

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, March 4, 2011

Tenue à :

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

le vendredi 4 mars 2011

APPEARANCES / COMPARUTIONS

Brian Wallace Lara Tessaro	Senior Commission Counsel Associate Commission Counsel
Tim Timberg Geneva Grande-McNeill	Government of Canada
Boris Tyzuk, Q.C. Clifton Prowse, Q.C.	Province of British Columbia
No appearance	Pacific Salmon Commission
No appearance	B.C. Public Service Alliance of Canada Union of Environment Workers B.C. ("BCPSAC")
No appearance	Rio Tinto Alcan Inc. ("RTAI")
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")
Tim Leadem, Q.C.	Conservation Coalition: Coastal Alliance for Aquaculture Reform Fraser Riverkeeper Society; Georgia Strait Alliance; Raincoast Conservation Foundation; Watershed Watch Salmon Society; Mr. Otto Langer; David Suzuki Foundation ("CONSERV")
Don Rosenbloom	Area D Salmon Gillnet Association; Area B Harvest Committee (Seine) ("GILLFSC")

APPEARANCES / COMPARUTIONS, cont'd.

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

APPEARANCES / COMPARUTIONS, cont'd.

No appearance	Métis Nation British Columbia ("MNBC")
No appearance	Sto:lo Tribal Council Cheam Indian Band ("STCCIB")
No appearance	Laich-kwil-tach Treaty Society Chief Harold Sewid Aboriginal Aquaculture Association ("LJHAH")
Lisa Fong Ming Song	Heiltsuk Tribal Council ("HTC")

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PANEL 8 (recalled)
Cross-exam by Mr. Timberg (cont'd) CAN)

1 Vancouver, B.C./Vancouver (C.-B.)
2 March 4, 2011/le 4 mars 2011
3

4 THE REGISTRAR: Order. The hearing is now resumed.
5 MR. WALLACE: Good morning, Commissioner Cohen. Brian
6 Wallace, commission counsel, and Lara Tessaro is
7 with me. This morning we are reassembled from
8 December the 16th, when we were almost, but not
9 quite, concluded the cross-examination of this
10 panel of the -- composed of Mr. Sprout and Ms.
11 Farlinger, the previous and current regional
12 directors general for the Pacific region.

13 There are five counsel who have advised me
14 they have questions in cross-examination. Mr.
15 Rosenbloom is concluding his. He has estimated 20
16 minutes. Mr. Eidsvik has advised me that he will
17 be about 30 minutes. Mr. Harvey has indicated 45
18 minutes. Mr. Lowes says he'll be brief, 10
19 minutes or less. And Ms. Gaertner has an estimate
20 of between 45 minutes and one hour. All of which
21 should allow us to complete this early this
22 afternoon.

23 Before we start, Mr. Timberg has one piece of
24 documentary business that he'll explain arising
25 from before Christmas.

26 THE REGISTRAR: Before you start, Mr. Timberg, may I
27 remind the witnesses, your oaths are still in
28 effect.

29 MS. FARLINGER: Yes.

30 MR. TIMBERG: Tim Timberg for Canada, and with me is my
31 colleague, Geneva Grande-McNeill.
32

33 CROSS-EXAMINATION BY MR. TIMBERG, continuing:
34

35 Q Ms. Farlinger, last December 16th you entered --
36 we were discussing an Ecological Risk Assessment
37 Guide to Ecological Risk Analysis at Exhibit 276,
38 if we could have that, Mr. Registrar? And at the
39 time you clarified that this was the American
40 version of the Ecological Risk Assessment and we
41 undertook to provide the Canadian version.

42 And so this here, if we could have the
43 Canadian version -- Ms. Farlinger, could you
44 identify this document, please?

45 MS. FARLINGER: Yes, this is the current DFO guidance
46 for ecological risk assessment, and as you'll see,
47 it's in draft.

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PANEL NO. 8

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

Cross-exam by Mr. Rosenbloom (cont'd) (GILLFSC)

1 MR. TIMBERG: Thank you. If that could be marked as
2 the next exhibit. I understand we'll mark it as
3 276A.

4 THE REGISTRAR: That's correct. It will be marked as
5 276A.
6

7 EXHIBIT 276A: Draft copy of The Departmental
8 Committee on Ecological Risk Assessments'
9 Guide to Ecological Risk Analysis dated
10 September 2009
11

12 MR. TIMBERG: And then, Mr. Registrar, if we could have
13 Exhibit 273 brought up, please?

14 Q And Ms. Farlinger, last December 16th we were
15 discussing DFO's sustainable fisheries framework
16 and a fisheries checklist, and so Mr. Registrar,
17 sorry, Exhibit 273, please.

18 So Ms. Farlinger, we were discussing the
19 sustainable fisheries framework and DFO's
20 fisheries checklist, and this was not the DFO
21 fisheries checklist. And if we could then, Mr.
22 Registrar, have the correct exhibit? And Ms.
23 Farlinger, can you identify what this document is,
24 please?

25 MS. FARLINGER: This is the most current version of the
26 fishery checklist, which we use, now, in
27 developing integrated fishery management plans.

28 MR. TIMBERG: And for the record, I note it's the year
29 2010-2011, and if this could be marked, I
30 understand, as Exhibit 273A?

31 THE REGISTRAR: That will be so marked, thank you.
32

33 EXHIBIT 273A: Fishery Checklist 2010-2011
34

35 MR. TIMBERG: Those are all my questions. 273A.

36 MR. ROSENBLOOM: Thank you very much. Don Rosenbloom.
37 As both witnesses will recall, I represent Area D
38 Gillnet, Area B Seiner.
39

40 CROSS-EXAMINATION BY MR. ROSENBLOOM, continuing:
41

42 Q You will recall that last day I was cross-
43 examining you and the matter was put over, and I
44 wish to complete my cross-examination this
45 morning.

46 Ms. Farlinger, I want to start with your will
47 say as filed as an exhibit. It is Exhibit 245.

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1 Mr. Lunn will put that document before us and I
2 will ask Mr. Lunn to turn to page 3. The pages
3 are unnumbered. But I will want you to focus on a
4 certain paragraph, and at page 3, down four
5 bullets from the bottom, it starts, "If asked
6 whether DFO has implemented," do you see where I'm
7 reading?

8 MS. FARLINGER: Yes.

9 Q Yes. I want to read that paragraph out to you,
10 and then I want to ask you a few questions in
11 regards to that paragraph. You say there, "If
12 asked" -- excuse me just one second, I gave you
13 the wrong paragraph.
14

15 If asked whether DFO has implemented the WSP
16 as quickly as it could be implemented, she
17 will say that the WSP could be more quickly
18 implemented if all stakeholders accept the
19 need to implement it. She will say that one
20 of the reasons that it is taking a lot of
21 time to implement the WSP is that the
22 stakeholders who originally embraced it are
23 now encountering its realities. She says
24 that, as DFO implements the WSP, it has or
25 will result in significant changes for
26 harvesting, habitat management and SEP.
27

28 My question to you is: Can you provide evidence
29 to this commission how the stakeholders have
30 obstructed the process?

31 MS. FARLINGER: I wouldn't say the stakeholders have
32 obstructed the process. I think it's, and it's a
33 point I believe I've made several times along the
34 way in talking about the Wild Salmon Policy, is
35 while information is important, while financing is
36 important, it really is bringing together the
37 stakeholders who are affected by the
38 implementation of the Wild Salmon Policy to agree
39 on that information and then ultimately to have
40 the kind of discussions that consider alternatives
41 that will have impacts on those stakeholders. And
42 as we move from the situation where it is a
43 policy-level document when it was published in
44 2005 and we work through that science and we work
45 through the other supporting information and we
46 begin to look at what implementation means, then
47 the impacts become clearer to all of the

1 stakeholders and really it's across the spectrum.

2 So I wouldn't say that the stakeholders are
3 holding this up; I would say that stakeholders are
4 now in a position, as we move closer and closer to
5 implementation, of understanding what the
6 implications may or may not mean to them.

7 Q Well, I may be the only one in this room that
8 interprets that paragraph as placing some blame on
9 the stakeholders for an implementation slower than
10 you wanted or expected. You say, in part there:

11
12 She will say that one of the reasons that it
13 is taking a lot of time to implement the WSP
14 is that the stakeholders who originally
15 embraced it are now encountering its
16 realities.

17
18 Do you have any evidence to bring before this
19 commission that the stakeholders have been holding
20 you back in the implementation of the WSP?

21 MS. FARLINGER: I would like to clarify that "holding
22 DFO back" is not the issue here. The challenge is
23 for all of us in implementing the Wild Salmon
24 Policy. As we gather more information, as we move
25 closer to implementation that all of us, including
26 members of the public, fishing communities, be
27 they recreational, commercial, Aboriginal, and
28 other groups, understand better the implications,
29 and it really is that Strategy 4 discussion, which
30 is the -- takes the information that's available
31 and begins to talk about alternatives in terms of
32 what would it mean to implement the Wild Salmon
33 Policy.

34 If I were to say, for example, look at the
35 Cultus Lake sockeye stock, as an example, or the
36 changes in harvest rate on the Skeena River, for
37 example, those are challenging, because they have
38 impacts on harvesters.

39 It is not a question of holding it up; it's
40 simply a question of having to work through a
41 common understanding of the information and the
42 impacts.

43 Q Yes.

44 MS. FARLINGER: And quite frankly, we're continuing to
45 do that as we go along.

46 Q Well, I hear you, and forgive me for breaking in,
47 but I have Mr. Wallace breathing down my neck

1 about 20 minutes of cross-examination.

2 You're speaking of the fact you need
3 cooperation from the stakeholders, correct?
4 Obviously?

5 MS. FARLINGER: It's pretty clear that the Wild Salmon
6 Policy contemplates a collaborative process, but
7 DFO, as the regulator, is in a position where they
8 are -- we are required to move forward and make
9 regulatory decisions.

10 Q Right.

11 MS. FARLINGER: Obviously, those are much harder if we
12 haven't worked through the issues, have a common
13 understanding of information, and have processes
14 where stakeholders actually talk to each other
15 about the impacts and how those can be considered,
16 and that takes time.

17 Q I fully understand, but you don't have evidence to
18 bring forward that there's been a lack of
19 cooperation until now, have you?

20 MS. FARLINGER: I don't think there's a lack of
21 cooperation; I think there is a variety of views
22 that need to be reconciled and, quite frankly, it
23 takes time to reconcile those views and understand
24 the impacts.

25 Q Let me move onto the second area of my cross-
26 examination. In the transcript of the last day --

27 MS. FARLINGER: Could I ask something?

28 Q Sure.

29 MS. FARLINGER: The last thing we discussed before we
30 left on December the 16th was habitat restoration,
31 and as I walked away from that I realized that I
32 was somewhat weakened in my last response, so if I
33 could take half a minute to simply clarify my
34 response, I'd be happy to do that.

35 Q If half a minute, yes; if it's a lot more than
36 that, I'd rather it be done through your counsel
37 in his re-examination. But half a minute, go
38 ahead.

39 MS. FARLINGER: Okay, I'll do my best. You had asked
40 me the question if the only way the Department did
41 habitat restoration was when charges were laid and
42 fines had been administered and those could be
43 used for habitat restoration, and the simple
44 answer to the question is, "No, that's not the
45 case." We have a five million dollar habitat
46 restoration group in the Salmonid Enhancement
47 Program and we do a variety of things leveraging

1 those funds, most years in the ratio of five to
2 one working with stakeholders and interest groups
3 to do habitat restoration.

4 Q Right.

5 MS. FARLINGER: So it's much broader than the question
6 you asked, that's it.

7 Q Thank you. And after you gave that response last
8 day Mr. Sprout actually responded to the question,
9 didn't he?

10 MS. FARLINGER: I guess he may have, yes.

11 Q Okay. Well, in any event, the record will speak
12 for itself. He did.

13 Now, coming to the second area of my cross-
14 examination today, I want to refer you to the
15 transcript of the last day, and Mr. Lunn, if you
16 could get out December 16th, and if you could get
17 out page 91, where you're responding to me, and we
18 -- to speed this up, let's start at line 25, and
19 I'll read that paragraph, line 25. You say, in
20 part, in response to a question of mine:

21
22 Secondly, I would say in the list you saw
23 this morning with respect to the
24 implementation of the national policy, that
25 checklist that was referred to, an economic
26 analysis as it pertains to each and every
27 fishery now is required, as part of that
28 checklist, as part of the integrated
29 management plan for each fishery. We do not
30 have all of those done for all of the IFMP's
31 for all of the fisheries, but they are
32 underway on a priority basis.

33
34 Can you fill us in to what extent they have been
35 done up to this moment in time? Have any of them
36 been completed?

37 MS. FARLINGER: Yes, some of them have been completed.
38 I can't tell you exactly which ones, but we
39 started a year and a half ago, when the checklist
40 first came into operational use, to set priorities
41 for our internal economists to begin to work
42 through the economic analyses for the various
43 fisheries. So, yes, we do have some done.

44 Q What percentage, excuse me, what percentage of the
45 CUs that you would expect to have socioeconomic
46 work done, what percentage of those have had their
47 studies done?

1 MS. FARLINGER: I can't tell you at this time and I
2 can't, in fact, tell you whether there is any
3 economic analysis done on the Salmon Integrated
4 Fishery Management Plan, we have some 30-odd other
5 integrated fishery management plans for the
6 region. But I do know we have some completed, and
7 I can certainly provide you with the information
8 on which ones are completed and which ones are
9 not.

10 Q So do I understand you to say maybe the ones that
11 have been completed aren't even relating to
12 sockeye salmon?

13 MS. FARLINGER: That may be the case.

14 Q So it may be - may be - that, in fact, no studies
15 have been completed with sockeye salmon on the
16 Fraser River in respect to the CUs?

17 MS. FARLINGER: There may have been economic studies.
18 The specific economic analyses that we are talking
19 about under the IFMP may not have been completed
20 for Fraser sockeye.

21 Q On any of the CUs?

22 MS. FARLINGER: It may not.

23 Q Yes.

24 MS. FARLINGER: Yes.

25 Q And you will be kind enough to provide that
26 information through your counsel, Mr. Timberg?

27 MS. FARLINGER: Yes.

28 Q And provide it to us, in turn?

29 MS. FARLINGER: Certainly.

30 Q Thank you very much. I come to the third area of
31 my examination today. I believe in an earlier day
32 of your testimony, not on the 16th but the
33 previous day to that - I forget whether it was the
34 9th of December or whatever - that you spoke about
35 the fact that the Department would be consulting
36 with the stakeholders throughout the process of
37 implementation of the WSP, that you suggested
38 there's been consultation in the past and there
39 would continue to be. You recall, generally, that
40 testimony?

41 MS. FARLINGER: In general, yes.

42 Q Yeah, in general. Tell me, how do you envisage
43 that consultation to take place in the future?
44 And I assume, by "stakeholders" you obviously
45 include my clients, the harvesters, and obviously
46 First Nations and so on and so forth. Very, very,
47 very briefly, can you tell us how you imagine that

1 consultation will be taking place? Will it be
2 taking place through the consultative processes
3 that we're familiar with the bodies that have been
4 spoken of time and again, or something else?

5 MS. FARLINGER: The consultation process, which has
6 been taking place and continues to take place on
7 Wild Salmon Policy exists through the existing
8 fishery management consultation process as well as
9 through a variety of sporadic arranged meetings
10 which occur on particular topics. So I could use,
11 as an example, the fall dialogue discussions.
12 There have been discussions and updates on the
13 Wild Salmon Policy in that forum. There have been
14 discussions in specific meetings arranged with
15 First Nations. There have been updates, regular
16 updates, at the Integrated Harvest Planning
17 Committee for salmon.

18 So there's a variety of ways, including some
19 watershed and other processes. So I think the
20 short answer is there is a variety of processes,
21 but we certainly use the regular consultation
22 process as well.

23 Q Are you in a position to indicate to the
24 commission that before management decisions are
25 taken on a CU basis that you will be consulting
26 with the stakeholders?

27 MS. FARLINGER: The management of the fishery and the
28 decision rules associated with that through any --
29 in any particular year are made through
30 consultations in the Integrated Fishery Management
31 Plan. So before an action is taken there is
32 consultation on those rules, and those rules
33 represent the implications if it is for a stock of
34 concern or a CU.

35 Q So your response is in the affirmative, that
36 stakeholders would be consulted in respect to
37 management decisions on a CU basis?

38 MS. FARLINGER: Management decisions, as they affect
39 the harvest of the fishery would be consulted on.

40 Q Thank you. And can one assume that that
41 consultation, generally, would also be implemented
42 to ensure that the Native Brotherhood of British
43 Columbia and the First Nation Vessel Owners
44 Association, in other words the First Nations
45 organizations that are also in the commercial
46 fishery, would also be consulted?

47 MS. FARLINGER: We consult a variety of groups and the

1 -- some members of those two groups are on various
2 either local advisory committees, harvest
3 committees, as we call them, or members if they
4 are elected by their harvest group; that is, all
5 the fishermen who harvest in that particular
6 fishery, then they can be members. Discussions
7 with those groups are not formally part of the
8 process, but they are members, from time to time,
9 who are elected to the process. Certainly,
10 they're members of the area-based harvest
11 committees and they may be elected by those
12 members to go to the higher level process.

13 Q Thank you. Next, in your absence, after your last
14 appearance here, we've had a lot of evidence about
15 over-escapement issues, a panel that spoke about
16 over-escapement, and delayed density dependence
17 and all these issues. My question to you is this,
18 and again, maybe I'm the only one not
19 understanding this: With the implementation of
20 the WSP, are issues of over-escapement, delayed
21 density dependence, cyclic dominance, all factored
22 into the decision-making and implementation of the
23 WSP?

24 MS. FARLINGER: When fishery management decisions are
25 made or the science supporting those are in place,
26 there are analyses from time to time that have
27 gone through the science process, or external
28 analyses, such as the one done by the Pacific
29 Fishery Resource Conservation Council on impacts
30 of over-escapement that are factored into the
31 decision-making. Many of the models used in doing
32 forecasting for Fraser sockeye are heavily
33 dependent on cyclic dominance parameters being
34 integrated into those models.

35 Q So can one assume, if one is an advocate of the
36 principle that over-escapement can have a
37 detrimental effect on stock, can those individuals
38 feel confident that with the implementation of the
39 WSP that one of the factors that DFO will consider
40 in stock assessment and stock help will be over-
41 escapement?

42 MS. FARLINGER: Certainly one of many factors, but yes.

43 Q Yes. And so one can imagine, hypothetically, that
44 where there is a threatened stock, DFO could come
45 to the belief that there has been an over-
46 escapement of that stock and, therefore, they
47 would reduce escapement in the future,

1 hypothetically?

2 MS. FARLINGER: Hypothetically, I think, like many of
3 -- like much of the science around Fraser sockeye
4 and other salmon, there are a variety of views in
5 the scientific community about that. And so once
6 again, those views will be brought to the table,
7 they will be discussed, they will be incorporated,
8 and the uncertainty around them will need to be
9 taken into account.

10 Q Yes. But you believe that the WSP, as currently
11 before you as a policy, does afford the
12 opportunity for your managers to render a decision
13 that there has been an over-escapement and to take
14 necessary action?

15 MS. FARLINGER: If, in fact, in that instance, that the
16 information, including science, that we had
17 supported that, it would certainly be something
18 that would be considered along with all the other
19 factors around the forecasting and health and
20 recovery and rebuilding or maintenance of that
21 stock.

22 Q Of course. Thank you. Two last areas of
23 examination, briefly. The first is, again, after
24 your last appearance here, there has been evidence
25 given by Dr. Riddell in respect to the budgetary
26 restraints that you and region and the national
27 office are grappling with in light of treasury
28 board decisions, and I want to refer you to
29 testimony of Dr. Riddell and then ask for your
30 comment.

31 Firstly, Mr. Lunn, transcript of February the
32 3rd, at page 28. I won't read out page 28, but
33 basically he's talking about the five percent
34 reduction. And I'll just summarize it, and if,
35 for any reason, you want to go directly into the
36 transcript, but I'm trying to speed this up, but
37 I'm happy to.

38 Basically, he's speaking about the five
39 percent reduction and he was explaining to the
40 commission that that five percent reduction is
41 really not a five percent reduction on operating
42 expenses -- excuse me, on the total budget, but,
43 rather, is focused on the operating expenses,
44 which means that it truly is a reduction of 15 to
45 20 percent.

