

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



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

**Public Hearings**

**Audience publique**

**Commissioner**

L'Honorable juge /  
The Honourable Justice  
Bruce Cohen

**Commissaire**

**Held at:**

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

Thursday, September 1, 2011

**Tenue à :**

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

le jeudi 1 septembre 2011

## APPEARANCES / COMPARUTIONS

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Mitchell Taylor, Q.C. Johah Spiegelman	Government of Canada ("CAN")
Boris Tyzuk, Q.C.	Province of British Columbia ("BCPROV")
No appearance	Pacific Salmon Commission ("PSC")
No appearance	B.C. Public Service Alliance of Canada Union of Environment Workers B.C. ("BCPSAC")
No appearance	Rio Tinto Alcan Inc. ("RTAI")
Alan Blair Shane Hopkins-Utter	B.C. Salmon Farmers Association ("BCSFA")
No appearance	Seafood Producers Association of B.C. ("SPABC")
Lisa Glowacki	Aquaculture Coalition: Alexandra Morton; Raincoast Research Society; Pacific Coast Wild Salmon Society ("AQUA")
Tim Leadem, Q.C.	Conservation Coalition: Coastal Alliance for Aquaculture Reform Fraser Riverkeeper Society; Georgia Strait Alliance; Raincoast Conservation Foundation; Watershed Watch Salmon Society; Mr. Otto Langer; David Suzuki Foundation ("CONSERV")
Katrina Pacey	Area D Salmon Gillnet Association; Area B Harvest Committee (Seine) ("GILLFSC")

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

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

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

No appearance	Sto:lo Tribal Council Cheam Indian Band ("STCCIB")
Steven Kelliher	Laich-kwil-tach Treaty Society Chief Harold Sewid, Aboriginal Aquaculture Association ("LJHAH")
Krista Robertson	Musgagmagw Tsawataineuk Tribal Counsel ("MTTC")
No appearance	Heiltsuk Tribal Council ("HTC")

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September 1, 2011

1  
PANEL NO. 60  
In chief by Ms. Grant

1 Vancouver, B.C. /Vancouver  
2 (C.-B.)  
3 September 1, 2011/le 1  
4 septembre 2011  
5

6 THE REGISTRAR: Hearing is now resumed.

7 MS. GRANT: Mr. Commissioner, Grant, initials K.L.,  
8 appearing for Commission counsel and with me is  
9 Mr. Martland. Today we have a panel of three  
10 witnesses testifying on the topics of compliance  
11 enforcement and monitoring. You'll recall that  
12 back in April we heard about these topics during  
13 the habitat management and habitat enforcement  
14 hearings. Today's testimony focuses on  
15 aquaculture.

16 Mr. Registrar, may I have these witnesses  
17 affirmed?

18 THE REGISTRAR: Mr. Thomson, your affirmation will  
19 remain in effect.  
20

21 ANDREW THOMSON, recalled.

22 KERRA HOYSETH, affirmed.

23 BRIAN ATAGI, affirmed.  
24  
25  
26

27 THE REGISTRAR: Would you state your name, please?

28 MS. HOYSETH: Kerra Hoyseth.

29 THE REGISTRAR: Thank you.

30 MR. ATAGI: Brian Atagi.

31 THE REGISTRAR: Thank you. Counsel?

32 MS. GRANT: As Mr. Thomson has recently testified, I  
33 won't be reviewing his background again. Mr.  
34 Lunn, could I please have Tab 2 of the  
35 Commission's list of exhibits?  
36

37 EXAMINATION IN CHIEF BY MS. GRANT:  
38

39 Q Ms. Hoyseth, do you recognize this as your c.v.?

40 MS. HOYSETH: Yes, I do.

41 MS. GRANT: Could we have this marked as the next  
42 exhibit, please?

43 THE REGISTRAR: 1704.  
44

45 EXHIBIT 1704: *Curriculum vitae* of Kerra  
46 Hoyseth  
47

September 1, 2011

1 MS. GRANT:

2 Q Ms. Hoyseth, you hold a B.Sc. in Biology from  
3 Simon Fraser University in 1996 and following your  
4 degree you worked as a wildlife biologist for the  
5 Provincial Ministry of Environment and as an  
6 aquaculture biologist for DFO. From 2000 to 2006  
7 you worked as a stock assessment biologist with  
8 DFO focusing on the analysis of North Coast salmon  
9 stocks. Then from 2000 to 2010 you were a senior  
10 habitat biologist at OHEB in Campbell River and in  
11 that role you were the lead biologist for the  
12 assessment of marine aquaculture, both shellfish  
13 and finfish and in that role you wrote s. 35 HADD  
14 authorizations, you worked with industry to  
15 develop compensation, restoration and monitoring  
16 plans, you participated in environmental  
17 assessments of aquaculture sites under the  
18 **Canadian Environmental Assessment Act**, you  
19 participated in auditing programs, worked with  
20 other agencies such as the B.C. Ministry of  
21 Environment on regulatory development and you  
22 worked with various stakeholders interested in  
23 aquaculture.

24 Then, in November 2010 your position moved  
25 from OHEB to the Aquaculture Environmental  
26 Operations or AEO Section of AMD and there you  
27 currently lead the marine finfish team of  
28 biologists contributing to licensing decisions,  
29 field monitoring, data management and public  
30 reporting; is that correct?

31 MS. HOYSETH: Yes, it is.

32 MS. GRANT: All right. Mr. Lunn, may I have Tab 3 on  
33 the screen, please?

34 Q And Mr. Atagi, do you recognize this as your c.v.?

35 MR. ATAGI: Yes, I do.

36 MS. GRANT: May I have that marked as the next exhibit,  
37 please?

38 THE REGISTRAR: Exhibit 1705.

39  
40 EXHIBIT 1705: *Curriculum vitae* of Brian  
41 Atagi  
42

43 MS. GRANT:

44 Q All right. Mr. Atagi, you have a B.Sc. in zoology  
45 from the University of British Columbia in 1984.  
46 You began work for DFO while still a student  
47 working as an observer fisheries guardian during

1 the summers. Then in 1986 you worked on contract  
2 for DFO as a biological technician trainee and  
3 then in 1987 you began your 24-year career with  
4 the Conservation and Protection Directorate?

5 MR. ATAGI: That's correct.

6 Q All right. And from 1987 you worked as a fishery  
7 officer at various locations in B.C. until 1996,  
8 when you were promoted to field supervisor for the  
9 North Squamish -- or North Shore/Squamish field  
10 unit. You've acted in various positions,  
11 including Chief Enforcement Officer, Chief of  
12 Program Planning and Analysis, and Program Officer  
13 for Audit and Standards. Then from 2004 to 2010  
14 you served as the Chief of Recruitment, Training  
15 and Standards.

16 In July of last year you moved into your  
17 current position of Area Chief Aquaculture; is  
18 that correct?

19 MR. ATAGI: Yes, that's what it's called now.

20 Q Okay. And in that role you were responsible for  
21 strategic development and implementation of the  
22 Aquaculture Enforcement Program establishing the  
23 programs, priorities and determining the programs'  
24 resourcing requirements and use; is that correct?

25 MR. ATAGI: Yes.

26 Q All right. I'm going to start with a broad  
27 question to each of you, asking you to  
28 characterize and describe in about two minutes or  
29 less DFO's work both before and after December  
30 18th, 2010 and Mr. Atagi, if you could comment  
31 with respect to C&P's role in enforcement actions  
32 related to aquaculture; Ms. Hoyseth if you could  
33 comment on what has changed in respect to your  
34 role as an aquaculture biologist; and Mr. Thomson,  
35 if you could comment with respect to the role of  
36 Aquaculture Management Directorate regionally and  
37 its involvement in compliance and enforcement  
38 activities.

39 And perhaps if we could start with you, Mr.  
40 Thomson?

41 MR. THOMSON: Certainly. The role that my group at  
42 Aquaculture Management Directorate since before  
43 and after December 2010 has probably changed the  
44 most in terms of really what ended up happening is  
45 as a result of the court's decision, we were  
46 granted the program resources to develop a  
47 management program for the management and

1 regulation of aquaculture in British Columbia. So  
2 that included the resources for in total 44 staff,  
3 into my group that would comprise fish health  
4 professionals, biologists such as Ms. Hoyseth,  
5 management -- resource managers to determine  
6 licensing decisions and some overall coordination  
7 staff, as well. So we went from what was  
8 previously a role of coordinating the department's  
9 response into what was at the time a largely  
10 provincially managed industry into taking on the  
11 management -- the majority of the management  
12 responsibility for the aquaculture industry in  
13 British Columbia, which is, you know, is a  
14 significant size of ministry.

15 So in terms of our regulatory functions,  
16 while we did have some regulatory functions prior  
17 to it in my office, the issuance of introductions  
18 and transfers licences, the issuance of nuisance  
19 seal licences, we now hold, of course, greater, I  
20 think, regulatory instruments through the issuance  
21 of the aquaculture licence under the **Pacific**  
22 **Aquaculture Regulation**. So it's been a -- I think  
23 it's hard to underestimate the significance of the  
24 change of the role functions specifically for my  
25 office.

26 Q And just to follow up on something you said, you  
27 said that you have -- you got 44 new staff; is  
28 that correct?

29 MR. THOMSON: I have 44 staff within my group in  
30 particular. That includes staff that were brought  
31 in as a result of the changeover, but also staff  
32 that were pre-existing in my group. The overall  
33 resources into the department as a result of the  
34 changeover is 55 total FTEs or full-time  
35 equivalents.

36 Q Okay. And so I'm just -- roughly how many of  
37 those would be new staff that came in?

38 MR. THOMSON: Well, it's a complicated question. It  
39 shouldn't be. It's about 37 is new, so...

40 Q And just in terms of funding for that new staff,  
41 how did you receive funding?

42 MR. THOMSON: Yeah, the funding for the new BCAR  
43 program was developed through an analysis of the  
44 provincial regulatory system to determine the  
45 number of positions that they currently had. And  
46 we were given direction from senior management  
47 that what we wanted to do is mirror that system

1 but with increased emphasis on enforcement and  
2 increased emphasis on public reporting and  
3 transparency. So we had resources appropriately  
4 for that.

5 So we sought and obtained funding for a  
6 program that is \$8.3 million ongoing with the  
7 first two years of the program, this being the  
8 past fiscal year and this fiscal year, having  
9 additional funding to gear up the program and  
10 develop the program of four million in the first  
11 year and two million in the second year. And that  
12 8.3 million ongoing includes in it what we call  
13 the enabler funding aspects of it, so there are  
14 portions of that funding that goes off to fund  
15 real property to manage office space. A portion  
16 of it goes off to Department of Justice to support  
17 our needs with them, portions of it goes off to  
18 communications, HR, those other enabler functions,  
19 as well.

20 Q And is that 8.3 billion (sic) -- or 8.3 million A-  
21 based funding?

22 MR. THOMSON: Yes. It's a -- many of the programs that  
23 go forward to government are based on five-year  
24 increments. This is not one of those programs.  
25 It's a change to our overall budget that is  
26 permanent, as much as anything can be.

27 Q And you also mentioned a four million and a two  
28 million figure for the past fiscal year and this  
29 fiscal year?

30 MR. THOMSON: Four million for the past fiscal and two  
31 million for this fiscal. And that's largely to do  
32 things such as purchasing the equipment, vessels,  
33 ROBs, et cetera, development of an aquaculture  
34 information management system that's, you know,  
35 quite an extensive and costly proposition,  
36 developing a new information management system  
37 which will feed into our transparency and improved  
38 enforcement characteristics, purchasing the  
39 equipment for staff in order to go out on the  
40 field, those type of things. So there's  
41 significant start-up costs and assets required to  
42 operate the program.

43 Q All right. Maybe we can move to Ms. Hoyseth. How  
44 has your role changed?

45 MS. HOYSETH: As you mentioned, my job used to be with  
46 the Habitat Branch and while in that capacity, the  
47 department in the habitat program reviewed new and

1 amended changes to shellfish and finfish  
2 facilities. That review is primarily done to look  
3 at impacts to fish habitat. We provided letters  
4 of advice, mitigation advice, and where necessary  
5 we conducted environmental assessments under the  
6 **Canadian Environmental Assessment Act** or **CEAA**, and  
7 if that concluded that significant impacts were  
8 not likely to occur, we would issue s. 35(2)  
9 authorizations, also known as HADD authorizations.  
10 And through that process we had monitoring  
11 requirements, compensations requirements and that  
12 was done largely out of the Campbell River office  
13 with at most three full-time employees. That was  
14 how we did business before.

15 How we do business now, as again you  
16 mentioned, my role moved from the Habitat Branch  
17 over to the Fish Management Branch. Although I  
18 would say the capacity that I do is quite similar  
19 in that my group of people are also reviewing fish  
20 habitat impacts. There's other people within our  
21 team who look at other elements that Andy  
22 mentioned that our program has brought in its  
23 scope, so there's fish health people and others.  
24 But within our group, that three full-time staff  
25 increased to about seven just for marine finfish,  
26 but also increased to another three for marine  
27 shellfish. So our capacity and staffing number  
28 has increased.

29 Also, the way we do business has changed a  
30 bit because we no longer will be issuing s. 35(2)  
31 authorizations. We'll be managing fish habitat  
32 protection through conditions of licence under the  
33 **Pacific Aquaculture Regulation** and the  
34 environmental assessments conducted under **CEAA**  
35 will now be led by Transport Canada if they have a  
36 trigger, rather than by our group.

37 Q All right. Mr. Atagi?

38 MR. ATAGI: Basically since mid-December we were in  
39 program and building up the logistical part of the  
40 program, the acquiring of equipment, organization  
41 of offices, staffing actions, relocations of  
42 staff, organizing procedures and protocols and  
43 whatever training sessions we could arrange, and  
44 also, because our field program wasn't -- the  
45 equipment wasn't quite acquired and the staff  
46 weren't in place, we developed contingency plans  
47 should occurrences take place until we obtained

1 all our equipment. We prepared for our inspection  
2 program, as well as for patrol planning.

3 Mid-July we acquired -- or after construction  
4 delays, our first vessel was delivered and we  
5 initiated our inspection program.

6 Q And can you just clarify, what was the role of C&P  
7 with respect to aquaculture prior to federal  
8 regulation, under the provincial regime?

9 MR. ATAGI: Prior to the federal regime, there were --  
10 if there were occurrences that were - I'm trying  
11 to think of the proper word here - that were under  
12 the current regulation such as the **Fisheries Act**,  
13 then they would be investigated by the local  
14 fishery officers.

15 MS. GRANT: All right. Mr. Lunn, could I please have  
16 PPR number 20 on the screen, and I'm going to go  
17 to page 176.

18 Q Mr. Thomson, this is a question for you just while  
19 that's coming up on the screen. I understand that  
20 the federal conditions of licence set out various  
21 self-reporting requirements for industry and I'm  
22 wondering if you recognize these tables that have  
23 been reproduced here at Appendix G as being  
24 something that was prepared by DFO to sort of show  
25 what all the different self-reporting requirements  
26 are in the regulations?

27 MR. THOMSON: Yes, I recognize it.

28 Q Okay. And has DFO prepared any sorts of forms or  
29 formats for industry to be able to complete all of  
30 these self-reporting requirements?

31 MR. THOMSON: We have some templates that -- for some  
32 of the information and they're attached as  
33 appendices to the licence, but no, there's a  
34 number of other ones that we haven't prepared and  
35 part of the reason for that is the timing. Part  
36 of it is also our desires to move to a system  
37 where we're not transferring paper back and forth.  
38 And part of the development of the information  
39 management system is to provide a way of entry of  
40 the data through a web portal or some other  
41 electronic means, as opposed to templating out the  
42 information. So that's part of the ongoing  
43 development of the information management system.  
44 But there have been some templates for some of the  
45 information but not for all of it, no.

46 Q When are -- so industry is submitting reports now  
47 though; is that correct?



1 MR. THOMSON: Oh, certainly, yeah. And they're  
2 submitting them in a -- you know, the best format  
3 that they have available in order to submit it to  
4 us, and it's causing a -- I would say some  
5 difficulties within the department in terms of our  
6 information management and flow of the information  
7 because they do come in occasionally in different  
8 formats and we have to convert in order to put  
9 into a common format for analysis. But, you know,  
10 that's the reality of what we have. It takes  
11 longer to develop the information management  
12 system than we would hope. The work is ongoing  
13 and we're hoping for a smoother system as we go  
14 through this year of first operation.

15 Q When do you expect an information management  
16 system to be up and running?

17 MR. THOMSON: We have an interim licensing system  
18 currently in place that has some basic  
19 capabilities. A more full version of the  
20 information management system I'm being told  
21 should be ready sometime between January and March  
22 of next year for our trials and such. I mean,  
23 this is -- it's a fairly complex venture and  
24 fairly costly venture to develop these new systems  
25 for the management of information but it's clear  
26 that it was one of the things that we most needed  
27 in development of this program. I would say  
28 information management for both the federal  
29 government and the provincial government need to  
30 be improved for the proper management of this  
31 fishery.

32 Q Is it fair to say that DFO built upon the  
33 province's reporting and auditing regime and tried  
34 as best it could to improve upon that?

35 MR. THOMSON: Yeah. In developing the program to take  
36 on the management responsibility, what we looked  
37 at is, of course, what was previously being done  
38 by the provincial government and looked to where  
39 we could make improvements and given the timeframe  
40 that we had, where we could make improvements as  
41 best we can. So where it came to reporting of  
42 information, some of it was more voluntary. We  
43 made it more compulsory, where we came to changes  
44 to the conditions of licences that we talked to  
45 with provincial staff about changes they saw. I  
46 think it was -- with any management system, if you  
47 ask anyone, you know, to any improvement, most

1 people say yes, of course. You know, there's a  
2 series of small and large changes that could be  
3 improved to it, and so we took into account those  
4 changes that the provincial staff suggest to us as  
5 a way of trying to, you know, make the best system  
6 possible within the time constraints that we had.

7 Q Did you consult with anyone outside the provincial  
8 government about improvements that could be made  
9 to that system?

10 MR. THOMSON: Oh, certainly, yeah. We -- you know,  
11 there's a fairly extensive consultation period in  
12 the development of the regulation with First  
13 Nations and public and others about how the  
14 regulation itself was developed. In terms of  
15 developing the licensing systems and such, we had  
16 meetings with industry at times, with -- we've had  
17 input and meetings with environmental groups as  
18 well into what changes they'd like to see. So, I  
19 mean, there's been a number of meetings and  
20 written correspondence back and forth about  
21 changes we can make to the systems. We talked  
22 about on two days ago with Mr. Swerdfager  
23 information that we received on transparency  
24 initiatives, and it's really, you know, I've said  
25 all the way along that the issuance of the  
26 licences in December 2010 were the first -- were  
27 the start, if you will, of the process that will  
28 ultimately improve and adapt over time as we learn  
29 more.

30 Q All right. We've heard some evidence that the  
31 province's approach resulted in impressive data  
32 sets, though time-limited. And I anticipate that  
33 we may also hear criticisms of the self-reporting  
34 regime and having industry do the field work,  
35 criticisms that it invites selective reporting or  
36 incomplete reporting. And I'm wondering how do  
37 you respond to that concern or risk and how do you  
38 address it?

39 MR. THOMSON: Well, self-reporting is really a  
40 management tool that we use all across our  
41 fisheries management system, so most commercial  
42 fisheries are self-reported, as well, or there's a  
43 self-reporting aspect to it and then we follow up  
44 with an audit. So, you know, if you look at the  
45 number of sites we have in British Columbia, both  
46 finfish, shellfish and freshwater, you know, it  
47 would be impossible for government staff to be

1 recording all the information at all times. We're  
2 certainly -- a great use of resources. We need  
3 the 8.6 billion, rather than 8.3 million, as you  
4 referred to earlier.

5 So, you know, in terms of having fishers or  
6 in this case aquaculturists, we self-report data  
7 and then having a system in place where we go and  
8 audit those reports to ensure accuracy, et cetera,  
9 is -- is sort of the management -- the way we  
10 choose to manage fisheries through the Department  
11 of Fisheries and Oceans.

12 Q All right. You've mentioned audits and I'm going  
13 to move on to a couple of questions about audits  
14 beginning with Ms. Hoyseth. I'm wondering how  
15 much of your time is spent doing field monitoring  
16 and field audits versus sitting at your desk and  
17 reviewing data or information submitted by  
18 industry.

19 MS. HOYSETH: Every report that we have a requirement  
20 in the licence to be submitted to the department  
21 is read by the department, so I'm not responsible  
22 or my team's not responsible for all of those.  
23 But certainly a large component of our work is  
24 receiving information that is required in the  
25 licence and reviewing that information so it's not  
26 just reading and reviewing, we have standards, we  
27 have protocols and, as you mentioned, we may have  
28 templates and requirements of what that report  
29 contains and all of those elements are checked for  
30 compliance.

31 Some of it is statistical analysis, some of  
32 it is watching video that's submitted and taking a  
33 look at the industry-generated data compared to  
34 what our observations are. And there's a feedback  
35 loop there, as well, back to licence-holders when  
36 we have issues where we aren't seeing the same  
37 thing. So that's a large part of our office work,  
38 along with data management, feeding into public  
39 reporting. And as well as the larger information  
40 management program that's being developed, our own  
41 internal teams in the aquaculture environmental  
42 operations group did not have a lot of existing  
43 infrastructure for our data management so we're  
44 developing that along the way, as well.

45 As well, we do a field component. My  
46 particular group does benthic monitoring along --  
47 that sort of continuity from the habitat program.

1 We're looking at impacts to the benthic  
2 environment and fish habitat and that program was  
3 developed and started by the Ministry of  
4 Environment in 2002 when they instituted their  
5 finfish aquaculture waste control regulation or we  
6 call it the FAWCR. The Ministry of Environment  
7 began the benthic monitoring program and  
8 underneath the FAWCR and the Department of  
9 Fisheries and Oceans and the Habitat Program,  
10 myself included in the past has partnered with the  
11 Ministry of Environment in doing that benthic  
12 audit, so that's the field component of auditing.  
13 And we've continued on that program, building upon  
14 the system that they began in 2002. That's for  
15 both soft sediment bottom types and hard sediment  
16 -- and hard bottom types.

17 We targeted this year - you asked how much of  
18 our work is doing that. This year our target was  
19 25 percent of the farms would have a benthic audit  
20 and that basically meant for four months my team  
21 worked week on/week off in the field and we have  
22 already hit 21 of the farms in benthic monitoring.  
23 We have two more trips scheduled in the month of  
24 September and we'll actually hit 28 percent of the  
25 farms. So we're on target for our benthic  
26 monitoring in this first year.

27 When we're out there, we also do a modified  
28 site inspection checklist to look at a few  
29 different issues of compliance with the licence  
30 conditions and that's just my team. But within my  
31 colleague -- within our group that does marine  
32 finfish also is looking to target audits that look  
33 at marine mammal interactions, escape protection  
34 or prevention and mitigation, as well as observing  
35 harvests for incidental catch data, again to audit  
36 that data element that's coming in from industry.

37 Q All right. And you've mentioned that you're this  
38 year going to visit about 28 percent of the farms.  
39 How do you choose which farms get visited?

40 MS. HOYSETH: To do a true audit of the data, we are  
41 requiring that industry supply us with benthic  
42 monitoring information at peak biomass which is  
43 basically when there's the most amount of fish on  
44 site and when we'd expect the greatest  
45 environmental footprint. So to do a true audit of  
46 that data, we also need to do benthic monitoring  
47 during a peak biomass event. So one of the first

1 things we do -- one of the reasons we have a field  
2 program this year that's based primarily in the  
3 summer is that some of this work can be hard to do  
4 in bad weather conditions. So we tend to -- in  
5 the past, the Ministry of Environment and the  
6 Department of Fisheries and Oceans when we've  
7 partnered that has been primarily through the  
8 summer months. We might change to broaden that in  
9 the future but that's just how we worked for this  
10 year.

11 But we basically took a look at that four-  
12 month season, at all the farms that were peaking  
13 in certain areas, had peak biomass and looked for  
14 opportunities of increased efficiency. So within  
15 an area, say the Broughton or the islands around  
16 Campbell River or the West Coast area, Clayoquot  
17 Sound, we looked at groupings of farms that had a  
18 few of them peaking in a similar time, so that we  
19 could make efficient use of our time and our trips  
20 to those areas. So quite often the first priority  
21 was which farms in an area were having a peak  
22 biomass event at a similar time.

23 Secondly, we look at sites where we've had  
24 issues in the past, where we might have concerns  
25 about reports that have been submitted to us or we  
26 might have had compliance issues and we'll add  
27 that to our list. Even in a situation where  
28 they're not having a peak biomass event, we might  
29 go there at any time during that cycle just to  
30 take a look at what might be available on site.

31 This year we also took a look at one of the  
32 sites. We've had an application for a new site  
33 this year and we -- there's nothing in the water,  
34 there's no approval there, but we just went out  
35 and put down our own drop camera and did a pre-  
36 site look to see if we can confirm what we've had  
37 industry submit for their baseline information.

38 Q All right. And a moment ago you mentioned a  
39 modified inspection checklist.

40 MS. GRANT: Mr. Lunn, could I have Tab 14 of the  
41 Commission's list, please?

42 Q And this is a document entitled "Marine Finfish  
43 Aquaculture AEO Inspection Checklist". Is this  
44 what you were just referring to?

45 MS. HOYSETH: That's right. So when we go out and do a  
46 benthic in monitoring or an audit, we -- if  
47 there's infrastructure at the farm, we'll also do

1           this checklist, as well. And it's basically --  
2           it's looking at certain conditions of licence but  
3           it may not exactly replicate the checklist that  
4           the fisheries officers are doing, but it has a bit  
5           more focus to some of the conditions of licence  
6           that my team manages.

7       MS. GRANT: All right. May we have this marked as the  
8           next exhibit, please?

9       THE REGISTRAR: Exhibit 1706.

10  
11                   EXHIBIT 1706: Marine Finfish Aquaculture AEO  
12                   Inspection Checklist  
13

14       MS. GRANT:

15       Q     All right. Ms. Hoyseth, I'm just wondering how --  
16           when you're using this checklist, if you look at  
17           the -- under "Operational Description and  
18           Information" there's a section that says licence,  
19           species, species present, estimated biomass,  
20           estimated number of fish, are those -- like how do  
21           you check that off? Are those questions that you  
22           ask the staff of the farm or do you actually do  
23           some measurement?

24       MS. HOYSETH: At this time it's just questions we ask  
25           of the staff. Obviously, a site manager, the  
26           licence-holder themselves, is very aware of their  
27           stock and so they keep very detailed records of  
28           the fish that they have on site. Obviously,  
29           there's -- they don't know every single fish on  
30           every single day, but they have good estimates.  
31           So that's something that we monitor by asking, as  
32           you mentioned, the site manager. And when we go  
33           back into the office, we know how many fish that  
34           farm was licensed for. And my goal in the future  
35           is to develop a feedback loop where we have more  
36           tools to try to assess accuracy of that data that  
37           the licence-holder is providing to us, so that we  
38           have a better idea of our own internal audit of  
39           how we can find -- to find out if we agree with  
40           those estimates.

41       Q     All right. And the section that's labelled "Site  
42           Observations" are those things that you visually  
43           inspect when you go to a farm?

44       MS. HOYSETH: They are both visual, as well some are  
45           asked of the site manager, as well, such as are  
46           lights used on sites. Sometimes you can't see  
47           that visually, so you might ask if that is

1 occurring. But otherwise, some of the other  
2 elements there are things that we would observe  
3 ourselves.

4 Q All right. And if you go down, Mr. Lunn, to the  
5 third page, there are a number of questions  
6 related to mass mortalities, sea lice monitoring,  
7 fish health and fish mortality events. Are these  
8 also things that you would ask the staff about?

9 MS. HOYSETH: That page of the checklist is basically  
10 what I call an opportunistic look, because not all  
11 of the time will those elements be occurring when  
12 we're on site. That first element is about are  
13 harvest or transfers occurring. So if a harvest  
14 or transfer were occurring, we would ask and  
15 observe some of those elements.

16 There's often times when we'll be on site  
17 when there won't be a harvest or transfer so that  
18 portion of the checklist wouldn't be completed,  
19 just like the sea lice monitoring or the fish  
20 mortality event. So we have them in there so if  
21 we're on site when that's occurring, we can take a  
22 bit of a look at some of the elements that are  
23 occurring. But otherwise, we might not every time  
24 be able to fill out that part of the checklist.

25 Q All right. And is there more work that you do  
26 that's not on this checklist?

27 MS. HOYSETH: Yeah, absolutely. I mean, we in the AEO  
28 group, have fishery guardian and inspector status  
29 so we have the ability to look at all elements  
30 under the **Fisheries Act** in a similar way to the  
31 fishery officers really. We don't have all the  
32 responsibility or the ability that they do, but we  
33 have the ability to ask questions, to have  
34 licence-holders provide us with information, to  
35 take water quality samples if we see an issue, to  
36 take photographs and collect evidence, so we do  
37 have some tools on site and some abilities to  
38 expand beyond this checklist and obviously the  
39 goal would be that anything we observe that does  
40 not seem appropriate or consistent with licence  
41 conditions, we would collect that information on  
42 site and we would communicate with the fisheries  
43 officers if required for follow-up.

