

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.

Tuesday, May 17, 2011

Tenue à :

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

le mardi 17 mai 2011

APPEARANCES / COMPARUTIONS

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| Jonah Spiegelman Hugh MacAulay | Government of Canada ("CAN") |
| Boris Tyzuk, Q.C. | Province of British Columbia ("BCPROV") |
| No appearance | Pacific Salmon Commission ("PSC") |
| Chris Buchanan | B.C. Public Service Alliance of Canada Union of Environment Workers B.C. ("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") |
| No appearance | 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.

| | |
|--------------------------|--|
| Phil 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") |
| Sarah Sharp | Western Central Coast Salish First Nations: Cowichan Tribes and Chemainus First Nation Hwlitsum First Nation and Penelakut Tribe Te'mexw Treaty Association ("WCCSFN") |
| Anja Brown 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") |
| No appearance | Métis Nation British Columbia ("MNBC") |

APPEARANCES / COMPARUTIONS, cont'd.

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

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PANEL NO. 36
In chief by Mr. McGowan

1 Vancouver, B.C. /Vancouver
2 (C.-B.)
3 May 17, 2011/le 17 mai 2011
4

5 THE REGISTRAR: The hearing is now resumed.

6 MR. MCGOWAN: Good morning, Mr. Commissioner, it's
7 Patrick McGowan. With me is Jennifer Chan. We're
8 counsel for the Commission.

9 The panel today will consist of two
10 individuals from the Department of Fisheries and
11 Oceans: on my left, Mr. Randy Nelson, and on my
12 right, Mr. Scott Coultish. Swear the witnesses,
13 please.

14 THE REGISTRAR: Good morning, gentlemen.

15 THE COMMISSIONER: Mr. Registrar I think their
16 microphones might not be on. Oh, there we go.

17
18 RANDY NELSON, reminded.

19
20 SCOTT COULTISH, affirmed.
21

22 THE REGISTRAR: Would you state your name, please.

23 MR. COULTISH: Barry Scott Coultish.

24 THE REGISTRAR: Thank you. Counsel.

25 MR. MCGOWAN: Thank you. Mr. Commissioner, just
26 before I commence examination of the witness, I'm
27 going to mark the Commission's next Policy and
28 Practice Report, which is at Tab 1 of our list of
29 documents. It's titled "Department of Fisheries
30 and Oceans Policies and Programs for Fisheries
31 Enforcement" dated April 19, 2011. If that could
32 be marked as the next PPR, please.

33 THE REGISTRAR: That will be PPR number 13.

34 MR. MCGOWAN: Thank you.
35

36 PPR13: Department of Fisheries and Oceans
37 Policies and Programs for Fisheries
38 Enforcement, April 19, 2011
39

40 EXAMINATION IN CHIEF BY MR. MCGOWAN:
41

42 Q Mr. Nelson, you are the Regional Director of
43 Conservation and Protection for the Pacific
44 Region?

45 MR. NELSON: Yes.

46 Q And you previously testified at this inquiry
47 primarily on the topic of habitat enforcement?

May 17, 2011

2
PANEL NO. 36
In chief by Mr. McGowan

1 MR. NELSON: Yes.

2 Q And that was April 7th and 8th?

3 MR. NELSON: I'm not sure of the exact dates, but I'll
4 take...

5 Q Okay. For the Commissioner's benefit, I
6 understand those were the dates. And, Mr.
7 Commissioner, just for your benefit, his c.v. was
8 marked as Exhibit 687. And as you've been here
9 before, sir, I won't spend any more time on your
10 background.

11 Mr. Coultish, you joined the Department of
12 Fisheries and Oceans as a Fisheries Officer in
13 1982?

14 MR. COULTISH: Yes, that's correct, on September 1st.

15 Q Okay. And within C&P you've been posted at
16 various locations around the province?

17 MR. COULTISH: Yes, that's correct.

18 Q You were the North Coast Area Chief from 2002 to
19 2009?

20 MR. COULTISH: Yes, that's correct.

21 Q And you're presently the Regional Chief of
22 Intelligence and Investigation Services for the
23 Department; is that correct?

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

25 Q And that's sometimes referred to as I&I?

26 MR. COULTISH: That's the acronym, yes.

27 Q Okay. And it's similar to a group that was
28 formerly known as the Special Investigation Unit
29 within the Department; is that correct?

30 MR. COULTISH: As a result of a reorganization, we've
31 created an intelligence, Regional Intelligence
32 Services Unit, and that stream now flows under the
33 Chief of I&I, so the plainclothes investigators
34 which formed the SIU are now under that stream, as
35 well.

36 Q Yes. Thank you. And if we could bring up our
37 list of documents, Tab 3, please. It's Mr.
38 Coultish's Work Summary/Resume. This is a copy
39 of, on the screen, sir, your work summary or your
40 resume, setting out some of the highlights of your
41 history with the Department?

42 MR. COULTISH: Yes, that's correct.

43 MR. MCGOWAN: If that could be the next exhibit,
44 please.

45 THE REGISTRAR: Exhibit 865.

46
47

May 17, 2011

1 EXHIBIT 865: Work Summary/Resume of Scott
2 Coultish
3

4 MR. MCGOWAN:

5 Q Mr. Nelson, I'm going to ask you a couple of
6 questions about the manner in which the Department
7 keeps statistics and some questions that we asked
8 you that arose from that. C&P keeps statistics
9 about occurrences and outcomes of investigations
10 and other matters related to investigations in a
11 system called DVS; is that correct?

12 MR. NELSON: Yes, it's Data Violation System, that's
13 what the acronym is.

14 Q Okay. And you also keep statistics about officer
15 effort and matters related to that in a system
16 called FEATS, F-E-A-T-S?

17 MR. NELSON: Yes, it's a time tracking system where
18 officers every day record what activity they do
19 during the day in an electronic system, and
20 provides us information on summarizing what we're
21 doing throughout the region.

22 Q Thank you. And the Commission made a request to
23 you to collect certain statistics or information
24 from these databases, as well as other sources; is
25 that correct?

26 MR. NELSON: Yes.

27 Q And we did that by way of posing to you 14
28 questions.

29 MR. NELSON: That's correct.

30 Q Some of them -- some of which had sub-questions,
31 correct?

32 MR. NELSON: Yes.

33 Q And in response to that, you, together with others
34 from C&P, put together a package of material
35 distilling information to answer these questions,
36 often in the form of charts or graphs; is that
37 correct?

38 MR. NELSON: Yes. Some of the data was obtained
39 through our -- our office in Ottawa provided a lot
40 of the statistical information and then we had a
41 group of 13 of my staff, 12 and myself got
42 together for an entire week and put other
43 information together, and we had a total of 350
44 years experience in the -- with the 13 people in
45 the room, so we were able to go back a long ways
46 and get a lot of information together.

47 Q I wonder if we could bring up the document at our

1 list at number 2, please, Mr. Lunn.

2 MR. LUNN: I have separate files for each of the
3 answers and sub-answers for number 2.

4 MR. MCGOWAN: Okay. If you could just bring up the
5 first page of the questions.

6 Q So this is the first page of the questions that
7 were posed to you?

8 MR. NELSON: Yes.

9 Q Okay. And it actually carries on up to question
10 number 14; is that right?

11 MR. NELSON: That's correct.

12 Q And you provided a package of material in response
13 to each of the questions posed?

14 MR. NELSON: Yes.

15 MR. MCGOWAN: Now, Mr. Commissioner, I'm going to come
16 back perhaps to some of the graphs in here, but
17 I'm going to suggest that collectively this
18 package be marked as the next exhibit.

19 THE REGISTRAR: Exhibit 866.

20
21 EXHIBIT 866: Commission Counsel's
22 Information Request Directed to Randy Nelson
23 (14 Questions) and DFO's Responses, April 20,
24 2011
25

26 MR. MCGOWAN: Sorry, that number again, please, Mr.
27 Giles?

28 MR. NELSON: 866.

29 MR. MCGOWAN: Thank you.

30 Q Mr. Nelson, there have been -- I'm going to move
31 on to talk about some of the previous
32 investigations into matters related to Fraser
33 salmon. There's been a number of previous
34 inquiries and reviews related to Fraser salmon; is
35 that correct?

36 MR. NELSON: Yeah, they number somewhere between 25 and
37 30 that I've heard.

38 Q Okay. And you've participated in a number of
39 those?

40 MR. NELSON: Yes.

41 Q Many of those reviews have included a review of
42 Conservation and Protection's, or at least fishery
43 officers' efforts, resources and capacity?

44 MR. NELSON: Yes.

45 Q And C&P's resources and the connection of those
46 resources to its capacity to enforce has attracted
47 significant attention over the years, both in the

1 context of those reviews and within the
2 Department?

3 MR. NELSON: Yes, it has, especially so in the two I
4 was most involved in, were '94 Fraser and 2005
5 Williams, they were very, very front and centre in
6 the both of those reviews.

7 Q And both of them had comments that were, is it
8 fair to say, somewhat critical of the Department's
9 ability to carry out its enforcement duties on the
10 river and on the waters?

11 MR. NELSON: That's a fair, fair comment.

12 Q Okay. The Commissioner has before him significant
13 evidence about present budgeting issues, both from
14 a Policy and Practice Report and information you
15 gave him when you were last here. And I'm not
16 going to cover those areas again, and you can take
17 it that the Commissioner is familiar with what's
18 in the Policy and Practice Report and your
19 evidence from last time.

20 I am going to ask you some questions,
21 however, about the implications of some of these
22 budgeting issues on the enforcement of Fraser
23 sockeye fisheries, as distinct from habitat that
24 you were talking about last time. Okay?

25 MR. NELSON: Okay.

26 Q Following the Williams review, there was an influx
27 of money to Conservation and Protection; is that
28 correct?

29 MR. NELSON: Yes.

30 Q And it was in the neighbourhood of \$1.8 million on
31 an annual basis?

32 MR. NELSON: Yes, and it was specifically targeted for
33 the Fraser River.

34 Q And it was initially referred to within your
35 Department as the "Williams money"; is that right?

36 MR. NELSON: Yes.

37 Q And this money was ultimately rolled into PICFI
38 and is now provided to you through PICFI; is that
39 correct?

40 MR. NELSON: Not the same amount, but it was rolled
41 into PICFI and is now part of that.

42 Q And the amount that you're presently getting?

43 MR. NELSON: Of the Williams money, the 1.8 million,
44 \$500,000 of that was for vehicle replacement for
45 the first two years. Then that number was taken
46 off, dropping it to 1.2 million. I believe last
47 year it was in the range of 1.1 million plus the

1 actual PICFI money was in the range of 720,000.
2 So 1.2, and, you know, close to \$2 million.

3 Q And are these funds used in part to facilitate the
4 Department's response to some of the
5 recommendations that were made in the Williams
6 Report?

7 MR. NELSON: Yes. The primary focus of the resources
8 were to deal with what was perceived to be serious
9 compliance issues with closed time patrols on the
10 Fraser River. That was the focus of attention,
11 and has continued to be the focus of attention
12 with those resources, the former Williams money.
13 The PICFI money has -- the focus of that was to
14 move us to an Intel-based enforcement, so we were
15 able to hire five new staff for the past five
16 years to try and move us in that direction.

17 Q Prior to getting the Williams money, prior to the
18 Williams Report, I wonder if you can explain to
19 the Commissioner your assessment of C&P's capacity
20 to carry out its enforcement duties.

21 MR. NELSON: It was very limited, I guess the testimony
22 I provided in the Williams Review probably spells
23 it out more clearly than I can spell it out right
24 now. But it's fair to say that we could not say
25 what was happening on the Fraser River in a lot of
26 areas during closed times. We did not have the
27 capacity to do patrols, and this Williams money
28 allowed us to bring in officers from throughout
29 the region to assist on the Fraser River, and also
30 enhance the local officers' ability to do more
31 work at all hours of the day.

32 One consequence, though, of bringing these
33 staff from other parts of the region, is it left
34 holes and gaps behind in their areas, and reduced
35 their abilities to do patrols, and some of those
36 were in coastal areas where Fraser River sockeye
37 are passing. So although we did a very good job,
38 a fairly, I'd say, an adequate job of compliance
39 over the last five years with the Williams and
40 PICFI money, it did create some holes in other
41 parts of the region.

42 Q Prior to the Williams money, did you have a
43 credible enforcement presence on the water in
44 areas --

45 MR. NELSON: In my view, no.

46 Q -- connected to sockeye fisheries, the Fraser
47 sockeye fisheries?

1 MR. NELSON: On Fraser River sockeye, no, and that view
2 would be shared by virtually every officer that
3 worked on the Fraser River watershed.

4 Q As Director of C&P for the Pacific Region, are you
5 the person who is primarily charged with
6 responding to and implementing the response to the
7 Williams recommendations in this region?

8 MR. NELSON: Yes.

9 Q Okay. I wonder if we could please bring up
10 Exhibit 77. And I take it as the Director, you're
11 also responsible for being familiar with
12 recommendations that were made previously to the
13 Department, in earlier reviews?

14 MR. NELSON: I'm very familiar with this document and
15 used it for many years afterwards to remind
16 ourselves and people in the Department of the
17 concerns that were raised in it.

18 Q I wonder if we could just turn to page 61 of that
19 document, please. Perhaps as a reminder of some
20 of the consistency with which some of these
21 matters arise, I want to start with recommendation
22 13 and just draw your attention to that. Page 61,
23 recommendation 13, this is from the Fraser Report:

24
25 We recommend that, for the 1995 fishing
26 season, DFO institute a plan to ensure that
27 an effective and credible enforcement level
28 is re-established.

29
30 So that's the Fraser Report in 1994 talking about
31 needing to re-establish a credible enforcement
32 presence, correct?

33 MR. NELSON: Yes.

34 Q Okay. Well, let's fast-forward then to 2004, to
35 the Williams Review. I wonder if we could have,
36 please, document 26 on the screen, please.

37 MR. NELSON: I would comment on that, that prior to '95
38 was very similar to prior to 2005. There had been
39 a continual erosion, reduction in resources, and
40 when '95 hit, there was an influx of resources and
41 then pared down until 2005, the next inquiry.
42 It's a pattern I've seen three times.

43 Q Yes. And I take it, as we move through your
44 evidence, you're going to suggest to the
45 Commissioner that we are again where you found
46 yourself in 1994 and 2004, at least we may well be
47 there at the conclusion of PICFI.

1 MR. NELSON: At the conclusion of PICFI we will be
2 probably in relative terms worse off than we were
3 in either of the other two.

4 Q Okay. What I'd like to do, sir, is take you
5 through some of the recommendations that Williams
6 made, and have you assist the Commissioner in
7 understanding what has been done in the Pacific
8 Region to respond to these, perhaps with reference
9 to how you've used the Williams money that has
10 been provided. Page 40 of that document, please,
11 Mr. Lunn. I'm going to start with recommendation
12 26 from the Williams Report:
13

14 At the present time, DFO through its C&P
15 Division is not maintaining a credible
16 enforcement presence and not properly
17 enforcing the *Fisheries Act* and *Regulations*
18 including those that relate to habitat
19 protection. Accordingly DFO must ensure that
20 adequate resources are available and that the
21 budget and staffing available for enforcement
22 be increased.
23

24 MR. NELSON: Yes.

25 Q I take it from what you've told us that you don't
26 disagree with Williams' assessment that there
27 wasn't a credible enforcement presence at the
28 time?

29 MR. NELSON: I agree with that statement and following
30 Williams, the increased resources, I would say we,
31 in my opinion, we have addressed this up until
32 this point.

33 Q At present --

34 MR. NELSON: On the Fraser River.

35 Q Yes. At present with respect to Fraser sockeye
36 fisheries, do you have a credible enforcement
37 presence?

38 MR. NELSON: On the Fraser River, yes. In some of the
39 approach waters with other things that have
40 happened to us in the Department, our patrol
41 capacity and presence in marine waters all along
42 the coast is much reduced. And but for on the
43 Fraser River and in the Fraser River, I am
44 satisfied and staff are satisfied that we have a
45 handle on closed time fishing activity, and we're
46 doing -- we're doing an adequate job.

47 Q And I wonder if you can assist the Commissioner

1 with some specifics as to what the Williams money
2 has been used for to allow you to have what you
3 now call a credible enforcement presence on the
4 Fraser.

5 MR. NELSON: Well, as I stated, in the first year or
6 two we brought a lot of fishery officers in from
7 outside the area, as many as 31 the first year,
8 for periods of time, not for the total summer, and
9 focused it during the summer months peak salmon
10 migration. That did create some major holes in
11 areas left behind, but the focus was on the Fraser
12 River with these resources, that's what we were
13 able to do.

14 We were able to do some helicopter flights,
15 which had been done with Fraser money from '94 and
16 then eroded away. We were able to again do
17 helicopter flights. They are a very valuable tool
18 to do a quick pass over the river and determine
19 what type of illegal activity might be going on.
20 Now, the helicopter doesn't address night time
21 work, so some of the funds were used to increase
22 night time patrols for fishery officers, and
23 vehicle and foot patrols. There were huge
24 increases in night time patrols all along the
25 Fraser River. There was increased vessel patrols
26 in daylight hours. We were able to put more
27 presence on the water at all times around the
28 clock with those resources.

29 Q When you say more presence on the water, is that
30 more fisheries officers, or the same fisheries
31 officers at times working longer hours?

32 MR. NELSON: Some of both. Bringing in some officers,
33 allowing -- putting more officers out there, but
34 we try not and have -- try to have officers not
35 working more than 12 hours and trying to make sure
36 they get a day or two off a week. There is a
37 limit. There is a maximum to how much presence
38 you can have, and that's an overall capacity issue
39 which we have to try and juggle to try and make
40 sure where officers aren't working too long of
41 hours. It isn't just a matter of getting more
42 money for more patrols and overtime. At some
43 point you need to have more bodies.

44 Q You mentioned overtime in your answer there. Was
45 there a significant increase in overtime allowed
46 for with the Williams money?

47 MR. NELSON: Yes, there was.

1 Q Okay.

2 MR. NELSON: And in relation to today's numbers, about
3 60 percent of the budgets on the Fraser River for
4 Conservation and Protection fishery officers is
5 this PICFI-Williams money, so it's more than half.

6 Q I'm going to come back to the overtime issue a
7 little bit later and take you to a graph on that,
8 sir. But I want to move now to recommendation 29:

9
10 Illegal fishing in the Fraser River has been
11 described as rampant and out of control.
12 This is unacceptable. DFO must properly
13 enforce the *Fisheries Act* and *Regulations* and
14 initiate measures to provide a reasonable
15 estimate of the scope of this illegal
16 activity and the number of fish actually
17 taken.

18
19 That was the state of affairs in 2004, according
20 to Williams. Have you been able to adequately
21 address illegal fishing in the time that's
22 followed?

23 MR. NELSON: On the Fraser River, in my view, and the
24 view of staff that work on the Fraser River that
25 have talked to me, we have done a reasonable job
26 of the illegal fishing activity. That isn't to
27 say we have addressed the illegal sales issue.
28 That's a different story. But as far as the
29 amount of illegal fishing activity and the amount
30 of unknown how many fish are being taken
31 illegally, we can say with a high degree of
32 certainty that it may be in the hundreds of
33 thousands, but it's certainly not in the millions.

34 Q Okay. Well, that sort of takes me to my next
35 question. The second part of this says:

36
37 DFO must properly enforce the *Fisheries Act*
38 and *Regulations* and initiate measures to
39 provide a reasonable estimate of the scope of
40 this illegal activity...

41
42 Now, you've just given the Commissioner a number
43 in the hundreds of thousands. Is that the
44 Department's assessment of the scope of illegal
45 activity at present?

46 MR. NELSON: No, that's my view based on talking to
47 staff. It's so hard to put a handle on illegal

1 numbers, because you don't count them. When
2 you're out there and find somebody, you don't
3 really know what percentage of the illegal
4 activity you're encountering. You can -- so it's
5 kind of a -- more of a feel or gut instinct, based
6 on the years of experience that we couldn't say in
7 '94 or 2005 that there weren't millions of fish
8 being taken illegally. We now feel we can say
9 that there aren't.

10 Q Okay. You made reference to a gut feeling. Your
11 number of 100,000, is it based on any statistics
12 or analysis or is it --

13 MR. NELSON: No.

14 Q Maybe you can explain how you come to that
15 assessment.

16 MR. NELSON: No, it's one of the difficulties that we
17 have in the Department is trying to estimate the
18 amount of illegal activity, and what that -- what
19 that number might mean. We regularly over the
20 years have provided some of this catch information
21 to our resource managers, but they sometimes
22 aren't interested in it, sometimes don't know what
23 to do with it, and it doesn't fit within existing
24 models. And I know there's been -- there's been
25 some attempts to try and measure that and include
26 it in some of the overall harvest estimates, but
27 nothing's been successful to date.

28 Q Mr. Williams recommended that measures be put in
29 place to provide a reasonable estimate of the
30 scope. Is there any such structure that's been
31 put in place?

32 MR. NELSON: No.

33 Q Okay. Has the Department satisfied this
34 recommendation?

35 MR. NELSON: Not in my view, no.

36 Q Okay. Moving to the next recommendation, which is
37 number 30:

38
39 Enforcement must also include adequate
40 presence to deter the concealing of over
41 harvesting of fish by participants from all
42 sectors.

43
44 What has the Department done since the Williams
45 Report to respond to this recommendation?

46 MR. NELSON: I guess I'm looking back here, I'm trying
47 to understand "deter the concealing of over

1 harvest". I'm struggling with trying to
2 understand exactly what that is. Like, I mean,
3 hiding them from being counted, or like it's sort
4 of related to illegal fishing.
5 Q Okay.
6 MR. NELSON: But I'm not sure on that one.
7 Q Has the Department or have you as the person
8 charged with responding to these recommendations,
9 I guess, sort of developed a view as to what your
10 understanding of his recommendation is?
11 MR. NELSON: I guess maybe I'm focusing too much on the
12 word "concealing". If I read the first part
13 again, "Enforcement must also include an adequate
14 presence", I would say we have had an adequate
15 presence on the water, and presence is the primary
16 deterrent in any enforcement, being present is the
17 most important. So I would say we've done an okay
18 job over the last five years with the resources
19 we've had at providing an adequate presence on the
20 water.
21 Q There is also reference in there to the issue of
22 overharvesting, which I take it to respond to one
23 must have an understanding of what the level of
24 harvest is; is that fair?
25 MR. NELSON: Yes. And --
26 Q Does C&P -- sorry, I didn't mean to interrupt you.
27 MR. NELSON: No, and as I have said earlier, I would
28 say we have a fairly -- we're fairly confident
29 that the amount of overharvest or illegal fishing
30 is not in the millions. There is some going on,
31 absolutely. But there is no way to accurately
32 determine what that amount is.
33 Q Does C&P have any regular involvement in auditing
34 catch reports?
35 MR. NELSON: No, we've tried a number of times and
36 taking, as I said, the information we have to
37 Resource Management, and it's been really
38 difficult sometimes providing the information. I
39 could give a number of examples that where we have
40 provided some information on catch monitoring but
41 it isn't acted upon.
42 Q Okay. We may come back to that issue a little bit
43 later. I want to move on now to recommendation --
44 I'm going to skip 31, and we will come back to
45 that shortly. It's the sale issue and I want to
46 deal with that separately. So let's move on to
47 32:

1 DFO should develop and have in place as early
2 as possible in 2005 a system to more
3 accurately record illegal nets and fishing in
4 the Fraser River and the approach waters.
5 This system should include overflights at
6 varying times during closed periods of all
7 waters in order to provide for accurate
8 assessment of the number of illegal
9 activities.