46 I just want you to look at the top of page
47 29.

1 MR. LUNN: I'm sorry, I'm having a little trouble.

2 I'll bring it up as soon as I can.

3 MR. ROSENBLOOM: No problem. Again, February the 3rd.

4 Q While Mr. Lunn's bringing it up, let me just read
5 it to you and then, if you wish to see it, it's
6 line 3 and Dr. Riddell says, "Yes" -- here we go,
7 page 29. There we go. Line 3. Dr. Riddell said:

8

9 Yes. The conversation was one of -- and this
10 does vary depending on how the reduction is
11 defined, but if you have a five percent on
12 total budget, that will include salaries.
13 Typically you will also have restrictions on
14 what you can take the reductions in and it
15 frequently does not include salary. But if
16 you have a five percent off total budget, it
17 can easily equate to a 15 percent of
18 operating funds.

19

20 And also, he testified on another date, and Mr.
21 Lunn, if you would bring this forward, February
22 2nd the previous day - I should have started with
23 this - at page 50. Yes, page 50, line 39. Dr.
24 Riddell said, at the bottom of the page:

25

26 Could I just add, it's sometimes easy to
27 forget exactly what five percent means,
28 because the five percent expression now is
29 five percent on total budgets. So it sounds
30 a fairly small percent. But you also have
31 government guidelines where you're not
32 allowed to reduce staff, unless they're term
33 field staff working in projects on a very
34 short-term basis. So what that means to a
35 senior manager is five percent of your total
36 budget. Very broad terms, at least 70
37 percent of your total budget is likely taken
38 up in salary -- well, salary, wages,
39 benefits, and all that. And so really you're
40 looking at five percent of a total that turns
41 into more like 15 to 20 percent of operating
42 at times. All right? And so these small
43 cuts have a very almost insidious way of
44 accumulating to significant reductions in
45 programs.

46

47 Okay. First of all, do you agree, generally, with

1 what Dr. Riddell has testified to here?

2 MS. FARLINGER: I guess I would first say is I don't
3 know what five percent he's referring to, but he
4 seems to be saying, in general, that five percent
5 can be taken away or can cause a reduction in a
6 number of ways. Now, it is possible to reduce
7 staff, it is possible to reduce operating funding,
8 and so, in general, any reductions can be targeted
9 in various ways.

10 Q Okay. Let's take this step by step. Firstly, as
11 to the five percent he's referring to, your Deputy
12 Minister Claire Dansereau did testify here, early
13 on, one of the earliest days that, I believe, she
14 testified that the Department was facing a five
15 percent reduction.

16 MS. FARLINGER: Okay.

17 Q That's what I believe he's referring to. Now, my
18 question, simply, is this --

19 MS. FARLINGER: Okay.

20 Q -- and I see Mr. Wallace wanting to cut me short,
21 so I want to be quick on this. You do not accept,
22 then, what Dr. Riddell has said to this
23 commission, that a five percent, prospective five
24 percent reduction really isn't five percent, it is
25 between 15 and 20 percent of the operating budget
26 of the Department; you don't accept that?

27 MS. FARLINGER: The five percent you're talking about,
28 which is all federal departments are required to
29 go through in strategic review, can be implemented
30 in a variety of ways either through salary or
31 operating. So that would be my answer to that
32 question. And if that's the five percent that
33 you're referring to, we will see that on a program
34 basis. It is a process of looking at lowest
35 priority programs and reducing those.

36 Q Right.

37 MS. FARLINGER: So that is, and it can be, either staff
38 or operating funding.

39 Q I'll deliver the same question to your deputy
40 minister when she returns at the conclusion of
41 these hearings.

42 My last question area with you relates to the
43 WSP implementation. What can one expect from the
44 Department in terms of implementing WSP in the
45 next, let's say, two years. Can you give a
46 percentage estimate of to what extent the WSP will
47 be in full implementation within, let's say, two

1 years?

2 MS. FARLINGER: Well, I have to say that while I might
3 speculate that's exactly what it would be. It is
4 a priority in the work plans for those involved in
5 salmon science, science fisheries management, and
6 salmon habitat in the region. I think there is
7 certainly an action plan having to do with the
8 implementation of the Wild Salmon Policy
9 associated with Marine Stewardship Council eco-
10 certification, which sets out that work plan. I
11 think there will be significant movement forward,
12 but I don't think I can put a percentage on it,
13 simply because we're dealing with the five stocks
14 over the 3,500 streams that they inhabit in B.C.

15 Q I appreciate that, but surely you can give this
16 commission some sense, two years from now, to what
17 extent will the WSP be implemented? I don't want
18 to pin you down to 50 percent, 75 percent, but do
19 you imagine within two years that your Department
20 will be in full implementation or partial
21 implementation of the WSP, and if it is partial,
22 to what extent? Fifty percent?

23 MS. FARLINGER: Well, I think as I said, it would be
24 speculation on my part. I think that we will
25 have, as we have committed to do, have limit
26 reference points and the framework for those that
27 was discussed in considerable detail here, I
28 think, with the science staff and with the
29 resource management staff in place for a far
30 greater number of stocks than we do, today. What
31 the percentage is, I think it would -- I just
32 simply wouldn't be confident in putting a
33 percentage on that.

34 MR. ROSENBLOOM: I have no further questions, thank
35 you.

36 MR. WALLACE: Thank you, Mr. Rosenbloom. I have Mr.
37 Eidsvik next on the list.

38 MR. EIDSVIK: Good morning, Commissioner. My name is
39 Philip Eidsvik, for the record, the Area E
40 Gillnetters Association and the B.C. Fisheries
41 Survival Coalition. I wonder if Mr. Lunn could be
42 kind enough to haul up Exhibit 212, page 6, for
43 us, please?

44
45 CROSS-EXAMINATION BY MR. EIDSVIK:

46
47 Q The subject matter, today, is implementation of

1 the Wild Salmon Policy, and I thought a good place
2 to start would be at page 6 of this exhibit.
3 Sorry, it's a different page 6. Sorry, sometimes
4 the pages get complex, so if you continue down,
5 continue down, stop. Right there.
6 Cultus Lake sockeye is a big concern in the
7 management of the fishery; is that true, Ms.
8 Farlinger?
9 MS. FARLINGER: Certainly one of the stocks of concern
10 in the management of the Fraser sockeye, yeah.
11 Q And one of the Wild Salmon Policy's -- and I think
12 if I read one of the objectives, is the
13 conservation of wild salmon in their habitat is
14 the highest priority for resource management
15 decision-making. So what would the "highest
16 priority" mean to you?
17 MS. FARLINGER: It would mean in the consideration of
18 any regulatory decisions that we make that we have
19 considered the conservation of the stock and those
20 elements in the decision-making and set them as a
21 priority.
22 Q So protecting the habitat of a stock that's at
23 risk, as Cultus Lake sockeye is, would be one of
24 the Department's very highest priorities?
25 MS. FARLINGER: That is a stated priority, protecting
26 the habitat and conserving a stock.
27 Q So I think if we look at the second paragraph
28 there, titled Eurasian milfoil (sic), and we see
29 Eurasian watermilfoil is an invasive species and
30 dive surveys show that spawning areas for Cultus
31 Lake sockeye are heavily infested and, however,
32 the effect of watermilfoil on Cultus Lake sockeye
33 is not fully understood.
34 So this document was published in 2005;
35 Cultus Lake sockeye was published in 2006, when it
36 was first recognized. I think I have those dates
37 correct, do I?
38 MS. FARLINGER: Well, I would have to --
39 Q The COSEWIC?
40 MS. FARLINGER: -- defer to Mr. Sprout for the exact
41 dates, but they sound reasonable to me.
42 Q And we've known that Cultus Lake sockeye has been
43 a problem for many decades prior to that? Is it
44 fair to say --
45 MS. FARLINGER: Perhaps I'll defer --
46 Q -- Mr. Sprout?
47 MS. FARLINGER: -- to Mr. Sprout.

1 Q You were probably around longer?
2 MR. SPROUT: Cultus Lake was a -- just clarify what you
3 mean by that, please?
4 Q We've had a concern on Cultus Lake sockeye for
5 many, many years long before --
6 MR. SPROUT: The status of the population
7 (indiscernible - overlapping speakers)
8 Q That's right.
9 MR. SPROUT: Yes, that's fair to say.
10 Q Perhaps you can, Mr. Sprout, you were involved,
11 tell us how aggressively watermilfoil habitat
12 approach is at Cultus right now and has been for
13 the past 15 years?
14 MR. WALLACE: Excuse me, Mr. Commissioner, this strikes
15 me as a fairly operational kind of series of
16 questions, and Cultus Lake is specifically on the
17 agenda in the end of May, early June, when we're
18 back with the habitat and integrated management
19 parts relating to WSP Strategy 4 and Cultus Lake
20 and the SARA piece that are all part of that. So
21 it may be that Mr. Sprout is not the person to
22 answer these sorts of detailed questions, but
23 those witnesses will be here later.
24 MR. EIDSVIK: I don't need to go into it in too much
25 detail, Mr. Commissioner.
26 Q So can you tell me if there's been an aggressive,
27 active milfoil program at Cultus Lake for, say, 15
28 years?
29 MR. SPROUT: I can't give you the specifics. I think
30 there are other people that are much more
31 knowledgeable that actually are dedicated to the
32 Cultus Lake program, but I can say that milfoil
33 removal, or the invasion of milfoil in Cultus Lake
34 is regarded as a habitat concern and that the
35 Department and others have carried out removal
36 activities over a period of time.
37 Q But at this point you can't attest to the level of
38 activities?
39 MR. SPROUT: Presently, you mean?
40 Q No; in recent years.
41 MR. SPROUT: I can say that the Department has --
42 Cultus Lake is one of the most studied lakes,
43 freshwater lakes, by the Department of Fisheries
44 and Oceans. The Department has carried out
45 milfoil removal, and just to explain what milfoil
46 is, it's an invasive freshwater --
47 Q Mr. Sprout, if I could --

1 MR. SPROUT: -- weed -- I'd like to respond to your
2 question about the habitat work the Department is
3 doing in Cultus Lake. So the Department has
4 carried out milfoil removal, contamination
5 studies, in terms of pollutants entering the lake,
6 groundwater surveys in terms of availability of
7 groundwater to support Fraser sockeye spawning in
8 areas that are supported by groundwater,
9 hydrological work looking at limnology, surface
10 tension, surface pressure, temperature, and so
11 forth, all of which are designed to broadly look
12 at the issues of habitat in Cultus Lake.

13 We actually have a laboratory in the area
14 whose work is dedicated to that and other
15 activities in that general area. In terms of the
16 specific things that have been going on in the
17 last few years, I'm not the person to talk to
18 that. Mr. Wallace is correct, it is an
19 operational issue that would be better referred to
20 by the scientists and biologists who carry out the
21 dedicated work that I referred to.

22 Q So in conclusion, you're not sure about the level
23 of milfoil removal, even though it's a really high
24 priority for -- the highest priority of the
25 Department and I can get that off another witness;
26 is that correct?

27 MR. SPROUT: In conclusion, I would say that that
28 operational question should be referred to an
29 operational expert who I understand will be
30 speaking to this later on.

31 Q And does the same go for recreation, where we talk
32 about the millions of people and the impacts of
33 swimming and angling on spawner migration? Has
34 anything been done to limit the number of the
35 people on the lake; can you tell us that?

36 MR. SPROUT: Well, you may want to raise that with the
37 province --

38 Q So you can't --

39 MR. SPROUT: -- because that is not a jurisdictional
40 issue that falls in with the DFO. That's the
41 recreational fishery in freshwater, which is
42 regulated by the province, so you may properly
43 refer that to that agency.

44 Q If it's having an impact on habitat, such as we
45 talk about here in your own paper, construction of
46 piers, amount of pollution, contribution to the
47 spread of milfoil, aren't those habitat issues?

1 MR. SPROUT: Yes, but the question you asked me was the
2 regulation of the fishery, and I've referred you
3 to the agency which is the responsible agency.
4 Now, if the question is, is the fishery, itself,
5 creating habitat issues --

6 Q I didn't talk about the fishery. I was referring
7 to the building of piers, pollution, and the
8 contribution to the spread of milfoil.

9 MR. SPROUT: Then those habitat issues would be of
10 interest to both the Department and to the
11 provincial agency as well as other parties.

12 Q Okay, now maybe perhaps you could just answer my
13 easy question: Has the Department limited the
14 number of people, limited the pollution caused by
15 those people in the lake, in the past few years?

16 MR. SPROUT: Actually, I spoke to this issue earlier
17 and I commented on the threats to Pacific salmon,
18 Fraser sockeye in particular, and I indicated that
19 one of the threats to Pacific salmon, Fraser
20 sockeye in particular, is human population growth
21 development. I've noted in the Lower Mainland, in
22 particular, that human population growth, the
23 placement of houses, bridges and construction on a
24 broad basis, I believe, is a very important threat
25 to Pacific salmon.

26 The Department of Fisheries and Oceans does
27 not control human population growth. We don't
28 determine how many people decide to live in a
29 certain area, and so forth. The policies the
30 Department has in relation to this particular
31 question are specifically related to its habitat
32 policy. The Department is required to react to
33 proposals that come forward by other agencies,
34 regional districts and so forth, in terms of
35 trying to ensure that those developments that
36 occur near water comport with our policy. But we
37 are not, the Department is not, in a position to
38 deal with the question I think you are raising,
39 which is human population growth development. But
40 again, once I -- I underscore that I do believe
41 that this is an important threat to Pacific
42 salmon.

43 Q Well, I think one of the major parts of the Wild
44 Salmon Policy, and we are talking about
45 implementation of it, is DFO has constitutional
46 authority to look after fisheries habitat; is that
47 correct? Sorry, maybe that's a question of law --

1 MR. SPROUT: Maybe.

2 Q -- that maybe I'll set aside.

3 MR. SPROUT: Well, I mean, I can respond. There are
4 multiple parties that have responsibility for
5 habitat. The province is a significant
6 constitutional responsibility, obviously so is the
7 Federal Government, but as well you have to look
8 at regional districts and other parties who have
9 an implication or an impact on habitat. So it's a
10 multi-jurisdictional area.

11 Q Okay. Aside from reacting to habitat issues so
12 that Wild Salmon Policy becomes a -- passed and
13 it's implemented, doesn't, in the end, where you
14 have a person who doesn't respect habitat come
15 down to some fishery officer going, laying charges
16 and bringing forth a prosecution with the
17 assistance of the Crown?

18 MR. SPROUT: What do you mean by "not respect habitat"?

19 Q Well, if somebody is going to violate the habitat
20 provisions in the **Fisheries Act**, introduce a
21 deleterious substance into the waters or build a
22 dam in an area where it doesn't belong and dry up
23 some spawning bits, I'm talking about the
24 enforcement of the habitat provisions of the Wild
25 Salmon Policy. In the end, doesn't it come down
26 to a fishery officer if someone is not going to
27 obey the law?

28 MR. SPROUT: It's way more complicated than that. The
29 reality is you would have to determine what action
30 or activity is taking place. You'd have to
31 determine whether, in fact, that activity or
32 action was resulting in deleterious effects on
33 habitat, whether that triggered federal
34 jurisdiction or provincial, or other activities,
35 and then you would have to determine whether there
36 had been some attempt by that group or individual
37 to comport with guidelines. In other words, I
38 cannot give you a simple "yes" or "no" to the
39 question you posed.

40 Q Well, if someone hasn't comported with the
41 guidelines, I'm sure --

42 MR. WALLACE: Mr. Eidsvik, the issue of habitat
43 enforcement, again, is a specific topic which we
44 will cover. This line does not relate to the
45 implementation of the Wild Salmon Policy, in my
46 view.

47 MR. EIDSVIK: I beg to differ, respectfully, with Mr.

1 Wallace. Given his position and his long history
2 of dealing with court cases and my inexperience,
3 I'm trying to get at if the Wild Salmon Policy is
4 there and we're going to implement it, does the
5 Department, even today, have the resources in
6 terms of fishery officers and others, to properly
7 enforce the habitat provisions and promises in the
8 Wild Salmon Policy. Does that satisfy you, Mr.
9 Wallace?

10 MS. FARLINGER: What the Wild Salmon Policy commits to
11 is in making decisions about habitat, about the
12 regulatory decisions we have to make, that we will
13 take into consideration information on the stock
14 status on the habitat issues and challenges and
15 the potential ecosystem impacts, before making a
16 decision.

17 In this case, in the case of Cultus Lake
18 sockeye and the recovery plan for that, you will
19 remember that there was a proposal by COSEWIC, the
20 committee on endangered - okay, I'm not going to
21 get that entirely right, which is why you need to
22 talk to SARA experts - that this stock should be
23 listed under the **Species at Risk Act**, and it was
24 put to the Minister of Fisheries and Oceans, and
25 the Minister of Fisheries and Oceans committed to
26 a recovery plan which included all the elements of
27 the Wild Salmon Policy. So, really, that's the
28 context. It's very broad and it includes all our
29 planning, our rebuilding plans, our harvest plans,
30 our habitat -- and also the habitat regulatory
31 work we do.

32 Q It will be certainly useful, because I think the
33 Cultus Lake is a -- given that it was listed by
34 COSEWIC in 2002 and the Wild Salmon Policy is now
35 five years old and it's 2011, assessing the Cultus
36 Lake situation will be useful. I guess we'll
37 leave that for another day.

38 I want to talk about one of the issues that
39 was raised by you, Ms. Farlinger, about ecosystem
40 management, and one of the implementation policies
41 or consultant studies, and there's been many on
42 the Wild Salmon Policy, it talked about bears that
43 how -- the contribution of salmon to the health of
44 bears. Now, how do you measure that in a specific
45 year?

46 MS. FARLINGER: I'm probably the wrong person to ask
47 that question. I think it's a fairly technical

1 question, and I wouldn't say as we've developed or
2 in the process of developing ecosystem indicators,
3 that there's a very clear methodology for
4 assessing the impact on bears, other than the
5 consideration of the ecosystem impacts of allowing
6 or not allowing or providing sufficient fish to
7 get to the spawning ground.

8 MR. EIDSVIK: It's a really important question -- how
9 am doing for time, Mr. Wallace?

10 MR. WALLACE: I have you about halfway through your
11 half hour, Mr. Eidsvik. Mr. Commissioner, this
12 line, again, if Mr. Eidsvik is going to ask
13 further questions about a study, he needs to
14 provide the witness with notice of that and make
15 specific reference to it. So I'd ask that he not
16 continue on this line.

17 MR. EIDSVIK: Perhaps I can rephrase my question.

18 Q Are bears, the health of bears, a consideration in
19 the Wild Salmon Policy, in your term of ecosystem
20 management?

21 MS. FARLINGER: The contribution of salmon to the
22 broader ecosystem in which they live and the
23 contribution of that ecosystem to the maintenance
24 or rebuilding of salmon populations is a
25 consideration.

26 Q When you're implementing the Wild Salmon Policy
27 and you're trying to figure out what is the
28 contribution of salmon to the health of the bears,
29 how do you measure that? How do you measure how
30 many salmon you need for "X" amount of bears?

31 MS. FARLINGER: I would just repeat my previous
32 response to that question, which is I am not
33 technically familiar with any studies we have on
34 that.

35 Q I think I'll move on again, given there's no
36 studies. Perhaps I could have Exhibit 70, the
37 2002 Fraser Panel Report, and it's page 4, please.
38 And while we're getting there, I'm going to read
39 the objectives - at the top of the page - and I'll
40 read the objectives at the bottom of the first
41 paragraph.

42
43 The objectives that guide the Panel's
44 decision-making listed in descending priority
45 are: to achieve the spawning escapement
46 targets, meet international catch and
47 allocation goals, and meet domestic catch

1 allocation objectives. Conservation concerns
2 of the Parties for other species and stocks
3 are addressed throughout the process.
4

5 Those, to me, are very clear objectives. Can you
6 show me, in the 57-page Wild Salmon Policy, where
7 there's such clear, measurable objectives that you
8 can measure every year? And that's what I was
9 raising with the bears. I had a problem trying to
10 measure how many salmon we need to put on the
11 grounds for bears. Very clearly, here, we have
12 objectives for the Fraser Panel.

13 MS. FARLINGER: I think the Wild Salmon Policy is a
14 domestic policy and it falls within the domestic
15 activities. The Pacific Salmon Treaty, which is
16 an agreement between the U.S. and Canada, is very
17 much focused on considering those conservation
18 objectives that each country has within its own
19 domestic programs, and fundamentally is focused on
20 these objectives that are set out here.