44 Q All right. Mr. Atagi, I want to ask you about the  
45 compliance inspections done by C&P. How often do  
46 fishery officers visit a farm and how do you  
47 decide what farms to visit?

1 MR. ATAGI: To answer the first part of that question,  
2 how often, it would depend on the site and the  
3 condition of the site. Right now we visit sites  
4 once, not all the sites, but we visited a number  
5 of sites once, and based on the inspections some  
6 will be flagged for further follow-up.  
7 As for deciding which sites to go to, a  
8 number of factors are considered, including the  
9 stocking information on the company sites, any  
10 information we received from the AEO staff, as  
11 well as any issues reported by the public and, of  
12 course environmental conditions as to which sites  
13 we can access safely.  
14 Q All right. And did I just hear that you've -- did  
15 you say that you visited all the sites?  
16 MR. ATAGI: No, we --  
17 Q Or, sorry.  
18 MR. ATAGI: -- visited a portion of the active sites.  
19 Q And what's that portion?  
20 MR. ATAGI: The last count I received was 36 of the  
21 active sites.  
22 Q That's what you've done this summer?  
23 MR. ATAGI: So far.  
24 Q And what's your goal for the summer?  
25 MR. ATAGI: As many sites as we can.  
26 MS. GRANT: All right. Mr. Lunn, may I have Tab 15 on  
27 the screen, please?  
28 Q This is a document entitled "Finfish Aquaculture  
29 Site Inspection Checklist", is this the checklist  
30 that fishery officers use when they visit a farm?  
31 MR. ATAGI: This document is an early draft of the  
32 document currently in use.  
33 Q Okay.  
34 MR. ATAGI: This one contains everything we could check  
35 under the conditions of licence. The actual ones  
36 we use, a living document that's always evolving  
37 is based on this document.  
38 Q So the actual document that's used would have less  
39 on it than what is in this checklist?  
40 MR. ATAGI: It could have -- well, it has less and  
41 eventually could have different items.  
42 Q And, sorry, eventually could have what?  
43 MR. ATAGI: It could have different items that we would  
44 look for.  
45 Q All right. And I have a similar question that I  
46 posed to Ms. Hoyseth. How do you assess these  
47 things? Are these things that are visually



1           assessed or are they things that you are going out  
2           and asking the staff about? What do you do when  
3           you're at the site?

4       MR. ATAGI: Well, it depends on which portion of the  
5           checklist, but a lot is gathered from the site and  
6           their records and a portion of it is also gathered  
7           through actual observation and checking, say, like  
8           the net serial numbers, they're actually inspected  
9           by the officers.

10      MS. GRANT: All right. Mr. Lunn, can you scroll down  
11           to page 9, the bottom of page 9, please?

12      Q     I notice at the bottom here there's a section that  
13           says:

14  
15                   My longer term goals are to have us develop  
16                   SOPs for the following...

17  
18                   First of all, SOP is a standard operating  
19                   procedure?

20      MR. ATAGI: That's correct.

21      Q     And "my longer term goals" is this you writing  
22           this?

23      MR. ATAGI: No, this is one of the officers who -- or  
24           the team of officers that drafted this form.

25      Q     Okay. And are these longer-term goals of C&P in  
26           the region? Are these things that you're working  
27           on?

28      MR. ATAGI: Some of them. They're -- right now we're  
29           in full inspection mode and that's the priority  
30           right now.

31      Q     Do you expect that you will develop SOPs for any  
32           of these? And if so, which ones?

33      MR. ATAGI: I believe once we pass the season for  
34           inspections we'll be able to work on things such  
35           as escape response, marine mammal incidents and  
36           harvest inspection transfer. I'm not sure about  
37           the other two.

38      Q     All right. So it's something you haven't turned  
39           your mind to yet?

40      MR. ATAGI: No.

41      Q     Is that -- all right. I notice there's also a  
42           note here:

43  
44                   And to develop inspection documents for  
45                   shellfish and freshwater.

46  
47                   Currently are you -- you're focusing on finfish;

1 is that correct?  
2 MR. ATAGI: Marine finfish.  
3 Q Marine finfish. That's right. And your team, I  
4 understand you have 12 officers, are you going to  
5 be expected, as well, to do enforcement activities  
6 for shellfish and for freshwater?  
7 MR. ATAGI: Well, to clarify that, there are 12 FTEs  
8 that were assigned under the B.C. Aquaculture  
9 Regulatory Program to conservation and protection.  
10 Eleven of those positions are in my program,  
11 including myself. Those ten either directly or  
12 functionally report to me. There's one position  
13 that is in the program planning and analysis  
14 program at -- in Vancouver with our -- with the  
15 C&P program. And we have one additional fishery  
16 officer that's assigned to us temporarily from the  
17 South Coast area. The number of fishery officers  
18 in the program, operational officers, if I exclude  
19 myself and the staff in Nanaimo, are eight in  
20 total, including the officer that's on assignment.  
21 Q All right. What I'm wondering is whether you have  
22 sufficient staff to also tackle shellfish and  
23 freshwater aquaculture facilities.  
24 MR. ATAGI: There was -- that was the number provided  
25 to us. There were other models that was presented  
26 to management for --  
27 Q I'm asking for your opinion though. Do you think  
28 it's sufficient?  
29 MR. ATAGI: My thoughts on that is no.  
30 Q All right. And how many do you think you would  
31 need to adequately do the job?  
32 MR. ATAGI: For all of aquaculture?  
33 Q Yes.  
34 MR. ATAGI: I would refer back to a model that was  
35 provided that was developed by C&P back the  
36 proposed -- I think -- believe it was 32.  
37 Q Thirty-two. All right. And right now with the 11  
38 that you have working for you, do you think that's  
39 adequate for the marine finfish?  
40 MR. ATAGI: I think that's adequate for a marine  
41 finfish inspection program. My thoughts -- my  
42 concerns are is if we enter into any sort of  
43 significant investigation that will take staff  
44 away from the inspection program. I don't -- I  
45 think that will limit our capacity.  
46 MS. GRANT: All right. Could I please have this  
47 document marked as the next exhibit?

1 THE REGISTRAR: Exhibit 1707.

2  
3 EXHIBIT 1707: Finfish Aquaculture Site  
4 Inspection Checklist  
5

6 MS. GRANT:

7 Q All right. One more question on here. I notice  
8 that just at the top of what's showing in the  
9 screen there's a reference to biosecurity  
10 protocol. I'm wondering if either -- I understand  
11 that biosecurity is an issue when you visit farms  
12 and I'm wondering if either you or Ms. Hoyseth  
13 could comment on what is biosecurity and how do  
14 you address it when you're visiting farms?

15 MR. ATAGI: Biosecurity is -- protocols are designed to  
16 prevent the transfer of pathogens. That's  
17 basically what they are. Our staff -- well,  
18 sorry, my staff have developed a draft standard  
19 operating procedure to deal with biosecurity  
20 protocol, as well as I drafted a letter to  
21 industry outlining what we would follow in regards  
22 to inspections and investigations and those  
23 letters have been signed and I don't believe  
24 they've been delivered yet though.

25 Q Okay. Does C&P have to give notice to companies  
26 before it visits a farm?

27 MR. ATAGI: No.

28 Q And do you give notice?

29 MR. ATAGI: On the inspections I went on, notice was  
30 given once we were in visual line of sight of the  
31 site.

32 Q All right. And Ms. Hoyseth, do you give notice  
33 before you visit a farm?

34 MS. HOYSETH: We don't have to give notice, as well.  
35 The work that we're doing with the benthic impact  
36 generally you can't change. The fish waste is the  
37 fish waste, so if we give advance notice that  
38 we're going out next week, there's pretty much  
39 nothing a licence-holder can do to change the  
40 benthic environment. So in that sense, we're not  
41 -- we don't feel that our audit data is  
42 compromised by notifying.

43 And the benefit to us about notifying  
44 industry is generally that they can alert us if  
45 they have any biosecurity issues. That just  
46 minimizes the risk that we ourselves assume by  
47 visiting those sites. And if they have any fish

1 health concerns or if they have an order that they  
2 prefer us to visit a farm, we're happy to follow  
3 those because, of course, we don't want to create  
4 any problems --

5 Q Right.

6 MS. HOYSETH: -- as well as licence-holders. What the  
7 biosecurity protocol tends to say is you go from  
8 most sensitive or susceptible fish to less-  
9 susceptible fish, which helps protect them. We  
10 also follow protocols when we go to the sites. We  
11 tend to only in a week's worth of benthic trips,  
12 we tend to go to one company at a time and then  
13 the next -- you know, the next monitoring trip we  
14 would go to a different company. We try to follow  
15 that procedure where we can to minimize risk. We  
16 use Virkon and agents that will help clean our  
17 equipment and, you know, industry themselves, of  
18 course, have their own protocols. We try to  
19 respect those and we try to do our job. We try to  
20 merge the two of those things where we can.

21 I have gone out in the past where we haven't  
22 notified industry and we've notified the site  
23 managers, as well as head office staff that it's  
24 not a requirement that we do so.

25 Q Thanks. Mr. Atagi, I'm wondering if there are any  
26 particular conditions of licence that are  
27 difficult to enforce, and if so, can you explain  
28 or suggest how that could be overcome?

29 MR. ATAGI: I can't really think of any particular ones  
30 off -- I know that we had an internal discussion  
31 as to changes each program would like to see and  
32 we submitted changes to that, but I can't recall  
33 any particular ones that stand out as being  
34 difficult.

35 Q All right. And I know it's early days of the  
36 federal regime but do you have a sense of the  
37 level of compliance of industry?

38 MR. ATAGI: I have an idea of how many issues were  
39 found at each site in regards to compliance with  
40 the current conditions of licence. The only  
41 comment I would add to that is that the conditions  
42 of licence are relatively new, so that the  
43 relativity of that information changes when you  
44 start to --

45 Q Industry is going through a learning phase right  
46 now; is that --

47 MR. ATAGI: Exactly.

1 Q What sorts of issues are you seeing?

2 MR. ATAGI: They range from more administrative, some  
3 records are missing, all the way in regards to  
4 records that the licence isn't on site to issues  
5 of housekeeping such as lack of secondary  
6 containment for fuels or equipment that use fuels,  
7 that sort of thing.

8 Q And when you see issues like that, what sorts of  
9 actions do you take?

10 MR. ATAGI: The discussions I've had with my staff was  
11 that they were trying to get all the inspections  
12 done but the plan now is that we would -- the  
13 sites that had the greatest issues of concern  
14 would get non-compliance letters as soon as  
15 possible and we would arrange for a revisit on  
16 those sites. The other sites with relatively  
17 minor issues, we would still issue non-compliance  
18 letters, but at a later date.

19 Q Okay. I have one more question for you. We've  
20 heard evidence two days ago from Mr. Thomson and  
21 Mr. Swerdfager concerning how information is being  
22 reported to the public under the federal  
23 regulations. Now, I'm assuming that not all of  
24 C&P data would be reported in the same way due to  
25 ongoing investigations, but is there any C&P data  
26 that's made public? And if so, when, how and  
27 what?

28 MR. ATAGI: I'm not aware of how or what or which parts  
29 of our data would be made public. Our data is  
30 typically -- if it involves investigations, is  
31 kept secure as it forms part of our investigation.  
32 I would have to defer to Mr. Thomson.

33 Q Mr. Thomson?

34 MR. THOMSON: Well, I think the standard practice with  
35 the Department of Fisheries and Oceans in terms of  
36 investigations is once -- once there's been a  
37 conviction in a case, we issue a press release  
38 regarding the conviction and that's -- whether  
39 it's for fisheries or aquaculture I would expect  
40 that to continue.

41 Q And once there has been a conviction, is any of  
42 the underlying data on inspections on that farm or  
43 anything like that released?

44 MR. THOMSON: Well, given that we're into a new area  
45 here, it's a bit hypothetical. The -- from my  
46 understanding from my -- what my history with the  
47 department has been is we don't typically release

1           anything further than what the conviction and, of  
2           course, what's come out in court. It would be a  
3           matter of public record, as well.  
4        Q     Have there been any convictions in the last, say,  
5           ten years of aquaculture, finfish aquaculture  
6           facilities?  
7        MR. ATAGI: I'm not aware of that information. I --  
8        Q     Does that mean you're not -- there hasn't been any  
9           or you're just not aware if there has been?  
10       MR. ATAGI: I'm just not aware of it.  
11       Q     Anyone else?  
12       MR. THOMSON: I'm not sure there's ever been  
13           convictions under the **Fisheries Act** for  
14           aquaculture facility to date, though I'm -- I  
15           would say I'm just not aware of any, so...  
16       Q     Have there been charges laid?  
17       MR. ATAGI: Yes.  
18       MR. THOMSON: Yes.  
19       Q     I'm going to, in the interests of time, move on  
20           and I have a couple of questions for Ms. Hoyseth  
21           about assessing applications. Prior to the  
22           federal regulation, DFO was involved in reviewing  
23           applications for new aquaculture sites or  
24           significant amendments. I think you were involved  
25           in that work and I understand you did things like  
26           issue s. 35 authorizations, that's correct?  
27           That's correct?  
28       MS. HOYSETH: Yes.  
29       Q     Can you describe very briefly for the Commissioner  
30           the review process that you would have undertaken  
31           to determine whether a fish farm would cause a  
32           HADD? And I'm thinking in particular if you could  
33           maybe explain what depositional modelling is and  
34           how that's used in relation to a threshold impact  
35           value?  
36       MS. HOYSETH: Sure. I think that the first element  
37           that we had for a new site or a major amendment  
38           application is actually something that happened  
39           before we ever saw the amendment or the  
40           application because the provincial government and  
41           the federal government had developed some siting  
42           criteria which was meant to provide some clarity  
43           and consistent approach to help industry  
44           understand the type of sites that we might find  
45           appropriate for marine finfish. And I'll just  
46           speak about marine finfish, rather than shellfish,  
47           if that's okay.

1           So the siting criteria basically provided  
2           some guidance that would help on a -- before a  
3           site even occurred to protect certain types of  
4           fish habitat. So, for example, it would provide  
5           guidance about staying out of sensitive or  
6           critical habitat areas, so before we even saw the  
7           application, there was a certain piece of  
8           protection of fish habitat that already occurred  
9           because if you were to apply for a new site, you  
10          would obviously want to meet those criteria before  
11          you even bothered.

12          Along with that, before we even would see the  
13          site application, is there's a large amount of  
14          mitigation or development of the industry itself  
15          that has occurred, both led by industry and  
16          influenced by regulatory bodies. So the  
17          mitigation that would reduce impacts is occurring  
18          all the time. And so those mitigation techniques  
19          would be applied to minimize impact, whether  
20          that's reducing the amount of waste feed that goes  
21          into the site or certain ways of managing the site  
22          to reduce environmental impact. Those things are  
23          done before we even see the project.

24          But when we do see the project, what we'd ask  
25          for from particularly a habitat point of view, is  
26          baseline information captured by video. There  
27          could be near-shore SCUBA dives where SCUBA divers  
28          swim and video the nearshore area where they can  
29          go and in deeper water, they would use an ROV  
30          camera to collect video data. So all of those  
31          things would help provide us with information  
32          about what type of habitats existed and therefore  
33          what kind of animals might live in that area.  
34          Along with that, they would take sediment grabs  
35          and samples to characterize the type of site that  
36          they were going to be potentially farming over.

37          Along with that you mentioned depositional  
38          modelling. One of the main tools that we used  
39          just a shortened version of depositional modelling  
40          called DEPOMOD is a tool that was developed in  
41          Scotland and one that we adopted and it basically  
42          predicts the amount of waste that will come out of  
43          the bottom of the farm and land on the substrate  
44          below and that modelling program has a number of  
45          parameters that are used to feed into it.  
46          Basically, bathymetry of the site, the depth of  
47          the site, the water currents, industry has to put

1 current meters in the water to understand and  
2 characterize the area they plan to farm. All of  
3 those things, currents and wind and depth of site  
4 will influence where that waste would be predicted  
5 to fall, as well as how many fish would be farmed  
6 at the site and the feed inputs. Obviously the  
7 amount of food in will influence the amount of  
8 waste coming out, so all of those elements are put  
9 into the modelling tool which predicts an impact  
10 and the DEPOMOD is also a tool that industry can  
11 use to help with their siting criteria. We tend  
12 to encourage impact to fall below the 30-metre  
13 depth which keeps the first 30 metres of the water  
14 is where the light penetrates and tends to be the  
15 most diverse. We tend to want that impact to fall  
16 below that depth and using DEPOMOD as a tool even  
17 before they submit an application, industry could  
18 play with net configuration or where it be located  
19 and predict different impacts and see to ensure  
20 that sensitive, critical or other areas or  
21 habitats that we're interested in protecting could  
22 be protected by changing configurations.

23 By the time we see that, those predictions  
24 and those anchoring locations tend to meet our  
25 criteria, 'cause obviously these are places that  
26 industry would like to have approved. So we use  
27 that DEPOMOD prediction both to look at protection  
28 to fish habitat with that baseline information of  
29 video data to see where that will overlay, and you  
30 mentioned a threshold for a s. 35(2) or HADD  
31 authorization. Prior to --

32 Q I'm going to ask you to be really brief here.

33 MS. HOYSETH: Sure.

34 Q Because I'm pretty much out of time.

35 MS. HOYSETH: Sure. Prior to 2004 we didn't have a  
36 really easy consistent approach to how we would  
37 define or a threshold for a HADD, harmful  
38 alteration. And when we use the DEPOMOD tool, it  
39 -- when it predicts the impact basically a  
40 threshold was set that above a five-gram contour  
41 we would consider a threshold for authorization.  
42 If we predicted below a five-gram contour, we  
43 wouldn't expect to have a harmful alteration. We  
44 would authorize.

45 So since 2004/2005 there's been a consistent  
46 approach with a consistent threshold for a HADD or  
47 a s. 35(2) authorization, mostly just based on



1 that modelling.

2 Q Thank you. I'm just going to ask one last  
3 question and I'd ask you all to be very brief,  
4 'cause I'm stepping over my time. And that is if  
5 any of you have any recommendations for the  
6 Commissioner on how to improve the work of the  
7 department with respect to monitoring compliance  
8 and enforcement.

9 MR. THOMSON: You know, I think as it is early days in  
10 the development of the program I think that, you  
11 know, it's key that we have -- I think the best  
12 recommendation I can bring forward is that, you  
13 know, really we need to have an adaptive  
14 management approach to this program and learn as  
15 we go from it and be -- and have the department be  
16 willing to adapt its processes as we gain more  
17 knowledge from this new business line, if you  
18 will, that we're in.

19 Q Anyone, jump in.

20 MR. ATAGI: I would recommend that the proposals by C&P  
21 for staffing of the enforcement program be  
22 reviewed.

23 Q All right. Ms. Hoyseth, do you have anything to  
24 add?

25 MS. HOYSETH: No. I feel that we are basing our  
26 monitoring program on a foundation that already  
27 existed and like Mr. Thomson mentioned, we can  
28 build upon that and do -- and expand as new  
29 science comes in, but I feel quite confident that  
30 the work that we're doing is based on a good  
31 foundation.

32 MS. GRANT: All right. Thank you. Those are my  
33 questions. Counsel for Canada is next with 40  
34 minutes.

35 THE COMMISSIONER: Ms. Grant, perhaps Canada will deal  
36 with it, but is there in evidence already marked a  
37 package of materials that has to do with the  
38 siting requirements? Is that already in evidence?  
39 It's been mentioned several times by these -- or  
40 one of the witnesses in any event, but is it --  
41 can I just -- can you just identify it for me?

42 MS. GRANT: Yes. The siting criteria is in the  
43 application package which was marked. It's also in  
44 the PPR at, I believe, page 45.

45 THE COMMISSIONER: But the actual exhibits, do you have  
46 reference to those?

47 MS. GRANT: Well, there's PPR page 45 and I don't have

1 the exhibit number off the top of -- actually...  
2 THE COMMISSIONER: These would be the current ones, I  
3 presume. I can --

4 MS. GRANT: Yes, the marine -- the Pacific Marine  
5 Finfish Aquaculture Application, the draft  
6 application form is Exhibit 1589 and the criteria  
7 are on that form, as well.

8 THE COMMISSIONER: Thank you very much. Thank you.  
9 Mr. Spiegelman?

10 MR. SPIEGELMAN: For the record, it's Jonah Spiegelman  
11 for the participant Government of Canada. A  
12 preliminary remark - I understand the aquaculture  
13 program at DFO covers both finfish and shellfish  
14 and freshwater aquaculture facilities, but to the  
15 extent that it's appropriate, I'd ask us to focus,  
16 given the shortness of time, on marine finfish, as  
17 I think that's most relevant to the Commission's  
18 terms of reference.

19

20 CROSS-EXAMINATION BY MR. SPIEGELMAN:

21

22 Q So just as a broad overview, Mr. Thomson, I wonder  
23 if we can begin by just outlining in brief form  
24 the general approach DFO took in designing the  
25 program for monitoring compliance and enforcement?

26 MR. THOMSON: Certainly. So the general approach we  
27 took was to, as I mentioned earlier, learn as much  
28 as we can from the provincial approach that they  
29 had in place, certainly between the two agencies  
30 that were involved at the time, both the Ministry  
31 of Agriculture and, of course, the Ministry of  
32 Environment. They had a -- in the provincial  
33 government they had seven inspectors in the  
34 Ministry of Agriculture and then when it came to  
35 investigations, they would turn that over to  
36 Ministry of Environment conservation officers. So  
37 we did what I'd say a fairly extensive review of  
38 the -- of how the province approached it and we  
39 recognized from the design of the program, for the  
40 objectives we wanted to achieve, that we could --  
41 we thought it would be better to strengthen some  
42 of the areas around compliance and monitoring  
43 approach.

44 So in designing our program additional  
45 resources were sought for the Conservation and  
46 Protection Branch over what the province, you  
47 know, previously had in terms of developing a

1 staff of 12 FTEs in total of which seven are field  
2 officers on the water, but we also have, of  
3 course, the sports staff and management such as  
4 Mr. Atagi.

5 And then in the Environment -- Aquaculture  
6 Environment Operations Group, which is one of the  
7 groups that I manage that's referenced on one of  
8 the organizational charts, we have a total of 18  
9 staff in that group looking after fish health,  
10 finfish, shellfish and freshwater compliance  
11 activities and as Ms. Hoyseth said earlier, all  
12 those staff have now been designated as both  
13 fisheries guardians and inspectors, which gives  
14 them additional powers. And I say actually  
15 significant additional powers over what the  
16 provincial Ministry of Agriculture and Lands  
17 inspectors previously had. So, you know, our  
18 intent was not necessarily to become more heavy-  
19 handed or anything in terms of our inspections and  
20 compliance activities, but just to give ourselves  
21 the tools to enable us to carry out monitoring  
22 compliance, you know, as we saw fit for the  
23 conservation of fish and fish habitat. So things  
24 such as, you know, obtaining samples is something  
25 that we can compel versus having to ask, so...

26 MR. SPIEGELMAN: Thank you. Mr. Lunn, can I have  
27 Canada's Tab 3, please?

28 Q You have described -- the panel has described how  
29 there's both Aquaculture Environment Operations  
30 and Conservation Protection Service having  
31 somewhat overlapping but shared roles, and I  
32 wonder if perhaps Mr. Thomson, you can identify  
33 this document and describe its purpose.

34 MR. THOMSON: Yes. Yes, it's a compliance protocol  
35 between the two directorates, Aquaculture  
36 Management and Conservation Protection Directorate  
37 to lay out the roles and responsibilities thereof  
38 between the two groups and also for, you know, one  
39 of the purposes is also to, you know, develop the  
40 principles around who will set the priorities in a  
41 given year for the compliance and monitoring and  
42 really, just formalizes, if you will, the  
43 relationship between the two directorates.

44 MR. SPIEGELMAN: Thank you. Can I have that as the  
45 next exhibit, please?

46 THE REGISTRAR: 1708.

47

1 EXHIBIT 1708: 2011-2013 British Columbia  
2 Aquaculture Compliance Protocol between  
3 Aquaculture Management Directorate and  
4 Conservation and Protection Directorate  
5

6 MR. SPIEGELMAN:

7 Q And so notwithstanding the roles and  
8 responsibilities set out in this document there  
9 will be some cross-training, as I understand it,  
10 between Conservation Protection and the AEO group,  
11 can -- Mr. Atagi, can you outline the training  
12 that fishery officers will receive or have  
13 received to help orient themselves towards this  
14 new line of work?

15 MR. ATAGI: So you're asking in regards to training  
16 beyond the normal training for fishery officers?

17 Q That's correct.

18 MR. ATAGI: What we've done is a number of information  
19 sessions, some from -- in cooperation with  
20 industry, as well as the other sectors within the  
21 Aquaculture Management Branch, as well as some  
22 technical training that's been scheduled or  
23 underway, such as heavy trailer endorsements  
24 because our two program -- our major two program  
25 asset vessels are quite large. We need special  
26 licence to be able to safely take them. As well  
27 as we're developing procedures and task hazard  
28 analysis for aspects of this new enforcement role.

29 Q Thank you. Ms. Hoyseth?

30 MS. HOYSETH: I just wanted to add to that, one of the  
31 things that I have noticed about cross-pollination  
32 that's been really beneficial is in the Campbell  
33 River office which is the new office that's for  
34 aquaculture, the fishery officers that are the  
35 field team are in the same office as a large  
36 amount of the AEO staff and that cross-pollination  
37 isn't necessarily based on specific training, but  
38 probably there's a fishery officer in my office  
39 every day and that happens very easily now that  
40 we're located in the same area and we're doing the  
41 similar jobs.

42 Q Thank you. Is there any particular training  
43 either formal or informal that your group, Ms.  
44 Hoyseth, has undertaken to help you -- there was  
45 mention of getting designated as fishery  
46 inspectors, for example. I wonder if you could  
47 just comment on that briefly.

1 MS. HOYSETH: Yeah, that is exactly the kind of thing  
2 that we've -- that allows us to understand a  
3 little bit better what the fishery officers are  
4 doing that gave us some more authority when we go  
5 out in the field and do our work. But as far as  
6 general understanding of the program from both  
7 sides, we also are trying to develop opportunities  
8 where the biologist kind of staff goes out with  
9 fishery officers on site inspections and vice  
10 versa, so fisheries officers are welcome to come  
11 with us when we do benthic inspections or other  
12 kind of work so we both understand each other's  
13 roles and we both get a broader understanding of  
14 the work that we could be doing and the impacts or  
15 conditions of licence on the farm sites.

16 Q Thank you. Mr. Atagi, we've heard that you -- the  
17 DFO program has established essentially a new unit  
18 of fishery officers that's dedicated to the  
19 aquaculture file. Do you think that that is a  
20 good model for aquaculture enforcement in B.C.  
21 currently?

22 MR. ATAGI: As I discussed earlier in regards to the  
23 proposals by C&P to delivery of that aquaculture  
24 in B.C. which included other aspects of  
25 aquaculture, subsequent to that we were informed  
26 that -- not to consider freshwater expansion,  
27 potential expansion of the industry and that that  
28 model needs revision, a revised model was provided  
29 that create an allocation of staff and funding and  
30 ultimately we received 12 positions.

31 Q Okay. Can you comment on some of the differences  
32 between enforcing aquaculture conditions of  
33 licence versus other sorts of enforcement work  
34 that C&P has traditionally done?

35 MR. ATAGI: One of the big issues with aquaculture  
36 versus a normal harvest fishery is that everything  
37 at the current time is by conditions of licence,  
38 so we have no ticketable offences in which to rely  
39 upon for minor offences. If we were to go further  
40 with enforcement action, we would have to prepare  
41 for prosecution. There is no -- we are heavily  
42 dependent on self-reporting from the industry and  
43 there is -- in some other fisheries we have  
44 independent mechanisms such as dockside  
45 monitoring, at-sea observers, electronic  
46 monitoring to independently provide the department  
47 with information, as well.

1                   The other issues such as biosecurity and  
2                   other procedural issues are a complication to this  
3                   fishery, as well.

4           Q        Would you say there is specialized information or  
5                   knowledge, expertise required to adequately  
6                   enforce the conditions of licence in place?

7           MR. ATAGI: There is some specialized information as  
8                   this is a new fishery for my staff. As for how  
9                   the inner workings, basically we're starting  
10                  afresh. We did some orientation inspections with  
11                  MAL staff. I had discussions with the  
12                  Conservation Officer Service prior to December.  
13                  But at the end of the day, there is no set course  
14                  or training that we -- that's available for that.  
15                  I think it's going to take a lot of on-the-job  
16                  training and working with the AMD staff, as well,  
17                  in order to get the program to where it needs to  
18                  be.

19          Q        Thank you. Does anyone else on the panel want to  
20                   comment on any of those matters?

