

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



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

## Public Hearings

## Audience publique

**Commissioner**

L'Honorable juge /  
The Honourable Justice  
Bruce Cohen

**Commissaire**

**Held at:**

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

Tuesday, August 30, 2011

**Tenue à :**

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

le mardi 30 août 2011

## APPEARANCES / COMPARUTIONS

Brock Martland Kathy L. Grant	Associate Commission Counsel Junior Commission Counsel
Mitchell Taylor, Q.C. Jonah Spiegelman	Government of Canada ("CAN")
Clifton Prowse, 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	B.C. Salmon Farmers Association ("BCSFA")
No appearance	Seafood Producers Association of B.C. ("SPABC")
Gregory McDade, Q.C.	Aquaculture Coalition: Alexandra Morton; Raincoast Research Society; Pacific Coast Wild Salmon Society ("AQUA")
Tim Leadem, Q.C. Judah Harrison	Conservation Coalition: Coastal Alliance for Aquaculture Reform Fraser Riverkeeper Society; Georgia Strait Alliance; Raincoast Conservation Foundation; Watershed Watch Salmon Society; Mr. Otto Langer; David Suzuki Foundation ("CONSERV")
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; Council of Haida Nation ("FNC")
No appearance	Métis Nation British Columbia ("MNBC")

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

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

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Vancouver, B.C. /Vancouver  
(C.-B.)  
August 30, 2011/le 30 août  
2011

6 THE REGISTRAR: The hearing is now resumed.

7 THE COMMISSIONER: Good morning.

8 MR. MARTLAND: Mr. Commissioner, we're today starting  
9 the first of three regulatory panels. Each panel  
10 will be one day in length. They'll be very dense,  
11 I expect. We're trying to obviously cover that  
12 ground within the one day. The time allocations  
13 are not very long as a result of that.

14 One of the points I'll just make before we  
15 commence today's evidence is to offer, in  
16 responding to what Ms. Gaertner identified as a  
17 concern yesterday, certainly our view, that unless  
18 it presents a difficulty for a participant or a  
19 witness, if -- we have both Mr. Swerdfager today  
20 and Mr. Thomson both here on this panel but  
21 returning on other regulatory panels in the next  
22 few days. So if there is a question that could  
23 not be asked today because of time constraints,  
24 that came later in the week on another topic, we  
25 would not expect that to create a difficulty and  
26 that perhaps may help to address some of the time  
27 pressures.

28 I'll ask by beginning, Mr. Giles, to have  
29 this panel affirmed, please.

30 THE REGISTRAR: Gentlemen, would you turn your  
31 microphones on, please?

32  
33 IAN FLEMING, affirmed.

34  
35 GAVIN LAST, affirmed.

36  
37 TREVOR SWERDFAGER, affirmed.

38  
39 ANDREW THOMSON, affirmed.

40  
41 THE REGISTRAR: Would you state your name, please?

42 MR. SWERDFAGER: Trevor Swerdfager.

43 MR. THOMSON: Andrew Thomson.

44 MR. LAST: Gavin Last.

45 DR. FLEMING: Ian Fleming.

46 THE REGISTRAR: Thank you. Counsel?

47 MR. MARTLAND: Thank you. I'll begin with some

2  
PANEL NO. 58  
In chief by Mr. Martland

1 preliminary matters, and Mr. Lunn, if you could  
2 put on screen number 1 from Commission counsel's  
3 list of documents, please.  
4

5 EXAMINATION IN CHIEF BY MR. MARTLAND:  
6

7 MR. MARTLAND:

8 Q Mr. Swerdfager, sir, I'll start with you. You  
9 recognize that as being your c.v.? It may not be  
10 the very most recent one, given the description of  
11 your title, but a fairly recent one?

12 MR. SWERDFAGER: It is, yes.

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

15 THE REGISTRAR: Exhibit 1578.  
16

17 EXHIBIT 1578: *Curriculum vitae* of Trevor  
18 Swerdfager  
19

20 MR. MARTLAND:

21 Q And briefly, to cover your background, you have a  
22 Bachelor of Environmental Studies from the  
23 University of Waterloo from 1985, a Master's of  
24 Arts in Geography and Resource Management from the  
25 University of Ottawa in 1988, and from 1988 for  
26 about 18 years you worked with Environment Canada  
27 largely with the Canadian Wildlife Service,  
28 starting out in roles related to co-management  
29 agreements with First Nations for waterfowl and  
30 migratory birds, and later taking on management  
31 roles including two years as the manager of  
32 biodiversity program development, four years as  
33 chief of the Resource Conservation Division of the  
34 Canadian Wildlife Services, Prairie and Northern  
35 Region, two years as Regional Director for  
36 Environment Canada's Environmental Conservation  
37 Branch in the Pacific and Yukon Region, and four  
38 years as the National Director General of the  
39 Canadian Wildlife Service. Is that accurate?

40 MR. SWERDFAGER: That's accurate, yes.

41 Q In 2006, you worked as a senior advisor on  
42 sustainability for the Forest Products Association  
43 of Canada as part of the Federal Executive  
44 Interchange Program, and then in 2007, you  
45 returned to the federal government in the position  
46 of Director General of what we'll refer to in the  
47 coming days as the AMD, the Aquaculture Management

August 30, 2011

1 Directorate within the DFO?

2 MR. SWERDFAGER: That's correct.

3 Q In that position, you were responsible for  
4 providing strategic and tactical leadership for  
5 AMD, developing and implementing federal  
6 aquaculture regulations, managing human and  
7 financial resources, working with other agencies,  
8 industry and stakeholders, and providing strategic  
9 and scientific advice to the departmental  
10 executive, Deputy Minister and the Minister; is  
11 that right?

12 MR. SWERDFAGER: It is, yes.

13 Q And in March, 2011, you moved over to the position  
14 of being the National Director General for C&P,  
15 the Conservation and Protection Directorate?

16 MR. SWERDFAGER: That's correct, yes.

17 MR. MARTLAND: Mr. Lunn, I'll move now to Mr. Thomson.  
18 I apologize to all of you for these witnesses  
19 (sic), but it's an efficient way to cover your  
20 background -- for these long questions, rather.  
21 It does allow me to cover the background.

22 Number 2 on our list of documents, Mr. Lunn.

23 Q Mr. Thomson, I'll turn to you next. You'll  
24 recognize that as being your c.v.?

25 MR. THOMSON: Yes, I do.

26 MR. MARTLAND: I'll ask this please be marked as the  
27 next exhibit.

28 THE REGISTRAR: Exhibit 1579.

29  
30 EXHIBIT 1579: *Curriculum vitae* of Andrew  
31 Thomson  
32

33 MR. MARTLAND:

34 Q Sir, you graduated in 1991 with a B.Sc. in Marine  
35 Biology from the University of British Columbia,  
36 and in the 1990s, you worked as a contract  
37 biologist and technician for DFO and other  
38 agencies and organizations in relation to a  
39 variety of fishing-related projects which included  
40 fisheries surveys, sampling, data analysis, data-  
41 based development and GIS development?

42 MR. THOMSON: Yes.

43 Q You spent periods in 1998 and in 2001 to 2002  
44 coordinating DFO's Pacific Biological Station's  
45 open house and in the period of '91 to 2003, you  
46 served as the program head for the Atlantic Salmon  
47 Watch Program which was a joint federal/provincial

1 program to determine the distribution, abundance  
2 and biology of Atlantic salmon in B.C. waters; is  
3 that right?

4 MR. THOMSON: Yes, it is.

5 Q In 2003, you became the Acting Senior Aquaculture  
6 Officer in DFO's Habitat Enhancement Branch, and  
7 among other things, you led policy work on  
8 aquaculture and served as a primary industry  
9 liaison. In 2005, you became Director of the AMD,  
10 a role that you hold to the present day.

11 MR. THOMSON: A clarification: I became Acting  
12 Director in 2005, and was affirmed as Director in  
13 2008.

14 Q Thank you. In that role, you've served as the  
15 lead departmental official for the Pacific Region  
16 for aquaculture-related issues, including  
17 regulatory issues, policy and operational  
18 guidelines development, litigation management and  
19 media requests.

20 MR. THOMSON: Yes.

21 MR. MARTLAND: And if I might, Mr. Lunn, I'm going to  
22 move through 18 through 22 on our list of proposed  
23 exhibits. Mr. Swerdfager and Mr. Thomson, I  
24 welcome either one of you to help me in this task.  
25 I don't propose to ask a great many questions.

26 Q These are a series of organizational charts. We  
27 have to read fairly carefully. Number 18 on our  
28 list of documents in the upper right-hand side  
29 says [as read]:  
30

31 A draft Pacific aquaculture regulatory  
32 program, organizational chart.  
33

34 Does either of you recognize that and can you  
35 comment on its accuracy?

36 MR. THOMSON: I recognize it. It's a reasonably  
37 accurate chart although there has been some minor  
38 changes as to reporting structure since it was  
39 drafted.

40 MR. MARTLAND: I'll ask this please be marked as the  
41 next exhibit.

42 MR. TAYLOR: I can advise, if it helps, there's another  
43 one not quite the same at Tab 4 of Canada's  
44 documents. The significance of that is that to  
45 understand this, you need to have the colour,  
46 which yours is black and white.

47 MR. MARTLAND: No, I'm happy to have Mr. Taylor make it

1 more colourful this morning, that's fine.  
2 MR. TAYLOR: I just raise it and let Mr. Martland know  
3 that.  
4 MR. MARTLAND: No, it's helpful, that's helpful. I  
5 wonder if I can in fact go to that and follow Mr.  
6 Taylor's lead. This is the colourful one.  
7 Q I take it this, again, gives us a better sense of  
8 the structure; is that right?  
9 MR. THOMSON: This is a much newer version, much more  
10 accurate, yes.  
11 MR. MARTLAND: Okay. Having marked the first number 18  
12 from our list -- I take it, Mr. Registrar, number  
13 18 from our list was made an exhibit?  
14 THE REGISTRAR: Not yet. I was waiting for Mr. Taylor  
15 to finish his comments.  
16 MR. MARTLAND: No, that's fine. I wonder if I can, to  
17 be thorough, have number 18 from our list marked  
18 as the first exhibit --  
19 THE REGISTRAR: That will be Exhibit 1580.  
20 MR. MARTLAND: -- and next, I'll use the colourful  
21 Canadian document that's put on screen, number 4  
22 from Canada's list, as the next exhibit, please.  
23 THE REGISTRAR: That will be 1581.  
24  
25 EXHIBIT 1580: Commission document 18, black  
26 and white organizational chart  
27  
28 EXHIBIT 1581: CAN document Tab 4, coloured  
29 organizational chart  
30  
31 MR. MARTLAND: If I can move to number 19 from our list  
32 of documents, the date on this is June of 2011.  
33 It refers to programs.  
34 Q Again, Mr. Swerdfager or Mr. Thomson, can you  
35 comment on that document when you see it?  
36 MR. MARTLAND: And, I'm sorry, it's number 19 from our  
37 list of documents, Mr. Lunn.  
38 Q Does that document fairly accurately set out the  
39 structure vis-à-vis your programs?  
40 MR. SWERDFAGER: The two out of the -- the boxes on the  
41 left and the right are accurate. The one in the  
42 middle with respect to aquaculture management is  
43 missing two boxes below it.  
44 Q Okay.  
45 MR. SWERDFAGER: Director of Stewardship's there and  
46 Ford is correct. Director, Aquaculture Policy,  
47 Eric Gilbert is correct. Missing from the diagram



6  
PANEL NO. 58  
In chief by Mr. Martland

1 is something called the National Aquaculture  
2 Secretariat, and also missing from the diagram is  
3 a fourth director who is Jamie Smith, who is  
4 responsible for sustainability reporting and  
5 certification.

6 MR. MARTLAND: That's helpful. If I might ask this be  
7 marked as the next exhibit, please.

8 THE REGISTRAR: Exhibit 1582.

9  
10 EXHIBIT 1582: Commission document number 19,  
11 organizational chart  
12

13 MR. MARTLAND: Number 20 in our list is a program  
14 policy for the AMD org chart. It has an updated  
15 date of June 29, 2011.

16 Q Same question, please?

17 MR. SWERDFAGER: So that's an accurate one, then.  
18 You'll see the ones that I said were missing are  
19 on this one.

20 Q Oh, that's helpful.

21 MR. SWERDFAGER: This one is correct.

22 MR. MARTLAND: All right. We seem to be getting things  
23 on the second go.

24 I'll ask this be marked as the next exhibit,  
25 please.

26 THE REGISTRAR: Exhibit 1583.

27  
28 EXHIBIT 1583: Program Policy - AMD  
29 organizational chart  
30

31 MR. MARTLAND: Next, number 21 on our list of  
32 documents, also bearing a June 2011 date, "The  
33 Ecosystem and Fisheries Management" is the title  
34 of this org chart.

35 Q Mr. Swerdfager, can you comment on that?

36 MR. SWERDFAGER: Again, the majority of the boxes are  
37 correct. The Executive Director, Aquaculture  
38 Operations I note in the middle is correct, and I  
39 think that -- I'm not as familiar perhaps, as I  
40 should be, with the sub boxes in some of the areas  
41 I don't work in directly, but this looks very  
42 accurate.

43 MR. MARTLAND: Okay, that's helpful. I'll ask that be  
44 Exhibit 1584, please.

45 THE REGISTRAR: So marked.

46  
47 EXHIBIT 1584: Ecosystems and fisheries

1 management organizational chart

2

3 MR. MARTLAND: Next, I'll go to number 22 on our list  
4 of documents. This one seems to be in a draft  
5 format. It's called "Aquaculture Operations  
6 Proposed Organizational Chart". It doesn't have  
7 -- the date on the bottom left is June 3, 2011.  
8 There doesn't seem to be one that's finalized.

9 Q Can you comment on that, please?

10 MR. THOMSON: It's accurate and was provided at the  
11 onset of the Aquaculture Operations Directorate  
12 being set up, so it's accurate as far as I see.

13 MR. MARTLAND: I'll ask this be 1585, please.

14 THE REGISTRAR: So marked.

15

16 EXHIBIT 1585: Draft aquaculture operations  
17 proposed organizational chart

18

19 MR. MARTLAND:

20 Q Mr. Last, I'll turn to you, please, sir.

21 MR. MARTLAND: If we could have number 4, Mr. Lunn, on  
22 our list of documents, which is a question about  
23 the c.v. You'll see that momentarily.

24 Q Sir, that's your c.v.?

25 MR. LAST: Yes, it is.

26 MR. MARTLAND: If this could be Exhibit 1586, please?

27 THE REGISTRAR: So marked.

28

29 EXHIBIT 1586: *Curriculum vitae* of Gavin Last

30

31 MR. MARTLAND:

32 Q You hold an Aquaculture Technician Certificate  
33 from Capilano College from 1989, a B.A. Honours in  
34 English from the University of Regina from 1993,  
35 and an LLB from the University of Saskatchewan Law  
36 School from 1999, and I take it you began your  
37 career with the province in 2000, working as a  
38 legislative analyst for the Ministry of  
39 Agriculture, Food and Fisheries, and in 2003, you  
40 became the Manager of Finfish Aquaculture  
41 Development with what's been referred to as BCMAL,  
42 the Ministry of Agriculture and Lands; is that  
43 right?

44 MR. LAST: Yes.

45 Q In that role, you developed and implemented  
46 finfish aquaculture policy and programs, prepared  
47 briefing materials for senior officials and

1           liaised with the public, other levels of  
2           government, industry and interest groups, and in  
3           2006, I understand that you moved into the role of  
4           Assistant Director of MAL's Aquaculture Branch,  
5           and in that capacity, were responsible for program  
6           administration, issue management and developing  
7           and managing strategic relationships with the goal  
8           of revitalizing federal/provincial relationships.  
9           Is that right?

10       MR. LAST: Yes.

11       Q     In 2010, anticipating the move to federal  
12           regulation of aquaculture, your position was moved  
13           to the Assistant Director of the Policy and  
14           Industry Competitiveness Branch within the  
15           Ministry of Agriculture.

16       MR. LAST: Yes, that's correct.

17       Q     And your current role is similar to your previous  
18           position with a reduced aquaculture responsibility  
19           and, on the other hand, increased responsibilities  
20           for a broader number or scope of agricultural  
21           issues?

22       MR. LAST: Yes.

23       MR. MARTLAND: Thank you. Dr. Fleming, next I'll ask,  
24           please, that number 3 from our list of documents  
25           be placed on the screen. While that's brought up,  
26           I'll begin this long-winded narration of your  
27           background.

28       Q     I'll just confirm, first, Dr. Fleming, that's your  
29           c.v.?

30       DR. FLEMING: That's correct.

31       MR. MARTLAND: I'll ask this please become Exhibit  
32           1587, please.

33       THE REGISTRAR: So marked.

34  
35                   EXHIBIT 1587: *Curriculum vitae* of Dr. Ian  
36                   Fleming  
37

38       MR. MARTLAND:

39       Q     Dr. Fleming, you hold a Ph.D. in Ecology from the  
40           University of Toronto from 1991, having worked on  
41           hatchery and wild coho salmon in B.C. during your  
42           thesis work. From 1991 to 2001, you were a  
43           research scientist for the Norwegian Institute for  
44           Nature Research which is a National Institute for  
45           Applied Ecological Research, and in that capacity,  
46           the main focus of your research was farmed and  
47           wild salmon interactions; is that right?

1 DR. FLEMING: That's correct.

2 Q In 2001, you joined Oregon State University as an  
3 associate professor in marine fisheries ecology,  
4 and in 2004, you moved to where you are now  
5 situated in Memorial University in Newfoundland  
6 serving as the Director of the Ocean Sciences  
7 Centre until 2009, currently as professor in  
8 marine and freshwater ecology; is that right?

9 DR. FLEMING: That's correct.

10 Q Since leaving Norway in 2001, you've maintained  
11 scientific affiliation with the body I just  
12 described that you'd worked for, holding an  
13 adjunct status there and undertaking collaborative  
14 research. Indeed, I understand within the last  
15 month you spent some time in Norway?

16 DR. FLEMING: That's correct.

17 Q Your research and academic publications have  
18 involved work on Atlantic and Pacific salmon  
19 species, both wild and farmed, including various  
20 studies on fish behaviour, reproductive successes,  
21 life history, genetics and population biology and  
22 you've worked extensively on the management and  
23 conservation of wild fish populations and  
24 ecological interactions with marine finfish  
25 aquaculture; is that right?

26 DR. FLEMING: That's correct.

27 Q You hold presently a number of grants from  
28 Canadian and European funding agencies, among  
29 other things, to conduct work related to  
30 interactions between farmed and wild fish, on  
31 escape prevention and on the effect of captive  
32 rearing; is that right?

33 DR. FLEMING: That's correct.

34 Q I'd like to, having taken a bit of time to cover  
35 that as an introduction, really ask a fairly broad  
36 question which is the following: Can the  
37 Department of Fisheries do two different things at  
38 the same time, the two different things being, on  
39 the one hand, promoting the industry, promoting  
40 the aquaculture industry, and on the other hand,  
41 regulating that industry and protecting wild  
42 stocks and fish habitat?

43 Mr. Swerdfager, perhaps I can start with you,  
44 please.

45 MR. SWERDFAGER: The question you posed is one that I  
46 get asked a lot, and my short answer to it is yes.  
47 My longer answer is really in two parts, I guess I

1 would say. The first is on a sort of more  
2 theoretical or conceptual level, and the second is  
3 much more personal.

4 At the general or sort of more conceptual  
5 level, I think historically there's been a view  
6 that in the paradigm particularly that arose in  
7 the '60s and '70s of having the environment and  
8 the economy-type departments clash, essentially,  
9 and you load up both departments and sort of smash  
10 them together in a battle between economy and  
11 environment and see who kind of comes out ahead.  
12 That particular paradigm has been around obviously  
13 since that period, and it's certainly one that  
14 some people feel today holds some allure and some  
15 attraction, that dichotomy between environment and  
16 economy.

17 At the same time, I think there's been a  
18 growth in the sense of the paradigm around  
19 sustainability or sustainable development, and  
20 under that approach, I think that what we're  
21 looking at much more is trying to take very much a  
22 focus on environment, economy and social issues at  
23 the same time.

24 I'm quite aware that when I say that, there's  
25 often an internal or sometimes even an external  
26 overt rolling of the eyes. It sounds perhaps like  
27 a platitude to say that we're focused on  
28 sustainability, but I actually believe that it's  
29 true. I think that in order to make progress as a  
30 society, we need to be able to move on all three  
31 fronts at once. We need to be able to be actively  
32 engaged in protecting the environment, developing  
33 our economy and working at the social scale.