21 Q And for many of us, measuring failure and success
22 at the end of the year is a pretty good thing, so
23 far as implementation goes, and I see in the
24 Fraser Panel it's pretty easy. Did you achieve
25 the spawning escapement targets? Did you meet
26 international catch allocations? And in the Wild
27 Salmon Policy, in the 57 pages, plus many
28 additional reports, I have a hard time trying to
29 figure out what objective are you trying to
30 measure and how you measure it. Maybe you can
31 help me there, because, frankly, at the end of the
32 salmon policy and the other papers I'm confused.

33 MS. FARLINGER: I think the objectives of the Wild
34 Salmon Policy are fairly clearly stated in terms
35 of maintaining the diversity of wild salmon and
36 the conservation objectives of the policy, and we
37 could certainly go back to those if necessary.

38 I think the Wild Salmon Policy is a far-
39 reaching document that sets out a number of
40 objectives and the processes for reaching those
41 objectives. The context of measuring the success
42 of the Fraser River Panel is somewhat more
43 constrained and somewhat easier to measure than
44 broad concepts like conservation and biodiversity.
45 But certainly in terms of stocks with limit
46 reference points, how those limit reference points
47 are incorporated into management in those stocks

1 are the -- I mean, that's one example of many of
2 progress in terms of implementing the Wild Salmon
3 Policy, and Mr. Sprout may have some more
4 examples.

5 MR. SPROUT: I do. Well, first of all, you realize
6 that you're comparing two different things? The
7 Fraser River Panel hierarchy that you've referred
8 to is principally an allocation hierarchy. What
9 it says is, number one, the first objective is
10 conservation, and then what's left for available
11 harvest then has to be distributed internationally
12 and then domestically. So you need to look at it
13 in that context.

14 So if you go back to number one, what's
15 guiding number one? What's guiding the
16 conservation objective? Well, domestically, from
17 DFO's perspective, it will now be the Wild Salmon
18 Policy. The Wild Salmon Policy will be informing
19 number one. Then, as you determine the allowable
20 harvest, you will be allocating it, you'll have
21 international arrangements, and in Canada you'll
22 have domestic arrangements between First Nations,
23 recreational, commercial. And that's the way you
24 need to look at this exhibit.

25 Now, when you come to the Wild Salmon Policy,
26 the question is, is are there objectives? Well,
27 there is. I mean, look at the policy on page 8.
28 There's a little house. And the little house at
29 the top has a goal. Then it has objectives. Then
30 it has strategies. There are six strategies.
31 Under the six strategies there's 17 actions. So
32 the strategies are bound to be realized by
33 implementing these actions. Then there's a set of
34 principles.

35 In fact, one of the, I think, arguments about
36 the Wild Salmon Policy was the clarity about what
37 it is the Department was trying to accomplish. In
38 fact, one of the criticisms that we received in
39 early RDG panels is, "You haven't done enough to
40 actually implement what you said you would do."
41 So, in fact, I think there is a lot of clarity
42 about what we would do; the debate is about how
43 well we have done it.

44 Anyway, I have a slightly different
45 perspective than the -- than counsel on that. But
46 nevertheless, I did want to respond more broadly
47 to this question.

1 Q I appreciated your response, and I think the fact
2 that there's a number of strategies and objectives
3 helps me get to my conclusion.

4 If I could go to this exhibit, please? And
5 we're going to go to page 310, please. And the
6 section I'm looking at is Non-Political Control,
7 and it's that paragraph there:
8

9 The Commission from 1937 to the 1970s focused
10 on the needs of the resource. Additional
11 problems also arose during these years.
12 However, the Commission enjoyed a free rein
13 to pursue these without undue interference
14 from governments or the fishing industry.
15 While the Commission was not always
16 impervious to political forces, those forces
17 were mostly supportive. Actions or
18 statements by political entities outside the
19 Commission did not deter the Commission from
20 achieving its goals and continuing its
21 commitment to the Convention.
22

23 And I probably should start off, Mr. Sprout, with
24 the rebuilding of Fraser River Sockeye, from '37
25 to the early 1990s, specifically the '60s to the
26 early 1990s. Would you agree that that was a
27 pretty magnificent job of rebuilding Fraser
28 sockeye?

29 MR. SPROUT: I would.

30 Q And under the Wild Salmon Policy, do you think
31 that there's enough clear objectives there that we
32 can repeat that process?

33 MR. SPROUT: Except for two big problems. One, is
34 climate change. There is something happening in
35 the ocean that is affecting the survival of
36 Pacific salmon, particularly southern stocks, more
37 specifically Fraser sockeye. This phenomena is
38 likely to persist and it is dramatically affecting
39 the returns of Fraser sockeye. This is not
40 control that the agency has, or any one agency.

41 The second threat, in my opinion, that
42 contrasts with this period of time that you've
43 selected, is human population growth development.
44 The reality is, is human beings like to come and
45 live in the Lower Mainland. They like to come and
46 live in the Shuswap system. They like to live in
47 areas that are close to salmon. And they like to

1 use water for human consumption, for agriculture
2 development, for industrial use. And these are
3 things that we are going to have to come to grips
4 with in order to address the issue of future
5 sustainability of salmon and specifically Fraser
6 sockeye.

7 Q You'd be surprised that counsel would agree with
8 you certainly on the habitat issue, Mr. Sprout.
9 The next page I'd like to refer to is page 302 in
10 the same exhibit, and it's the last paragraph on
11 the page.

12 Mr. Sprout, while we're getting there, you'd
13 agree, though, that habitat is under the full
14 authority of the Department of Fisheries to take
15 steps to protect habitat?

16 MR. SPROUT: No, I would not. You have to explain in
17 more detail what you mean by that. If you mean
18 the deposit of deleterious substances, the
19 disruption of habitat under certain circumstances
20 that are not authorized, then we have a role, but
21 so is the Department of Environment, so is the
22 Provincial Government, and so do regional
23 districts. So you have to be a bit more precise
24 by what you mean by that.

25 Q I think when we get to the habitat section of this
26 we can investigate this further. And the last
27 paragraph, the last sentence in the
28 Rebuilding/Restoring Fraser River Sockeye, and
29 this is why I'm conflicted by the Wild Salmon
30 Policy:

31
32 The Commission's ability to get the job done
33 was primarily related to the simplicity of
34 its mandate and the efficient manner in which
35 it was permitted to implement the decision-
36 making process.

37
38 Now, in the Wild Salmon Policy we have the 57-page
39 document, we have a number of other studies and
40 reports on how to implement those 57 pages, and do
41 you agree with me that the complexity of
42 interpreting and applying and the other issues
43 created by these very voluminous documents in the
44 Wild Salmon Policy and the associated documents is
45 a detriment rather than assistant to the
46 preservation and the enhancement of Fraser
47 sockeye?

1 MR. SPROUT: I agree the complexity is a problem, but I
2 disagree on the source. You're arguing that the
3 Wild Salmon Policy is the source of the
4 complexity. I think that's completely misreading
5 the situation. The reality is, since this
6 document is published, we've had the **Sparrow**
7 decision. First Nations have undetermined rights
8 and title. We have to figure out how to deal with
9 that issue. Climate change has come along and
10 been recognized since this document was published.
11 Human population growth is expanding in the areas
12 that I've talked about. Water withdrawal is
13 occurring. Invasive species are occurring in
14 watersheds that were not present when this
15 document took place.

16 Therefore, you need to look at these as the
17 sources of the complexity and the policies as the
18 tools to try to manage them as best we can. I
19 mean, I think all of us would wish sometimes we
20 could go back to where we were, but the reality
21 is, things have changed, and we have to adjust to
22 them as best we can.

23 Q So if I can sum up your testimony, then, at the
24 end of my conclusion here, we have no control over
25 global warming, as a society, or limited, as you,
26 as a regulator, but you do have authority over
27 habitat, you do have authority over fishing?

28 MR. SPROUT: In terms of the main threats to Pacific
29 salmon, the Department cannot deal with human
30 population growth development. We do not
31 determine how many people decide to live or not in
32 a certain watershed. I'm arguing that this needs
33 to be looked at carefully if you're going to get
34 at the issue of sustainability.

35 The things that the Department can control
36 are things that are consistent with its regulation
37 and legislation and its policies. So we have
38 involvement in habitat in those areas where our
39 regulations specifically apply.

40 When it comes to fisheries, particularly
41 fisheries authorized by the Federal Government, we
42 have a great deal of control, in terms of issuance
43 of licences and the control of the fisheries
44 itself. In other areas, the jurisdiction is much
45 more shared.

46 MR. EIDSVIK: Thank you, witnesses, and thank you, Mr.
47 Commissioner.

1 MR. WALLACE: Thank you, Mr. Eidsvik. It's now 11:15,
2 Mr. Commissioner. We have Mr. Harvey, Mr. Lowes,
3 and Ms. Gaertner remaining. Would this be a
4 convenient time to break?

5 THE COMMISSIONER: I think Mr. Lowes was going to be
6 shorter. Is it convenient to get that in and then
7 take the break, would that work? Mr. Lowes, if
8 that doesn't work, just say so.

9 MR. LOWES: No, I'm fine. J.K. Lowes for the B.C.
10 Wildlife Federation and the B.C. Federation of
11 Drift Fishers.
12

13 CROSS-EXAMINATION BY MR. LOWES:
14

15 Q First to Ms. Farlinger, I assume, Ms. Farlinger
16 that you, in particular, in the Department, are
17 monitoring carefully these proceedings?

18 MS. FARLINGER: Yes.

19 Q And in particular you've heard the evidence of Dr.
20 Walters and Dr. Woodey on the question of over-
21 escapement?

22 MS. FARLINGER: I know of it, but I don't know of it in
23 detail.

24 Q If I told you that during the course of that
25 evidence some challenges were made to fundamental
26 assumptions underlying the Wild Salmon Policy,
27 would that be a matter of concern?

28 MS. FARLINGER: It would certainly be a matter of
29 interest, yes.

30 Q Yes. And if I was to tell you that the thrust of
31 the evidence, at least in part, was that in some
32 cases harvesting the -- or not harvesting the
33 bigger runs caused problems to the bigger runs
34 that in cases -- out of proportion to the benefits
35 to the smaller runs, would that be of concern?

36 MS. FARLINGER: I think, as I've said, there is a
37 variety -- there are a variety of views in the
38 scientific community on this, and we would
39 certainly consider any of those views, including
40 those of Dr. Walters.

41 Q Yeah. Are you going to consider them?

42 MS. FARLINGER: Yes.

43 Q How?

44 MS. FARLINGER: Yes.

45 Q How? And when?

46 MS. FARLINGER: I don't know the exact answer to that
47 question, but I do know, as we go through each

1 year, in terms of the annual planning for
2 fisheries, that we evaluate the frameworks we use
3 for decision-making, we take into account
4 information and evidence. We have had, for
5 example, the salmon workshop that was carried out
6 under the Wild Salmon -- or, sorry, under the
7 Pacific Salmon Commission last year. We use fora
8 like that to bring scientists together to arrive
9 at a consensus --

10 Q Perhaps I can --

11 MS. FARLINGER: -- on what we know and what we don't
12 know. So there's a variety of ways that we take
13 that into account. Scientific reports prepared by
14 external scientists are routinely considered in
15 our science peer review process.

16 Q Are you aware of Dr. Walters' suggestion that over
17 the last decade or so some 25 million sockeye
18 could have been harvested that were not?

19 MR. LEADEM: Mr. Commissioner, I reluctantly am going
20 to object to this line of questions. It has very
21 little to do with the Wild Salmon Policy. We
22 heard a lot from Dr. Walters. If we're going to
23 start, now, embarking upon Dr. Walters' evidence
24 with this panel, we really open up the door for
25 other witness -- other participants to come and
26 ask these questions as well. I would suggest this
27 is totally not within the mandate of this panel's
28 participation, particularly with respect to the
29 Wild Salmon Policy.

30 MR. LOWES: Well, my next question, Mr. Commissioner,
31 was whether -- if the witness had heard such a
32 suggestion it had an influence on the
33 implementation of the Wild Salmon Policy.

34 MS. FARLINGER: There are, as you know, many
35 suggestions out there, and what we do in the
36 course of implementing the Wild Salmon Policy and
37 making our regulatory decisions is review new
38 science and incorporate it, given the uncertainty
39 around it, into management actions and, therefore,
40 the implementation of the Wild Salmon Policy.

41 This is one of many views and studies that
42 have been put forward by science experts that we
43 need to consider in terms of the long-term
44 implementation of the policy, as well as regular
45 annual decisions we make on fisheries management.

46 Q Well, with respect, Ms. Farlinger, I suggest this
47 is a very serious suggestion by a very eminent

1 scientist and that the Department ought to take it
2 seriously right now.

3 MR. SPROUT: May I speak to this point, please, in
4 terms of process?

5 MR. WALLACE: Mr. Commissioner, we are -- I agree with
6 Mr. Leadem's suggestion this is going well down a
7 path which has been well-trodden, and I think it
8 would be leading ourselves into repetition of
9 arguments under the guise of relating them to the
10 Wild Salmon Policy.

11 THE COMMISSIONER: Mr. Lowes, perhaps you could move
12 on.

13 MR. LOWES: Yes.

14 Q Is Strategy 4 in the Wild Salmon Policy, is that a
15 decision-making process, or is that a process to
16 design a decision-making process; do you
17 understand the distinction?

18 MS. FARLINGER: Well, I hope that I do. I think that
19 Strategy 4 is intended to provide those who are
20 interested in and impacted by potential decisions
21 that come out of the implementations of the Wild
22 Salmon Policy to work together to collaborate and
23 to provide recommendations to the minister.

24 Q I asked a question yesterday of a recreational
25 panel, and I'm going to ask the same question to
26 you in a little different way. If Mr. Wallace
27 thinks it should be dealt with at another time,
28 I'm happy to deal with that, but I would like the
29 question on the record, and the question is this:
30 In summary terms, how, by whom, and when, are
31 broad policies and concepts, how do -- when, by
32 whom, and how, do they become articulated in
33 specific management decisions? And I'm thinking,
34 when I talk about decisions, I mean fishing plans,
35 firstly, and in-season decisions. And I ask that
36 question with respect to the model provided by the
37 WSP, the model that you are presently working
38 under pending the WSP, and in case -- and the
39 actual situation as it is, whether it's consistent
40 with your model or not.

41 I think just to put that in context, it's
42 kind of formalizing, Mr. Sprout, your answer to
43 some of Mr. Eidsvik's questions about the policies
44 of the WSP and how they get implemented, but I
45 would like to deal with that not just *in futuro*,
46 in accordance with the WSP, but in the model that
47 you're following now.

1 MS. FARLINGER: The question seems to me a broad one,
2 and I'll see if I have got it right, which is how
3 do we translate departmental ministerial policy
4 into operations and regulatory decisions?

5 Q It's more the, "Who is the 'we' and how is it
6 done," yes.

7 MS. FARLINGER: First of all, in terms of a policy as
8 broad as the Wild Salmon Policy and, in fact, most
9 policies, they are approved by the minister. So
10 there is a process we go through which, depending
11 on the policy and people who are influenced or
12 interested in that policy, where there is a
13 consultation, where there is analyses, and where
14 the results of those are provided to the minister
15 for a decision.

16 In terms of implementation, I think the most
17 specific thing I can refer to here is step-by-step
18 as we go through the integrated, on the other end,
19 the Integrated Fishery Management Planning process
20 where the science and the decisions associated
21 with that science are available. These things are
22 then incorporated into the consultations on the
23 Integrated Fishery Management Plan.

24 And I'll turn to my colleague for --

25 Q Well, I wanted to go one level below that. Now,
26 you've got the plan and the staff managers have
27 the plan, let's say it's the recreational fishery.
28 How does that plan and the policies and the
29 priorities that are set out in the plan get
30 brought down to a specific management decision in
31 a specific situation? Who decides, for example,
32 what an Aboriginal priority is or what the
33 requirements of conservation are in the specific
34 management situation?

35 MS. FARLINGER: The subject of consultation are
36 embodied in the Integrated Fishery Management
37 Plan. Elements of the Integrated Fishery
38 Management Plan that have broad policy
39 implications are dealt with through briefing and
40 policy advice to the minister, who then will
41 approve decisions at that level that can effect
42 the Integrated Fishery Management Plan.

43 Along the way, the minister will ultimately,
44 in the case of salmon, approve the Integrated
45 Fishery Management Plan which sets out a set of
46 decision rules about how decisions will be made n
47 the fishery, including what are the escapement

1 requirements, how will decisions be made when run
2 sizes change in-season, and a variety - in fact, I
3 think you've heard about them over the last couple
4 of weeks - the myriad of decisions, operational
5 decisions, that will be taken inside the fishery.
6 Q Well, that's not quite responsive to my question.
7 Yesterday, we had a witness who was a staff
8 manager in the recreational fishery, and one of
9 the kinds of decisions that that manager would
10 have to make, perhaps during the course of a
11 season or even before a season, was with respect
12 to a particular -- with respect to the sockeye
13 fishery. Let's say in a certain situation the
14 Aboriginal priority would be respected. What is
15 the input that is given to that manager and what
16 is the -- and how is that input, in terms of
17 policy, articulated in terms of the answer to the
18 question that is asked of that manager?
19 MS. FARLINGER: I'm doing my best to understand your
20 question. I think when a decision is made in-
21 season --
22 Q All right. All right.
23 MS. FARLINGER: -- about priority and opening and
24 closing of fisheries, that decision is supported
25 -- the fishery manager does not make it on their
26 own. They're supported by the salmon coordinator,
27 they're supported by science staff, and then
28 ultimately decisions are made by managers, and if
29 necessary, the minister is consulted and requested
30 to make that decision. Sometimes, though,
31 decisions are made at the regional level;
32 sometimes they're made at the national level.
33 Q Okay. Well, I won't push it. One more question,
34 then, before I sit. In answer to Mr. Eidsvik's,
35 one of Mr. Eidsvik's questions, I think, Ms.
36 Farlinger, it was about the consistency or lack of
37 consistency - or, no, this was, sorry, Mr.
38 Rosenbloom's question - the consistency or
39 inconsistency of the Wild Salmon Policy with the
40 potential problems caused by over-escapement, and
41 I think you indicated in the course of your
42 argument that potential problems of over-
43 escapement would be taken into account in the
44 decisions made after implementation of the Wild
45 Salmon Policy.
46 Am I correct, though, that the decision
47 whether or not to override a lower limit decision

1 to protect a small stock is the minister's
2 decision, under the AFS; it's the minister's
3 decision to decide whether or not to put a small
4 stock at risk?

5 MR. SPROUT: Do you mean under the WSP; you said AFS.

6 Q Yeah, under the WSP.

7 MR. SPROUT: The ones that I am familiar with, Cultus
8 being the most obvious, that was a ministerial
9 decision. So the minister made the decision,
10 ultimately, about what would be the exploitation
11 rate on Cultus, which is regarded as a stock
12 that's at risk. So in that particular case, you
13 are correct. I would envision in the future that
14 those kinds of stocks at risk, where there's
15 argument for fishing even more greatly on those
16 stocks, my expectation would be the minister would
17 continue to have a significant role, a deciding
18 role, in those situations.

19 MR. LOWES: Yes, thank you.

20 MR. WALLACE: Thank you, Mr. Lowes. Mr. Commissioner,
21 is this a convenient time to break?

22 THE COMMISSIONER: Yes.

23 THE REGISTRAR: The hearing will now recess for 15
24 minutes.

25

26 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)

27 (PROCEEDINGS RECONVENED)_

28

29 THE REGISTRAR: Hearing is now resumed.

30 MR. WALLACE: Mr. Commissioner, I have Mr. Harvey up
31 next.

32 MR. HARVEY: Yes. Christopher Harvey for the Area G
33 Trollers and the United Fishermen and Allied
34 Workers' Union.

35

36 CROSS-EXAMINATION BY MR. HARVEY:

37

38 Q Ms. Farlinger, there's a perception amongst those
39 I represent that the root problem with the Wild
40 Salmon Policy is not so much its wording but the
41 fact that the wording bears no resemblance at all
42 with DFO practice. And I'm referring to, in this
43 regard, to Objective 3 and Strategy 4, Objective 3
44 being the objective which calls on page 14 for
45 socioeconomic benefits to be considered,
46 fisheries-dependent communities to be considered
47 and involved in decision-making and Strategy 4

1 being the integrated strategic planning process.