21          MS. HOYSETH: I would just add that it really -- having  
22                   worked for the Habitat Branch in the past and  
23                   working for fish management now, for me it  
24                   certainly helps when the fisheries officers I deal  
25                   with on a particular situation are very  
26                   knowledgeable about the file and the kind of  
27                   impacts and the kind of activity. Otherwise,  
28                   you're always starting from an educational point  
29                   of view and moving forward, which takes a bit more  
30                   time. I personally find it a huge benefit to have  
31                   dedicated fisheries officers who are working  
32                   specifically on aquaculture. I think it makes for  
33                   a great partnership between us and a great  
34                   information sharing. I think it would probably,  
35                   in my opinion, be more effective as we move  
36                   forward, having that staff be dedicated.

37          Q        Mr. Thomson?

38          MR. THOMSON: Well, I think the larger question which  
39                   you asked was, you know, are there things in the  
40                   conditions of licence that require a specific  
41                   skill set or such. I mean, I think that's why we  
42                   decided to split some of the accountabilities for  
43                   conducting inspections and compliance activities  
44                   between the C&P group and AEO. When you're  
45                   talking about sea lice counts and fish health  
46                   audits and some of these things, they are  
47                   technical aspects that require in some cases

1 significant technical training. That's why we  
2 have two veterinarians employed, we have fish  
3 health biologists, fish health technicians who  
4 conduct some of these audits and inspections.

5 So, you know, but we -- as Ms. Hoyseth says  
6 and Mr. Atagi, I mean, then we work together and,  
7 of course, if there is issues that come awry of  
8 that auditing program or inspection activities,  
9 then we can work together with our C&P partners to  
10 develop, you know, whether or not investigations  
11 are warranted afterwards. And that's really one  
12 of the big pieces of expertise that the C&P  
13 officers have, of course, over anything that we  
14 have is the ability and expertise around  
15 conducting investigations.

16 Q Thank you. We've heard a little bit this morning  
17 about biosecurity measures and how that can impact  
18 the work that -- or affect the work that you are  
19 doing. I wonder if we could just get for the  
20 record a sort of a point form or brief outline of  
21 what does that mean, biosecurity, and why is it  
22 important? Mr. Thomson?

23 MR. THOMSON: So, you know, again I think this is  
24 probably a question better answered by fish health  
25 professionals or veterinarians, but, you know, my  
26 understanding of it is that, you know, ultimately  
27 what we're trying to do through biosecurity is  
28 reduce any potential transfer of pathogens to or  
29 from the farm site or anywhere. So we're just  
30 trying to limit any potential impact in terms of  
31 movement of pathogens. So, you know, whether it's  
32 using footbaths or is Virkon or scheduling our  
33 stops to -- in terms of the number of sites we go  
34 to in a day.

35 What we're just trying to do is reduce any  
36 potential risk, of course, for the department in  
37 terms of moving pathogens around in the open  
38 ocean. Obviously, we, as the department,  
39 certainly in conducting our management activities,  
40 don't want to be responsible for any movement of  
41 pathogens. That's just -- you know, it's a fairly  
42 logical risk mitigation steps for us.

43 MR. SPIEGELMAN: Thank you. Could I have Tab 4 of  
44 Canada's list please, Mr. Lunn? While that's  
45 coming up -- is it Tab 4? Not Tab 4. How about  
46 Commission's Tab 16. Is it the same thing?

47 MS. GRANT: If it helps, I think Commission's Tab 16

1           has three documents at it. There's a letter,  
2           there's a table and then there's the document  
3           that's on screen.

4 MR. SPIEGELMAN: It's the letter that I'm looking for.

5 Q       Mr. Atagi, you mentioned that you prepared a  
6       letter that's been signed but not delivered to  
7       your knowledge to advise industry of the  
8       biosecurity measures you're prepared to take in  
9       different courses of your activities, and I wonder  
10      if you can just identify if that's the letter  
11      you're referring to?

12 MR. ATAGI: That's correct.

13 MR. SPIEGELMAN: Can I have that as the next exhibit,  
14      please?

15 THE REGISTRAR: Marked as 1709.

16  
17                   EXHIBIT 1709: Form letter dated August 9,  
18                   2011 outlining biosecurity measures signed by  
19                   B. Atagi

20  
21 MR. SPIEGELMAN: I note the time, Mr. Commissioner.

22       Would this be an appropriate place to break?

23 THE COMMISSIONER: Yes, I think this is a good time.

24 MR. SPIEGELMAN: Thank you.

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

26  
27                   (PROCEEDINGS ADJOURNED FOR MORNING RECESS)  
28                   (PROCEEDINGS RECONVENED)

29  
30 THE REGISTRAR: The hearing is now resumed.

31  
32 CROSS-EXAMINATION BY MR. SPIEGELMAN, continuing:

33  
34 Q       Ms. Hoyseth, you provided some evidence this  
35       morning on DFO's approach to habitat impact  
36       assessment and benthic impact assessment, and I  
37       wonder if you want to expand on that a little more  
38       and provide a bit more detail for the  
39       Commissioner.

40 MS. HOYSETH: Sure. I had mentioned this morning that  
41       the Ministry of Environment had developed a  
42       regulation called the **Finfish Waste Control**  
43       **Regulation**, which had elements of monitoring for  
44       benthic impact in the marine environment. And  
45       basically there's a fairly broad global  
46       understanding of what organic enrichment looks  
47       like, both from non-aquaculture facilities, and



1 fish farms specifically, and most specifically for  
2 soft sediment bottoms, we have a fairly broad  
3 understanding and knowledge base and scientific  
4 evidence of what impact looks like when we have  
5 organic enrichment in soft sediments. And so  
6 when the Ministry of Environment was developing  
7 the **FAWCR**, they used that global science and body  
8 of literature to develop their monitoring program.

9 And just for a bit of specific detail, the  
10 Habitat Program is looking for impacts to fish and  
11 fish habitat, but to look at specific creatures as  
12 a regulator for a compliance tool is very  
13 challenging, because our coastline is so diverse  
14 and we have such a variety of organisms that live  
15 there, that the two -- the main for soft sediment  
16 bottoms, the main regulatory or compliance  
17 threshold that's been utilized is sulphides. It's  
18 a chemical surrogate to look at harm that relates  
19 back to organisms and animals. And that is  
20 supported by other elements that are measured in  
21 the field, such as redox potential. And that  
22 framework was based in science and it was  
23 developed under the **FAWCR** in 2002.

24 After that was completed in 2002, the  
25 Ministry of Environment led a rewrite of the **FAWCR**  
26 and we're basically at the point where they are  
27 about to implement it. It went through a public  
28 consultation process. It went through a technical  
29 committee that the Department of Fisheries and  
30 Oceans participated on. I have participated on  
31 the **FAWCR** technical committee, along with my  
32 predecessors, also members of industry, and we  
33 pulled Science Branch into that a number of times  
34 so that the second iteration of the **FAWCR** was  
35 really a collaborative work based on science, and  
36 it was about to be implemented after consultation  
37 by the Ministry of Environment until it was struck  
38 down.

39 We basically looked at the **FAWCR** that was  
40 developed, the second one, because the Department  
41 had already participated on it. We had already  
42 had a peer-review Science process that was  
43 involved in the development of that. I mentioned  
44 that we have a large global understanding and  
45 science body under -- surrounding soft bottom  
46 impacts.

47 Our hard bottom understanding is a little

1 different, when we're talking about bedrock or  
2 sediments that cannot be scooped and chemically  
3 sampled. We have less global understanding.  
4 We're one of the first regulatory areas in the  
5 world who is going to have compliance around hard  
6 bottom impacts. So that element is in development  
7 and it's not as broadly understood.

8 But the second iteration of **FAWCR** did have  
9 hard-bottom compliance in it along with the soft,  
10 and basically we took that second version of the  
11 **FAWCR** and used it to base our benthic monitoring  
12 program. And I think that the benefit to us in  
13 that is that we have many, many years of that work  
14 already having been done in the Province, both by  
15 the Ministry of Environment and in partnership  
16 with the Department, and that we have a large  
17 science base underneath that monitoring program.

18 So the goal, of course, is fish habitat. We  
19 have thresholds in place that we manage, and  
20 they're very tightly managed. We have seen in  
21 general DEPOMOD predicts impact very close to the  
22 farm cages, and in general that is what we see.  
23 We see impact on the benthos occurring very close  
24 to directly underneath the cage arrays. We manage  
25 at a threshold of 30 metres away. Which is a very  
26 tight, if you're at a farm and you go to a 30-  
27 metre station, you realize how tight we're really  
28 managing impacts. And we have a threshold at the  
29 30 metre for soft-sediment bottoms for impact, and  
30 we have a threshold at 125 metres away. And both  
31 of those thresholds are based on scientific  
32 literature of impacts to -- to the organisms that  
33 live in soft sediments. We also, we have  
34 different standards for hard bottom, but they both  
35 -- they are also meant to protect fish habitat.

36 Q Thank you. And when you say there's thresholds, I  
37 understand there's some sort of a regulatory  
38 trigger, based on the results of your monitoring.  
39 Can you --

40 MS. HOYSETH: Yeah, that's right.

41 Q -- describe that little bit?

42 MS. HOYSETH: At peak biomass, as I mentioned before,  
43 when there's the most fish on site, the industry  
44 is required to do sediment monitoring, based on  
45 protocols we have provided to them in their  
46 licence. And for soft sediments, as mentioned,  
47 they collect physical samples, they scoop mud or

1 sediment from under the farm and they do chemical  
2 analysis to standards that we've provided to them.  
3 And for hard bottoms they do video monitoring.  
4 All that data is analyzed and reported to us.

5 And one thing that I would mention is quite  
6 often that data is collected, not by industry  
7 themselves, although that can happen, but often by  
8 a service provider, so a consultant, most often,  
9 who are R Bios, so there's sometimes a third party  
10 that does that monitoring. Sometimes that's  
11 industry members. When that data comes to us, as  
12 I mentioned, we do a desk audit, we review it.  
13 And the thresholds basically are set so that if an  
14 impact occurs beyond what we would consider  
15 acceptable, the requirement is to fallow the site  
16 until those thresholds are reduced, or those  
17 impacts are reduced below certain thresholds.

18 So the whole, the feedback loop there again,  
19 back to environmental protection, is impacts can  
20 occur, and when they occur beyond thresholds, we  
21 expect that the farm fallow until it's  
22 rehabilitated to our standards.

23 Q Thank you. Mr. Lunn, can I have Tab 10 from the  
24 Commission's list, please. This is a document  
25 entitled "The Framework for Aquaculture  
26 Environmental Risk Management". And the date  
27 appears to be July 2008, so before the decision  
28 that resulted in the change of regulatory power.  
29 Mr. Thomson, I wonder if you can comment on this  
30 document's relevance, going forward in the new  
31 regime.

32 MR. THOMSON: Yeah, this document was developed by the  
33 Aquaculture Task Group, which is a joint  
34 federal/provincial committee, developed under the  
35 Terms of Reference of the Canadian Council of  
36 Fisheries and Aquaculture Ministers, or CCFAM. So  
37 what was -- of course at the time prior to the  
38 decision of the B.C. Supreme Court regarding  
39 regulatory authority, really the federal  
40 government's role was trying -- in developing this  
41 document, was trying to coordinate and develop  
42 consistent standards for environmental management  
43 of aquaculture across the country and to work with  
44 our provincial partners in each of the provinces  
45 across the country to come up with those standards  
46 and assessments for them.

47 So that work was initiated at the national

1 level, through the Aquaculture Management  
2 Division, and started to be drafted and worked on  
3 collectively. Of course, when the court's  
4 decision in the Province of British Columbia, a  
5 lot of the resources that were devoted into  
6 developing this framework at the national level  
7 became devoted to helping develop the framework  
8 for taking over management authority and  
9 regulatory control in British Columbia.

10 And so what this document does is provides a  
11 precursor to a lot of the work that has  
12 subsequently gone on in British Columbia in terms  
13 of developing the regulation, in terms of  
14 developing the conditions, licences, and of course  
15 developing the suites of policies that I testified  
16 to two days ago.

17 Q Thank you. Mr. Lunn, can we turn to Appendix B  
18 which begins on page 26 of this document. This  
19 appears to set out the principles that would sort  
20 of underlie the approach to environmental risk  
21 management. Do these still accurately reflect the  
22 thinking behind the -- behind developing and  
23 delivering the program?

24 MR. THOMSON: Yeah, I mean, I think these -- again this  
25 is a draft document. It was never signed off by  
26 the Aquaculture Task Group. But, you know, I  
27 mean, they're really aligning with the thinking  
28 that we've put into development of the policies  
29 and development of our conditions of licence, and  
30 really what as going forward into the further  
31 development of the policies and conditions of  
32 licence and regulation.

33 So, you know, in terms of, you know, taking  
34 some of these things in terms of trying to be  
35 clear in communicating what our -- what our  
36 actions are going to be, you know, we've increased  
37 the amount of information we're posting to our  
38 website. We try to communicate through letters  
39 and such out to clients and First Nations and the  
40 industry as to what's going on out there. You  
41 know, we certainly are developing an ecosystem-  
42 based approach as per Principle III, through the  
43 development of the IMAP program. You know, we're  
44 trying to take in terms of developing our  
45 conditions of licence, take a science-based  
46 approach in terms of developing, as Ms. Hoyseth  
47 described, in terms of our peak biomass sampling

1 and these type of things.

2 So, yeah, the underlying -- the general  
3 principles that underlie all of the actually  
4 taken, though we don't have them incorporated as  
5 such into -- into the new policies, but they  
6 certainly are in line with what we're currently  
7 doing.

8 Q Thank you. Mr. Lunn, can I have Tab 7 of Canada's  
9 list, please.

10 MR. MARTLAND: Perhaps I can suggest that the document  
11 on the screen be marked, too.

12 MR. SPIEGELMAN: Thank you, Mr. Martland.

13 THE REGISTRAR: Exhibit 1710.

14

15 EXHIBIT 1710: The Framework for Aquaculture  
16 Environmental Risk Management (FAERM) Version  
17 3.0, DRAFT, July 2008  
18

19

MR. SPIEGELMAN: Tab 7, yes, please.

20 Q As an introduction to this document, I understand  
21 that in order to rationalize and provide some  
22 consistency, DFO Habitat has traditionally  
23 developed Pathways of Effects to sort of set out  
24 in general terms what kinds of impacts a  
25 particular sort of activity can have. Is that  
26 consistent with your understanding, Ms. Hoyseth,  
27 and do you want to add anything to that?

28 MS. HOYSETH: Yeah, the Habitat program has developed  
29 Pathways of Effects in the past to provide a  
30 consistent understanding, both to Habitat  
31 assessors within the Department, as well as  
32 industry outside the Department, not specifically  
33 speaking to aquaculture, to understand the types  
34 of things that the Habitat Branch should be  
35 looking at to assess harm or potential  
36 possibilities of causing harm. They've used that  
37 as a -- if you go on to the departmental website  
38 you'll be able to find under the Habitat Branch  
39 different Pathways of Effects that external users  
40 would be able to look at to see the types of  
41 things that their activities may -- we may  
42 consider when we look at how activities on land or  
43 in the water would ultimately affect fish habitat.  
44 They can use that for their planning purposes and  
45 it helps the Habitat assessors as well when we  
46 receive many proposals to sort of focus in on the  
47 important elements within those for habitat

1 assessment.

2 Q Thank you. And this appears to be a peer-review  
3 workshop proceedings by the Canadian Science  
4 Advisory Secretariat to give a fresh look at the  
5 Pathways of Effects that had been identified for  
6 finish aquaculture. Mr. Thomson, can you comment  
7 on this paper and how it might inform future  
8 management?

9 MR. THOMSON: Yeah. I mean, again it's an overview  
10 document in many ways of various aspects for  
11 potential effects of aquaculture, but, you know,  
12 it's a piece of the sort of picture that we get  
13 from Science Branch. I mean, in terms of our  
14 management actions and our conditions of licence  
15 development, we take the advice from Science  
16 Branch in terms of incorporating, you know, what  
17 needs to be studied, what needs to be monitored,  
18 what are the limits we need to incorporate into  
19 it. So while this is an overview document of a  
20 number of them, it's really just one piece of the  
21 Science advice we receive on various issues. And  
22 we, you know, as I've spoken earlier, in terms of  
23 our data management projects we receive greater  
24 Science advice. As we go forward in the  
25 management of this, we'll make changes as  
26 necessary as that information comes in.

27 Q And I understand that the program for -- PARR is  
28 the acronym, but I'm forgetting what the actual  
29 words are. We've had some evidence on it earlier.  
30 That's another piece that feeds into this?

31 MR. THOMSON: Yeah, certainly. I mean, we, you know,  
32 we love acronyms, so we have two PARR acronyms in  
33 the Department of Fisheries, one is **Pacific**  
34 **Aquaculture Regulation**, the other is Pacific --  
35 sorry, the Program for Aquaculture Regulatory  
36 Research, which is part of a funding package to  
37 provide for the Department in 2008, that provide  
38 resources specifically to address regulatory  
39 questions for Science Branch, and rather  
40 significant amount of resources. So, you know, in  
41 terms of providing science advice on impacts of  
42 sea lice, or, you know, benthic habitat monitoring  
43 standards, these type of things, we have resources  
44 in place in the Department, resources that came to  
45 the Department prior to the court's decision,  
46 which turned out to be advantageous for us to  
47 provide greater certainty and I would say greater

1 precision in our management actions, based on that  
2 Science advice.

3 Q Thank you. And the CSAS process, I understand,  
4 had both internal and external participation?

5 MR. THOMSON: Yes. The CSAS process is designed for --  
6 it's sort of a form of peer review, as opposed to  
7 passing papers around. They bring the scientists  
8 together, present papers. Peers in both internal  
9 government and external government provide  
10 comments on the papers, and then the papers are  
11 subsequently amended and published.

12 MR. SPIEGELMAN: Thank you. Can I have this as the  
13 next exhibit, please.

14 THE REGISTRAR: Exhibit 1711.

15  
16 EXHIBIT 1711: CSAS Proceedings of the  
17 National Peer-review Meeting on Aquaculture  
18 Pathways of Effects, 19-23 October 2009  
19

20 MR. SPIEGELMAN:

21 Q Mr. Atagi, recognizing that your unit is just  
22 getting up and running, I wonder if you can  
23 comment in general terms on the types of  
24 information that you might -- that your group  
25 might use to either identify occurrences or  
26 follow-up during investigations.

27 MR. ATAGI: To follow up on investigations?

28 Q How do you go about collecting information, either  
29 once an occurrence has been brought to your  
30 attention, or how do occurrences come to your  
31 attention?

32 MR. ATAGI: Well, there's the observe, record, report  
33 line that the public or anyone can make report  
34 violations to, that that would bring into light  
35 any particular occurrence that may present itself.  
36 Also information from our partnering agencies, or  
37 partners within the Department, such as the AEO  
38 staff during their visits, may bring something to  
39 light and that would need follow-up from C&P.

40 Q Would information come to your attention through  
41 your inspection program, as well?

42 MR. ATAGI: Oh, yes, of course. Any contraventions of  
43 the conditions of licences would be recorded and  
44 would be followed up as required. And I also  
45 failed to mention that any intelligence gathered  
46 through -- once we get our program running, any  
47 intelligence gathered through industry or possible

1 human sources would be considered, as well.

2 Q Do you have one of the FTEs as an intelligence  
3 analyst notionally assigned?

4 MR. ATAGI: We have identified one or two officers to  
5 take on the role as an area intel officer.

6 However, this is a supplementary role to their  
7 field operations, as well. So it's, I think  
8 that's part of our regional model that we have  
9 difficulty in that there's capacity issues there.

10 Q Right. We heard evidence in the general fisheries  
11 enforcement hearings about a move towards -- a  
12 general move nationally towards intelligence-led  
13 policing. Would that apply equally in your area?

14 MR. ATAGI: That's correct.

15 Q And finally, can I have Tab 12 from Canada's  
16 document list please. Mr. Atagi, you mentioned  
17 that C&P put together a proposal for staffing the  
18 new aquaculture program, and I wonder if you can  
19 identify this as that document.

20 MR. ATAGI: That's correct.

21 MR. SPIEGELMAN: Can I have that marked as the next  
22 exhibit, please.

23 THE REGISTRAR: Exhibit 1712.

24

25 EXHIBIT 1712: Pacific Region C&P Aquaculture  
26 Submission DRAFT, November 24, 2009 (Revised  
27 December 1, 2009)

28

29 MR. SPIEGELMAN: Those are my questions, thank you.

30 MR. MARTLAND: Thank you. Mr. Commissioner, the  
31 Province very helpfully has not sought time. I'll  
32 just double-check with Mr. Tyzuk that that's the  
33 case for this panel. We appreciate that. I have  
34 counsel for the B.C. Salmon Farmers Association at  
35 25 minutes.

36 MR. BLAIR: Mr. Commissioner, members of the panel, and  
37 for the record Alan Blair. I appear as counsel  
38 for the B.C. Salmon Farmers Association.

39

40 CROSS-EXAMINATION BY MR. BLAIR:

41

42 Q Mr. Lunn, I misdirected you when I told you what I  
43 would be leading off with. Let's see if we can  
44 start with the Aquaculture PPR number 20, please,  
45 and could we go to PDF 4. This question is for  
46 either Mr. Atagi or Mr. Thomson, and is that the  
47 -- I have PDF 4, Mr. Lunn, dealing with



1 biosecurity, but perhaps if we can't find the  
2 direct reference I'll ask my question generally to  
3 you, perhaps, Mr. Thomson. In this document,  
4 among other things, biosecurity is discussed, in  
5 particular the need to understand what biosecurity  
6 is from a site security perspective and vessel  
7 use; is that correct, Mr. Thomson?  
8 MR. THOMSON: As to my memory of the PPR, yes.  
9 Q Thank you. Mr. Atagi, does that accord with your  
10 memory, as well?  
11 MR. ATAGI: I don't recall.  
12 Q All right. Mr. Lunn, if we could go to B.C.  
13 Salmon Farmers Tab 14, please. My questions are  
14 for you, Mr. Thomson. You'll see that you  
15 received a c.c. on this email dated February the  
16 1st, 2010. Do you see that on the screen, sir?  
17 MR. THOMSON: Yes, I do.  
18 Q Perhaps you can just identify for us some of the  
19 key players on this string. Firstly, it's from a  
20 John Lewis. Who is John Lewis?  
21 MR. THOMSON: John Lewis was the chief of Conservation  
22 and Protection Branch of the South Coast Area at  
23 the time.  
24 Q For DFO?  
25 MR. THOMSON: Yes, DFO.  
26 Q And he's addressed it to a Randy Nelson. Who is  
27 Randy Nelson?  
28 MR. THOMSON: Randy was at the time the Regional  
29 Director of the Conservation and Protection Branch  
30 for DFO.  
31 Q And you and a number of DFO folks were c.c.'d on  
32 this February 1st correspondence, correct?  
33 MR. THOMSON: Yes.  
34 Q And in that brief email string there are two prior  
35 emails. We'll go to the earliest in time, so the  
36 second page. You'll see that it's an email of  
37 January 31st, so that the previous day, the prior  
38 day, and it's to Jason Knight, who I understand is  
39 a DFO fisheries officer?  
40 MR. THOMSON: Yes, that's true.  
41 Q And it's from Grieg Seafood, one of the site  
42 managers whose name is found in the first line of  
43 the text, Brice McCannel, do you see that?  
44 MR. THOMSON: Yes.  
45 Q And in this exchange which follows through to the  
46 first reference I made, you'll see that Grieg  
47 Seafood site manager at a sea site had some

1           unauthorized visitors at the site today, and I'm  
2           reading now down about three lines, and it's an  
3           opportunity for Grieg to connect with your  
4           fisheries officer to find out -- to inform and  
5           find out what may happen next; do you agree?

6   MR. THOMSON: It appears that way, yes.

7   Q       So reading part of the email into the record, the  
8           Grieg site manager continues at line 4:

9  
10           ...let me know we were having some problems  
11           with Alex Morton. Today while we were  
12           harvesting she showed up with 4 others in a  
13           boat and drove inside the system coming up  
14           almost against the harvest boat while we were  
15           loading and started sampling lice and video  
16           taping everything. I asked them to stay  
17           outside the yellow canbouys (sic) and system  
18           because it's a occupational health and safety  
19           issue and against bio security protocol and  
20           at that time they never went back to the  
21           harvest boat, however they continued in with  
22           there (sic) routine off the end of the system  
23           still getting up close to the site with there  
24           (sic) lice nets and equipment. I did phone  
25           the Rcmp (sic) first to file the complaint as  
26           directed by Mia...

27  
28           Do you know that Mia Parker is -- was the  
29           regulatory manager at Grieg Seafood?

30   MR. THOMSON: She was, yes.

31   Q       Yes. Back into the text:

32  
33           ...but unfortunately I missed the call back  
34           while I was outside. I just want everything  
35           to be documented because my experience with  
36           her is this could be a ongoing issue with her  
37           disregarding site biosecurity, as well as  
38           unauthorized site entry trying to discredit  
39           the industry. Hopefully its (sic) a one time  
40           affair.

41  
42           Now, Mr. Thomson, having read that into the  
43           record, did it in fact turn out to be "a one time  
44           affair"?

45   MR. THOMSON: What I've heard on several occasions that  
46           -- I can't say for sure it was Ms. Morton, but  
47           I've certainly heard on several occasions of

1 individuals coming close to farm sites and  
2 sampling their farm sites.

3 Q Through the spring of 2010, as this Commission was  
4 getting underway, were you on a number of emails  
5 between various fisheries personnel, fisheries  
6 officers and the RCMP to try to come to grips with  
7 some jurisdictional issues around biosecurity  
8 protocols and potential issues of trespass?

9 MR. THOMSON: I have certainly been involved with a  
10 number of emails and conversations regarding that,  
11 yes.

12 Q And you'll see that following Jason Knight, your  
13 fisheries officer, getting this email from Grieg  
14 at almost 6:00 p.m. on the 31st, he promptly gets  
15 it off his desk on February 1st at 8:39 to John  
16 Lewis and John in turn gets it to you and the  
17 others that you see on the head of this email  
18 string, correct?

19 MR. THOMSON: Yes.

20 Q And ironically, I guess we were into the Olympics  
21 or near the Olympics, and so it was difficult to  
22 find officers, in John Lewis's words, able to  
23 muster and provide assistance. Do you see that at  
24 the end of the top email string?

25 MR. THOMSON: Yes, I do.

26 Q Does that accord with your recollection?

27 MR. THOMSON: Well, it accords with my recollection  
28 because it's in the record in front of me.

29 MR. BLAIR: Thank you. could this be the next exhibit.

30 THE REGISTRAR: Exhibit 1713.

31  
32 EXHIBIT 1713: Email string between Brice  
33 McCannel, John Lewis and others re "Grieg  
34 Seafood - Esperanza Site", from January 31,  
35 2010 to February 1, 2010  
36

37 MR. BLAIR: Thank you.

38 Q Moving forward briefly in chronology, and also on  
39 the issue of biosecurity, could we have Tab 14,  
40 please -- I'm sorry, 13. Mr. Thomson, again  
41 you'll see at the top of this April 21st 2010  
42 email that John Lewis, the fisheries officer, is  
43 the sender, and you're a c.c. on that list. Do  
44 you see that, sir?

45 MR. THOMSON: On the April 21st, 7:08 p.m. one?

46 Q Yes.

47 MR. THOMSON: Yes. Not on the very top one, though.

1 Q I'm sorry, yes, that's added since I saw that.  
2 And Mr. Lewis with DFO is sending it to a Mike  
3 Carlson. Can you explain for the record who Mike  
4 Carlson is, please.

5 MR. THOMSON: Mike Carlson's an RCMP Inspector assigned  
6 to the Department as a liaison person between the  
7 Department and the RCMP.

8 Q And on the c.c. list, in addition to some of the  
9 DFO folks we've seen earlier, we also see some  
10 more senior DFO folks, Paul Sprout and Sue  
11 Farlinger?

12 MR. THOMSON: Yes.

13 Q And on this email string, Mr. Lunn, I'm going to  
14 go to the back of it. You'll see that the one I  
15 referred you to, sir, was April 21st, but it  
16 starts actually with an April 18th email from a  
17 Judith Wright and it's under the heading "Join the  
18 Parade!" If you could just pull that down. Thank  
19 you, sir. So on April the 18th, just before 1:00  
20 p.m., Judith Wright encourages people to join the  
21 parade. And you'll see, sir, from reading this  
22 text, that the Get Out Migration walk that Ms.  
23 Morton was engaged in at the time is being  
24 organized through this email, including a  
25 reference to in the Itinerary between 1:30 and  
26 2:30 there would be some underwater viewing with a  
27 camera and some swimming laps around the farm for  
28 the media. Do you see that at 1:30 to 2:30, Mr.  
29 Thomson?