34 In my opinion, DFO is uniquely well placed to  
35 do that. I think that because of our science  
36 presence, we are uniquely well placed to  
37 understand the environment because we work closely  
38 with industry, with stakeholders, with  
39 communities, both here in British Columbia, but  
40 more generally, nationally and indeed  
41 internationally. I think we're uniquely well  
42 placed to understand the dynamics of industry,  
43 whether it's in this case aquaculture or more  
44 broadly fisheries and, as a result, can work in a  
45 manner that moves us towards those sustainability-  
46 premised solutions.

47 There is one important difference, though, to

1 DFO, as compared to all of the people that work in  
2 the sustainability field and on these issues, and  
3 that is because we are a regulatory agency, at  
4 some point if we do get ourselves to the point  
5 where there is a conflict or something that's  
6 unresolvable by negotiation, discussion, on that  
7 more sustainability-oriented front, we're uniquely  
8 well placed in that we can pass a regulation and  
9 enforce it.

10 So, at the end of the day, we can dictate the  
11 rules and we can make people comply, and if they  
12 choose not to, we will force them to, and only  
13 government - in this case DFO - can do that.

14 I mention as well that I would just touch  
15 very briefly on a more personal aspect to this.  
16 One of the things that regularly is pointed out to  
17 DFO - and certainly I have been on the receiving  
18 end a great deal - is this internal conflict. The  
19 men and women that I have worked with at DFO  
20 across the country and in this province, joined  
21 DFO because they believe intensely in the  
22 environment and the protection and conservation of  
23 the environment. This is something people chose  
24 to do. So when people tell us that we are being  
25 unduly biased toward industry, that we can play on  
26 both sides of the fence so to speak, that we are  
27 perhaps not taking environment protection  
28 seriously, I have to say that from a personal and  
29 professional -- it's deeply offensive.

30 When I look at it from my own personal  
31 perspective, I come out of, as you read a few  
32 minutes ago, an environment program. This is my  
33 chosen field. Environmental-ism, if you will, is  
34 what I do. It's a big part of who I am. So for  
35 people to suggest to us that we are not paying  
36 sufficient attention to environment and that we're  
37 too focused on industry, is a suggestion that  
38 certainly I find very, very difficult to accept.  
39 The people that I work with I think would feel  
40 very much the same.

41 I can say personally I have never felt any  
42 kind of conflict between the two roles. I have  
43 never felt that I've been asked to err on the side  
44 of economic development or anything like that.  
45 Environment is always first and foremost for us,  
46 and so it's a long-winded way of saying I am very,  
47 very confident that not only can DFO address the

1 dual role that you've described, and in fact I  
2 would describe it in a more complex way, but not  
3 only can DFO do that, I think we must, and I think  
4 we are best suited to do so.

5 Q Mr. Last, from the province's point of view, is  
6 there or was there, before the federal assumption  
7 of responsibility, was there a similar kind of a  
8 tension or conflict and do you have views on this  
9 question of a conflict?

10 MR. LAST: Yes, there was, in, I imagine, in any  
11 resource development area within government that  
12 required attention to all of these complexities  
13 that Mr. Swerdfager describes, as they're --  
14 similarly in the province, there were similar  
15 issues.

16 What we tried to -- or what we did was create  
17 some separation between the functions of resource  
18 development and enforcement, to keep them  
19 separate, and as much as possible, avoid any kind  
20 of a conflict. In my experience, similar to Mr.  
21 Swerdfager's, that didn't occur. It made sense to  
22 have the people who were the experts in the area  
23 involved in reviewing on either -- in both  
24 circumstances.

25 Q Dr. Fleming, your experience includes having spent  
26 time and worked in Norway, but also doing work and  
27 having a sense of the picture internationally in  
28 terms of the management of aquaculture. From your  
29 point of view, do you identify a conflict, and do  
30 you have views or thoughts on how this should be  
31 addressed in Canada?

32 DR. FLEMING: Firstly, I probably can't speak to the  
33 true conflict inside DFO if one exists. It's only  
34 -- I think what I can address is really the public  
35 perception of that.

36 I can speak about generally my experience in  
37 Norway where the organization is different. The  
38 primary role of the regulation of aquaculture  
39 falls under the Ministry of Fisheries and Coastal  
40 Affairs. But in that, the Directorate of  
41 Fisheries is the main leading body, but then the  
42 (foreign word), that's the Ministry of Health and  
43 Food Safety, has a role. The Directorate of  
44 Nature Management has a role which is concerned  
45 with environment issues, and then also the  
46 Directorate for Coastal Administration, so all  
47 four have a role.

1           The other thing that's somewhat unique in  
2 Norway, which is kind of surprising for a  
3 socialist country, is that they privatized a  
4 number of their research wings, so the wing that I  
5 worked for was formerly part of the Ministry of  
6 the Environment, but was privatized with the idea  
7 of separating management from research, or  
8 research from management. Again, whether it works  
9 or it doesn't, there is the public perception that  
10 there's a degree of independence there that's  
11 going on and I think that's valuable.

12           I think the other thing that's valuable is  
13 there tends to - and it could be valuable, and as  
14 Mr. Swerdfager mentioned, it could also lead to  
15 conflict - but there is a -- the discussion  
16 becomes more public. It becomes more open, and  
17 the information is more available for the public  
18 to make reasoned or unreasoned decisions about  
19 that information.

20 Q       I'm going to move to a different topic. Thank you  
21 for those answers, panel members.

22 MR. MARTLAND: I'd like to bring up number 10, Mr.  
23 Lunn, please, on our list of documents.

24 Q       We'll see on screen in a moment the "British  
25 Columbia Aquaculture Regulatory Program, Licensing  
26 Approach." Mr. Swerdfager, or Mr. Thomson,  
27 perhaps you can assist me in just understanding.  
28 The date there is June 17, 2011. This is a  
29 presentation to the Departmental Management Policy  
30 Committee.

31 MR. THOMSON: Yes, it is.

32 Q       And if we have a look on the second page - and  
33 I'll use this really as the shorthand - perhaps  
34 before reading that page, I'll simply really give  
35 you the question which I'm about to get to. The  
36 question, at a broad level, is to ask for an  
37 update and an understanding of where things stand  
38 in terms of the development of regulations and the  
39 development of policy by DFO for aquaculture.

40           So with that as the question, if we have a  
41 look here, you'll see the description given to  
42 this Policy Committee at the start is the  
43 department having achieved major progress in  
44 establishing the aquaculture regulatory program,  
45 makes reference to the regulations being  
46 published. It makes reference to Canada/B.C.  
47 agreement on aquaculture management, and to 701



1 licences having been issued, staff having been  
2 hired, and offices established.

3 We then see that, on the other hand, there's  
4 part of the foundation still being finalized.  
5 There's reference to a suite of policies,  
6 approaches and protocols, to licence fees, what  
7 are called IMAPs, Integrated Management of  
8 Aquaculture Plans, the Aquaculture Regulatory  
9 Information Management System, ARIMS, also the  
10 First Nations engagement strategy and management  
11 of First Nations litigation related to new licence  
12 issuance.

13 Then we see at the bottom, reference at the  
14 six-month mark having -- I should pause just to  
15 say that the context for all of this - and I won't  
16 be covering this in a narrative form today - but  
17 the Policy and Practice Report that has been put  
18 before the Commissioner sets out the background,  
19 what's often referred to as the **Morton** decision or  
20 the **Hinkson** decision leading to the federal  
21 assumption of responsibility in December 2010.

22 So in June of 2011, six months into program  
23 delivery, there's reference to having some  
24 experience in receiving licence-holder reports,  
25 commencing audits, inspections and compliance and  
26 management activities, receiving applications for  
27 amendments to licences as well as new licences.  
28 So I've really relied on this document to set some  
29 of the framework.

30 Could you give us, please, an update in terms  
31 of the policy and regulatory work that's now  
32 underway, where things stand, please?

33 MR. THOMSON: Certainly. Currently, from a policy  
34 perspective, the first suite of policies has gone  
35 through departmental approval and review process  
36 and we'll be posting those to our website in the  
37 near future, once translated. That includes  
38 sustainable aquaculture framework, the licensing  
39 approach, and public reporting approach.

40 We're working through review of the second  
41 suite of policies which are largely environmental  
42 management policies, and then we'll -- at the  
43 national level, we'll begin to develop the third  
44 suite of policies sometime over the course of this  
45 fiscal year.

46 In terms of where we are in delivery of the  
47 program, we've got the beginnings of a draft for

1 an integrated management of aquaculture plan, for  
2 finfish aquaculture, largely put together, still  
3 missing some substantial bits, but we're looking  
4 to go out with that draft in the fall of this year  
5 for consultation that'll provide advice into --  
6 amendments to the draft and, of course, advice  
7 into ultimately making licensing decisions  
8 forthcoming.

9 We have an interim aquaculture regulatory  
10 information management system called the interim  
11 licensing system that is tracking some of our  
12 licensing data, data systems, but we're still, I  
13 would say, working towards a much more integrated  
14 management system. There's an enormous amount of  
15 information coming into the Department that needs  
16 to be managed and tracked and we're working toward  
17 that. We're hoping that that's completed by the  
18 end of the this fiscal, which would be March 2012.

19 We have recently, from my office, sent  
20 letters out to First Nations, environmental  
21 organizations, provincial government and licence  
22 holders describing these steps and describing our  
23 planned engagement strategy going forward in the  
24 fall, so that we are trying to manage our  
25 communications with our user groups and with the  
26 First Nations.

27 In terms of the actual delivery of the  
28 program, as it says on the bottom we have staff on  
29 the water who are conducting audits, inspections,  
30 following up on complaints and investigations and  
31 starting to consult with various parties on  
32 reviews of the conditions of licences that were  
33 first put out last year.

34 MR. MARTLAND: Mr. Registrar, I don't believe I paused  
35 to mark this as an exhibit. I should do that. So  
36 perhaps this might be, I think, Exhibit 1588?

37 THE REGISTRAR: That's correct, 1588.

38  
39 EXHIBIT 1588: Document titled, "British  
40 Columbia Aquaculture Regulatory Program,  
41 Licensing Approach."  
42

43 MR. MARTLAND: I'm finally learning to give you the  
44 numbers and try and go that route if I can do so.

45 Q With respect to the question of siting -- and  
46 perhaps I can do this by going to number 23 on our  
47 list of documents.

1 MR. MARTLAND: Mr. Lunn, that is something different  
2 than what I have at Tab 23 of our list of  
3 documents.

4 MR. LUNN: Just a moment, please, that's my error.

5 MR. MARTLAND: That's fine. It's hard to see on the  
6 screen, but there's a "Draft - Confidential" stamp  
7 or watermark on these sheets.

8 Q This is set out, seems to be, in draft format, but  
9 I take it, Mr. Thomson, this is the proposed or  
10 draft applicant form; is that right?

11 MR. THOMSON: Yes. The Department of Fisheries and  
12 Oceans and the provincial agency responsible for  
13 land tenuring forest lands, natural resources  
14 operations, have been working together in a series  
15 of meetings to develop what we term a harmonized  
16 application form to support the information  
17 requirements of the two agencies and use one  
18 format.

19 Q All right.

20 MR. THOMSON: So it's not quite finalized. There's a  
21 meeting at the end of this week, actually, to  
22 continue to work on it.

23 MR. MARTLAND: Okay. If this might please be Exhibit  
24 1589.

25 THE REGISTRAR: So marked.

26  
27 EXHBIIT 1589: Draft Finfish Aquaculture  
28 Application Form  
29

30 MR. MARTLAND:

31 Q If we turn to page 5 of this document -- and I'll  
32 just pause to observe the Policy and Practice  
33 Report on page 45 gives the same thing, which is  
34 the siting criteria that are employed with respect  
35 to the decision about situating or siting a new  
36 aquaculture facility.

37 Mr. Last, I'll ask you as well as Mr. Thomson  
38 and Mr. Swerdfager to please join in if you have  
39 further comments, how were those criteria  
40 developed?

41 MR. THOMSON: Well, I'll take the first crack at this.  
42 The criteria were largely the result of the  
43 recommendations came out of the Provincial  
44 Environmental Assessment office, Salmon  
45 Aquaculture Review, and at that point brought  
46 forward by the province, but obviously in  
47 consultation with the Department of Fisheries and

1 Oceans at the time. We've adopted these siting  
2 criteria in our -- and have been in use for a  
3 considerable period of time, obviously, and we're  
4 continuing to use them.

5 Q Mr. Last (indiscernible - overlapping voices).

6 MR. LAST: They're mostly, or they are direct from the  
7 Salmon Aquaculture Review recommendations.

8 Q In terms of the sort of life, the history, I  
9 suppose, of this set of criteria, do they predate  
10 the **Morton** decision? Do they overlap both the  
11 provincial period of jurisdiction and the present  
12 federal regime, so to speak?

13 MR. THOMSON: Yes, and they certainly predate the  
14 **Morton** decision. They were in place sometime  
15 after 1997.

16 Q All right. And the Salmon Aquaculture Review, all  
17 this again is some context that's set out in the  
18 PPR. If you can help me on the dates, is that a  
19 1997 date on the Salmon Aquaculture Review?

20 MR. LAST: Yes, the final report was 1997.

21 Q Mr. Last, that's a process indeed that you were  
22 quite involved in, not necessarily the report, but  
23 the work that came out of the SAR?

24 MR. LAST: Yes.

25 Q With respect to these criteria, we'll see included  
26 amongst these, the first one:

27  
28 At least 1 km in all directions from a First  
29 Nations reserve, unless consent is  
30 received...

31  
32 And the letter is appended. Secondly:

33  
34 At least 1 km from the mouth of a salmonid-  
35 bearing stream determined as significant.

36  
37 You won't be surprised to hear me say that some  
38 people have criticized these as not being  
39 sufficiently stringent.

40 Dr. Fleming, I wonder if I could ask if you  
41 have any comments on the criteria that are used  
42 here, and perhaps stepping back as to siting  
43 decisions in other parts of the world and whether  
44 there may be lessons that you think could apply to  
45 Canada.

46 DR. FLEMING: Okay. Of course, I can probably only  
47 speak to the second one that you mentioned, one

1 kilometre from the mouth of a salmon-bearing  
2 stream. Now, I haven't seen the reasoning behind  
3 this, and nor was any reasoning given here. It  
4 strikes me as - knowing something about it having  
5 studied salmon for a long time - as somewhat  
6 arbitrary given the migration paths of the fish,  
7 the interactions, the dispersal of diseases and  
8 pests, parasites, and the potential for escape  
9 interactions with other streams. I guess -- and  
10 it strikes me that the word "significant" is a  
11 rather vague term.

12 So overall, that particular criteria strikes  
13 me as being rather vague and unspecific, and the  
14 scientific basis for it is not clear to me.

15 Q Mr. Thomson or Mr. Last, would you care to respond  
16 to some of those concerns?

17 MR. THOMSON: I'll take it. I think that what's clear  
18 here is that this is a siting criteria that they  
19 use in the initial screening. It does not  
20 indicate that this is the only criteria being used  
21 to apply to the decision as to whether or not a  
22 licence will be granted or not. That'll go  
23 through an assessment by biologists -- I mean, the  
24 process has changed since the **Morton** decision, but  
25 certainly prior to the **Morton** decision, we go  
26 through an assessment by Habitat biologists and an  
27 assessment, quite often, the **Canadian**  
28 **Environmental Assessment Act**. So it's not that  
29 the screening criteria are the only things that  
30 are being applied in order to determine if the  
31 site can be licensed or not.

32 But, having said that, certainly it would be  
33 an area that the Department would seek to review  
34 those siting criteria for additional input given  
35 that they are from 1997, now that we have taken  
36 over the primary management control of the  
37 aquaculture industry.

38 Q Mr. Last, anything to add on that?

39 MR. LAST: When I became involved in government with  
40 aquaculture, it was at a time following the Salmon  
41 Aquaculture Review when we were looking at the  
42 recommendations and how best to harmonize the  
43 provincial and federal requirements as an  
44 overlapping regulatory, as we saw it at the time,  
45 matter.

46 The environmental concerns specifically  
47 related to fish habitat were issues that we

1 discussed and worked together on. If I remember  
2 correctly, we looked at what was being done in  
3 other jurisdictions and, at that time, didn't have  
4 a lot of guidance that way, and then were left to  
5 really look for a "made-in-B.C." solution. It was  
6 through discussion, mostly between the two  
7 governments, that many of these were developed.

8 Q Dr. Fleming, you had something to add, sir?

9 DR. FLEMING: I did not answer the second part of your  
10 question, whether there's experience from  
11 elsewhere. The experience I have is from Norway,  
12 also was involved in Iceland's decision about  
13 zoning and the location of farms and  
14 identification of national rivers and national  
15 fjords with particular information, and decisions  
16 made on migratory paths, et cetera, of the fish  
17 and interactions with major important salmon-  
18 bearing streams led to the zoning of particular  
19 areas within each of those countries as being  
20 significant and worthy of protection, and also  
21 continued research investigating the viability and  
22 suitability of these different zones, how  
23 effective they were at their objectives of  
24 protecting these particular rivers or fjords from  
25 other effects.

26 Q Is that something that is sometimes referred to as  
27 being a "coastal zone approach"? Or does that  
28 describe something different?

29 DR. FLEMING: I think it's a component probably of a  
30 coastal zone approach. It's one specific  
31 identified criteria of a species that's of  
32 interest. In this case, it's Atlantic salmon, and  
33 that was designed to protect that particular  
34 species.

35 Q And what are the other elements or components of a  
36 coastal zone approach?

37 DR. FLEMING: Well, it would be other -- I mean, it  
38 would involve all uses and the sustainability of  
39 the marine environment protection, of the  
40 environment and its processes and major  
41 contributions to sustainability.

42 Q I wonder, since you have the mike just now, if I  
43 can follow up, and appreciating, just to narrate  
44 the question, this is a question that goes beyond  
45 purely a siting and licensing question, but unlike  
46 other panel members, we don't have you returning  
47 later this week.

1           So since you are here, and I wonder if you  
2           could offer any views or perspectives you have  
3           from your work with respect to topics that you've  
4           worked on, such as monitoring for disease, on  
5           escapes, on sea lice management. Do you have  
6           comments on those sorts of topics and do you see  
7           particular lessons for the B.C. aquaculture  
8           regime?

9       DR. FLEMING: I should clarify most of my work is with  
10       escapes, less so with disease and associated  
11       things. The lessons I think - one of them as we  
12       talked about - is a zoning protection of salmon-  
13       bearing rives as well as migration corridors is  
14       probably quite important. Also, I think, the  
15       recognition that the governments have placed on  
16       the potential dangers posed by aquaculture, and  
17       that they have recognized the risk, and associated  
18       with that risk, they have gone forward and tried  
19       to mitigate those risks as best they can.  
20       Obviously, there's trade-offs. So those are  
21       things.

22       Also I think there is - and again mostly  
23       speaking from the Norwegian perspective - access  
24       to data and information is available. And a good  
25       idea this is -- a lot of the criteria that have  
26       been associated with the development of net pens.  
27       They have a Norwegian standard for net pens and  
28       the moorings for net pens. In fact, I think this  
29       has led to a dramatic decrease in escapes from  
30       starting in 2007. Prior to 2007, a number of  
31       escapes had been nearly a million. After 2007, it  
32       dropped down to about a quarter of a million, and  
33       this was related to the -- appears to be related  
34       to imposition of strong standards for the  
35       development of nets, the standards for replacement  
36       of nets and the locations in the fjords.

37       A lot of that came about by accessed  
38       information about what was going on, when major  
39       escapes occurred, and the opportunity for  
40       independent investigations of the causes of those  
41       escapes so that technical standards could be  
42       developed to deal with those escapes. So there  
43       was sort of a very proactive positive approach to  
44       that, and openness, and I think it benefited all  
45       having that approach.

46       Q     Mr. Swerdfager, you had something to add, and then  
47       I'll move on to my next topic. Go ahead, though.

1 MR. SWERDFAGER: Thanks. One final bit of context.  
2 When you look at these criteria taken as a whole,  
3 obviously not all of them would be applicable in  
4 every part of the world or the country, but I can  
5 tell you, because of the nature of the job that I  
6 have, I'm quite actively involved - or rather was  
7 prior to changing jobs - in the management of  
8 aquaculture in other parts of the country.

9 These criteria are as or more stringent than  
10 those that are in place for the management of  
11 aquaculture in Nova Scotia, New Brunswick and  
12 Newfoundland. I have also spent a considerable  
13 amount of time working with colleagues in  
14 Scotland, in Ireland and in Chile, and a little  
15 bit in Wales, and I can tell you that, again,  
16 these standards are as or more stringent than the  
17 same type -- they don't use the exact same format  
18 so I'm not sort of comparing directly apples to  
19 apples, but the standards and the things that sit  
20 underneath them, so to speak, in this particular  
21 set of criteria, are substantially -- or at least  
22 as stringent, in many cases substantially more so,  
23 than the other jurisdictions I've mentioned.