10
11 Let's start with -- break this down and start with
12 the first part, "a system to more accurately
13 record illegal nets and fishing in the Fraser
14 River". Have you got that?

15 MR. NELSON: I think there always has been an okay
16 system of documenting illegal nets. What we
17 didn't have is the capacity to go out there and
18 deal with them. Net fishing is -- gillnet fishing
19 is more prevalent in the Lower Fraser River, and
20 they have very accurate net counts of nets that
21 they seize. In the Mid and Upper Fraser River
22 it's some gillnetting and some dip netting. but in
23 all cases there's accurate recording of numbers of
24 nets.

25 Q Have you improved the accuracy of your recording
26 of illegal nets or fishing in the approach waters?

27 MR. NELSON: No. No, as I said, some of our capacity
28 has actually been reduced over the last number of
29 years, along with increases in other priorities
30 that are coming along.

31 Q With respect to overflights, have they increased?

32 MR. NELSON: Yes. In, as I mentioned, 2005 we have
33 somewhere in the range of 75 hours, I believe, is
34 flown in the Lower Fraser and about 75 hours in
35 the Interior on an annual basis.

36 Q You're making reference there to --

37 MR. NELSON: Helicopter time, sorry.

38 Q Yes.

39 MR. NELSON: Yeah, helicopter time.

40 Q You're referencing overflights on the Lower Fraser
41 and Upper Fraser, correct?

42 MR. NELSON: Yes. Yes.

43 Q What about the marine and approach waters, what's
44 the state of overflights there, from 2005 to
45 present?

46 MR. NELSON: There has been a number of years, around
47 that time period there was a provincial airlines,

1 contracted aircraft to patrol our coastal waters,
2 and they have patrolled as much as 1,500 hours, I
3 believe. But that number has been reduced in last
4 years to around 1,100 hours. That covers the
5 entire coast. But it is a way of detecting
6 activity. However if you don't have the capacity
7 on the water to follow up on what you're seeing,
8 you may identify potential areas, but if you don't
9 have the proper on-the-water system to deal with
10 it, it isn't really dealing with the issue.

11 Q How many years have you been involved in fisheries
12 enforcement?

13 MR. NELSON: Thirty-four and a half.

14 Q In your 34-plus years, have you formed a view as
15 to whether there is any connection between officer
16 presence and the degree of illegal activity?

17 MR. NELSON: Absolutely. Absolutely. We've seen it a
18 number of times leading up to both the previous,
19 the most recent inquiries we've mentioned here,
20 '94 and 2005, we saw an increased presence of
21 illegal fishing activity. And you say, how do you
22 know that? Well, you go out and you find trails
23 with lots of active use, you find blood on rocks,
24 you find nets. The activity was quite large.

25 And when the resources came along to deal
26 with it, we found a whole lot of activity -- you'd
27 go out on patrols early, the first year, for
28 example, I remember with the 2005 and with the '94
29 increase in resources, the patrol activity in
30 initial stages, you would find a lot more illegal
31 activity. And over the course of just a month or
32 two of being on the water and being present, you
33 would find less.

34 If you're not out there, people will take
35 advantage of it. Salmon are a valuable commodity,
36 and it's not just First Nations that are involved
37 in this. There are a lot of people out there that
38 fish illegally.

39 Q You've talked about the increase of resources and
40 especially the increase of effort on the river.
41 Have you given any thought, or has the Department
42 done an assessment of what the anticipated result
43 might be of the reduction in overflight hours on
44 the marine and approach areas and some of the
45 other reduction in capacity in those areas?

46 MR. NELSON: Sorry, ask that again, please? Has the
47 Department considered what...?

1 Q Considered what the result might be in terms of
2 levels of illegal activity in the marine and
3 approach areas of the reduction in overflight
4 hours and the other sort of cumulative reduction
5 in marine capacity.

6 MR. NELSON: We've certainly identified it. Like there
7 are a number of things, like the reduction in
8 hours means you're out there less, of the aerial
9 surveillance flights. We have less access to
10 patrol boats. There was a time that we had 30 or
11 40 patrol boats on the coast. We now have access
12 to four, and those four are owned by the Coast
13 Guard and we pay for their services to provide us
14 a patrol platform. And those services are getting
15 more costly each year. And they also had marine
16 enforcement officers, which were trained Coast
17 Guard staff on board those vessels. At one time
18 we had 55 of those, and those have been eliminated
19 now. So there's so many things that have impacted
20 the reduction in numbers of eyes and ears out
21 there.

22 We've countered it with the aerial
23 surveillance program, and then we've moved to more
24 use of high speed rigid hull inflatables, Zodiac-
25 style boats. We have some of those, 25, 30 feet
26 long, and they are a good fast way of getting out
27 on the water, but they're very costly to run and
28 they're in inclement weather or rough weather,
29 they don't do the job that a patrol boat would.
30 So you should have a combination.

31 Q Do you now have a reduced presence in the approach
32 waters as compared to, say 2005, when the
33 overflights were at their peak, or (indiscernible
34 - overlapping speakers).

35 MR. NELSON: Yeah, reduction in overflights, for sure.
36 The patrol boat capacity has probably been
37 relatively the same with the four. Those large
38 cuts were before that.

39 Q Okay.

40 MR. NELSON: And it's probably been relatively stable.
41 But the other thing that's compounded it is the
42 other priorities that keep coming on, especially
43 in coastal waters, where we have requirements for
44 -- there's new marine protected areas, there's
45 **Species at Risk Act** legislation that we have to
46 enforce, there's shellfish sanitation concerns,
47 there's new patrol standards for shellfish. So

1 all of these things have to be addressed. So
2 although since 2005 the number of officers in
3 coastal marine areas has remained relatively
4 stable, the amount of other duties that have been
5 added to their plate draws them away from
6 patrolling for, checking for Fraser River sockeye
7 impacts.

8 Q Thank you. Are there areas where sockeye
9 fisheries take place where Fraser sockeye may pass
10 that either aren't patrolled at all, or very
11 infrequently patrolled?

12 MR. NELSON: Oh, certainly areas that are infrequently
13 patrolled. Up off the West Coast of the Queen
14 Charlotte Islands there's -- it's very difficult
15 to get out there, especially when you don't have
16 larger patrol vessel capacity. There's areas on
17 the coast that get minimal -- there's areas
18 throughout the region that get minimal attention.

19 Q Moving to recommendation 33:

20
21 DFO should maintain a complete record, by
22 species, of all fish found in confiscated
23 nets.

24
25 Is that done?

26 MR. NELSON: Yes.

27 Q Okay. And where is that stored?

28 MR. NELSON: In each of the offices and each of the
29 areas would have that information.

30 Q If I were to ask you to provide information about
31 the number of sockeye found in confiscated nets in
32 2010, Fraser sockeye, could you do that?

33 MR. NELSON: Yes. Not right now, but I could.

34 Q No, I was just --

35 MR. NELSON: Yeah.

36 Q That capacity is in place now?

37 MR. NELSON: Yeah.

38 Q 34:

39
40 Night patrols should be undertaken on a
41 regular but variable basis, particularly in
42 those areas where illegal fishing is being
43 reported.

44
45 Did that occur?

46 MR. NELSON: Yes. That's one of the items I think
47 we've addressed fairly well.

1 Q Is it the overtime that has in part allowed that
2 to take place?

3 MR. NELSON: It's one of the important items that's
4 helped us do that. We also shift officers to, you
5 know, we have the ability to shift them to work
6 regular hours through the night. But with the
7 numbers that you have, overtime is a vital part of
8 maintaining the presence because of the number of
9 officers that we have.

10 Q I wonder if we could have page 123 of the Policy
11 and Practice Report, please. Thank you. Mr.
12 Commissioner, this graph is taken from Exhibit
13 866, but for convenience I'm just taking you to
14 the copy of it that's in the Policy and Practice
15 Report.

16 Mr. Nelson, this graph, and perhaps I'll just
17 summarize what I understand and you can tell me if
18 I've got it right, summarizes the quantity of
19 overtime expenditures in the Lower Fraser and BC
20 Interior and indicates by the colour distinction
21 whether they are A-base or B-base funded; is that
22 correct?

23 MR. NELSON: That's correct, the darker colour is the
24 B-base funding.

25 Q Okay.

26 MR. NELSON: On a year-by-year basis. The upper part
27 being Lower Fraser, the lower part BC Interior.

28 Q Okay. So looking on the screen, then, the pink-
29 coloured hours are B-base funded and the blue-
30 coloured hours are A-base funded; is that correct?

31 MR. NELSON: Yes.

32 Q And we see a substantial increase in overtime
33 hours in 2005. Can you explain to the
34 Commissioner how that came about?

35 MR. NELSON: That was the Williams -- Williams money.

36 Q Is the pink we see there the Williams money?

37 MR. NELSON: Yes.

38 Q And does that give us a pretty good sense of
39 what's going to happen to the overtime capacity if
40 PICFI sunsets and the Williams money is not
41 replaced?

42 MR. NELSON: Yes. It's compounded further by an
43 existing salary dollar shortfall that isn't shown
44 in this graph, like you've got to -- if PICFI
45 sunsets, there is a dramatic shortfall in salary
46 dollars for the number of staff we have. So that
47 number could actually drop and maybe even not be

1 available, of the light blue colour. Like if the
2 B-base or the PICFI-Williams money, the dark
3 colour ends, that doesn't mean we would be left
4 with what you see as light blue. It could
5 actually be worse.

6 Q Okay. Could we please have our document number
7 11, please.

8 THE COMMISSIONER: Just before you go there, did the
9 Williams Report get marked previously as an
10 exhibit, Mr. McGowan, or should we mark it now?

11 MR. MCGOWAN: It should be marked as an exhibit, and I
12 believe I neglected to do that. Thank you, Mr.
13 Commissioner.

14 THE REGISTRAR: That will be 867.

15 MR. MCGOWAN: Just before Mr. Giles does that, just let
16 me check my notes here.

17 I understand it is already marked as Exhibit
18 606, Mr. Commissioner.

19 THE COMMISSIONER: Okay. Thank you.

20 MR. MCGOWAN:

21 Q Now, we've heard about the 128 million you got in
22 2005, and as I understand it, in 2006 there was an
23 effort on your part and the part of those that
24 work under you to set out what's being done with
25 the money and some of the capacity increases that
26 have occurred; is that right?

27 MR. NELSON: Yes. I wasn't in my position on that
28 date, but I believe I was working in Vancouver
29 helping assist, and this information was compiled
30 to report through to the Department of what we
31 were doing with the increased funding from
32 Williams.

33 Q Okay. And does this provide sort of a nice
34 synopsis of the types of capacity increases that
35 occurred because of the Williams money?

36 MR. NELSON: Yes. Looking at the top one there, it
37 says "21% increase" in Fraser Valley East, "FVE",
38 so regular night patrols. "BCI" is BC Interior,
39 "200% increase" in patrols and night patrols for
40 both Northern Interior BC and Lillooet. So, yeah,
41 it just describes the various things that we were
42 able to improve on from the previous year
43 throughout the Fraser River watershed.

44 MR. MCGOWAN: If that could be the next exhibit,
45 please.

46 THE REGISTRAR: That will be marked as 867.

47

1 EXHIBIT 867: Williams Review -
2 Implementation Update, February 22, 2006
3

4 MR. NELSON: One I note there, too, in the second box,
5 lower on the right column it says 10 times more
6 night time patrols in Fraser Valley West. That's
7 a very dramatic increase.

8 MR. MCGOWAN:

9 Q Yes. Thank you. With the Williams money and the
10 capacity that you have presently, do you have a
11 credible enforcement presence on the water insofar
12 as it relates to fisheries enforcement of Fraser
13 River sockeye fisheries?

14 MR. NELSON: I feel we do, yes.

15 Q Okay. If PICFI sunsets and the money is not
16 replaced, will you continue to have a credible
17 enforcement presence, in your assessment?

18 MR. NELSON: No, and I must remind -- be reminded of
19 not just the Williams-PICFI money, but the
20 existing salary dollar shortfall that we have
21 outside of those would further diminish the
22 capacity.

23 Q And does the Strategic Review of the impact of
24 that also contribute?

25 MR. NELSON: It would. I haven't -- I don't have it,
26 it's something that has been identified, it's
27 another potential cut, but I don't know what it
28 might bring.

29 Q You've talked about some of the benefits that have
30 come because of the Williams money. Do we take it
31 that the removal of the Williams money, that sort
32 of the opposite will occur and those benefits will
33 be lost? Is that your evidence?

34 MR. NELSON: Yes. Even if they are maintained, if the
35 salary shortfall isn't brought up, we would
36 experience some losses even if they are
37 maintained, if that makes sense. Like there's
38 another -- there's another annual debt that we
39 have for the number of staff we have throughout
40 the region and if we are to bring ourselves within
41 the allotment we have, even if PICFI and Williams
42 are carried forward, we would still see some,
43 experience some reductions.

44 Q You've set out in your evidence here today and the
45 last time you were here concerns about the impact
46 of losing PICFI and what it will mean to you,
47 especially when put together with some of the

1 other reductions you've received, such as the
2 salary shortfall, the Strategic Review, the loss
3 of marine enforcement officers, you spoke last
4 time about the reduction in aboriginal guardians.
5 Have you brought these concerns and your
6 assessment of what the impact of this will be
7 cumulatively to the attention of your superiors?

8 MR. NELSON: Yes.

9 Q Have you made the RDG in this region or Mr. Steele
10 in Ottawa aware of your concerns?

11 MR. NELSON: Yes, both past RDGs and current ones, and
12 both past DGs of C&P in Ottawa and current one.

13 Q And do you know if your concerns have made their
14 way up to the Deputy Minister?

15 MR. NELSON: Yes, I actually met with the Deputy last
16 September and directed my concerns to her, as
17 well.

18 Q And what have you been told by your superiors, the
19 RDG, or Mr. Steele, or anybody else, regarding
20 whether you should anticipate additional funds to
21 cover off the shortfall that will exist at the
22 sunset of PICFI?

23 MR. NELSON: I've been told by both that to prepare for
24 those funds not to be coming again next year.

25 Q And do you have an exit strategy or a transition
26 plan in place to allocate your resources and
27 continue on with your enforcement activities at
28 the conclusion of PICFI?

29 MR. NELSON: I do personally, I'm retiring, but...

30 No, it's not a laughing matter, but we've
31 come up with a plan, and that plan, we met with
32 the same group of 12 staff that report to me, and
33 said if we, the worst case scenario or the case
34 scenario that we've been told, would result in the
35 loss of 30 to 40 fishery officers in the region.
36 So we said, well, what would that organization
37 look like, and with the focus on moving to an
38 Intel-led model, we still want to do that. If we
39 take that, the end result would be an organization
40 with 30 to 40 less fishery officers throughout the
41 region, that's about 25 percent of our existing
42 allotment, and would result in the closing of, we
43 estimated, 12 to 13 of our existing 35 offices
44 throughout the region. So there would be large
45 areas on the coast without fishery officer
46 presence, requiring increased travel time for
47 those areas to get any patrol coverage. It's a

1 massive number. And in order to get to that, it
2 would take us probably four to six years of not
3 hiring any new officers to get the numbers down to
4 that. So we had those discussions.

5 Q What would it mean to your ability to enforce
6 Fraser River sockeye fisheries? I'm not speaking
7 to any particular (indiscernible - overlapping
8 speakers).

9 MR. NELSON: Well, and I looked at that, too. In
10 relative terms, if we were to apportion those
11 cuts, it would result in, you know, 25 percent
12 less officers on the Fraser River, which would be
13 ten to 15 less officers on the Fraser River. So
14 the capability and the capacity to do the regular
15 type patrol activity that we've been doing would
16 be much reduced, and it would not be -- we would
17 be back to levels lower than we were in 2005 or in
18 '94. I don't know how far back you'd have to go
19 to get to numbers that low, but it would be a long
20 time ago.

21 Q The Pacific Region currently has more fisheries
22 officers than any other region in the country; is
23 that correct?

24 MR. NELSON: We have the largest region, and we have
25 the largest number of officers, but there are some
26 other regions that you could fit on Vancouver
27 Island. So it's if you look at numbers, you have
28 to look at the workload issues, as well.

29 THE COMMISSIONER: Mr. McGowan, just for clarity -- I'm
30 sorry.

31 MR. MCGOWAN: Yes.

32 THE COMMISSIONER: Just for clarity, if you could just
33 clarify, I think you're talking about the same
34 thing here. When you were here last time, you
35 talked about monitoring and habitat enforcement.
36 But this reduction would apply, I take it, to both
37 fisheries, as well as to habitat?

38 MR. NELSON: That's, oh, absolutely. Yes.

39 THE COMMISSIONER: You're not talking about two
40 separate things.

41 MR. NELSON: No, no, it's all -- we do the habitat
42 enforcement and fisheries enforcement, everything
43 to do with enforcement of **Fisheries Act** is done by
44 fishery officers.

45 THE COMMISSIONER: So your answers you've been giving
46 here today would apply equally to...

47 MR. NELSON: Absolutely.

1 THE COMMISSIONER: Thank you very much.

2 MR. NELSON: Yes.

3 MR. MCGOWAN: Thank you, Mr. Commissioner.

4 Q I'm going to move now, sir, to the issue of
5 illegal sales, and I want to start back with the
6 Williams Report, Exhibit 606, page 41. I'm going
7 to take you, sir, to recommendation 31. This is
8 Mr. Williams' assessment in 2004:

9

10 Throughout the South Coast there is an
11 ongoing problem with the illegal sale of
12 fish, both fish that have been caught as part
13 of an FSC entitlement and fish that have been
14 illegally harvested. We heard little
15 evidence of any serious effort to prevent
16 this activity. This situation is intolerable
17 and must be addressed by DFO.

18

19 That's a recommendation that I take it you're
20 aware of?

21 MR. NELSON: Yes.

22 Q And have efforts been made to respond to that?

23 MR. NELSON: There have been efforts made, and but it's
24 a recommendation I'd say we have not achieved.
25 It's still an issue. And when this refers to
26 South Coast, I'm looking at that to mean Vancouver
27 Island is what we call South Coast as an area, but
28 I'm assuming that this also means southern B.C.,
29 as in the Fraser River.

30 Q Well, maybe let me ask the question this way. The
31 report identifies a concern with respect to the
32 South Coast. Is it your assessment that a similar
33 concern also applies in other areas, or did apply
34 at that time?

35 MR. NELSON: It's a similar issue coast-wide.

36 Q Okay. When you say coast-wide, does that
37 include...

38 MR. NELSON: Prince Rupert, Vancouver Island, and even
39 in the Yukon.

40 Q Okay. And what about non-coastal areas, Lower
41 Fraser or Upper Fraser?

42 MR. NELSON: Yes, it's an issue in all regions, in all
43 areas within the region.

44 Q Okay. Now, I'm speaking of the 2004 timeframe.
45 Did that concern apply in your assessment more
46 broadly than to just South Coast, but to other
47 areas as well at that time?

1 MR. NELSON: Yes.

2 Q Now, was part of the response to this
3 recommendation, further investigations, including
4 what came to be Project Ice Storm?

5 MR. NELSON: Yes.

6 Q Mr. Coultish, I wonder if you could take a moment
7 and explain to the Commissioner, without getting
8 to the results yet, but explain sort of the design
9 and the process that was undertaken in Project Ice
10 Storm, please.

11 MR. COULTISH: The issue of illegal sale of fish,
12 salmon, from the Fraser River, out of all sectors,
13 but primarily out of the aboriginal food, social
14 and ceremonial fishery, has been an issue, a long-
15 standing issue for the organization and was
16 highlighted in the Williams Report. The issue
17 concerned or to consider is that sale is primary
18 root cause of illegal fishing, primarily. It's an
19 economic-based issue, and most of the fish clearly
20 illegally harvested is intended to be sold.

21 As a result of this, the Department and both
22 general duty uniformed officers and a group of a
23 contingent of officers known as our SIU, Special
24 Investigations Unit, conducted over a couple of
25 years a period of assessments as to try to
26 determine the nature and size of this issue of
27 illegal sales, which led to an operation in 2005
28 which was augmented by the funding provided by
29 Williams directly to do an assessment of the cold-
30 storage facilities located in the Lower Mainland
31 and Vancouver Island, to determine the amount of
32 food, social and ceremonial fish - this is fish
33 that is harvested by First Nations through a
34 communal licence that are not intended and not
35 allowed to be sold - to determine the quantity of
36 this fish in these facilities.

37 As a result of this investigation that
38 primarily occurred throughout the summer and early
39 fall of 2005, an audit of that information,
40 inspection, and so on, was conducted by DFO staff,
41 resulted in just under two million pounds of
42 sockeye found in the Lower Fraser and on Vancouver
43 Island. And as a result of that, the Department
44 hired an independent audit from Audit Canada to
45 come in and review the findings, which were
46 confirmed, that again approximately two million
47 pounds of sockeye were found in these cold storage

1 facilities during that project.

2 Q Okay. And there was a memorandum to the Deputy
3 Minister prepared summarizing the findings of
4 this; is that correct?

5 MR. COULTISH: Yes, that's correct.

6 Q If we could have document 24, our list of
7 documents, 24, please. This is that memorandum?

8 MR. COULTISH: Yes, that's correct.

9 MR. MCGOWAN: If that could be the next exhibit,
10 please.

11 THE REGISTRAR: Exhibit 868.

12
13 EXHIBIT 868: Memorandum for the Deputy
14 Minister re Disposition of Fraser River FSC
15 Fish in Cold Storage in the Fraser Valley
16 (Information Only), updated June 6, 2006
17

18 MR. MCGOWAN:

19 Q And I'm looking at the second bullet there --
20 pardon me, the third bullet under the summary:

21
22 The audit has determined that at the end of
23 the fishing season (September, 2005), an
24 estimated 1.9 million pounds or approximately
25 354K pieces of food, social and ceremonial
26 (FSC) salmon was in cold storage in 110
27 plants throughout the lower mainland.
28

29 Is that a fair summary of --

30 MR. COULTISH: That's accurate, yes.

31 Q Okay. And this number comes from approximately
32 September 2005?

33 MR. COULTISH: Yeah, the inspections were conducted
34 throughout the summer into September of 2005.
35 This number was determined as a result of the
36 information being put together in 2006.

37 Q Was there a commercial fishery that year of any
38 type?

39 MR. COULTISH: Not in the Fraser River, no.

40 Q Okay. These fish were labelled as FSC fish?

41 MR. COULTISH: They were determined to be FSC fish.
42 Not many of them were labelled FSC, but they were
43 determined to be FSC fish caught that year.