30 MR. THOMSON: It's at the very bottom of the screen,  
31 but I can --

32 Q Can you bring it up a little bit further? Thank  
33 you.

34 MR. THOMSON: Yes, I do see it.

35 Q You see that notation?

36 MR. THOMSON: Yes, I do.

37 Q And at the very top of the screen now there's a  
38 reference to:

39

40 There will be press and cameras with Alex, so  
41 the bigger the visual splash we can make, the  
42 better.

43

44 Do you see that, as well, sir?

45 MR. THOMSON: Yes, I do.

46 Q So this email was forwarded along to DFO when it  
47 is picked up by Richard Opala further along in the

1 string on April the 21st. Do you see the email --  
2 if you could scroll up, Mr. Lunn. Thank you.  
3 Sir, Richard Opala, you know him to be an employee  
4 of Marine Harvest?

5 MR. THOMSON: Yes, I do.

6 Q And he addresses his concerns, tagging the email  
7 from Judith Wright, and addresses it to Mike  
8 Carlson, the RCMP officer, and John Lewis, your  
9 fisheries officer, and others?

10 MR. THOMSON: John Lewis and Yves Antaya, who was the  
11 chief inspector for the provincial Ministry of  
12 Agriculture and Lands.

13 Q Yes. As well as the RCMP.

14 MR. THOMSON: Yes.

15 Q And just reading down the second line, speaking of  
16 the itinerary:

17  
18 ...visiting multiple company farming  
19 operations on the same day, people swimming  
20 around sites, proceeding to processing  
21 facilities and then to on-growing  
22 operations...all of these acts create a real  
23 potential for damage to property and stock  
24 security.  
25

26 Mr. Opala goes on to give the opinion that this is  
27 a deliberate disregard for various biosecurity  
28 protocols. Do you see all that on the record,  
29 sir?

30 MR. THOMSON: Yes, I do.

31 Q And I won't read in detail the following  
32 paragraph, but you'll agree if you quickly skim it  
33 that Mr. Opala's bringing to the attention of the  
34 provincial government, the federal government and  
35 the RCMP that there are a variety of protocols  
36 that have to be respected for biosecurity reasons.

37 MR. THOMSON: Yes.

38 MR. BLAIR: Could this be marked as the next exhibit,  
39 please.

40 THE REGISTRAR: Exhibit 1714.

41 MR. MARTLAND: Mr. Commissioner -- I'm sorry, I have no  
42 difficulty with the exhibit going in.

43 THE REGISTRAR: Okay, 1714.  
44

45 EXHIBIT 1714: Email string between Richard  
46 Opala, John Lewis and others, re "Alexandra  
47 Morton Proposed Itinerary", April 21, 2010

1 MR. MARTLAND: I'd -- to just alert through you, Mr.  
2 Commissioner, Mr. Blair, I'm not objecting at this  
3 point. I will be listening carefully. I'm  
4 concerned that with respect to a question that  
5 properly addresses the Department's process vis-à-  
6 vis biosecurity and the work these people do on  
7 aquaculture, that's not objectionable. As we veer  
8 towards areas that deal with a particular person  
9 or that seem to be focused on raising criticisms  
10 for a person, I may take issue with that.

11 MR. BLAIR: Thanks for that clarification of the  
12 Commission counsel's position, Mr. Commissioner.  
13 We're simply putting on the record that a number  
14 of agencies were involved with biosecurity  
15 concerns and it certainly follows on the concerns  
16 raised earlier.

17 Q So I have one more email string, and my question  
18 will then be to see where we are in the future in  
19 terms of this jurisdictional issue, which I think  
20 will be instructive to the Commission. The last  
21 one I wish to refer to, Mr. Lunn, is our Tab 15.  
22 And again we see it's from John Lewis, the DFO  
23 officer, again to the RCMP officer, Mike Carlson.  
24 This time we see Brian Atagi, you're tagged on  
25 this as a c.c., sir.

26 MR. ATAGI: That's correct.

27 Q And then further down in the string we see that it  
28 was -- the earlier message was from the RCMP  
29 officer, Mike Carlson, to both yourself, Mr.  
30 Atagi, and you, Mr. Thomson, would you agree?

31 MR. THOMSON: Yes, I see my name there. Yes.

32 Q At the 1:49, the email string.

33 MR. THOMSON: Yes.

34 Q And what this is, is this is Mr. Carlson for the  
35 RCMP inviting a number of parties to a meeting, to  
36 understand and explain the RCMP role and mandate  
37 with respect to biosecurity protocols, is that  
38 correct?

39 MR. THOMSON: Yes.

40 MR. ATAGI: Yes.

41 Q You see that in the first text, first paragraph,  
42 you agree?

43 MR. THOMSON: Yes.

44 Q And I note here that Mary Ellen Walling, who has  
45 been previously identified to the Commission as  
46 the Executive Director of the B.C. Salmon Farmers  
47 Association, was invited to the meeting and the

1 officer suggested it would be helpful if the  
2 industry could give a presentation regarding the  
3 concerns around unwanted guests, so really on the  
4 issue of biosecurity again?

5 MR. THOMSON: Yes, I see that.

6 Q And my question then for you, having set this  
7 scene that there's some tension around biosecurity  
8 between various parties, is can you help the  
9 Commissioner and the rest of us understand on a  
10 going-forward basis whether or not there's still  
11 active discussion going on between the DFO and  
12 perhaps the RCMP on issues of biosecurity and  
13 protocols for unwanted trespass, or is that not an  
14 issue that's top of mind right now?

15 MR. THOMSON: Well, I would characterize it as such  
16 that it certainly is an issue that continues to be  
17 raised between ourselves, the Department of  
18 Fisheries and Oceans, RCMP is occasionally  
19 involved as to their advice around legal issues,  
20 and of course industry as well has raised it to us  
21 as to, you know, they have concerns, if I can  
22 characterize them as such, around potential  
23 impacts to their stocks. And as such they're  
24 seeking, you know, advice and relief potentially  
25 from the government as to what can be done to  
26 better protect their biosecurity, or what they  
27 deem to be as potential impacts to the biosecurity  
28 for their stock.

29 Q Thank you. Could we go, please, to B.C. Salmon  
30 Farmers Tab 2.

31 MR. MARTLAND: I wonder if the document on screen ought  
32 to be marked, as well.

33 MR. BLAIR: Thank you.

34 THE REGISTRAR: Exhibit 1715.

35  
36 EXHIBIT 1715: Email string between Mike  
37 Carlson, John Lewis and others re "Meeting  
38 with RCMP, DFO and the BC Salmon Farmers  
39 Association and Industry members", May 26,  
40 2010

41  
42 MR. BLAIR:

43 Q Tab 2, PDF 5 and 6, please. Did we jump past the  
44 front page too quickly? Mr. Lunn, I'm sorry, I  
45 did direct you to 5 and 6, but just for the  
46 record. This is a Regulatory Compliance of  
47 British Columbia's Marine Finfish Aquaculture

1 Facilities, it's a 2009 document, it's a joint  
2 report from the provincial government, prepared by  
3 the provincial government, for the record. Mr.  
4 Thomson, if we could direct you to pages 5 and 6.  
5 And my question really is - find my own reference  
6 - is with respect to the industry and record  
7 keeping and reporting, and my question really is  
8 in terms of its reliability and whether they were  
9 cooperative or not in providing required  
10 information. If you look at that summary, do you  
11 acknowledge that the industry has had a good  
12 record keeping role and reporting and at a fairly  
13 high level of compliance and has been cooperative  
14 in that regard? If you scroll up to the bottom of  
15 the screen, Mr. Lunn.

16 MR. THOMSON: Do you want to show the bottom of the  
17 screen or the top of the screen, sorry.

18 Q I meant the bottom, yes, where it's highlighted in  
19 yellow, and over to the next page. In fact, if  
20 you just can put the yellow highlighted passages  
21 on the screen, Mr. Lunn.

22 MR. THOMSON: I'm sorry, Mr. Blair, could you clarify  
23 the question for me?

24 Q Certainly. And the reason for referring it to you  
25 is the comment on what appears to be just above  
26 the bullets, so now just off the top of the  
27 screen, sir, that there's a statement here of:

28  
29 The high level of compliance continued with  
30 all MAL inspection points found to be in  
31 the...

32  
33 And then it goes through a number of percentages.  
34 Do you see that?

35 MR. THOMSON: Yes, I do see it.

36 Q Does that accord with your understanding and  
37 knowledge of the reporting regime as the Province  
38 examined it and your ability to understand that  
39 going forward in your new roles?

40 MR. THOMSON: Well, certainly I'm familiar with these  
41 reports and subsequent previous reports, and we  
42 were certainly informed when we spoke with  
43 provincial agencies that they saw the high level  
44 of compliance between -- with the industry. Yes.

45 Q Thank you, sir. Now, we'll go to a document that  
46 you're more familiar with, B.C. Salmon Farmers Tab  
47 11.



1 MR. MARTLAND: And I'm just looking to see if we can  
2 just clarify for the record, because the document  
3 on screen has some highlighting on it. I was  
4 trying to learn with Ms. Grant, who is far more  
5 knowledgeable about all the documentary record, we  
6 think that this document unmarked, or at least un-  
7 highlighted may already be in as an exhibit. But  
8 perhaps Mr. Blair can just assist us in terms of  
9 what this document is and whether it should be  
10 marked.

11 MR. BLAIR: Thank you. The highlighting, I don't know  
12 who put it on, but I gather my client or my staff  
13 may have, and it doesn't need to go in, in the  
14 highlighted version. If it's already been  
15 exhibited, I'm happy to have a reference to the  
16 exhibited copy, or if it's easier for the parties  
17 today, we could mark it as a new exhibit with the  
18 highlight for ease of reference. I'm in the  
19 Commission's hands.

20 MR. MARTLAND: Well, I don't have the other exhibit  
21 number handy. I'm going to suggest that the  
22 highlighted version be marked, because the record  
23 will now reflect this mysterious highlighting if  
24 we don't have this part of the exhibit record,  
25 too.

26 THE REGISTRAR: That will be 1716.

27  
28 EXHIBIT 1716: Regulatory Compliance of  
29 British Columbia's Marine Finfish Aquaculture  
30 Facilities 2009, Joint Report Ministry of  
31 Agriculture and Lands and Ministry of  
32 Environment (highlighted version)  
33

34 MR. BLAIR: Thank you.

35 Q B.C. Salmon Farmers Tab 11. Mr. Thomson, is there  
36 a name on the front of this document you're more  
37 familiar with?

38 MR. THOMSON: Yes.

39 Q Is this your presentation?

40 MR. THOMSON: Yes, it was my presentation.

41 Q Thank you. I see the date is June the 1st, 2006,  
42 for the record. And if we could go to PDF 9,  
43 please. My question for you in a general sense,  
44 Mr. Thomson, is if you can explain briefly how DFO  
45 proceeds with **CEAA** reviews for aquaculture sites,  
46 huge question I understand, and perhaps you merely  
47 need to direct your attention to the slide to

1 indicate whether this summarizes the DFO role in a  
2 very large high level way.

3 MR. THOMSON: Well, at the time, of course, in 2006,  
4 this described our, you know, in point form, what  
5 the **Canadian Environmental Assessment Act** reviews  
6 of environmental effects for a project were. I've  
7 highlighted here, of course, that really what you  
8 do in conducting a **Canadian Environmental**  
9 **Assessment Act** screening is trying to determine  
10 whether the project, after mitigation measures, if  
11 the resulting environmental impact is going to  
12 cause a significant environmental effect. And as  
13 I testified to on Tuesday, and the heart of a  
14 **Canadian Environmental Assessment Act** review  
15 really is the Valued Ecosystem Components Table,  
16 which as you list off the ecosystem components  
17 that are being potentially affected, you list off  
18 the potential impact of the operation, the  
19 potential mitigation measures that are being  
20 proposed by the proponent, and then you score  
21 through a subjective evaluation what the -- what  
22 the resulting environmental impact is.

23 And also, as the subsequent table to that is  
24 the Cumulative Effects Assessment of existing  
25 sites that may be also within an area, whether  
26 they be aquaculture sites or other types of sites,  
27 may be an area that could cause environmental  
28 impact.

29 So it's a fairly short sketch of the role of  
30 **CEAA** that DFO had in 2006 when I made this  
31 presentation.

32 Q And just for your review, Mr. Thomson, and for the  
33 record, if Mr. Lunn could scroll down just the  
34 next couple of pages, just pausing so that Mr. --  
35 that's slide number 9, part of your presentation,  
36 speaking of the valued ecosystem components,  
37 correct?

38 MR. THOMSON: Yes.

39 Q And the --

40 MR. THOMSON: Well, it's a summary thereof, or just a  
41 selection of a few of the valued ecosystem  
42 components. Yes.

43 Q And the following one is again a further  
44 description of the DFO Review Role?

45 MR. THOMSON: Again, that's an example of what you'd  
46 see in a VEC table, from a **Canadian Environmental**  
47 **Assessment Act** document.

1 MR. BLAIR: Could this document be marked as the next  
2 exhibit.

3 THE REGISTRAR: Exhibit 1717.

4  
5 EXHIBIT 1717: Thomson, The Federal Role in  
6 Regulating Fin Fish Aquaculture in BC,  
7 Presentation to Special Committee on  
8 Sustainable Aquaculture, June 1, 2006  
9

10 MR. BLAIR: Thank you.

11 Q And keeping it on the screen and going to PDF 25,  
12 which would be slide 24 for you, Mr. Thomson.

13 MR. THOMSON: Yes.

14 Q This is perhaps just stating the obvious, but this  
15 again is a high-level summary of your  
16 presentation, indicating that the federal  
17 regulatory regime is based on the best available  
18 science, and attempts to continuously be improved  
19 with new information and tools as they become  
20 available; is that correct?

21 MR. THOMSON: Yes. I mean, it's correct to the  
22 presentation in 2006, and correct that, you know,  
23 we continue to operate on our adaptive management  
24 approach, even with our new regime.

25 Q So it was true then and it's true now?

26 MR. THOMSON: Yes.

27 Q And up one page -- slide, Mr. Lunn. In your  
28 presentation just before the final summary you've  
29 got the comparison with other jurisdictions.  
30 Could you just very briefly take us through this  
31 table and describe the importance of some of these  
32 jurisdictional differences?

33 MR. THOMSON: Yeah, we had in Pacific Region developed  
34 some changes to the program from managing  
35 aquaculture under our regime. So we had developed  
36 a standardized scoring matrix to provide more  
37 guidance to the biologists in conducting the VEC  
38 table scoring, as well as a standardized **CEAA**  
39 screening template, so that each of the **CEAA**  
40 screenings would be similar. Prior to the  
41 development of these things they were much more  
42 subjective assessments and there wasn't as much  
43 guidance given to the environmental assessors.

44 As we've testified to already in 2005, we  
45 developed a standardized HADD threshold, started  
46 using the tool of DEPOMOD to predict the impact,  
47 and started issuing s. 35(2) authorizations and

1           compensations.

2           On the Atlantic Region at the time in 2006,  
3 they were not -- they did not have a standardized  
4 HADD determination. Again it was much more  
5 subjective. They were not using DEPOMOD and were  
6 not using tool of authorizations, that, however,  
7 subsequently in the process of being reconsidered  
8 they are looking at using on the Atlantic Region  
9 now both DEPOMOD and Habitat authorizations.

10          And then finally on the bottom here, there is  
11 a Salmonid Importation Policy that's specific to  
12 British Columbia that is not in effect in the  
13 Atlantic Region that has conditions of importation  
14 on particularly Atlantic salmon eggs, but also  
15 they are on other types of eggs. But there is an  
16 Atlantic salmon importation policy that requires  
17 fish health testing and quarantine that you  
18 wouldn't find in the Atlantic Region.

19 MR. BLAIR: Thank you for your answers, sir, and thank  
20 you to the panel. Those are my questions.

21 MR. MARTLAND: Mr. Commissioner, next I have Ms.  
22 Glowacki for the Aquaculture Coalition at 24  
23 minutes.

24 MS. GLOWACKI: Thank you. Glowacki, initial L., for  
25 the Aquaculture Coalition.

26  
27 CROSS-EXAMINATION BY MS. GLOWACKI:

28  
29 Q       I just want to start by going back to an issue  
30 with biosecurity which seems to have been raised  
31 several times, and to analogize out from the  
32 situations that Mr. Blair was referring to of  
33 people passing by farms. If I was on a kayak trip  
34 in an area where there was several farms, and I  
35 passed one and then another, would I be breaching  
36 some kind of biosecurity rule?

37 MR. THOMSON: Not that I'm aware of. No.

38 Q       And so a situation in which a bunch of people go  
39 to one farm and then another in the waters around  
40 it, that's not a breach, either?

41 MR. THOMSON: I don't think I at any point in my  
42 previous testimony stated that there were  
43 biosecurity rules that applied to the general  
44 public.

45 Q       No. Okay, thank you. Biosecurity is directed at  
46 trying to prevent -- so the situation would be  
47 there's a fish farm that could have, let's say it

1 does have diseased fish, or it has pathogens in  
2 the farm, and biosecurity rules or procedures are  
3 there for DFO staff and for fish farm industry  
4 people so that they don't transfer those pathogens  
5 to another farm; is that right?  
6 MR. THOMSON: No, the biosecurity rules and protocols  
7 are in place so we don't transfer pathogens to or  
8 from the farm site, that we minimize the risk of  
9 pathogen transfer.  
10 Q Right.  
11 MR. THOMSON: So that we have footbaths when you step  
12 onto a site and step off of a site.  
13 Q Okay. So is that different from what I said?  
14 (Indiscernible - overlapping speakers).  
15 MR. THOMSON: I think you implied that they were only  
16 for reducing the risk of transfer from the site to  
17 somewhere else. That's just not -- that's only  
18 part of it. What we're trying to do is reduce the  
19 risk of transmission of pathogens, period, whether  
20 you're coming to or from the site.  
21 Q To or from, okay, fair enough. So I guess what  
22 I'm curious about, so you have biosecurity to  
23 limit transfer to and from the farm, but in terms  
24 of actually the fact of there being fish in a farm  
25 with pathogens, there's nothing that prevents  
26 those fish from transferring pathogens to the wild  
27 salmon, right? There's no rules against that.  
28 MR. THOMSON: Well, we --  
29 Q Is there a condition of licence that makes it  
30 illegal for a fish farm to have pathogens on their  
31 fish?  
32 MR. THOMSON: No. We have conditions of licence that  
33 require them having a Fish Health Management Plan,  
34 which -- and that they must follow the Fish Health  
35 Management Plan, which would, of course, the  
36 design of which is to limit pathogens being on the  
37 farm site.  
38 Q Right. But it's intended to limit, but it doesn't  
39 prohibit.  
40 MR. THOMSON: There is no condition of licence that  
41 prohibits pathogens on a farm site, no.  
42 Q No. Nor the transmission from fish in the farm to  
43 those that swim by.  
44 MR. THOMSON: No, there is no specific condition of  
45 licence that has that, no.  
46 Q Okay, thank you. I want to enter a few emails as  
47 exhibits. I'm going to run through them quickly

1 just so we get them on the record and then I'll go  
2 back to them as time permits. They are all emails  
3 in which you, Ms. Hoyseth are on, so I'm just  
4 going to direct these to you, and we'll just go  
5 through them quickly, if that's okay. The first  
6 one is on our Aquaculture Coalition list Tab 31,  
7 please. And you'll see that the top email is to  
8 you, Ms. Hoyseth. It's dated May 27th, 2010 and  
9 it's regarding Cyrus Rocks - DFO action. Do you  
10 recognize that?

11 MS. HOYSETH: Yes, I do.

12 MS. GLOWACKI: Okay. And it's a string of emails and  
13 hopefully we'll have time to go back to it. Can I  
14 have that marked as the next exhibit, please.

15 THE REGISTRAR: Exhibit 1718.

16  
17 EXHIBIT 1718: Email string between Kerra  
18 Hoyseth, Nick Leone and others, re "Cyrus  
19 Rocks - DFO action", from May 21, 2010 to May  
20 27, 2010  
21

22 MS. GLOWACKI:

23 Q The second email is on our supplemental list.  
24 It's Aquaculture Coalition J, please. And this  
25 again is from the same period, May 26, 2010, the  
26 top email is from Brad Fanos, but you're on the  
27 second one there and it's a similar string. Do  
28 you recognize that?

29 MS. HOYSETH: Yes, I do.

30 MS. GLOWACKI: Okay, thanks. Can I have that marked as  
31 the next exhibit, please.

32 THE REGISTRAR: Exhibit 1719.

33  
34 EXHIBIT 1719: Email string between Kerra  
35 Hoyseth, Brad Fanos and others, re "Cyrus  
36 Rocks - media lines", from May 21, 2010 to  
37 May 26, 2010  
38

39 MS. GLOWACKI:

40 Q The third email is Aquaculture Coalition Tab 22.  
41 Again this, if you look down to just below the top  
42 heading there, Ms. Hoyseth, you're on there as  
43 well. That's August 1st, 2008. Do you recognize  
44 these emails?

45 MS. HOYSETH: Yes, I do.

46 MS. GLOWACKI: Thank you. Can I have that marked,  
47 please. It's -- I should just for identification,

1           it's August 11, 2008, re Cecil Island Fish Farm  
2           Inspection.

3       THE REGISTRAR: Exhibit 1720.

4  
5           EXHIBIT 1720: Email string between Mona  
6           Madill, Shelley Jepps and others, re "Cecil  
7           Island Fish Farm Inspection" from July 22,  
8           2008 to August 11, 2008

9

10       MS. GLOWACKI:

11       Q     The next one is Tab 23 on our list, please. This  
12           one again is to you, Ms. Hoyseth. It's re Cecil  
13           Island - MOE sampling, and it's dated October 9,  
14           2008, and it's a string of emails. Do you  
15           recognize that?

16       MS. HOYSETH: Yes, I do.

17       MS. GLOWACKI: Thank you. Can we have that marked,  
18           please.

19       THE REGISTRAR: Exhibit 1721.

20

21           EXHIBIT 1721: Email string between Nicole  
22           Obree, Kerra Hoyseth and others, re "Cecil  
23           Island - MOE Sampling", from September 24,  
24           2008 to October 9, 2008

25

26       MS. GLOWACKI:

27       Q     And the final email is Tab 40 on our list, please.  
28           This email is the subject is re Cecil Island, it  
29           is from Ms. Hoyseth and it is dated Monday,  
30           December 13, 2010. Do you recognize this, Ms.  
31           Hoyseth?

32       MS. HOYSETH: Yes, I do.

33       MS. GLOWACKI: Okay, thank you. Can we have that  
34           marked as the next exhibit, please.

35       THE REGISTRAR: Exhibit 1722.

36

37           EXHIBIT 1722: Email string between Kerra  
38           Hoyseth and Alexandra Morton, re "Cecil  
39           Island", from December 11 to December 13,  
40           2010

41

42       MS. GLOWACKI:

43       Q     Could we put what is now Exhibit 1718 as  
44           Aquaculture Coalition Tab 31, please. This is a  
45           several page string email, and are you familiar  
46           with it, Ms. Hoyseth? Can I sort of jump around  
47           with it?

1 MS. HOYSETH: Sure.

2 Q Yes, okay. I'll just state my understanding of  
3 how it begins and you tell me if that's accurate  
4 or not, okay? If you turn to page 4, and this is  
5 dated May 21st, 2010. There's been some public  
6 attention, and I'm looking at -- so it's the  
7 second half of the page. There's been some public  
8 attention by NGOs and others about a fish farm at  
9 Cyrus Rocks, and there's been some concerns about  
10 the benthic impacts there. You're not clear why  
11 there would be that they would have concern there.  
12 However, you partner up with the B.C. Ministry of  
13 Environment, and if you go to the last line on  
14 page 4 you say that -- and I gather the Georgia  
15 Strait Alliance went out with you on your trip,  
16 but then they left, and after they left, you did a  
17 benthic grab and you found, I'll read here, it  
18 says:

19  
20 ...showed fairly bad impact.

21  
22 And then on the next page you talk about there's  
23 more specifics about how it appears to be over its  
24 -- what would be an allowable benthic impact; is  
25 that correct?

26 MS. HOYSETH: It's not over an allowable amount. It's  
27 over a threshold.

28 Q Okay, a threshold. What's the difference between  
29 a threshold and an allowable amount?

30 MS. HOYSETH: Well, there's no -- this is basically in  
31 a situation prior to -- let me just look, the  
32 email chain is prior to December 2010, I believe.

33 Q Right.

34 MS. HOYSETH: When this was managed primarily under the  
35 provincial Ministry of Environment regime, the  
36 **FAWCR**.

37 Q Mm-hmm.

38 MS. HOYSETH: So they and we do not have a licence  
39 condition or a piece in the regulation that says  
40 you cannot exceed a certain level. What both of  
41 those regimes say is there are thresholds of  
42 harm --

43 Q Mm-hmm.

44 MS. HOYSETH: -- above which a reaction will occur.  
45 And in both case extra monitoring and a required  
46 fallow period.

47 Q Okay. And the fallow period, you've mentioned



1           that before. A fallow period, I think I'm going  
2           to refer to this one specifically, because it's  
3           one that I've read. The fallow period would be  
4           after they finish growing out the fish, then the  
5           next year they would have to -- they couldn't put  
6           fish back in until the levels went down to what  
7           would be below the threshold; is that right?

8           MS. HOYSETH: That's correct.

9           Q     Okay, thank you. Okay. So the remainder, okay,  
10           so you're expecting some public attention to this  
11           and there's a development of media lines in which  
12           you ask several questions, and there's several  
13           lines of investigation that you would like people  
14           to look into, including its compliance record, and  
15           that kind of thing. That's on the last page,  
16           right?

17           MS. HOYSETH: Correct.

18           Q     Okay. Now, there's a couple of things I just want  
19           to point out. One is according to the research  
20           that the Department did, the farm has been  
21           compliant with its reporting requirements, and  
22           it's done the benthic grabs according to when it's  
23           supposed to, but it's nonetheless above the  
24           threshold; is that right?

25           MS. HOYSETH: Yes. Again, let me point out that this  
26           was under the Ministry of Environment's regime.

27           Q     Right.

28           MS. HOYSETH: So it was not the Department of Fisheries  
29           and Oceans that was managing this threshold. That  
30           was the Ministry of Environment.

31           Q     So while you, the Habitat Branch of DFO had power  
32           under s. 35 to administer benthic impact and  
33           impacts to habitat generally, you didn't do so.

34           MS. HOYSETH: The way that the Policy for the  
35           Management of Fish Habitat is written, and that's  
36           a document that is used as guidance by the broad  
37           Habitat Program, it's not specific to aquaculture.  
38           It's a guidance document and policy that's used by  
39           the Habitat Program in determining how we issue  
40           letters of advice, how we manage authorizations  
41           under s. 35(2). Basically it says that if an  
42           activity occurred prior to tools in place for  
43           either science understanding or, you know, we have  
44           -- the Province has existed for a while now, we  
45           have activities that occurred 100 years ago, 50  
46           years ago, 20 years ago, where regimes were not in  
47           place to manage, or science understanding to

1 understand the impacts of certain activities. So  
2 the policy is written such that if activities  
3 occurred before pieces were put in place, or  
4 understanding was generated, we did not  
5 retroactively go back and reassess those projects.

6 Marine finfish is one of those situations,  
7 where I know Mr. Thomson testified that in 2005 a  
8 procedure was put in place using DEPOMOD as a  
9 threshold for a HADD for an authorization. Prior  
10 to that we did not have a set threshold or a  
11 framework in place that was consistently applied.  
12 From 2000 onwards we've applied that consistently.  
13 Prior to our policy does not give us the  
14 flexibility to go back and say this was lawfully  
15 operating, but now we're going to go back and re-  
16 examine.

17 So in, I think I can speak for the Department  
18 there, this industry was managed primarily through  
19 the oversight of the Ministry of Environment from  
20 a benthic perspective, and the Ministry of  
21 Agriculture and Lands, because it was legally  
22 operating and lawfully licensed, the Department  
23 relied on the management regimes that were in  
24 place because of the memorandum of understanding  
25 from 1988, and that the provincial government was  
26 the lead regulatory agency for aquaculture.

27 We did not then go back following that  
28 decision and retroactively reassess these sites.  
29 They were being managed from provincial regime.  
30 After 2005 we applied moving forward a consistent  
31 approach to our HADDs.

32 Q Okay. And that policy is still in place, that --  
33 MS. HOYSETH: The Policy for the Management of Fish  
34 Habitat?

35 Q No, the policy, well, I suppose, but the aspect of  
36 the policy whereby if something was authorized, or  
37 in the past, or it occurred in the past going  
38 forward, it sort of -- you're not reviewing it  
39 again; is that right?

40 MS. HOYSETH: No, the policy stays in place, the Policy  
41 for the Management of Fish Habitat.

42 Q Right.

43 MS. HOYSETH: That hasn't changed for many years, that  
44 we wouldn't retroactively go back. But I think  
45 what Mr. Thomson has said to you is that moving  
46 forward in the future, a framework was developed  
47 in 2005 to 2010 that set a HADD threshold that

1           above which we would authorize. But now we aren't  
2           authorizing impact. We're managing the similar  
3           impacts through conditions of licence and are  
4           moving forward adaptive management and new science  
5           advice is how we'll be managing changes in the  
6           future.