24 Q If I could pick up on something that Dr. Fleming  
25 just referred to, he made a comment about public  
26 access to information. We've heard a little bit  
27 about that indeed in the last week or so in this  
28 hearing vis-à-vis data that's been acquired and  
29 assembled by both the industry and also by the  
30 provincial government during its time overseeing  
31 aquaculture.

32 MR. MARTLAND: If I could indeed go to number 12,  
33 please, on our list of documents to frame this  
34 discussion.

35 Q This bears a recent enough date of July 10, 2011.  
36 It is in draft form. Mr. Swerdfager or Mr.  
37 Thomson -- Mr. Swerdfager, I appreciate you've  
38 moved over to C&P and so you're busy in a new  
39 position, although no doubt also knowledgeable  
40 about what's going on at AMD. This is the public  
41 reporting draft approach, I suppose, or a document  
42 describing what is proposed for public reporting;  
43 is that correct?

44 MR. SWERDFAGER: That's correct, yes.

45 MR. MARTLAND: If this might please become, I thin,  
46 1590 is the number.

47 THE REGISTRAR: That's correct, 1590.



1 EXHIBIT 1590: British Columbia Aquaculture  
2 Regulatory Regime Public Reporting of  
3 Regulatory Information Under the British  
4 Columbia Aquaculture Regulatory Regime  
5

6 MR. MARTLAND:

7 Q With respect to this question, indeed last night  
8 Mr. Taylor sent around an email that gave us some  
9 website information, and I don't propose to take  
10 you to that, but I take it there's been indeed, as  
11 of last week, recent changes in terms of the  
12 provision of information to members of the public  
13 about fish farms, about sea lice, about what's  
14 going on at fish farms in this province.

15 I wonder if you could offer us your comments  
16 on the Department's approach to public access to  
17 information, and if you're in a position to make a  
18 commitment with respect to continuing to make  
19 information public.

20 MR. SWERDFAGER: Thank you. I think that just by way  
21 of context in answering that question, I think  
22 that one of the principles that guided the  
23 development of the Pacific Aquaculture Regulation  
24 was to substantially enhance the transparency of  
25 the aquaculture industry in British Columbia. So  
26 the way the regulation is set up and conditions of  
27 licence that flow from it has a very strong  
28 emphasis on the provision of information to the  
29 Department by the industry operators.

30 I think it's important to emphasize that  
31 these are terms and conditions that we are  
32 requiring. We are not going to have a discussion  
33 with farmers as to what we would like to get from  
34 them and how we would like to get it from them and  
35 so on. The discussion is very much one of "our  
36 modem is stuck on send". We're just telling  
37 people here's what you shall produce, and within  
38 reason, here's how you shall produce it.  
39 Obviously we'll have some discussion in terms of  
40 modalities around that, but we are compelling the  
41 production of certain information from farmers in  
42 a very, very detailed and rigorous way.

43 We intend to share the vast majority of that  
44 information. This policy document that is in  
45 draft sets out how we intend to do so. There are  
46 some nuances still to be made to it. There are  
47 some corrections and updates to it. But generally

1 speaking, the thrust very clearly here is to take  
2 the information that we glean from finfish,  
3 shellfish and freshwater aquaculture operations in  
4 this province, to make it publicly available.

5 We set about building an information  
6 management system to allow us to do that  
7 effectively. We had made comments to the effect  
8 in public that we had hoped to have that system up  
9 and running in April or May. We have certainly  
10 been a little bit late on that, but much of that  
11 information is now up on the website. It went up  
12 last week. It will continue.

13 The only thing is that we are proposing - or  
14 intending, rather - to withhold are things that  
15 are very clearly of a private nature, individual's  
16 names, addresses, phone numbers. That stuff is  
17 often contained, for example, in licences, and we  
18 will not be disclosing that sort of information.  
19 But all the information that we get from the  
20 operation of the industry will be shared publicly,  
21 regularly. I can't tell you today it will be  
22 published on the second Wednesday of every month  
23 or something like that, we're not down to that  
24 stage, but it will be very regular and very easily  
25 accessible.

26 Q Well, timing is everything, and it's interesting  
27 timing to have that indeed available before your  
28 testimony, and as we ask you questions around  
29 public reporting.

30 With respect to a different topic, I have a  
31 question, really, at a broad level about  
32 stakeholder involvement, consultation, and co-  
33 management in particular with First Nations.  
34 We've heard the complaint made that the DFO has  
35 not engaged in adequate consultation with First  
36 Nations, is not truly interested in co-management.

37 Mr. Thomson, I know this is an area that  
38 you've worked in. Part of the context for some of  
39 those concerns - and perhaps you can help to  
40 explain the process here - is in terms of the  
41 process for having grandfathered the existing  
42 licences for aquaculture facilities - and I can't  
43 remember the date in December 2010 - but I take it  
44 effectively existing licences were grandfathered.  
45 I would be interested to know about what the  
46 process was and who made decisions about the  
47 manner in which existing licences were

1           grandfathered by DFO.

2           So there's a broad question and a narrow  
3           question tucked into one big question.

4       MR. THOMSON: Thank you. In terms of the broad  
5           question of how we approached consultations going  
6           forward into making the licence decisions for  
7           December 19th, 2010, we began with consultations  
8           very early on in the spring of 2009. We had two  
9           sessions with First Nations groups, one in  
10          Campbell River, one in Vancouver, to discuss the  
11          impacts of the **Morton** case.

12          As we moved forward in terms of developing  
13          the regulation, we went through an amended AAROM  
14          -- sorry, Aboriginal -- sorry.

15       Q     I know it's in the PPR, so we can connect the dots  
16          later.

17       MR. THOMSON: Yeah. It's an aboriginal program for --  
18          that the Department of Fisheries and Oceans has  
19          for supporting aboriginal collectives or groups in  
20          accessing ocean and resource management funds. So  
21          we went through an AAROM agreement amendment with  
22          the First Nations Fisheries Council and the  
23          Aboriginal Aquaculture Association to host  
24          meetings for us to gain input into the drafting of  
25          the regulations. So there's two meetings hosted  
26          by the Aboriginal Aquaculture Association, and  
27          nine meetings, I believe it was, hosted by the  
28          First Nations Fisheries Council in which I  
29          attended and gathered what I considered to be  
30          extraordinarily valuable input into not just the  
31          drafting of the regulation, but also other aspects  
32          of First Nations' views on the management of  
33          aquaculture.

34          Then as we moved forward through the drafting  
35          of the regulations and starting preparing  
36          ourselves for determining -- making licence  
37          decisions in December of 2010, we began to send  
38          letters out to individual First Nations describing  
39          what our baseline conditions in licences were  
40          planning to be, seeking their comment. That was  
41          in the fall of 2011. And then as we --

42       Q     Fall of 2010, I'm sorry?

43       MR. THOMSON: Sorry, fall of 2010. Thanks for the  
44          correction. And then as we got closer to the  
45          December -- so also in the fall of 2010, we had  
46          individual bilateral meetings with several First  
47          Nations who had requested it, as we could arrange

1           them, and then on about December 19th, 2010, we  
2           took those considerations to mind and made  
3           decisions as to the licences issued to the  
4           finfish, shellfish and freshwater aquaculture  
5           operations that were currently operating.

6           Two of the decisions we took in making that  
7           licensing approach were, one, we chose not to  
8           amend the production amounts or species being  
9           licensed at any of the aquaculture facilities, so  
10          we would not change those amounts in order to  
11          keep, if you will, the status quo in place,  
12          recognizing we had a very limited amount of time  
13          to consult with First Nations and other parties on  
14          any potential changes.

15          The other choices we made is to have a very  
16          short -- or have a short or limited period of  
17          duration of licence of one year for finfish, and  
18          up to 18 months for shellfish licences and  
19          freshwater licences in order, again, to provide  
20          opportunities to getting further insight and  
21          consult with First Nations as to future licensing  
22          decisions.

23          Since that time, we've begun consultations on  
24          the development of the Integrated Management of  
25          Aquaculture Plans. In January again we entered  
26          into agreements with the First Nations Fisheries  
27          Council to produce a report for us as a result of  
28          meetings they held throughout British Columbia as  
29          to input into the design of the Integrated  
30          Management Aquaculture Plans and we're using that  
31          report as input as we start to design that first  
32          draft of Integrated Management Aquaculture Plans.

33          As I mentioned previously, we've now informed  
34          all First Nations by letter from my office as to  
35          our plans going forward for this fall. So, you  
36          know, I think the sort of kernel of that is what  
37          we're really trying to do is find as many  
38          opportunities as possible to communicate with  
39          First Nations and with other stakeholders as best  
40          as possible within the resource and time  
41          constraints that we all face.

42       MR. MARTLAND: And in relation to your point about time  
43                   constraints, I'm going to cede the microphone. I  
44                   have counsel for Canada next at 30 minutes.

45       MR. TAYLOR: Mitchell Taylor, and with me is Jonah  
46                   Spiegelman. We're counsel for the participant  
47                   Government of Canada.

1 CROSS-EXAMINATION BY MR. TAYLOR:  
2

3 Q My questions are going to be mainly for Mr.  
4 Swerdfager and Mr. Thomson. Time is short, as Mr.  
5 Martland has noted, 30 minutes I have. We can't  
6 cover everything that I think should be, but with  
7 that, we'll start in.

8 I want to begin by comparing the relative  
9 amount of involvement of the province and the  
10 federal government in the old regime versus the  
11 new regime, and then making a point about both  
12 being involved, if that is your evidence.

13 Mr. Last, and Mr. Thomson and Mr. Swerdfager,  
14 as I understand it, under the old regime - and I  
15 may have the percentages wrong but you'll get the  
16 idea I think - under the old regime, the province  
17 had 80 percent or more of the role in  
18 responsibility for aquaculture and the federal  
19 government 20 or so. Under the new regime, it's  
20 the reverse. The province has only a little bit  
21 and the federal government, the most. Is that a  
22 fair characterization, gentlemen?

23 MR. LAST: I'd say the reversal characterization is  
24 very accurate. The number, again, as you say, are  
25 subjective.

26 Q Yes, I don't mean to fix on those numbers. Just  
27 to understand your question, Mr. Last, you said  
28 the reversal situation is correct?

29 MR. LAST: The burden has shifted more towards the  
30 federal government.

31 Q Right. All right. So before it was mostly the  
32 province and now it's mostly the federal  
33 government you're saying.

34 MR. LAST: Yes.

35 MR. THOMSON: Sorry, Mitch, I'd just like to clarify  
36 one point in there. While the percentages are one  
37 indicator, both agencies always held a veto, in  
38 that a site could not go ahead without both  
39 agencies saying yes to it.

40 Q Under the old regime --

41 MR. THOMSON: Or new, yes.

42 Q -- or the new regime; is that correct?

43 MR. THOMSON: Yes.

44 Q The province still holds sway over the siting, I  
45 take it, under the new regime; is that right?

46 MR. LAST: Yes, that's correct. And over the siting,  
47 I'd be more specific in saying in granting the

1 land tenure.

2 Q All right. And the point being that, at all  
3 times, we've had both governments involved,  
4 whether more or less; is that right? Now, this --

5 MR. LAST: Yes.

6 Q -- is a B.C. only approach, isn't it, by reason of  
7 the **Morton** decision. It's not applied elsewhere  
8 in Canada, is that right, Mr. Thomson?

9 MR. THOMSON: Yes.

10 Q I'd like to turn, if I may, to Tab 32 of Canada's  
11 book of documents. Mr. Swerdfager and/or Mr.  
12 Thomson, do you recognize that document?

13 MR. THOMSON: Yes.

14 Q Can you briefly say what that is and what's  
15 covered by it and what's its purpose?

16 MR. THOMSON: It was a briefing prepared for a senior  
17 policy committee, the Economic Prosperity  
18 Strategic Outcomes Committee, to describe both the  
19 current position of the development of the B.C.  
20 Aquaculture Regulatory Program and also to  
21 describe the first groups and policies in what's  
22 called policy suite 1.

23 MR. TAYLOR: All right, thank you. May this be marked  
24 as the next exhibit, please?

25 THE REGISTRAR: Exhibit 1591.

26  
27 EXHIBIT 1591: British Columbia Aquaculture  
28 Regulatory Program Policy Discussion, Police  
29 Suite 1, Economic Prosperity Strategic  
30 Outcomes Committee  
31

32 MR. TAYLOR: If we could turn now to Tab 33 of Canada's  
33 document book, which is now Exhibit 1588, if I  
34 have the number right. This is a deck dated June  
35 the 17th of 2011.

36 Q Again, Mr. Swerdfager or Mr. Thomson, you've  
37 indicated to Mr. Martland what this is, which was  
38 a deck to provide a briefing. I'd like to go, if  
39 I may -- well, firstly, let's go to slide 3 if we  
40 could. You'll see at the top there the "Purpose  
41 of Today's Presentation." I take it that that  
42 first bullet - well, all the bullets - but in  
43 particular the first bullet is an outline of the  
44 purpose of this deck, is it?

45 MR. THOMSON: Yes, it is.

46 Q And if we could turn now to slide 4, please, this  
47 is entitled, "Overall Management Approach". I'll

1 let you choose, Mr. Swerdfager or Mr. Thomson, who  
2 to go first, but I'd like one of you to describe  
3 what you see here and explain briefly what it's  
4 saying.

5 MR. SWERDFAGER: I tend, by nature, to on occasion to  
6 be somewhat of a visual thinker, and so I asked  
7 that we put together a bit of a graphic that would  
8 allow us to explain what it is that we're doing in  
9 British Columbia in, what I think anyway, is a  
10 fairly simple slide.

11 So essentially when you look at the  
12 comprehensive management regime that we've built  
13 with respect to aquaculture in British Columbia,  
14 we are working on a set of authorities which are  
15 already in place for the most part, and I think  
16 it's important to emphasize that even though we  
17 talk, of course, most specifically about the  
18 Pacific Aquaculture Regulations as the graphic  
19 here indicates, they flow from the **Fisheries Act**.  
20 They should be viewed as a part of the **Fisheries**  
21 **Act** regulatory and legislative regime overall,  
22 which includes a number of factors, not just the  
23 content specifically of the Pacific Aquaculture  
24 Regulations. But on the left, it sets out the  
25 authorities from which the program flows.

26 As Andy mentioned earlier, we're in the  
27 process now of developing a series of guidance  
28 documents and they are at various stages in their  
29 production, but essentially those will guide the  
30 operation of the program that Andy leads, and will  
31 provide specific direction in terms of how we go  
32 about exercising our authorities.

33 The third area of course touches on the way  
34 we will ensure that our authorities, and to a  
35 considerable degree, the guidance documents are  
36 complied with. So it sets out the enforcement  
37 tools that we intend to use, how we will move  
38 forward in ensuring - if you were to expand upon  
39 that column, so to speak - how we will ensure  
40 compliance with the regime that we're talking  
41 about.

42 So taken together, what this is, is sort of a  
43 graphic interpretation of the whole ball of wax,  
44 so to speak, in terms of our management regime.

45 Q All right, thank you. And you mentioned earlier  
46 one of the principles that is underpinning the new  
47 federal regime in British Columbia for aquaculture

1 is transparency. Are there other particularly  
2 important principles that underpin the regulatory  
3 regime that we now have?

4 MR. SWERDFAGER: I think that there are a number, and I  
5 think that certainly protection of the environment  
6 is at the top of the list. It's certainly  
7 something that flows, again, from the **Fisheries**  
8 **Act**. To go back to one of the responses I made to  
9 Mr. Martland earlier on, protection and  
10 conservation of the environment is written right  
11 into the **Fisheries Act**. It's not a discretionary  
12 thing in any way, shape or form.

13 So certainly we designed the regulation to  
14 ensure that that's addressed. We designed the  
15 regulation to ensure that its administration could  
16 be as efficient and cost-effective as possible.  
17 As a result of this new regulation, the amount of  
18 overhead of a regulatory nature that's placed on  
19 the industry in British Columbia has dropped  
20 substantially. Where you used to have a  
21 requirement for four provincial permits or  
22 approvals, you now have one.

23 At the federal scale, we have integrated the  
24 majority of our permits and requirements into one,  
25 so from a regulatory burden perspective, we're  
26 substantially more effective.

27 An additional principle we wished to strive  
28 for is to be as comprehensive as possible. We  
29 believe that we've structured the regulation in a  
30 manner that allows us to address all aspects of  
31 aquaculture management, not just finfish, but  
32 shellfish, freshwater and anything else that we  
33 think could come to us.

34 We also have designed the regulation to  
35 ensure that it is enforceable, which perhaps is a  
36 statement of the obvious, but again, is something  
37 we spent a fair bit of time on.

38 Then, as you've already mentioned,  
39 transparency is a key factor in this regulation.  
40 We have looked at the regulatory regimes in place  
41 in other countries, in other jurisdictions within  
42 Canada, and we have worked very hard to take the  
43 best of those that we could and to make sure that  
44 this regulation puts in place a management regime  
45 that is as transparent as possible.

46 Q All right. Thank you. Slide 5 appears to deal  
47 with some of the independent policies and their



1 framework of independent policies. I think we can  
2 leave that. If we move to slide 6, there is a  
3 sentence at the top of the page where it says:

4  
5 ...the program has been designed so that  
6 habitat impacts are managed through the  
7 aquaculture licence with no separate  
8 **Fisheries Act** section 35 authorizations.  
9

10 Could you, Mr. Swerdfager, just briefly explain  
11 what's meant by that, how it operates and what's  
12 the rationale for that in a sentence or two?

13 MR. SWERDFAGER: Yeah, thank you. Essentially in the  
14 past, because of the way the administrative regime  
15 was set up, we used to issue HADD authorizations  
16 with respect -- or, sorry, s. 35 authorizations  
17 with respect to finfish farms. With the way the  
18 new regulation is set up, the matters that were  
19 previously addressed by those authorizations are  
20 now covered as conditions of licence. There's no  
21 longer a need for a separate HADD authorization  
22 because the matters are now covered under the  
23 regulation. So we will no longer have separate  
24 authorizations for that, or incidentally where we  
25 used to have introductions and transfers, licences  
26 or permits issued under s. 56, so the Fisheries  
27 General Regulations, those two are now going to be  
28 covered under the single aquaculture licence.

29 Q All right. If we turn to slide 9, it says there  
30 that until the Cohen Commission has issued its  
31 final report and consideration has been given to  
32 that, that they're not being intent to authorize  
33 any new marine finfish aquaculture operations.  
34 Has that recommendation been put in place?

35 MR. THOMSON: A recommendation has been put in place  
36 that we would not consider a marine finfish  
37 aquaculture -- a new marine finfish aquaculture  
38 operation -- or, sorry, not consider -- authorize  
39 any new ones where the impact to the environment  
40 would be greater than the one being potentially  
41 replaced. That decision has been transmitted out  
42 to various client groups as well as to all First  
43 Nations in British Columbia.

44 Q All right. Next, if I may, I'd like to move  
45 briefly through the forms of licence that exist.  
46 In doing this, I'm not going to address shellfish  
47 as I don't think it bears on what we need to deal

1 with here.

2 MR. TAYLOR: But if we could go first to Tab 13 of  
3 Canada's book, please, Mr. Lunn. I don't think  
4 that's Tab 13. There we are.

5 Q Now, Mr. Thomson, I'll ask these questions of you.  
6 Firstly, am I correct that there's four finfish  
7 aquaculture licences now in place, or now existing  
8 for templates?

9 MR. THOMSON: For general templates, yes.

10 Q And you see Tab 13 up on the screen. Is this the  
11 one for freshwater finfish?

12 MR. THOMSON: Yes, this is for commercial freshwater  
13 aquaculture operations. It would also apply to  
14 some activities that occur on land. They're  
15 actually cultivated in saltwater as well, so...

16 MR. TAYLOR: All right. May this be the next exhibit,  
17 please.

18 THE REGISTRAR: Exhibit 1592.

19  
20 EXHIBIT 1592: Template for Freshwater  
21 Aquaculture Licence, DFO  
22

23 MR. TAYLOR: If we may go to Tab 14, please, and as  
24 it's coming up, I'll say that this is Exhibit  
25 1463.

26 Q Is this the licence for what are sometimes termed  
27 "major enhancement facilities", or those operated  
28 by DFO?

29 MR. THOMSON: Yes. This is the licence issued to  
30 Salmon Enhancement Program operated facilities in  
31 British Columbia.