2 Now, I would like to, just to be sure I've
3 got this right, understanding, your evidence to
4 refer you to the transcript for December 16th at
5 page 27, this passage on page 27 follows Mr.
6 Timberg referring to certain pilot projects
7 involving wider consultation and then at line 30
8 you give the answer. You say this:

9
10 The multi-sector multi-stakeholder First
11 Nation multi-level of government groups that
12 are contemplated in Strategy 4 do much of the
13 work and guide much of the work in terms of
14 Strategy 1, 2 and 3.

15
16 Now, that's what you say. And then dropping down
17 to the next paragraph you say:

18
19 Now, when we talk about pilots, what we're
20 trying to do is figure out how this is going
21 to come together, and on a watershed basis,
22 things come together in a different way in
23 different watersheds. They're somewhat
24 organic. They depend on the populations and
25 the species of salmon that are there. They
26 depend on the First Nations organizations and
27 groups that are there, the harvesting groups
28 that are there, and the environmental groups
29 that are there.

30
31 So that's your -- that's the vision of a wider
32 consultation that involves community groups and
33 multi-levels of government in the sense of
34 federal, provincial, regional district, municipal
35 and First Nations; is that right?

36 MS. FARLINGER: I wouldn't describe it as the vision.
37 I would describe it as the process through which
38 the strategy for groups are coming together.

39 Q Yes. All right. Now, if I could refer you
40 briefly to Exhibit 267, that's the document
41 entitled Framework for Improved Decision-Making...
42 Is this -- does this describe the beginning of
43 this process of involving watershed groups or
44 wider groups in decision-making?

45 MS. FARLINGER: This document, as you can see from the
46 date, focuses on engaging a broader set of
47 interests. It does not specifically go as far as

1 dealing with the issues of implementing the Wild
2 Salmon Policy which focuses on working with all
3 the interests on a watershed basis, rather than
4 this document which is somewhat more focused on
5 the coast-wide salmon fishery and the various
6 processes that come together to support coast-wide
7 decision-making.

8 One of the significant challenges we will
9 have in bringing people into the Strategy 4 type
10 process is looking at the linkages between what is
11 largely described as the annual decision-making
12 process and the longer-term strategic plan for a
13 specific set of stocks in a watershed. And one is
14 somewhat longer-term. They clearly will interact
15 with each other.

16 Q You're aware that this document, Framework for
17 Improved Decision-Making refers to an auditor
18 general -- this is at page 4, the auditor general
19 commenting about the need of the Department to
20 improve processes for consulting with the Province
21 of British Columbia, with stakeholders and with
22 communities. You're aware of that?

23 MS. FARLINGER: Yes.

24 Q And towards the end, at page 20, there's a
25 reference to the first pilot and -- project which
26 is on the West Coast of Vancouver Island Aquatic
27 Management Board; you're aware of that all --

28 MS. FARLINGER: At that period that was certainly one
29 of the pilots that had come forward as a proposal
30 to the Department and that would be why it was
31 mentioned there, yes.

32 Q Yes. And part of the impetus for this was the
33 **Oceans Act**; is that right? I'll refer to -- I can
34 refer you to Exhibit 263 which is another one of
35 the exhibits Mr. Timberg put in, in your evidence.

36 MS. FARLINGER: Yes, certainly part of the impetus for
37 this was the **Oceans Act** and the strategy under the
38 **Oceans Act**, yes.

39 Q For example, if we look at page -- this is
40 Ringtail 004, this is part of the minister's
41 opening words, in the upper right-hand paragraph
42 he says:

43
44 We are now seeking to implement this strategy
45 through further collaboration. The
46 sustainable development and integrated
47 management of our oceans requires the help

1 and ideas of local communities, industries,
2 Aboriginal peoples, provinces and
3 territories, environmental groups and other
4 interests.
5

6 Now --

7 MS. FARLINGER: Yes. I'd point out that this policy
8 document, I believe, is somewhat later than the
9 consultation document that you were initially
10 referring to and, in fact, our activities under
11 the **Oceans Act** have integrated planning are
12 focused at a much higher level than the
13 operational or regulatory planning that we do in
14 the process that's referred to in the first
15 document. But clearly, the crossover between
16 integrated processes and processes that are very
17 focused on harvest management is one of the
18 challenges in front of us.

19 Q Are you aware that there have been requests made
20 in the course of this inquiry for socioeconomic
21 reports indicating the impacts to communities up
22 and down the coast of DFO policies?

23 MS. FARLINGER: I'm not aware of that specifically
24 during this inquiry, but certainly those issues
25 are discussed both in the integrated fishery
26 planning process, the one referenced from the
27 first document, and also in the evolving watershed
28 multi-stakeholder processes.

29 Q Yes.

30 MS. FARLINGER: So we're familiar with the fact that
31 there is an interest in and support for those
32 analyses. In some instances they have been done.
33 For example, there was an economic analysis in the
34 Skeena River looking at the impacts on the gillnet
35 fleet, so there are individual examples of these
36 -- of some analyses that have been done, but
37 there's certainly a greater demand for them
38 than --

39 Q Yes.

40 MS. FARLINGER: -- there are studies that have been
41 done.

42 Q Yes. There's -- I'd like you to -- if Mr. Lunn
43 could bring up Exhibit 486, this is a
44 socioeconomic review done or prepared for the Nu-
45 chah-nulth Tribal Council by a consulting firm and
46 it deals -- it discusses the West Coast Vancouver
47 Island Aquatic Management Board, page 5, but it

1 has a graph at page 19 showing the dramatic
2 impacts in this area.

3 MR. WALLACE: This is Tab 9, I think, in the documents
4 that Mr. Harvey provided.

5 MR. HARVEY: Yes. Thank you.

6 Q That graph probably come as no surprise to you,
7 shows the dramatic changes in the West Coast of
8 Vancouver Island in the pieces harvested in
9 sockeye equivalents, landed values by the troll
10 fleet; do you see that?

11 MS. FARLINGER: Yes, I see the graph.

12 Q So the socioeconomic impacts of this are discussed
13 in other places by the West Coast Vancouver Island
14 Aquatic Management Board; is that a board which
15 you consider to be of value in the consultative
16 process?

17 MS. FARLINGER: The mandate of the West Coast Aquatic
18 Board has been a subject of discussion between DFO
19 and the board initiated by the Nuu-chah-nulth in
20 around the year 2000. The mandate of that board
21 has been focused on planning, habitat and, in
22 fact, we have referred the board on a consistent
23 basis to the integrated harvest planning process
24 as the place to discuss fishery management and
25 fishery allocation matters.

26 So this board is somewhat differently focused
27 in the same way I talked about the difference
28 between the **Oceans Act** policy document you put up
29 a few minutes ago and the consultation framework,
30 which is the first document you put up. The focus
31 of the board, as agreed to in terms of DFO and its
32 regulatory activities is on those broader
33 integrated planning issues, rather than
34 specifically on the management and allocation of
35 the fisheries.

36 Q Well, that's because -- that's DFO's decision, not
37 the board's decision, isn't it? Because the board
38 itself is very concerned with the socioeconomic
39 implications of fisheries decisions in the West
40 Coast Vancouver Island area; is it not to your
41 knowledge?

42 MS. FARLINGER: It certainly seems to be in this
43 document, yes.

44 Q Yes. Well, don't you think it would be a more
45 appropriate consultation? Well, you say that
46 document. Let me refer you to one other document
47 first and that's Exhibit 502 which is a Standing

1 Senate Committee report and at page 30 of that
2 report --

3 MR. WALLACE: This is Tab 12 of the binder.

4 MR. HARVEY: Thank you.

5 Q At Tab 30 of that report, there's reference at the
6 bottom of the page:

7
8 The Committee heard testimony that years of
9 federal policies had shifted fishing licences
10 out of rural and Aboriginal coastal
11 communities, the result being that few now
12 see economic benefits from the fishery
13 resources adjacent to their shores. Witnesses
14 spoke about frustration, despair and the
15 depopulation of communities. On the West
16 Coast of Vancouver Island, where once there
17 had been a number of community fishers
18 involved in commercial fishing, this is no
19 longer the case. Committee members learned
20 that whereas there had been well over 200
21 licensed vessels operated by Nuuchahnulth
22 in the 1950s, there are now 16 vessels
23 remaining in communities where unemployment
24 rates vary from 70% to 90%.

25
26 And then over the page there's a table setting out
27 the loss of commercial fishing licences in various
28 rural communities all up and down the coast.

29 Are you aware of this report by the Standing
30 Committee?

31 MS. FARLINGER: I was not aware of this particular
32 report, although I'm certainly aware of the
33 opinions and the information presented in the
34 report. I think that I would say that there are a
35 number of reasons for this shift and far more
36 perhaps than may be addressed in this particular
37 report. Individual licence-holders may or may not
38 have retired their licence during the period in
39 the late 1990s when the salmon fishery was reduced
40 by half by the -- both what was referred to as the
41 Mifflin plan in which there was a licence
42 retirement in which holders of licences could
43 provide those licences to be retired --

44 MR. HARVEY: I think Mr. Wallace --

45 MS. FARLINGER: -- and be given funding for them.

46 MR. HARVEY: I think Mr. Wallace was about to say this
47 is off topic and I would agree. I -- because I --

1 my questions go to the consultation. My questions
2 go to the consultation mechanism and structure in
3 the Wild Salmon Policy.

4 Q And my question is this, that the socioeconomic
5 implications and the effect on communities of DFO
6 policies is necessarily something that is best
7 dealt with and the evidence best developed in
8 terms of regional boards, area boards or watershed
9 boards if you like to call them that, such as this
10 West Coast Vancouver Island Aquatic Management
11 Board, are they not?

12 MS. FARLINGER: There are several -- there are a number
13 of layers of decisions that are made around in the
14 long term and the short term around the salmon
15 fishery. Salmon, as you know, have historically
16 been harvested all over the coast. The changes we
17 talked about earlier in terms of firstly the
18 limitation of the number of the licences in the
19 fishery, the changes in the area-based licensing
20 in the fishery and the reduction of the number of
21 licences in the fishery are based on conservation
22 requirements.

23 The number of aspects of the Wild Salmon
24 Policy are based on conservation requirements. A
25 number of changes in where those salmon are
26 accessed, whether further out at sea in mixed
27 stock fisheries, or closer into the river when
28 they've separated off into more discernible units
29 is part of a suite of conservation measures that
30 have been occurring over the last -- fundamentally
31 over the last 20 years or longer in order to
32 achieve conservation objectives.

33 Also, I think in the matter of the Wild
34 Salmon Policy, the kinds of groups that we are
35 working with, if you were to look at exactly this
36 same area, includes the participation of the West
37 Coast Aquatic Board, but also includes commercial
38 fishers, salmon fishers from that area,
39 recreational salmon fishers from that area and
40 First Nations from that area. So the board is not
41 excluded from these processes related to the Wild
42 Salmon Policy and is, in fact, engaged in helping
43 to set up the process around this pilot process in
44 Barclay Sound. So if by -- it is of and by itself
45 not sufficient to consult on and the broad range
46 of interests.

47 Q With respect to these co-management or

1 consultative processes, would you agree with me
2 that there's been political direction from the
3 minister at various times since the one we looked
4 at earlier, I think, was 1999 or 2000, at various
5 times up to the present, direction to the DFO to
6 ensure that communities are involved in the co-
7 management and consultation structures? I can
8 refer you to some statements in this Standing
9 Committee report, if you like, on that. At page
10 30, for example, or page 38, I should say.

11 MR. SPROUT: Perhaps I could respond to this and
12 briefly deal with the question you've raised
13 earlier. I think my response is the departmental
14 advisory processes that is set up do actually
15 involved community members that participate as
16 fishing interests in those advisory processes.

17 So what are those advisory processes? Well,
18 we have a South Coast integrated advisory process
19 to develop fishing plans for the South Coast. So
20 why wouldn't you have just one for the West Coast,
21 which was your argument, I think, or your point.

22 Q My point was this, that the communities, the
23 general evidence that we've heard so far indicates
24 fishing licence holders being included, as they
25 should be, but the communities are not included
26 and the socioeconomic impacts on communities are
27 not properly brought before the -- brought into
28 the decision-making process.

29 MR. SPROUT: I'm not sure that's quite correct. I
30 think there's an argument for strengthening the
31 community input, but I don't believe you're
32 correct in the way you've just characterized it,
33 that they're not consulted or not involved. I
34 thought you made the point that it's the local
35 communities who are directly affected and
36 therefore should be consulted and whose opinions
37 should influence fishing development and fishing
38 plans and DFO policy.

39 But I think there's two issues you need to
40 appreciate. The reality is on the West Coast of
41 Vancouver Island, with the exception of Barclay
42 Sound sockeye, almost all of the fish harvested in
43 the West Coast, for example, chinook, don't spawn
44 on the West Coast of Vancouver Island. They spawn
45 in the Fraser River, in Georgia Strait and the
46 United States.

47 Q Now, Mr. Sprout --

1 MR. SPROUT: No, just let me finish my point. You
2 raised this point about local involvement. And so
3 if you think about how Pacific salmon behave,
4 would you want a West Coast group to be deciding
5 outcomes for fish that actually spawn in an
6 entirely different location? What about those
7 other people who live on the banks of the rivers
8 where those fish spawn? Shouldn't they be
9 consulted, as well? And I think what the
10 Department tries to do is to create an integrated
11 planning process that brings the affected interest
12 together, not just one party but all the parties.

13 And the other point that I think is relevant
14 here is the Department controls licence-holders.
15 It issues licences. But it doesn't tell the
16 licence-holders, "You must live in Bamfield. You
17 must live in Ucluelet. You must live in
18 Vancouver." If the licence-holders decide to move
19 from Bamfield to Vancouver or from Vancouver to
20 Bamfield, that's the licence-holder's choice.

21 Now, some argue that the licences should be
22 constrained to areas. That's an interesting
23 observation but that is not the current policy.
24 So I think these two factors are relevant in
25 looking at what kind of processes you put into
26 place for consulting on the development of fishing
27 plans and its implications.

28 Q All right. So the adjacency principle referred to
29 in the **Oceans Act** and the reference to communities
30 in the **Oceans Act** is something that you place
31 little weight on, I take it from that answer?

32 MR. SPROUT: No. And I think you've mischaracterized
33 it.

34 Q All right.

35 MR. SPROUT: The adjacency principle arose principally
36 through East Coast concerns about local operators
37 fishing close to in-shore areas. The principle
38 emerged through that and I would argue that the
39 principle is being respected in how it's being
40 applied in the West Coast. How and why is that?
41 Well, the answer is it respects how fish behave.
42 Pacific salmon are highly migratory. As a
43 consequence of that, when you create advisory
44 processes, you have to bring the interests all
45 together that are affected by the very behaviour
46 of the fish.

47 When you have more sessile species, species

1 that do not migrate, like for example clams, then
2 you can have very local processes with people in
3 the local area. And if you look at DFO's clam
4 advisory processes what you discover is that they
5 are, in fact, local, principally involving the
6 people in that very area. But as you move to more
7 migratory species, Pacific salmon, halibut being
8 the most migratory, then you move to processes
9 that necessarily must have a wider geographical
10 area to include the interests that are affected.
11 Q Mr. Sprout, what do you take fisheries-dependent
12 communities as it's used in page 14 of the Wild
13 Salmon Policy to mean? Doesn't that mean the
14 communities up and down the coast that
15 historically have been dependent on the commercial
16 fishery?
17 MR. SPROUT: I take it at face value. I take it at
18 communities that have fishing interests where fish
19 resources benefit those communities. And my view
20 is that that includes a very wide range of
21 communities --
22 Q All right.
23 MR. SPROUT: -- on the West Coast but you know it also
24 includes Prince Rupert and it also includes
25 Vancouver. The largest facilities for processing
26 of fish which creates enormous labour exist in
27 Vancouver and in Prince Rupert, so those
28 communities of interest in Steveston and Prince
29 Rupert are highly dependent on fish in their very
30 local community --
31 Q Yes.
32 MR. SPROUT: -- as are other communities outside of
33 Vancouver and Prince Rupert.
34 Q Yes. Ms. Farlinger --
35 MS. FARLINGER: I think the other issue here that's a
36 bit confusing is under the **Oceans Act** this is
37 about the involvement of a much broader set of
38 interests in terms of setting the framework for
39 any regulatory activity, whether it's Transport
40 Canada regulating shipping, whether it's DFO doing
41 its regulatory work around harvest or habitat, and
42 it is an integrated planning process which is a
43 very different thing from a harvest planning
44 allocation or access planning process. And once
45 again, when you look at the watershed-based
46 processes that are contemplated in the Wild Salmon
47 Policy, these are another thing, again, they are

1 the same sort of process that's contemplated in
2 both those other two, concentrated with interests
3 at the watershed level.

4 And as I said earlier, the West Coast of
5 Vancouver Island Aquatic Board is engaged as one
6 of the partners in the development of this pilot
7 program on the West Coast of Vancouver Island. So
8 it really is important to differentiate between
9 the objectives of the minister's authorities and
10 responsibilities under the **Oceans Act** and the
11 responsibilities under the **Fisheries Act** and the
12 kind of process we contemplate to meet our
13 requirements under the **Fisheries Act** and the Wild
14 Salmon Policy.

15 Q I see.

16 MS. FARLINGER: They happen at different scales and
17 they happen at different levels.

18 Q Yes. All right. And to be fair to you, Ms.
19 Farlinger, the West Coast Vancouver Island Aquatic
20 Management Board was also consulted with respect
21 to the impacts of the 2009 reduction imposed by
22 the Pacific Salmon Treaty just to put this in
23 context. The commercial trollers suffered a 50
24 percent roughly reduction in their chinook harvest
25 as a result of a Pacific Salmon Treaty agreement;
26 is that correct? And there was a \$30 million fund
27 provided for mitigation that was referred to the
28 Aquatic Management Board.

29 MR. TIMBERG: Mr. Commissioner, I question the
30 relevance of this. Mr. Harvey has just said that
31 that settlement is about chinook and that's not
32 the species that we're dealing with today. And as
33 I've objected previously, Mr. Harvey's going
34 towards the **Kimoto** litigation where he has been
35 counsel. That's now at the Court of Appeal and I
36 don't see the relevance of the settlement funds
37 from the Pacific Salmon Treaty as being relevant
38 to the terms of reference before us today.

39 MR. HARVEY:

40 Q All right. Well, my question was directed to the
41 consultation process and the socioeconomic impacts
42 on communities that's referred to in the Wild
43 Salmon Policy and I'm assuming that the same
44 processes would have been followed if it were
45 sockeye. So, in other words, it's the processes
46 that I'm asking about, not this particular
47 example, but the example is a good example, I

1 would suggest, of how the community impacts are
2 entirely disregarded in the decision-making
3 processes of the Department. That's the thrust of
4 the questions. And I should say this is the
5 thrust of my questions overall is that the wording
6 of the Wild Salmon Policy is one thing and it's
7 largely unobjectionable, but it's the practice
8 that is entirely different, that is objectionable.
9 And surely a concrete example is the best way to
10 test it.

11 MS. FARLINGER: The process you describe was an
12 extraordinary process, which happen from time to
13 time, around changes and actions that the
14 Department is going to take. So this is in
15 addition to the Wild Salmon Policy processes which
16 are focused on conservation and biodiversity and
17 the potential domestic decisions that are made
18 around that and is also different than the
19 integrated harvest planning processes. And to
20 answer your question directly, yes, the West Coast
21 of Vancouver Island Aquatic Board was part of that
22 consultation.

23 MR. SPROUT: I'd like to add, I don't agree with your
24 perspective that the Department didn't consult the
25 communities in the decision ultimately made by the
26 Government of Canada to reduce the chinook harvest
27 in order to conserve Canadian chinook and also to
28 conserve American chinook harvested in both the
29 United States and Canada.

30 Q That --

31 MR. SPROUT: You argued --

32 Q That wasn't the thrust --

33 MR. SPROUT: -- or you point -- you made a point --

34 Q -- of my question. My question was not with
35 respect to the reduction, but with respect to the
36 economic impacts on the sector that was affected
37 by the reduction.

38 MR. SPROUT: Can we just contextualize this a tiny bit
39 for the audience, so that they can follow?

40 MR. TIMBERG: Well, Mr. Commissioner, I'd like to
41 object to my friend pursuing this line of
42 questioning. It's with respect to chinook salmon
43 and it's with respect to a settlement fund or an
44 agreement of \$30 million that I don't see the
45 relevance in -- I think it is confusing and to
46 then allow the parties to go down this line, I
47 don't see that it's relevant to the terms of

1 reference.

