all three of you over the last couple
22 of days, I get the impression there is a great
23 deal of movement of staff, certainly at the senior
24 level. Madam Bombardier, in particular, you have
25 spoken about changes at the senior level.

26 Is the experience of Environment Canada, in
27 terms of staff transition, out of the norm for the
28 federal civil service or, to the best of your
29 knowledge, what we're seeing with Environment
30 Canada common throughout the federal civil service
31 at the senior level.

32 MS. BOMBARDIER: I'm sorry, but I cannot comment on
33 that. I don't have knowledge of departmental or
34 government-wide statistics on turnover rates.

35 Q Yes, I appreciate that. Staying with you for a
36 moment, are you able to say, in a very condensed
37 sort of way, what kind of staff changes have there
38 been at a senior level at Environment Canada over
39 the last four or five years that have obviously
40 complicated discharge of duties. You have spoken
41 about that, but what are those changes in staff?

42 MS. BOMBARDIER: Well, we've had a number of senior
43 officers retire and regional directors --

44 Q That have been hired, did you say? I didn't hear
45 what you said.

46 MS. BOMBARDIER: No, we've had a number of senior
47 officers and regional directors who have retired.

1 Q Retired, I'm sorry, yes.

2 MS. BOMBARDIER: In the past two or three years, which
3 -- yeah, we need to bring new people in and
4 there's a learning curve, so that is a challenge.
5 But, with proper training and coaching, it's...

6 Q Right. And you took over your current position in
7 May of 2010, so less than a year ago. Can you
8 tell me your predecessor, what was his name or her
9 name?

10 MS. BOMBARDIER: Renzo Benocci.

11 Q And that individual was in that position for how
12 long?

13 MS. BOMBARDIER: I believe eight years.

14 Q Eight years. In terms of the changes at fairly
15 senior -- at senior level within Environment
16 Canada, do you have an explanation to give for it
17 other than the fact that there was a series of
18 retirements that you just spoke about? Are there
19 any other problems that have led to such a
20 turnover of staff that you know of?

21 MS. BOMBARDIER: No, I would say that's the main
22 factor.

23 Q Thank you. Mr. Steele, focusing on DFO in your
24 branch, the C&P Branch, and so on, has there also
25 been a dramatic turnover of staff over the last,
26 let's say, five, seven years?

27 MR. STEELE: No, there hasn't.

28 Q Thank you. I want to move briefly to the issue of
29 the relations between DFO and Environment. Madam
30 Bombardier, you say in your will-say - and I'll
31 just put it to you and ask you to adopt it - in
32 part, you say, under "Responsibilities of Section
33 35 and 36" -- I actually read that first sentence
34 of that paragraph a moment ago. And then you
35 said, "She will say" -- then the will-say says you
36 will say that [as read]:

37

38 In the regions, enforcement officers work
39 closely with DFO and that the strong working
40 relationship appears to be a good one.

41

42 Nationally, she will say communications
43 between the two departments needs to be re-
44 established and work is underway to do this.

45

46 I assume you adopt that sentence, that that is
47 what you want to say?

1 MS. BOMBARDIER: Yes.

2 Q Can you tell us the circumstances that have led to
3 two federal departments having to "re-establish
4 their relations". What led to such a breakdown or
5 dysfunction in the communication between two
6 federal departments that obviously had great
7 common interest?

8 MS. BOMBARDIER: I would not say that there hasn't been
9 any interactions. We inform DFO of all
10 enforcement actions that we take under the
11 **Fisheries Act** at the national level, so that has
12 been ongoing.

13 What I'm saying and what I meant to say here
14 was that there hasn't been a regular face-to-face
15 discussions meeting of the two departments'
16 enforcement organizations in the past few years.
17 I cannot speak for my predecessor, but what I can
18 say is since I've been in my position and we have
19 a new Chief Enforcement Officer, we have started
20 to -- we have started the discussions again with
21 DFO to re-establish those meetings on a more
22 regular basis.

23 Q Are the two departments in the same building in
24 Ottawa, or the capital region?

25 MS. BOMBARDIER: No, we are on the Gatineau side, and I
26 believe DFO is on the Ottawa side.

27 Q But that, you would agree, should not in any way
28 be an explanation of why there hasn't been or
29 wasn't previously a good dialogue between the two
30 departments --

31 MS. BOMBARDIER: No.

32 Q -- obviously. Thank you.

33 We have focused here over the last two days,
34 in part, on what I will call deterrence, issues of
35 prosecution, issues of conviction. I heard you,
36 Mr. Nelson, speak to the fact that there were many
37 unpaid fines, if I heard the testimony correctly.
38 Did I hear that correctly?

39 MR. NELSON: Yes.

40 Q I want to explore that for a moment. These are
41 fines that have been imposed by the court pursuant
42 to conviction under s.35 and 36, or are these
43 fines in some other realm?

44 MR. NELSON: They include all outstanding fines levied
45 against **Fisheries Act** violations, including 35 and
46 36. Some are ticketable offences for sport
47 fishing, some are commercial fishing, First

1 Nations, pretty much all types.

2 Q So just in a very rough sort of way, a percentage
3 of those fines would be fines imposed as penalty
4 at sentence in the criminal courts?

5 MR. NELSON: Yes. Currently, there is, in this region,
6 just over \$1 million in outstanding fines.

7 Q A million dollars?

8 MR. NELSON: Yup.

9 Q And can I assume most of these fines are in the
10 range of five to \$10,000 at the most?

11 MR. NELSON: There are some larger than that. I would
12 say the average is probably much less than that,
13 but I -- we get a quarterly report that shows us
14 what the outstanding amount is.

15 Q The fact that most of these fines are even less
16 than that, can I assume that there are thousands
17 of individuals who have been fined who have failed
18 to pay their fines?

19 MR. NELSON: Thousands? Again, when I look at the
20 document, I scroll through it, look at the bottom
21 line, hundreds. Could be low thousands. I'm not
22 sure of the exact number.

23 Q Well, we are talking about, so the record is
24 clear, approximately a million dollars of unpaid
25 fines in Pacific Region.

26 MR. NELSON: Yes.

27 Q We are talking about fines imposed of which you
28 say most of them are less than five or \$10,000.

29 MR. NELSON: Yeah.

30 Q So we can all do the arithmetic. There are a
31 significant number of individuals that have been
32 fined and failed to pay their fine.

33 MR. NELSON: Yes.

34 Q Can you tell me why that's happening? Is it that
35 there is no follow-up at the governmental end for
36 the collection? Is it a case of the court system
37 not following it up? Where's the problem?