32 MR. TAYLOR: And if we turn next to Tab 15, please?

33 Q Is this the form of licence issued to smaller  
34 enhancement facilities, sometimes called  
35 "community facilities"?

36 MR. THOMSON: It is the type of licence that those  
37 smaller facilities will operate under. It's  
38 actually issued to the community advisor who is an  
39 employee of the Department of Fisheries and  
40 Oceans.

41 MR. TAYLOR: Okay. May that be the next exhibit,  
42 please?

43 THE REGISTRAR: Exhibit 1593.

44  
45 EXHIBIT 1593: Template for licence to  
46 conduct salmon enhancement activities issued  
47 to community advisor

1 MR. MARTLAND: And I think the prior one, the SEP main  
2 facilities one may not have been marked as an  
3 exhibit. I may have missed it. If it wasn't  
4 marked, perhaps it could be marked as well.

5 MR. TAYLOR: Are you able to tell, Mr. Lunn, if it's  
6 1463?

7 MR. MARTLAND: Ms. Grant tells me that it may already  
8 be Exhibit 1463, so I may have missed that. Thank  
9 you.

10 MR. TAYLOR: Do I get one minute, Mr. Martland?

11 Q If we turn next to Tab 16, I don't -- sorry, I've  
12 lost my count in exhibit marking here. But if  
13 turn to Tab 16, is this the form of licence that's  
14 issued to the finfish fish farms of a commercial  
15 nature, the ones that we're talking about mainly  
16 in this round of the hearings?

17 MR. THOMSON: Yes, this is the general template for  
18 those farms.

19 MR. TAYLOR: And may that be the next exhibit, please?

20 THE REGISTRAR: Exhibit 1594.

21 MR. TAYLOR: Thank you.

22

23 EXHIBIT 1594: Template for licences for  
24 commercial finfish fish farms  
25

26 MR. TAYLOR:

27 Q Now, I'm going to, in the interest of time, just  
28 leave that licence untouched in terms of delving  
29 into the content, but as a general question, is it  
30 fair to say that the licence terms are very  
31 comprehensive and complete in terms of what  
32 they're covering?

33 MR. THOMSON: Yes. I would say they're very  
34 comprehensive. They're about 98 pages long.  
35 They're one of the more comprehensive or complete  
36 licences we, as the Department of Fisheries,  
37 issues.

38 Q And is this the document that's then used to  
39 require the various pieces of information that  
40 farms provide to the Department?

41 MR. THOMSON: It requires not only record-keeping but  
42 reporting of that information in various places of  
43 the document, yes.

44 Q Does it also require husbandry, proper husbandry?

45 MR. THOMSON: Yes. It requires adhering to fish health  
46 management plans.

47 Q And in fact, first developing fish health

- 1 management plans; is that right?  
2 MR. THOMSON: And developing fish health management  
3 plans, yes.  
4 Q And I won't go through the list, but it monitors  
5 for sea lice, pathogens, disease, et cetera?  
6 MR. THOMSON: The sea lice, pathogens, disease, benthic  
7 monitoring, escape prevention protocols, et  
8 cetera.  
9 Q And is there rationale underlying the level of  
10 detail that's put into the licence and the  
11 requirements made of the fish farm operators?  
12 MR. THOMSON: Well, the rationale is to provide a  
13 detailed document that sets out explicitly what  
14 the requirements are of the operator, and to allow  
15 for enforceability should those requirements not  
16 be met.  
17 Q And what are the tools for enforcing that?  
18 MR. THOMSON: Well, we have, under the **Fisheries Act**, a  
19 suite of enforcement tools for conducting  
20 compliance for the farm companies. We have no  
21 ticketable offences under the Pacific Aquaculture  
22 Regulations so if there are charges that go  
23 forward, they have to go forward to court.  
24 Q It's perhaps obvious, but just to be clear, when  
25 did the forms of licences we've just looked at  
26 come into being?  
27 MR. THOMSON: The original drafts of the forms of  
28 licences were drafted over the period of time of  
29 the fall of 2010, but the issuance of this licence  
30 came into effect December 19th, 2010.  
31 Q And are these the licences - that is, what's now  
32 Exhibit 1594 - are these licences that are a one-  
33 year licence for each of the farms?  
34 MR. THOMSON: Yes, they are.  
35 Q And so they expire again in December of this year,  
36 do they?  
37 MR. THOMSON: Yes, they do.  
38 Q In the course of 2011 and through the fall that  
39 we're about to enter, is there going to be, or is  
40 there a review of the terms of licence?  
41 MR. THOMSON: Yes, we began the process to review the  
42 terms of licence, to make corrections where  
43 required, improve the terms and collect for  
44 clarification, et cetera, so we've begun that  
45 process already. We have had one meeting now with  
46 industry to discuss potential changes, and we've  
47 sent letters out to various groups seeking advice

1 as to potential changes.

2 Q And those are the letters that you referred to  
3 earlier in answer to Mr. Martland, are they?

4 MR. THOMSON: Yes, they are.

5 Q And that includes First Nations, does it?

6 MR. THOMSON: Yes, it did.

7 THE COMMISSIONER: Mr. Taylor, would this be a  
8 convenient spot?

9 MR. TAYLOR: Yes.

10 THE COMMISSIONER: Thank you.

11 THE REGISTRAR: The hearing will now recess for 15  
12 minutes.

13

14 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)

15 (PROCEEDINGS RECONVENED)

16

17 THE REGISTRAR: The hearing is now resumed.

18

19 CROSS-EXAM BY MR. TAYLOR, continuing:

20

21 Q Mr. Thomson, has there been a situation where the  
22 province has approved a site or tenure, as Mr.  
23 Last points out, and the federal government has  
24 declined or refused to provide a licence of  
25 permission?

26 MR. THOMSON: Yes. Under the previous regime there  
27 was, to my knowledge at least, four instances, and  
28 there may have been more, in which the outcome of  
29 the **Canadian Environmental Assessment Act**  
30 screening or the habitat review was such that we  
31 were not willing to go ahead with the site and the  
32 site was turned down.

33 Q And that likewise could happen under the new  
34 regime, that is, the province could approve a  
35 tenure and the federal government still wouldn't  
36 license?

37 MR. THOMSON: Certainly, but, you know, the intent  
38 under the new MOU that was signed in December of  
39 2010 is to try to -- while we cannot harmonize our  
40 decision-making authorities, because of course  
41 that would fetter our individual ministers'  
42 authority, our intent is to try to synchronize our  
43 decisions as best as possible, so we don't have  
44 this one decision coming several months before or  
45 after another, which is, you know, not  
46 particularly good client service, or good service  
47 to the public.

1 Q So by that do you mean the aim is to work in  
2 concert and to as much as possible reach a similar  
3 conclusion on a given application?

4 MR. THOMSON: Well, I don't know if you would  
5 necessarily say reach a similar conclusion, but  
6 rather reach a conclusion in a similar time period  
7 so we don't have the juxtaposition. I think it's  
8 obviously the provincial government and the  
9 federal government have different mandates and  
10 different, you know, different points of decision  
11 to make, and therefore it is, you know, certainly  
12 reasonable that within each decision-making matrix  
13 they could come to the different decisions, but to  
14 try to reach that decision in the same time period  
15 is really...

16 Q All right, thank you. If we might go to Tab 2 of  
17 Canada's book, please. I simply want to see if  
18 you can identify this document, Mr. Swerdfager and  
19 what it is, and then I'll enter it as an exhibit  
20 if you can, and won't ask questions about it.

21 MR. SWERDFAGER: Yes, I can identify it as a memo that  
22 was sent up in July of this year.

23 Q And that's on the topic of just what the title  
24 says, licensing decisions for B.C. during the  
25 period of the Cohen Commission being in operation?

26 MR. SWERDFAGER: Correct.

27 MR. TAYLOR: And the recommendation is set out towards  
28 the end, of course. May that be the next exhibit,  
29 please.

30 THE REGISTRAR: Exhibit 1595.

31  
32 EXHIBIT 1595: Memorandum for the Minister,  
33 Licensing Decisions for British Columbia  
34 Aquaculture During the Cohen Commission, July  
35 27, 2011  
36

37 MR. TAYLOR:

38 Q Then if we might go to Tab 7, Mr. Thomson, this  
39 is a letter of August 16th of this year,  
40 apparently signed by you. Can you identify that?

41 MR. THOMSON: Yes, I can.

42 Q What is that?

43 MR. THOMSON: As I stated earlier, it's a letter that  
44 was sent out to the provincial government. This  
45 one at the top here is to the Provincial  
46 Government Directors' Aquaculture Committee  
47 Colleagues, which includes both provincial

1 agencies and Transport Canada and Department of  
2 Fisheries and Oceans, to inform of the decisions  
3 made regarding our decision-making process during  
4 the period of the Cohen Commission, and also an  
5 update on our management framework. This --  
6 virtually the same letter was sent to licence  
7 holders, First Nations and a group of  
8 environmental non-government organizations that  
9 was -- the list was provided to us from our  
10 consultation secretary.

11 MR. TAYLOR: All right, thank you. May that be the next  
12 exhibit, please.

13 THE REGISTRAR: Exhibit 1596.

14  
15 EXHIBIT 1596: Letter from Fisheries and  
16 Oceans Canada, Pacific Region, Andrew  
17 Thomson, to Directors' Aquaculture Committee  
18 Colleagues, August 16, 2011  
19

20 MR. TAYLOR:

21 Q If we might now have up on the screen, please, Mr.  
22 Lunn, the document Mr. Martland referred to. I  
23 sent in an email last night -- no, not that one.  
24 That one, thank you.

25 Now, Mr. Thomson or Mr. Swerdfager, I'll ask  
26 you to identify this. What we've done is go to  
27 the DFO website and then take snapshots and I hope  
28 you're going to recognize this. But you can see,  
29 and maybe just scroll for the first three, Mr.  
30 Lunn, in three snapshots, this is -- aims to be  
31 the home page for the Aquaculture site on the DFO  
32 web. Do you recognize that?

33 MR. THOMSON: Yes, I do.

34 Q And if you just scroll back to, I think it's the  
35 second one, Mr. Lunn. You'll see there on the  
36 right side "Public Reporting". Is that the place  
37 on the website where one would go and open up and  
38 get the information that you can see listed there?

39 MR. THOMSON: Yes, it is.

40 Q And that's the public reporting of information  
41 that you or Mr. Swerdfager referred to earlier in  
42 answer to Mr. Martland, is it?

43 MR. THOMSON: It is the selection of public reports  
44 that are currently available. More will be added  
45 as they become available.

46 Q All right. Now, if you could just scroll down,  
47 MR. Lunn, please, at a pace that Mr. Thomson can

1 see what you're scrolling through, without taking  
2 too much time. You can keep going. You'll see  
3 that there's different topics coming through. And  
4 just keep going, I think it's fine. We'll see a  
5 chart that should come up now, I think. Yes.  
6 Now, is that the kind of information you're  
7 putting on the website, Mr. Thomson?

8 MR. THOMSON: Yes, it is.

9 Q All right. And these are -- these have been  
10 pulled out of Canada's Tab 36 to 44, and in the  
11 interests of time I'm not going to go through  
12 everything here, but I'm going to ask that this  
13 compilation be the next exhibit, if it may.

14 THE REGISTRAR: Exhibit 1597.

15  
16 EXHIBIT 1597: Compilation of DFO websites re  
17 Aquaculture Management, Public Reporting on  
18 Aquaculture in the Pacific Region  
19

20 MR. TAYLOR:

21 Q And you mentioned that some more is going to be  
22 put on it. What other things are going to be put  
23 on by way of reporting and when might that be  
24 occurring, and why isn't it up now?

25 MR. THOMSON: Well, I think as we review the reports  
26 coming in from industry we'll determine as much as  
27 possible what can be put on the website. Things  
28 such as benthic monitoring, summary reports of  
29 escapes, reports of other fish health events  
30 beyond just the sea lice reports that are  
31 currently on. That's the type of information that  
32 we envision going on the website, as well as  
33 copies of the licenses would ultimately be up on  
34 the website, as well, as opposed to now we have a  
35 table of the licences. So I think there's a  
36 number of pieces of information we intend to put  
37 up on the website. Our intent is to have them up  
38 there as soon as possible, and I hope over the  
39 next three to six months to continue to populate  
40 the website with increasing amounts of  
41 information.

42 Q All right, thank you. If we might go to Tab 17.  
43 Do you recognize that document, Mr. Thomson or Mr.  
44 Swerdfager?

45 MR. THOMSON: Yes, I do.

46 Q Okay. And what's that?

47 MR. THOMSON: It's the document describing the



1           Sustainable Aquaculture Fisheries Framework, which  
2           is really sort of the overarching framework under  
3           which we're going to situate a number of policies  
4           that will guide our management of aquaculture.

5       MR. TAYLOR: Okay. I'm going to ask that this be  
6           marked as the next exhibit, please.

7       THE REGISTRAR: Exhibit 1598.

8  
9           EXHIBIT 1598: British Columbia Aquaculture  
10           Regulatory Regime: A Sustainable Aquaculture  
11           Fisheries Framework (DRAFT), June 29, 2011  
12

13       MR. TAYLOR:

14       Q     Is it draft? Yes, it says at the end it's draft.  
15           Do you know if it's -- on this copy. Do you know  
16           if it's final now?

17       MR. THOMSON: There is a finalized version that has  
18           been signed off, yes.

19       Q     All right. Tab 18, same question, can you  
20           identify that very quickly? I think this may be  
21           Exhibit 1590, but I can't guarantee that. Do you  
22           recognize that, Mr. Thomson?

23       MR. THOMSON: Yes, I do. It's the description of the  
24           policy around public reporting and regulatory  
25           information for the B.C. Aquaculture Regime.

26       Q     Okay. It's a different -- it's the same document  
27           with a slightly different date from 1590, I see.  
28           So we'll mark this as an exhibit, if I may.

29       THE REGISTRAR: Exhibit 1599.

30  
31           EXHIBIT 1599: British Columbia Aquaculture  
32           Regulatory Regime, Public Reporting of  
33           Regulatory Information, Under the British  
34           Columbia Aquaculture Regulatory Regime  
35           (DRAFT) June 29, 2011  
36

37       MR. TAYLOR:

38       Q     And Tab 19, is that a similar document but on  
39           licensing approach?

40       MR. THOMSON: Yes, it is.

41       MR. TAYLOR: Next exhibit, please.

42       THE REGISTRAR: Exhibit 1600.

43  
44           EXHIBIT 1600: British Columbia Aquaculture  
45           Regulatory Regime, Aquaculture Licensing  
46           Approach (DRAFT), June 29, 2011  
47

1 MR. TAYLOR:

2 Q Tab 20, same sort of document, but on  
3 environmental impacts -- we'll have to wait a  
4 moment for it.

5 MR. THOMSON: Yes. it is.

6 MR. TAYLOR: Thank you. May that be the next exhibit,  
7 please.

8 THE REGISTRAR: Exhibit 1601.  
9

10 EXHIBIT 1601: British Columbia Aquaculture  
11 Regulatory Regime, Identification and  
12 Management of Environmental Impacts of, Under  
13 the British Columbia Aquaculture Regulatory  
14 Regime (DRAFT), June 29, 2011  
15

16 MR. TAYLOR:

17 Q And just finally in this little group, Tab 22 of  
18 Canada's book, please.

19 MR. THOMSON: Yes, it is, it's a description of the  
20 approach to aquaculture management from an  
21 ecosystem-basis.

22 MR. TAYLOR: And may that be the next exhibit, please.

23 THE REGISTRAR: Exhibit 1602.  
24

25 EXHIBIT 1602: Pacific Aquaculture  
26 Regulations, Ecosystem-Based Approach to  
27 Aquaculture Management (DRAFT)  
28

29 MR. TAYLOR:

30 Q Now, I have in the book that I want to turn to,  
31 firstly Tab 23, a series of documents which are  
32 entitled "Approach to", and they're on different  
33 topics. Tab 23 itself is on "Feed-Related Organic  
34 Deposition". As I understand it, a series of  
35 documents were prepared on "Approach to" by  
36 Fisheries on various topics, and this is one  
37 example; is that right?

38 MR. THOMSON: Yes.

39 Q And approximately what date would these have been  
40 created, do you know?

41 MR. THOMSON: They've been created over the late spring  
42 and summer of 2011.

43 Q All right.

44 MR. THOMSON: And they are approaches as a precursor,  
45 if you will, to a policy development, or to a  
46 policy.

47 MR. TAYLOR: All right, thank you. I'm going to ask

1           that this be marked as the next exhibit, please,  
2           Tab 23.

3           THE REGISTRAR: Exhibit 1603.

4  
5                   EXHIBIT 1603: Pacific Aquaculture  
6                   Regulations, Approach to Managing Feed-  
7                   Related Organic Deposition in Aquaculture  
8                   (DRAFT), 2011  
9

10           MR. TAYLOR:

11           Q     And there's a series of them at Tabs 24 through  
12                 29, and Tab 31 of Canada's book. I'm wanting to  
13                 have them marked as an exhibit. Notice has been  
14                 given, and in the interests of time, I'm going to  
15                 propose that they might just be marked without  
16                 taking the time to go through each one, if I can  
17                 do that, unless Mr. Martland or anyone else  
18                 objects.

19           MR. MARTLAND: No, that's a sensible use of time unless  
20                 there's a concern. I think one of the tabs,  
21                 number 26, may not be an "Approach to" document.  
22                 But that observation aside, unless other counsel  
23                 have an issue, perhaps the easier way to do that  
24                 would be to -- I don't know if Mr. Taylor wished  
25                 to do the numbering now or whether we could indeed  
26                 do that over the midday break and assign the  
27                 numbers on the record at that point quickly.

28           MR. TAYLOR: I'm happy to do it on the break, and I can  
29                 also advise that Tab 27 is Exhibit 1576, and I  
30                 will go to Tab 26 then separately. So I'll deal  
31                 with over the break, 24, 25, 27 is an exhibit, 28,  
32                 29, 31.

33           Q     We'll go to 26 right now, if we may. That may not  
34                 be an "Approach to" document, but, Mr. Thomson,  
35                 I'll let you say what it is.

36           MR. THOMSON: It's some guidance that was developed at  
37                 the national level for development of the  
38                 Integrated Management of Aquaculture Plans.

39           MR. TAYLOR: Okay. I'll ask that that be the next  
40                 exhibit, then, please.

41           THE REGISTRAR: Exhibit 1604.

42  
43                   EXHIBIT 1604: Pacific Aquaculture  
44                   Regulations, Integrated Management of  
45                   Aquaculture Plans (IMAP) Guidance (DRAFT)  
46  
47

1 MR. TAYLOR:

2 Q Tab 30, please. Mr. Swerdfager or Mr. Thomson,  
3 what is this?

4 MR. THOMSON: It's a policy document for discussing the  
5 current access to wild resources as it applies to  
6 Aquaculture Policy which is in play, for a  
7 potential review and changes as we review that  
8 current policy.

9 MR. TAYLOR: All right, thank you. May that be the  
10 next exhibit, please.

11 THE REGISTRAR: Exhibit 1605.

12  
13 EXHIBIT 1605: Department of Fisheries and  
14 Oceans, Policy on the Access to Wild Aquatic  
15 Resources as it applies to Aquaculture,  
16 Discussion Document (DRAFT), March 9, 2011  
17

18 MR. TAYLOR:

19 Q And then Tabs 45 and 46, either together on the  
20 screen, or separately, whatever works easily, they  
21 are documents to do with sea lice. Do you  
22 recognize that document, Mr. Thomson?

23 MR. THOMSON: Yes.

24 Q And that's what it says, it is? It's a DFO  
25 document on managing sea lice?

26 MR. THOMSON: Yes.

27 MR. TAYLOR: May that be the next exhibit, please. And  
28 then --

29 THE REGISTRAR: That was number which, Tab which?

30 MR. TAYLOR: Tab 45.

31 THE REGISTRAR: Tab 45, 1606.

32  
33 EXHIBIT 1606: Management of Sea Lice in B.C.,  
34 [DFO]  
35

36 MR. TAYLOR: Thank you. Sorry, Mr. Giles.

37 Q Tab 46, can you just explain very quickly what  
38 that is, Mr. Thomson?

39 MR. THOMSON: It's a graph produced showing the amount  
40 of in-feed treatment applied in the B.C.  
41 aquaculture industry from 1996 to 2010. The in-  
42 feed treatment being that for reducing the numbers  
43 of sea lice on farmed salmon.

44 Q Is that part of what goes on the website?

45 MR. THOMSON: This particular graph is on our website,  
46 yes.

47 MR. TAYLOR: And then if you turn, please, to Tab 9,

1 and then we'll go to Tab 10 after that.