44 Q Okay. Do you know what the total estimated catch
45 in the Lower Fraser of FSC fish was in 2005, or
46 reported to be?

47 MR. COULTISH: I believe it was about 457,000 pieces,

1 somewhere thereabouts.

2 Q Was this fish in the cold storage facilities
3 processed in any manner?

4 MR. COULTISH: It was in a variety of -- processed in a
5 variety of manner and conditions, from being
6 glazed, which is where the fish are generally
7 processed and then dipped in salt water and so on,
8 and fast frozen, allowing the fish to maintain in
9 cold storage for longer periods of time without
10 degrading. The fish was -- product was found that
11 was smoked, had already been processed, packaged
12 in small packages and so on, filleted and in some
13 cases custom packaged where the fish had been
14 packaged in smaller portions in the vacuum-pack
15 type packaging, typically that you would see in
16 commercial sales, you know, people are --
17 commercial retail sales, and so on, as well as in
18 individual, people will do it individually for
19 themselves, as well. Most or all of this was
20 consistent with the type of processing that you
21 would see for commercial fish and how it was
22 handled and packaged.

23 Q Are there costs associated, to your knowledge,
24 with keeping fish in cold storage?

25 MR. COULTISH: Yes. All of this, if done by a
26 processing facility, a plant or -- there's a cost
27 attributed to it. And the interest clearly for
28 ourselves is that for food, social and ceremonial
29 fish that is harvested to be distributed amongst
30 the communities, First Nations communities,
31 generally are not going to incur a lot of cost
32 because somebody has to pay for that. And in the
33 situation where we have this volume of product
34 that has been processed in varying ways, there are
35 substantial costs attributed to that. And hence
36 in various ways of having that paid for, it leads
37 us to believe that this product was simply not
38 just for food, social and ceremonial use.

39 Q You made reference to the Department retaining an
40 external auditor to essentially audit the numbers;
41 is that correct?

42 MR. COULTISH: Yes, that's correct.

43 Q Okay. I wonder if we could have our document 23,
44 please. Is this a document setting out the
45 numbers as checked by the auditors of the number
46 of fish in cold storage?

47 MR. COULTISH: Yes. On the left-hand side, the blacked

1 out would be the owner of the products, and the
2 right side are the tallies of the amounts found.
3 Q Now, I don't want you to identify anything that's
4 written under the black specifically, but
5 generally speaking would those be the names of
6 individuals that owned the fish, or something
7 else?

8 MR. COULTISH: Both individuals and companies.

9 Q Okay.

10 MR. COULTISH: As many of the -- many of the people who
11 own this product opened and identified companies,
12 and this fish would then be held under the company
13 name.

14 Q Okay. And if we look through that will we see
15 that several of the owners had quantities in the
16 hundreds of thousands of pounds?

17 MR. COULTISH: Yes, that's correct.

18 MR. MCGOWAN: If that could be the next exhibit,
19 please.

20 THE REGISTRAR: Exhibit 869.

21
22 EXHIBIT 869: 2005 Plant Audit Lower Mainland
23 and Vancouver Island Compilation of sockeye
24 by owner, May 23, 2006, Consulting & Audit
25 Canada
26

27 MR. MCGOWAN:

28 Q Now, Mr. Coultish, the Department itself prepared
29 an Operational Intelligence Assessment following
30 the conclusion of Project Ice Storm; is that
31 correct?

32 MR. COULTISH: Yes, that's correct.

33 Q And that was authored -- the primary author on
34 that was a Mr. Melvin?

35 MR. COULTISH: That's right, Fishery Officer Rob
36 Melvin.

37 Q If we could please bring up our document 22. If
38 we could go forward to the third page of that
39 document. The very first, the "Executive
40 Summary/Key Findings", number 1:

41
42 The FSC First Nations Fishery on the Lower
43 Fraser River is largely out of control and
44 should be considered in all contexts a
45 Commercial Fishery.
46

47 I'm going to ask you, we had Williams, who made

1 his comments with the South Coast. We now have
2 findings here related to the Lower Fraser. Is
3 that -- well, let me ask you. Is that a finding,
4 first of all, that the Department accepted, Mr.
5 Coultish, as being accurate?

6 MR. COULTISH: Well, I'm sure the -- many of the people
7 in the Department probably wouldn't like the way
8 it's written, but I think what it's intended to
9 state is that the intent of the FSC fishery under
10 First Nations, as provided by *Sparrow*, was to
11 provide for food, social and ceremonial purposes.
12 And I believe that what this comment makes
13 reference to is the overwhelming information in
14 evidence that we've had in C&P is that the
15 majority of fish harvested under these communal
16 licences is sold.

17 Q And there were a number of recommendations that
18 were also put forward in this document, over on
19 page 4; is that correct?

20 MR. COULTISH: Yes, that's correct.

21 Q Okay. I'm going to come back to those
22 recommendations in a moment. I want to direct a
23 question to you, Mr. Nelson, as the Director in
24 the Pacific Region, we have Mr. Williams'
25 assessment in 2004, on the heels of that, Project
26 Ice Storm, which comes up with the assessment I've
27 just read. What did that tell you about the state
28 of matters with respect to the illegal sale of
29 Fraser sockeye in the province in 2005/2006?

30 MR. NELSON: I think it confirmed with what fishery
31 officers and Conservation and Protection thought
32 was occurring. There were a lot of people in the
33 Department that didn't accept that as we find with
34 something that's that large of a number. That's
35 one reason why the audit was done. I wanted an
36 independent audit of it to verify. And even after
37 that there was still people say, well, that, you
38 know, this can't be right. This can't be so. And
39 it comes back to what I feel one of the large gaps
40 are the accuracy of the catch reporting that we
41 have in all fisheries, but particularly on this
42 one.

43 As I said, we weren't surprised by the
44 results. I went forward and asked and said if we
45 want to begin addressing this, this is something
46 large. To try and address an issue like this
47 where fish are in commercial storage plants and

1 trying to be able to track those, there's a number
2 of investigative techniques and enforcement
3 techniques that you would use, but it would
4 require a lot of resources and a long time to
5 address. It's not -- you can't do it by putting a
6 few fishery officers out there. This is a big
7 project that would take a lot of resources. And I
8 raised that and we didn't get any additional
9 resources. We tried to do a number of other
10 projects to address it, as Scott will probably get
11 into, to try and address some of the illegal
12 sales, but in my view we haven't begun to address
13 this issue.

14 Q Are you doing a credible job in this region at
15 present enforcing matters related to illegal sales
16 of Fraser sockeye?

17 MR. NELSON: Not in my view.

18 Q As a result of Project Ice Storm, from that
19 investigation were any charges laid?

20 MR. NELSON: I don't believe so. As I understand it,
21 you know, it wasn't illegal to store them there,
22 and the fish were moved, small quantities, bit at
23 a time, throughout the course of -- over the whole
24 next year, I believe. So that wasn't an offence.
25 As I said, to begin to determine and ascertain
26 where that fish was going, would be a massive
27 undertaking.

28 Q If we could turn to the next page of this
29 document, please. These are some of the
30 recommendations that came out of that, and as
31 you've just said the storage of fish, of course,
32 is not illegal. It's the sale that would have to
33 occur for it to be illegal. And if we look at
34 recommendation 16, it appears that may have been
35 targeted at that:

36
37 Follow the FSC salmon that was in storage
38 during 2005 and investigate each suspect so
39 to where those fish went.

40
41 MR. NELSON: Once the fish is in storage you'd pretty
42 much have to be able to track it, and if you're --
43 it's physically impossible to -- the fish, there
44 was nothing wrong with the product being there.
45 There's no rules about it. But it's so easy for
46 that product to be changed, transferred to another
47 location. The ability to follow it is virtually

1 impossible. Perhaps Scott can...

2 MR. COULTISH: Just a point of clarity.

3 Q Certainly. Yes, please.

4 MR. COULTISH: Presently there are regulations,
5 provincial legislation that provides guidelines
6 for the storage and handling of aboriginal
7 harvested fish in these commercial enterprises,
8 under the provincial **Fisheries Act**, where this
9 product must be labelled, separated to some
10 degree, and marked "Not for sale", and so on. The
11 unfortunate is that we have -- the unfortunate
12 thing about this is we have, I would hazard a
13 guess, significant commercial or organized
14 criminal activity in the handling of this product,
15 its laundering into the commercial market because
16 of the significant value of it. And our
17 information and intelligence that we're working
18 toward and have, clearly indicates that this is
19 going on.

20 So Randy's comment about the size and scope
21 of these projects and this type of thing is true.
22 We're farther ahead now than we were possibly in
23 2006, but they are significant projects that --
24 and operations that we have to commit to if we're
25 going to move in this direction. That's part of
26 the Intel major case management process that the
27 department is moving toward to handle these very
28 types of audits, and so on. We're just about
29 there, but our future is in jeopardy, given all
30 that we've heard today from Randy.

31 Q Mr. Coultish, has a similar large-scale audit of
32 plants been done subsequent to Project Ice Storm?

33 MR. COULTISH: Not to that extent. What we found was
34 that in 2006 by about, I think it was the summer
35 of 2006, 60 to 70 percent of that fish had moved.
36 And we realized that the shortcomings of being
37 able to trace and audit that.

38 We've investigated and continue to
39 investigate illegal sales as a primary activity of
40 our projects, but again when it comes down to the
41 nature of that type, we are developing our
42 capacity through major case and intelligence and I
43 would suggest that we can, you know, we would just
44 about be ready to be able to mount another major
45 project with the idea rather than just assessing,
46 actually following the product. But that is
47 contingent upon where we're heading now with these

1 funds and our manpower issues.

2 Q There has been, it seems a focus here with Project
3 Ice Storm on fish taken in the FSC fishery. Has
4 there been a similar assessment done whether there
5 are -- to determine the magnitude of illegal sales
6 which result from the recreational fishery or
7 illegal harvest by other user groups?

8 MR. COULTISH: Well, on the Fraser River we have a very
9 large recreational fishery that takes place
10 outside of the Lower Mainland in the Fraser
11 Valley, and so on, and certainly there are catches
12 that occur and, you know, again we have
13 intelligence that indicates that at times some of
14 this product may be sold. But it's not
15 significant when it comes to amount and numbers.

16 As far as the commercial fishery, well,
17 that's the whole idea of having that fishery, is
18 to catch and sell. We still have issues when it
19 comes to catch reporting at times, depending on
20 whether people are selling their own products and
21 so on, and catch statistics, but clearly it's the
22 ability for them to harvest and sell their
23 product. The only thing that there would be a
24 concern is prohibited species. If there's a non-
25 retention in the Fraser River on sockeye, there's
26 generally no issue with non-retention.

27 Q Mr. Nelson, has the Department, to your knowledge,
28 or Mr. Coultish, done an assessment of the extent
29 of this problem? What's the percentage of FSC
30 fish that you've determined, or have you
31 determined that are being sold?

32 MR. NELSON: I couldn't guess on that. Obvious I -- I
33 suspect large amounts, but I couldn't put a number
34 on it. I don't know, Scott, if you have any...

35 MR. COULTISH: Yeah, I don't think we would probably
36 want to put a number on it, but again given the
37 economic attractiveness of it, the markets that
38 have been created, and the intelligence that we
39 are receiving, it's indicating that it is a very,
40 very high percentage.

41 MR. NELSON: I think the incentive for not just Fraser
42 River sockeye, but for any species that is worth a
43 lot of money on the whole coast, it's another form
44 of currency that gets used by people who want to
45 make money by illegal means. It doesn't matter
46 what species it is. Abalone, for example, has
47 been closed on the coast for 30 years. There's

1 still abalone fishing going on, and substantial
2 amounts of money being made off abalone. So no
3 user group is -- like, we're talking a lot about
4 Fraser River sockeye on the Fraser River, but it's
5 -- there are illegal sales issues with most
6 species, especially those that are worth a lot of
7 money. Halibut is another one where there is --
8 we have substantial information that commercial
9 halibut fishing, although it has an individual
10 quota, and is relatively well-controlled, there
11 are aspects to it that illegal fish are being
12 taken with that, as well.

13 MR. MCGOWAN: Could we have document 28, please, page
14 6. Actually, start at page 1 and move forward.
15 Before we got to that one, perhaps I should mark
16 the last document we had, which was the Project
17 Ice Storm, Operational Assessment.

18 THE REGISTRAR: Exhibit 870.

19 MR. MCGOWAN: Thank you.

20
21 EXHIBIT 870: Operational Intelligence
22 Assessment - Project Ice Storm, November 27,
23 2006
24

25 MR. COULTISH: Can I just make - sorry - just one last
26 comment with regards to the FSC.

27 MR. MCGOWAN:

28 Q Yes.

29 MR. COULTISH: The issue simply isn't just a commerce
30 issue. The Department and the province or the
31 federal government and the province has extensive
32 legislation in place to protect the health of the
33 general public when it comes down to safety and
34 health of this product and others, and some of the
35 examples of what we see at times when people are
36 selling fish after they've harvested and so on,
37 and the condition and the health concerns is very,
38 very significant. So it's simply not just the
39 fact that people are deriving an income from a
40 means when which they have no authority to do so.
41 It boils down to health concerns, as well,
42 particularly where we see processed product,
43 smoked and canned and others, where they have not
44 been done through a provincially or federally
45 licensed facility and the potential for serious
46 health injury, or death can occur. So we pay a
47 lot of attention to the public safety.

32
PANEL NO. 36
In chief by Mr. McGowan

1 MR. MCGOWAN: Thank you.
2 THE COMMISSIONER: Mr. McGowan, is this a good place to
3 take the break?
4 MR. MCGOWAN: Yes. Thank you, Mr. Commissioner.
5 THE COMMISSIONER: Thank you.
6 THE REGISTRAR: The hearing will now recess for 15
7 minutes.

8
9 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)
10 (PROCEEDINGS RECONVENED)

11
12 THE REGISTRAR: The hearing is now resumed.
13 MR. MCGOWAN: And document 28, Mr. Lunn?

14
15 EXAMINATION IN CHIEF BY MR. MCGOWAN, continuing:

16
17 Q We were talking about the extent of the magnitude
18 of the issue of illegal sales and the ultimate
19 disposition of FSC fish and the Department's
20 stance on that at least. This is a document, Mr.
21 Coultish, of a meeting from April of last year,
22 the I&I Working Group. Do you recall this meeting
23 or meetings of its type?

24 MR. COULTISH: Yes, I do, yeah.

25 Q Mr. Nelson, I'm not sure I see your name on there.
26 Were you at this meeting, do you know?

27 MR. NELSON: I don't believe so.

28 Q Okay. In any event, this is a meeting where the
29 I&I folk, Mr. Coultish, got together to discuss
30 key issues for investigation; is that right?

31 MR. COULTISH: This was a meeting intended to solicit
32 requests for assistance from general duty staff
33 for project-based activities that I&I would be
34 involved in. We have a process where general duty
35 puts in a formal request, we get together at this
36 meeting over a three-day period and then screen
37 these requests and come up with a list of projects
38 that I&I would then provide or work with general
39 duty with regards to for the year. And that's
40 what this meeting was intended to do.

41 MR. MCGOWAN: If we could turn to page 6, please? And
42 if we could just highlight the first third of the
43 page.

44 Q Under the heading, "Issues to Consider", the third
45 bullet down, we had Williams in 2004, Project Ice
46 Storm in 2005 with the assessment in 2006. We're
47 now up to 2010 and that bullet reads:

May 17, 2011

1
2 97% of FSC harvest in LFR --

3
4 Is that "lower Fraser River"?
5 MR. COULTISH: Yes, that's correct.

6 Q
7 -- is thought to be sold (DFO staff
8 comments).

9
10 First of all, can you tell me what the source of
11 that number is?

12 MR. COULTISH: Staff comments.

13 Q Okay. Which staff?

14 MR. COULTISH: From the lower Fraser.

15 Q Okay. C&P staff?

16 MR. COULTISH: Yes.

17 Q Do you know what the source of their comments is,
18 upon what they based that information?

19 MR. COULTISH: They're activities and participation in
20 investigations and enforcement on the Fraser for
21 many years, as well as past activities by the
22 Special Investigative Unit.

23 Q Okay. Do you support this number as accurate?

24 MR. COULTISH: I'd say it's pretty close.

25 Q Okay. And on what do you base your assessment?

26 MR. COULTISH: Same criteria. Working on the Fraser
27 for many years, being intimately involved in
28 projects and being a part of enforcement activity
29 on the Fraser myself as well.

30 Q Have you gone to First Nations to ask them if
31 they're getting their FSC fish and eating it? Or
32 using it for social or ceremonial purposes?

33 MR. COULTISH: Well, what was interesting is -- just a
34 little history and I'll try to be as concise as I
35 can. Back in the early '90s as a result of
36 Supreme Court of Canada decisions and challenges
37 that were made on court cases, the Department, as
38 part of the reasoning and rationale, introduced
39 the Aboriginal Fishery Strategy and Pilot Sales
40 Opportunities for three geographical areas in the
41 province. Prior to that, the sale of FSC fish or
42 any fish harvested by First Nations under that was
43 not permitted.

44 As a result of that, the Pilot Sales
45 Opportunities were created and allowing First
46 Nations to harvest fish under communal licensing
47 and sell. Now, as a result of that, there were a

1 large increase of participants that came into the
2 fishery who had not previously been a part of it.
3 There were organized collection of fish and sales
4 and so on through companies and so on that were
5 now involved. So the commercial marketing the
6 product went from very, very little to now
7 substantial. And I remember being part of that
8 process on the river and being approached by
9 elders on some First Nations indicating that the
10 nature of the fishery had changed, that they
11 weren't getting their FSC fish anymore because the
12 very people that were fishing for them were now
13 fishing for commercial purposes, were selling and
14 all the fish were going for sale. And being a
15 part of the river myself, I've heard that many
16 times. And I still believe that, as a result of
17 the increased ability to sell through legitimate,
18 has created marketing and processes now that haunt
19 us now when it comes down to FSC.

20 Q Mr. Nelson, we have a number here of 97 percent.
21 Mr. Coultish, who heads the I&I Division, has just
22 told the Commissioner he thinks that's fairly
23 accurate. Do you accept that number as providing
24 any sort of reasonable estimation?

25 MR. NELSON: It's from the lower Fraser River where
26 I've only worked for a short bit of my career; I
27 spent most of mine in the upper. Maybe I'll
28 comment about that and then I'll come back to
29 this. In my experience in the upper Fraser, there
30 were some sales issues there as well, probably not
31 as significant as this number. I'll focus on the
32 Lillooet area first. We've changed the policy,
33 this goes back in the mid-'90s somewhere. We used
34 to seize fish and then dispose of them through, if
35 they were in good shape, taking them and going
36 through a commercial plant and selling then the
37 proceeds to the Crown, or keeping them for court
38 purposes.

39 What we started doing differently is taking
40 the fish that we seized, if they were in good
41 shape and good quality, and distributing them to
42 the First Nations bands. We would actually go on
43 the reserve with the load of fish we'd seized and
44 distributed them. And we found that many people
45 in the community had not got fish before that
46 summer even though there had been FSC fisheries,
47 particularly some of the elders. And that was, I

1 think, kind of a rude awakening for all of us,
2 including the community, the First Nations
3 community. And we did some work with them to, how
4 can we address this? Because a lot of the illegal
5 fishing tied into sales was from people outside
6 their community coming in and fishing and a lot of
7 it was happening at night. So they came to us
8 with a proposal to end nighttime fishing and we
9 followed up with that request. And the problem
10 really, really diminished. So I think it's an
11 example of we worked with them and reduced the
12 problem. There still was some missed sales for
13 sure but I would say in the Interior. It's not
14 anywhere near that number. I've heard is high,
15 very high, down here so I can't really say I'd
16 stand behind that or say it's wrong. I'm not
17 comfortable saying, yes, it's 97 percent. I
18 haven't worked in the lower Fraser.

19 Q Given the information you're getting from Mr.
20 Coultish and other staff and the information you
21 got from Project Ice Storm, does the Department
22 have a handle on the sales issue at all?

23 A Not an adequate handle on it, no.

24 MR. MCGOWAN: Okay. If we could mark this as the next
25 exhibit, please?

26 THE REGISTRAR: Exhibit Number 871.

27
28 EXHIBIT 871: Record of Meeting I&IS Work
29 Planning and New IMAP Meeting, April 27 to
30 29, 2010 [DFO]
31

32 MR. MCGOWAN:

33 Q And just before we leave the sales issue, Mr.
34 Nelson, without getting into them yet, and Mr.
35 Coultish, I take it there are a number of
36 challenges enforcing the sales provision, some of
37 which you've alluded to?

38 MR. NELSON: Yes, and one of the other challenges,
39 obviously, is what's causing people to do this is
40 sometimes the deep-rooted social issues in
41 communities. There are a couple that probably
42 have those deep-rooted social issues more than
43 other communities and we struggle to work with
44 some of them because of that. We've tried to get
45 the attention of other agencies such as the
46 provincial government social services and say,
47 look, this community is in trouble. Let's try and

1 get to the root of the real problems. It's not
2 just about them wanting to sell fish. And it sort
3 of got started but then it kind of fizzled. But
4 we understand that sometimes the reason for these
5 sales is not just for monetary; there's social
6 issues in the community that drive some of it.
7 MR. MCGOWAN: Thank you. If we could have document 29,
8 please? And if there's two parts, it's the second
9 part that I'm looking for, the document as opposed
10 to the email.
11 MR. LUNN: Thank you.
12 MR. MCGOWAN:
13 Q This is a document that was prepared by a member
14 of your department; is that right, Mr. Nelson?
15 MR. NELSON: Yes.
16 Q And this is a document designed to answer two
17 questions that were posed, the first, "What is the
18 Department doing to address illegal sales issues
19 in B.C.?" and the second question, "Why do we
20 still regularly hear complaints from the public
21 about illegal sales of FSC fish?" Correct?
22 MR. NELSON: Yes.
23 Q And this document, I take it, sets out some
24 concerns or challenges faced by the Department in
25 addressing this issue; is that fair?
26 MR. NELSON: Yeah, it's a fairly good summary and I
27 believe the final document was prepared by Paul
28 Steele, Director General in Ottawa, with input
29 from this region. I believe Dennis Burnip, who is
30 an area chief that reports to me, was acting in my
31 chair when this was actually compiled.
32 MR. MCGOWAN: If that could be the next exhibit,
33 please?
34 THE REGISTRAR: Exhibit 872.
35
36 EXHIBIT 872: Report - What is the Department
37 Doing to Address the Illegal Sales Issues in
38 B.C.
39
40 MR. MCGOWAN:
41 Q Mr. Coultish, with I&I, I take it there is a move
42 towards an increased attention to Pillar 3
43 activity, that's major investigations; is that
44 fair?
45 MR. COULTISH: Yes, that's correct. The federal
46 government actually, or C&P federally, has
47 recognized the importance of intelligence-led

1 program both from a strategic perspective, that
2 is, an overarching program, but as well as the
3 ability to tactically then focus in and go after
4 high-value targets. That combined with the
5 adoption of what we referred to as a major case
6 management strategy, as well as implementation of
7 several types of software that are now being
8 implemented, both from a national as well as
9 certainly within the region, is a move toward
10 those programs.