2 MR. HARVEY: Well, Mr. Commissioner, I'll move on in
3 the interests of time.

4 Q Mr. Sprout, if we could look at the transcript
5 again, Mr. Lunn, at page 63 of the transcript of
6 December 16th. Mr. Sprout, at line 32 you refer
7 to -- you were asked whether you have
8 recommendations. This is, I think, Mr. Rosenbloom
9 asking you whether you have recommendations to the
10 commissioner and then you say this in your answer:
11

12 Well, I do, and I wouldn't -- first of all,
13 let me just correct your impression of how
14 I'm feeling. I feel passionate about Pacific
15 salmon and about the Wild Salmon Policy. And
16 this is an opportunity for me to express
17 that. I'm not frustrated. This is an
18 opportunity and I am here to express as well
19 as I can my understanding of how well we're
20 doing, and I will provide advice, where I am
21 able to, in areas that I think I have
22 expertise.
23

24 And so with regard to your question on
25 recommendations --
26

27 This is page 64 now.
28

29 -- recommendations relative to this, I have
30 suggested a couple of areas. One is -- and
31 these are along the lines of dealing with
32 others that are outside the Department that I
33 think are relevant in the sustainability of
34 Pacific salmon. And my view is, is that we
35 need to create watershed processes that are
36 led by those agencies who have responsibility
37 and the legal responsibility for management
38 of water and the use of land, and that those
39 exercise, those watershed processes need to
40 look at planning human development. We need
41 to confront the issue of where we want to
42 live...
43

44 Et cetera, et cetera, et cetera. And then you
45 say:
46

47 Regrettably the federal policies don't get at

1 those issues, and therefore I have suggested
2 that one of the things in terms of going
3 forward, would be developing watershed-based
4 processes that are led by those that have
5 jurisdictional responsibility.
6

7 Mr. Sprout, my question is what do you mean that
8 there are no federal policies in place? Isn't
9 Canada's **Oceans Act** strategy that we looked at
10 earlier a policy? And isn't the preamble to the
11 **Oceans Act** a policy? Isn't that enough?

12 MR. SPROUT: No, it's not. And just to be precise,
13 what I was referring to here in the context of the
14 Wild Salmon Policy was how you can move forward on
15 Strategy 4 and particularly how you can deal with
16 some of the threats that I believe are going to be
17 very important for Pacific salmon. And I think
18 one of those threats is climate change and how
19 that's being realized, I think, in watersheds
20 particularly in the south, is water management. I
21 think the availability of water for Pacific salmon
22 is going to be a very crucial issue for the
23 future, so I'm thinking down the road.

24 So the issue is who controls water? What are
25 the jurisdictional levers for water? Does the
26 federal government control that? And the answer
27 to that is no, it doesn't. That is provincial
28 jurisdiction that involves regional districts. So
29 what I was saying here is federal policies and
30 regulation, I don't think will get at this
31 question of climate change in the context of fresh
32 water. I believe that in creating watershed
33 processes that have to be led, in my opinion, by
34 other agencies but which DFO would participate on,
35 that these processes need to look at how to manage
36 water scarcity, what to assign to fish versus what
37 to assign to humans or industry, and that's what I
38 was getting at here.

39 Q But Mr. Sprout, those processes would only be
40 beneficial if DFO gave them some weight and some
41 -- and they took a meaningful part in DFO
42 decision-making, wouldn't they?

43 MR. SPROUT: What do you mean?

44 Q Well, if the processes are in place and a wide-
45 ranging consultation through those processes
46 occurs and DFO ignores it, that would be of little
47 value, wouldn't it?

1 MR. SPROUT: I'm not following what you're saying, but
2 I'm going to -- I'm going to --

3 Q All right.

4 MR. SPROUT: -- try this. If -- DFO can only go so
5 far. It can only go -- legally, based on the
6 regulations and law that it has, it can create
7 policies or approaches but what it cannot do is
8 say that when it comes to water management that
9 I'm going to give some -- assign some volume of
10 that water to fish and I'm going to assign some
11 volume of the available water to human
12 consumption, I'm going to assign some available
13 volume for industrial use, like hydroelectric
14 development.

15 DFO cannot do that. So what I'm suggesting
16 here is you have to create something else and give
17 it the authority to make those choices and I'm
18 arguing that those should be some sort of
19 watershed-based processes which DFO participates
20 on but does not lead.

21 Q But are you saying that those sort of processes
22 should not be utilized to determine the
23 socioeconomic impacts of DFO decisions?

24 MR. SPROUT: Are you talking about the socioeconomic
25 impacts of fisheries or habitat? What are you
26 referring to?

27 Q Of decisions made by DFO managers.

28 MR. SPROUT: Okay. So the managers are typically
29 making decisions about fisheries. Are you talking
30 about fisheries?

31 Q Yes. I'm talking about the sort of decisions that
32 DFO managers make and I'm particularly aiming this
33 question at the -- what seems to me to be a
34 deficiency and in the perception of my clients is
35 a gross deficiency in the socioeconomic impact
36 information that DFO appears not to give
37 sufficient weight to, possibly because it doesn't
38 have the socioeconomic analyses or the other data
39 to form the basis for the decisions.

40 MR. SPROUT: Okay. You seem to be talking about
41 fisheries. Now I just want to put this transcript
42 to bed. When I spoke in the transcript on
43 December the 16th, when I talked about
44 sustainability or watershed governance, water
45 management, I'm talking about something different.
46 I'm talking about literally trying to decide how
47 to allocate water. And in this instance I'm

1 saying DFO can't lead those processes. It does
2 not have the jurisdictional responsibility; that
3 those groups that do are the ones that should and
4 DFO should participate.

5 Q All right.

6 MR. SPROUT: Now I'm going to answer your other
7 question, which I think is different.

8 THE COMMISSIONER: Mr. Sprout, I wonder if -- it's
9 12:35 with -- you can hold that thought, which I'm
10 sure you can, and if we could resume at two
11 o'clock.

12 THE REGISTRAR: Hearing is now adjourned until 2:00
13 p.m.

14
15 (PROCEEDINGS ADJOURNED FOR NOON RECESS)

16 (PROCEEDINGS RECONVENED)

17

18 MR. HARVEY: Thank you. Unless there's any objection
19 to it, I just want to turn to two further matters.
20 Firstly, and again on the subject of the
21 disconnect that I see between policy and action,
22 if we could have Exhibit 270 up, please, Mr. Lunn.

23 THE REGISTRAR: The hearing is now resumed.

24 MR. HARVEY: Oh, sorry.

25 THE COMMISSIONER: Now we know who's in charge.

26 MR. WALLACE: I'm sorry. That 90 seconds you had is
27 still a debit.

28 MR. HARVEY: So Exhibit 270.

29 MR. LUNN: Yes. I'm sorry for the delay. The file I
30 have is damaged, so I'm just going to have to get
31 it from a backup. It will be just a moment. I'm
32 sorry.

33 MR. HARVEY: All right.

34

35 CROSS-EXAMINATION BY MR. HARVEY, continuing:

36

37 Q Well, let me deal with this. This is the PICFI
38 Policy, Pacific Integrated Commercial Fisheries
39 Initiative, and, Ms. Farlinger, there are about 14
40 PICFI licences in DFO inventory with respect to
41 Area G Salmon Troll; does that seem right to you?

42 MS. FARLINGER: (Indiscernible - microphone off).

43 MR. HARVEY: Yes. In the Ahousaht case I'm referring
44 to the -- have we got a problem?

45 All right. Well, maybe if the microphones
46 are working, should we proceed and I'll just read
47 in what I need from this policy.

1 Q But, Ms. Farlinger, the Ahousaht case, you're no
2 doubt familiar with the Ahousaht and a number of
3 other West Coast Vancouver Island First Nations
4 succeeded in establishing an aboriginal commercial
5 right to fish for numerous species, including
6 salmon, a judgment given by Madam Justice Garson
7 in November 2006. Is that consistent with your
8 understanding?

9 MS. FARLINGER: I think it might have been November
10 2009, and I think it had to do with the right to
11 sell, as opposed to a commercial right.

12 Q Yeah, you're quite --

13 MR. TIMBERG: Yes.

14 MR. HARVEY:

15 Q And you're quite right. It was 2009, and the
16 judgment will speak for itself. I won't --

17 MR. TIMBERG: Thank you.

18 MR. HARVEY:

19 Q -- draw any fine points out of that. But in the
20 course of the judgment at paragraph 729 and 730
21 there was a reference to this PICFI Policy. It
22 was noted that:

23
24 The Nuu-chah-nulth Tribal Council has been
25 integrally involved in the consultation and
26 formation of the PICFI program. ...

27
28 The plaintiffs contend that PICFI is a
29 recently announced program and has provided
30 little or no fishing opportunities...

31
32 In particular, the 14 troll licences have been in
33 inventory for some time and have not been issued
34 to the Ahousaht or any of the other West Coast
35 Vancouver Island First Nations; is that correct?

36 MS. FARLINGER: I'm not sure the length of time that
37 the licences have been in inventory. Of the
38 licences held in the PICFI inventory, they're
39 dependent on a process of the First Nation
40 developing the economic capacity, an economic
41 management organization.

42 As far as the program itself goes, the final
43 allocation of access and licences will be made
44 through the final agreement, which occurs through
45 the proposal, the business, the development of the
46 economic organization for managing the access, the
47 business plans, which in many cases are being

1 completed by the groups of First Nations, and then
2 ultimately the final agreements.

3 This is the last year of the current PICFI
4 Program and it is the year in which - by this I
5 mean the 2011/12 year - in which we are on track
6 to deliver the final agreements and the access.

7 Q Perhaps I should ask Mr. Sprout this. The
8 intention is, I believe, to transfer those 14
9 licences upriver; is that correct?

10 MR. SPROUT: Are you talking about salmon licences that
11 have been purchased through the PICFI program and
12 are being held; is that what you're speaking to
13 specifically?

14 Q Yes, and specifically the 14 Area G Troll
15 licences.

16 MR. SPROUT: Okay. So just to provide a bit of context
17 for those that may not follow this as closely as
18 you and I --

19 MR. WALLACE: Mr. Commissioner, I do hate to keep
20 standing up, but I would like to know, if I may,
21 from Mr. Harvey how this relates to the
22 implementation of the Wild Salmon Policy.

23 MR. HARVEY:

24 Q All right. Well, it's on the subject of policy
25 and action, and we still don't have the PICFI
26 Program, but let me read, if I may, three points
27 which are from page 7 of 28 of Exhibit 270. It
28 describes PICFI as a \$175 million program.

29
30 It includes the following four key elements:

31
32 1. First Nation participation in integrated
33 commercial fisheries BC-wide in advance
34 of treaties through Voluntary Commercial
35 Licence Retirement;

36
37 Oh, there we have it.

38
39 2. First Nation Capacity Building...
40
41 3. Fisheries Accountability Measures...and,
42
43 4. New Pacific Co-Management Models...
44

45 I won't say anything more about co-management.
46 But the first element, "integrated", that means
47 fisheries in which First Nations and non-

1 aboriginal licence holders fish side-by-side
2 according to the same rules basically; is that
3 correct, Ms. Farlinger?

4 MS. FARLINGER: The integrated fishery fundamental
5 working definition there is under the same rules
6 on a level playing field.

7 Q Yes.

8 MS. FARLINGER: So there can be differences in how
9 things happen, but the access and the rules and
10 the monitoring requirements and all the management
11 aspects of the fishery are to be the same, on a
12 level playing field.

13 Q Yes. But nevertheless, that's what the policy
14 says. But the intention is to move those licences
15 upriver, I believe, Mr. Sprout; is that correct?

16 MR. SPROUT: Okay. And just to explain the context
17 again, for those that aren't aware of this, so
18 commercial licence holders volunteered to retire
19 their licences.

20 Q Yes.

21 MR. SPROUT: The licences are purchased by the
22 Department of Fisheries and Oceans with resources
23 that come through PICFI. Then in the case -- and
24 these are a whole range of licences, not just
25 salmon, it could be herring, could be groundfish,
26 could be geoduck, shellfish, and so forth. So
27 those are purchased at fair market value for those
28 that wish to retire.

29 Then the Department in the case of the salmon
30 licences will take those licences, particularly if
31 the licences are retired from the outside
32 fisheries, outside being the West Coast of
33 Vancouver Island or Northern B.C., and will retire
34 those licences. And then the shares associated
35 with those, the salmon associated with those will
36 be transferred into inland waters, possibly on the
37 Skeena or on the Fraser River.

38 And the argument for the transfer inland is
39 you're trying to take the pressure off of the more
40 outside fisheries where the fisheries are more
41 mixed. There's a number of stocks mixed together
42 and what this program does is basically try to
43 take a bit of pressure off of those populations
44 and provide more specific localized fisheries in
45 the areas where the stocks can be more
46 distinguished or separated.

47 Q Yes. But, Mr. Sprout, my point is that that

1 obviously has broad socioeconomic implications for
2 the First Nations on the outside coastal
3 communities, and it does not appear anywhere in
4 this policy document, and it's not, if I'm
5 correct, been debated in Parliament. Am I
6 correct in all those?

7 MR. SPROUT: Well, first of all, in terms of the
8 outside First Nations, again it's a voluntary
9 licence retirement program. No one is forced to
10 retire their licences. If a person wants to get
11 out of the fishery, exit, and they wish to retire
12 their licence, then a potential buyer is the
13 Department of Fisheries and Oceans, and that's a
14 transaction between a buyer and a seller. So the
15 buyer determines and the seller determine what the
16 price is, so people voluntarily leave. So and the
17 second thing is, is that this transaction is
18 designed to try to create opportunities elsewhere
19 for First Nations.

20 Q Yes.

21 MR. SPROUT: But opportunities that biologically allow
22 for the separation of fish populations and
23 therefore help address conservation, and arguably
24 help implement various policies the Department
25 has.

26 Q Yes. But that doesn't appear in this policy, the
27 "elsewhere" part of it, and I gather from what
28 you're saying that what Ms. Farlinger --

29 MR. WALLACE: Mr. Commissioner, Mr. Harvey has put a
30 proposition before this witness which is based on
31 the whole PICFI document, which is not before the
32 witness, and I'm not sure if that can be tested.

33 MR. HARVEY: All right. Well, I'll leave that for
34 final argument in the interests of time. Thank
35 you.

36 MS. FARLINGER: May I just add a possible helpful
37 addition, is that some of the salmon access
38 retired through the PICFI process may well be
39 awarded through in the regular commercial salmon
40 fishery. Some of it may be awarded at the end of
41 the process to upriver fisheries. So it goes both
42 ways and is consistent with the Allocation Policy
43 and the Selective Fishery Policies that we
44 described to you in the New Directions suite of
45 documents.

46 MR. HARVEY:

47 Q But you'd agree, Ms. Farlinger, that anyone

1 reading this document and the reference to
2 "integrated commercial fisheries", and anyone
3 retiring or deciding to retire an Area G licence
4 would presumably expect that to be reissued to
5 First Nations in the integrated Area G fishery.

6 MS. FARLINGER: Not necessarily. The Department
7 retires licences in a number of ways to provide
8 access to First Nations for treaties through an
9 Aboriginal Access Program we have called
10 Allocation Transfer, and this program is similar
11 in that regard, and so it does not necessarily
12 imply that the licence will be reissued in the
13 same way, only, as Mr. Sprout described, that it
14 will in some way be tied to the share and the
15 access to the particular stocks that that licence
16 had.

17 Q I see. All right. Let me deal with one final
18 point. And this is more in the nature of a
19 comment, but I make it because this will form part
20 of what my final argument will be to this
21 Commission, and my comments at the end of the day
22 to this Commission, and I think I should bring it
23 up now, as you will not be back as I understand
24 it, and you should have an opportunity to comment
25 on it. I am going to read a passage which is
26 taken from something we haven't yet reached here,
27 it's --

28 MR. WALLACE: Mr. Commissioner, if this is not related
29 to the Wild Salmon Policy, I anticipate that Ms.
30 Farlinger will in fact be back, if there's a more
31 appropriate --

32 MR. HARVEY: I see.

33 MR. WALLACE: -- place to put this question.

34 MR. HARVEY: All right.

35 Q Well, this is related to the Wild Salmon Policy.
36 But what this is, is something we haven't reached
37 yet, it's a peer review of a former DFO official
38 with respect to the Science Project 11, which I
39 think we'll reach later in the month. But his
40 comments on the peer review are, in my submission,
41 hit the nail on the head, and I think you should
42 have an opportunity to respond to this. These are
43 his comments [as read]:

44
45 Over the past 25 years, a number of
46 stressors, climate change in the ocean, the
47 development of aquaculture, the evolution of

1 new management requirements to address First
2 Nations rights, both change the productivity
3 of the Pacific salmon stocks, including
4 Fraser River sockeye, and change the way the
5 Department could do business. For both legal
6 and biological reasons, the status quo was no
7 longer an option. However, the response by
8 DFO to these changes was dysfunctional and
9 ineffective.

10
11 On the biological side, the productivity of
12 Fraser River sockeye changed, but the nature
13 and extent of the change was not recognized
14 within DFO. Rather than attempting to
15 measure the degree of change, institutional
16 inertia developed with a focus on counting
17 the fish (stock assessment) but not on
18 identifying or getting ahead of the declining
19 productivity. It seems that until the SFU
20 expert think tank of December '09 published
21 its iconic graph of the 20-year decline, the
22 magnitude of the decline and the length that
23 it had been declining had gone unremarked and
24 largely unappreciated by DFO, who focused on
25 bits and pieces without grasping a larger
26 picture.

27
28 Instead of developing a coherent strategy for
29 dealing with this decline, and advising
30 senior level of government of the nature of
31 the problems that would lie ahead if the
32 trend did not reverse itself, no coherent
33 strategy ever seems to have been developed.
34 Instead, DFO promulgated a growing series of
35 ever more complex mandates with ever more
36 woolly objectives. Thus as the problem grew
37 worse, the rhetoric about what DFO would do
38 became increasingly abstract. Describing
39 ever more complex objectives...

40
41 And then he lists:

42
43 The Wild Salmon Policy; integrated watershed
44 plans; ecosystem management; precautionary
45 approach; ecological approach.

46
47 Given that even the simpler goals of an

1 earlier era were arguably poorly executed, it
2 was increasingly unlikely that DFO could
3 successfully execute and achieve the much
4 more complex management demands that were
5 placed upon it, given the very real
6 difficulties evident even in the much simpler
7 times.

8
9 To list a few of the major points, it appears
10 that the Wild Salmon Policy, more than a
11 decade in the making, apparently is not yet
12 fully operational. I am sceptical that the
13 integrated watershed plans, the much heralded
14 New Directions, are actually either
15 integrated or can act as a blueprint for an
16 effective plan, and ecosystem management, a
17 laudable philosophy in principle, seems to be
18 almost completely lacking in concrete metrics
19 against which DFO or more senior levels of
20 government could possibly measure progress
21 and effectiveness. Thus timelines
22 lengthened, execution and delivery
23 progressively weakened, and the gap between
24 reality and what was promised widened.

25
26 The Department does not seem to have been
27 successful in advising the Minister or other
28 senior levels as to the gravity of the
29 developing problem with Fraser River sockeye.
30 Perhaps most telling, it seems to have taken
31 the SFU think tank and the Cohen Commission,
32 not DFO with its mandate to do so, to put
33 together the widespread extent of the problem
34 and communicate it. That DFO's Pacific
35 Region could not do this when the problem for
36 Fraser River sockeye, central to B.C.
37 fisheries, developed literally at the peak of
38 the East Coast crisis over Northern Cod,
39 which led to the largest single bout of job
40 layoffs in Canadian history, will likely
41 raise fascinating academic issues in
42 governance and fisheries research, if true.

43
44 So those comments generally go to the point that
45 the WSP, the Wild Salmon Policy, is a hugely
46 complex model, but it will not and cannot
47 effectively act as a metric for decision-making on

1 the grounds directed to restoring Fraser River
2 sockeye. That's a proposition that you may wish
3 to comment on or you may not. I see Mr. Wallace
4 again...

5 MR. WALLACE: Mr. Commissioner, Mr. Harvey didn't
6 provide any advance notice of the use of that
7 quote, and if he wishes to have a comment on it in
8 any detail, I think that would be unfair to these
9 witnesses, and perhaps they could simply take this
10 as notice that it's something on which he wishes a
11 comment at some future time.