2 THE REGISTRAR: Did you wish to mark Tab 46 first?

3 MR. TAYLOR: Oh, I'm sorry, yes, thank you, Mr. Giles.

4 THE REGISTRAR: Exhibit 1607.

5

6 EXHIBIT 1607: Excel graph showing Use of In-  
7 Feed Sea Lice Therapeutants in British  
8 Columbia (1996-2010)

9

10 MR. TAYLOR: As we go there, I'm probably about two  
11 minutes out, Mr. Prowse has said that he will give  
12 me a few minutes of his time, so if you want to  
13 just make a note of what I somehow owe him, I'd be  
14 indebted.

15 Q Tab 9. Now, this is a document that relates to  
16 something called PARR, is it, either Mr. --

17 MR. SWERDFAGER: That's correct.

18 Q And what is PARR?

19 MR. SWERDFAGER: As it says at the top, it's the  
20 Program for Aquaculture Regulatory Research, and  
21 it's a component of the Department's Sustainable  
22 Aquaculture Program established in 2008.

23 MR. TAYLOR: All right. And I think in the interests  
24 of time we'll have to let the document speak for  
25 itself. But if that could be marked as the next  
26 exhibit, please.

27 THE REGISTRAR: Exhibit 1608.

28

29 EXHIBIT 1608: Program for Aquaculture  
30 Regulatory Research (PARR), Call for  
31 Proposals (2009/10)

32

33 MR. TAYLOR:

34 Q And if we turn to Tab 10, there's a two-page  
35 document, called "Directed Call for Proposals".  
36 Can you just explain what that's about, what this  
37 is, Mr. Swerdfager?

38 MR. SWERDFAGER: This is a program component that's  
39 administered by the Science sector, and it is for  
40 administering PARR. Essentially what it does is  
41 it puts out a call for proposals to departmental  
42 scientists based on a set of priorities that are  
43 developed in tandem by Aquaculture Management  
44 Directorate that I used to head, and the Science  
45 sector, and it is how we allocate funding under  
46 the PARR - I was going to say PARR program, but  
47 that's double-counting "program" - under the

1 program.  
2 Q All right, thank you. Mr. Last, I have a question  
3 of you. Can you describe how you would  
4 characterize the working relationship between the  
5 Province and Canada regarding aquaculture?  
6 MR. LAST: It's been in one word cooperative, firmly  
7 committed to a smooth transition to federal  
8 regulation of aquaculture from the province.  
9 Q All right, thank you. And that relationship will  
10 be an ongoing one, I take it?  
11 MR. LAST: Yes.  
12 Q Dr. Fleming, do I understand correctly that your  
13 knowledge is focused on Atlantic salmon in the  
14 Atlantic?  
15 DR. FLEMING: That's correct.  
16 Q Thank you.  
17 DR. FLEMING: Though I have worked in the Pacific.  
18 Q During your doctorate work?  
19 DR. FLEMING: Yes, and my Masters.  
20 Q And that would be up to about 1991, is it?  
21 DR. FLEMING: That's correct.  
22 Q So some time ago.  
23 DR. FLEMING: And as well as I was in Oregon for --  
24 from 2001 to 2004.  
25 Q Yes. You were an adjunct professor down there, I  
26 believe?  
27 DR. FLEMING: No, I was an associate professor  
28 (indiscernible - overlapping speakers).  
29 Q All right. Thank you for that correction. Mr.  
30 Swerdfager, you indicated earlier that you have  
31 some knowledge of regulatory regimes in other  
32 countries around the world. You didn't mention  
33 Norway. Do you have knowledge of what's done in  
34 Norway?  
35 MR. SWERDFAGER: I've been to Norway twice and met with  
36 my counterparts at some length. We also as a  
37 Department have a bilateral memorandum of  
38 understanding with Norway. We meet face-to-face  
39 once a year and by conference call every off six  
40 months, so to speak. And we had a -- have,  
41 rather. an informal committee of heads of  
42 aquaculture management organizations in  
43 government. So my counterpart over there, Magnor  
44 Nerheim and I used to meet face-to-face fairly  
45 regularly and by phone quite frequently. So I'm  
46 very familiar with how they set things up and run  
47 them.

1 Q Do you have anything to say quite briefly in  
2 response or further to what Dr. Fleming was saying  
3 earlier in answer to Mr. Martland's questions?

4 MR. SWERDFAGER: I think he characterized the structure  
5 of the government accurately, and I think that the  
6 point that I would have added is that when he was  
7 enumerating some of the variety of departments  
8 that are involved in aquaculture management, there  
9 are some parallels, of course, to Canada.  
10 Aquaculture is not managed at the federal level  
11 exclusively by DFO. Obviously we are engaged with  
12 our counterparts in Environment Canada and other  
13 Departments, just as they are in Norway.

14 Norway is somewhat different, though, and of  
15 course in the sense that they are not a federal --  
16 or a federation, sorry, so they don't have the  
17 equivalent of the federal/provincial dynamic and  
18 interaction. They run a much more centralized  
19 system. Their enforcement powers, therefore, are  
20 a little bit different. But much of the structure  
21 of the regulatory program is familiar to us.  
22 We've spent some time on it. And they're also  
23 very active in the International Standards  
24 Organization. We've worked with them very closely  
25 there in terms of technical requirements for net  
26 pen strength and design and a number of other,  
27 what I would describe as very operational detailed  
28 factors.

29 MR. TAYLOR: All right, thank you. Those are may  
30 questions, and Mr. Martland may let me know how  
31 much I owe Mr. Prowse at some point.

32 MR. MARTLAND: Yes, I'll do the math soon. I wonder  
33 just by way of quickly dealing with these  
34 documents, so I'm not using his time allocation,  
35 the one on screen, number 10 from Canada's list, I  
36 don't believe that was marked. Perhaps we can do  
37 that.

38 THE REGISTRAR: Exhibit 1609, yes, 1609.

39  
40 EXHIBIT 1609: Program for Aquaculture  
41 Regulatory Research (PARR), Directed Call for  
42 Proposals (2010-2011), PARR research  
43 priorities, science objectives and funding  
44 allocation for the 2010-2011 funding cycle  
45

46 MR. MARTLAND: What I'm going to propose, Mr. Lunn and  
47 Mr. Giles, and I'll pass you a note with these

1 numbers. But I wonder if I can propose that  
2 Canada's number 24 become 1610; Canada's 25 become  
3 1611; Canada's 18 become 1612.

4 THE REGISTRAR: So marked.

5  
6 EXHIBIT 1610: Pacific Aquaculture  
7 Regulations, Approach to Managing Non Feed-  
8 Related Organic Deposition in Aquaculture  
9 (DRAFT)

10  
11 EXHIBIT 1611: Pacific Aquaculture  
12 Regulations, Approach to Fish Health (DRAFT)

13  
14 EXHIBIT 1612: Pacific Aquaculture  
15 Regulations, Approach on the Use of Noise  
16 (DRAFT)

17  
18 MR. MARTLAND: Canada's 29 become 1613.

19 THE REGISTRAR: So marked.

20  
21 EXHIBIT 1613: Pacific Aquaculture  
22 Regulations, Approach to Managing Fish  
23 Transfer, Removal and Production in  
24 Aquaculture Facilities (DRAFT)

25  
26 MR. MARTLAND: Canada's 31 become 1614.

27 THE REGISTRAR: So marked.

28  
29 EXHIBIT 1614: Pacific Aquaculture  
30 Regulations, Approach to Chemicals and Litter  
31 Management of Aquaculture Sites (DRAFT)

32  
33 MR. MARTLAND: And that I be given a prize for the most  
34 documents entered in a minute.

35 I'm going to give now Mr. Prowse up to 30  
36 minutes, or indeed under 30 minutes, given the  
37 shuffling of time, please.

38 THE COMMISSIONER: Mr. Martland, can I just ask you, in  
39 Tab 26, which I think was already marked as an  
40 exhibit, if I'm not mistaken.

41 MR. MARTLAND: Yes, it was.

42 THE COMMISSIONER: 1604, correct. On page 2 of that  
43 document, perhaps Mr. Taylor is the one who could  
44 address this. In the bullet at the top of the  
45 page it refers to:

46  
47 • The incorporation of the federal policy



1 approach for aquaculture, in particular the  
2 precautionary approach and ecosystem approach  
3 to management in aquaculture decision-making;  
4

5 Are any of these exhibits that have been marked,  
6 Mr. Taylor or Mr. Martland, those documents? In  
7 other words, are there specific documents that  
8 relate to that?

9 MR. TAYLOR: Well, I'll defer to Mr. Swerdfager or Mr.  
10 Thomson, I think, to answer that.

11 THE COMMISSIONER: Thank you.

12 MR. THOMSON: I believe there was a document marked for  
13 exhibit as the Ecosystem Approach to Management  
14 for Aquaculture.

15 THE COMMISSIONER: All right. So you think there is an  
16 actual document that's been marked?

17 MR. THOMSON: Yes.

18 THE COMMISSIONER: Well, perhaps over the break, Mr.  
19 Martland or Mr. Taylor, you can put your heads --  
20 I just wanted to know whether there were documents  
21 marked that refer specifically to those items.

22 MR. MARTLAND: Thank you, we'll --

23 MR. TAYLOR: 1601, I'm being told is what the  
24 Commissioner may be referring to.

25 MR. THOMSON: Yes, that's the one on the screen.

26 MR. LUNN: I have 1602 on the screen now, I believe.

27 MR. TAYLOR: I might have the document number wrong,  
28 but this is the document that you're thinking of,  
29 is it, Mr. Thomson, in answer to the  
30 Commissioner's question?

31 MR. THOMSON: Yes, it is.

32 THE COMMISSIONER: That's Tab 22 then, okay, thank you.  
33 And if you discover another one, you could let me  
34 know after the break.

35 MR. TAYLOR: All right, thank you.

36 THE COMMISSIONER: Thank you very much.

37 MR. THOMSON: Thank you.

38 THE COMMISSIONER: Sorry, Mr. Prowse.

39 MR. PROWSE: Thank you, Mr. Commissioner. Mr.  
40 Commissioner, D.C. Prowse appearing for the  
41 Province of British Columbia. And, Mr. Lunn, I  
42 think I will be referring to the provincial tabs  
43 that were I think sent by email on August 23rd,  
44 2001.  
45  
46  
47

1 CROSS-EXAMINATION BY MR. PROWSE:  
2

3 Q So, Mr. Last, can you explain to the Commissioner  
4 your role with respect to particularly the  
5 recommendations of the Review Committee that  
6 reported in 1997. So you joined the Province, I  
7 think, in 2000, and what was your general role at  
8 first as a legislative analyst?

9 MR. LAST: My first role when I began working for the  
10 Province was in the development of the escape  
11 regulations and the standards of practice for  
12 escape prevention.

13 Q All right. And then after 2003 what was your  
14 general role, really to date?

15 MR. LAST: That generally looking at implementing the  
16 recommendations of the Salmon Aquaculture Review  
17 with respect to the broad categories of siting,  
18 waste management, escape prevention, and fish  
19 health.

20 Q All right. And I'd like -- there's a committee  
21 called the Directors' Aquaculture Committee that I  
22 think has been around for some time and is still  
23 continuing. Can you tell the Commissioner what  
24 that committee is and does?

25 MR. LAST: It was implemented, as you say, quite some  
26 time ago, and its function has evolved, but it  
27 over the years has been primarily an opportunity  
28 for communication between provincial -- all  
29 provincial agencies with an interest in  
30 aquaculture and federal agencies, as well. More  
31 recently it has been somewhat restructured to  
32 align with the new regulatory framework and report  
33 directly to the Canada-British Columbia  
34 Aquaculture Management Committee that was  
35 established by the agreement signed between the  
36 two governments in December 2010.

37 Q And you were asked about your working relationship  
38 with DFO, and particularly with Mr. Thomson. I  
39 gather the two of you have a long history of  
40 working together?

41 MR. LAST: Yes, we've been working together pretty much  
42 ever since I started in government.

43 Q And how would you describe your working  
44 relationship with him?

45 MR. LAST: Good, cooperative, and we have similar goals  
46 in mind in respect to the serving -- serving the  
47 public interest efficiently and working together

1 as we have to in this area that requires  
2 provincial and federal governance.

3 Q All right. Mr. Lunn, could we have Tab 4 from the  
4 Province's list, please. So the Salmon  
5 Aquaculture Review preceded your arrival in  
6 government, and I gather it was a five-volume  
7 report that covered a whole host of things with  
8 respect to a moratorium that had -- on new sites  
9 that had been imposed in 1995; is that right?

10 MR. LAST: Yes.

11 Q All right. And this document shows the date of  
12 March of 2006. I gather that you are one of the  
13 hands that was involved in the preparation of this  
14 document.

15 MR. LAST: Yes.

16 Q And that it was used for different purposes as  
17 from time to time.

18 MR. LAST: It was updated, it evolved, it was intended  
19 to gather the -- to reflect the work that was  
20 being done to implement the Review's  
21 recommendations.

22 Q All right. So I'm going to take you to some of  
23 these and get you to either talk to them or  
24 sometimes just summarize them and I'll lead on  
25 some of these.

26 So recommendation 1 is on the topic of "Farm  
27 Siting", and it was to do with establishing a Fish  
28 Farm Review Committee, and the response indicates  
29 in particular that there was some work done  
30 between 2000 and 2003 in that there was a Project  
31 Review Team that was created in 2003. Can you  
32 explain the function of the Project Review Team  
33 and your understanding of how it worked?

34 MR. LAST: Yes, I can. I'll back up a little bit and  
35 say that the nub of the recommendation was for a  
36 number of regional committees established around  
37 the province that we didn't feel that was -- it  
38 wasn't warranted, it wasn't efficient to have  
39 these standing permanent committees, in view of  
40 the low numbers of applications, the low amount of  
41 work that would be required, and instead decided  
42 that a single committee was more appropriate.

43 The Fish Farm Review Committee was  
44 established for that purpose in 2000.

45 That was replaced in 2003 by a body called  
46 the Project Review Team, the PRT, that performed  
47 kind of a -- it was an initial assessment, initial

1 screening of the completeness of an application,  
2 so that to ensure that all the information that  
3 was needed in order to make a decision was  
4 available before proceeding.

5 Q There is a reference to a number of different  
6 ministries and DFO in this recommendation, and,  
7 Mr. Lunn, I believe in the PPR at page 28 of the  
8 PPR there's a chart that would be useful to refer  
9 to here. So, Mr. Last, can you just briefly refer  
10 to the different entities here.

11 MR. LAST: Yes, this goes back to, as it says at the  
12 bottom, 2004-2005, but it represents the broad  
13 divisions between the parts of the provincial  
14 government that dealt with different areas on the  
15 right-hand side under the Ministry of Environment,  
16 this -- they dealt with fish -- fish waste, the  
17 fish waste regulations. Next to that we have  
18 ILMB, dealt with Crown land tenuring. Then under  
19 MAL, which is now Agriculture, we have the broad  
20 groupings of fish health under, then, Ron Lewis,  
21 the Director of Animal Health. In the middle, Al  
22 Castledine and Aquaculture Development is the  
23 Policy function, and then on the left, Licensing &  
24 Compliance, separated by that dotted line.

25 Q And the question was asked at the outset about  
26 conflicts, and can you say something about the  
27 extent to which this shows some firewalls that  
28 were to address those kinds of tensions?

29 MR. LAST: Yes. The dotted line is representative of  
30 that, keeping the development function separate in  
31 the organizational structure from the licensing  
32 and compliance function.

33 MR. PROWSE: All right. Mr. Commissioner, could we  
34 mark the table document as the next exhibit.

35 THE REGISTRAR: Exhibit 1615.

36  
37 EXHIBIT 1615: Province of British Columbia  
38 actions to meet the intent of the Salmon  
39 Aquaculture Review's Recommendations  
40 (03/2006)

41  
42 MR. PROWSE:

43 Q And so this can be actions to meet the intent of  
44 the Salmon Aquaculture Review's Recommendations of  
45 03/2006 as a title. So moving on to point 2 of  
46 this on "Farm Siting", Mr. Last, can you very  
47 briefly just refer to the Coastal Zone concepts

1 that are there, just in a sentence or two.

2 MR. LAST: The Review recommended that the Province  
3 pursue development of these Integrated Coastal  
4 Zone Management Plans, and Land and Resource  
5 Management Plans, and the Province pursued  
6 developing -- development of a number of these  
7 plans, and that they were to varying degrees,  
8 depending on where they were focused, completed.  
9 We have LRMPs with -- that have a coastal  
10 component in the Central Coast, and there was a  
11 Kalum Plan, as well on farther north. At a more  
12 local level there was a North Island Straits  
13 Coastal Plan, Kyuquot, and in other areas, Baynes  
14 Sound and Cortez Island for shellfish aquaculture.

15 Q But it's fair to say that the use of these --  
16 coastal planning is not the same as what's been  
17 referred to or referenced to in Norway,  
18 particularly when it comes to aquaculture?

19 MR. LAST: I think they are different, different  
20 approaches, and I think Dr. Fleming is more of an  
21 expert in that area, but my understanding is that  
22 they are somewhat different approaches.

23 Q Sticking with farm siting, I'm going to lead up to  
24 item 8, but starting with item 4. So the  
25 recommendation was to:

26  
27 Adopt revised salmon farm siting criteria.

28  
29 And can you just speak to item 4.

30 MR. LAST: Yes. Following the recommendation, the  
31 province reviewed its existing -- I understand, I  
32 wasn't -- I wasn't directly involved, but as I  
33 said, I gathered the information for this table.  
34 But reviewed the existing siting farm criteria or  
35 guidelines and adopted the guidelines that were in  
36 place at the time of the transition to federal  
37 regulation.

38 Q And so item 5 again follows up on the  
39 recommendation as to how this was applied. But  
40 moving then to item 8, it says one of the  
41 recommendations was to:

42  
43 Assess existing salmon farms to determine if  
44 the farms are causing significant negative  
45 impacts that need to be corrected.

46  
47 So can you spend a little time on the response to

1 item 8, how that -- what happened as you  
2 understand it?

3 MR. LAST: Yes, there was a process to review the  
4 existing, the farms that existed at that time  
5 between 2000 and 2002, and look at environmental,  
6 social and economic impacts that may -- may have  
7 required the relocation of those farms. A list  
8 initially of ten farms was selected and then a  
9 further 27 were added to that a few years later.

10 Q All right. And to your understanding, of those 37  
11 farms, are there any active farms that are still  
12 in the same location they were at in 1997?

13 MR. LAST: Of the --

14 Q Doing the same things?

15 MR. LAST: Of the 37 farms there were in 2002 when the  
16 moratorium was lifted, six of the farms that were  
17 identified for economic reasons no longer needed  
18 to be on the list because companies could apply  
19 for new sites, so those were withdrawn. Two that  
20 were initially dealt with as relocations, were re-  
21 put back into the review process as new farm  
22 sites. Nine were completed, the transfers from  
23 the initial sites to the proposed new locations  
24 were completed. And the rest of them have been --  
25 their operational strategy, their management --  
26 their purpose has been adjusted to suit the  
27 location. So they're no longer doing the same  
28 thing that they were doing at the time they were  
29 identified as being not sited as well as they  
30 could be.

31 Q So your understanding is that all 37 in fact have  
32 been dealt with one way or another?

33 MR. LAST: Addressed, yes.

34 Q And reference has already been made to the  
35 importance of **CEAA** screening and siting, and so I  
36 won't ask you about that.

37 The topic of escapes is referenced at item 12  
38 of Exhibit 1685 (sic). Can you just say what your  
39 role was with respect to escapes, just summarize  
40 it very briefly?

41 MR. LAST: The -- it was, pursuing the recommendations  
42 of the report, the -- we looked at, we did an  
43 analysis of the information that was available,  
44 and determined that the primary cause for escapes  
45 was human error. And the best approach to  
46 addressing the issue was to prevent escapes, which  
47 we chose to do through regulation and through

1 development of standards of practice for the  
2 prevention of escapes, which included net  
3 standards, net strength testing, protocols for  
4 that, recordkeeping around nets, strict reporting  
5 requirements, maintenance or development of  
6 maintenance of best practices plans around escape  
7 prevention.