7           Q     Right. So the -- so you're not going to be doing  
8           s. 35 reviews of the -- the ones that are already  
9           existing, or to any of them, going forward.

10          MS. HOYSETH: If by s. 35 review you mean will we be  
11          looking at habitat impacts? Yes, we will. We will  
12          not be issuing s. 35(2) authorizations, but the  
13          review of the benthic impact is part of our  
14          monitoring and licensing regime in the province  
15          right now.

16          Q     But your policy for this year and next year and  
17          the policy documents I've seen suggest that those  
18          -- where there's going to be a new licence, or I  
19          think it's an amendment with the significant  
20          effects, is that the wording I've seen?

21          MS. HOYSETH: Sure.

22          Q     Yeah. Then you're going to do an evaluation, but  
23          the ones that are already in place, you're going  
24          to, those sort of are --

25          MS. HOYSETH: The --

26          Q     They're not going to be evaluated in the  
27          (indiscernible - overlapping speakers).

28          MS. HOYSETH: They are evaluated --

29          Q     Is that right?

30          MS. HOYSETH: -- through required monitoring contained  
31          within the conditions of licence. They're  
32          constantly monitored by industry, audited by us.

33          Q     Okay, monitoring. Yes.

34          MS. HOYSETH: And we have thresholds that we have set  
35          within the licence.

36          Q     Right. Okay. So there's monitoring thresholds,  
37          but there's not sort of a re-evaluation of whether  
38          or not it would be a harmful -- that having the farm  
39          there at all would be an impact to the fish  
40          habitat. The farm is allowed to stay; is that  
41          right?

42          MS. HOYSETH: Yes, it's correct.

43          Q     Okay.

44          MS. HOYSETH: Our policy does not give us the  
45          flexibility to go back and re-evaluate.

46          MS. GLOWACKI: Okay, thank you. I have about five more  
47          minutes of questions. Do we want to break now, or

1           continue?  
2       THE COMMISSIONER: Why don't you complete your  
3           questions.  
4       MS. GLOWACKI: Okay, thank you.  
5       Q     Can I have document Tab 22, which is Exhibit 1720,  
6           please. I'm going to try and go through this a  
7           little bit more quickly -- quicker. And you're  
8           familiar with this again?  
9       MS. HOYSETH: Yes.  
10      Q     Okay. So this begins in 2008 and it's regarding a  
11           fish farm, Cecil Island Fish Farm, and there has  
12           been a complaint by Mona Madill from the 'Namgis  
13           First Nation that she thinks that there's dead  
14           fish out on the farm. There's been a report from  
15           Alexandra Morton that there's been bubbles seen at  
16           the site, as well, and that's on pages 4 and 5 of  
17           that email. And then Kirsty Walde responds, she's  
18           a fisheries officer, she responds to those  
19           expressions of concern and goes and visits the  
20           site; is that right?  
21      MS. HOYSETH: That's correct.  
22      Q     Okay. And she spoke with the representative of I  
23           believe it's Marine Harvest, but I don't want to  
24           say for sure because I'm not certain. Anyway, she  
25           spoke to a representative -- Mainstream, pardon  
26           me.  
27      MR. THOMSON: Sorry, it's Mainstream.  
28      Q     Mainstream, yes, thanks. And he talked to them,  
29           showed them the video that he's done and the  
30           officer reviewed the reports. She saw bubbles and  
31           took pictures, but didn't see anything out of the  
32           ordinary; is that correct?  
33      MS. HOYSETH: If that's what's written in the email,  
34           that's written by Kirsty Walde.  
35      Q     Okay. And that's forwarded on to you, right?  
36           Correct?  
37      MS. HOYSETH: I believe so, if you scroll up, I would  
38           see that.  
39      Q     Yes. On July 29th, on the first page, it's  
40           forwarded to you.  
41      MS. HOYSETH: Okay.  
42      Q     Can I have Tab 23 up, that's Exhibit 1721, please.  
43           This relates to the same occurrence, but the same  
44           community members reported also to the Province.  
45           And this, if you go to page 2, Nicole Obee is  
46           writing to you, reporting on what she found going  
47           there. So three paragraphs down:

1                   In one location, where the community member  
2                   expressed some concern, our vessel's sonar  
3                   showed three large "blobs" just above the  
4                   ocean floor. It's unclear what these were.  
5

6                   And then the next paragraph:  
7

8                   In another sampling location, at the edge of  
9                   the feed shed, near where the community  
10                   member had reported bubbles at the surface,  
11                   our grab became entangled and pulled up a  
12                   mort uplift pipe full of dead fish.  
13

14                   And then he goes on, or she goes on about how the  
15                   person didn't know anything about it, and it may  
16                   have gotten to the bottom of the sea floor by  
17                   mistake. And she forwarded that to you, that's  
18                   at, if you go to the first page, September 24th,  
19                   you respond to her, thanks for the information,  
20                   and there's some follow-up. It appears that the  
21                   Province's intent to go do the more follow-up  
22                   research; is that right?

23                   MS. HOYSETH: That's correct.

24                   Q     Okay. Can we have Tab 40, please, Exhibit 1722.  
25                   So first, before we get to this one, a mort pipe,  
26                   that is a pipe that sucks up fish from the bottom  
27                   of the fish farm?

28                   MS. HOYSETH: From the bottom of the net pen.

29                   Q     Right. Yeah, and so the fish are dead already.

30                   MS. HOYSETH: That is the mort collection system. Yes.

31                   Q     Yeah. Okay. And they are dead from unknown  
32                   reasons, it could be disease, it could be  
33                   something else?

34                   MS. HOYSETH: I think in this particular situation it  
35                   was being managed again by the Ministry of  
36                   Environment --

37                   Q     Yes.

38                   MS. HOYSETH: -- as the main regulator.

39                   Q     Yeah. So but it's true that the fish are dead for  
40                   some reason.

41                   MS. HOYSETH: They're dead.

42                   Q     Right. Okay. And that's not a -- that's not an  
43                   issue for you as the Habitat or DFO that...

44                   MS. HOYSETH: At the time of this situation the  
45                   Department of Fisheries and Oceans did not manage  
46                   the mortalities at fish farms.

47                   Q     And so it's not a problem for an alteration of

1 fish habitat, and it's not against s. 36 of the  
2 **Fisheries Act** to have --  
3 MS. HOYSETH: It's not to have dead fish within a fish  
4 farm, no.  
5 Q No. And several months after, rotting in the  
6 pipes, that's okay, too?  
7 MS. HOYSETH: At the time is again, as I've mentioned,  
8 the main regulatory of this situation was the  
9 Ministry of Environment, and the communications at  
10 that point you'll see here --  
11 Q Mm-hmm.  
12 MS. HOYSETH: -- was that we were partnering in further  
13 understanding what was going on.  
14 Q Right.  
15 MS. HOYSETH: And that they were leading that.  
16 Q Yes. And that the Department, you determined that  
17 there was nothing wrong from the DFO's  
18 perspective.  
19 MS. HOYSETH: I don't think I ever said there was  
20 nothing wrong with it. I believe what I said was  
21 that the Ministry of Environment was the lead  
22 regulatory body that was managing it.  
23 Q Okay. Can we then have this -- yes, let's go to  
24 this email, then. And today your opinion would be  
25 that there is -- or is something wrong, or is not  
26 something wrong with having a pipe two months  
27 later.  
28 MS. HOYSETH: Oh, I think it's not best management  
29 practices to have gear thrown overboard, whether  
30 intentionally or unintentionally, whether it be  
31 from a fish farm or a boat, it doesn't really  
32 matter, it's probably not appropriate to have gear  
33 disposed of on our sea beds. That said, we were  
34 managing it by monitoring it and the Ministry of  
35 Environment was being the lead --  
36 Q Right.  
37 MS. HOYSETH: -- regulatory body on that.  
38 Q So your monitoring of it didn't catch it, but the  
39 reports from the First Nation and from a concerned  
40 member did.  
41 MS. HOYSETH: Well, I mean, I really, as you noticed  
42 there in the -- okay, I won't refer to that. I  
43 have no idea if the bubbling that was observed by  
44 the community member had anything to do with this  
45 mort pipe. I don't know if they had any  
46 connectivity at all.  
47 What we did do, and if you looked at some of

1 the emails that were submitted there, is we had a  
2 fishery officer visit the site for follow-up, and  
3 I believe there was three different benthic  
4 monitoring sampling events that occurred in  
5 response to this event. So I feel that we really  
6 took the complaint seriously. We went out and  
7 responded on more than one event to go find out  
8 and to look into and investigate.

9 And the framework of the Ministry of  
10 Environment, and again what I've mentioned we've  
11 moved forward with in our benthic monitoring  
12 program is looking at certain thresholds, we're  
13 using sulphide as the chemical surrogate to look  
14 at harm to fish habitat, and because that's really  
15 been the main focus of the **FAWCR** and adopted by  
16 the Department in our conditions of licence, those  
17 were the elements that we looked at. We looked at  
18 compliance with the **FAWCR** and with that element.  
19 At that time the Department did not manage that  
20 element. This was not a site that had a s. 35(2)  
21 authorization, so the provincial government was  
22 the main regulatory body.

23 We partnered with that because of course from  
24 a fish habitat perspective we have an interest in  
25 that. But they were leading, and we were  
26 partnering and participating in that, responding  
27 with the fishery officer and responding with DFO  
28 Habitat staff going on site to look.

29 Q Okay. One thing that comes to mind is perhaps  
30 what you're looking for is not broad enough if  
31 something like that doesn't get caught. It's  
32 potentially diseased fish in those pipes, and  
33 they've been sitting there for a couple of months  
34 and that doesn't seem to be an issue for anybody.

35 MS. HOYSETH: At the time it wasn't our management that  
36 was managing mortalities.

37 Q Okay. So - 30 seconds - the last paragraph of  
38 this email you say that everything's in compliance  
39 with the **Finfish Aquaculture Waste Control Regs.**  
40 The farm's in compliance. You've done your grabs.  
41 You never saw any bubbles, which I don't think  
42 that's actually true, but the fishery officer did.  
43 But you're satisfied and you're communicating to  
44 this concerned member that nothing out of the  
45 ordinary was found at that farm?

46 MS. HOYSETH: I didn't communicate that. I communicate  
47 that they were in compliance with the **FAWCR.**

1 Q And you say at the end:

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...nor any information we could find to explain your observations.

MS. HOYSETH: I don't have -- I don't know what caused the bubbles that were observed, because I didn't observe them, so I couldn't comment on what caused those, or I have no way of knowing what those were from, or why they happened. I didn't observe them. I couldn't make conclusions on that.

MS. GLOWACKI: Okay, thank you. That's my examination, thank you.

THE COMMISSIONER: Thank you very much, Ms. Glowacki.

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

(PROCEEDINGS ADJOURNED FOR NOON RECESS)

(PROCEEDINGS RECONVENED)

THE REGISTRAR: The hearing is now resumed.

MR. MARTLAND: Mr. Commissioner, I have counsel for the Conservation Coalition next at 25 minutes. Thank you.

THE COMMISSIONER: Mr. Leadem.

MR. LEADEM: Thank you, Mr. Commissioner. For the record, Leadem, initial T., appearing as counsel for the Conservation Coalition.

CROSS-EXAMINATION BY MR. LEADEM:

Q I want to begin by pulling up Conservation document number 18. It should be an email. Do you recognize this email chain, Mr. Thomson?

MR. THOMSON: Yes, I do.

Q In fact, on the second email you'll see that you're listed as one of the recipients from an email that was generated from Mr. Paul Sprout as the Regional Director General as he was then; is that correct?

MR. THOMSON: Yes.

Q And if you take the time to just look through the email, you'll see that there's a listing of some non-compliance issues, and I'll ask Mr. Lunn to scroll through the email just slowly. Portions have been redacted due to not relevance. And the email that generated this whole chain is an email



1 from Gary Miller to John Lewis. And in that email  
2 right at the very end of it - I think we'll get  
3 there in a moment. There it is, thank you, Mr.  
4 Lunn - it says:  
5

6 There seems still [to] be a belief by some  
7 that the compliance rate in the industry [is]  
8 extremely high. Can you provide, in bullet  
9 form a list of some of the things you have  
10 experienced in the last while regarding non  
11 compliance or that would be worthy of further  
12 action by [Conservation and Protection].  
13

14 And what follows then is that listing that we just  
15 scrolled through; is that correct?

16 MR. THOMSON: As you put it to me on the screen, yes.

17 MR. LEADEM: All right. Could we have that marked as  
18 the next exhibit, please.

19 THE REGISTRAR: Exhibit 1723.  
20

21 EXHIBIT 1723: Email string between Gary  
22 Miller, John Lewis and others, re  
23 "aquaculture incidents: note Gold River MM  
24 comments protected", March 1, 2010  
25

26 MR. LEADEM:

27 Q Can we now go to Conservation document number 22,  
28 please. Do you know a Sharon Ford, Mr. Thomson?

29 MR. THOMSON: yes, she's a director in the Aquaculture  
30 Management Division office in Ottawa at the  
31 national level.

32 Q I'm going to refer you to this email chain which  
33 she emanates, dated September 12th, 2010, and the  
34 middle email is something from a fellow named John  
35 Taekema. Is he within your office, as well?

36 MR. THOMSON: It's John Taekema, it's Bernie Taekema is  
37 the name he goes by. Yes, he works in the  
38 Aquaculture Management Division currently.

39 Q All right. And could you clarify for me this  
40 acronym, **FAWCR**, it says for example in Bernie  
41 Taekema's:  
42

43 Further to my most recent E-Mail I can attest  
44 when I was auditing fish farms for the past  
45 couple [of] years including to up to July  
46 this year the level of compliance with the  
47 **FAWCR** was falling.

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What's **FAWCR**?

MR. THOMSON: Finfish Aquaculture Waste Control Regulation, the former provincial regulation that Ms. Hoyseth referred to earlier.

MR. LEADEM: All right. Could that be marked as the next exhibit, please.

THE REGISTRAR: Exhibit 1724.

EXHIBIT 1724: Email string between Sharon Ford and John Bernie Taekema, re "Further - sorry for the bits and pieces", September 12, 2010

MR. LEADEM:

Q Could we now go to Conservation document number 64, please. I think you're listed on this email chain that emanates from Melanie McNabb?

MR. THOMSON: Yes, I am.

Q And the reference there is from Ms. McNabb in the first line is:

...we are struggling to come to grips with the fact that not all farms have fulfilled their reporting requirements.

She goes on to say:

How should we approach this? We have the option of simply omitting those farms, and indicating the data represents "only data that DFO received from industry" OR we can list every farm, and where we have not received data, put a comment like "reports not received".

The issue as I understand it there was the fact that you were getting the sufficient amount of information relative to the reporting requirements from specific farms; is that correct?

MR. THOMSON: The issue was primarily one of the fact that we introduced through the conditions of licence that we put in place on December 19th a rather lengthy list, as was introduced in evidence previously of new reports the industry had to report on. And, you know, I think there's a certain educational component to this for

1 aquaculture companies, finfish, shellfish, and  
2 freshwater, that these reports are conditions of  
3 licence requirement, and as such in the very first  
4 set of reports, those being from Q1, there was  
5 some farms that had not submitted reports. And  
6 subsequently, you know, we have followed up with  
7 letters to the companies requesting that those  
8 reports be submitted as soon as possible.

9 Q Have you received those resubmitted reports as of  
10 today?

11 MR. THOMSON: Well, no, I don't have any information as  
12 to how many of them we received as of today.

13 MR. LEADEM: All right. Could we have that marked as  
14 the next exhibit, please.

15 THE REGISTRAR: Exhibit 1725.

16  
17 EXHIBIT 1725: Email from Melanie McNabb to  
18 Gary Tacogna and others re "Public reporting  
19 question-reports not received", June 21, 2011  
20

21 MS. HOYSETH: Would it -- would you mind if I say  
22 something regarding that?

23 MR. LEADEM:

24 Q Certainly.

25 MS. HOYSETH: One of the elements as well that we  
26 struggled with is I think there was only reporting  
27 requirement that in the licence actually required  
28 reporting of nil reports. So there was a large  
29 number of reports that are required every quarter,  
30 and were not listed specifically in the licence  
31 conditions, that if no data was gathered, because  
32 say the farm was not operational, a nil report  
33 would be submitted. And one of the -- one of the  
34 reasons we didn't receive some reports was because  
35 nothing had occurred, but we needed to follow up  
36 on that to understand if it was an issue of non-  
37 compliance or an issue of not requiring a report.  
38 That was one of the elements we had to follow up  
39 on, as well.

40 Q And I want to take this opportunity to see if I  
41 can flesh out some of my concerns with respect to  
42 the conditions to a licence and what would happen  
43 in the event that those conditions were not being  
44 complied with. Because I understood from you,  
45 Officer Atagi, that in the past you had the  
46 ability to ticket offences and so that there would  
47 be some follow-up if there were non-compliance

1 with some provision that was going on in the sea  
2 farm, or the open net finfish farm. What does DFO  
3 envisage would happen in the event that a farm was  
4 not in compliance with the conditions of its  
5 licence, would there be a prosecution, would there  
6 be a fine levelled, would the licence get yanked,  
7 what kinds of things would occur?

8 MR. THOMSON: Well, if I can start the answer, and I'll  
9 ask Brian to finish if I get anything wrong,  
10 obviously he has greater familiarity on it. But  
11 essentially what you're looking is a continuum of  
12 compliance activities that you'd be presented to,  
13 to get the operator, whether it be a fish farmer  
14 or, you know, anyone else under the **Fisheries Act**  
15 into compliance.

16 And so the continuum of activity begins with  
17 informing them of non-compliance and seeking  
18 compliance through a letter. It can continue  
19 through in some cases in terms of **Fisheries Act**  
20 violations on the West Coast. There are some  
21 **Fisheries Act** violations that are ticketable  
22 offences. There are none under the **Pacific**  
23 **Aquaculture Regulation**, but that certainly is a  
24 tool available in some cases. And then it can  
25 continue on into activities such as either  
26 restorative justice or going to a full prosecution  
27 and a fine being assessed by the court. That's as  
28 I understand it. I don't know if, Brian, if you  
29 have more to add.

30 MR. ATAGI: No, and I would reiterate that not all  
31 infractions under the **Act** are ticketable. There  
32 are certain provisions for tickets. From the  
33 switch from the provincial regime to the federal  
34 regime MAL inspectors had tickets for some of  
35 their offences, and we do not have that at current  
36 time.

37 Q Officer Atagi, do I have it right that there has  
38 never been a successful prosecution of a fish farm  
39 for failing to abide by either conditions of its  
40 licence or back in the old days to failure to  
41 comply with provisions of the **Fisheries Act**?

42 MR. ATAGI: Not that I'm aware of.

43 Q Could we now look at Conservation document number  
44 34, please, and this question will be to you, Ms.  
45 Hoyseth. Because I think that the email, once it  
46 comes up would be something that you're familiar  
47 with. Do you recognize this?

1 MS. HOYSETH: Yes, I do.

2 MR. LEADEM: Could this be marked as the next exhibit,  
3 please.

4 THE REGISTRAR: Exhibit 1726.

5

6 EXHIBIT 1726: Email string from Kerra  
7 Hoyseth to Joe Knight and others, re "Letter  
8 to Mainstream", from February 23, 2009 to  
9 February 25, 2009

10

11 MR. LEADEM:

12 Q I'm going to ask that, Mr. Lunn, you scroll  
13 through and get to the bottom of the email chain,  
14 if you could. It goes on at length but if you get  
15 to the very bottom you'll see that there should be  
16 your signature column. There it is, I think  
17 that's it. Thank you. And if you can highlight  
18 the penultimate paragraph, the one beginning "I  
19 haven't", and you say in this email:

20

21 I haven't been very satisfied throughout this  
22 process, both by the lack of feedback to me  
23 on any status updates, and on the time that  
24 it has taken. I hope that this kind of  
25 situation doesn't happen again, so any  
26 feedback on how to handle this better would  
27 be appreciated.

28

29 And my understanding is that this was a situation  
30 that attracted your attention and you were a bit  
31 frustrated in terms of the inactivity of personnel  
32 within DFO to address the issues that you raise.

33

Is that a fair statement?

34

MS. HOYSETH: Yes, that is correct.

35

Q You go on to say:

36

37 I have literally only had the one complaint  
38 for aquaculture for almost 2 years, although  
39 I understand there are other Habitat issues,  
40 and of course, the ongoing workload of  
41 [Conservation and Protection].

42

43 And then if I can go back to the top of the  
44 email chain, what you're proposing is to have an  
45 educational process to explain how aquaculture is  
46 managed by the different sectors of DFO and  
47 provincial governments. Now, I realize this was

1 written at a time before there was a transfer of  
2 jurisdictional authority from the province to the  
3 feds. Did in fact you ever have those discussions  
4 within the Department and with provincial  
5 authorities so that you can get some coordination  
6 of effort going?

7 MS. HOYSETH: If you look at the date of that, that is  
8 right around the time when we were going to be  
9 changing our regime. So we didn't prior to, we  
10 did begin discussions at that point of forward-  
11 looking about what the new regime would look like,  
12 that started around then.

13 Q All right. I'm now going to move to a different  
14 topic, if I could, and that's the question of  
15 funding for aquaculture, and these questions will  
16 be mainly to you, Mr. Thomson.

17 MR. THOMSON: Of course.

18 Q And I'm going to -- and this is something I did  
19 not get to you when you met -- when we met  
20 earlier. Could I have Conservation Tab number 10,  
21 please. Now, you're included in this email chain,  
22 from Mr. Rosenberger, are you not?

23 MR. THOMSON: It appears that way, yes.

24 MR. LEADEM: Could this be marked as the next exhibit,  
25 please.

26 THE REGISTRAR: Exhibit 1727.

27  
28 EXHIBIT 1727: Email chain between Susan  
29 Farlinger, Barry Rosenberger and others re  
30 "URGENT - Science budget impacts", from June  
31 16, 2010 to June 16, 2010  
32

33 MR. LEADEM:

34 Q And the reference that Mr. Rosenberger is making  
35 is cuts to his Department, which deals with coho  
36 assessment of -- he seems to be concerned about  
37 some of the wild stocks and coho assessment and  
38 things of that nature, and if you read through  
39 quickly you'll see that he's concerned about cost  
40 cuts; is that right?

41 MR. THOMSON: That's what it says, yes.

42 Q All right. Conservation document number 13,  
43 please. And once again a question for you, Mr.  
44 Thomson, the Backgrounder is for Sustainable  
45 Aquaculture Program. Are you familiar with this  
46 document?

47 MR. THOMSON: Yes, I am.

70  
PANEL NO. 60  
Cross-exam by Mr. Leadem (CONSERV)

1 MR. LEADEM: Next exhibit, please.  
2 THE REGISTRAR: Exhibit 1728.

3  
4 EXHIBIT 1728: Backgrounder, Sustainable  
5 Aquaculture Program, August 27, 2008 [DFO]  
6

7 MR. LEADEM:  
8 Q And the lead-in paragraph, if we could just  
9 highlight that briefly, Mr. Lunn, thank you:

10  
11 The Government of Canada is committed to  
12 enhancing the global competitiveness and  
13 environmental performance of Canada's  
14 aquaculture industry. In 2008, Fisheries and  
15 Oceans Canada (DFO) received a \$70 million  
16 investment over five years to meet this  
17 commitment.  
18

19 That's accurate, is it not?  
20 MR. THOMSON: We received a budget allotment of 70  
21 million to go into several aspects of Aquaculture  
22 Management and Science, yes.

23 MR. LEADEM: Could that be marked as the next exhibit,  
24 please.

25 THE REGISTRAR: Exhibit 1729.

26 MR. LEADEM: Sorry.

27 THE REGISTRAR: No, that's the same one. That's 1728.  
28 Sorry.

29 MR. LEADEM: I'm sorry, Mr. Giles, my fault. I find  
30 that the compression of time is of concern to me,  
31 Mr. Commissioner, so you'll have to bear with me  
32 if I make that error every once in a while.

33 Q Commission -- sorry, Conservation document number  
34 14, please. This is a heading for the AIMAP, the  
35 Aquaculture Innovation and Market Access Program.  
36 You're familiar with this document, are you, Mr.  
37 Thomson?

38 MR. THOMSON: Well, it appears to be media responses or  
39 some sort of that -- I'm certainly familiar with  
40 the program and content of documents that look  
41 similar to this. I don't know if I've actually  
42 seen this particular document, but it's similar  
43 documents I've seen.

44 MR. LEADEM: Next exhibit, please, Mr. Giles.

45 THE REGISTRAR: Exhibit 1729.

46  
47 EXHIBIT 1729: Aquaculture Innovation and

1 Market Access Program (AIMAP) March 1, 2010  
2 [DFO]  
3

4 MR. LEADEM:

5 Q Now, your counsel was good enough, and I  
6 acknowledge the cooperative nature of the federal  
7 government in providing me with an email early  
8 this morning, with respect to a breakdown of all  
9 of the costs associated with aquaculture over the  
10 last few years. And I'm going to in a moment ask  
11 that Mr. Taylor's email to me of this morning,  
12 that I believe I sent on to you, Mr. Lunn, the  
13 first one of that set be pulled up, which contains  
14 an actual diagram or contains a chart of costs,  
15 and I'm going to ask Mr. Thomson if he recognizes  
16 that and if he can corroborate that.

17 If we can scroll down a bit. I understand  
18 that your counsel may have shared this with you  
19 and that you would acknowledge these costs and  
20 this information is accurate to the best of your  
21 knowledge?

22 MR. THOMSON: It looks accurate to the best of my  
23 knowledge, yes.

24 MR. LEADEM: Okay. And actually, Mr. Commissioner,  
25 this is -- actually gets extended out a little bit  
26 and we'll make sure that you have the right  
27 version and the right copy for the exhibit  
28 database. Because the column was long enough that  
29 it actually can be read in landscape as opposed to  
30 portrait, I believe. Could we have that marked as  
31 the next exhibit, please.

32 THE REGISTRAR: Exhibit 1730.  
33

34 EXHIBIT 1730: Email 1 from Mitch Taylor to  
35 Judah Harrison and Tim Leadem re "Cohen,  
36 Conservation Coalition request for  
37 information re public funding of  
38 aquaculture", (Not Final), September 1, 2011  
39

40 MR. LEADEM:

41 Q Now, the next is also an email that Mr. Taylor  
42 sent to me early this morning. It would be the  
43 second one in that list. And this one says:

44  
45 Further to the Conservation Coalition's  
46 request...  
47



1           There is an acknowledgment that DFO has additional  
2           funding to regulate aquaculture in B.C. as of  
3           December 2010. Then there is some hyperlinks to  
4           some texts. The announcement then in bullet form:

- 5
- 6           • \$8.3 million in new money...
- 7
- 8           • In addition, the federal government as
- 9           allocated \$5 million to address one time
- 10          start up costs for the program.
- 11

12          And then:

- 13
- 14          • Funds will be used to establish operations in
- 15          Vancouver and in various Island
- 16          communities...
- 17

18          You're familiar with the facts that have given  
19          rise to this, are you not, Mr. Thomson?

20       MR. THOMSON: Yes, as I testified earlier this morning.

21       MR. LEADEM: All right. Could we have that marked as  
22          the next exhibit, please.

23       THE REGISTRAR: Exhibit 1731.

24

25               EXHIBIT 1731: Email 2 from Mitch Taylor to  
26               Judah Harrison and Tim Leadem re "Cohen,  
27               Conservation Coalition request for  
28               information re public funding of  
29               aquaculture", (Not Final), September 1, 2011  
30

31       MR. LEADEM: And, Mr. Commissioner, I'm really in your  
32          hands as to how we mark this with respect to the  
33          hyperlinks. I would suggest that we mark it so  
34          that when people scroll onto this, because it's a  
35          public document and the links are public, and  
36          anyone can access to the Net, that we keep the  
37          status of the links so that people can actually  
38          have access to the links, as well.

39       MR. MARTLAND: The only concern is a logistical one, in  
40          terms of what we put on our website and whether  
41          one can hyperlink off that, or would have to cut  
42          and paste out of a PDF document. I can't tell  
43          you, Mr. Commissioner, how that would work in  
44          practice. I can have a conversation with Mr.  
45          Leadem at the break to see, and then a further  
46          thought is simply to provide as subdocuments the  
47          current versions of those additional documents.

1           So we'll have a conversation at the break on that  
2           point.

3       MR. LEADEM: Thank you.

4       Q     And there's one more email in that chain, Mr.  
5           Thomson, for your benefit, and that should be the  
6           last email from Mr. Taylor to myself this morning.