12 There was one piece of it which does, I think
13 reflect a question that relates to the
14 implementation of the Wild Salmon Policy. It's a
15 question, though, I think has been asked and
16 probably answered today, which is, isn't this too
17 complicated and vague to be feasible of
18 implementation, which is the only question I can
19 think of out of that which would be a fair
20 question, and I think it's been answered today.

21 MR. HARVEY: Yes, but I'm in your hands, Mr.
22 Commissioner.

23 MR. TIMBERG: I would support the Commission counsel's
24 perspective. This is not a fair question or
25 appropriate form of cross-examination.

26 THE COMMISSIONER: Well, thank you, Mr. Harvey. I
27 think you've put your comment on the record, and
28 you've framed your question, and at least Ms.
29 Farlinger has notice of your position and in due
30 course, if it's appropriate, it may be responded
31 to.

32 MR. HARVEY: Thank you. Those are all my questions.

33 MR. WALLACE: Thank you. This takes us, Mr.
34 Commissioner, to Ms. Gaertner.

35 MS. GAERTNER: Mr. Commissioner, Brenda Gaertner, and
36 with me Leah Pence for the First Nations
37 Coalition.

38 I just need a little moment for cleanup on
39 yesterday's transcript. I know that we don't
40 usually do it this way, but apparently when Anja
41 Brown and Crystal Reeves introduced themselves,
42 they said something that was inaccurate that I
43 don't want to suggest anything on it.

44 Anja Brown introduced herself on behalf of
45 all of the First Nations Coalition, and Crystal
46 Reeves introduced herself only on behalf of one of
47 the participants in the Coalition. That may occur

1 in the future, but we will be very precise about
2 that. It was not precise yesterday. They were
3 both participating on behalf of the whole of the
4 Coalition yesterday. And I'd like to make that
5 clear on the record. In the future if that does
6 need to happen, we'll be very clear about that
7 with you, and the implications of that.

8 And then I just wanted to thank the witnesses
9 for coming here again today, and for giving us the
10 opportunity, and myself the opportunity on behalf
11 of the Coalition to ask a few questions.
12

13 CROSS-EXAMINATION BY MS. GAERTNER:
14

15 Q I'm going to give you sort of an overview of what
16 I'm hoping to cover today with you. I have some
17 introductory comments and questions around the
18 relationship between the Wild Salmon Policy and
19 the Pacific Salmon Treaty, and just some follow-
20 up, clean-up comments and questions around that.
21 Then I want to turn to some of the unique
22 contributions the Wild Salmon Policy provides to
23 us in conjunction with a number of other existing
24 policies, and particularly focus on some of the
25 challenges that we've already experienced in
26 implementation that give us opportunities for
27 improvement, and where we can go in the future.
28 And then I have to close with some miscellaneous
29 matters that have arisen in the hearing, partly on
30 some of the days that I wasn't here with you, and
31 partly subsequent to that.

32 I'm anticipating that I will take an hour of
33 the time this afternoon, that's my quote, and I
34 think I will require that amount of time with you.

35 So starting first with questions regarding
36 the relationship between the Wild Salmon Policy
37 and Canada's commitments under the Pacific Salmon
38 Treaty, Mr. Sprout, at the time the Wild Salmon
39 Policy was passed, what was DFO's vision on how
40 management based on the conservation units could
41 be implemented through the in-season decision-
42 making of the Fraser Panel or otherwise. We
43 appreciate that they're working on the four large
44 aggregates, and we've got many more conservation
45 units and there's some challenges associated with
46 that. So I want to start just with what you might
47 have envisioned at the time you were working on

1 the Wild Salmon Policy, and then I'll take you to
2 some specifics.

3 MR. SPROUT: Well, I can tell you what we would have
4 thought in terms of the relationship with the
5 United States through the PST in terms of us
6 advancing our interests.

7 So Canada with the Wild Salmon Policy would
8 develop its perspectives around what it required
9 for conservation, consistent with the policy,
10 following client discussions or discussions with
11 other parties, including First Nations. We would
12 have an opinion on what we would think might be an
13 escapement requirement for Fraser and how that
14 might be realized in terms of harvesting. That
15 would potentially become a discussion item with
16 the United States. And through that discussion
17 with the United States, Canada and the United
18 States would try to arrive at some sort of
19 consensus agreement on how we would prosecute the
20 fisheries in a way that U.S. and Canada could
21 agree.

22 From the U.S. perspective, it would be to
23 satisfy whatever allocation requirements had been
24 negotiated in the treaty, and from Canada's
25 perspective to do the best we could to try to
26 arrive at something that we thought was reasonable
27 from Canada's perspective that reflected our
28 interests as well as possible.

29 So that's the process we would follow with
30 the Wild Salmon Policy. Bring it into the
31 process. It would obviously influence our
32 thinking, but we'd be working with our U.S.
33 counterparts to arrive at some consensus that
34 would be mutually satisfactory.

35 Q So if I've understood that right, what you're
36 imagining is that it would have informed Canada's
37 position at the table and be the sort of the
38 domestic discussion that moves into the
39 international discussion.

40 I'm a little bit more interested in taking it
41 one step further if I may, and just maybe I'll
42 give you the two areas where I'm particularly
43 interested. One is Mr. Lapointe's evidence of
44 January 20th, at pages 91 and 92 of the
45 transcript. I only need to take you there if you
46 would like to see his actual words, and I'm happy
47 to do that, and will bring that forward. But he

1 gave examples of areas where he felt that the work
2 of the PSC, in particular the PSC staff, could be
3 useful in helping to become more particularized in
4 the management groups, and using the conservation
5 units, using index stocks, getting all of that
6 work done. And in the context of the work on
7 implementing the Wild Salmon Policy, that level of
8 particular information becomes extremely useful.
9 You would agree with me on that? The more
10 particular we can be, the better it is, including
11 at the PSC level, and the PST level. And so why,
12 how can we bring that to -- not just at Canada's
13 side, but right into the work of the PST and right
14 into the discussions that are happening at the
15 Fraser River Panel.

16 MR. SPROUT: Well, Canada would be the most likely
17 party to raise this, given its interest and its
18 wild salmon domestic policy. So the answer to
19 your question is, is that Canada, through its
20 technical processes and its technical staff
21 involved in the Fraser Panel, could potentially
22 bring that matter of more detail or specificity
23 around CUs into the technical process that
24 involves the United States, and that through that
25 process, that could come to the attention of the
26 Fraser Panel, or to the Pacific Salmon Commission
27 itself, the bilateral commission. So that would
28 be likely the process that could be used.

29 Just in the same way, if the U.S., for
30 example, had a stock of concern, an endangered
31 species in the U.S., they may well choose to flag
32 that through exactly the process that I've just
33 described, through their technical staff, bringing
34 that to the attention of our technical staff,
35 Canada's technical staff, and then upwards through
36 to the Panel, and potentially the Commission.
37 That would be the typical processes for these
38 things to be developed.

39 Q Is there concerns that we should know about as to
40 why moving from the aggregates to conservation
41 units is not being discussed at the PST
42 specifically? And I'm just going to do a little
43 bit of bringing in some facts, and if these are
44 inaccurate, it's the understanding, and we can go
45 to Exhibit 67 if we need to, that in the
46 renegotiation of the Annex IV, Chapter 4, moving
47 from these aggregates to the conservation units

1 has not been raised as a topic by Canada. And my
2 clients are concerned about that, and I think it
3 would be useful to this Commission if we
4 understood why not.

5 Why is Canada reluctant to bring
6 conservation, or management of the conservation
7 units directly into the obligations of the PSC?

8 MR. SPROUT: I'm not aware that Canada has been
9 reluctant. I'm aware that Canada has advanced the
10 Cultus sockeye, which is a CU, in the Pacific
11 Salmon Treaty process. Canada, as well, has
12 brought to the attention of the United States coho
13 CUs in the interior of B.C. Now, it's true that
14 the United States may have a different perspective
15 on what it should do in response to those CUs, and
16 whether they're prepared to conserve, or conserve
17 as much as Canada would propose to conserve. But
18 it's not accurate to say that Canada has not
19 brought these CUs to the attention of the United
20 States.

21 Q Sorry. I might have, obviously I should have
22 chosen my words a touch more carefully. It's just
23 that it's not been tabled as a topic as part of
24 the renegotiations of the Annex, the movement into
25 conservation units. And I can take you to Exhibit
26 67 in which the topics of renegotiation are
27 listed, and if we could do that. And as far as I
28 understand -- whoops, now you see it, now you
29 don't. There it is. Those are the listings and
30 the action items following the Fraser River Panel
31 work on the renegotiation of the Annex, and
32 "Management groups" are what's talked about in "2"
33 but we're still primarily talking about the
34 current management groups.

35 And so it's my understanding that Canada has
36 not tabled with United States that we would like
37 to move from the four aggregates to the
38 conservation units as part of the considerations
39 or part of the work or as the fundamental
40 management groups. Now, there may be good reasons
41 for that. I'm not suggesting that you should, but
42 it's not apparent to us, and it's definitely not
43 apparent to my client why we wouldn't do that.
44 And so if that needs to be considered by the
45 Commissioner when he's considering recommendations
46 around this, it would be very useful to know.

47 Is it unnecessary from your perspective? I

1 hear you when you say, oh, well, when we've got an
2 actual stock of concern, and we've got it to a
3 legislated format, both Canada and the U.S. will
4 bring there. But you'll agree with me that we've
5 got nuances in the Wild Salmon Policy that's
6 intending us to take steps well before a stock has
7 hit that level of concern. And so I'd like to
8 hear from you on why it is that we're not yet
9 seeing in the list of things for renegotiation
10 conservation units.

11 MR. SPROUT: Well, a couple of observations. First of
12 all, the list that's in front of us, I think was a
13 list that was developed by the Department, with
14 consultation which included First Nations and non-
15 Natives, that potentially could be a set of
16 discussions that would be introduced by Canada at
17 the renegotiation of the expiry of the Fraser
18 River Agreement. So this is a list of items that
19 Canada might or may not bring to the attention of
20 the United States.

21 With respect to the issue of conservation
22 units, my perspective is, is that Canada can bring
23 to the attention of the U.S. as it wishes issues
24 around the status of individual conservation
25 units, which I've already pointed out two
26 examples. So my view is, is that Canada already
27 has the flexibility to do that. How the U.S.
28 responds to that, particularly if Canada is
29 seeking a reduction in the U.S. harvest, that's a
30 different matter. But my simple answer to you is
31 that that's already within Canada's capacity and
32 already has been exercised in at least two
33 instances that I'm aware of with the U.S.

34 Q But there isn't the gathering, like, there is work
35 in gathering and analyzing and making in-season
36 management decisions that the Fraser River Panel
37 does pursuant to the Treaty, which right now is
38 premised on the four aggregates. And so it would
39 just seem to me and definitely from my client's
40 perspective that we would be moving more towards
41 the Wild Salmon Policy if we were not dealing with
42 the Fraser River Panel work and the work at the
43 PST level on the premise that it's only when the
44 stock is of significant concern that we move into
45 something beyond the format aggregates.

46 MR. SPROUT: Okay. Well, I understand your position on
47 that, but that is a position I don't think that

1 Canada has adopted. Canada's view is that Canada
2 has the flexibility under the current Treaty
3 arrangements to bring specific CUs into the
4 discussion with the United States. And then the
5 fact when you look at how the fishery is managed
6 by the four management units, the larger units,
7 the Summer population, the Late population, both
8 of those units have large surpluses from time to
9 time, only a proportion of which are allowed to be
10 harvested because of concerns for the bycatch of
11 smaller populations that are not as strong, not as
12 productive, or depressed.

13 So in fact the parties are already bringing
14 into the discussion at the international level
15 concerns around conservation units. And in some
16 cases those units are either very depressed or
17 require rebuilding. So it's not just extreme
18 populations that are being considered. There's a
19 range. So again in summary I think the Treaty
20 does provide for this flexibility to bring these
21 matters to the attention of the United States.

22 But the final remark I have here is that it
23 takes two parties to agree. So Canada can do
24 whatever it would like to do in terms of
25 advocating for a position, but really what you're
26 trying to do is find consensus with the United
27 States. And the U.S. obviously will be looking
28 at, well, what does this mean for our potential
29 harvest, consistent with the allocation agreements
30 that we have with Canada.

31 Just the way if the U.S. is bringing to
32 Canada's concern its stocks of concern, and it
33 does, from time to time it brings concerns for
34 chinook or coho, more typically. Canada's
35 reaction is to look at that in the context of what
36 will that have, how will that affect our ability
37 to harvest our share, and what will it mean for
38 our conservation of our stocks.

39 So it is a negotiation, Canada does have the
40 flexibility to bring these matters to the United
41 States. The actual consequence of that, though,
42 is up to what the negotiation and negotiators can
43 arrive at.

44 Q Okay, I'll move on, then. I just have one further
45 question, Mr. Sprout, on the PSC and particularly
46 on the Fraser River Panel. And I note it's not
47 exactly on the Wild Salmon Policy, but I have been

1 booted twice to this panel to get the answer to
2 this question, and so I'm going to proceed with
3 it. And that is, Mr. Sprout, as you know, First
4 Nations have raised concerns with the Department
5 regarding their representation on the Fraser River
6 Panel. That's something you're aware of?

7 MR. SPROUT: I am.

8 Q And you're aware that they're seeking and have
9 been stressing the need to increase their
10 participation on the Fraser River Panel; is that
11 correct?

12 MR. SPROUT: That's correct.

13 Q and you were at a meeting in February 2009 at the
14 Pacific Salmon Commission's First Nations caucus
15 meeting and you were able to share some of your
16 personal views with respect to that. And in
17 particular you raised, you offered your personal
18 opinion that there should be up to 50 percent
19 representation of the First Nations on the Fraser
20 River Panel. Do you recall that?

21 MR. SPROUT: I do.

22 Q And could you give us some information around your
23 thinking with respect to that and the importance
24 of that. It is something that we will be seeking
25 recommendations on, and I'd like to have the
26 Commissioner the value of your experience and why
27 that would be important and how that might be
28 helpful.

29 MR. SPROUT: Okay. Well, this is part of a broader
30 suite of governance changes that I think should be
31 done or should be reflected on. But one of those
32 I believe is the First Nations participation in
33 processes like the Fraser Panel, and I believe in
34 others should be increased substantially. And the
35 reason I believe that is that I think if these
36 advisory processes are to work and potentially
37 evolve to something more robust, possibly decision
38 processes, I think the only way that that can be
39 done, or one of the ways that that can be done, is
40 by ensuring that First Nations are well-
41 represented in their views, are comfortable in the
42 process and are able then to actively participate
43 in a way that can ideally produce consensual plans
44 with non-Natives. And right now when there's one
45 or three in a group that's comprised of 12 people,
46 I believe that ratio is just inadequate. I also
47 believe that doesn't take into consideration the

1 diversity of First Nations in this province and
2 their perspectives, which often are not
3 homogeneous on some of these subjects.

4 So I did express a personal view. I do
5 believe and continue to believe that participation
6 by First Nations on the Panel would ideally be
7 larger than it is now. But you should be aware
8 that, I mean, it is important that they are there
9 and we've had very good participation by the
10 leaders that do come. But I believe that in the
11 longer run it needs to be augmented.

12 Q All right. And in order to do that, a mandated
13 Tier 1 process would be useful to that process
14 also, would you agree with me on that?

15 MR. SPROUT: I did, and you should go back over and
16 make sure we haven't lost sight of what is meant
17 by Tier 1 for all the parties here. Does
18 everybody get that?

19 Q Yeah.

20 MR. SPROUT: Okay.

21 Q I think I've been onto that enough.

22 MR. SPROUT: I agree with your point on Tier 1, Tier 2
23 and Tier 3, and the issues around capacity, if
24 that's the point you're raising.

25 Q Ms. Farlinger, do you have anything to add on this
26 topic? Are you comfortable with the views that
27 Mr. Sprout has raised? Is there any challenges
28 that you'd like to bring to bear on that, or are
29 his views something that you share in terms of on
30 a go-forward basis?

31 MS. FARLINGER: I should say that I have discussed this
32 same topic in the same forum this year with the
33 First Nations caucus, and agreed that we should
34 continue to work towards increased participation.

35 Q Thank you. Ms. Farlinger, I just want to turn now
36 to the next topic, which is I reflected after
37 hearing your evidence the last time and all the
38 policy work that you brought forward to the
39 Commission and the package of work that's been
40 going on with the Department around policy work,
41 and I want to ask you whether or not you share
42 some of the observations around the Wild Salmon
43 Policy that my clients have and that I have as a
44 unique type of policy within that gamut of
45 policies. And in particular one of the things
46 that it appears different in the Wild Salmon
47 Policy is that it's sort of a hybrid between

1 general principles and operational goals. I mean,
2 we've got something that's way more specific. It
3 has timelines. It has all of the components in it
4 that a lot of policies don't have. A lot of
5 policies, and I'll just take the Selective Fishing
6 Policy for example, a very general policy with
7 general approaches. Would you agree with that
8 observation?

9 MS. FARLINGER: It certainly is more complex and has
10 set out very clear steps for implementation in
11 comparison to higher level policies like
12 conservation, like preserving biodiversity. I
13 think it is much more specific.

14 Q And one of the goals or one of the reasons for
15 that was that there has been quite a lot of years
16 of discussion and disagreement around what is
17 conservation and how we're going to bring the
18 rubber to the road; is that correct?

19 MS. FARLINGER: I think that is correct, and I'll just
20 refer back to some comments I made earlier, which
21 is that part of writing down the Wild Salmon
22 Policy was to be clear about the intentions of the
23 Department, and to actually begin to define what
24 it was we meant by very broad concepts like
25 biodiversity and conservation.

26 Q And would you also agree with me that on a go-
27 forward basis the Wild Salmon Policy reflects one
28 of the most significant policies on the
29 sustainability of the Fraser River sockeye salmon?

30 MS. FARLINGER: It's certainly a key policy in setting
31 out what the Department's goals and objectives
32 are, and strategies for moving in that direction,
33 yes.

34 Q A couple of days ago Mr. Commissioner asked Ms.
35 Adams and Ms. Sneedon - I think is how you say her
36 name, I don't know if I've got that right - about
37 the differences between policies and vision
38 statements and directions and reform documents and
39 all of those different titles that are sometimes
40 used. I wonder if you could help by putting the
41 Wild Salmon Policy and its unique and key role
42 into a better or more concrete description for the
43 Commissioner in that context. I mean, how do you
44 within the Department view the Wild Salmon Policy
45 in comparison to something like the Pacific
46 Fisheries Reform document? I know that's an
47 allocation document as a distinct. But there's

1 something more pressing, I think, about the Wild
2 Salmon Policy and I think it would be useful for
3 Mr. Commissioner to hear from you about those
4 differences.

5 MS. FARLINGER: I think that one of the things about
6 the Wild Salmon Policy is that it's the most
7 explicit description of what the Department means
8 when it says conservation is the highest priority
9 of the Department. I think it is clearly part of
10 a suite of policies that deal with high level
11 objectives right down to, for example, who gets
12 what, the allocation-type policies, and then right
13 down to the operational level. There was one
14 policy we talked about was the Management
15 Guidelines for Aboriginal Fisheries, which was a
16 very operational day-to-day instruction to
17 frontline staff. So it is something that sits at
18 the centre of the other policies because it
19 defines for us how we intend to or want to
20 implement our first priority, which is
21 conservation. I don't know if that's helpful.

22 MS. GAERTNER: Does it help you, and I wasn't in the
23 inquiry when that question arose, Mr.
24 Commissioner, but does that help you, and would
25 you like me to go further with that?

26 THE COMMISSIONER: Yes, Ms. Gaertner. I think just
27 briefly, just to add to your question, it would be
28 helpful to know the distinction between a document
29 which is called a policy, a document which is
30 called New Directions, a document which is called
31 a discussion paper, or a document that's called
32 initiatives. In other words, in the application
33 of those documents to the day-to-day operations of
34 the DFO, what is the weight given to those
35 documents in terms of their implementation and
36 importance.

37 The other thing that would be helpful is
38 perhaps you could bring up the -- I apologize.
39 You've invited me. That was a mistake, Ms.
40 Gaertner, because you'll be sorry, but...

41 MS. GAERTNER: I'm not sure how this will affect my
42 time, but I'll take that risk.

43 THE COMMISSIONER: Just give me a moment. If you could
44 bring up the Pacific Fisheries Reform Discussion
45 Paper, it's not called a policy.