38 MR. NELSON: I'm not exactly sure, but I know we don't
39 have a system to collect and follow up. Do you
40 have any...?

41 Q Mr. Nelson (sic)?

42 MR. NELSON: Steele.

43 MR. STEELE: I don't have a lot of information to add
44 to that. I know it does come up in discussions
45 from time to time. I know there are issues about
46 the costs that would be involved of us chasing
47 those fines to get collection. There are also

1 some issues around authorities, if I recall. I
2 think there may have been some legal advice to the
3 effect that fishery officers did not have the
4 appropriate authority to execute warrants of
5 committal that would be required to follow
6 through. So there's those issues.

7 Again, the details are a bit fuzzy right now,
8 but there are issues around legal authorities, and
9 also getting assistance from other agencies to
10 collect fines on our behalf is not something that
11 is easily done either. I know there's been some
12 difficulties in that area in the past.

13 Q Would you agree with me that this circumstance
14 diminishes the deterrent aspect of prosecution or,
15 more to the point -- I'd like to rephrase that
16 question. Would you agree with me that these
17 circumstances diminishes the likelihood of
18 compliance by the public of the provisions of the
19 **Fisheries Act?**

20 MR. STEELE: I would say it has that potential, yes.
21 If it's widely known that a person could
22 potentially get off without paying a fine, then
23 that could have an effect on compliance and the
24 deterrence level, yes.

25 Q And the fact there are so many people out there
26 who have not paid their fines, surely it becomes
27 known within certain communities that in fact you
28 can get away with this because, if there is to be
29 a prosecution, the governmental agencies are not
30 going to come after you to pay the penalty. Do
31 you agree?

32 MR. STEELE: Yes, I'm not sure that I would agree to
33 the extent that it's -- I'm not sure we can make a
34 blanket statement to say that we would never come
35 after a person for an unpaid fine. I'm sure there
36 are others that were collected through various
37 means that didn't end up on the list Mr. Nelson's
38 referring to. So I don't think it's a case of,
39 you know, anyone at any point in time can evade
40 having to pay a fine.

41 But that possibility is there, and if it's
42 widely known, then that could have an impact, yes.

43 Q Mr. Nelson, does this situation frustrate you as
44 an enforcement officer?

45 MR. NELSON: I think the fishery officers out there are
46 aware sometimes this happens, and it certainly is
47 of concern to them in doing their work.

1 Now, we should recognize too that that's a
2 cumulative amount that's been -- as long as
3 somebody isn't paying a fine, it's still on
4 record. So I don't know how many dollars worth of
5 fines a year we issued but we could probably find
6 that out. But it is of concern to officers, for
7 sure.

8 MR. ROSENBLOOM: Mr. Commissioner, would it be
9 appropriate to ask of the government that
10 something is filed with this Commission that gives
11 a figure that we can rely on with some exactitude
12 since this \$1 million figure is not placed to
13 which years we're speaking of or how far back it
14 cumulatively goes.

15 Would it not be in the interest of the
16 Commission that I would request that this
17 information be filed --

18 MR. MARTLAND: I wonder if I can suggest that we make
19 inquiries through counsel and see if that's
20 information that can be provided and circulated
21 through Ringtail. At that point, if it is, we can
22 turn our minds to whether or not it might be put
23 in evidence.

24 MR. ROSENBLOOM: That's acceptable to me.

25 Q I wish to go to my last topic which is to direct
26 your attention, Mr. Nelson, to your will-say and
27 to page 2 of your will-say where there was a
28 sentence that intrigued me, and maybe it's been
29 covered in the last two days but I didn't hear
30 testimony about it.

31 Under "Enforcement Process", down at the
32 bottom, you say, in part, in the second bullet [as
33 read]:

34
35 Mr. Nelson will also explain the decisions to
36 prosecute a habitat case do not rest solely
37 with C&P. In rare instances, political
38 pressures appear to operate so as to redirect
39 investigations or stay prosecutions.

40
41 First of all, I assume you will adopt that you are
42 saying that?

43 MR. NELSON: Yes, if I'm allowed to explain it?

44 Q Of course, and I want you to.

45 MR. NELSON: Yeah. In my career, there have been a
46 couple of occasions where I was directed to not
47 proceed with a habitat prosecution, but it did not

1 come from a politician, it came from a supervisor.
2 In one event it was an area chief who directed me;
3 in another, it was --
4 Q Sorry, in one case it was a what?
5 MR. NELSON: The area -- sorry, they were called
6 district managers back then.
7 Q Thank you.
8 MR. NELSON: Yeah, district manager directed me not to
9 proceed with a case. And in a second time, before
10 trial involving a prosecution, I was advised that
11 the charges were being stayed.
12 Q But that doesn't speak directly to what you say
13 here in this paragraph which you adopted a moment
14 ago. I'm --
15 MR. TAYLOR: Hang on. This is not a document that the
16 witness wrote. This is a document that Commission
17 counsel wrote.
18 MR. ROSENBLOOM: One moment. Sorry, are you finished?
19 Excuse me. I put to this document -- to this
20 witness whether he adopted this paragraph as being
21 an accurate statement of what he wanted to testify
22 to. He adopted that paragraph with --
23 MR. TAYLOR: That's not my recollection of what he
24 said.
25 MR. NELSON: I said I'd accept it with explanation.
26 MR. ROSENBLOOM:
27 Q Yes?
28 MR. NELSON: An explanation inferring (sic) to the word
29 "political". I have never had a politician
30 directly influence. I have had occasion where
31 somebody new, an MLA or an MP and they phone them
32 and phone calls were made. When that information
33 comes back to me, I would direct it to Ottawa. In
34 no case has there been a political interference
35 with any case I've been involved in, that I'm
36 aware of, anyway. Like the direction I was given,
37 I don't know where it came from.
38 Q I appreciate that. So in terms of that paragraph,
39 you would want to correct it by saying that you do
40 not have evidence of political interference. Is
41 that what your testimony is?
42 MR. NELSON: Capital "P" political, right.
43 Q What about lower case "p" political?
44 MR. NELSON: Well, it is -- somebody directed the
45 charge to be stayed, and I don't know who it is.
46 Q And you didn't know why?
47 MR. NELSON: I didn't know why.