7       MR. THOMSON: Yes, I've seen this.

8       MR. LEADEM: All right. Next exhibit, please.

9       THE REGISTRAR: Exhibit 1732.

10

11                   EXHIBIT 1732: Email 3 from Mitch Taylor to  
12                   Judah Harrison and Tim Leadem re "Cohen,  
13                   Conservation Coalition request for  
14                   information re public funding of  
15                   aquaculture", (Not Final), September 1, 2011  
16

17

17       MR. LEADEM:

18

18       Q     And this references the AAROM, the funding to the  
19           Aboriginal Aquaculture Association.

20

20       MR. THOMSON: Yes.

21

21       Q     And then there's some linkages as well that would  
22           be of some interest and instructive.

23

23       MR. THOMSON: Yes.

24

24       MR. LEADEM: Once again I thank Mr. Taylor for waking  
25           up early to do this. There was a comment that the  
26           government never sleeps, but certainly they rise  
27           early.

28

28       Q     Now, could we move on, if I could, earlier we had  
29           received some evidence from Kristi Miller  
30           concerning her research, and during the course of  
31           that research she indicated that she entered into  
32           some discussions with the Aquaculture Industry  
33           with respect to testing for the what she has  
34           described as a parvovirus, and she produced some  
35           emails. And I'm going to in a moment pull up an  
36           email that I'd hoped that you would be able to  
37           identify for us, Mr. Thomson, because it has your  
38           name front and centre, and this would be -- I  
39           believe it's the email that I showed you from  
40           Grieg Seafood.

41

41       MR. THOMSON: Yes.

42

42       Q     You acknowledge that you received this.

43

43       MR. THOMSON: Yes, I received it following an email I  
44           sent to the participants at the top of the header  
45           there. It was a response, if you will.

44

45

46

46       MR. LEADEM: Right. Could we have that marked as the  
47           next exhibit, please.

47

1 THE REGISTRAR: Exhibit 1733.

2  
3 EXHIBIT 1733: Email from Stewart Hawthorn to  
4 Andrew Thomson re "sampling program", August  
5 12, 2011  
6

7 MR. LEADEM:

8 Q And finally to complete the Kristi Miller emails,  
9 that I would seek to tender into evidence, there  
10 is one further one, if you can just pull that  
11 forward.

12 MR. THOMSON: Yes, I received this.

13 Q Okay. And if you could just scroll through for  
14 the edification of the Commission, I just wanted  
15 to show that there was a very lengthy email from  
16 Dr. Miller there, in which she's writing directly  
17 to Mary Ellen, who I take to be Mary Ellen  
18 Walling, is that your understanding, as well?

19 MR. THOMSON: Certainly that's my understanding yes.

20 MR. LEADEM: Next exhibit, please.

21 THE REGISTRAR: Exhibit 1734.

22  
23 EXHIBIT 1734: Email string between Andrew  
24 Thomson, Kristi Miller-Saunders, Mary Ellen  
25 Walling and others re "sampling program",  
26 from August 12, 2011 to August 18, 2011  
27

28 MR. LEADEM:

29 Q Could we then next go to Conservation document  
30 number 15, please. The second email is one that  
31 seems to have emanated from your office, Mr.  
32 Thomson.

33 MR. THOMSON: Yes.

34 Q Is that right?

35 MR. THOMSON: Yes, it did.

36 MR. LEADEM: Could we have that marked as the next  
37 exhibit, please.

38 THE REGISTRAR: Exhibit 1735.

39 MR. LEADEM:

40 Q My understanding that the content of this relates  
41 to information releases, and when you wrote this  
42 back on March 29th, 2010, you reference:

43  
44 The problem with this approach of industry is  
45 that it will cause a break in the time series  
46 of fish health data that BC has been  
47 collecting, which is an issue scientifically,

1 and they have also informed B.C. that they  
2 will not provide carcasses for fish health  
3 sampling.  
4

5 Both of these decisions by BC SFA are short  
6 sighted as it plays back into the whole  
7 secrecy issues that the industry is  
8 criticized for.  
9

10 And if you scroll down, you'll see that there's an  
11 earlier email exchange between you and Mr.  
12 Swerdfager. And then keep on scrolling down.  
13 There is an email from Mary Ellen Walling to  
14 yourself and it references a recent decision by  
15 Mr. McEvoy, Adjudicator, on the release of data.  
16 That's basically the subject matter of this  
17 particular email is the information sharing, is it  
18 not?

19 MR. THOMSON: It wasn't as much information --  
20 certainly information sharing is a part of the  
21 reasons that may be listed in the letter. My  
22 concerns and the reason why I wrote the email at  
23 the top of the header were that there was going to  
24 be a limitation on the access, as I understood it  
25 at the time, of provincial veterinarians to some  
26 of the Fish Health samples and/or Fish Health data  
27 that the industry had.

28 Now, subsequent to that, to this email, my  
29 understanding is the Salmon Farmers contracted an  
30 independent lab to conduct some of that Fish  
31 Health sampling. But nevertheless, my comments at  
32 the time stand, you know, I thought it was, you  
33 know, I didn't agree with the approach the  
34 industry was taking at the time. And I will say  
35 this. Really, this is an incident that probably  
36 is a good illustration of the type of lessons we  
37 learn, how we incorporate into the design of a new  
38 program. With the designation of Fisheries  
39 Guardian, Fisheries Inspector for my Fish Health  
40 -- I shouldn't say my, but the Fish Health staff  
41 that report into my groups, we had the ability to  
42 obtain samples as we required for good management  
43 of the fisheries.

44 MR. LEADEM: Mr. Giles, I've lost track. Have I asked  
45 that that be marked?

46 THE REGISTRAR: You were last at Conservation 15 is  
47 1735.

1 MR. LEADEM: Yes, thank you.

2 MR. MARTLAND: Indeed, just to clarify one thing. Our  
3 note is that document already is Exhibit 1636. If  
4 we're correct about that, we'll suggest that, Mr.  
5 Giles, perhaps you can cancel 1735 and we'll just  
6 note that this one is 1636 already, please. Thank  
7 you.

8 MR. LEADEM: Thank you, Mr. Commissioner, my apologies.  
9 It's hard to keep track of all of these things.

10 THE REGISTRAR: Yes, it is identical, so that number  
11 will be rescinded.

12 MR. LEADEM: Thank you.

13 Q Conservation document number 30. You recognize  
14 this email, Mr. Thomson?

15 MR. THOMSON: Looks like I do, yes.

16 MR. LEADEM: Okay. Next exhibit, please.

17 THE REGISTRAR: Tab 30 will be marked as 1735.

18

19 EXHIBIT 1735: Email chain between Andrew  
20 Thomson, Paul Sprout and Don Radford, re  
21 "Meeting between yourself, SADM McClung and  
22 Mary Ellen Walling of the BCSFA", from July  
23 13, 2006 to July 14, 2006  
24

25

MR. LEADEM:

26 Q Now, I want to turn next to you, Officer Atagi,  
27 because you were talking earlier in your testimony  
28 about biosecurity protocols, and my understanding  
29 is that you had some issues with respect to  
30 biosecurity protocols. Has it ever been the case  
31 that any of your officers were refused entry onto  
32 fish farm sites because of biosecurity protocols?

33 MR. ATAGI: No.

34 Q Do all the companies have the same biosecurity  
35 protocols?

36 MR. ATAGI: I've been told that they don't.

37 Q So is the issue from the perspective of you as an  
38 enforcement officer the fact that there is some  
39 discontinuity in terms of the biosecurity  
40 protocols from fish farm to fish farm, and, if so,  
41 is that hampering your job in going out and  
42 conducting inspections?

43 MR. ATAGI: Can you ask the question again, please?

44 Q All right. You've just acknowledged that there is  
45 some dissimilarity in terms of the biosecurity  
46 protocols from fish farm to fish farm, and my  
47 question is a simple one: is that something that

- 1 hampers you in your ability to conduct and  
2 inspections of fish farms? In other words, is it  
3 a problem in that you need to phone and make sure  
4 that you're going to be in compliance with the  
5 biosecurity protocols before you'd be granted  
6 access to a specific fish farm?
- 7 MR. ATAGI: The short answer is no. That's why we have  
8 that letter in place, and that which also at the  
9 end invites the companies to have dialogue with  
10 our staff, to outline their particular concerns.  
11 But overall that letter outlines some of the  
12 procedures we will follow for all farms.
- 13 Q So could I now have Exhibit 1716, I believe. I  
14 think that you were shown this earlier, Mr.  
15 Thomson.
- 16 MR. THOMSON: Yes.
- 17 Q And I believe that if you go through this report,  
18 you'll see that there are something in the  
19 neighbourhood of five sites which were out of  
20 compliance with licence production. And so under  
21 that regime, what, if any, penalties or fines or  
22 consequences would occur to companies that were  
23 out of compliance?
- 24 MR. THOMSON: I'm sorry, you're asking me what, what  
25 under the provincial regime what the --
- 26 Q Yes.
- 27 MR. THOMSON: -- activities would be?
- 28 Q Right.
- 29 MR. THOMSON: I'm unfamiliar with the provincial  
30 regulatory regime in terms of its ability to  
31 assess fines or anything. It's not something I'm  
32 familiar with.
- 33 Q All right. You didn't have discussions with your  
34 provincial counterparts when you took over  
35 authority in terms of liaising types of  
36 enforcement of what types of activities they would  
37 do should they --
- 38 MR. THOMSON: Oh, I certainly was aware of the  
39 activities they would do in terms of monitoring,  
40 in terms of what they would -- they ultimately  
41 could do in terms of a regulatory enforcement  
42 manner, you know, I think there was some  
43 conversations I had many, many years ago where I  
44 was -- I understood what some of the fine  
45 structures were. But I don't really, I'm not well  
46 versed or conversant in how the Province took  
47 apart -- took upon itself enforcement type actions

1           beyond the inspections, you know, once they --  
2           once they determined if there was an action to  
3           take. That's something that really was in their  
4           hands.

5           Q     Okay. You simply left it up to them.

6           MR. THOMSON: No, it was their regulatory authority,  
7           therefore it would be their regulatory authority  
8           in order to pursue management actions or  
9           enforcement actions afterwards.

10          Q     So I suppose it begs the question now that  
11          authority has shifted over to the federal  
12          government, what consequences might flow in the  
13          event that there was over-production occurring and  
14          non-compliance with over-production at fish farms?

15          MR. THOMSON: Well, we would, as I stated before, we  
16          would look at continuum of enforcement activities  
17          that we could take place in order to ensure  
18          compliance. I would start with informing the  
19          companies it was unacceptable to be out of  
20          compliance with its production amounts, and  
21          continue right through to the potential laying of  
22          charges and the assessing of fines under the  
23          federal **Fisheries Act**.

24          MR. LEADEM: Thank you. Those are my questions, thank  
25          you, gentlemen, Ms. Hoyseth.

26          MR. MARTLAND: Thank you. Mr. Commissioner, counsel  
27          for Areas D and B, and indeed we did this on the  
28          fly, made a contribution to Mr. Leadem, so I have  
29          a further, we'll round up to six minutes for Ms.  
30          Pacey's questions.

31          MS. PACEY: Thank you. Mr. Commissioner, Katrina  
32          Pacey, P-a-c-e-y, initial K., counsel for Area D  
33          Salmon Gillnet Association and Area B Seiners.

34  
35          CROSS-EXAMINATION BY MS. PACEY:

36  
37          Q     My first question I hope is not repetitive, so  
38          please forgive me if this has already been  
39          answered. But I just want to get clear. Have  
40          there been -- and any of the panellists are  
41          welcome to answer this. Have there been charges  
42          laid against any particular fish farms in relation  
43          to disease-related events under the **Fisheries Act**?

44          MR. THOMSON: Well, as our disease-related regulations  
45          really came into force in December 2010, no.

46          Q     And prior to that, to your knowledge?

47          MR. THOMSON: Not to my knowledge, no.

1 Q Any other panellists want to answer? No? Okay,  
2 thank you. All right. So, Mr. Thomson, my  
3 questions are going to be directed to you and are  
4 regarding reporting to the public of information,  
5 and I'm hoping these are questions that you're  
6 able to answer. And, Mr. Lunn, if I could ask you  
7 bring up Exhibit 1590, please. Mr. Thomson, I  
8 think you've seen this document before, because I  
9 think it was brought up when you were here Monday.

10 MR. THOMSON: Yes, I have, Tuesday.

11 Q Tuesday, thank you. And this was the DFO document  
12 which explicitly states the government's  
13 commitment to increased transparency around  
14 reporting of monitoring and outcomes information  
15 from fish farms, as well as regulatory compliance  
16 information. Is that our understanding of the  
17 contents of this document?

18 MR. THOMSON: Yeah, it's the draft policy for that.  
19 Yes.

20 Q Thank you. And if I could ask, Mr. Lunn, to  
21 please scroll to page 2, and you'll see part 3.0,  
22 and I'm particularly referring to bullet number 1.  
23 And I just want to confirm, if you could just take  
24 a moment to have a look, bullet number 1, that DFO  
25 is committed to sharing disease information. And  
26 what I'm speaking about specifically is farm level  
27 and fish level, individual fish-level disease  
28 information with the public. Is that your  
29 understanding of the plan for DFO in terms of  
30 sharing information from fish farms?

31 MR. THOMSON: Yeah. As we've already put up on our  
32 website, we've got farm-level information on sea  
33 lice counts currently. We have a plan in place to  
34 increase the level of data that we report on as we  
35 go forward. Of course, it's all within the  
36 caveats of our -- we have to maintain our -- to  
37 the **Privacy Act** and our responsibilities under  
38 that.

39 Q Of course, and in particular, in my question I was  
40 referring also to individual fish-level data, and  
41 I'm just wondering whether you could confirm that  
42 that will be also shared with the public.

43 MR. THOMSON: I'm not sure if we would go to the  
44 individual fish-level data. That would be  
45 something where I'd have to consult with the Fish  
46 Health experts as to whether or not the -- what's  
47 the appropriate level, what really data do you get



1 out of individual fish, versus if you're sampling  
2 a subset of a population, i.e., a net pen, is  
3 there something more you could give out of that  
4 net pen, as opposed to from the individual fish.  
5 So I don't think those decisions have been taken  
6 to that level.

7 Q Would you agree with me, based on your own  
8 experience working in this policy area, that it is  
9 within the public interest to share this  
10 information with the public around disease and  
11 pathogens on fish farms?

12 MR. THOMSON: I think it's within the public interest  
13 generally to have a better understanding about the  
14 industry as a whole and how the Department is  
15 managing it, and that includes things such as, you  
16 know, effects that the farm may have, and how  
17 we're managing and what the farm is licensed for  
18 and where they're located. Yes.

19 Q Would you agree with me if I said that it's also  
20 in the public interest for independent scientists  
21 to have the opportunity to reflect on the data and  
22 use that data for the purpose of looking at the  
23 impact of fish farms in British Columbia?

24 MR. THOMSON: I think it's important to have data  
25 available for scientific evaluation. I'm not sure  
26 I understand the inference between independent and  
27 those that work for government, but...

28 Q I guess my question is would you, in your  
29 experience, support a broader inquiry into the  
30 impact of fish farms, so both within the  
31 Department and outside the Department.

32 MR. THOMSON: A broader inquiry, such as the one we're  
33 currently participating in?

34 Q Such as scientists from within DFO as well as  
35 external to DFO.

36 MR. THOMSON: Well, I think there's been lots of  
37 external scientists that have looked at the data  
38 on salmon farms currently.

39 Q I guess my question is specific to the access to  
40 that data. Do you believe it will be in the  
41 public interests for that to be available for that  
42 purpose?

43 MR. THOMSON: I think the data will be available for  
44 that purpose under, again, under the restrictions  
45 that might occur under the **Privacy Act**, you know,  
46 with the odd exception, so...

47 Q I have just one last question and I think one more

1 minute. If I could ask, Mr. Lunn, to go to page  
2 4, please. There's a text box there, it says  
3 "Data Stewards", and then below there it's a  
4 paragraph, and then the next bullet, I'm going to  
5 ask you -- oh, sorry, if you could scroll back up  
6 a little bit. Right there, "Protection of  
7 sensitive production inventory", if you could  
8 highlight that paragraph, please, Mr. Lunn. Yes,  
9 thank you. Mr. Thomson, could you confirm that  
10 data, farm level, and what I've been asking about  
11 specifically, fish-level data will not be withheld  
12 from the public in the interests of some business  
13 interest or what it states here as a competitive  
14 position of a particular company. Could you  
15 confirm that?

16 MR. THOMSON: Well, actually, as this states, is we  
17 will release information, but we may not release  
18 it in a manner that would impact the ability of  
19 the companies to operate and have a competitive  
20 position. So what we're saying here in this  
21 paragraph is that we may -- we will release it,  
22 but there will be some delay, or time -- time  
23 delay, so that we don't impact the competitive  
24 ability of the corporation to operate.

25 MS. PACEY: Thank you for that. And those are my  
26 questions. Thank you, Commissioner.

27 MR. MARTLAND: Mr. Commissioner, you will recall  
28 yesterday Ms. Gaertner had further questions for  
29 Mr. Thomson. With a view to trying to provide for  
30 some further time for that, if we're able to, and  
31 with the agreement of the remaining participants,  
32 I'm going to ask next to have -- they're agreeing  
33 to really re-sequence the order of remaining  
34 counsel. Counsel for the Aboriginal Aquaculture  
35 Association is next, therefore, at 15 minutes.  
36 Thank you.

37 MR. KELLIHER: Steven Kelliher here, Mr. Commissioner.  
38 Just a few questions, I don't think 15 minutes'  
39 worth.  
40

41 CROSS-EXAMINATION BY MR. KELLIHER:

42  
43 Q To get a sense, an overall sense of the regulatory  
44 and enforcement aspect of aquaculture, is it  
45 correct to say there is -- that it's founded on  
46 self-reporting, audits, third-party reports that,  
47 if you will, are the backbone of the civil aspect

1 of the monitoring of aquaculture, and what I mean  
2 by civil is something other than penally inspired.  
3 When it becomes a criminal investigation. That's  
4 the sense of the regulatory framework; is that  
5 correct?

6 MR. THOMSON: I'll take the first stab at that. Well,  
7 I think that -- first of all, I don't see the  
8 division between civil in penal in that it's -- we  
9 all operate under the same **Fisheries Act** and the  
10 same Pacific Aquaculture Regulation. So the  
11 required reports that the companies must submit  
12 are required by conditions of licence. The audits  
13 that take place are conducted by Fisheries and  
14 Oceans staff which are designated to be inspectors  
15 or guardians and, you know, should investigations  
16 be required to proceed to charges, they're done by  
17 Fisheries and Oceans fisheries officers.

18 So I'm not sure I understand the -- there is  
19 no "civil" versus "penal", though we all operate  
20 under the same **Fisheries Act**, the same Pacific  
21 Aquaculture Regulation.

22 Q Right. Well, perhaps just to give you an  
23 illustration of the distinction that I'm trying to  
24 bring to your attention is there is a significant  
25 parallel between what you're describing and the  
26 Canada Revenue Agency, for instance, that relies  
27 on self-reporting, third-party reporting, audits.  
28 That's in the civil sphere.

29 The moment it becomes a criminal  
30 investigation, it's quite a different matter, and  
31 it moves to the investigative branch and the civil  
32 component is excluded because the **Charter of**  
33 **Rights and Freedoms** is engaged, and that's where I  
34 want to go beyond now. So there is a world of  
35 difference between a civil inquiry and one that  
36 has penal consequences because of the engagement  
37 of the **Charter**, once there are reasonable and  
38 probable grounds to believe an offence has been  
39 committed. How do you grapple with that within  
40 the fisheries organization? How do you deal with  
41 that?

42 MR. THOMSON: I'll start the answer, but I think Mr.  
43 Atagi can probably provide a better response. But  
44 the -- you know, from our perspective, that's  
45 exactly as I mentioned earlier this morning.  
46 That's exactly one of the big strengths that  
47 obviously having a Fisheries Officer Services

- 1 brings to us, is a full investigative capacity  
2 that can then take charges forward. But Brian  
3 would have -- Mr. Atagi would have a much better  
4 probably descriptor of it, so...
- 5 MR. ATAGI: I'm still not clear how you're linking the  
6 civil process with our investigative process.
- 7 Q All right. Maybe I could ask a few questions of  
8 you, Mr. Atagi. Have you ever applied for a  
9 search warrant in the course of your work with  
10 aquaculture?
- 11 MR. ATAGI: No.
- 12 Q Assuming you are in a position to conduct an  
13 investigation in connection with aquaculture, have  
14 your officers or yourself taken any training as to  
15 how you would obtain the documents upon which a  
16 prosecution would proceed?
- 17 For instance, how would you get the documents  
18 from the auditor within the Department of  
19 Fisheries? How would you obtain those documents?
- 20 MR. ATAGI: Either through -- from the companies  
21 themselves or --
- 22 Q Yes, well, what would be the legal process in the  
23 course of your investigation of these companies  
24 that would enable you to obtain those documents?
- 25 MR. ATAGI: Either through officers would have to  
26 complete Information to Obtain a Warrant, if that  
27 was necessary. We could request and demand data  
28 under s. 61.
- 29 Q Mm-hmm. Now, have there been any protocols  
30 developed about how search warrants that would be  
31 obtained, that is, how Informations to Obtain  
32 would be structured, and how searches would be  
33 executed, bearing in mind the biosecurity aspects  
34 of this kind of investigation?
- 35 MR. ATAGI: Fishery officers are trained -- initially  
36 they're hired as cadets. They go through a five-  
37 month classroom training process including nine  
38 weeks with the RCMP in Regina, which deals with  
39 aspects of Canadian law and enforcement. They go  
40 through another -- upon graduation they go through  
41 another 30 months of field training at which all  
42 aspects of --
- 43 Q Yes.
- 44 MR. ATAGI: -- legal and court procedures, obtain  
45 warrants, that's all addressed during that  
46 training process.
- 47 Q Right. Sir, there are -- did I hear you correctly

1           that there are two designated aquaculture  
2           fisheries officers, fisheries investigators; is  
3           that correct? How many aquaculture investigators  
4           do you have within the Department of Fisheries  
5           that you control?  
6   MR. ATAGI: On the Operational Unit, there are seven  
7           fishery officers, plus we have one on assignment  
8           for a total of eight.  
9   Q       And are they designated to deal with aquaculture  
10           issues?  
11   MR. ATAGI: They are fishery officers, and they belong  
12           to the aquaculture compliance program.  
13   Q       All right. And what training do they have that  
14           other fisheries officers do not?  
15   MR. ATAGI: Aside from information sessions regarding  
16           specifically the aquaculture industry, as well  
17           some technical courses such as heavy trailer  
18           endorsement I mentioned earlier. They're trained,  
19           they have their full basic training, and they're  
20           off that current level.  
21           Because of -- all my positions were staffed  
22           through deployment, they're all seasoned except  
23           for the one officer on assignment who's still a  
24           trainee. The rest are all - I'm trying to think  
25           of the best word - experienced officers.  
26   Q       Not to make so much of this, what may be a small  
27           point, sir, but you'll agree with me that to  
28           execute a search with five or ten officers at a  
29           fish farm has complexities that executing a search  
30           in an ordinary business environment has, correct?  
31   MR. ATAGI: I would say that would depend.  
32   Q       Depend on what?  
33   MR. ATAGI: Well, if we were to execute a warrant on  
34           the company at the head office, that would be  
35           fairly complex, whereas most of the documentation  
36           on a farm site is in generally one area.  
37   Q       Right. I'm thinking of the biodiversity aspects  
38           of having five, ten or 15 officers coming onto a  
39           fish farm site. Is there a protocol within your  
40           office to ensure that the health concerns are  
41           maintained?  
42   MR. ATAGI: I think you -- I believe you said  
43           "biodiversity". Or did you mean --  
44   Q       Yeah.  
45   MR. ATAGI: -- biosecurity?  
46   Q       Biosecurity.  
47   MR. ATAGI: The biosecurity issues --

85

PANEL NO. 60

Cross-exam by Mr. Kelliher (LJHAH)

Cross-exam by Ms. Robertson (MTTC)

1 Q Quite similar to me.

2 MR. ATAGI: -- are procedures to us to ensure pathogens  
3 are not transferred.

4 Q Right. On large numbers of tall leather boots,  
5 for instance.

6 MR. ATAGI: Rubber boots.

7 Q Rubber boots. So is there a protocol in place --

8 MR. ATAGI: There's a --

9 Q -- to execute -- the execution of a warrant on a  
10 fish farm?

11 MR. ATAGI: No.

12 Q Why?

13 MR. ATAGI: Because we would follow our biosecurity  
14 procedures, but the execution of a warrant would  
15 still follow what our normal warrant procedures  
16 would be.

17 Q Right. Is it because you don't contemplate  
18 exercising a search warrant on a fish farm?

19 MR. ATAGI: I guess what it is, is that we do not  
20 contemplate any differences from our normal field  
21 enforcement duties in regards to exercising a  
22 warrant -- executing a warrant on a farm site.

23 MR. KELLIHER: All right. Those are my questions.  
24 Thank you.

25 MR. MARTLAND: Thank you. Mr. Commissioner, next on  
26 the list, I have counsel for the MTTC with ten  
27 minutes.

28 MS. ROBERTSON: Mr. Commissioner, Krista Robertson for  
29 the Musgamagw Tsawataineuk Tribal Council.

30

31 CROSS-EXAMINATION BY MS. ROBERTSON:

32

33 Q Good afternoon, panel.

34 MS. ROBERTSON: Mr. Lunn, could you please pull up the  
35 PPR number 20 and go to page 77, please. If you  
36 could just highlight paragraph 151 there.

37 Q Mr. Thomson, this question is for you. So this  
38 paragraph makes the point that:

39

40 Currently, federal aquaculture licence  
41 holders pay no fees for their licences.

42

43 And the last sentence indicates there that the  
44 process under the **User Fees Act** is lengthy and it  
45 may be years before fees can be imposed under the  
46 PAR.

47 So we've heard, over the course of this

1 Commission, a great deal of evidence about DFO's  
2 financial challenges in terms of their capacity,  
3 all matters of fisheries management. We've heard  
4 evidence from you today of the very high costs of  
5 getting this whole aquacultural program up and  
6 running. We've heard from Mr. Atagi today about a  
7 shortage in inspectors.

8 What's your take on this, in terms of the  
9 overall sustainability of DFO?

10 MR. THOMSON: Well, it's a good question. First of  
11 all, let's be clear there is no federal  
12 aquaculture licence fee. The aquaculture  
13 operators are still required to pay a land-  
14 tenuring fee to the B.C. government as we were  
15 before.

16 The introduction of a user fee for the  
17 Pacific Aquaculture Regulation has always been  
18 intended and it continues to be an intended act of  
19 the Department in order to introduce it into the  
20 regulation. However, as you can imagine, as part  
21 of the federal government, we are bound by the  
22 **User Fee Act**. It is a lengthy process to go and  
23 introduce a new fee as a result of the **User Fee**  
24 **Act**. That's the legislation we fit under and, for  
25 good reason, it was introduced and passed.

26 So we will be producing an options document  
27 and a discussion document about introducing a **User**  
28 **Fee Act** in the near future. In terms of the  
29 difficulties that may mean for government,  
30 typically user fees collected by government,  
31 whether -- are not held within the individual  
32 departments, so the user fee collected would go  
33 into the general revenue fund of the government  
34 and be distributed to whatever the priority the  
35 government saw to that day.

36 So while there's a slight link to  
37 departmental issues around funding, it's not a  
38 direct link.

39 Q All right. I'm just going to turn now to see a  
40 topic that keeps popping up and we haven't had a  
41 very comprehensive, I think, overview of it.  
42 Generally, I think the evidence has been from you  
43 that for the 130 salmon aquaculture farms in the  
44 province, environmental assessments were  
45 previously done under the **CEAA**. In new sites,  
46 that's going to change under the new regime.

47 But it's true that for some of those farms, a

1 number of those 130 farms, CEAA's were never  
2 completed. Is that true?

3 MR. THOMSON: Well, the storyline is slightly more  
4 complex than that, in that a number of the farm  
5 sites were introduced prior to the promulgation of  
6 the **Canadian Environmental Assessment Act** itself.  
7 So the sites were actually put in place before  
8 **CEAA** was introduced and passed by Parliament.

9 Then the issuance of a navigable water  
10 permit, which was previously with the Department  
11 of Fisheries and Oceans authority, under the  
12 Canadian Coast Guard, and triggered the **Canadian**  
13 **Environmental Assessment Act** screening of farm  
14 sites.

15 So in about 2001 -- well, it depends on the  
16 year, because each farm site was introduced at a  
17 different time, therefore different time periods  
18 for navigable waters permit. But in the early  
19 2000, as the navigable waters permit authority  
20 need to be reissued on farm sites that had been  
21 there prior to the promulgation of **CEAA**, that  
22 reissuance after the promulgation of **CEAA**  
23 triggered a navigable waters -- or, sorry,  
24 triggered a **Canadian Environmental Assessment Act**  
25 screening. The Department started on a number of  
26 these **Canadian Environmental Assessment Act**  
27 screening documents for the farm sites.