11 Q Okay. Within this region and within I&I,
12 intelligence-led policing, where do issues related
13 to Fraser sockeye fall on your list of priorities?

14 MR. COULTISH: Well, certainly since 2005 with Williams
15 funding applied, which provides the I&I Group in
16 the Fraser River, as well as the others funding,
17 it's considered to be a priority. However, in the
18 last couple of years, we simply just haven't
19 received or been able to engage in large complex
20 sales projects for a couple of different reasons
21 and, that is, competing priorities as well as just
22 resources. Manpower and financial resources, it's
23 just a very complex and complicated program that
24 certainly can be done but has to be done
25 methodically and we're hoping that the
26 intelligence-led process with major case
27 management will allow us to move back into the
28 projects where we can target the high-value
29 offenders versus the odd fisherman that has ten or
30 12 fish.

31 Q Okay. And I take it mounting investigations like
32 this requires manpower?

33 MR. COULTISH: It certainly does, yes.

34 Q Okay. And Mr. Nelson, the movement towards more
35 Intelligent-Led Policing, does that mean a greater
36 proportion of the resources and manpower will be
37 devoted to the types of investigation Mr. Coultish
38 was alluding to?

39 MR. NELSON: If there aren't additional funds, yes, it
40 would have to come from within just as some of the
41 Pillar 1 activities that we have gotten into have
42 drawn officers away from our regular patrol
43 activity. The Pillar 1 activities, just for the
44 Commissioner, are things that we do to improve
45 relationships, education with all user groups.

46 Q And that's at the expense of bodies on the water
47 doing traditional fisheries enforcement, for lack

1 of a better word?

2 MR. NELSON: Yes, but it's a decision we have to make
3 sometimes because it's a better investment to,
4 example Pillar 1, get out there, build some
5 relationships with the people and get them to
6 understand what we're about, we understand what
7 their about and work together on solutions.
8 That's what Pillar 1 does. Pillar 3 is dealing
9 with the small segment of any society that is
10 going to break the law no matter what you do. And
11 our goal is to try and reduce the number in the
12 group and increase the number in the bottom group
13 with Pillar 1 relationship building.

14 Q Okay. Fraser told you in '94 that you needed more
15 credible staffing levels on the water. Williams
16 talked about the need for a greater enforcement
17 presence on the water. You've told the
18 Commissioner earlier today that when there is a
19 reduced number of uniformed officers on the water
20 that, in your experience of 34 years, lack of
21 compliance increases. How do you reconcile those
22 considerations with a determination to move bodies
23 form on-river positions to plainclothes duties and
24 major investigations?

25 MR. NELSON: How do you reconcile?

26 Q Yes.

27 MR. NELSON: You do the best job you can. There's an
28 ever-increasing amount of pressures and workloads
29 put on officers. And I'm at the stage now where
30 I'm seriously concerned that the added stress to
31 an already stressful job could create some health
32 and safety concerns for officers and the public.
33 We're at a point where we can't continue to expect
34 changing a focus of how we address something to
35 solve the problems. We're at a capacity, we're
36 stretched beyond capacity, as we are. And to
37 expect that intel-led is going to provide us
38 solutions and directions, yes, we might be able to
39 focus on a few key large case investigations but
40 it will be at the cost of some of the local level,
41 local community things that are vitally important
42 to try and maintain compliance.

43 This is an extreme example, but if all we did
44 was put all our attention towards major cases and
45 aren't taking care of the softer approach items,
46 such as relationship building and just getting out
47 there and being present, we wouldn't be doing a

1 very good job with conserving Fraser River sockeye
2 as well. So there has to be a balance. And I'm
3 already concerned that the intel model. There are
4 probably people who think it's going to enable us
5 to do the job with a lot less resources and I
6 don't share that view.

7 Q Mr. Coultish, I see you expressing an interest in
8 responding so, please.

9 MR. COULTISH: Mr. Commissioner, the struggle that
10 Randy's described to us is a day-to-day issue that
11 we struggle with when it comes to our programs and
12 so on. I'll give you an example, though, with the
13 RCMP. A number of years ago, the Mounted Police
14 chose to move toward intel policing simply because
15 of the nature of what we were seeing with a
16 variety of things but let's look at the gang
17 problems and the violence that they've seen. They
18 started off with several analysts and now are at
19 approximately 160 analysts that are a variety from
20 intelligence to criminal analysts to threat
21 assessment. And these people are civilian
22 members. These are additions to the force.

23 They're not police officers that have been
24 converted or decided to be trained. What they've
25 recognized is, they've established what they
26 believe to be is a minimal level of street
27 presence, patrol officers, and they require to do
28 their jobs. But instead of cutting into that and
29 eating into that cadre, they had to sell it. They
30 had to do the business plan and they have. And
31 virtually every law enforcement regulatory
32 organization in Canada is doing the same thing,
33 has gone the same way, understanding intelligence-
34 led, major cases and so on. We're struggling with
35 that, with the idea that not only within 176 but
36 possibly down to 130 or more officers to do the
37 type of work that we do. It is simply just a real
38 struggle to believe that we can do that
39 effectively without giving up a significant part
40 of what we do as an organization. That's where
41 we're at.

42 Q Thank you, Mr. Coultish. Mr. Nelson, I'm going to
43 move now to a different issue, it's still an
44 enforcement-related one, and ask you about a
45 couple of potentially challenging areas of
46 enforcement. And I want to ask you first, sir,
47 about what's come to be known as the mortally-

1 wounded clause. I wonder if you can just very
2 briefly tell the Commissioner what that clause is
3 and what your concern is with it.

4 MR. NELSON: One of the ways that resource managers
5 deal with changes in fisheries is add a condition
6 on licences. And one of the conditions that is
7 added. Several years ago, it was first started on
8 the Fraser River and it's a clause only in the FSC
9 fishery that says if a fish is mortally wounded
10 they're allowed to retain it. So if for example,
11 a river is open for chinook and there is a
12 conservation concern for Early Stuart sockeye,
13 which are migrating at the same time, fishers go
14 out, they're allowed to keep the chinook and if
15 the sockeye is mortally wounded, they're allowed
16 to retain it. And that clause is unenforceable.
17 There is no way any expert in the world will be
18 able to say that that fish coming over the side
19 would have survived or not survived by them
20 keeping it. And again, if everybody was a law-
21 abiding citizen, it would be fine. But you take
22 one or two people that start abusing it and
23 keeping those sockeye, then everybody does.

24 There were even examples in a dipnet fishery
25 in the Interior where the mortally-wounded clause
26 was used. Well, in a dipnet fishery, yes, the
27 fish is going to lose some scales but they're
28 kept. And that clause is still prevalent in some
29 of those fisheries and it's expanding. Last year,
30 the resource managers in the Johnstone Straits in
31 a commercial fishery, were allowing the retention
32 of a prohibited species and saying, well, they
33 would be kept as FSC. So there's all sorts of
34 problems that are created by it but the main thing
35 is, when a fish is in a net, some people might say
36 it's mortally wounded there because it's lost so
37 many scales. But certainly if it's released it
38 has a chance of survival. If it goes in the boat,
39 it has no chance. So it's a clause that has been
40 put in and I know that in one area, the First
41 Nations group has said in their traditional
42 beliefs and values you shouldn't release something
43 that is good food. I share that. It hurt. I've
44 caught fish myself that were under size and dead
45 and you have to release it because if you don't
46 you've lost control of enforcing it.

47 And so we're trying to get the message across

1 internally within our organization but there's so
2 much pressure on the resource managers as well to
3 try these new techniques. I don't know how else
4 to explain it. Have I made it understood, Mr.
5 Commissioner? I'm not sure. Because it's a
6 difficult one. But if a fish is in a net and
7 comes over the side, we have had officers observe
8 fishers pulling everything over the side. There's
9 no attempt to revive anything, no attempt to
10 release anything and the officers have to stand
11 there and realize that they can't do anything
12 about it. That's the frustration. If the clause
13 is changed and it reads something like "Every
14 attempt should be made to revive a fish that not
15 be kept," at least some are going to survive.

16 But it's one of the management conditions
17 that seem to come along every once in a while and
18 are instituted without thorough discussions with
19 Conservation and Protection and the fishery
20 officers. The fishery officers are out on the
21 water and know better than anybody else about some
22 of those conditions and what they might mean and
23 being enforceable. If meaningful discussions had
24 taken place internally, there may have been some
25 input from the fishery officers that say, don't
26 use those words but perhaps these words to make it
27 manageable. We want to work with them but so
28 often we see these conditions get implemented and
29 put in place and we come along after the fact to
30 try and change them. Do you have any comments?

31 MR. COULTISH: Mr. Commissioner, in the recreational
32 fishery and commercial fishery, I'll speak to the
33 commercial fishery as an example in the Prince
34 Rupert area, we have a migrating steelhead that
35 are coming back through the mouth of the Skeena
36 River. One of the techniques that is employed
37 there is a reduced net length and soak time and
38 that is the amount of time that the net can be in
39 the river. Every vessel in that area must have a
40 revival box and that is if they encounter a
41 steelhead that fish through the gillnet must be
42 handled as carefully as possible, placed into the
43 revival box with the intent of allowing that fish
44 to recuperate from that and then released.

45 In our recreational fisheries where
46 prohibited species or non-retainable species, we
47 have things such as best-handling practices and

1 techniques, training videos and others that some
2 of our sport fishing communities and others have
3 adopted as best practices for fish handling. What
4 these do is basically say you cannot retain these
5 species period. We want to try to save them as
6 much as we can. This clause allows catch to be
7 retained virtually under any circumstance and
8 creates a loophole such that in some cases
9 hundreds of pieces can be kept for that reason.

10 MR. NELSON: And the ones that are kept are obviously
11 the ones that are the most endangered stocks under
12 those licensed conditions.

13 Q Thank you. Mr. Nelson, you've also addressed us
14 about some concerns related to duo fishing. I
15 wonder if you could just very briefly explain to
16 the Commissioner what duo fishing is and what
17 concern you identify in terms of enforcement and
18 resourcing needed to enforce that type of a
19 fishery.

20 MR. NELSON: This is another management tool that
21 resource management have used and it involves
22 commercial fishing at the same time or immediately
23 before or after FSC fishing. So for example, a
24 commercial fishing vessel, and they tried it on a
25 pilot last year in Johnstone Straits for the
26 salmon fishery, so two or three large seine boats
27 went out ahead of the commercial fishery to catch
28 their FSC allocation, bring it onboard. Now, the
29 commercial fishery opens up. They fish for their
30 commercial fish. Goes on the same boat in the
31 same hold and after it closes they can continue
32 fishing for FSC to within their allocation. Now,
33 we from C&P said, look, you've got to have a
34 monitor onboard every boat and document all these
35 fish and it's got to be followed right to where
36 it's offloaded. That happened but there were
37 problems with it.

38 And duo fishing is taking place currently in
39 the halibut fishery. I know we're getting away
40 from the Fraser River but it's this management
41 technique that is creeping into the fisheries
42 where Fraser River sockeye are caught. I'll just
43 describe briefly the halibut fishery. It's a
44 hook-and-line fishery out in the ocean where large
45 lengths of line are put on with baited hooks to
46 catch halibut. And the same technique was used in
47 duo fishing, like, okay, the person has an

1 allocation, a quota, to catch other halibut. They
2 go out, they catch that, okay, I've got all the
3 halibut quota I'm allowed, now I'm going to FSC,
4 catch Aboriginal FSC fish. It can be a person
5 that is designated by any band and they'll go out
6 and they'll continue to fish and catch an FSC
7 allocation, again, put on the same boat and
8 brought in. Now, what's good about the halibut
9 fishery is it has a mandatory landing program in
10 place so when the commercial halibut boat comes
11 in, he has to have an independent monitor that
12 meets him at the dock and they record and weigh
13 the catch that comes off. So in these FSC
14 fisheries, or with the FSC fish, they also record
15 it and document that. So you think, great, we got
16 a record of what was FSC.

17 Now, it's incumbent on the First Nations band
18 that is the alleged recipient of those fish to
19 report it to the Department. And the recent
20 information that I got this week is that only 9
21 percent of the FSC fish was reported to the
22 Department, 9 percent was partially reported and
23 82 percent was not even reported to the
24 Department. And that's with a good thing in place
25 like a mandatory landing program in place.

26 So the idea of duo fishing is it's opening
27 another door that's going to make it very, very
28 difficult to do enforcement on without some very
29 costly techniques to put in place such as a person
30 to put onboard to count those fish.

31 Q Mr. Nelson, well, let me see if I can help
32 summarize what I think your position is. There
33 may be some efficiencies gained in terms of fuel
34 costs and resources allowing duo fishing. Your
35 concern is the amount of resources required from
36 C&P to police that type of fishery and ensure that
37 the rules are complied with. Is that a fair
38 summary?

39 MR. NELSON: Yeah, and particularly the amount of
40 catch. I think it's important to get proper catch
41 information.

42 Q Yes.

43 MR. NELSON: So you would have to have some methods and
44 some techniques in place that would ensure you're
45 getting a proper catch and the enforceability of
46 sales.

47 Q Thank you. I want to just ask you very briefly

1 about the high seas driftnet fishery. I take it
2 the Department's position at least as articulated
3 on its website is that this problem is largely
4 under control; is that your understanding?

5 MR. NELSON: That's my understanding, yes.

6 Q Okay. You're aware that in recent years as many
7 as 25 and in another year 47 boats were detected
8 by overflights engaged in what appears to have
9 been illegal driftnet fishing in the high seas; is
10 that correct?

11 MR. NELSON: Yes.

12 Q Okay. Despite those numbers, is it your evidence
13 that the problem is still under control?

14 MR. NELSON: Maybe I'll just try to do a brief history.
15 Like historically, there were two main fisheries
16 out in the Pacific, one was a squid fishery and
17 one was a driftnet salmon fishery. They had
18 hundreds of vessels involved and at the peak there
19 was an estimated two million kilometres of nets in
20 Pacific fishing out there. Over the years,
21 agreements, international agreements, those fleets
22 have been eliminated and there is a very small
23 fishery out there now. It's monitored,
24 international agreements, they're signatories to
25 this, monitored and the numbers that you mentioned
26 there, the 47, that were the number of vessels
27 detected that could have been fishing illegally.
28 It isn't the number that were targeting on salmon.
29 It's an unknown what they were fishing for. So
30 that's the maximum amount of target vessels out
31 there. So when you compare 30 to 40 to what were,
32 you know, seven, 800 years ago, it's a small
33 amount.

34 Q Thank you. I understand there's some information
35 in the policy and practice report that you've seen
36 about a fairly significant reduction in the number
37 of Aurora hours, that's the plane used by Canada
38 to police the high seas. Are you aware that
39 there's been a significant reduction in the number
40 of overflight hours?

41 MR. NELSON: Yes, there have been quite a significant
42 amount in the Aurora hours. It has to do with the
43 mechanical deterioration of all the aircraft, the
44 amount of aircraft that are available. And we are
45 trying to deal with that in a way where we've
46 approached Japan to get access to landing our
47 aircraft in their country. And it's a very

1 sensitive issue, obviously, landing a military
2 aircraft in Japan. Those discussions are taking
3 place. But if that's allowed to happen, it will
4 mean a plan flying for six or eight hours before
5 they get to the patrol area will be much more
6 efficient if they could land and access it from
7 Japan. In other words, they're flying for a long
8 time before they get to the patrol area. If
9 they're able to land overnight in Japan, then
10 they're going to spend a lot more time patrolling
11 the area. But the reductions are substantial.

12 Q Thank you. Mr. Nelson, at this point I'm going to
13 ask you sort of a broad question and ask you to
14 address the Commissioner. I'm wondering if you
15 can identify for the Commissioner what you would
16 rank as your top, identify your most significant
17 enforcement concerns at present. And when I say
18 "most significant", I mean those posing the
19 greatest risk to the sustainability of Fraser
20 sockeye.

21 MR. NELSON: I think there's a whole lot of things that
22 could be done but I guess recognizing the capacity
23 needs. I hate to say that money's the first issue
24 but certainly capacity is not there. If we don't
25 have that, we aren't going to gain much from this.

26 Q I'm just going to stop you for a second. I am
27 going to come to the question about what you think
28 about it.

29 MR. NELSON: Okay.

30 Q But looking at each of the different fisheries,
31 the recreational fishery, the commercial fishery,
32 First Nations fisheries, what do you identify as
33 the most significant enforcement lapses or
34 enforcement concerns that are presently posing a
35 risk to sockeye?

36 MR. NELSON: I'll do a couple and then I'll ask Mr.
37 Coultish for his thoughts, too.

38 Q Thank you.

39 MR. NELSON: This whole idea of the cold storage, I
40 think in regard to the commercial fishery,
41 addressing that issue, like how do we deal with
42 that and make sure that we have proper
43 traceability? We've started down that road but
44 I'd say proper traceability in the commercial
45 fishery and catch reporting, making the catch
46 reporting accurate, accurate in the minds of
47 everybody, not just the resource manager and not

1 just C&P. We've got to come together and find a
2 way to get a better handle on what the catch is.
3 In the FSC fishery, I would say allocations. It's
4 an easy word to say but to try and nail down what
5 the number is that each particular band is going
6 to require. Until you have that, it's so
7 difficult to manage it. So I would say in the FSC
8 fishery, that's one. And in it, also the accuracy
9 of the catch issues has to be raised up.

10 In the rec fishery, a simple thing like
11 making it mandatory that all salmon be recorded on
12 the back of the licence immediately might help us
13 deal with some of the problems we see in the
14 recreational fishery. Again, this is related to
15 Fraser River sockeye. As it is now, only chinook
16 have to be recorded on the back of a licence. Why
17 not make it all salmon recorded on the back of a
18 licence? And if you fill the card up, then you go
19 and get another one. I think there's a common
20 theme among them all. In order to properly manage
21 any fishery, they've got to know what the amount
22 is, in other words, what the allocation is in all
23 of those fisheries, and you've got to have some
24 confidence in what's being caught. And I think
25 those apply to all of them. So Scott, do you have
26 any thoughts?

27 MR. COULTISH: I think from a compliance and
28 enforcement issue, I think our focus has to be on
29 targeting people who consciously decide to break
30 the law and the ones, the individuals or groups
31 who are the primary offenders, and that applies to
32 any fishery. But I would suggest that we need to
33 continue to develop our capacity as an
34 organization to target the chronic and/or the
35 commercial organized crime offenders. Most of the
36 First Nations people and commercial people and
37 recreational people we deal with, by far the
38 majority of them, are good people and sometimes
39 those people get led astray. But there is a core
40 group of people out there that simply are in it
41 for themselves, they're in it for the monetary
42 gain, they don't care about conservation and, in
43 fact, create problems for their own people. And
44 those are the ones we have to go after.

45 Q Thank you. Mr. Nelson, just a couple of sort of
46 brief questions to clean up a couple of things we
47 touched on before. The first is, the mortally-

1 wounded clause that you referred to, I take it
2 that's not attached to every First Nations fishery
3 licence?

4 MR. NELSON: Oh, no, no, it's on some on the Fraser
5 River and some in south coast but not anything in
6 north coast yet.

7 Q Okay. And not every one in the Fraser River; is
8 that correct?

9 MR. NELSON: Oh, no, no.

10 Q Okay. Now, you made reference to the need for
11 better catch numbers and a better understanding of
12 what is being caught. We talked earlier about the
13 recommendation from the Williams report, Greater
14 Enforcement to Avoid the Concealing of Over-
15 Harvesting. I think you've told us that C&P is
16 not regularly involved in auditing catch numbers.
17 Do you feel that C&P could have a greater role to
18 play using its powers of inspection, auditing
19 catch numbers, and if so, what's stopping that
20 from happening?

21 MR. NELSON: I would go even further not saying it
22 could, it must. The only way we can get a true
23 handle on the accuracy of all fisheries in the
24 catch is bringing some rigour into an audit
25 program that C&P has an involvement in. Now, when
26 I say that, somebody immediately will say, "Okay.
27 Here, go ahead and do it." But then it's this
28 capacity issue. If you want us to do it, I'm sure
29 fishery officers are willing to do it. But don't
30 ask us to do it on top of everything else we have.
31 And just a few examples on catch monitoring
32 issues. You're saying, well, why are we so sure
33 that the numbers aren't right? And I just have a
34 few written down here, a few issues that I know
35 about.

36 There was an example this past summer from
37 central coast where two vessels came down to
38 Johnstone Straits to fish for sockeye. Some of
39 them would have been Fraser River sockeye. They
40 caught 23,000 FSC fish and returned home and
41 nobody in the Department knew about it. Like the
42 resource managers didn't know they'd been caught.
43 It was only when they got back and started
44 distributing in the community that our officers
45 got aware of it and went and checked on it. So
46 when you hear numbers like that, it's a little
47 scary.

1 And then also last year on the lower Fraser
2 River, in an FSC fishery, fishery officers did a
3 patrol during a two-day opening. So they went on
4 the water for a patrol which probably four or
5 five, six hours and they went onboard the vessels
6 and physically counted 123 sockeye. This was very
7 early in the season so it's a small number, very
8 small number. But they counted 123 sockeye and
9 when they returned the area chief for the lower
10 Fraser went to resource management and said,
11 "Here's a piece of information you might want to
12 consider." And she said, "Oh, we've already
13 calculated our catch and we've come up with 113 as
14 the entire catch for the full two days." And our
15 officers had patrolled a fraction of the area in a
16 small time period in a 48-hour fishery.

17 And the obvious question is, "Well, you have
18 to adjust your numbers." "Well, no, it doesn't
19 fit the model." And it's very frustrating to see
20 that happen. And that's not a unique example.
21 That's happened, in my experience, over many years
22 ago on the Fraser River. It still happens today
23 where the direct information that we have. It's
24 pointing out some real deficiencies in the catch
25 program that people in the Department just do not
26 want to recognize it sometimes.

27 I know I testified at the last inquiry about
28 an example where we were physically observing a
29 fisher and asked a catch monitor to go find out
30 what they caught. And they came back with a
31 number of 25. And we said, no, go back again. We
32 know it's great than that. They went back and
33 said 25. When we approached the site, we counted
34 275. And these are probably big examples or
35 extreme examples. But if that's going on, there's
36 no incentive for people to report or give us the
37 right numbers in any fishery. If they're fishing
38 to a quota or a number in any fishery, what's the
39 incentive for them to be accurate to you? I'm
40 going to tell them this number and there's no
41 consequence for that. So somehow we have to build
42 some kind of an incentive system into the accuracy
43 of these.

44 Again, it's something that I've seen over and
45 over again in my career. If you talk to any
46 officer in the region, you're going to see it. We
47 need to have some rigor to the catch monitoring

1 system. And I know there's people in the
2 Department who say we have some of the greatest
3 catch monitoring in the world. Well, I know
4 another example I've told of recently in the east
5 coast in the crab fishery where they have this
6 monitoring system in place that was deemed to be
7 very, very good.