8 Q All right. And moving on to item number 24, again  
9 very briefly can you explain the importance of the  
10 -- well, the recommendation was to:

11  
12 Develop a regulation under the **Waste**  
13 **Management Act** that implements a Performance-  
14 Based Waste Management Model.  
15

16 And was that done?

17 MR. LAST: Yes, it was. Performance-based **Finfish**  
18 **Aquaculture Waste Control Regulation** came into  
19 effect in 2002, and this is based on a system that  
20 requires registration of the site with a baseline  
21 sampling of what exists or existed under the site  
22 prior to fish being introduced, and then setting a  
23 -- using a performance-based approach, setting a  
24 standard. A threshold for sulphides was the  
25 indicator that was preferred as a surrogate for  
26 diversity. And that performance-based standard  
27 was something that was monitoring was used to  
28 ensure that the impact under a particular farm was  
29 held or kept below that threshold. If it was  
30 exceeded, there were requirements for addressing  
31 that to bring the -- bring the farm back into  
32 compliance. And this was all around the -- built  
33 around the growth cycle at the salmon farm.

34 Q All right. And again, a significant effort by a  
35 number of different provincial government  
36 ministries working with the Department of  
37 Fisheries and others to achieve these --

38 MR. LAST: Primarily Ministry of Environment, they were  
39 the lead on the development of that regulation,  
40 but, yes, there was quite a bit of cooperation.

41 Q Skipping ahead to item 43, Mr. Lunn, this shows  
42 that the concept of closed marine -- closed  
43 containment, or they call it closed marine  
44 systems, went back -- was one of the SAR  
45 recommendations. And the answer, as I understand  
46 it, Mr. Last, shows early closed containment work  
47 that was done by the province, or with the input

1 from the province?

2 MR. LAST: Yes. We supported several pilot projects  
3 that explored the use of a closed-bag system, for  
4 example, was one of the projects that was set up  
5 in the marine. There was a land-based system, so  
6 there were a number of projects supported by the  
7 province to explore the potential of closed  
8 systems.

9 Q And, Mr. Lunn, if you could bring up provincial  
10 Tab 8 -- I can see I'm running out of time here.  
11 So just on the closed-containment, this is a  
12 document that you did with respect to closed-  
13 containment, in particular addressing that policy  
14 work done following the Special Legislative  
15 Committee and the Pacific Salmon Forum?

16 MR. LAST: It's a more recent summary, picking up on  
17 the work the province has done to support the  
18 review of closed-containment aquaculture. There's  
19 a -- the list of the timeline of the development  
20 of some of this work including the federal CSAS  
21 review that the province provided some support  
22 for, for the technical review, and a number of  
23 others. But that work -- the province's work in  
24 that regard is ongoing. We continue to provide  
25 small, a little financial assistance, and but  
26 mostly supporting in with expertise and in kind  
27 contributions.

28 Q Thank you. And item 44 is speaking to financial  
29 items, again there's been some provincial  
30 contributions over the years that are referred to.  
31 Can you speak to that?

32 MR. LAST: Yes, most significantly the development of  
33 the Aquaculture and Environment Fund. It was a  
34 large sum of money directed towards research into  
35 aquaculture and environment interactions.

36 MR. PROWSE: Yes. If I could mark -- Mr. Lunn, I'm  
37 sorry, I forgot to mark Tab 8 as an exhibit -- or,  
38 sorry, Tab 8 as an exhibit.

39 THE REGISTRAR: Exhibit 1616.

40  
41 EXHIBIT 1616: Summary on Closed-Containment  
42 Aquaculture Activities in BC, December 2010  
43

44 MR. PROWSE: And Tab 9, Mr. Lunn. And so the -- I'm  
45 going to have to -- I think there may be time  
46 disputes here, but I'm told my time was running  
47 out rapidly.



1 Q So this is again to bring this up to date on  
2 response to the Special Legislative Committee on  
3 Sustainable Aquaculture, which we'll have to  
4 explain another time. Is that -- so that  
5 document, did you participate in this document and  
6 it's accurate, is it?

7 MR. LAST: Yes.

8 MR. PROWSE: All right. If that can be the next  
9 exhibit.

10 THE REGISTRAR: Exhibit 1617.

11  
12 EXHIBIT 1617: Special Legislative Committee  
13 on Sustainable Aquaculture  
14

15 MR. PROWSE:

16 Q And if I can go to Tabs -- I'd like to mark as  
17 exhibits provincial Tabs 2, 3, 6 and 1 as the next  
18 four exhibits. And so if we can do that over the  
19 noon hour. At Tab 2, Mr. Lunn, if you can bring  
20 that up. So there was a commission or a report  
21 done for the Salmon Forum by a Mr. Porter. Tab 2  
22 in the middle, there's a sentence saying:

23  
24 We would have preferred to see an audit that  
25 focused on outcomes and not simply on whether  
26 or not a specific action was prescribed in  
27 regulation.  
28

29 What's the point here in terms of performance-  
30 based approaches to regulation?

31 MR. LAST: This audit that was prepared for the Pacific  
32 Salmon Forum by Mr. Gareth Porter applied an  
33 approach that he had used previously in Atlantic  
34 salmon farming jurisdictions to rate government  
35 regulatory frameworks for the protection of the  
36 wild salmon in those jurisdictions. We felt  
37 strongly that Mr. Porter had not considered that  
38 the performance-based approach that B.C. had  
39 used in developing some of our regulations, rather  
40 than a prescriptive-based approach, had not been  
41 considered adequately in his analysis, and  
42 suggested that it was -- that it would have  
43 benefited from that.

44 Q All right. And Tab 3 was an email you sent on  
45 February 17th, 2006 which was sent by you to Mr.  
46 Porter?

47 MR. LAST: That's true.

1 Q And it talked about doing a follow-up, and that if  
2 you turn to Tab 6, Mr. Lunn, that's the  
3 Comprehensive MAL Response to BC Audit and that's  
4 found at Tab 6. And you, amongst others, there  
5 was wide participation in doing this comprehensive  
6 response to Mr. Porter?

7 MR. LAST: That's right. I was -- I coordinated the  
8 gathering of this information, the packaging it  
9 into a single report.

10 Q I think I'm getting the hook, Mr. Commissioner, so  
11 those are my questions.

12 MR. MARTLAND: And I wonder if the last two ought to be  
13 marked as exhibits, I don't know that they were,  
14 the last three.

15 THE REGISTRAR: He spoke about four, he spoke about Tab  
16 2, 3, 6 and 1.

17 MR. PROWSE: Yes, I did.

18 THE REGISTRAR: Which ones would you like marked?

19 MR. PROWSE: Yes, please.

20 MR. MARTLAND: I don't know if he went to number 1.

21 THE REGISTRAR: I'm sorry?

22 MR. PROWSE:

23 Q Mr. Lunn, can you bring up Tab 1 and turn to the  
24 signature page. Mr. Thomson, did you sign that?

25 MR. THOMSON: Yes, I did.

26 MR. PROWSE: Those are my questions, Mr. Commissioner.

27 THE REGISTRAR: Okay. Now do you want to mark those in  
28 sequence?

29 MR. PROWSE: In the sequence that I gave, yes, please.

30 THE REGISTRAR: Tab 2 will be marked 1618; Tab 3 will  
31 be 1619; Tab 6, 1620; Tab 1, 1621.

32

33 EXHIBIT 1618: Letter from Al Castledine,  
34 Jaclynn Hunter and Dr. Joanne Constantine to  
35 Pam Parker Re: Ministry of Agriculture and  
36 Lands Response to "An Audit of the Management  
37 of Salmon Aquaculture for the Protection of  
38 Wild Salmon in British Columbia" By Gareth  
39 Porter, July 31, 2006

40

41 EXHIBIT 1619: Email from Gavin Last to  
42 Gareth Porter Subject: Comments on draft  
43 report, February 17, 2006

44

45 EXHIBIT 1620: Comprehensive MAL Response to  
46 BC Audit, April 5, 2006

47

1 EXHIBIT 1621: Letter from Andrew Thomson to  
2 Pamela Parker, Subject: Fisheries and Oceans  
3 Canada Response to "An Audit of the  
4 Management of Salmon Aquaculture for the  
5 Protection of Wild Salmon in British  
6 Columbia" by Gareth Porter  
7

8 MR. MARTLAND: Mr. Commissioner, Mr. Blair for the  
9 Salmon Farmers Association is the next counsel.  
10 His allocation is 20 minutes. I simply raise as a  
11 question whether if we were to sit a few minutes  
12 late he would complete, otherwise if we broke at  
13 the normal time I suppose he'd be resuming. Thank  
14 you.

15 THE COMMISSIONER: We'll break at the normal time, Mr.  
16 Blair.

17 MR. BLAIR: Thank you, Mr. Commissioner. For the  
18 record, Alan Blair appearing on behalf of the B.C.  
19 Salmon Farmers Association.  
20

21 CROSS-EXAMINATION BY MR. BLAIR:  
22

23 Q Gentlemen of the panel, we all are under time  
24 constraints. I'm going to start with a couple of  
25 big picture questions about the relationship  
26 between the industry and its regulators, federal  
27 and provincial. My first series of questions are  
28 probably directed best toward Mr. Thomson and Mr.  
29 Last, and again these are high level, they're  
30 probably yes or no answers. We'll get more  
31 detailed ones a little bit later in my time.

32 I think it's fair to characterize the  
33 industry relationship with regulators in this way,  
34 and I'll ask for your agreement or comment.  
35 Industry collects information for site  
36 applications according to the protocols  
37 established by the regulators using best available  
38 -- a best available science approach.

39 MR. THOMSON: Yes.

40 MR. LAST: Yes, I would agree.

41 Q Siting guidelines were developed by regulators  
42 using best available science or following a  
43 precautionary approach where gaps existed in  
44 science.

45 MR. THOMSON: Yes.

46 MR. LAST: Yes.

47 Q Industry works with these siting guidelines all of

1 the time, and therefore tends to apply for sites  
2 that have a higher probability of being approved.  
3 And what I'm getting at there is there's a high  
4 cost associated with each application, and is it  
5 your experience that you don't find very many  
6 applications from an industry on a site which is  
7 destined to fail the siting guidelines. So my  
8 question really is there likely a higher  
9 probability of being approved because they work  
10 with the guidelines all the time and the higher  
11 cost associated with that?

12 MR. LAST: Yes.

13 MR. THOMSON: Yes.

14 Q Regulators conduct extensive reviews, and this  
15 includes public consultation following a risk  
16 management approach that considers Pathways of  
17 Effects?

18 MR. THOMSON: Yes.

19 Q Residual effects of -- and I'm hoping the  
20 recorder's getting the yeses. Thank you.  
21 Residual effects --

22 MR. LAST: I'd have to say that the Pathways of Effects  
23 exercise that I've been involved in was led by the  
24 federal government. We participated, but it was  
25 primarily a federal government exercise.

26 Q Thank you, Mr. Last, for that clarification.  
27 Residual effects of specific aquacultural  
28 activities, aquacultural activities are scored,  
29 taking into account industry mitigations such as  
30 siting, fish health management programs, and the  
31 final scoring outcome dictates the final  
32 acceptance of the project, or requires revision,  
33 redesign of the project.

34 MR. THOMSON: Under the Environmental Assessment  
35 Screening projects, we determined whether or not  
36 there was a significant environmental effect after  
37 all factors were considered, mitigation included,  
38 and then we would determine whether there was  
39 mitigation effect from that.

40 Q Largely in agreement, Mr. Last?

41 MR. LAST: The process that a decision-maker uses to  
42 come to a conclusion, turning their mind to all of  
43 the relevant information, I don't know if I'd say  
44 that it comes down to a scoring system.

45 Q Okay.

46 MR. LAST: But their role is to look at all of the  
47 relevant information in making a decision.

1 Q Thank you. Active sites are monitored both by  
2 industry and the regulators as required by  
3 regulation to ensure that the performance  
4 standards are being met and established measures  
5 of mitigation -- and to establish and to determine  
6 whether the established measures of mitigation are  
7 being effective.

8 MR. THOMSON: Yes.

9 MR. LAST: Yes.

10 Q Mr. Lunn, could we have Commission counsel Tab 23.  
11 If we could go to PDF, which I also understand is  
12 page 5. And counsel will correct me if we've  
13 already seen this. This looks quite similar to a  
14 document we've seen earlier, but I think it's new  
15 today. I hear no corrections. I'm going to  
16 suggest to you, Mr. Thomson, this is a March 2010,  
17 basically a siting, a farm siting requirement  
18 list, and if you need to go to the front page, we  
19 can do that. But does March 2010 sound about  
20 right to you, Mr. Thomson?

21 MR. THOMSON: Yes, it's part of a document that was  
22 developed in March 2010.

23 Q Thank you. And it lists a number of requirements  
24 to be met.

25 MR. THOMSON: Sorry, March 2011 would be more accurate.

26 Q 2011?

27 MR. THOMSON: Yes.

28 MR. BLAIR: Thank you. Could this be marked as the  
29 next exhibit, please.

30 MR. MARTLAND: I think it's already Exhibit 1589.

31 MR. BLAIR: Oh, I'm sorry. Thank you.

32 THE REGISTRAR: That will be --

33 MR. BLAIR: No, I think I'm being told it's already  
34 been marked.

35 THE REGISTRAR: Oh, it's already marked.

36 MR. BLAIR: Thank you.

37 Q Then, Mr. Lunn, could we go to B.C. Salmon Farmers  
38 Tab 1, please. Just while we see that face sheet,  
39 and these questions are for you, Mr. Last. This  
40 document - you can flip the page, sir, Mr. Lunn -  
41 it refers to a guideline, and I believe the date  
42 on it is May 2003. Do you see that?

43 MR. LAST: Yes.

44 Q Now, I'm told that this is a good outline of the  
45 process that's been followed in the relationship  
46 between the industry and the province in terms of  
47 siting and licensing. It's a 2003 document, and

1 I'm told that it's the -- it's a good template of  
2 the process that's been followed, but there has  
3 been some updating of some of the requirements to  
4 meet more site-specific applications and to be  
5 adaptive in that regard. Do you agree?

6 MR. LAST: Yes, that's correct.

7 MR. BLAIR: Thank you. Could this be marked as the  
8 next exhibit.

9 THE REGISTRAR: Exhibit 1622.

10

11 EXHIBIT 1622: Guide to Information  
12 Requirements for Marine Finfish Aquaculture  
13 Applications, British Columbia, May 2003  
14

15

MR. BLAIR:

16 Q B.C. Salmon Farmers Tab 3, please, PDF 37 after we  
17 see the face sheet just for a moment. This is  
18 from the Pacific Salmon Forum and if we could go  
19 to PDF 37. If you could enlarge the paragraph  
20 below the graph, please, Mr. Lunn. These  
21 questions are for you, Mr. Thomson and/or Mr.  
22 Last. Take a moment to read that particular  
23 paragraph that commences:

24

25 Today, all site application must undergo  
26 detailed biological and environmental reviews  
27 in accordance with both provincial and  
28 federal regulations.

29

30 Do you see that?

31 MR. THOMSON: Yes.

32

33 Q These reviews require a significant  
34 investment of time, money and expertise.

35

36 Do you both agree with that statement?

37 MR. THOMSON: Yes.

38 MR. LAST: Yes.

39 MR. BLAIR: Could that be marked as the next exhibit.

40 THE REGISTRAR: Exhibit 1623.

41

42 EXHIBIT 1623: BC Pacific Salmon Forum Final  
43 Report & Recommendations to the Government of  
44 British Columbia, January 2009  
45

46

MR. BLAIR:

47 Q B.C. Tab 16, please. Mr. Thomson and Mr. Last,

1           again in particular, you're familiar with this  
2           Practitioners Guide?

3       MR. THOMSON: I've seen it, but I'm not familiar with  
4           it.

5       MR. LAST: I wouldn't say I was familiar with it.

6       Q       Neither -- I'm sorry, neither of you are familiar  
7           with it?

8       MR. LAST: I've seen it, but I haven't...

9       Q       All right. I'm going to direct your attention,  
10           then, to PDF 4, please, Mr. Lunn. And the second  
11           paragraph under the word "Preface", starting "The  
12           Risk Management Framework". The document says:

13  
14                   The Risk Management Framework is a structured  
15                   approach to decision-making using a common  
16                   set of tools. Some of these tools are new,  
17                   such as the Pathways of Effects, and will  
18                   require further refinement as they are tested  
19                   and evaluated by Practitioners. Other  
20                   elements, such as regional habitat  
21                   classification schemes which identify fish  
22                   and fish habitat sensitivities, have been in  
23                   existence for some time in different regions  
24                   of Canada.

25  
26                   Does that accord with your understanding of how  
27                   the industry has moved forward in the last ten  
28                   years or so in terms of siting and licensing?

29       MR. THOMSON: It certainly is in agreement with how the  
30           Department applies its Habitat Management Program,  
31           yes, to aquaculture facilities, as well.

32       MR. BLAIR: Could this document be marked the next  
33           exhibit, please.

34       MR. LAST: And this is a federal document, specific to  
35           their processes, so I can't comment.

36       MR. BLAIR: Thank you for that clarification.

37       THE REGISTRAR: The document will be 1624.

38  
39                   EXHIBIT 1624: Practitioners Guide to the  
40                   Risk Management Framework for DFO Habitat  
41                   Management Staff, Version 1.0. Habitat  
42                   Management Program, Fisheries and Oceans,  
43                   Canada

44  
45       MR. BLAIR:

46       Q       B.C. Tab -- B.C. Salmon Farmers Tab 8, please. My  
47           question again for Mr. Thomson or Mr. Last. It

1 really relates to how -- to explain how valued  
2 ecosystem components tables are used. I'm told  
3 that this particular document, as you can see on  
4 the face of it, is a **CEAA** Screening Report. It  
5 deals specifically with a Grieg Seafood BC Ltd.  
6 Proposed Finfish Aquaculture Facility at  
7 Concepcion Point in Nootka Sound, and I wonder if  
8 we could go, please, to PDF 17 and 18. Gentlemen,  
9 I'm referring you to - once Mr. Lunn decides  
10 whether he wants us to go for lunch or not - Table  
11 1, please, Mr. Lunn. I think you had it, yes.  
12 Yes, thank you.

13 Firstly, Mr. Thomson or Mr. Last, are you  
14 familiar with this particular table and/or its  
15 use?

16 MR. LAST: I'll let Mr. Thomson comment to this, again  
17 this is a federal document.

18 MR. THOMSON: Yes, I am.

19 Q Can you very briefly describe the use of a Valued  
20 Eco Components.

21 MR. THOMSON: Yes. So in the **Canadian Environmental**  
22 **Assessment Act** screening of a proposed activity,  
23 in this case an aquaculture facility, really the  
24 heart of the assessment is in the Valued Ecosystem  
25 Components table where you list the proposed  
26 activities, the potential environmental  
27 interaction of that activity, what is the  
28 potential ecosystem component that's going to be  
29 impacted, of the VEC that's going to be  
30 potentially impacted by that activity, and then  
31 you assess the -- or then you list the mitigation  
32 measures that are going to be implement by the  
33 operator of the company, in terms to avoid impact  
34 of those valued ecosystem components. And then a  
35 habitat practitioner or someone with expertise in  
36 it, assesses the significance of what the residual  
37 effect after the mitigation measures were applied  
38 is to the environment.

39 MR. BLAIR: Could this be marked as the next exhibit,  
40 please. Mr. Commissioner, I have one question  
41 left, I'm in your hands.

42 THE REGISTRAR: That will be 1625.

43  
44 EXHIBIT 1625: **CEAA** Screening Report, Grieg  
45 Seafood BC Ltd. Proposed Finfish Aquaculture  
46 Facility at Concepcion Point, Nootka Sound  
47 BC, DFO



1 THE COMMISSIONER: We'll take the break, Mr. Blair.  
2 MR. BLAIR: Thank you.  
3 THE REGISTRAR: The hearing will now recess until two  
4 o'clock.

5  
6 (PROCEEDINGS ADJOURNED FOR NOON RECESS)  
7 (PROCEEDINGS RECONVENED)  
8

9 THE REGISTRAR: The hearing is now resumed.

10 THE COMMISSIONER: Mr. Blair?

11 MR. BLAIR: Thank you, Mr. Commissioner. Carrying on,  
12 I have some questions for Mr. Swerdfager regarding  
13 the Canadian Aquaculture Industry Alliance. And I  
14 wonder if, Mr. Lunn, you could put up B.C. Salmon  
15 Farmers' Tab 7?  
16

17 CROSS-EXAMINATION BY MR. BLAIR, continuing:  
18

19 Q The second paragraph in that text refers to, and  
20 this is a statement from the Canadian Aquaculture  
21 Industry Alliance. It says, in part:  
22

23 The **Fisheries Act** is basically a wildlife  
24 management act and is not focused on the  
25 process of farming in the aquatic  
26 environment. Now more than ever before,  
27 aquaculture needs an act which recognizes  
28 that the process is a food production  
29 practice which takes place with fish as  
30 private property and occurs in legally  
31 defined private spaces. It is not the  
32 management of common property resource which  
33 occurs in public waters.  
34

35 Sir, is it fair to say that you've heard that  
36 position being expressed by the industry  
37 generally, and by the Industry Alliance over time?