1 Q These are rare occurrences, are you saying?

2 MR. NELSON: Yes.

3 MR. ROSENBLOOM: I thank you. I have no further
4 questions.

5 MR. MARTLAND: Thank you. Mr. Commissioner, I have Mr.
6 Harvey for 15 minutes.

7 MR. HARVEY: Yes, it's Chris Harvey on behalf of the
8 Area G Trollers and the United Fishermen and
9 Allied Workers Union.

10

11 CROSS-EXAMINATION BY MR. HARVEY:

12

13 Q I'd like to start with this preface. It's the
14 mandate of this Commission is, no doubt you all
15 know, to investigate and make findings of fact
16 regarding the causes for the decline in Fraser
17 River sockeye. I want to ask a general question
18 first.

19

Have you, Mr. Nelson, or any of you, come
20 across anything in your work that you consider to
21 be one of the causes of the decline of Fraser
22 River sockeye? I'm talking about the decline that
23 started in the late '90s and continued through to
24 2009. I think probably Mr. Nelson would be in the
25 best position to answer that question.

26

MR. NELSON: Wow. Just to get it clear, you want to
27 know, going back to the '90s forward, what do I
28 think might be some of the causes to decline?

29

Q Yes. From your area of expertise and your
30 experience.

31

MR. NELSON: From where I sit, and what I've seen
32 throughout my career, everybody has done a part.
33 I mean, anybody who points the finger has got to
34 also look in the mirror. Commercial fishermen
35 have -- are responsible for some, all user groups,
36 recreational fishers, First Nations, everybody who
37 lives along the water, who has waterfront
38 property, is impacting in some small way.
39 Everything we do impacts it.

40

So as far as -- I think everybody has played
41 a part in it. At times, one user group will
42 appear to have more of an impact than others.
43 It's really a difficult, difficult question.
44 There's no, in my view, magical formula to come up
45 with, with what's happened to fish.

46

Environmental changes have no doubt
47 contributed to some of the things as well.

1 There's things we don't have control over.
2 Logging back in the -- if I get the decade right
3 -- but '70s or '80s, there was massive logging in
4 the upper Fraser watershed that exposed huge, huge
5 areas of -- areas which increased runoff. So you
6 can look anywhere in the province, anywhere in the
7 watershed, and people will have had an influence.
8 Q What was it, you mentioned that your budget had
9 been increased following the Williams inquiry, I
10 think it was.
11 MR. NELSON: That's correct.
12 Q What was identified in that inquiry that led to an
13 increase in your budget? I gather it was for
14 increased fisheries officers.
15 MR. NELSON: Increased enforcement on the Fraser River
16 particularly to closed area patrols throughout the
17 watershed. That's where the money was put
18 towards. It went towards helicopter flying,
19 increased operational money, increased overtime
20 and those are the main things. Over that -- that
21 was in 2005, and up until the last number of
22 years, it's more related to the fisheries --
23 fisheries enforcement end of things than habitat,
24 because over that same time period, our habitat
25 enforcement has dropped.
26 Q I expect we can look in the Williams report to see
27 what it was that led the government to -- or led
28 to a recommendation for increased funding.
29 MR. NELSON: Yeah, the recommendations are there.
30 Q Yes, all right. And you mentioned, I think, the
31 prospect of losing 30 or 40 fishery officers now
32 as a result of the sunset provisions in the PICFI
33 Program. Have I got that right?
34 MR. NELSON: It's an accumulation of the potential for
35 those programs to sunset and the existing salary
36 dollar shortfall that we're under, the two
37 combined.
38 Q How would losing 30 or 40 fishery officers impact
39 on your efforts with respect to Fraser River
40 sockeye?
41 MR. NELSON: Well, you know, just a straight math
42 formula, 30 to 40 percent is 20, 25 percent of our
43 fishery officer complement throughout the region.
44 So it could impact it by that much.
45 We have a lot of offices who have two
46 officers present, and if we stop hiring, one of
47 those officers moves on, that office is

1 effectively not able to conduct patrols without
2 somebody travelling a long distance to join them.
3 So it accumulates. It causes more money to be
4 spent on travel, et cetera, so the actual impact
5 would probably be greater than 20 or 25 percent,
6 yes.

7 Q And it is in particular the migratory route of the
8 sockeye salmon that you're considering when you
9 talk about patrols in the sockeye context?

10 MR. NELSON: Yes. I mean, the sockeye travel all the
11 way down from the north coast through south coast,
12 B.C. Interior, lower Fraser. The only area not
13 impacted is the Yukon.

14 Q Yes. I didn't understand this, and perhaps you
15 can explain it. What is the logic that resulted
16 in the transfer of that money you got, the budget
17 allocation you got as a result of the Williams
18 report, transferring that into PICFI?

19 MR. NELSON: What was the logic of it?

20 Q Yes, if there is a logic.

21 MR. NELSON: I don't know. I personally spoke out that
22 I thought the Williams money should be A-based,
23 but it was rolled into PICFI which is sunseting
24 money, and next year we're here.

25 Q PICFI, part of the -- when I was trying to answer
26 that question for myself, one thing that occurred
27 to me is that PICFI -- part of the PICFI program
28 is designed to establish commercial fishing
29 upriver.

30 MR. NELSON: Correct.

31 Q And that, I suppose, requires more enforcement,
32 actual monitoring, does it?

33 MR. NELSON: Well, the Williams money was more focused
34 on patrolling close time. PICFI was more to move
35 towards integrated commercial fisheries. So I
36 just thought it's not really a good fit. They
37 should have been kept separate, funded separately.

38 Q Once you go from food fishing to commercial
39 fishing in the river, does that give rise for a
40 need for more surveillance and enforcement?

41 MR. NELSON: It changes the way we do enforcement. It
42 would have some additional complexities that, if
43 you have a commercial fishery and a First Nations
44 fishery simultaneously, it creates extra task
45 force to do -- yeah.