8 Q I'm perhaps just going to stop you there.

9 MR. NELSON: Okay, yes.

10 Q We're perhaps getting a little far afield with the
11 east coast crab fishery example. Sir, those are
12 the questions I have. I understand you have some
13 other recommendations that you'd like the
14 Commissioner to consider and I understand that
15 your counsel is going to ask you about those and
16 give you an opportunity to share them with the
17 Commissioner before your evidence is concluded so
18 I won't duplicate that effort.

19 THE COMMISSIONER: Thank you, Mr. McGowan. I would
20 also ask if either you or your learned friend, if
21 it's appropriate, just two points that were raised
22 that could come back through their questions or
23 your questions. One is, Mr. Coultish mentioned
24 the federal policing program that is in place now
25 with analysts that are being civilian retained,
26 whether fisheries could rely upon federal police
27 authorities or do they have to duplicate, in
28 essence, that kind of program within fisheries?
29 And the other point is, I think Mr. Nelson touched
30 on it but I'm not quite sure if he fully touched
31 on it, here we are in 2011 and you talked about
32 what the future holds. Has a full assessment been
33 done by fisheries with respect to what, in fact,
34 is needed, costing out the ultimate perhaps with
35 Plan B and Plan C? In other words, has a thorough
36 analysis been done, in fact, with all of the added
37 responsibilities both of you mentioned with regard
38 to SARA and other areas, whether there has been an
39 analysis done, in fact, in British Columbia, the
40 region, what is, in fact, needed and what it would
41 cost? Just so we have some parameters here to
42 work with. But I'm going to leave it with Mr.
43 McGowan or his learned friend to draw that out as
44 they ask their questions.

45 MR. MCGOWAN: Thank you, Mr. Commissioner, and perhaps
46 just before I sit down then I'll leave the first
47 question you've asked so Mr. Spiegelman and I can

1 discuss it over the lunch hour.

2 Q But Mr. Nelson, perhaps you could just take a
3 moment and address the Commissioner's second
4 question. Given we have these added pressures,
5 which you've articulated here today and last time
6 you were giving your evidence and given what
7 you've been told will be the end of the PICFI
8 money without any replacement, have you done an
9 assessment of what that will mean for the
10 Department, and, more importantly perhaps, what
11 you need in the way of resources and how they
12 would be allocated to ensure a continued credible
13 enforcement presence with respect to Fraser
14 sockeye fisheries?

15 MR. NELSON: I have put together some numbers and
16 information. It's fairly rough and some of it may
17 or may not be accepted by the Department but I do
18 have a way to try and explain that.

19 Q Have you reduced it to paper?

20 MR. NELSON: Yes.

21 Q Is it a document that you could share with the
22 Commission?

23 MR. NELSON: With a little cleaning up. I've got a lot
24 of notes scratched on it and stuff but I could
25 provide something, yes.

26 Q Is it a document that you could clean up overnight
27 and provide to the Commission tomorrow?

28 MR. NELSON: Yeah.

29 MR. MCGOWAN: I wonder if that might be an appropriate
30 way. And then if there's further follow-up, I
31 could deal with it in re-examination, Mr.
32 Commissioner.

33 THE COMMISSIONER: Oh, yes, my preference would be that
34 he provide it to you and your learned friend and
35 then you deal with it accordingly.

36 MR. MCGOWAN: Yes. Thank you, Mr. Commissioner.

37 MR. SPIEGELMAN: For the record, my name is Jonah
38 Spiegelman, counsel for the participant Government
39 of Canada. With me is my colleague, Hugh
40 MacAulay. I note the time. We have about ten
41 minutes before the break and I do think I have one
42 discrete matter we can cover before the lunch
43 hour, if that suits.

44
45 CROSS-EXAMINATION BY MR. SPIEGELMAN:

46
47 Q Mr. Nelson, when you were here giving evidence on

1 April 7th and 8th, you and Mr. Steele gave some
2 evidence on the matter of unpaid fines. Do you
3 recall that?
4 MR. NELSON: Yes.
5 Q And subsequent to giving that evidence, have you
6 looked into that issue in more detail?
7 MR. NELSON: Yes.
8 Q So I have a few questions for you to help clarify
9 the record on that matter, if that's all right.
10 You indicated at that time that there is
11 approximately one million dollars in outstanding
12 fines?
13 MR. NELSON: Yes.
14 Q And that you know that because you receive a
15 quarterly report that sets out the outstanding
16 fines?
17 MR. NELSON: Yes.
18 Q My first question is from whom do you receive that
19 report?
20 MR. NELSON: From Public Prosecution Services.
21 Q And am I correct in saying that your understanding
22 of that total is that it's a rolling balance and
23 that in each quarter some fines are paid and
24 additional fines are added?
25 MR. NELSON: Yes.
26 Q Is it your understanding that some of those fines
27 that are listed in that report are not yet due to
28 be paid? Those are simply fines in the system
29 that have not been paid?
30 MR. NELSON: There are probably some in there, yes.
31 Q And do you know the approximate time period over
32 which those fines may have accumulated?
33 MR. NELSON: I know some of them go back to the early
34 '90s but I didn't really look through to see where
35 the oldest one was.
36 Q So as much as 15 or 20 years, approximately?
37 MR. NELSON: Yes.
38 Q Thank you. And do you know approximately how many
39 fines we're talking about?
40 MR. NELSON: Yeah, I was asked and I'd said hundreds,
41 perhaps low thousands. It's in the neighbourhood
42 of 17 or 1,800.
43 Q Okay. And just for comparison sake, do you know
44 how many fishing licences are issued each year in
45 the Pacific region?
46 MR. NELSON: I don't know offhand commercial licences,
47 if Scott has any idea, but I know recreational

1 licences in the saltwater, three to 400,000 and
2 probably a similar number in freshwater.
3 Q Okay, thank you.
4 MR. NELSON: Commercial licences is in the low
5 thousands in the region. I don't know the exact
6 number.
7 MR. SPIEGELMAN: Okay. Mr. Commissioner, I don't
8 propose to tender those quarterly reports into
9 evidence for a variety of reasons, one of which is
10 they contain the personal information of those
11 people. It's our position that's not relevant.
12 They're also very lengthy and ultimately not
13 necessary. However, if Mr. Lunn can pull up
14 document 12 from Canada's list, that may be of
15 some assistance.
16 THE COMMISSIONER: Just while he's doing that, Mr.
17 Spiegelman, I just meant to ask Mr. McGowan before
18 he saw down, was the last document that you
19 referred to with the witnesses marked as an
20 exhibit? I can't recall. I meant to ask him at
21 the time. It may have been and I just didn't make
22 a note of it.
23 MR. MCGOWAN: I believe that it was Tab 29 of our list
24 of documents and I believe it was marked as
25 Exhibit 872, Mr. Commissioner?
26 THE COMMISSIONER: 872?
27 MR. MCGOWAN: Yes, I believe it was marked, Tab 29, as
28 872.
29 THE REGISTRAR: That is correct.
30 THE COMMISSIONER: Thank you very much.
31 MR. MCGOWAN: I don't believe I went to a document
32 after that but I will -- no.
33 THE COMMISSIONER: Appreciate that. Thank you very
34 much.
35 MR. MCGOWAN: Thank you.
36 MR. SPIEGELMAN:
37 Q Mr. Nelson, do you recognize the document that's
38 up on the screen?
39 MR. NELSON: Yeah, this is a summary from the quarterly
40 reports of how much is outstanding and how much
41 has been paid on a quarterly basis.
42 Q Okay. And on the last two lines of this document,
43 am I correct in taking it that this is setting out
44 how much has been paid over the period covered by
45 this document?
46 MR. NELSON: Yes.
47 Q And so reading from the document, since 2008, over

1 a million dollars has been paid in fines?

2 MR. NELSON: Yes.

3 MR. SPIEGELMAN: Can I have that marked as the next
4 exhibit, please?

5 THE REGISTRAR: Exhibit 873.

6

7 EXHIBIT 873: Pacific Region Fishing Related
8 Fines 2008- 2011

9

10 MR. NELSON: Obviously, there would be a lot of fines
11 that had been paid. I don't know what that amount
12 is.

13 MR. SPIEGELMAN:

14 Q Right. But the outstanding balance from each of
15 these reports --

16 MR. NELSON: Yes.

17 Q -- the number's hovering around a million dollars
18 but it's not that it's accumulating in every
19 period. It's a rolling balance?

20 MR. NELSON: Yes.

21 Q Okay. On April 8th, Mr. Rosenbloom and you had an
22 exchange that I'll just quote from the transcript.

23 MR. SPIEGELMAN: If anyone is interested, it's at page
24 68, beginning at line 34. I'm not sure if it's
25 necessary to bring it up or quick to do.

26 Q So beginning at line 34 of that.

27 MR. SPIEGELMAN: Mr. Lunn, are you --

28 MR. LUNN: Okay.

29 MR. SPIEGELMAN:

30 Q The question posed to you was:

31

32 Q Can you tell me why that's happening?

33

34 Referring to the outstanding balance.

35

36 Is it that there's no follow-up at the
37 governmental end for collection, or is it a
38 case of the court system not following up?
39 Where is the problem?

40

41 And your answer was:

42

43 A I'm not exactly sure but I know we don't have
44 a system to collect and follow-up.

45

46 That's the end of the quote. Mr. Nelson, do you
47 have anything to add to that answer based on

1 information you've learned in the past month or
2 so?

3 MR. NELSON: Yes, what I wasn't aware of and should
4 have been is that, and I was accurate in what I
5 said there in that we don't have a system to
6 collect because it's the Public Prosecution
7 Services' responsibility. What we do have, and I
8 also wasn't aware of, we have a standard operating
9 procedure, which explains to fishery officers, if
10 you have something, a ticket that you wrote or a
11 fine that was supposed to be paid by a certain
12 date, contact the courts, find out if it's been
13 paid. If it hasn't been paid, there's a procedure
14 to follow to try to send a letter or something and
15 then notify Public Prosecution that it hasn't been
16 paid. And that's how they get added to it. Now,
17 Public Prosecution, since 2009, have been making
18 some focused efforts at recovering some of these
19 fines. I should back up. Where it involves a DFO
20 licence, like a commercial licence, we can go to
21 our Licensing Department and ask that when they
22 come to renew their licence, they pay the fine at
23 that time or they don't get issued the licence.
24 For most of the other fines, such as sport fishing
25 licences, we don't have that capability. But with
26 the Public Prosecution Services, they can access
27 Canada Revenue and get it added onto the person's
28 income tax. In other words, if they have an
29 outstanding balance, their amount of fine would be
30 deducted, if they have a refund coming. So there
31 is a means to try and recover it.

32 MR. SPIEGELMAN: Thank you. Mr. Lunn, may I just have
33 document number 1 from Canada's list, please?

34 MR. LUNN: Certainly.

35 MR. SPIEGELMAN:

36 Q Is this the standard operating procedure that you
37 were just referring to, Mr. Nelson?

38 MR. NELSON: Yes, and it actually is in the process of
39 being updated or upgraded.

40 MR. SPIEGELMAN: Okay. May I have that marked as the
41 next exhibit, please?

42 THE REGISTRAR: 874.

43
44 EXHIBIT 874: Collection of Outstanding
45 Court-Imposed Fines and Section 79.2 Orders
46 [DFO- Pacific Regions SOP, eff. March 7,
47 2009]

1 THE COMMISSIONER: Would this be a good place to break?
2 MR. SPIEGELMAN: Yeah, I think that that's fine. Thank
3 you.

4 THE COMMISSIONER: Thank you.

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

7

8 (PROCEEDINGS ADJOURNED FOR NOON RECESS)

9

(PROCEEDINGS RECONVENED)

10

11 THE REGISTRAR: The hearing is now resumed.

12

13 MR. SPIEGELMAN: Good afternoon. For the record,
14 again, it's Jonah Spiegelman for the Government of
15 Canada. With me is Hugh MacAulay.

16

CROSS-EXAMINATION BY MR. SPIEGELMAN, continuing:

17

18 Q I have one more matter to follow up from last
19 day's evidence with Mr. Nelson.

20

21 MR. SPIEGELMAN: And in particular, Mr. Commissioner,
22 at the conclusion of Canada's examination of these
23 witnesses, or of Mr. Nelson and Paul Steele on
24 April 8th, you asked a question about Exhibit 701.
25 And if Mr. Lunn could just pull that up for
26 reference. To refresh your memory, this is an
27 exhibit that shows the proportion of fishery
28 officers' time in the Pacific Region of the
29 proportion of their hours spent on habitat-related
30 matters. And you asked if similar graphs could be
31 provided for the Fraser River. So now, Mr. Lunn,
32 if you could pull up document 7 on Canada's list?

33

Q Mr. Nelson, can you identify this document?

34

35 MR. NELSON: Yes, this is a document we had made up
36 which identified just the Fraser River habitat
37 effort that our officers patrol on. And just to
38 remind everybody, the numbers on the right
39 represent hours of time, and the percentage of
40 time is on the left column. So as an example,
41 2003, 43 percent of fishery officer patrol effort
42 on the Fraser River was targeted on habitat.

43

Q Okay.

44

45 MR. NELSON: Two similar ones were developed, one for
46 the Lower Fraser and one for the B.C. Interior.

47

Q Right. And we'll go to those directly, but I just
48 wanted to be clear that these data are from
49 combining the B.C. Interior and Lower Fraser
50 areas; is that correct?

1 MR. NELSON: Yes.

2 Q Okay.

3 MR. NELSON: And then just a reminder, the red line is
4 the number of violations by year, and the blue
5 line is the number of occurrences by year.

6 MR. SPIEGELMAN: Thank you. Can I have that marked as
7 the next exhibit, please?

8 THE REGISTRAR: Exhibit 875.

9

10 EXHIBIT 875: Fraser River C&P Habitat
11 Effort, Occurrences and Violations, 2000-2009
12

13 MR. SPIEGELMAN: So Mr. Lunn, if we could pull up
14 document number 8?

15 Q Now, this is the same information just from the
16 B.C. Interior this time, is that --

17 MR. NELSON: That's correct. And you'll notice a much
18 higher effort. Well, not much higher, but
19 generally higher effort in most years in the B.C.
20 Interior, and that stands to reason. A lot of
21 their work is where salmon migrate to so they take
22 care of a lot of the fish habitat for Fraser River
23 sockeye and other species.

24 Q Thank you.

25 MR. SPIEGELMAN: Can I have that marked, as well,
26 please?

27 MR. NELSON: And it shows that --

28 THE REGISTRAR: Exhibit 876.

29

30 EXHIBIT 876: BC Interior Area C&P Habitat
31 Effort, Occurrences and Violations, 2000-2009
32

33 MR. NELSON: -- sorry -- a high of 61 percent in years
34 2003 and '04, down to about 23 percent last year --
35 - sorry, in 2009. 2010 data was incomplete so it
36 wasn't put on here, but it's down in that range.

37 MR. SPIEGELMAN: And finally, document number 9, Mr.
38 Lunn?

39 MR. NELSON: And that's a similar graph just for the
40 Lower Fraser River.

41 MR. SPIEGELMAN: And marked, as well, please?

42 THE REGISTRAR: 877.

43

44 EXHIBIT 877: Lower Fraser Area Fraser River
45 C&P Habitat Effort, Occurrences and
46 Violations, 2000-2009
47

1 MR. SPIEGELMAN: Thank you.
2 Q So these last three graphs that we've entered as
3 exhibits, together with 701, Exhibit 701, tend to
4 indicate or demonstrate how C&P's efforts shifted
5 around 2005 away from habitat work?
6 MR. NELSON: Yes.
7 Q Is that your understanding?
8 MR. NELSON: Yes.
9 Q And just to be clear, the left-hand axis of all of
10 these charts is the percentage of fisheries
11 officers' hours?
12 MR. NELSON: Percentage of their patrol time.
13 Q Of their patrol time.
14 MR. NELSON: Yes.
15 Q Thank you. Now, 2005, you've testified this
16 morning, was also the year that DFO began to
17 implement its response to Williams review?
18 MR. NELSON: Yes.
19 Q Is that right? And you testified that a major
20 focus of that work was to monitor closed times for
21 illegal fishing; is that fair?
22 MR. NELSON: Yes.
23 Q And Mr. McGowan brought you to some evidence in
24 the PPR that indicated that additional funding was
25 provided to work extra overtime hours?
26 MR. NELSON: That was part of it, and also flying and
27 operating money, as well, was increased.
28 Q Thank you.
29 MR. SPIEGELMAN: Could we pull up the PPR, page 123?
30 MR. LUNN: Yes.
31 MR. SPIEGELMAN:
32 Q I just had a small point of clarification, just to
33 make the record clear, and it ties back to what
34 you said about the 2010 data. Now, this graph was
35 pulled from those 14 questions and answers that
36 you provided, that was marked as an exhibit this
37 morning; is that correct?
38 MR. NELSON: Yes.
39 Q And did you have any comments about -- or perhaps
40 I'll put it more pointedly, is the same true about
41 the 2010 data for these graphs, that it wasn't
42 necessarily complete when you compiled these
43 answers?
44 MR. NELSON: That's correct.
45 Q So throughout the PPR and that exhibit, the 2010
46 data?
47 MR. NELSON: There might be some difference, variances

1 from what it actually ended up on.
2 Q Okay. I just wanted to make that point clear on
3 the record.
4 MR. NELSON: Yeah, in looking at this one, I don't
5 think it's much because just knowing what the
6 numbers were, it's close to the same. So I think
7 on these overtime graphs, it's probably fairly
8 accurate.
9 Q Okay. Thank you.
10 MR. SPIEGELMAN: Now, Mr. Lunn, can we have Tab 30 of
11 Exhibit 866?
12 Q Can you identify this document, Mr. Nelson?
13 MR. NELSON: Yes, this is a document prepared to answer
14 some of the 14 questions that were put to us. And
15 it represents a category in our time tracking
16 system called UCAT, which is unlicensed/closed
17 area time. So if you see that acronym, UCAT,
18 that's what it refers to. This represents the
19 number of hours, patrol hours that fishery
20 officers spend in that category of work, in other
21 words, patrolling closed times, basically.
22 Q And I note in 2005, the number of patrol hours
23 dedicated to UCAT jumped quite dramatically from
24 prior years; is that fair?
25 MR. NELSON: Yes. As did the number of occurrences and
26 violations, which goes along a little bit with
27 what I said. If we're out there, we catch people,
28 basically.
29 Q So --
30 MR. NELSON: Sorry. If we're not out there, the
31 numbers of violations won't drop.
32 Q So combining these graphs, is it fair to say that
33 some of the effort that was previously dedicated
34 to habitat work was shifted over to closed time
35 patrols as part of a response to Williams?
36 MR. NELSON: It probably is part of it, but they were
37 to be shifting to other responsibilities, too,
38 because as we talked about in the habitat
39 enforcement, there was the change in the EPMP
40 directive, which was to move away from habitat.
41 I'm not sure what portion of these increases, if
42 we could say that came from habitat to here. They
43 could have went to other places, as well.
44 Q Thank you.
45 MR. NELSON: But that could explain some of the
46 increases.
47 Q So I'm going to spend the next couple of minutes

1 providing the Commissioner with some of the policy
2 background around the Williams response work, and
3 in particular, as part of the Department's effort
4 to address the issues identified in the Williams
5 Review, they developed something called the
6 National Compliance Framework; is that correct?

7 MR. NELSON: Yes.

8 MR. SPIEGELMAN: And Mr. Lunn, can I have document
9 number 2 from Canada's list, please?

10 Q Mr. Nelson, do you recognize this document?

11 MR. NELSON: Yes, it's produced nationally from our
12 Conservation and Protection, and this sort of
13 describes a little more in detail the three pillar
14 approach we have to compliance work.

15 MR. SPIEGELMAN: Can I have that marked as the next
16 exhibit, please?

17 THE REGISTRAR: 878.

18
19 EXHIBIT 878: DFO National Compliance
20 Framework
21

22 MR. SPIEGELMAN:

23 Q There's been some talk in the evidence about
24 various pillars, but I don't know that we've had
25 much of a clear and concise statement of what we
26 mean by pillars and what each one of them are so
27 perhaps I could ask you briefly just to talk about
28 what the three pillar approach is, what each
29 pillar is and how they fit together to contribute
30 to the efforts.

31 MR. NELSON: Okay. I guess it's trying to categorize
32 what the job used to be all in one. Maybe I'll
33 start with education stewardship. It's something
34 that we've always done. I think going back many
35 years, we probably did a better job of education
36 stewardship and relationship building with all
37 groups years ago. We were in more communities
38 back then and we were out on the water a lot more.
39 But recently, I would say over time, we kind of
40 got away from that and over the last five years,
41 we've made some focussed efforts to put more of
42 our work into Pillar 1. In other words, building
43 relationships, working with the communities,
44 education. So that's primarily Pillar 1.

45 Pillar 2 is what most of our uniformed patrol
46 activities. They can be vehicle, vessel, aerial
47 patrols and generally, it encompasses most of the

1 work of what fishery officers do, or a high
2 percentage of what fishery officers do. So that
3 would be, if you want an analogy to police work,
4 it's the uniformed officer out on the street,
5 driving the cars around and checking people and
6 doing investigations.

7 The Pillar 3, major case and special
8 investigations, this is the more often non-
9 uniformed, complex investigations that require a
10 lot more gathering of intelligence and analysis,
11 and then directing perhaps covert activities to
12 try and deal with the more sophisticated
13 violations that we encounter.

14 And in recent years, I think the
15 sophistication of some of the illegal activity has
16 definitely increased and getting more
17 sophisticated. As we catch up, they catch up, and
18 we're kind of battling back and forth at
19 progression with all the technologies that are
20 advancing this type of activity.

21 Q Thanks.

22 MR. SPIEGELMAN: I'll have a few more questions about
23 each of the pillars in a few minutes, but before I
24 go there, perhaps, Mr. Lunn, we can pull out
25 document number 3 from Canada's list.

26 MR. NELSON: Just one thing on that, too, our goal, of
27 course, is to reduce the amount of clients we have
28 under Pillar 3 and increase the amount that we are
29 dealing with on Pillar 1. That would be a
30 successful program, if we've got less people that
31 we're trying to do the secret scroll work on and
32 more people that are just working with us.

33 MR. SPIEGELMAN:

34 Q Thanks. That's helpful. Mr. Nelson, this is a
35 draft document dated December 4th, 2006. Are you
36 familiar with this document?

37 MR. NELSON: I am. I'm not quite sure of the source,
38 if this was another national document. I don't
39 have that at hand here.

40 Q All right.

41 MR. NELSON: But I recognize it, yes.

42 Q Okay. Pages 5 and 6 of this document set out
43 eight key principles underlying the National
44 Compliance Framework, and I just wanted to ask you
45 if these are consistent with your understanding of
46 the program and how it's being run and just to set
47 out a document for the Commissioner's benefit.