46 MS. GAERTNER: The reform, the Pacific Fisheries
47 Reform?

1 THE COMMISSIONER: I think that's the one, Pacific
2 Fisheries Reform
3 MS. GAERTNER: The 2005 Pacific Fisheries Reform, I
4 think that's the Allocation Policy. Yes? It's a
5 discussion paper, yes.
6 THE COMMISSIONER: That may not be the one that I want.
7 MS. GAERTNER: Ms. Farlinger, you're familiar with
8 this.
9 THE COMMISSIONER: Which is the one called discussion
10 paper?
11 MS. GAERTNER: This one is. This one is.
12 THE COMMISSIONER: This is? Oh, I'm sorry.
13 MS. GAERTNER: It's called "A Discussion Paper on the
14 Implementation of Pacific Fisheries Reform".
15 THE COMMISSIONER: Yes. Can we just go to the last
16 page of that document?
17 MR. LUNN: It's Exhibit 269.
18 THE COMMISSIONER: Exhibit 269, all right. Yes. There
19 it talks about "Themes" and the last item -- no,
20 I'm sorry, it's the first item.
21 MS. GAERTNER: Mm-hmm.
22 THE COMMISSIONER: Just how these things are tied
23 together. In other words, this document does
24 refer back to the Wild Salmon Policy. So it would
25 just be helpful for me to know what is meant by
26 these different titles.
27 MS. GAERTNER: When I realized you had this question
28 and I knew Ms. Farlinger was going to be here, I
29 couldn't think of a better person to ask this
30 question of, and so I'm going to throw it directly
31 to her. She's heard your question and I'll leave
32 it at that.
33 THE COMMISSIONER: Thank you so much for your patience.
34 MS. GAERTNER: Mm-hmm.
35 MS. FARLINGER: Thank you. Well, I'll do my best to
36 distinguish between a framework, a policy, an
37 initiative and a discussion paper, if that's
38 helpful.
39 I would call two things frameworks. One
40 would be the New Directions document. This
41 framework - as well as the sustainable fisheries
42 framework, which is the current national fisheries
43 policy into which all our salmon policy work fits
44 - they're a framework. They say this is what
45 we're trying to cover in this suite of policy
46 documents. So it is an over-arching framework in
47 which to embed policies.

1 So if you were to look at New Directions,
2 there are a number of policies that came out of
3 that: the Salmon Allocation Policy, the Wild
4 Salmon Policy, the Selective Fishing Policy, a new
5 consultation framework for Pacific fisheries.
6 Those four things are considered to be policies.
7 So they will address a particular topic within the
8 broad suite of that framework.

9 What happens in initiatives and discussion
10 papers is fundamentally setting out the public
11 discussion or consultation prior to the
12 finalization of the policy. So if we move over to
13 a broad framework like the sustainable fisheries
14 framework, which is our national equivalent
15 framework to the set of salmon policies I just
16 described, it says conservation is the first
17 priority. It says we're going to manage on an
18 ecosystem basis, so it sets out very broad things
19 that are derived from legislation.

20 Then you get into the policies, the Bycatch
21 Policy, the Benthic Policy, the Forage Policies
22 and the Precautionary Approach Policy. Now, the
23 Precautionary Approach Policy at the national
24 level is the parallel policy to the Wild Salmon
25 Policy. So if you take all the marine and
26 anadromous species in Canada, you have the
27 Precautionary Approach. It says that the
28 Government of Canada, when it manages fisheries,
29 will use the Precautionary Approach.

30 The Wild Salmon Policy, which, if you pull
31 salmon apart from all the other species, the
32 Pacific Wild Salmon policy says, "And this is how
33 we're going to implement the Precautionary
34 Approach for salmon."

35 So the initiatives, the discussion papers,
36 discussion papers in particular are how we consult
37 on those policies before finalizing them. To take
38 the Pacific PICFI, as we call it, the Pacific
39 Integrated Commercial Fisheries Initiative, that
40 is an action that is taken congruent with the
41 policies. So, for example, in the case of PICFI,
42 the one I just described, the government provides
43 \$175 million dollars to take these actions to
44 implement the suite of policies that have been
45 laid out.

46 I don't know if that's helpful.

47 Q All right. I just have a couple of questions on

1 implementation of the Wild Salmon Policy before I
2 get to some more strategic questions around that.
3 Ms. Farlinger, in your earlier testimony, you
4 mentioned that - and Mr. Sprout, you mentioned
5 this again - that we'll never have all the science
6 that we need, and science will never be absolutely
7 certain. Of course, now, with things like climate
8 change, we've got uncertainties of time and
9 uncertainties of environments.

10 MS. GAERTNER: I hearken, Mr. Commissioner, to the
11 evidence we got from Dr. Wendy Watson right at the
12 beginning of the inquiry around how we really are
13 living in a precautionary time, as distinct from
14 precautionary decisions.

15 Q I'm just wondering, we know that the Department is
16 doing work on identifying the conservation units,
17 and we know that there's benchmark work on the
18 conservation units, and I've got a couple of
19 questions later on that.

20 But more importantly, given that we're never
21 going to have all the information we need, given
22 that we're always going to have to take
23 precautionary steps based on uncertainty, would
24 you agree with me that it's important to move -
25 I'm going to use the word "aggressively" but
26 maybe "optimistically" might be just as good a
27 word - right into implementing Strategy 4 before
28 we have all of the information in Strategy 1, 2
29 and 3 of the Wild Salmon Policy? Is it time to
30 really begin to do that work, even though we don't
31 have all the perfect data?

32 MS. FARLINGER: I think that inevitably the discussions
33 that occur in Strategy 4 will have to make use of
34 the available information. I think they will need
35 to be based on developing alternatives based on
36 the existing information. Also, we will need to
37 bring to the table what we think the threats and
38 risks are around the uncertainty of that
39 information, and therefore what the implications
40 of the uncertainty is. So when we're in the
41 process with those participants of developing
42 through those first three steps, it's very likely
43 that all the participants will become aware of
44 just the kind of uncertainty that is there.

45 Then in Strategy 4, when we're looking at a
46 strategic plan for a particular set of stocks or a
47 watershed, we can be very clear about what the

1 uncertainty is and what we know about those risks.

2 So I think it is inevitable, as you say, that
3 those processes will go ahead without perfect or
4 even, in fact, adequate, in some cases,
5 information because harvest continues, habitat
6 challenges continue. All those regulatory
7 decisions continue to have to be made in the
8 context of today, which is we have some
9 information and all we can do is bring the best of
10 it to the table.

11 So should we be moving ahead on Strategy 4?
12 Yes, and I believe that's what the pilots that
13 we're working with in various contexts in the
14 various watersheds are about. At least one of the
15 challenges is ensuring that all the people, the
16 affected individuals, are represented in those
17 discussions, and that continues to be an ongoing
18 challenge.

19 So, yes, we need to implement it sooner
20 rather than later. If you look at some of the
21 decisions you've heard about over the last few
22 weeks with fishery managers, you'll know that DFO
23 has moved ahead and made decisions ahead of those
24 processes simply because it has had to do that.
25 But the sooner, the better.

26 Q Thank you. The next question I have on
27 implementation of the Wild Salmon Policy relates
28 to how we see the Wild Salmon Policy influencing
29 harvest management decisions. I've heard the
30 evidence this morning and reflected on what you've
31 said previously. As I understand it, we really
32 have to look to the IFMP process for seeing some
33 of how the rubber hits the road. Would you agree
34 with me on that?

35 MS. FARLINGER: Yes. The IFMP process fundamentally is
36 what we -- the wheels keep turning, fish come back
37 every year, fisheries are executed every year. It
38 will be when the strategic plan envisioned in
39 Strategy 4 and the IFMP nest within one another
40 that they'll link. But they are short-term and
41 long-term plans.

42 Q And we've heard -- we have had Mr. Sprout and Mr.
43 Rosenberger here to talk about the IFMP and I just
44 want to have your agreement that it will be
45 extremely important to make sure we have adequate
46 First Nation representation. We do not yet have
47 that, that's the evidence so far, at the IFMP

1 stage, at least as it relates to the Fraser River
2 sockeye salmon, and that again, a more functional
3 Tier 1/Tier 2 process would help us get into
4 better adequate representation in the IFMP. Would
5 you agree with that?

6 MS. FARLINGER: I would agree with the fact that the
7 First Nation participation at the integrated
8 table, at the Integrated Harvest Planning
9 Committee process continues to be a challenge for
10 us, that we certainly, both on the First Nations
11 side and on DFO side, spent considerable time and
12 energy and bilateral discussions, and considerable
13 resources and energy on both sides in terms of
14 building that Tier 1 process, the various
15 processes we've talked about earlier.

16 The more effective those processes can be,
17 the more likely the process will be better
18 integrated at the coast-wide process, but also at
19 the watershed process. Our next challenge will be
20 linking the watershed processes to the Integrated
21 Harvest Committee.

22 Q And we're going to get into lots more of that
23 detail during the week on the aboriginal fisheries
24 so I won't take you there yet. It's sitting there
25 waiting to be explored, but I wanted to get a
26 sense of your agreement on the IFMP.

27 All right. Just briefly, again, we've heard
28 some questions today about the challenges in
29 implementing the Wild Salmon Policy and, in
30 particular, the concerns that are raised by marine
31 commercial harvesters, or those representing them,
32 about what is now being called delayed density
33 dependence, or too many fish on the spawning
34 grounds.

35 Ms. Farlinger, in your evidence today you
36 talked about different viewpoints, scientific or
37 otherwise. You'll agree with me that a
38 fundamental premise of the Wild Salmon Policy,
39 littered throughout the policy itself, is the
40 importance of hearing from First Nations on
41 traditional ecological knowledge, and that could
42 and would likely have an influence on this issue
43 of too many fish on the spawning grounds; is that
44 correct?

45 MS. FARLINGER: Yes.

46 Q And that's a commitment you've made both in the
47 Policy and otherwise, that you will be

1 incorporating traditional ecological knowledge
2 when making decisions around the amount of
3 spawners that we need in the spawning grounds?

4 MS. FARLINGER: Certainly the processes we have in
5 place, and also our continued stated intentions to
6 do that both on the aboriginal side and ours, yes,
7 those are in place. We have, on both sides, on
8 the First Nations side and on DFO side, run up
9 against considerable challenges in terms of
10 gathering and understanding traditional knowledge,
11 and we continue to move that forward as a priority
12 on all our processes with the First Nations.

13 Q Thank you. There's just -- with respect to the
14 identification of conservation units and
15 benchmarks, we heard from both Mr. Saunders and
16 Mr. Irvine during the development of the Wild
17 Salmon Policy that First Nations involvement in
18 the setting of the conservation units and the
19 setting of the benchmarks for conservation units
20 was a commitment. It's in the Wild Salmon Policy
21 itself.

22 There were some concerns that were raised as
23 a result of Dr. Holt's evidence earlier in this
24 inquiry, in particular, when the evidence she gave
25 around the paper she co-wrote with Sue Grant in
26 which there was -- there appears to be a movement
27 towards dropping of the distribution as a class of
28 indicators in setting of the benchmarks in the
29 conservation units. So at the present moment, the
30 science apparently is uncomfortable with the
31 amount of details they have on distribution and
32 the recommendation is that be dropped at this
33 point in time and that we would move towards more
34 of a reliance on historic abundance data. Dr.
35 Holt also gave evidence that there was some
36 pressure to produce this discussion paper.

37 Ms. Farlinger, it's a bit confusing and
38 challenging for some of my clients that such a
39 move, the move towards dropping a distribution as
40 part of the setting of the benchmarks would occur
41 without engagement, without consultation with
42 First Nations. Could speak to that? Could you
43 speak to whether there's particular pressure in
44 completing this report at this point in time
45 before there is engagement with First Nations on
46 this issue?

47 MS. FARLINGER: I can speak to this perhaps only in the

1 most general way, that it would be our intention
2 and continues to be our practice, when we are
3 establishing either escapement targets or
4 reference points, to do that in consultation.
5 Now, often we encounter disagreements, and here is
6 an example of where finding out how to
7 characterize, extract and then bring together the
8 traditional knowledge, as opposed to just opposing
9 views, continues to be a challenge for us.

10 But it would be our intention to consult on
11 the matter of setting these points, including the
12 methodology with First Nations.

13 Q And so could you give us some level of commitment
14 or -- I'm not sure if that's too hard a word or
15 not, but it appeared from the evidence of Dr. Holt
16 that she was instructed to move forward to finish
17 this paper. This paper has not been ground
18 through with First Nations. It has only had the
19 PSARC review.

20 Can you give us some commitment that
21 something as important as the distribution metric
22 on a benchmark for First Nations will be
23 consulted? There will be a consultation around
24 that before it's finalized?

25 MS. FARLINGER: That's a fairly detailed question.

26 Q I'm sorry.

27 MS. FARLINGER: I think what I can say to you is that
28 the paper may be finalized, but certainly that
29 does not in any way stand in the way of
30 consultation on how the methodologies in the paper
31 and how the final conclusions were arrived at, and
32 whether in fact they need to be considered in a
33 different way.

34 MR. TIMBERG: Mr. Commissioner, just for the clarity of
35 the record, you've spoken about the Ms. Sue Grant
36 paper and you've also spoken about the Carrie Holt
37 paper. I'd just like to clarify that they're two
38 separate papers. There's Ms. Holt did her initial
39 work with respect to how to determine benchmarks
40 under the conservation units, and then Sue Grant
41 is working on an assessment of the various
42 conservation units.

43 Q So what paper I am referring to is the paper that
44 Dr. Holt has co-written with Sue Grant, and I
45 believe it's Exhibit 184. It is the paper that
46 has just -- it was in draft form, it's been
47 recently peer-reviewed in which we're working

1 towards -- it's Sue Grant, she co-wrote it with
2 Dr. Holt. There's more than one paper.
3 MR. TIMBERG: No, yes, and I'm just trying to be clear.
4 MS. GAERTNER: That's good.
5 MR. TIMBERG: So how I've come to understand it, that
6 there are two papers, and I think of Carrie Holt
7 is a primary author of her paper --
8 MS. GAERTNER: Yes.
9 MR. TIMBERG: -- and then she's a supportive writer.
10 MS. GAERTNER: Yes.
11 MR. TIMBERG: She's not the primary author of the
12 second paper, which is a Sue Grant paper. So I
13 think just for our own purposes, it would be
14 helpful to call the second paper the Sue Grant
15 paper.
16 MS. GAERTNER: Okay. I'll call it the Sue Grant paper,
17 I'm happy to.
18 MR. TIMBERG: And that's Exhibit 184.
19 MS. GAERTNER: That's right, happy to. That's the
20 paper I'm referring to today.
21 Q I guess -- I'm sorry, now, I think I lost my
22 thread. Your answer, Ms. Farlinger, if I've heard
23 it right - I'll just make sure I'm feeding this
24 back to you - is that you would intend to discuss
25 this paper after it's finalized to see how it
26 would be implemented.
27 I need to go one step before that, which is
28 that this is going to be one of the classes of
29 indicators for a benchmark, the distribution.
30 You'll appreciate that that would be extremely
31 important to many First Nations as to where and
32 how the distribution of these conservation units
33 are being watched, how they're being looked at,
34 how they're being measured. If we simply drop
35 that as a benchmark at this point in time because
36 of insufficient information, that could have
37 significant implications for First Nations.
38 You'll agree with me on that, that that's
39 something that you understand.
40 MS. FARLINGER: I understand that one of the metrics
41 being discussed, which is distribution, is viewed
42 by the First Nations as critical 1 (sic) in terms
43 of their interest. I guess what I'm trying to
44 separate out in your question is fundamentally our
45 -- let's call it DFO's science-based processes.
46 One might well argue that in a perfect world, we
47 would have engaged aboriginal traditional

1 knowledge every step of the way in the creation of
2 that paper. I don't think anyone would imagine
3 that we're here yet -- there yet, as I would say.

4 But on the other hand, concerns that First
5 Nations raise about any aspect of how we set those
6 limit reference points will be heard and will be
7 responded to. Now, whether the timing will be
8 whether the paper's finalized and the discussion
9 after, I mean, science advice is just that. It is
10 science advice. That's what it is. We're quite
11 prepared to discuss the science advice with First
12 Nations.

13 Q Thank you. I'm going to move on, then, and we'll
14 go to the next topic.

15 MS. FARLINGER: Okay.

16 Q Mr. Sprout, I'm going to turn to some questions
17 for you now. In your evidence on December 16th,
18 and it's at page 37 of the transcript if you need
19 to. I'm just going to summarize what I found to
20 be a very useful summary of a number of things
21 that you identified in dealing with -- the
22 question was around the challenges associated with
23 implementing the Wild Salmon Policy, and you said:

24
25 ...we've got competing interests, we've got
26 undefined rights and title, we've got
27 scientific uncertainty that will never be
28 eliminated, and we have diverged --

29
30 I think you meant "divergent".

31
32 -- interests and DFO is in the middle of it
33 trying to broker consensus amongst those
34 interests with that climate of uncertainty.

35 I think the challenge for DFO is it
36 needs to distribute the accountability
37 differently. Right now, DFO makes all of the
38 decisions, and I think we have to re-examine
39 that model.

40
41 Do you remember that evidence?

42 MR. SPROUT: I do.

43 Q I'm going to unlock some of that. That's an
44 extremely useful -- it almost sounds like me in
45 terms of how long the sentence is. But I want to
46 move through a number of key items in that, and
47 particularly I'm going to take you to the

1 implications of undefined title and rights and
2 some of the things we're learning around that.

3 Then I want to take you to some of the
4 evidence you gave around the considerations of a
5 watershed process and the importance of that and,
6 in particular, I want to take you to some of DFO's
7 roles in that. Then I'm going to go one step
8 further and we're going to talk about that tricky
9 thing of multiple jurisdictions and how we can
10 improve our processes as it relates to that, all
11 of which I think are very important to the types
12 of recommendations we will be asking the
13 Commissioner to consider.

14 So starting first with undefined title and
15 rights. Would you agree that the Wild Salmon
16 Policy is one of DFO's more explicit policies and,
17 in particular, it has a principle that resource
18 management processes and decisions will honour
19 Canada's obligations to First Nations. So in
20 2005, we have an active policy that now
21 specifically sets out that in implementation of
22 that policy, throughout it, you've got the first
23 -- or the second principle of honour in Canada is
24 obligations to First Nations.

25 MR. SPROUT: It is explicit, obviously, you've just
26 referenced it. But it's not the first time that
27 that's referenced. We have the allocation
28 document in the Pacific region that does reference
29 First Nations for food, social and ceremonial
30 purposes, so there's other documents where that
31 type of explicitness is present.

32 Q You'll agree with me that in the Wild Salmon
33 Policy, the nuance of the undefined title and
34 rights is moved along in terms of in seeking First
35 Nations' involvement in the management decisions
36 as it relates to the Wild Salmon Policy, seeking
37 to look at the traditional ecological knowledge,
38 all of the things that are in there. We've got a
39 much more active application of a policy, even
40 though we still have undefined title and rights.

41 MR. SPROUT: I think the process of First Nations being
42 involved in these discussions is more explicit in
43 the WSP. I also think it codifies remarks that
44 are in other documents, but they're in separate
45 documents. So I think it brings them together.

46 I would argue that what the Wild Salmon
47 Policy reflected is the Department's perspective

- 1 on First Nations participation, but it brings it
2 together in, frankly, a more clear and more
3 coherent way.
- 4 Q And would you agree with me that one of the
5 opportunities, and perhaps also the challenges is,
6 in applying the Wild Salmon Policy, is to create
7 that process whereby First Nations, DFO and the
8 stakeholders are dealing with priorities,
9 gathering information and making decisions.
- 10 MR. SPROUT: Yes. I would agree that that is one of
11 the challenges of the WSP.
- 12 Q And the WSP actually looks forward to decision-
13 making, not just advice.
- 14 MR. SPROUT: Okay, here that's not clear. The policy
15 -- if you read through the policy, it does not
16 talk about changing the governance structure of
17 the Department of Fisheries and Oceans. It talks
18 about increased participation. Clearly it talks
19 about the role of First Nations in terms of
20 consulting, but it does not make any changes to
21 governance structure.
- 22 Q So it's incremental step. We're talking about an
23 incremental step in the Wild Salmon Policy.
- 24 MR. SPROUT: I would argue that it definitely makes it
25 more coherent by bringing together all the
26 disparate documents, some of which the
27 Commissioner referred to where various statements
28 are made in initiatives or policy. It brings them
29 together into one document, and says this is the
30 process we would envision following as we make
31 decisions, but the decisions still rest with the
32 Minister, with the Department.
- 33 Q It is premised, however, on the basis that if you
34 had reached consensus through a Wild Salmon
35 Process, that there would be less decisions left
36 for the Department.
- 37 MR. SPROUT: Okay, that's a very good observation.
38 That would be my view as well, that if you come to
39 a consensus through a collaborative process which
40 the policy supports, that the likelihood of the
41 Minister supporting that consensus would be very
42 high.
- 43 Q And in fact, from your work, all the years that
44 you've done within the Department and, Ms.
45 Farlinger, if you want to add to this, please do,
46 but that is typically what happens is that if and
47 when you can reach consensus on contentious issues

1 amongst the stakeholders and with DFO, that it is
2 typically the consensus that will inform and then
3 drive the decision, if any, that the Minister has
4 to make.