46 Q Yes.

47 MR. NELSON: And I guess affecting habitat, of course,

- 1 all of that, during our summer months when it is
2 peak salmon migration time, we don't have as much
3 time to put attention towards habitat enforcement
4 on the Fraser River.
- 5 Q Yes. Now, on the question of habitat, you
6 discussed the No Net Loss policy. With respect to
7 sockeye habitat, it's really the quality of the
8 spawning areas and the rearing lakes that's the
9 critically important thing, is it not?
- 10 MR. NELSON: Yes.
- 11 Q Yes. In the sense of maintaining the productivity
12 of both the spawning grounds and the rearing
13 lakes.
- 14 MR. NELSON: Yes. And migration routes all along and
15 estuaries -- the Fraser River estuary is a key
16 vital thing as well.
- 17 Q Yes. In terms of productivity, I recall that --
18 it hasn't happened here fortunately, but Lake Erie
19 in the '60s was said to have become a dead lake,
20 I think, through the result of all the -- the
21 effective population, nutrient additions to the
22 lake as a result of human activity.
- 23 MR. NELSON: I'm not aware of that, but...
- 24 Q But that's the sort of thing you focus on, isn't
25 it, when you're dealing with habitat concerns and
26 habitat protection of the rearing lakes?
- 27 MR. NELSON: You're concerned with the whole range of
28 things that could impact the fish habitat,
29 shoreline, vegetation, spawning grounds,
30 deleterious substances entering the streams,
31 people catching fish, people operating boats in
32 rivers where fish are spawning. There's so many
33 ways that it can be impacted.
- 34 Q Do you liaise with the biologists who have the
35 expertise with respect to what is essential to
36 maintain the productivity of a rearing lake,
37 whether it be the Cultus or the Shuswap or...?
- 38 MR. NELSON: Our officers are usually graduates, many
39 with university degrees, have a lot of that
40 knowledge already. On the job training, they
41 receive a lot of it as well, and then working
42 closely with other program staff, they work with
43 our biologists as well, yes.
- 44 Q Now, we've heard evidence here that the Cultus is
45 kind of a bottleneck in the sense that the Cultus
46 stocks are stocks of concern, and it's affecting
47 the economic returns in the wider commercial

1 fishery. We've heard evidence that, starting in
2 about the '70s, productivity of the Cultus seemed
3 to drop and a cyclic pattern developed with the
4 fish.

5 I'm wondering if the human activity around
6 that lake has engaged the attention of your
7 section?

8 MR. NELSON: I've never worked in the Lower Fraser
9 area. I'm familiar with the weakness of the
10 Cultus Lake stocks, but I'd be reluctant to
11 comment on an area I haven't worked.

12 I could say that in areas where I have worked
13 in the Interior, certainly I know of one small
14 lake in the Quesnel area which had a very large
15 number of people living around it, and it was on
16 the verge of becoming eutrophic through all the
17 increased septic field inflow into the system. It
18 wasn't a salmon stream, or salmon lake, but
19 Shuswap Lake is another example, one I'm more
20 familiar with. All of the foreshore development
21 and septic inflows into that lake are having an
22 impact, yes.

23 Q Yes. Eutrophic, that results from --

24 MR. NELSON: Too many nutrients and the lake
25 essentially dies.

26 Q Yes. I think that's what I was trying to get to
27 in the Lake Erie example.

28 Do you consider that you have sufficient
29 powers under the **Fisheries Act** to deal with that
30 in the sense of -- I think it's called
31 anthropogenic nutrient loading. In other words,
32 one example would be failed septic systems that
33 you mentioned. Do you have sufficient powers to
34 deal with that?

35 MR. NELSON: It really is an Environment Canada matter
36 when it comes to an effluent like that. It's
37 licensed by the province. The province also has
38 some jurisdiction over when you can put a septic
39 field in, and regional districts. It's a little
40 bit beyond my expertise.

41 Q But if it's resulting in a lake becoming
42 eutrophic, and that lake is an essential sockeye
43 rearing lake, would that not engage the attention
44 of your section?

45 MR. NELSON: If it were identified to us of violations,
46 yes, it would.

47 Q What would it take to identify it to you?

1 MR. NELSON: Well, I'm not sure where you're going or
2 what you want. As far as the Shuswap Lake system,
3 I'm not in any way inferring that it's on the
4 verge of becoming eutrophic in any way. It has a
5 very high turnover rate.

6 Q Yes.

7 MR. NELSON: It's extremely fast turnover and inflow,
8 so that's not an issue in that lake.

9 Q And the Cultus, you're not familiar with?

10 MR. NELSON: I'm not familiar with Cultus, no.

11 Q Well, let's use the Shuswap example, then. If you
12 considered, or if biologists in the DFO considered
13 that the nutrient loading was becoming a problem
14 and was affecting the productivity of that lake
15 system, would you be able to deal with it?

16 MR. NELSON: I think that our biologists, Habitat staff
17 are trying to work with municipalities and cities
18 and regional districts to try to help develop the
19 guidelines so that people know what the rules are
20 in discharging into lakes. If somebody were to
21 breach those rules and it results in harmful
22 alteration of fish habitat or something like that,
23 then we could become involved.

24 MR. HARVEY: Yes, okay. Those are my questions, thank
25 you.

26 MR. MARTLAND: Mr. Commissioner, Ms. Brown is the last
27 counsel with questions remaining, so I'm in your
28 hands with respect to whether we take a break now
29 or whether she commence and we break perhaps at
30 3:00?

31 THE COMMISSIONER: I'm sorry, I've forgotten Ms.
32 Brown's time estimate.

33 MR. MARTLAND: Sixty minutes is my note.

34 MR. BUCHANAN: I may seek leave for a few minutes.

35 MR. MARTLAND: And I apologize. Mr. Buchanan and I had
36 discussions about --

37 THE COMMISSIONER: Why don't we have Mr. Buchanan for a
38 few minutes now, then take a break, and then let
39 Ms. Brown finish off.

40 MR. MARTLAND: Thank you.

41 MR. BUCHANAN: Thank you. Chris Buchanan, counsel for
42 the PSAC.

43

44 CROSS-EXAMINATION BY MR. BUCHANAN:

45

46 Q I just have a couple of questions of Mr. Nelson.
47 I gather from your testimony yesterday that your

1 view is that one of the best tools of enforcement
2 is the feet on the ground?

3 MR. NELSON: Yes, officer presence, I said, is one of
4 the key tools.

5 Q And I gather from your evidence yesterday, there's
6 been a decline in the amount of enforcement that
7 your officers are able to accomplish since 2005;
8 is that fair to say?

9 MR. NELSON: Yes, following the direction that came to
10 us to reduce habitat enforcement work, there is
11 less of it going on, yes.

12 Q So my question to you is how many additional pairs
13 of feet would be necessary today to meet the same
14 level of enforcement as it was in 2005?

15 MR. NELSON: Well, with the budget conditions we're
16 expecting to be under, the number of 30 to 40 is a
17 ballpark estimate of what I thought we would need
18 funding for. As far as additional, that would
19 fund our existing. I'd have to give some more
20 thought to what -- if the peak of fishery officer
21 numbers, we were at a number of 212. I don't
22 remember when that was, it was quite a while ago.