1 MR. NELSON: Yeah, I think this document fairly
2 accurately covers some of the things I was trying
3 to describe, probably much clearer than the words
4 I was using. Actually, can I have that marked as
5 the next exhibit, please?

6 THE REGISTRAR: 879.

7
8
9 EXHIBIT 879: DFO National Compliance
10 Framework, Draft December 4, 2006
11

12 MR. MCGOWAN: Sorry. I'm sorry, Mr. Commissioner, I'm
13 just trying to make sure we don't have a duplicate
14 exhibit going in. Mr. Lunn, could you please pull
15 up Exhibit 694? That's fine, thank you.

16 MR. SPIEGELMAN: Okay. Mr. Lunn, can I have document
17 number 5 from Canada's list on the screen, please?

18 Q Mr. Nelson, are you familiar with this document?

19 MR. NELSON: Yes. This is a year's summary put
20 together by the Fraser Coastal Detachment, which
21 is the lower part of the Fraser River, the lower
22 lower part of the Fraser River, near Steveston.

23 MR. SPIEGELMAN: Mr. Commissioner, on April 7th, during
24 Mr. Martland's examination in chief, you asked the
25 witnesses to comment on some of the preventative
26 activities the Department was engaged in, in
27 addition to sort of compliance or compulsion type
28 of activities. And I offer this document as an
29 example of the breadth of the activities that the
30 fishery officers engage in in a given area, and in
31 particular, the first 14 slides are useful
32 illustrations of some of these proactive
33 activities that the fishery officers are engaged
34 in, also known as Pillar 1 activities. Can I have
35 this marked as the next exhibit, please?

36 THE REGISTRAR: Exhibit 880.

37
38 EXHIBIT 880: Fraser Coastal 2009-2010
39 Highlights
40

41 MR. SPIEGELMAN:

42 Q Mr. Nelson, using this deck, if it's helpful, or
43 otherwise, can you please comment briefly on some
44 of the particularly noteworthy Pillar 1 activities
45 that your organization has been involved in?

46 MR. NELSON: Maybe using this document, if I get it
47 just to scroll through sort of, I'll just touch on

1 them briefly. You'll know when I'm done talking
2 to them, just go to the next one. Yeah, these are
3 just some photographs of officers attending at
4 varied events, some First Nations gathering in
5 that picture. Go to the next one. Pulling
6 Together, I mentioned that before, it's a canoe
7 journey, that the Department now has two large
8 canoes capable of taking 14 people in and we
9 participate with First Nations and other
10 enforcement agencies in journeys called Pulling
11 Together, and they'll be anywhere from a week to
12 10 days long and you canoe from community to
13 community, stopping and, you know, experiencing
14 their culture, staying overnight in the
15 communities, and getting to know each other
16 better. And it's been very effective. I had no
17 idea how important a canoe is in First Nations
18 culture until I experienced this and for some of
19 our officers, they described it as a life-altering
20 experience. That sounds a little touchy feely to
21 some, perhaps, but that's what it is. It's quite
22 important.

23 Next. July 1st here, just some officers
24 helping out with a Canada Day celebration of some
25 kind. Next one? Fish for the Future, I'm not as
26 familiar with that one, but obviously, I think
27 it's involving taking young kids out to experience
28 fishing activities and our officers are pictured
29 with a couple of youths.

30 Next? There's a fisherman's memorial
31 service. Again, you know, being connected with
32 all our user groups, including commercial
33 fisherman so I think we pay tribute at this
34 memorial service, as well, for fisherman.

35 Next? Yeah, the Coho Festival, this is
36 something in West Vancouver. It would probably
37 tie in with the hatchery in West Vancouver, the
38 Capilano Hatchery. So it's, again, just getting
39 out, putting on a display and talking to the
40 people.

41 Next? B.C. Rivers Day. That's an event.
42 I'm not quite sure where it's located, but it's in
43 the lower -- obviously, in the Steveston field
44 unit somewhere, where our officers put on a
45 display and talk to the public about what we do
46 and interact with them.

47 Next? Richmond Science Fair. We do get

1 involved in a lot of school talks and I expect
2 this is a science fair that our officers probably
3 participated in, maybe did some judging. You
4 know, just being out there in the community.

5 Next? I'm not familiar with this one, but as
6 it states, it says, "Squamish fishery officers
7 invited and attended the Annual General Meeting
8 for the Squamish Nation," and gave a presentation
9 at that assembly.

10 Next? Fishery officers had a display at the
11 Aquarium on a diver's weekend. Diving is a big
12 part of activity on the coast and with some of the
13 species such as abalone, it's really important for
14 us to connect with the diving community on what we
15 do.

16 Next? And those are a list of some other
17 events that the Steveston staff participated in,
18 the canoe journey, other special events, a police
19 officer memorial in Washington State.

20 Next? And in 2009, a number of our officers
21 participated in the World Police & Fire Games and
22 a couple were in the Honour Guard. Next?

23 Q We move on from there.

24 MR. NELSON: Oh, okay. Yeah.

25 Q Now, is it fair to say that these are the
26 activities of just one detachment and each
27 detachment would be engaged in similar activities
28 throughout the course of their --

29 MR. NELSON: Yes. We have directed officers to
30 participate in these type of activities throughout
31 the region, and we have about, I think it's 15
32 detachments in the region and each of them are
33 expected to do these type of things.

34 Q And is the thinking here that educating the public
35 on the need for conservation of the resource and
36 on the work that the Department does, that these
37 kinds of activities will lead to voluntary
38 compliance, or is that --

39 MR. NELSON: Yes. Yes, and them understanding a little
40 bit more about what we do in our job. If the only
41 time people see us is when we show up when things
42 are bad, it's hard to imagine having a good
43 relationship, but this allows us to interact with
44 all users on a regular basis to see us outside of
45 our regular work and also see them outside their
46 regular work and activities.

47 Q Thank you. Last week, this Commission heard

1 evidence from Grand Chief Ken Malloway, who
2 described a recent incident where fishery officers
3 initiated a search and rescue operation when they
4 thought that he was in trouble. Did you read that
5 transcript?

6 MR. NELSON: I did. We hear a lot of that and it's
7 really gratifying to hear the positive feedback
8 that we can get, considering where we were a
9 number of years ago. But maybe while I'm on that
10 topic, there's been so much focus here today about
11 the FSC fishery and illegal sales, and I think
12 it's important to remind ourselves of why we got
13 here. I value the relationships that I have with
14 all user groups very highly, and the personal
15 relationship I've had with First Nations over the
16 years has gone from, probably, fairly low to very
17 high, and just to remind us why we're here and
18 focussing on Fraser River is probably throughout
19 history, the salmon runs coming to the Fraser
20 River have probably been over-fished by a whole
21 lot of other people, First Nations, commercial
22 fisherman. I mean, one item that sticks with me
23 in my mind is when I first started with the
24 Department in 1977, I went to Rivers Inlet and
25 there was a commercial fishery going on, and
26 Rivers Inlet had a very large sockeye run at one
27 time, and I remember being on a patrol boat with
28 the officer in charge, and a whole bunch of
29 industry representatives coming on the boat and in
30 the wheelhouse, surrounding him and convincing him
31 and lobbying him to keep the fishery open. And I
32 thought this is really -- you know, is this how
33 things operate? And you know, we don't have
34 sockeye returns there that can be of any numbers
35 that can be fished much in Rivers Inlet any more.
36 So I think it's important to remind ourselves that
37 everybody's played a role in where we are today.

38 Q Thank you. I'm going to move on to a few
39 questions on the Pillar 2 activities. As a broad
40 overview, I think you've given some evidence on
41 why patrols remain important, but perhaps you can
42 just briefly add or reiterate what you may have --

43 MR. NELSON: Sorry, on --

44 Q On Pillar 2.

45 MR. NELSON: Oh, okay. On Pillar 2, yeah, that's the
46 sort of the core activity of the bulk of our
47 fishery officers in the region, that is being out

1 there, patrolling when it's open and patrolling
2 when it's closed, and checking for compliance, as
3 I mentioned a number of times. The field presence
4 is the biggest deterrent you can have.

5 Q You testified this morning that the patrol
6 capacity in the marine areas has been reduced over
7 the last period of time. Can you comment on that
8 or explain any further?

9 MR. NELSON: Well, there's a number of things that have
10 happened. I mentioned the number of patrol
11 vessels the Department used to have. We had, at
12 one time, not that distant, like 30 years ago, we
13 had about 30 patrol boats on the coast that each
14 had a crew and capable of carrying fishery
15 officers to do patrol work. We had 35 or so
16 charter patrol boats, which were patrol boats out
17 on the coast, eyes and ears for the Department to
18 gather catch information, to do a little bit of
19 compliance work.

20 The marine enforcement officers in the Coast
21 Guard, we went from 30 patrol boats down to four
22 basic patrol boats, and then two that we have
23 partial access to. They're a little larger
24 vessels. But the four patrol boats are the core
25 of our coastal patrol activity. And we had at one
26 time 55 trained Coastguard staff that were capable
27 of fishery officer work, they were called marine
28 enforcement officers. And over time, they have
29 been phased out to where, a year ago, it was
30 decided that Coastguard staff would no longer do
31 any enforcement work at all. And those four
32 patrol boats that we have on the coast are due to
33 be replaced over the next three, four years by
34 what's called mid-shore patrol vessels. They're
35 going to be a larger vessel, beautiful vessels
36 capable of doing good work, but we've already been
37 told that the expectation is that we will provide
38 fishery officers on board those vessels. And four
39 boats doesn't sound like a lot, but when you
40 consider you have to have three officers on board
41 to do a patrol and they go on shifts of 28 days
42 off, 28 days off, to properly man those boats is
43 going to take 30 to 35 fishery officers to have
44 fishery officers on them at all times. So we've
45 got some major work to do on there.

46 As far as other activity on the coast, I
47 might be missing a couple, but those are the key

1 ones.

2 Q Thank you. Turning to aerial surveillance --
3 MR. NELSON: Maybe I could just ask Scott if he has
4 anything to add to that?

5 Q Oh, sure.

6 MR. COULTISH: No, Randy captured that one.

7 Q Okay. Thank you. Turning to aerial surveillance
8 now, we heard testimony this morning that there
9 has been a reduction in the hours devoted to
10 aerial surveillance. And I just want to pick up
11 on a point in the PPR.

12 MR. SPIEGELMAN: Mr. Lunn, if we could pull up page 43
13 of the PPR?

14 Q And paragraph 79 is where I want to take us to.
15 The second sentence of paragraph 79 has a quoted
16 statement attributed to DFO, and it states that:

17
18 Aerial surveillance program is the only
19 viable offshore monitoring program.
20

21 And in particular, I guess, the point that I want
22 to make or have you comment on, rather, is that
23 document that's cited to you, CAN 063179, I
24 understand to be an annual report authored by
25 someone in your organization named Wanda Saunby;
26 is that correct?

27 MR. NELSON: Yes. Yes.

28 Q Was Ms. Saunby speaking on behalf of DFO in
29 writing that report, or do you have any
30 information on it?

31 MR. NELSON: No, Wanda is in charge of the aerial
32 surveillance program, a very dedicated, passionate
33 employee, and with internal documents, you state
34 your views, and I welcome that, but in this case,
35 it was her opinion, not the Department's opinion.
36 Obviously, we have patrol capacity with our rigid
37 hull inflatables that I talked about, and we have
38 some patrol presence. And, you know, aerial
39 surveillance, to me, isn't the total answer,
40 either. If you fly over and get a picture, you've
41 got a nice picture, but you have to have somebody
42 capable of following up on it. So I'd say it's a
43 personal opinion of an employee.

44 Q Okay. Thank you. And the next page, on paragraph
45 82, the PPR references frustration and attributes
46 that to C&P Pacific Region.

47 MR. NELSON: Sorry, what number are we in?

1 Q Paragraph 82.

2 MR. NELSON: Okay.

3 Q I guess it will be on the following, the second
4 half of that paragraph.

5 MR. NELSON: Yeah. Yeah.

6 Q On the next page, "... expressed the following
7 frustrations." Now, those are attributed to the
8 same document?

9 A Yes.

10 Q And so I suppose a general point is whether you
11 agree that in terms of reading the PPR, is it fair
12 to have those kinds of statements attributed to
13 DFO as an organization, or should they more
14 properly be attributed to an individual?

15 MR. NELSON: I would say the first one is more
16 attributable to an individual. The first bullet
17 on this page, talking about flying hours
18 allocation 1155, I think that's a fair statement.
19 We were at 1500 at one time and they've been cut
20 back. Now, it's my job to take that message
21 forward. That reduction was help to offset some
22 of the salary dollar shortfalls that I was talking
23 about earlier. So that's what the money was used
24 for. It was national decision, do we fly or do we
25 pay for officers? Those are the hard decisions
26 that we were down to.

27 As far as the next bullet that says "no night
28 missions," I talked to her at length about that,
29 and it's not that there are no night missions,
30 it's more likely that we won't have night missions
31 if our patrol time gets down and it's more
32 difficult to arrange and on and on, but we still
33 are capable of flying night missions, it's just
34 they're going to be much reduced.

35 Let me read the last one. And I would agree
36 with the last one that, you know, if you reduce
37 the amount of flying, people see less of you out
38 there and the risk probably goes up for drops in
39 compliance.

40 MR. MCGOWAN: Commissioner, perhaps I'll just rise at
41 this point to ensure the record is clear. My
42 friend, when asking the question, suggested the
43 PPR attributed these quotes to DFO generally. The
44 PPR, in fact, makes it clear that they are taken
45 from a report. The sentence preceding the bullet
46 reads:
47

1 2008/2009 Pacific Region National Aerial
2 Surveillance Program Annual Report expressed
3 the following frustrations with reduced
4 flying time.
5

6 So that's the sentence preceding those bullets.

7 MR. SPIEGELMAN: Fair enough. Thank you.

8 Q Turning now to Pillar 3 activities and the major
9 case investigations, Mr. Coultish, perhaps I can
10 ask you to summarize or underline why this is an
11 important aspect of the C&P program?

12 MR. COULTISH: Well, just to understand that the
13 primary activities that C&P have been involved in
14 primarily relate to patrol enforcement presence,
15 uniform presence. And our organization within the
16 Pacific Region, here, in the mid-1980s, began a
17 program where we created an investigative unit,
18 and this is a plainclothes unit to initiate, I
19 guess, a program, again, to look at moving away
20 from -- or not completely, but adding to our tool
21 belt, and that is, again, our primary patrol
22 activities, the idea of being able to utilize
23 these new skill sets and abilities for
24 investigative work, targeting on activities and so
25 on that we just simply can't do as a uniformed
26 presence.

27 In the Pacific Region, we've developed that,
28 continued to move and, in fact, now, as part of
29 the National Framework, understanding that the
30 criminal element that we face in a country, and
31 I'll refer to the Pacific Region, isn't simply all
32 just people we'll see while we're out on patrol.
33 There is an organized criminal element that has
34 substantial impacts and effects that we simply
35 can't do by being just in uniform. And the idea
36 of creating an intelligence organization,
37 following the intel-led model, implementing major
38 case management as a professional management of
39 large complex cases similar to what you see now
40 with organizations such as the RCMP with their
41 IHIT, integrated homicide teams, and so on, who
42 have adopted these processes because of, again,
43 the complexity, disclosure requirements by our
44 court systems and, in fact, we invest often
45 thousands and millions of dollars in these and we
46 need to have success. So as far as the
47 Department's concerned, we're moving toward these

1 types of modern principles of law enforcement to
2 go after or to target these complex,
3 sophisticated, criminal activities that we know
4 are there, we haven't been able to go after as
5 good as we could, but we are moving in that
6 direction.

7 Q Thank you. Perhaps this would be an opportune
8 time to ask you to comment on the Commissioner's
9 question regarding borrowing the analytical
10 capabilities of the intelligence capacity from the
11 RCMP.

12 MR. COULTISH: Right. Well, it's a good question and
13 as an example, during the Olympics, we
14 participated as what was referred to as a Category
15 2 organization with the joint intelligence group,
16 that was created at E-Division Headquarters Office
17 by the RCMP. As Category 1 were the primary law
18 enforcement organizations in the province and in
19 the country, and Category 2 were a number of other
20 organizations, such as ourselves, Regulatory,
21 Transport Canada, CBSA, or sorry, Canadian Border
22 Services, and others, to create a group of people
23 that where information would come in and be deemed
24 to be potential intelligence and then be looked
25 upon as of threat assessments and others.

26 In understanding that and moving toward the
27 intelligence, from a strategic perspective, and
28 that is intelligence that would be utilized to
29 assist in program influence and movement, the RCMP
30 and that type of process has and could help us,
31 and we're looking at the idea not only from a
32 strategic PPA, which is always referred to as
33 program planning and analysis services, but the
34 issue of having analysts within our organization
35 that look at operational and tactical
36 intelligence, and that is the arm that actually
37 focuses on offenders, it would be very difficult
38 to utilized a housed group, if you would say,
39 because of the level of knowledge that those
40 analysts will have to have with regards to the
41 internal workings of our organization and what we
42 do.

43 As well, as part of our deployment of
44 intelligence within the region, we chose to rather
45 than centre just analysts, for instance, in our
46 regional headquarters capacity, is to have
47 analytical capacity right out into the areas,

1 again, following a model such as the RCMP have
2 done, where they've gone from zero to 160 analysts
3 now, and these analysts are housed right out into
4 the detachment and district offices, because the
5 information that they're looking for on
6 criminality and crime analysis and trends is
7 garnered right from there, right from the
8 detachment levels and so on. And that can
9 influence and guide as to how the program, as well
10 as the E-Division program is run. I believe that
11 to be a very valid process, both from a regional
12 perspective and a national perspective and that's
13 our preliminary plan at this point is to, rather
14 than centralize, is to actually decentralize some
15 of that ability so that the information coming in
16 from the grassroots, from the field level can be
17 interpreted and if deemed proper to be
18 intelligence at that level and then brought up to
19 the regional level.

20 Q Thank you.

21 MR. SPIEGELMAN: Mr. Lunn, could I have Exhibit 870 on
22 the screens, please?

23 Q Mr. McGowan asked some questions about this
24 Project Ice Storm this morning, and I just wanted
25 to ask a couple of questions about this report and
26 similar reports like it. This particular one, can
27 you tell me the author of the report?

28 MR. COULTISH: Robert Melvin.

29 Q Okay. And he was the sole author, I presume?

30 MR. COULTISH: He acted as, basically, an analyst,
31 threat assessment specialist in this capacity on
32 this project.

33 Q And to whom was this particular document
34 distributed after it was created?

35 MR. COULTISH: It would have been to the head of the
36 SIU Unit, the Regional Director, and probably the
37 detachment supervisor from where this was centered
38 out of.

39 Q Okay. I note that there's some red writing on the
40 coversheet, here, that we can see. Can you
41 comment at all about the degree to which this kind
42 of document would be shared outside of the
43 intelligence community, within C&P?

44 MR. COULTISH: In the classification, because of
45 security standards and information that we deal
46 with involving individuals' activities,
47 techniques, investigative techniques, and that

1 type of thing, it would be listed as Protected B,
2 which is a high level of classification, thereby
3 restricting the distribution of this document to a
4 very few people. This would not be randomly
5 distributed among DFO staff, C&P staff, it would
6 be held to the highest levels, a need-to-know
7 basis.

8 Q Can you comment at all on how that classification
9 level might impact on the kinds of language used
10 by the author and the way the information is
11 framed within a document like this?

12 MR. COULTISH: Well, the role of the analyst --

13 MR. MCGOWAN: I'm just rising. If the question is
14 asking about how it impacted on this particular
15 author in this particular report, I'm not sure
16 this witness is particularly well-suited to answer
17 that question. If there's a policy in place that
18 my friend wants to ask about, or a directive
19 that's been given, I don't have any objection to
20 that.

21 MR. SPIEGELMAN: The objective of my question is to put
22 into context for the Commissioner and the people
23 attending the hearing today, put into context the
24 nature of the work that's put into these documents
25 and how the information is framed so that people
26 who are now going to be viewing this on the
27 website can at least have some kind of context
28 around which to interpret the information. And it
29 need not be particular to this author and this
30 document, but there's other documents similar to
31 this and I note that the language that's used in
32 this document is very different from the briefing
33 note that you also entered into evidence along
34 with it. I was just trying to get the witnesses
35 to explore and explain why there might be some
36 difference in messaging.

37 MR. COULTISH: The operational intelligence assessment
38 is intended to provide an objective assessment of
39 the work and the information related to the
40 investigation and the project. At times, you'll
41 find some very candid questioning language.
42 That's the whole idea of the assessment is to
43 determine the intelligence or the information as
44 to the project. And the importance of
45 intelligence is to allow it to lead your
46 investigations instead of predisposing where we
47 should move in that direction. And like in any

1 investigation, if the intelligence analysis is in
2 conflict with a part of that project, or the
3 intent, or what's going on, you need to see that,
4 you need to focus on that because you may have to
5 reassess your activities. And that's a key part
6 of the intelligence assessment.

7 MR. SPIEGELMAN:

8 Q Thank you. That's helpful. Switching topics a
9 little bit, I thought, Mr. Coultish, you could
10 comment a little bit on the efforts under the
11 PICFI program to improve traceability.

12 MR. COULTISH: Well, traceability is a fundamental part
13 of the initiative and under PICFI, funding, C&P,
14 which is a component of enhanced accountability,
15 where we derive our funding from, receives through
16 project submissions, funding through that to
17 benefit and to participate in the overall enhanced
18 accountability program. There are two categories,
19 one would be referred to as direct monitoring,
20 which is funding that is given to the areas and to
21 I&I to engage in activities, trying to change the
22 way we do business on compliance.

23 The other section that we receive funding
24 through under enhanced accountability, would be
25 directed at an inspection database or inspection
26 development of an inspection program within the
27 Pacific Region, which we've done. And the biggest
28 bulk of money is directed toward the development
29 of the intelligence-based or led model in the
30 Pacific Region.

31 That supports five FTEs or five positions,
32 people, including myself, right now, and is wholly
33 responsible for, at this point, where we are, the
34 advancement that we've been able to make because
35 of that funding. There is no A-base funding
36 supporting the development so far or the
37 continuation of the intelligence-led program in
38 the Pacific Region.

39 Q Thank you. And overall, perhaps I can get each of
40 you to comment briefly on this, to what extent
41 would you say that the National Compliance
42 Framework and it's three pillars model has
43 contributed to your ability to achieve the
44 outcomes that C&P is trying to reach?

45 MR. NELSON: I'm not sure I -- like, the concept is
46 developed naturally on the three pillars. And
47 we've got some seed money for starting it in this

1 region. We had already made some conscious
2 decisions to move some of our staff to more Pillar
3 1 type activities so I'd say the overall structure
4 is there and I hear from our new Director General
5 that he sees this as probably a future way to go,
6 as move to intel-led once the development of a
7 national model in some of the regions, but as I
8 stated earlier, the model will be good and it will
9 look good on paper, but if we don't have the parts
10 to put it in place to hold all three pillars up,
11 it's going to fall down.