38 MR. SWERDFAGER: I have heard that expressed a number  
39 of times, yeah.

40 Q And this, I understand, and it's hard to tell from  
41 page 1, but when you look further down on the  
42 subsequent pages, it appears to be a July 2010  
43 statement by that group. Does that accord with  
44 your understanding of when this document might  
45 have been produced?

46 MR. SWERDFAGER: If it says that's the date it was  
47 produced, I don't have any dispute with that, no.

1 MR. BLAIR: And I wonder if we could mark this as an  
2 exhibit, and then I'd like to take the witness to  
3 a series of email exchanges.

4 THE REGISTRAR: 1626.

5 MR. BLAIR: Thank you.

6

7 EXHIBIT 1626: Document entitled, "An  
8 Aquaculture Act for Canadian Aquaculture (or  
9 separate Chapter in **Fisheries Act**)

10

11 MR. BLAIR: If we could go to B.C. Salmon Farmers' Tab  
12 34, please?

13 Q So Mr. Swerdfager, I have a three-page email  
14 string, and you'll see that you're either a  
15 receiver or a sender? And if we could look at the  
16 email that's on the screen -- if you could just  
17 move your cursor, thank you Mr. Lunn -- the one,  
18 April 17th, from yourself to a variety of parties,  
19 commenting generally about the options that could  
20 be presented to the DM, the Deputy Minister, for  
21 consideration as a new **Aquaculture Act**. Do you  
22 see that in the first line of your paragraph?

23 MR. SWERDFAGER: I do, yeah.

24 Q And so this accurately reflects your view in April  
25 of 2010 of some of the options that needed to be  
26 considered as the federal government moved into  
27 the new regime with the industry?

28 MR. SWERDFAGER: Well, it's my view that some of those  
29 options should be presented to our Deputy Minister  
30 for consideration, for sure.

31 MR. BLAIR: And just if you could go to the next page,  
32 Mr. Lunn?

33 Q I want to direct you, sir, to the email, it's the  
34 same day, it's the nightshift, I think. It looks  
35 like the Saturday, April 17th, at 0600 hours.  
36 There we are. And the third paragraph down.

37 MR. BLAIR: Just highlight that bottom paragraph, Mr.  
38 Lunn?

39 Q And sir, this, again, is an email that you sent  
40 that day to a variety of parties following up on  
41 the -- in fact, I showed you the 11:54 version.  
42 This was written a few hours earlier, correct?

43 MR. SWERDFAGER: The government never sleeps.

44 Q I didn't intentionally give you that lead-in, but  
45 you got it. This paragraph, I'm going to read it  
46 into the record, and then I'm going to ask you to  
47 comment on it generally, if I may, sir?

1 MR. SWERDFAGER: Mm-hmm.

2 Q You said in this email:

3  
4 I feel that the **Fisheries Act** may not be an  
5 adequate mechanism for governing the  
6 aquaculture sector in Canada.  
7 Notwithstanding the fact that the B.C.  
8 Supreme Court ruled that aquaculture is a  
9 fishery, the Court was equally clear that it  
10 is a unique fishery and not necessarily akin  
11 to capture fisheries. Indeed, at a  
12 conceptual level, I would argue that there  
13 are real concerns with treating aquaculture  
14 as just a subset of capture fisheries to be  
15 managed using a statute designed for capture  
16 fisheries albeit modified in some way to  
17 address aquaculture. Just as no one now  
18 would equate agriculture with gathering and  
19 hunting wild plants and animals, it is  
20 likewise inappropriate to perpetuate the  
21 misconception that the domestic culturing of  
22 aquatic plants and animals is closely allied  
23 to the capturing of wild organisms. To  
24 modernize the **Fisheries Act** while retaining  
25 its antiquated concept that aquaculture is  
26 just a subset or minor element of the fish  
27 and seafood sector would, in my view, be  
28 unfortunate.  
29

30 Does that reflect your view of the need to  
31 minimally modernize the **Fisheries Act** and perhaps  
32 be more bold and put forward a recommendation for  
33 an Aquaculture Act to address the unique features  
34 of the industry that you've highlighted in this  
35 paragraph?

36 MR. SWERDFAGER: Well, I think the way I've laid it out  
37 there certainly reflected my view then, and I  
38 think I would agree with most of what I've said in  
39 there now. I think that the only caveat I would  
40 put on that, of course, is that certainly, our job  
41 in the Department is to offer suggestions,  
42 recommendations, options, well, (a), to our Deputy  
43 Minister, but on up into the Minister, and that  
44 certainly would be a decision that the government  
45 would make as opposed to anything we would do.

46 I think that the key point here is that to  
47 some considerable degree, we're using, as I say,

1 here, a tool to manage an industry that was not  
2 built, and I'm talking about the Act now, as  
3 opposed to the Regulations, but was not built for  
4 that purpose. And as the industry continues to  
5 mature across the country, I think there may be a  
6 scope for us, at some point, if the government  
7 chose, to go in a particular direction towards  
8 modernizing the regime, certainly, to put  
9 something in place that's more explicitly  
10 addressing aquaculture is something they probably  
11 would want to think about.

12 Q And without speaking for where government might go  
13 in the future on a legislative initiative, you'd  
14 want it to be open, both to considering  
15 modernizing the **Fisheries Act**, and/or an option on  
16 the table, an Aquaculture Act in its own right?

17 MR. SWERDFAGER: I think that it would be important for  
18 a number of options to be considered, and I would  
19 be the first to admit that my own views on this  
20 have waffled a little bit over the years. There  
21 are times I've thought that an Aquaculture Act is  
22 necessary, there are times that I thought that  
23 simply an amendment to add a part or a major  
24 section to the **Fisheries Act** would suffice. I  
25 think the key thing is that it would be ideal for  
26 options to be put before our government to select  
27 from as to how best Parliament may want to express  
28 itself with respect to aquaculture.

29 Q Thank you for those views. As you probably know,  
30 the Commission is looking for recommendations and  
31 to the extent that you're able to give an  
32 indication of a personal view as opposed to a  
33 government or legislative agenda, we appreciate  
34 those views.

35 MR. BLAIR: And those are my questions. Thank you. I  
36 think I have a credit of about three minutes that  
37 Mr. Martland might give me sometime in the future,  
38 October, I think.

39 MR. MARTLAND: Well, we're hiding away all our credits.  
40 I'll talk later with Mr. Blair about that.

41 MR. BLAIR: Thank you.

42 MR. MARTLAND: I wonder if the document on screen, if  
43 it hasn't been marked, if it should be marked as  
44 an exhibit?

45 MR. BLAIR: Thank you, Mr. Martland.

46 THE REGISTRAR: Tab 34 will be marked as 1627.

47 MR. BLAIR: Thank you. Those are my questions.

1 EXHIBIT 1627: Email from James Smith to  
2 Trevor Swerdfager dated April 19, 2010, re  
3 **Aquaculture Act**  
4

5 MR. MARTLAND: Thank you. Mr. Commissioner, I have  
6 next counsel for the Aquaculture Coalition, 20  
7 minutes. Thank you.

8 MR. McDADE: Thank you, Mr. Martland. My name is Greg  
9 McDade, and I'm counsel for Dr. Morton and the  
10 Aquaculture Coalition.

11 Before I commence, Mr. Commissioner, I just  
12 want to put a statement on the record. I'd like  
13 to express our significant concern about the fact  
14 that we have such a short time period, 20 minutes.  
15 And I know you're under a great deal of pressure.  
16 I just believe that 20 minutes is completely  
17 inadequate to deal with this important issue and  
18 the many documents that are before us, but I'll do  
19 the best I can.

20 THE COMMISSIONER: Thank you very much, Mr. McDade.  
21

22 CROSS-EXAMINATION BY MR. McDADE:  
23

24 Q Dr. Fleming, you're the only person on this panel  
25 that is a non-governmental person and you've come  
26 the farthest so let me begin with you. And I'm  
27 very interested in your Norwegian experience. As  
28 I understand your evidence, in Norway, the  
29 government, in its wisdom, has seen fit to  
30 recognize that certain fishing rivers or migratory  
31 routes for fish are important enough that they  
32 should keep salmon farms off of them?

33 DR. FLEMING: That's correct.

34 Q And so does that mean the government recognizes a  
35 risk to wild fish from fish farms?

36 DR. FLEMING: Yes, there are official statements to  
37 that fact.

38 Q And one of those risks is the risk of disease  
39 transmission?

40 DR. FLEMING: Yes.

41 Q Now, I understand, in Norway, the fish farm  
42 industry has significant problems with disease and  
43 has had, really, throughout its history; is that  
44 right?

45 DR. FLEMING: Yes. Well, there have been problems with  
46 disease throughout time, yes.

47 Q And it seems to be a new disease, or there's new

- 1 diseases emerging all of the time. There are  
2 currently a number that they're struggling with,  
3 aren't there?
- 4 DR. FLEMING: I probably couldn't comment on the degree  
5 to which there are new diseases, but yes, they are  
6 still tackling the existing diseases and disease  
7 epidemics.
- 8 Q And Norway has rules, as we do, to force the fish  
9 farms to protect from disease?
- 10 DR. FLEMING: Yes. Yeah, there are rules in place,  
11 veterinarian regulations with regards to transfer  
12 and reporting disease, et cetera.
- 13 Q And those rules are not working well enough to  
14 keep disease away from the fish farm industry?
- 15 DR. FLEMING: Since there are diseases present, yes, I  
16 would say that they haven't been able to eliminate  
17 the presence of disease in the farms.
- 18 Q And the Norwegian Government does not regard those  
19 rules as sufficient to protect the wild fish?
- 20 DR. FLEMING: I guess the question's a little vague  
21 because it's not specific to the particular rules,  
22 but there is, in terms of veterinarian  
23 regulations, they haven't been effective in  
24 eliminating diseases or the transfer of diseases  
25 between both wild and farmed fish both ways,  
26 disease and parasites.
- 27 Q And let me ask you, Doctor, in terms of the risk  
28 of disease transmission to wild fish, is that  
29 worse or different in confined waters or smaller  
30 spaces than it is in the open sea?
- 31 DR. FLEMING: Yeah, presumably, it would be. I think  
32 the laws of physics would suggest that in terms of  
33 number of propagules that could be spread and the  
34 likelihood of encountering propagules, yes.
- 35 MR. McDADE: Could we have Aquaculture document 3 up on  
36 the screen, please?
- 37 Q Now, because you're from Newfoundland, Doctor, I  
38 won't presume you know fully our geography, but  
39 we've heard evidence that the wild sockeye salmon  
40 swim up the East Coast of Vancouver Island in  
41 disproportionate numbers, I think 80 or 85 percent  
42 of the run. And now, does Norway have the similar  
43 problem, or --
- 44 DR. FLEMING: I think that the situation in this part  
45 of the world is somewhat unique in the degree to  
46 which the migratory path, or the migratory path  
47 for a large number of fish is confined to a

1 particular area. The same situation does not  
2 occur in Norway where the fish exit long fjords,  
3 but out into the open ocean.  
4 Q Well, where they have long fjords, and so they're  
5 confined until they exit, is there regulations  
6 prohibiting fish farms in those areas?  
7 DR. FLEMING: To a certain extent, there is. It  
8 depends on how the national fjord system is  
9 established. Sometimes the national fjord system  
10 covers only the innermost parts of a fjord,  
11 sometimes it covers, such as in the  
12 Trondheimsfjord, the whole fjord, but there are  
13 still the drift of disease, parasites.  
14 MR. McDADE: If we could have Aquaculture document  
15 number 6 up?  
16 Q And this is a map, Doctor, of the Discovery  
17 Islands, which is the narrowest part of that  
18 particular passage that I showed you in the larger  
19 map. Would you agree that it's particularly  
20 important to zone areas such as this to avoid  
21 disease transmission?  
22 DR. FLEMING: I believe it would be helpful, if my  
23 understanding is correct, that the sockeye salmon  
24 and the other species, large number of species,  
25 have to pass through a narrow point, and if these  
26 stocks are recognized as being significant, then,  
27 yes, it seems to be an important area that would  
28 require protection if there is significant effect  
29 of disease and parasites on those fish that pass  
30 through that area. Yes.  
31 Q Well, are you aware of any country in the world  
32 where fish farming is conducted in a volume where  
33 there is not problems with disease?  
34 DR. FLEMING: No, I'm not aware that there is a  
35 situation where fish farming is done in a disease-  
36 free manner.  
37 Q So to your experience, no matter how tough the  
38 rules around veterinarian practices and  
39 quarantine, disease develops everywhere?  
40 DR. FLEMING: Especially when there's contact with the  
41 open ocean or open environments, yes, I think  
42 that's true.  
43 MR. McDADE: Now, sorry, I think the document on the  
44 screen's already got an exhibit number, but can I  
45 mark the other one?  
46 THE REGISTRAR: That will be 1628.  
47

1 EXHIBIT 1628: Map entitled, "Fish Farming on  
2 and around Vancouver Island and Coastal  
3 British Columbia"  
4

5 MR. McDADE:

6 Q Now, let me go to you, Mr. Last. B.C. has no such  
7 zoning in place?

8 MR. LAST: Similar to the --

9 Q Norwegian?

10 MR. LAST: No.

11 Q And you referred to LR&P plans and that stuff.  
12 They don't zone fish farm locations based on their  
13 contact with wild fish, do they?

14 MR. LAST: No.

15 Q So other than the northern part of B.C., which was  
16 put into a moratorium some years ago, there is no  
17 zoning pattern or regulations in B.C. that  
18 prohibit the siting of fish farms in a particular  
19 location?

20 MR. LAST: Other than the appropriateness of a given  
21 location geophysically and, you know, all of the  
22 criteria that have to be taken into account. Some  
23 places are more and less appropriate.

24 Q But would you agree that a zoning mechanism like  
25 Dr. Fleming referred to from Norway would be  
26 helpful in terms of protecting wild salmon?

27 MR. LAST: Would it be helpful? Possibly, yeah, it  
28 could be.

29 Q And B.C. has no plans to consider that currently,  
30 do they?

31 MR. LAST: Not that I'm aware of, no.

32 MR. McDADE: Now, can we have Exhibit 1589 up on the  
33 screen? Sorry, page 5, I think, was the siting  
34 requirements that we looked at. There we go.

35 Q Now, Mr. Last, this is a document you referred to  
36 in your examination earlier. I think these siting  
37 criteria have pretty much been in place since  
38 1997; isn't that right?

39 MR. LAST: Yes.

40 Q And they've been carried through most of B.C.  
41 regulation of the aquaculture industry?

42 MR. LAST: Since that time, yes.

43 Q And they've been basically carried over holus-  
44 bolus into the federal regime?

45 MR. LAST: As far as I know that this version is the  
46 same as what the province used for siting criteria  
47 prior to the transfer to federal administration.



- 1 Q So up until 2010, when there was a change of  
2 jurisdiction, all of the fish farm sites that are  
3 currently operating were approved according to  
4 that list?
- 5 MR. LAST: That list and other considerations. These  
6 were the siting guidelines that were applied, yes.
- 7 Q Right. And so despite all of the science that's  
8 taken place in the current century in respect of  
9 sea lice and disease, no one has though it  
10 sufficient to change the siting criteria in any  
11 way?
- 12 MR. LAST: The criteria have stayed the same, but all  
13 of that information is certainly available to, and  
14 has been available to decision makers.
- 15 Q If we can go to the first criteria, at least one  
16 kilometre in all --
- 17 MR. McDADE: Sorry, the second one.
- 18 Q At least one kilometre from the mouth of a salmon-  
19 bearing stream determined as significant. Now,  
20 what's the purpose of that siting requirement?
- 21 MR. LAST: My understanding is that it's an attempt to  
22 create some distance between a salmon farm and  
23 streams that wild salmon rely on for spawning and  
24 for rearing.
- 25 Q And didn't the Salmon Aquaculture Review hear  
26 evidence and make recommendations in terms of  
27 trying to avoid areas where there's confined  
28 spaces?
- 29 MR. LAST: I'd have to go back and look. I see the  
30 logic of that, but I can't say for sure that I  
31 know that they heard that evidence.
- 32 Q And the logic of that, and the logic of keeping it  
33 one kilometre away from the mouth of a stream is  
34 to avoid wild salmon?
- 35 MR. LAST: It's to reduce the risk, that there is some  
36 concern, there is some uncertainty, and that is  
37 addressed by creating that spatial distance.
- 38 Q And so the logic of this is that in confined or  
39 narrow channels where the fish runs, the migratory  
40 runs of the wild sockeye are more concentrated,  
41 the risk is higher, isn't it?
- 42 MR. LAST: If there is a risk, it would be greater in  
43 those circumstances.
- 44 Q Now, you say that there have been other factors  
45 considered, but I suggest to you that the  
46 possibility of disease affecting the wild sockeye  
47 runs has never been a factor for B.C. in terms of

1 a siting decision; that's a fair comment, isn't  
2 it?

3 MR. LAST: I couldn't really say because the  
4 information before a decision maker on any  
5 particular siting decision, or in the past for the  
6 province, licensing decision, that varies. That's  
7 on a case-by-case basis.

8 Q Well, in all the documents that we've seen, in the  
9 600,000 or so documents in the database, I've yet  
10 to see a document suggesting the province ever  
11 rejected a site because of wild salmon migratory  
12 routes. Are you aware of any of those?

13 MR. LAST: No.

14 Q What about you, Mr. Swerdfager, can you think of a  
15 site that's ever been rejected by the federal  
16 government because of its impacts on wild salmon  
17 migratory routes?

18 MR. SWERDFAGER: No, I can't.

19 Q In fact, it's the position of DFO, is it not, that  
20 there are no risks from disease transfer from fish  
21 farms to wild salmon? You don't recognize that  
22 risk, do you?

23 MR. SWERDFAGER: I don't think I would characterize the  
24 DFO position as bluntly as you have. I would  
25 think that what DFO's position on matters related  
26 to disease for sometime has been that we wish to  
27 understand those risks better, that they may  
28 exist, they may differ from place to place, from  
29 time to time, from species to species. And  
30 certainly, when DFO looks at citing decisions,  
31 whether it's with respect to, in this case,  
32 aquaculture or other matters, certainly, DFO has,  
33 in the past, given consideration to disease  
34 issues. And also, when it comes to siting,  
35 whether it's in a case like this criteria, or  
36 others, part of DFO's interest is to keep economic  
37 development in general, not just activities  
38 related specifically to the aquaculture industry,  
39 but more generally, away from areas that we  
40 consider to be sensitive habitat for a whole  
41 variety of reasons, some of which relate to  
42 salmon. So to suggest that the only reason that  
43 we would put this criterion, for example, in place  
44 is a concern about disease or aquaculture per se,  
45 is perhaps narrowly focussed. I think, in fact,  
46 our concerns tend to be broader in nature and  
47 focus on all marine ecosystem conservation and

1 protection and a concern about all economic  
2 development activities.

3 Q Well, is it the belief of the federal government,  
4 Mr. Swerdfager, that by having a fish health  
5 management plan, by putting in these kind of  
6 veterinary measures, that you can eliminate the  
7 risk to wild salmon?

8 MR. SWERDFAGER: I don't think any biologist or any  
9 department working in the biological area would  
10 say that we could eliminate risk to wild salmon to  
11 anything, for that matter. I think that for a  
12 start, we don't fully understand as a society, as  
13 a department, what all of those risks are. I  
14 think that the fish health management plan concept  
15 is certainly one that substantially reduces or  
16 minimizes risk. I certainly would stand to be  
17 corrected by any of my colleagues in the Science  
18 sector, but my feeling would be that the  
19 likelihood of us taking a risk from existing to  
20 zero is probably unlikely. It's not something  
21 that I think any credible resource manager would  
22 want to state as categorically as that.

23 Q Well, as you saw on the map that was up on the  
24 screen, there have been at least 10 fish farms  
25 approved right in the narrowest channel of the  
26 Discovery Passage, the narrowest place the wild  
27 salmon migrate through. Was that risk considered  
28 when they were approved?

29 MR. SWERDFAGER: I wasn't part of the risk assessment  
30 decisions when those particular sites were  
31 approved, and maybe Andy might want to talk about  
32 those in the past, but I am very, very confident  
33 that quite a wide range of risks were considered  
34 when we made those siting decisions. Do you want  
35 to explain on that, maybe, a little bit.