23 Q So if you need more time, is it fair to say that
24 you would view there to be 30 to 40 additional
25 officers to reach the same level of enforcement as
26 there was in 2005?

27 MR. NELSON: No, the funding shortfalls that we
28 anticipate, we could be at, as of April 2012, are
29 in the range of \$4 to \$5 million. That would keep
30 us at the levels we were at in 2005. Now, we
31 would have to have a change in priorities from the
32 government to return to do the amount of habitat
33 enforcement we were doing.

34 But during that time, there have been a whole
35 lot of other duties that have been added to our
36 portfolio. So how would I measure those? I'd
37 have to do a little more math.

38 MR. BUCHANAN: Well, that's my last question. It may
39 be appropriate if the witness needs a little time
40 to think about that over the break and maybe he
41 can return with an answer to that, if that's fair.

42 THE COMMISSIONER: Yes, I think it's fair if he thinks
43 it's fair. He might need more time than just the
44 break, Mr. Buchanan.

45 MR. BUCHANAN: Well, if he --

46 MR. TAYLOR: Maybe Mr. Buchanan could just restate the
47 question so that Mr. Nelson knows exactly what

1 he's considering.
2 THE COMMISSIONER: Let me just say that I've been
3 having trouble following this because there's a
4 number of numbers being kicked around, so perhaps
5 if he gets the break just to -- you're taking him
6 back to 2005, correct?
7 MR. BUCHANAN: That's correct, and I'll try to rephrase
8 the question so it's clear to everybody involved.
9 Q Setting aside the budget, announced budget cuts
10 that would reduce the capacity of your department,
11 so just taking the existing complement now --
12 MR. TAYLOR: I hate to interrupt again, but there's no
13 announcement of budget cuts. I'm not sure what
14 he's referring to or what Mr. Buchanan is
15 referring to.
16 MR. BUCHANAN: Well, I believe --
17 MR. TAYLOR: There's a sunset program. There's
18 been a lot of evidence on it.
19 MR. BUCHANAN:
20 Q Well, with the reduction of resources allocated to
21 your department, whether it's styled as a budget
22 cut or a non-renewal of the funding, setting that
23 aside, just speaking with respect to the officers
24 present now, how many additional officers would
25 there be needed, how many pairs of feet would
26 there be needed to reach the same level of
27 enforcement as there was in 2005?
28 Now, you've indicated there's additional
29 duties upon your officers, so taking that into
30 account, how many more officers would you need
31 just to meet the enforcement of 2005?
32 MR. NELSON: I wouldn't be able to answer that in a few
33 minutes' thoughts either. I would require a -- I
34 have some information that I could provide but it
35 wouldn't be today.
36 MR. BUCHANAN: Perhaps what we could do is with respect
37 to some witnesses, we've asked them to follow up
38 their answers by way of affidavits and/or will-say
39 statements. Perhaps I can talk to counsel about
40 giving this witness that opportunity.
41 THE COMMISSIONER: Thank you.
42 MR. MARTLAND: We'll certainly have that conversation,
43 thank you. Perhaps we'll move to break, then.
44 THE COMMISSIONER: Yes, we'll move to break for ten
45 minutes and then, Ms. Brown, you have until four
46 o'clock or -- I think you might -- do you have any
47 more questions you're going to have to ask?

1 MR. MARTLAND: None from Commission counsel at this
2 juncture. I don't know if Mr. Taylor would seek
3 to re-examine on any points. Maybe too early to
4 say.

5 MR. TAYLOR: Well, of course, I can't speak to Ms.
6 Brown's questions. One, I think.

7 THE COMMISSIONER: Well, Ms. Brown, if you could keep
8 that in mind because we will be adjourning at
9 4:00.

10 MS. BROWN: Mr. Commissioner, I can advise that I don't
11 expect I'll require the full hour.

12 THE COMMISSIONER: All right. Thank you very much.

13 THE REGISTRAR: We'll now recess for ten minutes.

14

15 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)

16 (PROCEEDINGS RECONVENED)

17

18 THE REGISTRAR: The hearing is now resumed.

19 MS. GRANT: Ms. Brown is next.

20 MS. BROWN: Thank you, Mr. Commissioner. For the
21 record, Anja Brown, and I'm appearing with my
22 colleague, Leah Pence, and we're counsel for the
23 First Nations Coalition. And the First Nations
24 Coalition is a group of First Nations from up and
25 down the Fraser River; not all of the First
26 Nations, but many. We also represent the Douglas
27 Treaty Groups and also the Council of the Haida
28 Nation. And we also represent a number of Fraser
29 River aboriginal fishing organizations.

30

31 CROSS-EXAMINATION BY MS. BROWN:

32

33 Q Mr. Bisset, if we could start, please, by turning
34 up Exhibit 709. And this is an exhibit that I
35 understand Mr. Steele was referring to earlier
36 today, and it is the table that identifies
37 national priorities for 2010 and 2011. And if I
38 could ask you please to go to page 5 of that
39 exhibit, please. And at the top of the table
40 you'll see item number 15, which is the
41 "Aboriginal Fishery Guardian Review", which is
42 identified as a priority B, which I understand to
43 mean a medium priority; is that correct? Could
44 you tell us, please, what the Aboriginal Fisheries
45 Guardian Review process means.

46 MR. STEELE: Yes. What that refers to was an effort on
47 our part to, I guess, revitalize the Aboriginal

1 Guardian Training Program. There had not been any
2 either refresher training or training for new
3 aboriginal guardians provided by the Department
4 for a number of years, up until I think the year
5 previous to this list being compiled. This list
6 would have been done probably in early 2010, and I
7 think in 2009 we had initiated a course to provide
8 refresher training to aboriginal guardians who had
9 been previously designated a number of years ago,
10 but had not received any refresher training for
11 quite some time, I think, possibly a period of ten
12 years, or somewhere thereabouts.

13 So there had been discussions internally
14 about trying to revitalize the guardian program,
15 and the first step towards that was to provide
16 refresher training for existing guardians. And
17 the next step from there was to bring in new
18 candidates who were interested in doing the
19 training and potentially being designated down the
20 road. So phase 2, that particular phase has been
21 initiated this year in 2011 and of course was
22 recently completed. I think three weeks ago there
23 was a graduation ceremony from the second course
24 for new aboriginal guardian recruits. This, now I
25 should explain, all of which, the training that I
26 have just talked about, has been exclusive to the
27 East Coast. There's been no training provided up
28 until now in this region.