12 MR. COULTISH: A quick summary. As I've indicated,
13 that in our history as an organization, C&P and
14 the Department, we've been in the communities
15 doing community policing, Pillar 1, engaged in
16 enforcement activities, surveillance, monitoring
17 and investigations for 104 years, the life of our
18 organization. However, as we modernize our
19 policing law enforcement regulatory techniques, we
20 begin to move them and categorize them to
21 articulate the need. And this is what I believe
22 that we see with the Pillar 1 activities, or,
23 sorry, the pillar activities, was we've now been
24 able to illustrate and actually adjust and focus
25 our attention onto these activities in a more not
26 only graphic, but a way of being able to actually
27 show how much time and effort that we're doing,
28 through FEATS and other ways. And I believe it's
29 a step and to continue to modernize our
30 organization as we progress, as we have to, given
31 the changes we see in our industry and culture,
32 and the social things that we deal with, not only
33 as an organization, but in Government of Canada.

34 MR. NELSON: Can I just add a couple of comments, too,
35 about line reporting helped start us down the
36 right road. Prior to that, our officers were
37 reporting to people who have no background in
38 enforcement and don't really understand some of
39 the techniques and tools required. For this last
40 five years with line reporting, we've been able to
41 sort of put some of the foundation in place and
42 now we've got to start putting the building blocks
43 together and make this a workable structure. So
44 you know, can we do that with what we have? I
45 think a decision has to be made somewhere in the
46 Department whether we continue to try and be
47 perceived as a modern intel organization or truly

1 become one. And I don't know what exactly that
2 might mean, but it could mean we take line
3 reporting to another level and have the directors
4 report to a person with enforcement background.
5 That might be something we should consider because
6 until you do and get the understanding all the way
7 up the chain, it's going to be missing.

8 Q Thank you. I'm going to turn briefly to the issue
9 of high seas driftnet fishing that was raised
10 earlier this morning.

11 THE COMMISSIONER: Just a minute. I wonder if I could,
12 before we leave this topic, just ask one more
13 point, which goes back to the question I asked
14 earlier. I'm going to assume for the minute that
15 the resource, the financial resource for what
16 you're talking about ultimately has to come from
17 the Treasury Board. In other words, funds have to
18 be provided. And I would assume that, and I'm
19 just assuming this, I have no idea, that for
20 Transport Canada, or Canadian Border Services, or
21 the military, or CSIS, or RCMP, they're going to
22 have to make proposals for funding for
23 intelligence services, resources, et cetera, much
24 along the lines you've addressed. Is there a
25 business plan or a proposal put together by DFO
26 with respect to Fisheries enforcement that takes
27 into account the kind of modern technologies
28 you're talking about, whether they can be shared,
29 or not shared? In other words, for the people,
30 ultimately, who have to make the decision about
31 where to put tax dollars for this kind of
32 operation, surely, they need to know whether
33 there's some synergy that can be used here,
34 whether there's some sharing opportunities. How
35 does that all come together from a policing point
36 of view? And I haven't mentioned it, but I should
37 include, I presume, when you talk about organized
38 criminal activity, it would also involve
39 provincial police who are also engaged in those
40 kinds of concerns.

41 MR. NELSON: Right.

42 THE COMMISSIONER: Does every agency end up having to
43 have the same kind of structure, or do these
44 things ultimately require some sort of shared
45 synergy?

46 MR. NELSON: Maybe I could comment first. We did look
47 at possible, some synergies with other

1 organizations. Canada Revenue is just a couple of
2 blocks from our office and one of our chiefs went
3 down there and talked to them, and they were quite
4 willing to work with us, train some of our staff,
5 and it's actually one of the recommendations that
6 our collective chiefs came up with is something
7 that should be explored is is there a way to have,
8 develop a centre of expertise with other agencies
9 so that we don't all have to have informatics
10 experts and analysts. And it could be quite
11 onerous, but perhaps as a stepping stone, we
12 should look at other resource agencies, such as
13 Environment Canada, Canadian Wildlife Service,
14 Parks Canada. If even those federal resource
15 agencies got together, maybe look at, with the
16 Provincial Conservation Officer Service, those
17 agencies that are dealing with resources, if we
18 had a collective, put our dollars together, we
19 could probably develop a very effective intel
20 centre of expertise, and I think that's what
21 you're getting at. And it's one of the points we
22 actually did discuss with our group last week.
23 Scott?

24 MR. COULTISH: Yeah, and I think it certainly has a
25 merit, understanding that there are a lot of
26 organizations within the country, all, you know,
27 looking after the same type of -- or having the
28 same goals, and that is law enforcement,
29 compliance, public safety, and so on.

30 I know of Canadian Border Services, my son
31 works with them. I've worked with their
32 intelligence section. They've created an
33 intelligence section. Environment Canada has an
34 intelligence section. Every police organization
35 in the province of British Columbia not only has
36 an intelligence section, but is a part of a bigger
37 one called the Criminal Intelligence Services of
38 British Columbia, which we are a Category 2
39 membership, as well. And we'd benefit from that
40 larger -- as well as it's Criminal Intelligence
41 Services of Canada, which is the federal, and we
42 benefit from the information that flows. The
43 challenge is with the nature and the types of
44 specific work, if you want to say we do, and the
45 understanding of the fishing industry and the
46 players, it may be difficult to have a general
47 group having that type of knowledge. I'm not to

1 suggest that at a higher level, certain levels of
2 analytical abilities, but what we have found is
3 the need to have them embedded in our organization
4 at the working level, to be able to provide the
5 guidance and the objectivity that we require if
6 we're going to truly look at being an
7 intelligence-led organization.

8 New money and having additional bodies to
9 create that is probably our first choice.
10 Understanding, you're correct, it would be a
11 Treasury Board submission that the federal
12 organization is looking to move in that direction
13 as far as developing an intel-led model, and I
14 believe we'll explore that. I sit on a national
15 intel MCM working group and for the Pacific
16 Region.

17 The thing is that we've driven this interest
18 from the ground up. It's now taken fire at a
19 national level and we hope that some leadership
20 and resourcing, and so on, will come from that.
21 That's going to take time. In the meantime, do we
22 sit, in the Pacific Region, or in other regions
23 and wait for that, or do we try to facilitate what
24 we can from within? And we're really, really at
25 the precipice, if you would say, because if the
26 funding that we're presently receiving does not
27 continue, without a complete reorganization of our
28 internal workings within the C&P, we simply can't
29 continue. And that's where we're at and if we're
30 going to be an effective investigative
31 organization evolving, we simply have to go there.

32 MR. NELSON: If I could just add one point, too, on the
33 notion of, well, other agencies need these
34 analysts, too, most other agencies have those in
35 place. And I think with Environment Canada, with
36 their recent increases in officers, they created a
37 number of intelligence analysts in that
38 organization. And again, most other agencies have
39 some of that in place, but certainly pooling
40 resources together could be an option.

41 THE COMMISSIONER: Thank you very much.

42 MR. NELSON: Thank you.

43 MR. SPIEGELMAN: I note the time, I have perhaps 10
44 more minutes of questions. Maybe we could take
45 the afternoon break?

46 THE COMMISSIONER: Oh, you want to take the break now?

47 MR. SPIEGELMAN: I'm in your hands.

1 THE COMMISSIONER: I'm content for you to continue.

2 MR. SPIEGELMAN: Okay. That's fine, let's carry on.

3 Q I have just a couple of questions and it's really
4 a point of clarification on the PPR as regarding
5 the high seas driftnet fishing.

6 MR. SPIEGELMAN: So perhaps, Mr. Lunn, I could have
7 page 83 of the PPR pulled up?

8 Q In particular, this is a chart that was discussed
9 during Mr. McGowan's examination.

10 MR. SPIEGELMAN: And if we could just scroll up, Mr.
11 Lunn, just the paragraph above, it says that these
12 numbers do not match, and then a little bit
13 further, it says:

14
15 DFO documents suggest there may have been a
16 resurgence in high seas driftnet fishing from
17 2006 to 2008.

18
19 Q Now, going down to Table 8, it appears to me, and
20 perhaps you will agree, that for the most part,
21 the numbers do match until that period. And Mr.
22 Nelson, I wonder if you could comment a little bit
23 on why that might be?

24 MR. NELSON: Yes, these numbers were put together by
25 Robert Martinolich. He has worked on the
26 international file and been part of North Pacific
27 Anadromous Fish Commission, NPAFC, for quite some
28 time. And one of the more senior people on that
29 group. He's now retired. But I talked to him
30 about these numbers and I said, "What happened
31 that these numbers changed?" And he said it was
32 his opinion that the number of vessels detected
33 out there should all be put on this document,
34 whereas other people in the NPAFC felt that it
35 should be only those that they confirmed were
36 targeting on salmon because that's what they deal
37 with, is anadromous. It was a different point of
38 view and so that's why there's such a large
39 discrepancy from '06 on, because he made that
40 decision to enter the information.

41 Q So if I understand you correctly, the methodology
42 in compiling the numbers changed at that time?

43 MR. NELSON: Yes. Probably what should have been done
44 is there should have been an extra column added
45 and a footnote explaining that very fact, that
46 these are all vessels detected versus ones
47 suspected of targeting on salmonids.

1 Q And so given that, can you comment on whether, in
2 your opinion, these numbers do, in fact, suggest a
3 resurgence in high seas fishing?

4 MR. NELSON: Well, without that explanation, it would
5 appear very much so, but with the explanation and,
6 you know, I do note that in '07, it says seven
7 apprehensions. That's a bigger number than what
8 you see in the previous years, but I think it's
9 explainable as to why the numbers are larger.

10 Q Thank you.

11 MR. SPIEGELMAN: And now, on the next page, Mr. Lunn,
12 there's a discussion about Canada's contribution
13 to the enforcement of high seas driftnet fishing.

14 Q And there's discussion of the Aurora aircraft,
15 which we've discussed already so I won't recover
16 that ground, but what I noticed is not discussed
17 here is the Radarsat-2 program, and I wonder if
18 you could comment on that a little bit.

19 MR. SPIEGELMAN: And if it does help, Mr. Lunn, if you
20 could pull up Document number 10 on Canada's list
21 and that might help Mr. Nelson.

22 MR. NELSON: Yeah, the Radarsat is a Canadian satellite
23 that provides information to the NPAFC. It
24 provides information for a lot. It's actually
25 military, I think, is the one that controls the
26 information, but they detect vessels of interest
27 in the North Pacific and that information gets
28 reported through our Department and then shared
29 with the other countries that are signatories to
30 the NPAFC. So that's the gist of it. The
31 technology isn't such that it can identify the
32 vessel as fishing or anything, it just picks up a
33 known target out in the Pacific and then aerial
34 patrols can be adjusted to focus on areas of
35 interest so it helps define where we can best put
36 our efforts. Instead of random flying and
37 checking everything, it helps the patrol focus on
38 areas where vessels are known to be.

39 Q Thank you. And by way of wrapping up --

40 THE COMMISSIONER: Did you want to mark that document?

41 MR. SPIEGELMAN: Oh, yes, please. May I please have
42 that marked as an exhibit?

43 THE REGISTRAR: 881.

44 MR. SPIEGELMAN: Thank you.

45

46 EXHIBIT 881: Fisheries Working Group North
47 Pacific Heads of Coast Guard Form, Fisheries

1 Combined Operations, Mar 2010

2

3

MR. SPIEGELMAN:

4

Q And by way of conclusion, perhaps I will just
5 throw it open to the both of you to comment on if
6 there's anything more you'd like to say about
7 what's been working well for C&P in the post-
8 Williams area and recommendations you may have for
9 going forward.

10

MR. NELSON: And we're taking a break shortly?

11

Q Yes.

12

THE COMMISSIONER: How long do you have before your
13 retirement?

14

MR. NELSON: No, I just wondered because what I have is
15 going to take more than a few minutes, that's all.

16

MR. SPIEGELMAN:

17

Q Okay. Well, perhaps --

18

THE COMMISSIONER: You can get started.

19

MR. SPIEGELMAN: Okay.

20

Q And the Commissioner's question about full
21 assessment of costs, I'm not sure, did you want to
22 discuss that?

23

MR. NELSON: Oh, well, yeah, that's a good point, or a
24 good reminder.

25

Q I understand that Mr. Nelson's going to be finding
26 a document or preparing a document, or he's got
27 something to share with us, but it's not prepared
28 right now and perhaps we can enter it tomorrow.

29

MR. NELSON: What I could do on it maybe to start with
30 before I get into some recommendations is the PPR
31 document, page 124 and 125 is something I'd like
32 to refer to. But before that, regarding the
33 costs, we had a process, together with -- again,
34 with -- the 12 staff report to me and we said what
35 would we need to do our job, and we took into
36 consideration the Marine Enforcement Officer
37 Program. How were we going to man that if we have
38 to? How were we going to do -- southeast B.C. and
39 northeast B.C. were added to our plate a number of
40 years ago with no resources. There's just a whole
41 number of things, and the number's a big scary
42 number, but what I'll provide you tomorrow is a
43 detailed breakdown. There are so many things in
44 here that are included, you know, such as some
45 aerial surveillance money, the CSSP issue,
46 relocation costs. We spent half a million dollars
47 relocating our officers and there's no real fund

1 for that. It all adds up to a number that is in
2 the \$12 to \$14 million range and what I provide
3 you will be a breakdown of what that is. But
4 sorry, the next page after this one, maybe I had
5 the number wrong. Yeah, this one. Okay. Yeah,
6 and the one below it. Okay. We'll start with
7 this one first. And what I want to point out here
8 is that exercise I just described, where we came
9 up with that number, that was done before I had
10 the information that's on the screen right now.
11 So through our best estimates, collective
12 estimates, that's where we thought we would have
13 to be if we wanted to have a proper compliance
14 program in Pacific Region. And I then got the
15 information that shows other regions compared to
16 Pacific Region. And what this graph is is for the
17 next three years, this is a percentage of C&P's
18 budget versus all of the resource management of
19 all the ecosystems and fisheries management. So
20 in other words, if you look at Pacific on far
21 right, we form -- and over the next three years,
22 so if you ignore the colours and just imagine them
23 as an average, we are 22 percent of our ecosystems
24 and fisheries management. And I thought I wonder
25 how we compared to other regions so I put them up
26 here and the ones that are most relative to us are
27 the three East Coast regions, the second, third
28 and fifth columns, because they are coastal
29 Maritime regions, Gulf Maritimes and Newfoundland.
30 National Capital Region is the one in there, it's
31 not really as relevant because it's our Ottawa
32 centre. But if you look at those three, they
33 average 56 percent of their organization.
34 Now, again, this is salary dollars, not all
35 the other stuff. So just the salary dollars. In
36 this region, C&P is 22 percent of the
37 organization. In the other three, they average
38 56. And I kept scratching my head, trying to see
39 what was wrong with this and then I thought, well,
40 we have salmon enhancement in this region. And if
41 you go down to the next graph right below this
42 one, I did the same exercise taking salmon
43 enhancement funds out of it and we still only came
44 up to 30 percent versus the average of 56 to the
45 others. So then I thought, well, what would that
46 gap take to bring us up, and ironically, it comes
47 out to 14.9 million, which was in the ballpark of

1 the number we were at. So then the obvious
2 question is, well, what's the relativity in the
3 workload? And I looked at a number of things.
4 All I could think of as far as relatively and in
5 this region, we have more occurrences and
6 violations. We had the same amount of occurrences
7 and violations in this region as they have in the
8 entire rest of the country together. So to me,
9 that's a work indicator. We have as many
10 violations and occurrences as the rest of the
11 country combined.

12 And I looked at things like, well,
13 population. Maybe we should look at population
14 and figure out how many fishery officers per
15 capita we have. And in Newfoundland, it worked
16 out to one officer for every 4,600. In Gulf, it
17 was one for every 6,000, and Maritimes, one for
18 every 8,000. And in this region, it's one for
19 every 24,000. So when I start putting these
20 numbers together, I start realizing why we're
21 feeling like a little overwhelmed by what we're
22 doing in relation to some of the other regions.

23 I then looked at, you know, the type of
24 fisheries that we have. We have a marine
25 recreational fishery with 300,000 to 400,000
26 fishers. They really don't have any recreational
27 fishery back East to speak of. There are just
28 very small amounts in marine environment. In the
29 aboriginal fishery, we have more First Nations and
30 more bands than any other region by a long shot.
31 Our commercial fishery is more complex. We have
32 more integrated fisheries management plans than
33 any other region.

34 I then thought, well, what about the value of
35 the commercial fisheries. And in this region,
36 based on 2010 information, the value of our
37 commercial fisheries in this region are \$1.2
38 billion. And in the others, Newfoundland is \$780
39 million, Maritimes, about 800 million, Gulf Region
40 is about 970 million. So every which way I looked
41 at it, I couldn't -- the other things I looked at
42 were we have the most areas without treaties. We
43 have the most **Sara-listed species, the Species at**
44 **Risk Act.** We have the most habitat work of
45 anybody, the most lineal kilometres of salmon
46 streams in the country. And I honestly couldn't
47 find anything that made this make any sense. So I

1 thought it's important for the Commissioner to see
2 this and I asked the questions and I don't have
3 the answer, but it makes sense to me when I see
4 this gap and we did our exercise to determine what
5 we thought some of our needs were.

6 There was actually another officer who did
7 another process a totally different way and came
8 up with a similar number. Now, I don't for a
9 minute think that that might be where we end up in
10 this, but there has to be some understanding in
11 our agency, right to the top, that we can't do
12 what you're asking us to do with the continuing
13 funds that we have. And that's really the bottom
14 line. So I just wanted to make sure that that
15 information was -- oh, and another indicator, of
16 course, is vessel traffic on the coast. This
17 coast has a third more vessel traffic, and I'm
18 talking large type vessel traffic than the East
19 Coast combined. So I couldn't find a statistic
20 that could explain to me why such a large variance
21 in numbers of fishery officers.

22 MR. COULTISH: I can make mine much quicker. Mr.
23 Commissioner, having the opportunity, I have three
24 years left until I retire and I'm dedicated as
25 much as I can to try to make an impact when it
26 comes to where we think we need to go as an
27 organization. So really quickly, I think what the
28 Department has to do, and particularly with C&P,
29 is establish what type of a program C&P needs to
30 be given our modern look at what we think we're
31 doing or what we need to do, establish that
32 program, establish the number of FTEs, give us the
33 overtime, the over-men required and then leave us
34 alone. And when I say that, I understand the
35 pressures of the federal government, I've been in
36 it a long time, but we're going to continue to
37 face these same things and same questions over and
38 over if we're simply eroded year after year after
39 year.

40 Coming to an intelligence-led policing
41 process, same thing, is determine what model we
42 want to achieve, fund it, assign the FTEs and
43 allow us to grow and show what we can do. I
44 believe that that model will increase as the need
45 increases, and that's fine, but we will not get
46 there unless we go through this process, that
47 process. And I look at every other policing

1 organization, law enforcement, and I've had a
2 chance to review from the province to the federal
3 government, to many of the regulatory and that's
4 what's happening with them. And we're farther
5 behind many of them and we need to catch up for
6 the reasons as that the bad guys have no
7 restraints, social networking, all the technology
8 available to them, and we're in a catch-up mode.

9 When it comes to the investigative group,
10 which is the plainclothes investigators, there is,
11 in my opinion, a very important role for these
12 people to continue to play. We're the only
13 organization in the country within C&P that has
14 it, we're the envy of most other regions when it
15 comes to that. We need to be able to, again,
16 establish, if that's what's important to us, the
17 number, funding and leave us alone.

18 And at the end of the day, when it comes down
19 to the program, in general, I'm on the same page
20 as Randy, but I have maybe a little plainer talk.
21 We're simply trying to do too much. The public
22 loves us, the industry loves us, but they love to
23 call us and we want to help, but at the end of the
24 day, there's just too much work for us to do and
25 expectations. And we're probably one of our own
26 worst enemies because we come into these jobs to
27 help the people of Canada to protect the resource,
28 and then we take that very, very seriously, and
29 saying no is just not in our context, but we have
30 to. We have to say it more now. And I think
31 we're trying to do too much. And I think, as an
32 organization, we have to be able to say no. And
33 unfortunately, that comes with consequences.

34 Thank you, sir.

35 MR. NELSON: And you'd asked about recommendations. I
36 could start that now, or --

37 THE COMMISSIONER: Maybe this would be a good place to
38 take the break.

39 MR. NELSON: Okay. Thank you.

40 THE REGISTRAR: The hearing will now recess for 10
41 minutes.

42
43 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)
44 (PROCEEDINGS RECONVENED)
45

46 THE REGISTRAR: The hearing is now resumed.

47 MR. SPIEGELMAN: Good afternoon. Before I invite Mr.

1 Nelson to offer his recommendations, I just wanted
2 to make one point of clarification on the radar
3 imagery point. I do know, and my friend pointed
4 it out to me, that paragraph 178 does mention the
5 use of radar or satellite imagery, so my
6 characterization of it being absent was not
7 correct.
8

9 CROSS-EXAMINATION BY MR. SPIEGELMAN, continuing:
10

11 Q Now, Mr. Nelson, if you can briefly list some
12 recommendations, then we can...

13 MR. NELSON: Okay. I'll try and be brief and what I'll
14 do with this information is the budget numbers
15 that I have talked about, I'll have that in a
16 document, and also provide you with these
17 recommendations in a little better format than it
18 is right here in front of me, and I'll perhaps
19 just read a sentence from each one for time
20 purposes to say what they're about. This is a
21 collection of recommendations that I've got from
22 our collective management group and I actually
23 phoned a couple of offices in the region and said,
24 "If you were going to make recommendations, tell
25 me what you would hear," so I went right to the
26 bottom of the organization and said, "What can we
27 do to make things better?"

28 I must say that I'm very proud of the
29 organization that I work for and I would be giving
30 this same information if I had five years left.
31 There's some people, who know who I am, say,
32 "Well, you're on your way out, you don't care what
33 you say." I truly care what I say, and I would be
34 saying the same thing if I had another five or ten
35 years.

36 I'm really excited at the opportunity that we
37 can present some of this stuff and hopefully some
38 of it will move us forward. So I'll just go into
39 these and perhaps read them off.