5 MR. SPROUT: Yes. My experience is that if you can get
6 consensus, particularly if it's done properly and
7 it's widespread consensus - not narrow, not one
8 interest group, for example - that it's very
9 likely under those circumstances you'll have
10 support at the most senior levels in the
11 Department, including the Minister, for that
12 decision or that consensus to be adopted and a
13 decision to be made.

14 Q Now, one of the primary challenges associated with
15 obtaining consensus with First Nations around this
16 thing of undefined title and rights, as you were
17 calling it, is the content of their section 35
18 management rights. Would you agree with that?

19 MR. SPROUT: I think that's one of the challenges, yes.

20 Q And would you agree with me that the goal of Tier
21 1 and Tier 2 process is trying to create
22 mechanisms by which DFO and First Nations can come
23 together with -- in an effort to reach more
24 consensus about management decisions and
25 responsibilities that need to be made for everyone
26 that's interested in the conservation of sockeye
27 salmon.

28 MR. SPROUT: I do agree, but I need to add this: It's
29 true Tier 1 and Tier 2 can advance the consensus,
30 first of all, amongst First Nations and then
31 subsequently between government, federal
32 government and First Nations.

33 But regrettably, when it comes to fish and
34 salmon, if you don't have the non-Natives in that
35 discussion, I think in early stages, you can go
36 fairly far down the road in a government-to-
37 government process, Tier 2, and then find out
38 that, in fact, when you get to the Tier 3, you're
39 disrupted. So I would qualify that remark by
40 saying that I think my personal view is that the
41 non-Natives need to be involved in very early
42 discussions with First Nations, and obviously the
43 government.

44 Q And you'll agree with me that that's -- there's a
45 bit of tension between DFO and First Nations with
46 respect to when it is appropriate to bring the
47 third parties or the other stakeholders into the

1 room.

2 MR. SPROUT: Yes, I would.

3 Q And would you agree with me that if we could get
4 to a functional Tier 1 -- a well-mandated Tier 1
5 process, that some of that tension might be
6 alleviated?

7 MR. SPROUT: I think theoretically I do agree with
8 that. Practically, I'm not as sure. But, yes, I
9 agree the theory is that if they can -- if First
10 Nations can, amongst themselves, start to clarify
11 their perspectives when it comes to fisheries,
12 exploitation rates, harvest rates, and there's a
13 consensus amongst First Nations -- and I mean
14 between inside First Nations and outside First
15 Nations, inside being the Fraser, outside being
16 Johnstone Strait First Nations or something like
17 that -- then that would be highly desirable and
18 that would be helpful.

19 Q When trying to get to a Tier 1 process -- and
20 we're not going to, again, go into all of the
21 details associated with the challenges. I'm going
22 to ask the Commissioner to bear with me on that.
23 We'll do that later.

24 Will you agree that it will be extremely
25 important to bring incentives to that table so
26 that First Nations see that the status quo will be
27 moving forward, in particular the importance,
28 perhaps, of being clear on how their voice will be
29 heard in co-management issues and as it relates to
30 meaningful allocation discussions?

31 MR. SPROUT: What do you mean by incentives?

32 Q Well, we all are inspired to do different things
33 by different ways, and there has been clearly
34 through the process, many processes, incentives
35 that are offered for people to do work. Of course
36 First Nations have the incentive of the
37 conservation of salmon. They've made that clear
38 to the Department. But there has been a lack of
39 clarity as it relates to undefined title and
40 rights, around their co-management place at the
41 table, and allocation. Would you agree with me on
42 that, and that if we had incentives and clarity
43 around that, that may assist in getting the work
44 of Tier 1 done, Tier 1 and Tier 2 done.

45 MR. SPROUT: Well, for example, if you mean by
46 "incentive" there was capacity money to bring
47 First Nations more -- to have them more actively

1 involved in doing stock assessment, for example,
2 salmon stock assessment, enumeration, stream
3 surveys. If that's what you mean by incentive -
4 so that they feel more involved in the status --
5 assessment of the status, the populations, and
6 therefore more prepared to participate in the
7 fishing planning, particularly with non-Natives -
8 then I would agree with that perspective, if
9 that's what you mean by incentives.

10 Q So that's one type of incentive. And you'll also
11 agree with me that, from their perspective, having
12 respect of their right at the table and their
13 responsibilities is another incentive that's very
14 important to them.

15 MR. SPROUT: Yes, I agree. Respect would be an
16 important incentive in that context.

17 Q Respect as it relates to co-management efforts.

18 MR. SPROUT: Yes, but you need to translate that, I
19 think, into something pragmatic or practical, what
20 you mean by that. I've given you an example of
21 what I think it could mean, and I believe it would
22 be helpful in terms of an incentive.

23 Q Let's go right to that. I think the next question
24 that I have might help us pursue that. You gave
25 evidence around this multiple interest and DFO's
26 role with respect to that. What did you mean
27 about an improved Watershed Management Board, and
28 how that would work? We're going to get to the
29 water management component later when we get to
30 the multi-jurisdictional, but you talked about a
31 Watershed Management Board, and I think it's
32 extremely important that the Commissioner
33 understand more what you mean about that.

34 MR. SPROUT: Okay. So I just need to separate. So
35 I've talked about two types of governance changes.
36 One, I've spoken of today and I talked earlier,
37 one is what I describe as a Watershed Management
38 Board or a watershed management process to manage
39 water. Multi-jurisdictional, I'm not going to
40 talk about that now. I'm going to talk about
41 something different now.

42 What I have proposed, or I believe needs to
43 be considered is a board or a committee who has
44 responsibility and accountability for making
45 decisions about strategic conservation objectives
46 within a broad framework, like Precautionary
47 Approach, and respect of the Wild Salmon Policy,

1 respect for aboriginal rights and title, where
2 they're defined and so forth.

3 So this would be a board that would be a
4 decision board, not DFO. And this board would be
5 constructed of -- comprise diverse interests,
6 obviously First Nations and other parties. So
7 what is the strategic operational objective?
8 Well, an example would be Cultus exploitation.
9 What should the Cultus exploitation rate be?
10 Twenty percent, 30 percent, 15 percent, zero, or
11 we don't care.

12 Q So, Mr. Sprout, I wonder if I could just interrupt
13 for a second. So, in your mind, this board would
14 deal with conservation priorities. Is it also
15 pretty fair to say that if we went as far as
16 creating a board like that, and moving towards
17 that, even if it's advisory to begin with, it's
18 going to also have to deal with allocation
19 licensing issues and it's also going to have to
20 deal with some in-season decision-making
21 processes. They're pretty linked, would you agree
22 with me on that?

23 MR. SPROUT: I would argue that you shouldn't take it
24 that far. The reason is that if you take it that
25 far, I believe you're going to be duplicating the
26 Department of Fisheries and Oceans, and I don't
27 think that's what you want to do.

28 The other thing is that I think you have to
29 learn -- you have to grow this, and you also have
30 to decide whether you want to keep it. I just
31 want to be clear about that. The argument that
32 I'm making is that the advisory processes that we
33 have in place right now do involve First Nations,
34 commercial fishermen, recreational fishermen and
35 NGOs sitting around a table with DFO managers and
36 scientists to try to find consensus on fishing
37 plans drive by conservation objectives. That's
38 what we have right now.

39 The problem is it's an advisory process, and
40 the people that are around that table are not
41 accountable for the advice they provide, and that
42 at the end of the day, whatever decision is made
43 is made by the Minister. So none of the
44 participants who participate in the process I've
45 just described is inclined necessarily to defend
46 the decision if they don't like it, even though
47 they might have been an active participant but

1 they don't agree with the final outcome.

2 However, having said that, if you can imagine
3 a process the way I've just described actually
4 working, First Nations working with non-Natives
5 and government to produce a consensus, isn't that
6 the ideal? But the reality is it's not working as
7 well as it should.

8 So what I have suggested is, on an interim
9 basis, creating a board who will have decision-
10 making authority in a limited area, and that board
11 will be informed by the advisory processes who
12 will do as much work as they can on trying to find
13 consensus on these questions, and then the board,
14 at the end of the day, will make the decision.
15 Then, in the long run, you have to determine
16 whether you want to keep that management board or,
17 in fact, your advisory processes are working so
18 well, people are able to come to consensus that
19 you can basically get rid of the board.

20 But what I am talking about is a fundamental
21 governance change in the model that we currently
22 have in this Department that would create
23 authority and responsibility in a separate group,
24 but still working with existing processes. I
25 further argue that you should be cautious about
26 how much weight and extra activities you provide
27 to this board for fear that you will basically
28 undermine its ability to work. Hence, my view
29 that it should be limited to what I've just
30 described.

31 Q And that's the conservation priorities.

32 MR. SPROUT: Strategic conservation objectives. Things
33 like Cultus exploitation, how to respond to a
34 conservation unit that's depressed, how much of
35 the productive stocks we're prepared to forego to
36 protect the weaker stocks. Those kinds of
37 questions I believe a board could grapple with,
38 could make decisions on, and those would then
39 inform the Department who would implement them,
40 and it would still be respectful of the advisory
41 processes that I think have much merit but,
42 frankly, need some support.

43 Q All right. Just before I leave this topic, I have
44 an observation that I'd like to raise with you and
45 then have you respond to it, which is when you use
46 the word "broker" amongst competing interests and
47 DFO's role there, I was a bit challenged by that

1 because I see DFO doing all kinds of different
2 things in relation to conservation and allocation
3 and decision-making. You have regulatory
4 obligations to your decision-maker. You're not a
5 broker on that. But then sometimes you play the
6 role of the facilitator, and then sometimes you
7 play the role of the mediator, and sometimes
8 you're actively holding the information that's
9 necessary by everyone to make these decisions.
10 Lots of times you're developing the rules of the
11 game.

12 So I think there is a lot of confusion in the
13 role of the Department of Fisheries and Oceans in
14 some of this practical work. I'm wondering if you
15 could help us in trying to look at how to improve
16 that, and get rid of some of that confusion, what
17 you see DFO's ongoing role being in setting of
18 conservation priorities, in taking advice from
19 groups that are more consensus-based, all of those
20 things that -- there is a lot of confusion on the
21 ground right now.

22 MR. SPROUT: Well, I think you're right. I think we do
23 have all of those roles, depending on the question
24 in front of us, so that's -- I think that's a fair
25 comment. We are a regulator, mediator,
26 facilitator, decision-maker and so forth. That is
27 true.

28 My own view is that you're not going to
29 remove those hats changing, depending on the issue
30 that's in front of the Department of Fisheries and
31 Oceans. So we will be a regulator when it comes
32 to implementing habitat and dealing with
33 developmental issues. We will become a regulator
34 when we're involved with licence issuance and so
35 forth. We will become a mediator when we're
36 involved in trying to deal with some issues where
37 the parties are separated. We're satisfied that
38 either position is represented by the parties can
39 meet the Department's objective, and we can
40 mediate an outcome.

41 But to answer your question of how I think we
42 could simplify things, I want to come back to the
43 notion that, right now, this Department, decision-
44 making rests with the Minister of Fisheries and
45 Oceans. It's a very paternalistic decision-making
46 process. All of the decisions ultimately radiate
47 up to the Minister. That doesn't mean the

1 Minister makes every decision in the Department,
2 but what it does mean is that the Minister has
3 significant decision-making authority. If you
4 look at other Departments, you'll see often they
5 have created independent boards, committees and
6 others to deal with certain issues, typically
7 allocation issues and so forth, or certainly to
8 get advice that the Minister of the day will
9 follow.

10 I think what I'm suggesting is a modest
11 change which I think will have potentially
12 substantial benefits which will, in a certain
13 area, remove the Department from the decision-
14 making, bring in others who have this
15 accountability, and the Department then implements
16 that in this narrow area. Then evaluate that, how
17 that's working, and determine to what extent it
18 can be replaced in the future, if the advisory
19 processes that I've argued are working better, or
20 alternatively, has to be continued.

21 MR. WALLCE: I regret, Mr. Commissioner, Ms. Gaertner,
22 I think there's five minutes remaining.

23 MS. GAERTNER: I guess, then, if I'm going to run out
24 of time. There's a number of things. The next
25 issue is the multiple jurisdictions and the whole
26 issue of how to create more adequate tools to
27 comprehensively address some of the key issues
28 you've talked about.

29 Mr. Commissioner, I understand from the
30 transcripts, when this was raised before December,
31 there were concerns about whether this fell within
32 your terms of reference at all. I have very
33 strong views that these are matters that you could
34 make recommendations on, based on the content of
35 the terms of reference around that. I don't need
36 to continue to pursue this today, but I would like
37 to be on record that I think this is an important
38 topic. I think it's one of the important topics
39 of this inquiry as to how to improve decision-
40 making going into the future around key issues
41 that Mr. Sprout has raised from his experience are
42 some of the key issues for conservation of sockeye
43 salmon. So I would like to be on the record that
44 I would like to have this discussion. I would
45 like Mr. Spout back and Ms. Farlinger back to have
46 this discussion. I think it extremely useful to
47 your terms of reference.

1 Q I have five more minutes and so I'm going to have
2 to ask two, or two or three very general
3 questions. One is I want to just briefly touch on
4 Strategy 6. Mr. Sprout, you were the RDG at the
5 time in which what's now Exhibit 257 was
6 requested, which is the report that was done by
7 the Pacific Fisheries Resource Conservation
8 Council to give the Department some feedback on
9 how to do the Strategy 6 review. You remember
10 that?

11 MR. SPROUT: I do.

12 Q And that report was done as a result of a fairly
13 broad group of people that are involved in Fraser
14 River sockeye salmon, the First Nations Fisheries
15 Council there. There's a number of First Nations,
16 a number of stakeholders are all there. At page 1
17 of the summary of that report, there's ten steps
18 for developing a framework with respect to the
19 Strategy 6. If I heard your evidence right in
20 chief, this was unsatisfactory or disappointing to
21 the Department of Fisheries and Oceans in that it
22 wasn't specific enough going forward with the
23 review. I just want to ask you why is it, then,
24 when this kind of consultative work is done, and
25 this effort is made to bring consensus and we
26 reach consensus, that when the Department is
27 disappointed with it, they go back internally and
28 work on things internally, which is what happened.
29 That, I think is a very unsatisfactory way of
30 dealing with consensus-building reports.

31 So could you explain that? Could you explain
32 why you've done that and how we can get this back
33 on board so that those that have worked so hard to
34 get this in place can be encouraged in their work?

35 MR. SPROUT: Well, as I stated earlier, we thought that
36 what was produced by the Council wasn't exactly
37 what we were expecting. We were expecting a
38 little bit more specificity and detail on
39 something that we could adopt. As a consequence
40 of that, went back internally to further reflect
41 on elements of what we thought needed to be
42 expanded on.

43 But I do take the point that you've raised
44 that we could have gone back to the Council and
45 said, look, thanks for what you've given, but we
46 want more material in this area. I think that's a
47 fair comment.

1 We were also mindful of the timeline we were
2 working under, trying to get something in place as
3 soon as we can notwithstanding the fact that we
4 weren't able to do it in 2010. But I do take the
5 point you're raising that one of the things we
6 could have done was gone back to the Conservation
7 Council.

8 Q Ms. Farlinger --

9 MR. SPROUT: Now, we did write --

10 Q Sorry.

11 MR. SPROUT: -- to the Conservation Council and
12 certainly thanked them, and we will use this
13 information to inform any process, and assume they
14 wish to speak to this in terms of what may have
15 been transpiring since I've left. But I do take
16 your point on that.

17 Q Ms. Farlinger, is there anything you would like to
18 add to that? I do think it's extremely important
19 in the building of consensus that these types of
20 efforts be respected and I would wonder how you
21 could -- what comments you could make with respect
22 to that?

23 MS. FARLINGER: The process we've gone through since
24 about June of last year, I think we described
25 previously, but I'll just update, I think, on
26 that. We did go to our audit group to ask for
27 advice and where we get external advice we
28 fundamentally were not able to get much support
29 for a policy review.

30 In the interim, we have used some of the
31 elements here in terms of, okay, what are those
32 themes, what are some performance measures, and
33 we're currently -- we have gone internally to the
34 Department to look at implementation across
35 programs (coughing).

36 I don't know why I couldn't have done that
37 when I wasn't talking.

38 However, at the moment, we have identified
39 some of these themes, some of these potential
40 performance measures and we are in the process of
41 identifying candidates or bodies that could
42 potentially do this review, and much of the
43 information in this report would be incorporated
44 into that.

45 Q Two very quick questions. As part of the MSC
46 certificate, Ms. Farlinger, that's related to the
47 Wild Salmon Policy implementation, the Department

1 of Fisheries and Oceans has an obligation to
2 produce a report on how the salmon fisheries and
3 aboriginal title and rights issues are to be --
4 how aboriginal treaty rights, sorry, are being
5 incorporated as it relates to sockeye fisheries.
6 That was report was due in June of 2010, as we
7 understand it, and it has not been completed.
8 Could you let us know when we can expect
9 completion of that report?

10 MS. FARLINGER: I can't give you an exact date, but
11 that's something I can come back to you on. We're
12 currently in the process of taking a look not only
13 at our own programs and how we will have to move
14 forward on the management of section 35 rights in
15 the situation we have, which is some treaties, and
16 the greatest proportion of First Nations without
17 those treaties, and we are in the process of doing
18 that work internally. So I'm going to stop there
19 and just ask --

20 MS. GAERTNER: One final question, Mr. Commissioner, if
21 I may.

22 THE COMMISSIONER: If it's quick, Ms. Gaertner.

23 MS. GAERTNER:

24 Q And that is, Ms. Farlinger, it's the experience of
25 First Nations, particularly those in treaty
26 negotiations and otherwise, that there are a
27 number of significant matters that are being put
28 on hold pending the outcome of this inquiry.
29 Could you explain is it -- are those decisions
30 being made at the regional level? Where are those
31 decisions being made as it relates to what's being
32 put on hold while we're doing this inquiry?

33 MS. FARLINGER: Those are Government of Canada
34 decisions.

35 Q So those are being made in Ottawa?

36 MS. FARLINGER: By the government, yes.

37 MR. WALLACE: Mr. Commissioner, I have one question in
38 re-examination which I can arrange to do in
39 writing. Mr. Timberg, I think, perhaps could do
40 that same, I'm not sure.

41 MR. TIMBERG: Mr. Commissioner, I have two questions.
42 I think they're very short. I think it'll just
43 take me -- I think they're short questions, and I
44 think they're short answers, if I could proceed.

45 THE COMMISSIONER: I would prefer that you put them in
46 writing, Mr. Timberg.

47 MR. TIMBERG: Okay.

1 THE COMMISSIONER: We've been going at it without a
2 break, and I think it would be appropriate to do
3 that.

4 MR. TIMBERG: Fair enough, okay. I'll do that.

5 MR. WALLACE: Thank you, Mr. Commissioner. That
6 concludes it.

7 THE COMMISSIONER: We are adjourned --

8 MR. WALLACE: Thank you. Till Monday morning at ten
9 o'clock.

10 THE REGISTRAR: The hearing is now adjourned until
11 Monday at ten o'clock.

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13 (PROCEEDINGS ADJOURNED AT 3:35 P.M. TO MARCH
14 7, 2011, AT 10:00 A.M.)
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1 I HEREBY CERTIFY the foregoing to be a true
2 and accurate transcript of the evidence
3 recorded on a sound recording apparatus,
4 transcribed to the best of my skill and
5 ability, and in accordance with applicable
6 standards.

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11 Karen Hefferland

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14 and accurate transcript of the evidence
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42 standards.

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