29 Q As part of the review process, is there any
30 consideration being given to revitalizing the
31 program in the Pacific Region, either in terms of
32 training or perhaps of reinstating programs that
33 have been cancelled?

34 MR. STEELE: I'll let Mr. Nelson maybe describe that,
35 but my understanding is that, yes, it is under
36 consideration.

37 MR. NELSON: Yeah, maybe just for Mr. Commissioner and
38 everybody here to understand, going back a number
39 of years we had three phases of aboriginal
40 guardian training. It goes back, I think it was
41 the early '90s. And at one time we had, I think
42 it was a high of 33 aboriginal guardians. And
43 today I think there are about 11 left.

44 And one of the -- there was a very extensive
45 report done on it by a fellow by the name of Bob
46 Warren, and made a number of recommendations. And
47 I am very supportive of us developing an

1 aboriginal guardian program or continuing or
2 upgrading it. But there was a few items that are
3 key to its success, in my view, is the aboriginal
4 guardians must be trained, get consistent
5 training, and all of the bands must understand
6 what the expectations and the results of those
7 will be.

8 In our dealings with bands, some people think
9 that a guardian, all they would do is monitoring,
10 catch monitoring, to the full range where some
11 people want their guardians to be fully armed,
12 and work with fishery officers. My position on it
13 has been nationally we have to develop a clear
14 plan on what phases of guardian training will be
15 required, and when you're done, what the
16 expectations are, and I also believe there has to
17 be a strong connection with existing Conservation
18 and Protection Program to work very closely,
19 jointly with C&P. And I believe those were
20 elements of the Warren Report that were spelled
21 out as well.

22 So I just would ask Mr. Steele maybe to
23 follow up. And we would have training, but we
24 must develop that plan and get everybody on the
25 same page to understand so that everybody's
26 expectations are the same. In the past the
27 expectations were all over the map and that was
28 the reason for some of it not being successful.

29 Q Mr. Nelson, based on your comments, it sounds like
30 you're not part of this review that's underway; is
31 that correct?

32 MR. NELSON: No, as a director we'd be part of the
33 review. Yes.

34 Q All right. And have you been part of the review
35 as far as it's gone so far?

36 MR. NELSON: Directly one of my staff members has been,
37 but under me, yes.

38 Q All right. And the items that you just identified
39 for the Commission as being key are those items
40 that have been brought to the attention of Mr.
41 Steele or his counterparts as part of the review
42 process?

43 MR. NELSON: Yes. And that was -- that was part of my
44 reluctance to have training in this region until
45 we have a fully laid out plan and everybody knows
46 what the expectations are, so that has to happen
47 first.

1 Q Now, you just said a moment ago that there used to
2 be 33 guardians and there are 11 left. Do you
3 mean in your Pacific Region?

4 MR. NELSON: Yes, in this region.

5 Q And are you able to tell us out of the 11 that are
6 left how many of those individuals work on the
7 Fraser River?

8 MR. NELSON: Actually, I'm not. I know some work in
9 Cowichan, some up in Hazelton. I honestly can't
10 say how many are on the Fraser. I know some on
11 the Fraser became permanent fishery officers,
12 joined, became DFO fishery officers. But I don't
13 know -- I can find out, but I don't know how many
14 we have. There might not be any.

15 Q Now, could you please advise the Commissioner what
16 habitat enforcement roles aboriginal fisheries
17 guardians have. In the work that they do, what
18 aspect of their work relates to habitat
19 enforcement?

20 MR. NELSON: I'm not sure I quite understand, but they
21 would obviously be eyes and ears and to report
22 incidents to DFO officers. I don't know that any
23 of them do actual investigations in habitat.

24 Q And do they work independently of your C&P staff,
25 or do they work in conjunction with them?

26 MR. NELSON: I think it's both in some, depending on
27 where they are.

28 Q And I'm advised that at times aboriginal fisheries
29 guardians may actually be involved in habitat
30 monitoring, rather, habitat enforcement activities
31 including investigations. For example, they may
32 be involved in taking samples of water, or
33 reporting incidents that they observe, the Cat in
34 the river example, that you've given, for example.

35 MR. NELSON: I can't honestly say for sure, but I would
36 assume. They've got the training. If they've got
37 the habitat training, as well, they should very
38 much be able to conduct the investigations with
39 our officers.

40 Q So habitat enforcement is one of the roles and
41 responsibilities of an aboriginal fisheries
42 guardian, correct?

43 MR. NELSON: It should be. I haven't -- I've been out
44 of the field too long to be able to say, yes, they
45 are still doing it. I could find out, but I'd be
46 guessing a bit if I answered that.

47 Q All right. Now, Mr. Nelson, are you aware of a

1 period of time from approximately 1993 to 1999
2 there were about 14 aboriginal fisheries guardians
3 on the Lower Fraser, and specifically they would
4 have worked for the Sto:lo.
5 MR. NELSON: I remember there being guardians there.
6 The numbers, I'm not exactly sure.
7 Q All right. And are you aware that that particular
8 program was cancelled?
9 MR. NELSON: I believe it's cancelled, yes.
10 Q And would that be because it was a program that
11 had a particular sunset date, or was there some
12 other source of funding that was no longer
13 available, or was it cancelled for some other
14 reason, if you know?
15 MR. NELSON: I'm not really sure. I'm not sure.
16 Q Now, in terms of training, and you'd indicated
17 that training, obviously it's an important thing
18 and the training that's given to guardians ought
19 to be consistent. Would you agree that one of the
20 skill sets that aboriginal fisheries guardians
21 bring to bear, and again looking at this from a
22 habitat enforcement point of view, is that they're
23 working within their own physical territories, so
24 to speak, so they have intimate personal knowledge
25 of the habitat and also of the fish that flow
26 through that habitat.
27 MR. NELSON: Absolutely. That's not just with habitat.
28 With every part of the fishery, local knowledge is
29 very key.
30 Q Right. And so their presence on the water and
31 working with the Department has helped build
32 relationships with DFO between First Nations and
33 DFO, do you agree with that?
34 MR. NELSON: Yes. It's been one part of it, but, yes,
35 definitely if you have aboriginal guardians, the
36 contacts they have in their community help us do
37 our job together.
38 Q And it would also seem that especially during the
39 time that you've indicated that there were as many
40 as 33 aboriginal fisheries guardians working in
41 the Pacific Region, that they would have helped
42 your staff do the work that it needs to do.
43 MR. NELSON: Yes.
44 Q Now, I think this question is also directed to
45 you, Mr. Nelson. We heard earlier this week how
46 part of the work that HMP does is to monitor
47 projects that might be subject to a particular

1 regulatory tool, whether that is an operational
2 statement or letter of advice, that sort of thing.
3 And what I'm asking is how does Habitat management
4 work with C&P?