40 First one:

- 41
- 42 • It should be mandatory that resource
43 management and C&P meet to discuss fisheries
44 and potential changes in fisheries long
45 before being implemented. I'm getting into
46 the things like conditions of licence that
47 seem to pop up. We've got to be forced

1 together, I guess, because we can't seem to
2 be engaged.
3

- 4 • There needs to be an agreed-to allocation in
5 FSC fisheries and that's a monster, a monster
6 in that it's very difficult to achieve with
7 all the groups, but it's something we've got
8 to start addressing.
9
- 10 • Catch-monitoring in all fisheries must
11 receive a higher degree of rigour and audit,
12 and we've talked about that a little bit,
13 including C&P.
14
- 15 • There should be a legal requirement for
16 processors and cold storage facilities to
17 have a detailed tracking system. We should
18 be able to do a better job and put the focus
19 on the cold storage facilities and the
20 processors to track all the fish on their
21 premises.
22
- 23 • Dual fishing, I've talked about that.
24
- 25 • "Mortally wounded" clause, the elimination of
26 that.
27
- 28 • Looking at perhaps more vessel monitoring
29 systems on our commercial boats.
30
- 31 • Implementing special constable status for
32 fishery officers and investigative body
33 status. I raised those, I think, in the
34 habitat session.
35
- 36 • Restorative justice. More funding and
37 expansion of the use of restorative
38 community-based justice.
39
- 40 • There should be an independent non-DFO
41 committee to review whatever recommendations
42 come out annually. That, to me, is one that
43 I feel real strongly about. They should have
44 full access to DFO staff and report directly
45 to either the Standing Committee on Fisheries
46 and Oceans or the Minister, just to try and
47 make sure that two and three and four years

1 from now, whatever recommendations come out
2 of here, that there's some system to follow
3 up and try and ensure they keep them moving.
4

- 5 • A media liaison officer. I mentioned that
6 one before.
7
- 8 • Consideration should be given to take line
9 reporting a step further, and there was
10 mention of the word "agency status". Is that
11 something that would help move us forward in
12 where we have to go in the future?
13
- 14 • I touched on, in the past as well, about our
15 computer system, the radio system. Our
16 current radio system, I understand, would
17 require a huge amount of money, \$11 million
18 over three years to upgrade it. Or, rather
19 than update it, like review and bring up some
20 kind of a radio system that -- or
21 communications system that will be useful.
22
- 23 • Ensure line reporting doesn't go back.
24 That's one of the biggest things that came
25 out -- most part of the things that came out
26 of the last review, and just I can't over-
27 emphasize how important that's been.
28
- 29 • Ensure that the Regional Director of C&P - in
30 other words, the position I am in - continues
31 to be filled by people with extensive law
32 enforcement background. In the past, that's
33 not always been the case and I think that's
34 important.
35
- 36 • Other staff don't track their time. I
37 mentioned that in the habitat one. There's
38 certainly probably aspects of the
39 organization that could benefit from a time-
40 tracking system to ensure we're all working
41 on the priorities we need to be.
42
- 43 • I think we should review the money we pay to
44 Coast Guard for their services. We pay \$5
45 million in this region, and it's \$20 or \$25
46 million nationally to provide Coast Guard
47 services. Are we getting our value out of

1 that?
2

- 3 • Rebuild the aboriginal guardian program, and
4 I've talked about that a little bit in the
5 past.
6
7 • Consider a dedicated enforcement presence at
8 the airport. This came from some of the
9 officers working in the Lower Mainland. Ten
10 percent of all packaged transports out of the
11 Vancouver Airport are fish or fish products.
12 Needs to be a regulation to ensure people
13 crossing the border properly declare fish
14 products. Right now it's not there.
15
16 • Time delays in producing impact statements
17 from resource management. That's a common
18 factor in some of our delays in moving some
19 of the violations through the system.
20
21 • Administrative support. There's many offices
22 in the region that don't have administrative
23 support and we have fishery officers doing
24 administrative work when we really would be
25 better off having them out in the field.
26
27 • Recreation fishers should record all their
28 salmon on their licences. That was something
29 I mentioned before. I think that's worthy of
30 looking into.
31
32 • A federal centre of expertise for
33 intelligence and informatics should be
34 considered along the lines with what Mr.
35 Commissioner was talking about.
36
37 • The aerial surveillance program, funding
38 should not be reduced.
39

40 I think those are the main ones.
41

- 42 • One somebody said, I don't know if it's a
43 possibility, but ask the Commissioner if he's
44 interested in seeing what a patrol on the
45 Fraser River might look like, and I'll throw
46 that out there. It may or may not be
47 feasible to do.

- 1
2 • Some of the policy gaps we have need to be
3 addressed, and that's a national issue, and I
4 think it's a capacity issue at the national
5 level.
6

7 Those are it. I know it's a long list, but
8 it's from a lot of people with a lot of years who
9 know a lot about this Department. So I'll provide
10 this to you in a little better format than it is
11 now, but please understand these are not -- the
12 explanations here might not be enough, and I don't
13 know how, if there's more questions, how we'd
14 address that but at least you'll have a little bit
15 more than I've given you right now.

16 MR. SPIEGELMAN: And with that, Mr. Commissioner, in
17 order for the budget document that you were
18 referring to and requesting from Mr. Nelson to be
19 presented in evidence tomorrow, I would like to
20 seek leave to, while he's under cross-examination,
21 to communicate with him just to the extent
22 required to coordinate that document, if that's --

23 THE COMMISSIONER: Yes, that's fine.

24 MR. SPIEGELMAN: -- acceptable. Thank you. Those are
25 my questions.

26 MR. ROSENBLOOM: Thank you very much, Mr. Commissioner.
27 It is approximately 25 minutes to the hour. I
28 have been afforded 50 minutes and probably will
29 use that time.

30 Gentlemen, my name is Don Rosenbloom. I
31 appear on behalf of Area D Gillnet and Area B
32 Seiner.
33

34 CROSS-EXAMINATION BY MR. ROSENBLOOM:
35

36 Q A number of my questions actually feed on
37 testimony that you have given both this morning
38 and this afternoon. I want to maybe go in reverse
39 order and take some of your more recent testimony
40 and seek a little bit of clarification.

41 Mr. Nelson, moments ago you gave your wish
42 list of recommendations that you thought should be
43 considered by the Commission, and I was intrigued
44 by about your third or fourth or fifth item which
45 I believe related to an independent committee to
46 audit the progress that DFO might make with
47 recommendations that come out of this inquiry.

1 Did I understand that correctly?

2 MR. NELSON: Yes.

3 Q Yes. Let's explore that just a little bit. I
4 also am most concerned that after the investment
5 of the Government of Canada at this inquiry, and
6 the investment of all of our energies, that there
7 is accountability at the end of the day after the
8 Commissioner does file his report.

9 What do you envisage as the kind of committee
10 that would be struck to review the progress that
11 DFO might make year to year after the filing of
12 Mr. Commissioner's report. Secondly, to what
13 extent would you see this committee doing that
14 audit? Would it be yearly or every five years, or
15 what?

16 MR. NELSON: I have given it some thought and I think
17 what would make it best is if it's -- I look back
18 at the Williams review and the committee that was
19 set on that was representatives from all user
20 groups. So, for starters, I would say you want to
21 have a First Nations representative, a commercial
22 representative, a recreational fishing industry
23 representative and a non-government organization,
24 and maybe a former DFO employee - and I'm not
25 looking for work - but somebody outside the
26 organization.

27 Those are off the top, and maybe somebody
28 else to facilitate it. I'm not sure. That was
29 the concept that I was thinking of.

30 Q Would it also be advisable if one sweet-talked the
31 Auditor General's office into over-viewing,
32 overseeing the progress of this initiative once
33 the Commissioner has delivered his report?

34 MR. NELSON: I guess that's an option. I throw the
35 idea out as somebody and having the ability to
36 report either to somebody like SCOFO or the
37 Minister and the Auditor might be an option.

38 Q Would you not agree with me that if it was the
39 Auditor General, it would be a document that was
40 then filed in the House of Commons in the
41 Parliament of Canada, and thus the Government of
42 Canada might feel a little more accountable for
43 the review that the Auditor General might make?

44 MR. NELSON: I'm not entirely sure of the details, but
45 if that's how the system does work, it's a
46 possibility, yes.

47 Q Thank you.

1 MR. NELSON: Or you'd mentioned annually. I think some
2 type of an update annually, maybe not a detailed
3 -- looking at it maybe every three years,
4 something a little more detailed. Because you
5 don't want to create a big bureaucracy. You want
6 it to be concise and just have some checks in the
7 system.

8 Q Thank you very much. Feeding on other evidence
9 you've given this afternoon, you gave very
10 compelling testimony about the disparity in
11 funding of C&P out in this region as compared to
12 other regions in the context of salary funding, as
13 I understood it. Of course, you referred to the
14 various charts at the back of the PPR.

15 Can you explain to us how this disparity came
16 about? It seems so overt as you went through your
17 list of how we measure up in terms of
18 responsibility in C&P over here in Pacific Region
19 as opposed to these other areas, and yet we are
20 receiving a very, very small percentage of the
21 funds that are going, for example, to the
22 Maritimes or to the Gulf. Can you explain how
23 that came about?

24 MR. NELSON: Definitely not. I can offer some perhaps
25 opinions on it, but I have no idea how it
26 happened.

27 Q What are your opinions.

28 MR. NELSON: Well, the east coast has been fishing,
29 been around fishing for 400 years. We haven't --
30 we've only been here a couple of hundred years.
31 Perhaps there's some relationship to it being the
32 way it was back then. There were more officers in
33 the communities. You know, the east coast had a
34 much bigger fishing industry years ago than it did
35 now (sic). I can't explain it, to be honest. I
36 looked at it as many ways as I can.

37 I think part of the explanation in this
38 region might have come from when we went, in 1993,
39 moved away from doing everything and created fish
40 managers and habitat staff. A lot of fishery
41 officers moved over into those positions and there
42 was some reductions in numbers then. That might
43 explain part of the gap, but I really couldn't
44 offer any insight.

45 Q Well, you're a very passionate advocate for your
46 division within DFO with C&P and your commitment
47 to see yourselves fulfil the mandate under the

1 **Fisheries Act.** Can you -- presumably, and I have
2 read a number of your documents, things that you
3 have produced, papers that you produced,
4 submissions you produced in respect to the need
5 for funding or better funding for your division.
6 Can you explain to us what reaction you are
7 getting both from the regional headquarters and
8 from the national headquarters when you set out
9 the kind of analysis you did for us just before
10 the break, and the disparity.

11 MR. NELSON: I guess regionally, as I mentioned, both
12 the previous Regional Director General and this
13 one, the information I got back is you have to
14 show how your organization will look without
15 additional funding. That's the answer I get back
16 regionally.

17 Q But that's no answer, is it?

18 MR. NELSON: Well, it's the only answer I get. It's
19 make do with what you have. That's really -- if
20 you want it in the simplest terms, that's what it
21 means to me.

22 Q And what about when you've made your
23 representations to the national headquarters?

24 MR. NELSON: The same response. The same response.

25 Q In other words, nobody has answered to you as to
26 why this disparity exists?

27 MR. NELSON: Oh, the graph that is discussed here and
28 the differences, that I -- that hasn't been -- I
29 only got that information when I started putting
30 things together to answer some of these questions
31 for inquiry. I didn't have access to that
32 comparative information before, so it's new to me
33 and it has been recognized -- I know that Director
34 General of C&P, I queried him on it and he said,
35 yes, there's people that look at that and wonder
36 why there's so many resource managers in your
37 region. And I go, "What?" That was one
38 explanation that was given to me. I didn't agree
39 with that.

40 I'm not for a minute suggesting there are too
41 many resource managers in this region. It's much
42 more complex fisheries and they require more
43 resource managers in this region.

44 I also looked at that ratio of salary dollars
45 for fishery officers to resource managers, and in
46 the eastern regions, there is one salary dollar in
47 resource management for every two-and-a-half to

1 three-and-a-half dollars for fishery officers.
2 So, in other words, there's two-and-a-half to
3 three-and-a-half times as many dollars spent on
4 fishery officers as there is resource managers in
5 other regions. In this region, it's one-to-one.

6 So it was another angle. You go, okay, why
7 is that different? The only answer I was given
8 was maybe there's too many resource managers.

9 Q Is one explanation for this disparity an issue of
10 political clout?

11 MR. NELSON: I can't answer that.

12 Q You won't answer that.

13 MR. NELSON: I don't. I mean if I knew, if I had some
14 belief and some information that had been
15 presented to me that says, yes, so-and-so says
16 it's because of politics this is happening, but I
17 don't have that information.

18 Q Thank you very much. I would like to ask a
19 question of Mr. Coultish. You spoke both this
20 morning and briefly this afternoon, in response to
21 your counsel, about the fact that you and your
22 division believes that organized criminal activity
23 is taking place here in the Pacific Region. I
24 wonder if you could expand on that a little bit
25 without obviously breaching any intelligence
26 information that shouldn't be out into the public
27 domain.

28 My question is, is this organized criminal
29 activity within the First Nations community, or is
30 this outside of the First Nations community and
31 has infiltrated the First Nations community, or
32 what?

33 MR. COULTISH: Well, I certainly wouldn't target the
34 First Nations community by itself. I would
35 suggest that criminal activity has infiltrated all
36 aspects where it comes to profit involving fish.

37 Q And you're speaking of organized criminal
38 activity.

39 MR. COULTISH: Well, as an example --

40 Q Yes.

41 MR. COULTISH: -- I can't speak specifics as far as
42 names, but I'll give you an example of a recent
43 investigation that we participated in assisting
44 the RCMP at the Vancouver Airport, where crab was
45 being shipped from the Vancouver Airport to --
46 sorry, to New York, and a number of shipments had
47 gone through. On the tenth shipment, a container

1 was damaged and marihuana was found -- or
2 concealed in amongst the crab. Subsequent
3 investigation has indicated that over the ten
4 shipments approximately a million dollars worth of
5 marihuana had been -- it is suspected at this
6 point of being shipped.

7 Given the nature of it, the details and so
8 on, and some of the work that we've done with the
9 RCMP, that's an example of an organized criminal
10 activity.

11 We've found, again, with our liaisons with
12 the RCMP and the intelligence services and so on,
13 that many of the people they're dealing with, for
14 various types of criminal activities, are involved
15 in fish.

16 Commercial fishing activity on the west
17 coast, we have 29,000 kilometres of coastline in
18 British Columbia. You've heard how much of it is
19 now exposed to virtually nobody being out there
20 from a law enforcement perspective, including
21 ourselves, because of cutbacks. There's lots of
22 examples of those types of things that have gone
23 on, and our associations with the RCMP, with the
24 U.S. authorities and others, we know it's going
25 on. We're getting the information. It's simply a
26 matter of being able to target, when it comes to
27 illegal fish, the right people and using
28 intelligence - and I go back to that - as our
29 primary function and use of information to target
30 those people.

31 Q And when it comes to organized crime, the
32 investigations are usually very costly, aren't
33 they?

34 MR. COULTISH: Yes. We also employ the use of
35 undercover officers that report through to me, and
36 are involved in intelligence probe activity where
37 we're trying to determine the nature of activity
38 and information come (sic), and when we engage in
39 those types of activities, we get substantial
40 amounts of information that show us that there are
41 communities, if you would say, of activity out
42 there involving criminal actions.

43 Another recent one was an internet sales
44 investigation that led to a substantial amount of
45 information regarding criminality involving not
46 only fish but, as an example, a substantial
47 quantity of illegal cigarettes were seized that we

1 came across at Aquasasne, which now employed the
2 RCMP there, Immigration through CBSA, the Custom
3 and Excise people. These are criminal
4 organizations that are involved.

5 Q Thank you. There's been much spoken today about
6 FSC fishery and I don't intend to go into that.
7 Some of my colleagues will be focusing some of
8 their questions in respect to FSC issues and
9 possible illegality.

10 I do want to focus, though on one aspect of
11 your testimony, and that related to the
12 traceability of fish stock that you have found in
13 these fish plants. Who own these fish plants -
14 and obviously I'm not asking for names - I gather
15 this is, for the most part, not First Nation
16 proprietors; is that correct?

17 MR. COULTISH: No, these are commercial establishments.

18 Q Right. And you have said very clearly that for
19 these plants to possess even FSC fish is not
20 obviously a criminal act.

21 My question to you is before -- it would only
22 become criminal at the point that you were able to
23 establish that that stock of FSC fish was sold in
24 the marketplace; is that fair to say?

25 MR. COULTISH: When sale took place, that's correct.

26 Q Sale. I'm fascinated to understand why you could
27 not impose regulations that ensure that these
28 commercial establishments that are licensed
29 establishments would -- why they could not be
30 compelled to provide audit of every fish that goes
31 through that plant and where it ends up.

32 MR. COULTISH: Well, I think we're looking at -- that
33 is a provincial matter. It's not a federal
34 government matter. The jurisdiction, once the
35 fish have been harvested legally, and so on,
36 become possession of the fisher and/or subsequent
37 becomes under the jurisdiction of the provincial
38 fisheries legislation.

39 Q Yes.

40 MR. COULTISH: I think that we're clearly looking and
41 working with the province now and working
42 internally to try to determine if there are
43 subsequent relations that can be applied, or
44 licence conditions, but understanding that many of
45 these places simply provide a service. They don't
46 take ownership of the fish. It's not their fish.
47 They're providing a service, which is storage. So

1 they're actual responsibility to account for those
2 fish for the actual numbers, it's not theirs.
3 It's the owner of the fish.

4 The shell games that are played, the numbers
5 of companies that are created by these fisher --
6 by people who own this fish, and you saw that long
7 list by the audit, and the manipulation of fish
8 and movement and so on becomes very complicated.

9 There are basic regulations that state that
10 an individual who either -- whether he's a buyer
11 or a seller of fish -- must provide documentation
12 and when and so on, compliance with that is very
13 poor. The province, whose responsibility it is to
14 regulate that, simply doesn't have the resources.
15 They're worse that we are when it comes down to
16 that. We encounter that, we work with them as
17 much as we can, but at the end of the day, it's a
18 very complicated process.

19 Q But if this matter of what I'll call audit is in
20 the hands of the provincial government because of
21 their jurisdiction, if there were recommendations
22 from this Commission that called upon better
23 cooperation between the two levels of government
24 with possibly the consideration of new
25 regulations, might that not make your job much
26 easier?

27 MR. COULTISH: Absolutely.

28 Q Thank you. In the PPR, there is a reference, Mr.
29 Nelson, to prioritizing (sic) operational -- what
30 I'll call operational prioritizing within the
31 Pacific Region, and I'm referring in particular to
32 page 27 of the PPR where it sets out -- actually
33 27 going on to page 28 -- what I believe was the
34 Pacific Region's prioritizing for the year 2010,
35 2011 at the bottom of page 27, top of 28.

36 I note that the highest priority was
37 aquaculture, am I not correct, number one?

38 MR. NELSON: I don't -- these aren't in priority.
39 They're in how they -- they're where they're
40 located on the heat map. In other words, which
41 one is going to present us the most challenges to
42 achieve for this coming year.

43 Q I see.

44 MR. NELSON: Yeah.

45 Q But I want to stick on the aquaculture for a
46 moment.

47 MR. NELSON: Yeah.

1 A Your government has already taken over
2 jurisdiction of that field; is that not correct?

3 MR. NELSON: Yes. Yes.

4 Q And as a result of inheriting that area of
5 jurisdiction, have you already - "you" meaning DFO
6 - already done all the hirings in terms of C&P?

7 MR. NELSON: Within C&P we have got every one -- we
8 have 12 positions. We have done the hiring for
9 those.

10 Q And you have done the hiring as of January 1, this
11 year, approximately.

12 MR. NELSON: No, no. We didn't have the people in
13 place. That's why this one rated so high on the
14 risk scale is because we knew we wouldn't have
15 people in place right away when we took it over.
16 So I think right now we are -- there might still
17 be one or two non-fishery officer positions to
18 fill, and some people maybe haven't completed
19 their relocation. Of the 12 we had hired, I
20 believe it's seven -- seven are fishery officers.

21 Q And in respect to those new hires, has money been
22 allocated for those salaries that does not, in any
23 way, compromise your budget for the rest of C&P?

24 MR. NELSON: That's right. The budget numbers that we
25 put together here were put together before and
26 without the aquaculture funding. The aquaculture
27 is a separate stream of funding for 50 or 55
28 positions for all of DFO of which C&P receive 12.

29 Q And you are confident, even though you're going
30 off into the sunset in terms of retirement, that
31 in the upcoming years the funding of this
32 initiative of taking over this jurisdiction will
33 not undermine the overall funding of your division
34 of C&P?

35 MR. NELSON: As good a confidence as you can have, I'm
36 told it's A-based funding and it's not like the
37 PICFI program where it was expected to sunset.
38 That's what I've been told.

39 Q Thank you very much.

40 I want to turn to the dragnet fishery of the
41 high seas for a moment. We see in the PPR, and I
42 can refer you to it if need be, that the position
43 of Treasury Board is that DFO is maintaining
44 strong monitoring control and surveillance
45 presence in the northeast Pacific through
46 Operation Driftnet.

47 My question to you is this: We also read

1 that the Aurora Surveillance Program has been
2 severely cut back, correct?

3 MR. NELSON: Yes.

4 Q How does all this jive, firstly, that there is a
5 reduction in aerial surveillance, and my secondary
6 question -- second question is going to be when
7 there is aerial surveillance and they determine
8 that there is something that appears might be
9 illegal in activity, what capacity do you have to
10 do anything about it once a report is given to
11 your office?

12 MR. NELSON: Okay. A couple of items. The amount of
13 flying time has been reduced. The Radarsat is
14 another tool to help provide some of the
15 information to focus our efforts --

16 Q Yes.

17 MR. NELSON: -- on a reduction in hours, and also
18 looking into the prospect of being able to land in
19 Japan. If those -- if we are able to achieve
20 that, you could probably deliver, depending what
21 the number gets down to -- like I don't know what
22 -- somewhere in the PPR it talks about a number of
23 40 hours versus 120 hours. I don't know if you
24 can achieve that, the same goal, but that's the
25 idea. With the use of Radarsat and the ability to
26 land in Japan, that will increase our capacity,
27 and also working with the other signatories to the
28 North Pacific Anadromous Fish Commission groups,
29 they have control capacities as well.

30 Now, when vessels of interest are identified,
31 they try and determine the country of origin, and
32 report it to those countries. Countries like
33 China and Russia and the U.S. have more vessel
34 capacity out there to deal with the violators, and
35 they will often be the ones that do the
36 apprehensions.

37 Q And we're speaking of interception, aren't we?

38 MR. NELSON: Yes.

39 Q We don't have any capacity, do we?

40 MR. NELSON: I guess if our DND ships were used, they
41 might be able to, but I'm not aware of us ever
42 doing that.

43 Q Yes. So our contribution to the international
44 community in terms of enforcement of international
45 arrangements is simply surveillance and passing
46 that information on; is that correct?

47 MR. NELSON: Yes. Yes.

1 MR. ROSENBLOOM: Thank you. Mr. Commissioner, this may
2 be an appropriate time for the break. Thank you.
3 THE REGISTRAR: The hearing is now adjourned for the
4 day and we'll resume at ten o'clock tomorrow
5 morning.
6

7 (PROCEEDINGS ADJOURNED AT 4:00 P.M. TO MAY 18
8 AT 10:00 A.M.)
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14 I HEREBY CERTIFY the foregoing to be a true
15 and accurate transcript of the evidence
16 recorded on a sound recording apparatus,
17 transcribed to the best of my skill and
18 ability, and in accordance with applicable
19 standards.
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32 and accurate transcript of the evidence
33 recorded on a sound recording apparatus,
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I HEREBY CERTIFY the foregoing to be a true and accurate transcript of the evidence recorded on a sound recording apparatus, transcribed to the best of my skill and ability, and in accordance with applicable standards.

Irene Lim

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

Diane Rochfort