28 To further complicate the issue, I would say  
29 the responsibility for navigable waters permit  
30 issuance moved from the Department to Transport  
31 Canada in and about 2005, and so the screening  
32 documents for some of those farm sites that had  
33 not been completed, were transferred, in part, to  
34 - or somewhat completed but not fully completed -  
35 to the Transport Canada Environmental Assessment  
36 office, and they have been continuing on the  
37 review and completion of those environmental  
38 assessment for these farm sites that, again, were  
39 in place prior to the promulgation of the **Canadian**  
40 **Environmental Assessment Act**.

41 Q So, short answer, some farms do not have completed  
42 environmental assessments.

43 MR. THOMSON: That's my understanding, but again, that  
44 would be with Transport Canada, not -- it's not  
45 necessarily in my shop to know that.

46 Q So you know or you don't know that some farms --  
47 MR. THOMSON: It's my understanding that some farms



1 still have yet to complete it. My difficulty in  
2 answering the question is had they been completed  
3 in the last few days, I may not be entirely aware  
4 of everything, so...

5 Q Fair enough. Moving on now, as I have such  
6 limited time to cover these topics, but I'd just  
7 like to ask a couple of questions about the  
8 DEPOMOD model. Have you ever had, as a  
9 Department, any feedback on the effectiveness of  
10 that model? That would be the first question.  
11 The second question, I'm wondering if you could  
12 relate -- has the Pacific Salmon Forum given any  
13 comments on the DEPOMOD model as an assessment  
14 tool?

15 MR. THOMSON: In terms of have we ever had any feedback  
16 on the use of DEPOMOD, I'm sure we probably had  
17 some correspondence received and feedback over  
18 meetings and such on the use of DEPOMOD as a tool.

19 In terms of whether or not the Pacific Salmon  
20 Forum has ever provided feedback on the use of  
21 DEPOMOD, I'm familiar certainly with Pacific  
22 Salmon Forum's filed report. I apologize, sort of  
23 scanning by brain trying to think of the  
24 recommendations. I cannot think of the  
25 recommendation that refers to DEPOMOD, but I could  
26 be proven otherwise. I know it's an exhibit  
27 that's been introduced.

28 Q Well, maybe just generally I'll ask, I mean, are  
29 you satisfied as a biologist, for instance, that  
30 the DEPOMOD is an effective -- I mean, it's a  
31 computer-modelled tool, as I understand it. Have  
32 you -- do you feel good about that model? Is it a  
33 good tool? Do you have any concerns with it?

34 MS. HOYSETH: What I think I really like about it is it  
35 provides an opportunity for us to make a best  
36 guess before we put fish in the water. In that,  
37 there are constraints in that there's been some --  
38 there has been some science written on some of the  
39 constraints that DEPOMOD has. So, yes, it's a  
40 model, it has limitations and it's only as good as  
41 the data that goes in, and there's always  
42 anomalies. So of course, there's situations where  
43 it will not predict completely accurately.

44 But what's nice about it is it's an  
45 opportunity to make a best guess. The other nice  
46 thing is it's not the only tool we rely on. We  
47 have operational monitoring. So once we have a

1 site go in the water, we don't just go, "We did  
2 DEPOMOD, we're done." We have an ongoing  
3 monitoring that occurs every time there's a  
4 (indiscernible) at the farm. So that's sort of a  
5 feedback loop you're talking about there, not  
6 maybe a review one or the Pacific Salmon Forum  
7 one, but when we put the farm in the water, that  
8 operational monitoring tells us, to some degree,  
9 if that prediction was correct.

10 We use that information to set our monitoring  
11 stations, for example, and to look at worst case  
12 impact. Quite often we see alignment. I  
13 mentioned before that our monitoring stations for  
14 soft-bottom sites are 30 metres from the cages.  
15 DEPOMOD generally doesn't predict impact beyond  
16 those as well, that the main amount of impact and  
17 that prediction is fairly consistent with what we  
18 see in our ongoing monitoring program.

19 Q Does it tend to be just what's happening right  
20 underneath the site, then?

21 MS. HOYSETH: Yeah. I mean, the impact generally tends  
22 to fall very close to the cage array, and  
23 occasionally you'll see, because of bathymetry or  
24 current or other pieces of information on a site  
25 specific basis, you might see impact fall at a  
26 different location than another site. But DEPOMOD  
27 sometimes catches those predictions and sometimes  
28 it's wrong.

29 Q Okay. Thank you.

30 MS. ROBERTSON: Do I have time for one more? Okay.

31 Q Just a quick one, then, about the aboriginal  
32 fisheries guardians and their role in this. Now,  
33 I'm happy to say that it was the one change in DFO  
34 taking over the regulation that they were happy  
35 with, is - correct me if I'm wrong, Mr. Thomson -  
36 it was an amendment to the Fisheries General  
37 Regulation that permitted for aboriginal fisheries  
38 guardians to access aquaculture sites as part of  
39 an inspection process. Is that --

40 MR. THOMSON: I believe the amendment allows the  
41 application of fisheries guardians generally to  
42 all aquaculture, to the aquaculture regulation.  
43 That's how I would put it but, yeah.

44 Q So that would include an aboriginal fisheries  
45 guardian?

46 MR. THOMSON: I presume so, if they are designated  
47 under the same -- I'm not an expert in the law

1 obviously. I presume so, if they are designated  
2 under the same designation as fisheries guardians.  
3 Q And has DFO been able to provide any capacity to  
4 First Nations to participate in that program in  
5 respect to aquaculture?

6 MR. THOMSON: I'm not an expert on capacity provided  
7 through the aboriginal fishery strategy that  
8 supports some of the fisheries guardians, but I do  
9 know that some capacity funding is provided for  
10 fisheries guardians in general.

11 Q But you're the director of the Aquaculture  
12 Program. You must -- do you know, has the  
13 Department turned its mind to additional capacity  
14 of First Nations to --

15 MR. THOMSON: There was no additional funding as part  
16 of the aboriginal fishery strategy to support the  
17 aquaculture work beyond the other work that was --  
18 that the aboriginal fishery strategy supports, no.

19 MS. ROBERTSON: All right, thank you. Those are my  
20 questions.

21 MR. MARTLAND: Mr. Commissioner, just to look ahead to  
22 the remainder of the day, the only counsel  
23 remaining with questions now is Ms. Gaertner for  
24 the First Nations Coalition. Ms. Grant has just  
25 told me she didn't have, to this point, re-  
26 examination questions. I haven't yet had the  
27 chance to enquire of Canada, and they of course  
28 may have something arising in the course of Mr.  
29 Gaertner's questions.

30 Perhaps if she were to proceed in the  
31 expectation that we can either inquire on the go,  
32 or that she leave five minutes at the end if there  
33 is any re-examination by Canada. Thank you.

34 MR. GAERTNER: Mr. Commissioner, would you like to take  
35 the afternoon break before I get started, and then  
36 I'll just continue, or do you want me to keep  
37 going right now? Sure, okay. For the record,  
38 Brenda Gaertner and, with me, Leah Pence.

39  
40 CROSS-EXAMINATION BY MS. GAERTNER:

41  
42 Q Mr. Thomson, I'm going to have to do some catch-up  
43 with you yet, so I can't go right to monitoring  
44 and enforcement on this topic. I'm going to back  
45 up a little bit, so the rest of the panel can just  
46 sit tight for a bit and I'll try to get back to  
47 you near the end of my questions if I may.

1           If I understand the evidence so far, Mr.  
2 Thomson, when the Pacific Aquaculture Regulation  
3 was passed, it was your goal that the concerns and  
4 interests that First Nations had raised with you  
5 at that time, and in fact the letter that went  
6 from Minister Shea to Chief Allan Claxton and the  
7 summit and the Union of B.C. Indian Chiefs, that  
8 the goal was that you would intend to fund First  
9 Nations' engagement in the development of the  
10 operational policies; is that correct? Was that  
11 the thinking at the time, that you were going to  
12 not attend to the concerns and interests that they  
13 had at the time of the passing of the regulation,  
14 but rather hope to do that through the policy  
15 development?

16 MR. THOMSON: I'm sorry, I don't think I've got the  
17 whole context of the question in terms of -- the  
18 intent, of course, was -- I don't have the letter  
19 in front of me, but the intent, as I understood  
20 it, was that we would help to fund some engagement  
21 into the development of the Integrated Management  
22 of Aquaculture Plans and which was really the  
23 heart of, as we heard on Tuesday, of a lot of our  
24 management strategy going forward. Through that,  
25 we provided some funding to the First Nations  
26 Fisheries Council to help facilitate a series of  
27 meetings that gathered input into the development  
28 of the Integrated Management Aquaculture Plans in  
29 a very comprehensive and useful manner.

30 Q       Okay. Well, I better back up and get the steps  
31 right. So prior to the passing of the Pacific  
32 Aquaculture Regulation, you were advised through  
33 various meetings and reports that First Nations  
34 had concerns regarding the Department of Fisheries  
35 and Oceans, the passing of jurisdiction over.  
36 They had concerns around the proper recognition of  
37 their s. 35 rights. They had concerns around  
38 decision-making and co-management processes. They  
39 had strong concerns around the interaction between  
40 the farm fish and the protection of wild fish.  
41 They had concerns around the siting. They had  
42 concerns about monitoring and enforcement. Were  
43 all those concerns taken into consideration and  
44 adjusted and developed and worked into the  
45 regulatory regime when you passed it in 2010? Are  
46 you hoping to attend to those concerns through the  
47 policy development?

1 MR. THOMSON: Oh, I think a lot of the concern -- as I  
2 mentioned on Tuesday, I went through a rather long  
3 series of meetings with First Nations all across  
4 the Province of British Columbia and heard a lot  
5 of concerns regarding various aspects of  
6 aquaculture and its management and their  
7 involvement in the decision-making.

8 A lot of that information was collected by  
9 the First Nations Fisheries Council. It was also  
10 obviously -- I had personal knowledge of it having  
11 been there -- and in some of the cases, the  
12 information was brought forward into those that  
13 were drafting the regulations as was pieces of  
14 information from various other sources and  
15 considered in the drafting of the regulation.

16 Other pieces of the information that were  
17 brought forward will be considered as we go  
18 through and draft policies and draft licence  
19 conditions. You can look through a very common  
20 thread through many of the consultations and  
21 information sessions we had, that it was a desire  
22 by First Nations to have greater information-  
23 sharing. If you look through the  
24 regulation/conditions licence, we have greater  
25 information-sharing, greater reporting.

26 So there's been a number of places where  
27 we've reflected on the pieces of information  
28 brought forward by both First Nations and others,  
29 and tried to adjust as best possible.

30 What I really view, though, is the wealth of  
31 information that we received really is the start  
32 of a process, you know, in terms of we will  
33 continue to provide opportunities for us to engage  
34 with First Nations and others and provide greater  
35 information, and we'll continue, as I've mentioned  
36 before, to adapt a management approach where we  
37 continue to improve our system over time.

38 Q Okay. If I was to take you to Exhibit 1703 and go  
39 to page 3, you'll see in that letter from Minister  
40 Shea to the UBCIC, that was just one of two  
41 letters that went out at the time. If you go to  
42 page 3, you'll see that:

43  
44 Through the B.C. First Nation Fisheries  
45 Council Aquaculture Working Group, it is the  
46 Department's intent to fund First Nations'  
47 engagement in the development of the

1 operational policies needed to manage the  
2 industry on an ongoing basis...  
3

4 Do you see that?

5 MR. THOMSON: Yes.

6 Q That was the Department's intentions at the time?

7 MR. THOMSON: Yes.

8 Q And does it remain your intentions at the time --  
9 at this time?

10 MR. THOMSON: As I said, we have funded through the  
11 First Nations Fisheries Council activities to  
12 provide input into those operational policies in  
13 Integrated Management Aquaculture Plans. We  
14 continue to work with the Aquaculture Working  
15 Group of the First Nations Fisheries Council. The  
16 First Nations Fisheries Council itself, of course,  
17 is funded through an AAROM grant of the Department  
18 of Fisheries of Oceans as well. Where required,  
19 and where it meets the goals of both ourselves and  
20 the First Nations Fishery Council, if there's some  
21 additional work beyond the baseline work that we  
22 fund through the AAROM agreement, well, we can  
23 seek to agree on that additional work.

24 Q All right. And it was your understanding that  
25 that work on the policies was going to happen at a  
26 collaborative level through the Aquaculture  
27 Working Group?

28 MR. THOMSON: No.

29 Q That was not your understanding?

30 MR. THOMSON: I wouldn't use the term "collaborative".  
31 I would use the term that we would provide an  
32 opportunity to work through -- take input and take  
33 advice from First Nations, that we work through  
34 some of the policy development processes, but I  
35 wouldn't say that -- I wouldn't use the term  
36 "collaborative".

37 Q So your approach is a one-way street. You'll go  
38 there --

39 MR. THOMSON: No.

40 Q Let me finish my question. You'll go there,  
41 you'll get information, you'll leave and you'll  
42 make your decisions.

43 MR. THOMSON: I think the drafting of policies and the  
44 back and forth with First Nations and other groups  
45 is always a complicated matter in that you're  
46 never sure exactly when to take -- I use a bake  
47 cake analogy, when to have a cake baked or not. I

1 find it useful occasionally, we have drafts and  
2 have discussion point on (sic). I also find it  
3 useful to start with a clean slate at times and  
4 get an input.

5 What we've taken in the case in the IMAP  
6 development is we went for a blank slate approach  
7 which we gathered input from First Nations through  
8 the IMAP information sessions that the First  
9 Nations Fishery Council helped to host and provide  
10 a document on, before we even started drafting  
11 what the IMAP for finfish would look like.

12 Well, now we've drafted part of that IMAP and  
13 we'll take that forward to First Nations for  
14 consideration and provide further input on it. So  
15 that's the approach I've taken.

16 Q Would it be consistent with your understanding  
17 that the First Nations Fisheries Council received,  
18 in 2010 and '11, \$75,000 to do the meetings and  
19 one-quarter of 45,000, which I calculate to be  
20 just roughly over \$11,000 annually - that was all  
21 they got - to participate in the annual working  
22 group, and that this year -- or the Aquaculture  
23 Working Group, sorry -- they got the grand total  
24 of \$15,000 to participate at the Aquaculture  
25 Working Group?

26 MR. THOMSON: If you're telling me that's what's in the  
27 AAROM agreement, then I'm -- yes, so --

28 Q That's consistent with your understanding?

29 MR. THOMSON: It appeared --

30 Q So that's the Department's intention to fund First  
31 Nations engagement in the development of the  
32 operational policies?

33 MR. THOMSON: Well, as I said a few moments earlier, I  
34 think, as we work through issues with the  
35 Aquaculture Working Group, that there are times in  
36 which we think there is a need for a greater  
37 involvement with the Aquaculture Working Group or  
38 a greater use of the resources that they can bring  
39 to bear that would provide a greater use from us  
40 (sic), then we'll seek to enter into an amended  
41 AAROM agreement, as we did last year and as we did  
42 the previous year. That's part of the discussions  
43 that go on at Aquaculture Working Group.

44 We also are mindful, of course, of the fact  
45 of the matter is that in many discussions with the  
46 Aquaculture Working Group members and with the  
47 First Nations Fisheries Council, they're very

1 clear and very right in pointing out that they are  
2 not the rights-to-title holders and that they do  
3 not represent the rights-to-title holders and the  
4 consultation activity should take place with the  
5 individual rights-to-title holders.

6 So we really take a two-part approach, which  
7 is, one, is we contact each of the individual  
8 First Nations across British Columbia to also ask  
9 them to provide input and commentary into  
10 conditions of licence, policies, et cetera, as  
11 well. So we're already looking at a two-track  
12 approach where we use individual communication  
13 with the individual First Nations, but also use  
14 the First Nations Fishery Council, where  
15 appropriate, and the Aquaculture Work Group.

16 Q And you don't have any clear consultative  
17 processes in place to tell us what you're doing  
18 where, and in fact you've received many reports  
19 from the First Nations Fisheries Council that that  
20 type of work needs to be done.

21 MR. THOMSON: I'm sorry, what type of work needs to be  
22 done?

23 Q Well, you say there's work that needs to be done  
24 strategically with the First Nations Fisheries  
25 Council who's been mandated by UBCIC in the summit  
26 to conduct discussions with you, and there's work  
27 that has to happen locally with those that are  
28 holding rights.

29 MR. THOMSON: Yes.

30 Q You understand that distinction?

31 MR. THOMSON: Yes.

32 Q But there are no consultation policies, and there  
33 are no procedures that are transparent as to how  
34 you're going to do that, and in fact the First  
35 Nations Fisheries Council has recommended that you  
36 do that.

37 MR. THOMSON: You're saying the First Nations Fisheries  
38 Council recommended we develop a clear policy?

39 Q Yeah -- yes.

40 MR. THOMSON: Yes.

41 Q You'll agree with all of that.

42 MR. THOMSON: Yeah.

43 Q And you'll agree that the First Nations Fisheries  
44 Council, as a result of hosting these meetings and  
45 engaging at the Aquaculture Working Group with the  
46 limiting funding that they have, have been  
47 bombarded with requests for consultation and



1 engagement with the Department on all aspects of  
2 the policy and management -- aquaculture policy  
3 and management. You heard those concerns also?

4 MR. THOMSON: Well, I've heard the First Nations  
5 Fisheries Council say that they've had a number of  
6 requests, yeah. I haven't heard --

7 Q Bombarded. You've heard those words?

8 MR. THOMSON: I don't recall hearing the word  
9 "bombarded".

10 Q Shall I take you to the document that has it?

11 MR. THOMSON: If you're telling me there's a document  
12 says they've bombarded, I'll take your word at it.

13 MS. GAERTNER: All right. Well, that's --

14 Commissioner, that's in our document number 29  
15 which is an email from the First Nations Fisheries  
16 Council to the Deputy Minister, being very clear  
17 that they have concerns around the nature of the  
18 amount of work that they're taking on and the  
19 challenges associated with it. One of those key  
20 concerns is that the First Nations Fisheries  
21 Council is being bombarded with requests for  
22 consultation and engagement with the Department,  
23 and it's already an exhibit, 1655.

24 Q Now, I guess, based on your comments earlier then,  
25 my clients, the First Nations Fisheries Council,  
26 were quite concerned that the first time they saw  
27 the draft policies that you're talking about that  
28 were being operational is when they were put into  
29 the Cohen Commission process. They were not  
30 released prior to. You had no discussions of that  
31 draft form at all. They were concerned about  
32 that, they didn't feel that that was a very  
33 transparent and useful working relationship.  
34 Would you agree that that's a problematic way of  
35 getting information to and from a working --  
36 within a working group?

37 MR. THOMSON: Well, what I would agree to is the fact  
38 that -- I agree with you that it's -- again, it's  
39 a decision taken that we are operating under some  
40 licensing decisions and rules currently, and I  
41 want to be as transparent as possible and put  
42 those licensing decisions and rules, once  
43 finalized, out there, because the reality is, is  
44 we have to have a continuum of -- we're in the  
45 management seat now and we have to make these  
46 licensing decisions as we go. So I'd rather be  
47 transparent and put forward what the policies are

1 in place that I'm being guided with now, and then  
2 seek to amend those policies through consultation  
3 and discussion over time as needed, rather than to  
4 pretend that we're not making decisions or not  
5 acting on policy.

6 The reality is that we are acting on policy-  
7 making decisions and I'd rather be transparent  
8 about what our current guidance is, and then seek  
9 to amend over time.

10 Q And then finally on the question of funding, it's  
11 our understanding, then, when DFO made the  
12 submission to Treasury Board which provided the  
13 budget required for DFO to take on management  
14 responsibilities related to Pacific aquaculture,  
15 there was no allowance made for funding  
16 requirements associated with First Nations  
17 engagement. Is that consistent with your  
18 understanding?

19 MR. THOMSON: No.

20 MS. GAERTNER: Could I go to Exhibit 1655, First  
21 Nations Council Tab 29, page 2.

22 Q So if you'll go to the paragraph that says:

23  
24 This leads the Council --

25  
26 And that's the First Nations Council.

27  
28 -- concerned the DFO is leaving --

29  
30 Sorry. Didn't have it memorized.

31  
32 -- leaving a trail which looks like  
33 consultation and engagement without the  
34 substance of providing adequate capacity and  
35 resources for First Nations to prepare in  
36 advance important input into these  
37 initiatives. It is unfortunate that in the  
38 Treasury Board submission which provided the  
39 budget required for DFO to take on management  
40 responsibilities related to Pacific  
41 aquaculture, there was no allowance made by  
42 the for the funding requirements associated  
43 with First Nations engagement. It has been  
44 clear for some time to the Department of  
45 Fisheries and Oceans that First Nations  
46 engagement in aquaculture in B.C. was going  
47 to be a significant issue, and it is the

1 obligation of DFO to ensure that they are  
2 able to respond in a manner that meets their  
3 legal, statutory and fiduciary obligations to  
4 First Nations.  
5

6 Now, it's a letter that went to the Deputy  
7 Minister. Do you have any response to that?

8 MR. THOMSON: Yeah, and we have provided funding to the  
9 First Nations Fisheries Council to support  
10 engagement activities with the First Nations. So  
11 therefore there were funding available.

12 Q Sorry, that was the amount of money that I was  
13 talking about, the -- what have I got? I've got  
14 15,000 for this year to hold meetings at the  
15 Aquaculture Working Group level and I've got  
16 11,000 in 2010 and 2011 to hold meetings at the  
17 Aquaculture Working Group. That's basically to  
18 pay for rooms and to get people there. There's no  
19 program dollars, there's no ability to  
20 substantively address or look at some of the  
21 issues behind it. These are simply to pay for  
22 program -- to pay for people to get there and to  
23 hold a meeting, as I understand it.

24 MR. THOMSON: Yeah, but there were additional  
25 amendments to the AAROM agreements that provided  
26 funding to the First Nations Fisheries Council to  
27 hold a series of workshops on the IMAP discussion  
28 paper, which occurred in January of this year, and  
29 previously, as related to before, to conduct a  
30 series or to host a series of workshops throughout  
31 the province of British Columbia to provide input  
32 into the regulatory drafting process.

33 MS. GAERTNER: Commissioner, for the record, I'd like  
34 to put in my client's understanding of the funding  
35 that was received, and I'll ask the witness about  
36 that.

37 Q In 2009 and '10, they received 150,000 for  
38 meetings that were held in 2010. Those are the  
39 meetings you're just talking about. That's the  
40 '09/10 fiscal year. In 2010 and '11, they  
41 received 75,000 to hold the meetings that took  
42 place in 2011, and then in 2010 and '11, they've  
43 got \$11,000 for the Aquaculture Working Group and  
44 in this year, they've got 15,000 for the  
45 Aquaculture Working Group. Do you have any  
46 knowledge that would suggest that information is  
47 incorrect?

1 MR. THOMSON: No.

2 THE COMMISSIONER: Would this be a good place for the  
3 break, Ms. Gaertner?

4 MS. GAERTNER: Sure.

5 THE REGISTRAR: The hearing will now recess for ten  
6 minutes.

7

8 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)

9

(PROCEEDINGS RECONVENED)

10

11 THE REGISTRAR: Hearing is now resumed.

12

13 CROSS-EXAMINATION BY MS. GAERTNER, continuing:

14

15 Q Mr. Thomson, I heard you say in your evidence  
16 earlier that DFO is looking -- or is looking at  
17 making amendments or changes to the licence  
18 conditions or the draft policies. Is DFO prepared  
19 to make substantive amendments to the licence  
20 conditions and/or the draft policies that have  
21 been tabled?

22

MR. THOMSON: Yes.

23

24 Q If so, why is it that in a call yesterday that the  
25 First Nations Fisheries Council organized with all  
26 First Nations and DFO representatives in which  
27 Todd Johansson and Barbara Elias were present that  
28 they were advised that changes may be considered  
29 but we are unlikely to have time to justify any  
30 changes. What did that mean?

31

MR. THOMSON: I'm not sure. I wasn't on the call. But  
we'll be looking at changes for licence. But more  
to the point, I think your previous question was  
rather open-ended. You asked whether or not  
changes would ever -- substantive changes would  
ever be considered. Well, yes, but I foresee that  
may be this year, may be next year, may be over a  
period of time.

32

Q Sometime in the future.

33

MR. THOMSON: We could make some of the changes this  
year too.

34

35 Q I'm going to have to move on. I've got a number  
36 of topics I have to cover with you and I'll have  
37 to -- I'm going to change topic right now and go  
38 to the siting issues. And I would like to go to  
39 Exhibit 1589, if I may, to page 5 which is the  
40 siting criteria that is now part of your  
41 applications and there's two -- we've talked a  
42

1 little bit about the subjective nature to the  
2 second bullet. I want to go to the sixth bullet  
3 [as read]:

4  
5 An appropriate distance from the areas of  
6 sensitive fish habitat as determined by DFO.  
7

8 And then the fifth from the end:  
9

10 Not in areas that would pre-empt important  
11 aboriginal --  
12

13 And you go on to say commercial or recreational  
14 fisheries.

15 Prior to issuing the December 2010 licenses  
16 and the grandfathering in of these licenses, what  
17 steps, if any, did you take as the decision-maker  
18 to ensure that those conditions were being met by  
19 the existing finfish farms?

20 MR. THOMSON: Well, as was entered into evidence a  
21 couple days ago, this particular series of siting  
22 buffers, which really is a high-level screening  
23 tool in terms of the application approach and  
24 certainly does not mean that it is the only  
25 decision-making steps we take in siting, has been  
26 in place since approximately 2000 and so those  
27 siting buffers, which is the common term we use,  
28 have been applied for farm sites that have been in  
29 application since that time.

30 Q So does that --

31 MR. THOMSON: So just -- I'd like to finish my answer,  
32 please. So just to finish my answer there, I took  
33 into effect before making my decisions that  
34 knowledge that this siting buffer or this series  
35 of criteria had been in place since 2000.

36 Q So you took no additional or independent steps at  
37 the time in which you made the decisions in  
38 December 2010. You just assumed since this  
39 criteria was in place that the existing finfish  
40 farms had been screened for that purpose?

41 MR. THOMSON: I assume that the siting buffer had been  
42 in place since 2000 and provided some measure of  
43 comfort that these siting buffers had been adhered  
44 to before making that decision, yes.

45 Q You'll appreciate that you have particularly  
46 unique obligations to aboriginal people and that  
47 that assumption could have been incorrect?

- 1 MR. THOMSON: Yes.
- 2 Q And then we go to policy exhibit 1601 which is the  
3 new draft policy that I understand you're  
4 considering to address siting concerns and  
5 environment impacts and if I've got that right,  
6 these new environmental matters and siting issues  
7 will only apply to new licenses and applications  
8 for substantive amendments; have I got that right?
- 9 MR. THOMSON: That's what the application of these is  
10 for as far as the sites are -- that would be an  
11 application or changes, substantive changes to the  
12 sites, yes.
- 13 Q And it's your understanding that First Nations  
14 consultative processes will only apply to these  
15 new applications and significant amendments?
- 16 MR. THOMSON: No.
- 17 Q That's what it says on page 3 of this policy, if I  
18 could turn you to that.
- 19 MR. THOMSON: Well, that may be what it says on page 3  
20 of the policy but -- you know, and that may be the  
21 intent that they're talking about conducting  
22 consultations on new sites or substantive  
23 increases, but certainly in our communication with  
24 First Nations if -- in consultation or engagement  
25 of First Nations if they were to raise issues  
26 about existing sites we would, of course, consider  
27 those sites.
- 28 Q Well, you know that they've raised issues about  
29 the existing sites and you know they've raised  
30 issues around the grandfathering of these  
31 licences. Where and when and how are these  
32 existing licences going to be reviewed for the  
33 impact on Fraser River sockeye?
- 34 MR. THOMSON: Well, we review the licences on issuance  
35 of the licence.
- 36 Q But you've issued those licences and these --
- 37 MR. THOMSON: Yes.
- 38 Q -- these policies are now going to apply to new  
39 licences or significant amendments.
- 40 MR. THOMSON: Yes.
- 41 Q So they're not going to apply to renewals?
- 42 MR. THOMSON: These policies are designed to apply to  
43 new licences and amendments, but it doesn't mean  
44 that we won't consider impact -- consider input  
45 into the issuance for existing sites.
- 46 Q Are you waiting for recommendations from the  
47 commissioner as to how to address this?

1 MR. THOMSON: Well, certainly we're looking forward to  
2 recommendations of the commissioner once they come  
3 forward as to any of the impact to DFO programs.

4 Q So you're waiting for recommendations from the  
5 commissioner as it relates to the siting of the  
6 finfish farms along the migratory route in order  
7 to address the concerns First Nations have raised  
8 with you?

9 MR. THOMSON: No. We'll work -- continue to consult  
10 and work with First Nations as to the concerns  
11 around impacts of salmon farms. We'll consider --  
12 continue to receive information from our Science  
13 Branch as to potential impacts to salmon and  
14 consider the input of others in making our  
15 licensing decisions, but I didn't want to presume  
16 that we wouldn't also be looking forward to the  
17 input of the commission once it reports.