5 MR. NELSON: Well, hopefully what is happening and in
6 the areas I'm most familiar with, it is working.
7 Habitat staff at the chief level work together to
8 develop -- going back to our Integrated Risk
9 Management Process that we run regionally, we
10 invited Habitat staff to participate in that. And
11 we had one or two people participate in that.
12 Going down the next level to the area, like the
13 Fraser, Lower Fraser River and the Upper Fraser
14 River, that's two areas, the area chief in those
15 areas from Habitat and Conservation and Protection
16 would get together and help develop work plans,
17 and eventually down to the field level, where
18 they're working together.

19 Q You'd spoken earlier about occurrences and how
20 occurrences are sometimes brought to the attention
21 of C&P staff by the public. Are occurrences also
22 brought to C&P's attention by the HMP Unit?

23 MR. NELSON: Yes.

24 Q And how often does that happen?

25 MR. NELSON: I don't know the numbers, but we could
26 probably find that out.

27 Q And is that in the regular course of events, if
28 you have a monitoring staff person out in the
29 field, and he or she comes across something that
30 causes them concern, do they then contact someone
31 within C&P?

32 MR. NELSON: It depends on what it is they encounter.
33 If it's something that has already happened and
34 there's nobody around, they might just go back and
35 report it to C&P and ask them to follow up. If
36 it's something active, right in front of them,
37 they might call C&P at the time. So it depends on
38 the size of the event and the state of it. Is it
39 just starting, or is it over.

40 Q All right. We've heard evidence this week about
41 the separation of the various programs within the
42 Department. For example, we heard Ms. Bombardier
43 speak about how she deals with enforcement and
44 that there's a separate ADM for Environmental
45 Protection. And we also heard earlier this week
46 from representatives from DFO's Habitat Management
47 Group, and also from the Habitat Management Unit,

1 and then we heard from you at C&P. And there
2 seems to be a very clear separation from what
3 happens at the front end and the referral process
4 of habitat work, and the back end where
5 enforcement comes into play. And do you agree
6 that there's a benefit of having those that are
7 working at the front end, and by that I mean those
8 that are dealing with authorizations and letters
9 of advice, that sort of thing, is there a benefit
10 with having those people working more closely with
11 those of you at the enforcement side of things,
12 with respect to habitat?

13 MR. NELSON: Certainly, they have to be working
14 together and particularly under the new protocol
15 it's directing it to happen. So fishery officers
16 alone, if they encounter something, can start
17 initial action on it, but they will need to rely
18 on Habitat expertise to proceed much further, and
19 vice versa.

20 Q And how much ongoing communication is there
21 between monitoring and C&P?

22 MR. NELSON: I'm hoping a lot, but I really am far
23 removed from the field level. And, you know, what
24 I haven't heard is complaints that they aren't
25 working together, with some exceptions. You know,
26 in some areas the relationship is much better than
27 others, and you try and direct it and encourage it
28 where it needs it, and recognize those that are
29 working together. You know, you want it to
30 happen.

31 Q Right.

32 MR. NELSON: So from my position, that's what I try and
33 make happen.

34 Q Right. And we know that there are protocols in
35 place that set out the working relationship
36 between C&P and monitoring and the various roles
37 and responsibilities. I'm wondering if you have
38 any suggestions or recommendations that would help
39 improve the interrelationship between those two
40 very critical parts of DFO and the work that it
41 does on the ground.

42 MR. NELSON: Well, the biggest thing that I have on my
43 plate, as I mentioned, is the new protocol,
44 national protocol, as I have to work with my
45 counterpart to determine how we're going to
46 address some of the issues that are in there.
47 Like who's the lead, lead responder, for example.

- 1 It doesn't really identify in there who is
2 supposed to go out first. The protocol talks
3 about habitat management leading the monitoring
4 part of it, and what I have to negotiate, I guess,
5 or understand with my counterpart is what does
6 that mean. How are they going to do that without
7 going into the field? How do they make their risk
8 assessments? You know, you can make some risk
9 assessment based on the document received, but
10 until you actually go out and look at it, how do
11 you make that risk assessment. So there's a whole
12 lot of things that I have to work out before I can
13 expect the staff to be very clear on.
- 14 Q Right. And is that part of ongoing work in some
15 way?
- 16 MR. NELSON: Yes.
- 17 Q And in what way is that -- is that work proceeding
18 in some formal fashion?
- 19 MR. NELSON: I met initially with my counterpart, I
20 think it was a week or two ago, and that was the
21 first discussion we've had since the new protocol
22 came out, and we have to set up a meeting. What
23 I'm thinking is we'll do is get some of the C&P
24 chiefs together with some of the Habitat chiefs,
25 get the people who are going to be working with it
26 and see if we can come to a resolution on how
27 we're going to approach it.
- 28 Q Now, yesterday you talked, or you spoke in your
29 evidence about fishery officers' knowledge, and I
30 have a few questions about that. Do you agree
31 that one of the key elements of the success to
32 your enforcement program is in building
33 relationships, cooperation and trust between DFO
34 and the public?
- 35 MR. NELSON: Yes.
- 36 Q And would you also agree that successful
37 enforcement requires a knowledge, not only of the
38 habitat of the particular area where your staff
39 are working, but also knowledge of the surrounding
40 community, the people that live there.
- 41 MR. NELSON: Yes.
- 42 Q What has C&P done to increase the relationship or
43 to improve, perhaps, the relationship between
44 fisheries officers and the communities and people
45 where they're operating and enforcing.
- 46 MR. NELSON: We've done a lot of things over recent
47 years. A lot with First Nations, maybe I'll start

1 there, is there's a conference at Edmonton called
2 the Dreamcatcher Conference, where you take a
3 small group of First Nations youth in the 12 to 16
4 age category, along with an elder from that
5 community, a fishery officer, an RCMP officer, and
6 they go to Edmonton and it's about life-coping
7 skills for the First Nations children that attend.
8 It did so much for us in improving relationships
9 that we had a fishery officer actually start a
10 program in B.C., and it's run two years in a row
11 now out of Chase. And there were 100 to 150
12 Native youth attended last year. That was started
13 from a fishery officer.

14 The other thing we've done in this region is
15 participated in the Pulling Together Canoe
16 Journeys with First Nations. We have two large
17 canoes, and last summer they travelled -- they
18 travel in various areas along the coast. One went
19 from the Nass down to Kitkatla. One started up
20 the Fraser River and came down the Fraser River.
21 They've been in the Interior, and it brings
22 together hundreds of people, fishery officers, we
23 have also invited Habitat staff and Resource
24 Management staff, as well. That works fairly well
25 for us. And again it's about getting out and
26 meeting the people and understanding them and them
27 working with us.

28 There's a whole host of other things that we
29 have going. We have assigned an aboriginal
30 liaison officer for each band in British Columbia.
31 We have a fishery officer that has to report and
32 talk to each band office in the province. As far
33 as other groups, we attend trade shows, boat
34 shows, have officers attend school talks. There's
35 a whole host of things that we try and do to build
36 a better understanding and better relationships
37 with First Nations.

38 Q Right. And it sounds like what you're expressing
39 is really a two-way street. So these sorts of
40 initiatives that you've described, they're not
41 only to help the public understand DFO and what it
42 does, but it's a mechanism for your staff and
43 other members of DFO to learn about the
44 communities where they're working.

45 MR. NELSON: Absolutely. You know, through history
46 we've had a lot of serious confrontations with all
47 user groups. We've had a number on the Fraser

1 River with First Nations. They were not very --
2 they weren't a lot of fun to be part of. I was
3 unfortunately a part of too many of those, and we
4 found ways that seem to work better. I also have
5 mentioned before the use of restorative justice is
6 something that we've adopted in a lot of our work,
7 as well, with a high degree of success.

8 Q Now, I thought I had heard you say before the
9 break that you weren't -- that the Lower Fraser
10 wasn't part of the area where you worked. So did
11 I misunderstand that?

12 MR. NELSON: In my career I've never physically worked
13 in, other than a few days here or there, I wasn't
14 stationed in the Lower Fraser in my career.

15 Q All right. And my last series of questions relate
16 to --

17 MR. NELSON: Sorry. Sorry, for four months I was
18 established out of New West office, but other than
19 that I have worked, you know, a few days here and
20 there in the Lower Fraser, yes.

21 Q All right. My last series of questions relate to
22 PICFI, and you had given some evidence yesterday
23 with respect to that program. So, Mr. Bisset,
24 could you bring up, please, Exhibit 270. And if
25 we could go, please, to page 6. And your evidence
26 yesterday, as I understand -- I believe that's
27 page 5.

28 MR. NELSON: That's 5.

29 Q I'm just looking at the number at the -- thank
30 you. And your evidence yesterday regarding the
31 PICFI funding spoke to how that money has been
32 used and how it may continue to be used if PICFI
33 doesn't sunset. And I'm advised, and we've also
34 heard from previous testimony in this inquiry that
35 PICFI was intended primarily to support First
36 Nations participation in the fishery; is that
37 correct?

38 MR. NELSON: That was my understanding of the program,
39 yes.

40 Q All right. And looking at page 6 under "Details",
41 four key elements of PICFI are identified there
42 and we can see them and we can read them, and
43 under number 3 we see that greater enforcement is
44 identified as number 3. And I'm wondering if
45 you're able to, if you can tell the Commission how
46 much of PICFI's \$175 million is going towards a
47 greater enforcement effort?

1 MR. NELSON: There's sort of two parts of the PICFI
2 funding that comes to Conservation and Protection.
3 There was the former Williams money, which was in
4 the range of 1.2 to 1.6 million, I don't have the
5 number exactly at hand. And then through the
6 PICFI initiative we got some additional funding to
7 hire four positions to create, start our
8 Intelligence and Investigation Unit. So that was
9 a separate amount of money, and that amount of
10 money, I think, was in the range of about 600,000,
11 for a total of about 1.8 million. So that's what
12 came to C&P, per --

13 Q All right.

14 MR. NELSON: -- per year. So over five years you're
15 talking about \$9 million, I guess.

16 MS. BROWN: Thank you, those are my questions.

17 MS. GRANT: Mr. Taylor has some re-exam.

18
19 CROSS-EXAMINATION BY MR. TAYLOR, continuing:
20

21 Q I just have one question with a couple of
22 components to it, and it's of Mr. Nelson. Mr.
23 Buchanan asked you a question to which you
24 responded that the high in terms of the numbers of
25 fisheries officers in B.C. and the Yukon was about
26 212, you weren't sure what year, but --

27 MR. NELSON: Right.

28 Q -- about 212, and you recall that?

29 MR. NELSON: Yes.

30 Q And that's compared to right now, I think your
31 evidence has been that it's around 170, 175,
32 something like that?

33 MR. NELSON: Correct.

34 Q And that's about the same number as in 2005?

35 MR. NELSON: It's about the same number of positions,
36 but we had a lot of vacancies in 2005.

37 Q All right. My question, though, of you, is there
38 a number that is the low end, or the low number of
39 fisheries officers that have existed in this
40 region within the last some range of decades, and
41 if you know what that is, when was that?

42 MR. NELSON: I think it was around 150, but I'd have to
43 check to be sure, about 150.

44 Q But in that range.

45 MR. NELSON: Yes.

46 Q And do you know when?

47 MR. NELSON: I think it would have been around 2005 or

1 '06.

2 MR. TAYLOR: All right, thank you.

3 MS. GRANT: Mr. Commissioner, that concludes the
4 evidence for this hearing topic.

5 THE COMMISSIONER: Thank you very much, Ms. Grant.
6 First of all, thanks to Mr. Martland and Ms. Grant
7 for preparing this session, and to participants'
8 counsel and participants for your cooperation
9 throughout this week in ensuring that we got
10 through the panels. I also want to thank Ms.
11 Bombardier, Mr. Steele, and Mr. Nelson for making
12 yourselves available for these proceedings. And I
13 think two of you at least are travelling east, so
14 safe journey to your homes. And I believe we are
15 now adjourned until Thursday, April 14th, is that
16 correct, at 10:00 a.m. Right. Thank you all very
17 much and have a safe and pleasant weekend. Thank
18 you.

19 THE REGISTRAR: The hearing is now adjourned until
20 Thursday, April 14th at 10:00 a.m.

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(PROCEEDINGS ADJOURNED AT 3:28 P.M. TO APRIL
14, 2011 AT 10:00 A.M.)

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Karen Hefferland

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Pat Neumann

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Diane Rochfort