18 Q But your policies do not take -- do not make that  
19 clear, do they?

20 MR. THOMSON: It may be that policies don't make it  
21 clear but in terms of making the decisions, we  
22 will continue to take the input of Science Branch,  
23 of the First Nations and others in making those  
24 decisions.

25 Q All right. Let's turn to IMAPs, if I may. As I  
26 understand your evidence from two days ago, it's  
27 your intention to have a draft IMAP in place in  
28 the Fall for consultation; is that correct?

29 MR. THOMSON: Yes.

30 Q If I could turn you to Exhibit 1656 page 3. This  
31 was a letter that was sent to Mr. Swerdfager from  
32 Chief Allan Claxton of the First Nations Fisheries  
33 Council and at page 3 they -- page 3 second...  
34 You'll see in that second paragraph they raise  
35 specific concerns about the idea that the IMAP  
36 process would run in a manner consistent with the  
37 IHPC process, in particular the concerns around  
38 the dysfunctional nature of the IHPC. There's  
39 been a number of days of evidence before this  
40 commission around that and the suggestions have  
41 been that we increase the number of seats  
42 available on the IHPC process for First Nations,  
43 that they develop bilateral tables where DFO and  
44 First Nations sit down together to specifically  
45 address issues around aboriginal title and rights  
46 impacts and that Canada provide funding,  
47 especially as it relates to this so we can get

1           this process off on the right start.

2           Do you agree that it's problematic to model  
3           the new IMAP process on a flawed IHPC process?

4       MR. THOMSON: Well, not -- I'm not saying that we are  
5           modelling on the IHPC process, flawed or not. But  
6           that's one of the intentions of developing an  
7           AAROM amendment agreement with the First Nations  
8           Fisheries Council to seek views on how to develop  
9           the IMAP processes. And in that process with the  
10          First Nations Fisheries Council we specifically  
11          asked questions relating to the current IFMP  
12          processes and what could be improved on them.

13       Q     All right. Now could I take you to Exhibit 1241?  
14           And this is a report that the B.C. First Nations  
15           Fisheries Council provided to you and to First  
16           Nations on the development of the IMAP process; is  
17           that correct?

18       MR. THOMSON: Yes.

19       Q     You've received this report and reviewed it?

20       MR. THOMSON: I have received the report, yes.

21       Q     Have you reviewed it?

22       MR. THOMSON: I have read it, yes.

23       Q     Have you considered the concerns and interests --  
24           concerns that were in this report and when you're  
25           -- and the recommendations?

26       MR. THOMSON: The concerns are being considered as we  
27           start drafting the draft IMAP, yes.

28       Q     All right. So if I could take you to page 3 of 3  
29           to start with. Page 3 of 3. There's a beginning  
30           section and then the main part, so, yeah. So  
31           there's a list of recommendations there that  
32           summarize some of the concerns that have been  
33           raised with respect to the IFMP approach. We talk  
34           about adequate capacity and resourcing. We've had  
35           a little bit of a discussion here. We'll have to  
36           move on.

37           But then they talk about establishing a  
38           governance process and including looking at the  
39           Tier 1 and Tier 2 and Tier 3 elements. You'll  
40           agree that if you move immediately to the IMAP -  
41           sorry, these acronyms are going to challenge me  
42           forever - IMAP process, you're moving immediately  
43           to a Tier 3 process?

44       MR. THOMSON: No. The IMAP is really a development of  
45           a document. The process for advisory structure  
46           doesn't necessarily have to be immediately moving  
47           to a Tier 3.



1 Q Can you commit that you'll use a Tier 1, Tier 2  
2 process to develop this before you move to a Tier  
3 3?

4 MR. THOMSON: I think we're still in the development  
5 phase of how to best structure the advisory  
6 processes and one that we would consult on, in  
7 which case I don't have a process in place of how  
8 we're -- of what type of advisory processes would  
9 be put in place laid out and that's one of the  
10 reasons why we want to have further discussions on  
11 the draft IMAP process.

12 Q And then what about the concerns that First  
13 Nations have raised as to the scale of IMAP? And  
14 now I'll take you to page 11 of 11 of that  
15 document. There's a number of different options  
16 around how to develop; IMAPs. What is DFO's  
17 considerations on these issues right now?

18 MR. THOMSON: I'm waiting for the scroll. Well, again,  
19 this is, you know, as I discussed earlier, what we  
20 went -- what our intention going forward with an  
21 IMAP to try and gain some input into the IMAP  
22 development process, is to go forward with  
23 essentially what was a blank slate. I was very  
24 clear in my meeting with the First Nations  
25 Fisheries Council and with participants in the  
26 first meeting in Richmond that I didn't want to  
27 come forward with a map drawn up in pretty colours  
28 and suggesting I know exactly which areas were  
29 going to be planned for. I wanted people's input,  
30 First Nations and others, as to how we would  
31 divide the coast up into areas and what would be  
32 appropriate for the geographic scale of area  
33 management approaches.

34 I think what we're looking at now moving  
35 forward is development of a -- initially  
36 development of a generalized IMAP for the Province  
37 of B.C. and then start continuing discussions on  
38 how to subset that into a specific area management  
39 models as we go through the consultation process  
40 going forward this Fall.

41 But again, this is really the development of  
42 a rather ground-breaking approach for aquaculture  
43 management in the Province of British Columbia.  
44 It certainly builds on area management approaches  
45 and other jurisdictions but it is unique to  
46 British Columbia and so it will be a process that  
47 takes some time to develop and certainly one that

1 I really would never say will be carved in stone.  
2 Why would you not continue to develop and improve  
3 the process over time through engagement of  
4 industry, the engagement of other parties and, of  
5 course, the engagement of the coastal First  
6 Nations and other First Nations that live in these  
7 areas?

8 Q So you're committed to a consultative process on  
9 that. So what are you planning to table in the  
10 Fall then?

11 MR. THOMSON: We have what's being developed currently  
12 is a draft IMAP which will describe - you've seen  
13 tabled the guidance document around the IMAPs -  
14 but it'll describe the management approaches for  
15 finfish aquaculture in British Columbia. We'll  
16 seek to consult on that and if we have the ability  
17 to in the time allotted start consulting on the  
18 geographic areas that we would like to develop  
19 area-specific management approaches for and  
20 whether or not there really are in some cases  
21 area-specific or is it really more of a mapping of  
22 management approaches for areas generally in that,  
23 you know, we could have general principles around  
24 area management as opposed to specific principles  
25 for certain areas.

26 These are all questions that we'll bring up  
27 during the consultative process. Because I think  
28 it is clear that there's a lot of valuable input  
29 that could be gained through the various parties.

30 Q I'm just wondering, the commissioner has also  
31 heard a lot of evidence around the Wild Salmon  
32 Policy and --

33 MR. THOMSON: Yeah.

34 Q -- its implementation. Has there been  
35 consideration around how this IMAP process and the  
36 considerations of ecosystems indicators there will  
37 align with the Wild Salmon Policy's Strategies 2  
38 and 3 which deal with habitat assessments and  
39 ecosystem indicators and values and are we going  
40 to be able to reduce duplication and try to find  
41 ways of synergizing this effort?

42 MR. THOMSON: Well, certainly I think that we're  
43 obviously going to be informed by the Wild Salmon  
44 Policy, which I was very fortunate enough to be  
45 one of the drafting members of it. The policy for  
46 the Wild Salmon Policy really focuses on the  
47 conservation units of wild salmon and the

1 protection thereof.

2 Maybe conservation units is a good indicator  
3 of health of an ecosystem and it might be a good  
4 indicator of how you would draw an area management  
5 approach for an area. I think that's a -- that's  
6 certainly an area that we would explore. But  
7 again, it's an area that I don't want to come out  
8 and say this is the way it's going to be, because  
9 I think it's an area for discussion and  
10 exploration.

11 Q Thank you. That will be helpful to my clients to  
12 hear.

13 So I have only barely 15 minutes left and so  
14 I'm going to go very quickly on to monitoring and  
15 then enforcement and then I have some final  
16 questions. If I could go to First Nations  
17 Coalition document 18 which is Exhibit 1240. And  
18 if I could go to page 7 Theme number 8. This is a  
19 document the First Nations Fisheries Council  
20 provided to you and Theme number 8 deals with  
21 broader and inclusive monitoring and they say that  
22 the scope of monitoring must be expanded to  
23 include First Nations interests in far-field, not  
24 just the tenure boundaries of a particular farm,  
25 and their view that there has to be more dynamic  
26 monitoring is needed to look at broader metrics  
27 for assessing impacts on ecosystems. And you need  
28 to create opportunities for First Nations to  
29 conduct third-party monitoring.

30 Are you familiar with those concerns and  
31 those ideas?

32 MR. THOMSON: Yes.

33 Q How does the monitoring regime take these ideas  
34 into account?

35 MR. THOMSON: Well, initially the monitoring regime in  
36 terms of far-field effects, what we did is  
37 introduce a new monitoring site for benthic  
38 impacts at a farther distance from the farm than  
39 was previously done by the provincial government.  
40 But certainly in terms of truly far-field or  
41 ecosystem impacts, that again is part of the  
42 development hopefully of the IMAP process and the  
43 area management approach to start looking at  
44 potential ecosystem indicators of impact in an  
45 area and how best to explore those.

46 In terms of creating opportunities for First  
47 Nations to conduct third-party monitoring, there

1 was an inclusion in the -- or as was previously  
2 pointed out, there was an amendment made to the  
3 **Pacific Fisheries Regulations** to allow for  
4 guardians to have authority over the -- or, sorry,  
5 the **Pacific Aquaculture Regulations**, so we did  
6 make an opportunity within that for guardians.

7 Q Can these ecosystem-based indicators or these  
8 approaches include First Nations traditional  
9 ecological knowledge?

10 MR. THOMSON: I would think that would be one of the  
11 things we could look at including and I think it's  
12 -- the adoption of traditional ecological  
13 knowledge into indicators would be a valuable  
14 inclusion. I think the difficulty sometimes is  
15 developing that metric and I think it's been a  
16 challenge generally for government in developing  
17 those metrics around inclusion of traditional  
18 ecological knowledge.

19 Q Would you support a recommendation that there be  
20 not only monitoring of fish health within  
21 individual salmon farms but also a program that  
22 monitors the health of the ecosystem and the  
23 health of the wild stocks that pass those farms as  
24 a way of looking at the impact of those --  
25 potential impacts?

26 MR. THOMSON: I think it's well worth considering all  
27 the -- you know, looking at the monitoring of the  
28 health of an ecosystem from a broad scale in terms  
29 of, you know, whether or not it's an area such as  
30 the Clayoquot Sound or something, you know, I  
31 think monitoring of the ecosystem indicators for  
32 an area, whether it be from impacts of  
33 aquaculture, fisheries, mining, forestry,  
34 whatever, it would be valuable from that point of  
35 view.

36 Q Are you aware of the independent monitoring  
37 program that's been run by the Kitasoo/Xiixais for  
38 the salmon farming operation at Klemtu?

39 MR. THOMSON: Sorry?

40 Q Are you aware of the independent monitoring  
41 program that's run by the Kitasoo --

42 MR. THOMSON: Yes.

43 Q -- for the -- and understand that program includes  
44 monitoring ecosystem indicators of the community  
45 members deemed to be appropriate?

46 MR. THOMSON: I'm actually not aware of the ecosystem  
47 indicators that they monitor but would be more

- 1 than happy to hear more about it.  
2 Q Let's turn to enforcement, if I could, for a  
3 moment. And we're still at 1240. Let's go to  
4 Theme number 9, more stringent enforcement. First  
5 Nations at the time and continue to expect that a  
6 much stricter and tougher approach for enforcing  
7 compliance with the regulations than was the case  
8 with the province and that First Nations should be  
9 trained to conduct the inspections and be  
10 enforcement officers.  
11 You're aware that those concerns were raised?  
12 MR. THOMSON: Yes.  
13 Q And that these were repeatedly stressed at the  
14 community meetings in February and March of 2010,  
15 correct?  
16 MR. THOMSON: Yes.  
17 Q And continues to be stressed in the 2011 document  
18 such as the First Nations perspective on the  
19 management framework for aquaculture in B.C.; is  
20 that correct?  
21 MR. THOMSON: Yes.  
22 Q We've heard from our clients that some of the  
23 aspects that First Nations would like to see as  
24 part of the enforcement regime, including the  
25 following: spot checks. Will this be done and  
26 will this be increased?  
27 MR. THOMSON: Yes. I don't want to speak for Mr.  
28 Atagi's program but generally we will have a  
29 greater level of compliance in enforcement  
30 activities than was previously done and in terms  
31 of previous testimony from Mr. Atagi and previous  
32 statements on the part of the department, we have  
33 no intention of requiring to give advance notice.  
34 So if that meets the definition of a spot check,  
35 then...  
36 Q I'll turn to you, actually, if I may, Mr. Atagi.  
37 Can -- are you intending to do more spot checks  
38 than had been done before and more frequent audits  
39 and inspections of fish farms than was done  
40 before?  
41 MR. ATAGI: We will conduct inspections and checks as  
42 much as possible with the capacity that we have.  
43 Q Will that be more than what was done by the  
44 Province of British Columbia when they were doing  
45 it?  
46 MR. ATAGI: That remains to be seen.  
47 Q So at this point in time you can't make that

1           commitment?

2       MR. ATAGI: No.

3       Q     Will there be protection for whistle-blowers?  
4           That's something that has been a concern that  
5           First Nations have raised? Will there be any  
6           protection in terms of identification of whistle-  
7           blowers or anything like that?

8       MR. ATAGI: It would be similar to our -- whatever we  
9           do for our current observe, record, report  
10          program.

11       Q     So does that mean there won't be further  
12          protections?

13       MR. ATAGI: Just for this program? No, it would be  
14          similar to what is in place.

15       Q     Will there be fines for breaches of licence  
16          conditions that will act as a sufficient deterrent  
17          at this point in time as we understand that the  
18          maximum fine is a thousand dollars per  
19          contravention which, from my clients' perspective,  
20          could be considered a cost of doing business.  
21          Will there be -- is the department looking at  
22          increasing the fines for breaches of licence  
23          conditions?

24       MR. THOMSON: The fine structure for violations of the  
25          conditions of licence are the same for aquaculture  
26          as they are for all **Fisheries Act** violations,  
27          which to my knowledge are a maximum fine of  
28          \$500,000.

29       Q     But for the conditions of a licence that are a  
30          ticketable offence or punishable for a maximum  
31          fine of a thousand dollars --

32       MR. THOMSON: There are no ticketable offences in  
33          conditions of licence.

34       Q     So if you were thinking of the ticketable offences  
35          at this point in time, your maximum fine would be  
36          a thousand dollars?

37       MR. ATAGI: It would be limited to the provisions of  
38          the **Contraventions Act**.

39       Q     Would you agree that fines should increase in  
40          severity with the number of infractions?

41       MR. THOMSON: Well, again, the fine would be set for --  
42          by the court, would be at the court's discretion.

43       Q     The other key question when it comes to  
44          enforcement is for First Nations is who is  
45          conducting the enforcement. We've heard a lot  
46          about the concerns about funding and the  
47          challenges associated with it. From my experience

1 working with First Nations it's actually quite  
2 useful to have protocols and have them working on  
3 the direct on-the-ground work. They're closer to  
4 the sites. They're more responsive to changes.  
5 They can observe that. Would you agree with me on  
6 that?

7 MR. ATAGI: Can you repeat that, please?

8 Q It's my experience with First Nations all over the  
9 Province of British Columbia that when it comes to  
10 enforcements in local areas that the primary  
11 governments of the Province of British Columbia or  
12 the federal government, in particular the  
13 Department of Fisheries and Oceans, have  
14 challenges associated with manning local areas and  
15 getting people locally and so there is a benefit  
16 of working collaboratively with First Nations in  
17 guardian programs and otherwise to ensure that  
18 things happen more quickly at a local area.

19 Do you have a response to that? And have you  
20 -- are you considering developing those types of  
21 protocols to maximize better enforcement?

22 MR. ATAGI: There may be benefits to that. At this  
23 point I have not been aware of any protocols that  
24 have been built in place specifically for  
25 aquaculture.

26 Q So in the memo to the Deputy Minister that we just  
27 saw earlier, we learned that DFO will not be  
28 developing an aboriginal fisheries guardian  
29 program in the first year of the new Pacific  
30 Aquaculture Program. Are they considering the use  
31 of an aboriginal fisheries guardian program going  
32 forward?

33 MR. THOMSON: I don't know of any plans to develop an  
34 aboriginal fisheries guardian program for  
35 aquaculture specifically. I really am not  
36 knowledgeable about the current aboriginal  
37 fisheries guardian program to speak to it.

38 Q Do you think it would be a useful thing to  
39 consider when we're trying to cost-benefit and  
40 develop more trust as it relates to this industry?

41 MR. THOMSON: I certainly think there would be some  
42 benefits in the trust -- on the trust aspect of  
43 it. I think that the cost benefit analysis would  
44 be something that would be better answered by  
45 someone who's more familiar with the costs  
46 associated with the current aboriginal fisheries  
47 guardian program.

1 Q Regretfully, I learned that the document I was  
2 referring to was not an exhibit yet, so I have to  
3 go to First Nations document number 17.

4 Mr. Thomson, are you familiar with this memo  
5 to the deputy minister in which they summarize  
6 that they will be not developing an aboriginal  
7 fisheries guardian program for the first year of  
8 the program, Fisheries Aquaculture Program?

9 MR. THOMSON: Could you scroll through it?

10 Q Sure. I can't but Mr. Lunn can.

11 MR. THOMSON: Yeah. Sorry.

12 Q Mr. Atagi, are you familiar with this document?

13 MR. ATAGI: Vaguely, yes.

14 Q I notice on the first page that it appears that it  
15 may have come out of your --

16 MR. ATAGI: Out of my archive, yes.

17 MS. GAERTNER: Yes. Could I have that marked as the  
18 next exhibit?

19 THE REGISTRAR: 1736.

20

21 EXHIBIT 1736: Memorandum for the Deputy  
22 Minister - Aboriginal Fisheries Guardian  
23 Program for the British Columbia Aquaculture  
24 Regulation Program

25

26 MS. GAERTNER:

27 Q Now, in my last five minutes I want to tackle what  
28 in some ways might be considered a sensitive issue  
29 with you, Mr. Thomson, but I don't mean it that  
30 way. I'm going to say it that way because I'm  
31 looking to help the commissioner understand the  
32 challenges associated with implementing these  
33 kinds of changes and I'm going to take you to  
34 Exhibit 1697. This is a document that was put  
35 into evidence yesterday by Mr. Leadem for the  
36 Conservation Coalition and I had an opportunity to  
37 review it last evening and if I take you to page 5  
38 of that document under "Pacific Region". I'm  
39 curious about the comment [as read]:

40

41 We need to use shellfish aquaculture as a  
42 gateway for First Nations into aquaculture.

43

44 And then later in the document it says:

45

46 If we could get First Nations to support  
47 aquaculture it would take the wind out of the



1                   NGO sails.  
2

3                   I'm just -- I'm very concerned about those two  
4                   kinds of comments and I know that the First  
5                   Nations Fisheries Council have raised concerns  
6                   with the department around characterizing First  
7                   Nations interests around this -- around  
8                   aquaculture.

9                   Do you have any response to this? I mean,  
10                  when I read these and I read the letters that  
11                  First Nations Fisheries Council have sent to the  
12                  department around the repeated emphasis on how  
13                  First Nations could receive money from the  
14                  aquaculture companies and how they could be part  
15                  of that business, we're missing some of the more  
16                  -- well, my clients would say more important and  
17                  fundamental issues first, which is they've got  
18                  concerns around their s. 35 rights and how to  
19                  properly protect those rights and it appears by  
20                  looking at these kinds of comments that somehow in  
21                  the department you have this idea that if they'd  
22                  only get involved in aquaculture from an economic  
23                  perspective that those concerns will somehow  
24                  disappear. And I'm just wondering if you could  
25                  speak to that because it's a very serious concern.

26               MR. THOMSON: Yes. First I'd like to make clear as I  
27                  recall the report that's entered here was produced  
28                  by a consultant about communications and these  
29                  appear to be quotations by unnamed people within  
30                  the department. So I just put that into context.

31                  In terms of, you know, is it appropriate for  
32                  people to talk about getting First Nations into  
33                  aquaculture or not, you know, in the 2002  
34                  Aquaculture Policy Framework, the department was  
35                  very clear that one of its goals is to increase  
36                  investment or increase participation by aboriginal  
37                  groups into aquaculture generally. And I think  
38                  that that still remains a policy direction of the  
39                  department and the reasons for it are, of course,  
40                  to, you know, aquaculture does represent a rather  
41                  significant or can be rather significant economic  
42                  opportunity for those living in coastal areas and  
43                  especially for First Nations, where frankly, as  
44                  I'm sure you're well aware, we have many First  
45                  Nations communities that have limited economic  
46                  opportunities other than those of marine resources  
47                  of which aquaculture is one of them.

1           And so, you know, in various communities,  
2           Klemtu you've already mentioned, and others, we've  
3           seen where development of aquaculture, whether it  
4           be shellfish or finfish or others, has provided  
5           for increased economic opportunity to those First  
6           Nations that in my - and it only is my - opinion  
7           frankly, you know, I think benefited from  
8           increased economic opportunity in those  
9           communities.

10         Q        Could I take you to Exhibit 1656 and this concern  
11           is significant for the First Nations Fisheries  
12           Council and I want to take you to page 5 bullet 4  
13           and this was in their letter responding to the  
14           draft Pacific Aquaculture Regulations. This is my  
15           last question. And I'll take you to that fourth  
16           bullet [as read]:

17  
18                   It is offensive to First Nations that in the  
19                   opening statement only positive statements  
20                   are made with respect to First Nations'  
21                   engagement in aquaculture. There is a total  
22                   lack of recognition of rights and title, of  
23                   issues and concerns which have been raised  
24                   repeatedly by First Nations with respect to  
25                   many aspects of the current aquaculture  
26                   management system. The repeated emphasis in  
27                   the opening statement about First Nations  
28                   receiving benefits from aquaculture companies  
29                   totally misses the point of the significant  
30                   issues and concerns which have been  
31                   repeatedly raised by B.C. First Nations with  
32                   respect to the aquaculture industry.

33  
34                   I'm going to leave it there. I'm just going to  
35                   ask you what is your response to this? Are you  
36                   prepared to put as a primary matter addressing the  
37                   ongoing significant concerns they've raised as it  
38                   relates to their s. 35 rights and not simply punt  
39                   it off to the idea that we'll just solve it by  
40                   getting them involved in the industry?

41         MR. THOMSON: Well, I certainly would never put it  
42           punting off an idea. I take very seriously my  
43           responsibility with the department of consulting  
44           with First Nations. I spend a great deal of my  
45           time and energy doing so and I'll continue to do a  
46           better job as best I can in terms of talking with  
47           First Nations, whether through formal consultative

1 processes or working with the aquaculture working  
2 group in order to better understand their concerns  
3 regarding it and take those into consideration  
4 when making the licensing decisions.

5 Q And how can we help you on that in the work that  
6 we're doing here?

7 MR. THOMSON: Well, and I'm glad actually -- really  
8 glad you asked that question. I think the First  
9 Nations Fisheries Council has been extraordinarily  
10 helpful in development of this, and I'm concerned  
11 that statements over last couple of days indicate  
12 that there's -- that this system was -- I mean, I  
13 would never say it's perfect, but I think that the  
14 process we entered into with First Nations  
15 Fisheries Council in gathering the information we  
16 did prior to the drafting of the regulation was in  
17 some ways -- it was probably a little bit ground-  
18 breaking in terms of it was really a great  
19 information source prior to regulatory drafting.  
20 I'm not sure it's happened before.

21 I don't know all the regulations that have  
22 ever been drafted. I'm not going to pretend that I  
23 do. But I -- you know, I personally travelled  
24 around to each of those nine communities. I  
25 personally learned a great deal about First  
26 Nations, First Nations concerns about aquaculture,  
27 about fisheries in generally, and so I found it to  
28 be an educational experience.

29 I took a lot of that information to heart and  
30 I'll continue to use that information that I  
31 gathered with the great assistance of the First  
32 Nations Fisheries Council in setting up all these  
33 meetings and managing all those -- the issues  
34 around it. It was a huge benefit to me personally  
35 and I think a huge benefit to the department in  
36 order to provide that information into the  
37 department and we have that information stored and  
38 will continue to act on the information we  
39 received and will continue to work with the First  
40 Nations Fisheries Council on that basis.

41 MS. GAERTNER: Those are my questions, Mr.  
42 Commissioner.

43 MR. MARTLAND: Mr. Commissioner, I have about two very  
44 quick housekeeping matters. I can do those at the  
45 end. We don't have re-examination questions.  
46 Canada has just a few, I believe.

47 THE COMMISSIONER: If we can finish by 4:00, that's

1 fine.

2 MR. MARTLAND: I believe so.

3 MR. SPIEGELMAN: Thank you, Mr. Commissioner. I'll do  
4 my utmost to be less than two minutes and I  
5 believe I can do so.

6

7 CROSS-EXAMINATION BY MR. SPIEGELMAN, continuing:

8

9 Q Mr. Atagi, during my friend Mr. Leadem's  
10 examination, he suggested that at one point there  
11 was the ability to ticket -- issue tickets in  
12 aquaculture and my question is this, has DFO ever  
13 had the ability to have ticketable -- to issue  
14 tickets for aquaculture offences, for violations?

15 MR. ATAGI: Not that I'm aware of, no.

16 Q Are you aware of any ticketable offences in any  
17 commercial fishery in Canada?

18 MR. ATAGI: Only under the **Fisheries General**  
19 **Regulations.**

20 Q Thank you. And my other quick question is there  
21 was some questions during earlier questioning  
22 about whether pre-existing aquaculture facilities  
23 had undergone environmental assessment under the  
24 **CEAA**. And so my question is under the current  
25 conditions of licence the benthic monitoring  
26 requirements and the thresholds for fallowing,  
27 those do apply to pre-existing facilities; is that  
28 correct?

29 MR. THOMSON: Yes, they do.

30 MR. SPIEGELMAN: Thank you. Those are my questions.

31 MR. MARTLAND: Thank you. Mr. Commissioner, by way of  
32 just housekeeping, Mr. Leadem dealt with some  
33 exhibits and I'll just, unless someone raises a  
34 concern, will propose that vis-à-vis the early  
35 morning emails from Mr. Taylor that were forwarded  
36 on, Exhibit 1730, 1731, 1732, it's really just a  
37 matter of housekeeping but we'd propose to remove  
38 the header and the back-and-forth with counsel  
39 forwarding on and have those cleaned up. In  
40 addition, one of them had the chart and the  
41 landscape format and we'll rotate the page or do  
42 what we need to do to ensure the exhibit is  
43 properly put in as -- once it is an exhibit -- it  
44 is an exhibit. Once it's communicated via our  
45 website, as well.

46 Secondly, with respect to Exhibit 1731 and  
47 1732 we've discussed among counsel the question as

1 to whether the hyperlinked further document should  
2 be sub-documents. The consensus of that was no,  
3 they need not. The links are available to members  
4 of the public but they're dynamic, so they'll  
5 change over time.

6 The final point I'll just offer, Mr.  
7 Commissioner, by way of a quick remark at the  
8 conclusion not of all of your hearings this week  
9 but of the hearings on aquaculture and disease for  
10 this week, we are nine out of 12 days into those  
11 hearings. On my math we've heard from 19  
12 witnesses, six scientific technical reports  
13 commissioned put in. We've had a significant body  
14 of evidence put forward.

15 I appreciate that there have been some  
16 concerns over our pace. On the other hand, in my  
17 submission we're in a position now where we have  
18 covered that ground and we're on schedule and I  
19 want to express our gratitude to all counsel.  
20 They've played by the rules, so to speak, on the  
21 time allocations, not always happily I appreciate,  
22 but it has allowed us to hear from these witnesses  
23 and put forward the body of evidence we have.

24 With respect to aquaculture, on that basis we  
25 would be adjourned to Tuesday, the 6th. I  
26 understand, Mr. Commissioner, there are other  
27 hearings tomorrow at 10:00 a.m. Thank you.

28 THE COMMISSIONER: Thank you, Mr. Martland. Thank you  
29 to the panel. Certainly you've been here more  
30 than today, so thank you for that, Mr. Thomson.  
31 And to the other two panel members, Thank you very  
32 much for attending. Thank you.

33  
34 (PANEL NO. 60 EXCUSED)

35  
36 THE REGISTRAR: The hearing is now adjourned to ten  
37 o'clock tomorrow morning.

38  
39 (PROCEEDINGS ADJOURNED AT 4:01 P.M. TO  
40 SEPTEMBER 2, 2011 AT 10:00 A.M.)  
41  
42  
43  
44  
45  
46  
47

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

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11 Susan Osborne  
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41 Diane Rochfort  
42 Registered Court Transcriber  
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