36 Q Well, no, no, I'm a little stretched for time  
37 here, sir. Let me help you with this.

38 MR. SWERDFAGER: Well, maybe, if it would be all right,  
39 if we could just complete our answer to your  
40 question, that might be --

41 Q All right. If Mr. Thomson can point me to a place  
42 where they considered it, I'd appreciate that.  
43 Can you do that, Mr. Thomson?

44 MR. THOMSON: Yes, I can. In the **Canadian**  
45 **Environmental Assessment Act** screenings for  
46 several fish farms, which that may be an inclusion  
47 of the ones you're talking about, one of the

1 valued ecosystems that's considered is impacts of  
2 fish health, and really, the basis of the position  
3 in considering it is that if the fish in the farm  
4 are kept healthy through proper management of the  
5 farm population, then the likelihood of any  
6 passage of pathogens to wild fish is, therefore,  
7 reduced.

8 Q Yes, well, that certainly makes logical sense, but  
9 as we've heard in the evidence leading up to this,  
10 infections still happen despite the best rules  
11 that you have in place. Up to 30 high-risk fish  
12 infections a year, right? They're still happening  
13 today.

14 MR. THOMSON: I'm sorry, I'm not sure of the records  
15 you're talking about.

16 Q All right. Well, there are active fish infections  
17 every year on fish farms in British Columbia,  
18 aren't there? You're aware of that, aren't you?

19 MR. THOMSON: Yes.

20 Q Right. So despite the best efforts, you can't  
21 stop them?

22 MR. THOMSON: Well, the efforts, again, around  
23 implementing a fish health management plan is to  
24 have the best efforts in place by the companies in  
25 order to manage the fish health of their stock,  
26 their stock being in net pens surrounded by the  
27 open oceans. You know, it seems to me that it  
28 would be logical to assume that some pathogens  
29 will be picked up in the open ocean, yes.

30 Q So the only way you can prevent wild fish from  
31 getting infections is to keep them away from  
32 migratory paths; wouldn't that make sense?

33 MR. THOMSON: I'm sorry, you're asking the only way to  
34 keep wild fish from getting infections?

35 Q Yes.

36 MR. THOMSON: I mean, wild fish get infections. I'm no  
37 expert on fish health, but my belief is wild fish  
38 get infections whether as part of the natural  
39 course of fish being in the natural environment.

40 MR. McDADE: All right. Can I have Aquaculture number  
41 23 up on the screen?

42 Q This is the **Canadian Environmental Assessment Act**  
43 screening for the Dunsterville on the Discovery  
44 Islands.

45 MR. McDADE: Can we have that marked as an exhibit?

46 THE REGISTRAR: Exhibit, what are we at, here, 1629.

47

1 EXHIBIT 1629: Transport Canada, **Canadian**  
2 **Environmental Assessment Act** (CEAA),  
3 Screening Environmental Assessment Report  
4

5 MR. McDADE: Can I have Aquaculture Exhibit 24 up on  
6 the screen?

7 Q This is the **CEAA** assessment screening for the  
8 Conville Bay site in the Discovery Islands.

9 MR. McDADE: Can we have that marked as the next  
10 exhibit?

11 THE REGISTRAR: 1630.  
12

13 EXHIBIT 1630: Transport Canada, **Canadian**  
14 **Environmental Assessment Act** (CEAA),  
15 Screening Environmental Assessment Report  
16

17 MR. McDADE:

18 Q And is it your evidence that those **CEAA** screenings  
19 would have considered the risk to wild salmon of  
20 transmission of disease when we have disease  
21 outbreaks?

22 MR. THOMSON: Well, I'm not familiar with these  
23 particular two environmental assessments, as  
24 they're authored by Transport Canada, but what I  
25 said earlier was that I know in previous  
26 environmental assessments authored by DFO, disease  
27 risk was considered in the SIDK table, yes.

28 Q Now, Mr. Swerdfager, earlier, we had tabled the  
29 application form for a new licence under current  
30 rules. Let me suggest to you that nowhere on that  
31 licence did they even ask whether the site is on a  
32 migratory site, or not, for wild sockeye. It's  
33 not even on the application form; is that fair?

34 MR. SWERDFAGER: I don't know.

35 MR. THOMSON: I don't believe it's on that form, that  
36 question, no.

37 Q So currently, the federal government takes no  
38 special steps in respect of farms that are on the  
39 salmon migratory route?

40 MR. THOMSON: Well, under the current regime, which has  
41 been in place since December 19th, 2010, no, but  
42 we are in the midst of developing integrated  
43 management of aquaculture plans which are designed  
44 to take an area management approach to aquaculture  
45 management within the Province of British  
46 Columbia.

47 Q And as I understand, the farms that are currently

1 approved by the federal government were  
2 grandfathered, basically, over from the provincial  
3 regime, that's right?

4 MR. THOMSON: Licences were issued for the same number  
5 of species and for the same level of production.

6 Q There was no new assessment done?

7 MR. THOMSON: There was an assessment of the licence  
8 production and the amount that was -- the past  
9 previous provincial licences were provided to the  
10 Department for review.

11 MR. MARTLAND: Mr. Commissioner, I'm going to raise  
12 with respect to the time, simply to indicate that  
13 Mr. McDade is at the 20-minute mark, I'm afraid.  
14 I don't know if he's managed to succeed in  
15 contributions from colleagues, but in the absence  
16 of that, based on the premise that is applied  
17 fairly with all counsel, I will ask that we move  
18 on to the next counsel.

19 MR. McDADE: That's all I can do.

20 MR. LEADEM: Leadem, initial T., appearing as counsel  
21 for the Conservation Coalition. I want to begin  
22 with Conservation document number 62, if I may?  
23

24 CROSS-EXAMINATION BY MR. LEADEM:  
25

26 Q Earlier, Mr. Last, you may recall that you  
27 tendered into evidence the provincial response,  
28 and then through Mr. Thomson, the federal response  
29 to the Porter audit. Is what you see before you,  
30 in fact, the Porter audit that he prepared for the  
31 B.C. Pacific Salmon Farm?

32 MR. LAST: It looks like it, yes.

33 MR. LEADEM: Could that be marked as the next exhibit,  
34 please?

35 THE REGISTRAR: 1631.  
36

37 EXHIBIT 1631: An Audit of the Management of  
38 Salmon Aquaculture for the Protection of Wild  
39 Salmon in British Columbia, by Gareth Porter,  
40 for the B.C. Pacific Salmon Forum, dated  
41 May 9, 2006  
42

43 MR. LEADEM:

44 Q And if I could just ask you to briefly turn to  
45 page 23 of that. What Mr. Porter did was  
46 basically do a rating based upon different  
47 criterion which are explained in the report, and I

1 don't have the time to actually go through each of  
2 these criterion. But essentially, he looked at  
3 B.C. in comparison to Atlantic Canada, Iceland,  
4 Ireland, Norway, Scotland, and the United States.  
5 And my understanding, based upon the criterion  
6 that a high score is good and a relatively low  
7 score is not as good. Is that your understanding,  
8 as well, Mr. Last?  
9 MR. LAST: Yes.  
10 Q So you see that B.C. ranks somewhere in the  
11 middle, somewhere below Norway and Iceland and the  
12 United States, but apparently better than Scotland  
13 and Atlantic Canada, and slightly better than  
14 Ireland; is that right?  
15 MR. LAST: According to Mr. Porter's report, yes.  
16 Q Okay.  
17 MR. LEADEM: Could we now turn to Conservation document  
18 Tab 1, please?  
19 Q Mr. McDade asked you a number of questions, Mr.  
20 Last, about the siting criterion that the Province  
21 had adopted and I'm advised that this looks like  
22 it's the siting criteria from the Province. Do  
23 you recognize it as such?  
24 MR. LAST: Yes.  
25 MR. LEADEM: Could we have that marked as the next  
26 exhibit, please?  
27 THE REGISTRAR: 1632.  
28  
29 EXHIBIT 1632: Criteria for siting new  
30 finfish aquaculture facilities  
31  
32 MR. LEADEM:  
33 Q And it appears as though there's 15 criteria.  
34 MR. LEADEM: And if we look at Exhibit 1589, Tab 5, and  
35 if we can somehow split the screen and page 5 of  
36 that, Mr. Lunn?  
37 MR. LUNN: Exhibit, one more time, please?  
38 MR. LEADEM: I think it was 1589, it was the licence  
39 application that Mr. McDade referred to.  
40 Q We see that with one juxtaposition, I believe, of  
41 the last two, essentially, the federal application  
42 that's in place for present applications for  
43 aquaculture is identical to the B.C. one that you  
44 see on the right-hand side; is that right?  
45 MR. LAST: You're saying it is identical?  
46 Q Yes.  
47 MR. LAST: I believe it is.

1 Q Okay.

2 MR. LAST: Yeah.

3 MR. LEADEM: Could we have that Tab 1 marked as the  
4 next exhibit, please, the siting requirements?

5 THE REGISTRAR: Well, you did, you marked it 1632.

6 MR. LEADEM: Oh, sorry. Could we have Conservation  
7 Tab 2, please?

8 Q Now, I'm turning to you, Mr. Thomson, do you  
9 recognize this?

10 MR. THOMSON: Yes, I do.

11 Q All right. Emily Drouin, I take it, is one of  
12 your employees within the Aquaculture Division of  
13 DFO; is that correct?

14 MR. THOMSON: Emily Drouin was an employee of the  
15 Aquaculture Management Division in Ottawa. She  
16 came to British Columbia, worked on an assignment  
17 and then returned to Ottawa to a position.

18 Q All right. I'm going to just look at her email to  
19 you, in part, and I believe you were copied on  
20 this, as well, were you not, Mr. Swerdfager?

21 MR. SWERDFAGER: If we scroll down, I think that the  
22 originator of this email chain is me. Well, in  
23 fact, probably, it's David Lane, but I was  
24 forwarded, in this email chain, a paper from David  
25 Lane, who works for the T. Buck Suzuki Foundation,  
26 and I apologize, I forget the name of the author  
27 of the paper, but it was -- okay, here we go,  
28 Steven Catania.

29 Q Right.

30 MR. SWERDFAGER: And in the document, they offered a  
31 number of recommendations to us. It was sent to  
32 me at my request with respect to how they would  
33 see a well-designed regime rolling out, so to  
34 speak, with respect to making sure that the regime  
35 we were building is as transparent as possible in  
36 terms of information sharing, and I think you'll  
37 see in my note on May 19th, at 8:21 a.m., I'm  
38 working some weird hours it seems, that I felt the  
39 paper was really quite good, and I forwarded it  
40 on, asking for any advice that staff may have as  
41 to whether or not there would be any problems in  
42 implementing it.

43 Q All right. So you were of the view, certainly,  
44 that the report that was done by Steven Catania  
45 from University of Victoria, Environmental Law  
46 Centre, contained some really good recommendations  
47 with respect to transparency that you wanted to



1 adopt into the DFO program; is that fair?

2 MR. SWERDFAGER: I thought it was an excellent paper  
3 and, in fact, among the various inputs received,  
4 as part of the development of the regulation,  
5 itself, and the policy process, I found it had  
6 more effect on, certainly, my thinking than a lot  
7 of the papers that we received. I thought it was  
8 extremely good and I think much of what was  
9 recommended in that paper, in fact, has sort of  
10 found itself, found its way, rather, into the  
11 regulation and the conditions of licence that flow  
12 from it.

13 Q All right. Now, going, then, up in the chain to  
14 the email from Ms. Drouin, she asks a very  
15 interesting question. She says:

16  
17 Do we have a process in the works to obtain  
18 B.C. Salmon Farmers' Association data as  
19 historical need-to-know and for upcoming  
20 reporting and auditing purposes?  
21

22 So I'm going to ask that question of you, Mr.  
23 Swerdfager.

24 MR. SWERDFAGER: Yeah.

25 Q Do you have that in place?

26 MR. SWERDFAGER: I assume it's going to be scrolled up.  
27 I think that what Emily was asking is are we going  
28 to be able to get that? I think that the way we  
29 have established our regulation -- now there's  
30 some music coming in my -- oh, okay, sorry. The  
31 way we have established our process now in terms  
32 of the regulations and the conditions of licence  
33 that flow from it allows us to obtain all of this  
34 information and some of it has been made publicly  
35 in a historical context. Certainly, going  
36 forward, we're very confident we can compel its  
37 production.

38 Q So you're setting something in place?

39 MR. SWERDFAGER: Something is in place now. When you  
40 look at the content of the reg. and the licence  
41 conditions that flow from it, the kinds of things  
42 that Emily's asking about, how are we going to get  
43 this information, we now have a system to do so.

44 MR. LEADEM: Okay. Could we have that marked as an  
45 exhibit, please?

46 THE REGISTRAR: 1633.  
47

1 EXHIBIT 1633: Email from Andrew Thomson to  
2 Emily Drouin, dated May 19, 2010, re further  
3 views on transparency and monitoring  
4

5 MR. LEADEM: And could we go to Tab 3 of the  
6 Conservation documents, please, Mr. Lunn?

7 Q This is a proposal of Canadian Fish and Seafood  
8 Sustainability Briefings. Are you familiar with  
9 this, Mr. Swerdfager or Mr. Thomson?

10 MR. SWERDFAGER: I'm familiar with it, I think, yes.

11 MR. THOMSON: Yes.

12 Q All right. It appears to be that there was a  
13 proposal put to brief trade commissioners in  
14 Ottawa concerning an outreach to U.S. retailers  
15 with respect to aquaculture and marketing of  
16 aquaculture products from Canada in that country;  
17 is that correct?

18 MR. SWERDFAGER: You were correct right up until the  
19 last part of that statement. What we proposed to  
20 do was bring together the trade commissioners that  
21 are based in, I believe it's 13 consular offices  
22 around the United States to talk to them about not  
23 only aquaculture, but sustainable fisheries  
24 management overall. You can see, in the second  
25 paragraph, the people that are listed there, it's  
26 not just aquaculture. And essentially, what we  
27 were looking to do was to respond to a very large  
28 number of questions that trade commissioners based  
29 in the United States were directing our way with  
30 respect to fisheries and aquaculture management  
31 and so rather than trying to keep doing it one by  
32 one, question by question, we sought to bring  
33 trade commissioners together. We ended up  
34 actually doing that in Toronto with a quite a  
35 large workshop. And then we also engaged in a  
36 number of market outreach sessions in key markets  
37 throughout the United States, but the only point I  
38 would suggest maybe I wouldn't entirely agree with  
39 your characterization of it, certainly, the  
40 Department of Fisheries and Oceans was not in the  
41 marketing aquaculture products. That's very much  
42 the role of the industry, itself, that's not  
43 something we do, but we were engaged in meeting  
44 with people in markets to explain the management  
45 regime that we have in place for wild and capture  
46 fisheries.

47 Q All right. If you turn to page 5 of that report,

1           you'll see there's a table with respect to  
2           anticipated costs of briefing sessions to FAM, and  
3           that stands for Fisheries Aquaculture Management;  
4           is that right?  
5   MR. SWERDFAGER: Fisheries and Aquaculture Management,  
6           yeah.  
7   Q       And I understand that that cost of \$50,000 was a  
8           cost that DFO assumed, that was paid; is that  
9           right?  
10  MR. SWERDFAGER: No, that's a projected -- you'll see  
11           at the top it says, "Anticipated Costs." So the  
12           workshops in Houston, New Orleans, Philadelphia,  
13           Miami, and Washington did not take place. The  
14           workshop in Boston took place, but only as part of  
15           the Boston Seafood Show, and so the cost of that  
16           was not incremental to that work. The workshop, I  
17           forget if I skipped over it, we did not have one  
18           in Denver or in Houston. So in terms of our total  
19           expenditures, I would say it was approximately  
20           \$10,000 in total.  
21  Q       Okay. And that was --  
22  MR. SWERDFAGER: And those were --  
23  Q       That cost was assumed by DFO, then?  
24  MR. SWERDFAGER: Well, the costs associated with them  
25           were to get me and one of my staff, and one of my  
26           colleagues in the capture fishery side of things  
27           to those sites where we did conduct the sessions.  
28  Q       And then if we turn the page, we see Annex 1 is a  
29           report on sustainability training in Vancouver,  
30           April 10th, 2008. You attended that, did you not?  
31  MR. SWERDFAGER: I did. It was just up the road, here,  
32           at Library Square.  
33  Q       And Mr. Thomson, you attended, as well, on behalf  
34           of DFO?  
35  MR. THOMSON: I believe I attended portions of it, but  
36           not the entire event.  
37  Q       All right. And then --  
38  MR. SWERDFAGER: Actually, Andy was there briefly in  
39           the morning and he had other things, so he was  
40           there to actually meet people as we kicked off and  
41           then had to leave.  
42  Q       And there's a report on page 7, and I draw your  
43           attention, Mr. Swerdfager, to the next-to-the-last  
44           paragraph on that, where you relate that you met  
45           with Greenpeace and Greenpeace had launched a  
46           campaign --  
47  MR. SWERDFAGER: Mm-hmm.

1 Q -- and your reaction to that campaign. That's an  
2 accurate reflection of what you said at that  
3 meeting, is it not?

4 MR. SWERDFAGER: Yes, it is.

5 MR. LEADEM: Next exhibit, please.

6 THE REGISTRAR: Oh, I'm sorry, 1634.

7

8 EXHIBIT 1634: Canadian Fish and Seafood  
9 Sustainability Briefings, Proposal

10

11 MR. LEADEM: Could we now move to Tab 7 of the  
12 Conservation Coalition's documents?

13

14 Q I'm hoping that you recognize this, Mr. Thomson,  
15 because it appears that you were a recipient from  
16 an email from Nancy Fowler that referenced a visit  
17 with United States senators and B.C. fish farms?

17

18 MR. THOMSON: Yes, I recognize the document.

18

19 MR. LEADEM: Could we have that marked as the next  
20 exhibit, please?

20

21 THE REGISTRAR: 1635.

21

22

22 EXHIBIT 1635: Email from Nancy Fowler to  
23 Stewart Lindale et al dated April 14, 2008,  
24 Re: US senators and B.C. fish farms

25

26

26 MR. LEADEM:

27

27 Q And there is a bunch of what are termed key  
28 messages, generic and key messages, sea lice.

28

29

29 MR. THOMSON: Yes.

30

30 Q Did you review those, Mr. Thomson?

31

31 MR. THOMSON: Did I review them?

32

32 Q Yes. Did you actually meet with any of the U.S.  
33 senators who were meeting with officials within  
34 DFO to get briefed on aquaculture facilities in  
35 the industry, here, in British Columbia?

33

34

35

36 MR. THOMSON: Well, I was part of a group that met with  
37 some state senators from California that came up  
38 to tour aquaculture facilities and also to talk  
39 about aquaculture and how it's managed, and so if  
40 that is what this particular email's referring to,  
41 then, yes, I remember doing that.

36

37

38

39

40

41

42

42 Q Under the heading, "Key Messages, Sea Lice," the  
43 second bullet down says:

43

44

45

45 DFO laboratory studies continue to show no  
46 evidence of a negative impact to juvenile  
47 pink salmon as a result of exposure to farm

46

47

1 source sea lice.

2  
3 Is that the message that DFO presented to the U.S.  
4 senators who were meeting with respect to B.C.  
5 fish farms?

6 MR. THOMSON: Well, I'm not sure if that particular  
7 message was presented, no.

8 Q But certainly, that was being proposed as a  
9 message to go out to the U.S. senators by this  
10 email chain, was it not?

11 MR. THOMSON: These were suggested messages provided to  
12 provide advice or information to the U.S. state  
13 senators, yes.

14 MR. LEADEM: Has that been marked yet? I've lost  
15 track.

16 MR. LUNN: Yes, it has.

17 MR. LEADEM: Thank you. Tab 15, a Conservation  
18 document.

19 Q I'm going to turn to both you, Mr. Thomson, and  
20 you, Mr. Swerdfager, do you recognize this email  
21 chain from Sharon Ford?

22 MR. THOMSON: Yes.

23 Q Both of you do? If we scroll down just slightly,  
24 you'll see that there's an email that you  
25 emanated, Mr. Swerdfager, on 29 March 2010. And  
26 if you need to reference the other side, there's a  
27 long email from Mary Ellen Walling of March 22,  
28 2010. And then your reaction to her long email, I  
29 suggest to you, is contained in your email of  
30 March 29; is that a fair, accurate representation  
31 of what's going on?

32 MR. SWERDFAGER: It does appear accurate, yes.

33 MR. LEADEM: Could that be marked as the next exhibit,  
34 please?

35 THE REGISTRAR: 1636.

36  
37 EXHIBIT 1636: Email from Sharon Ford to  
38 Andrew Thomson et al dated March 29, 2010,  
39 re: letter to MAL from BCSFA re information  
40 release and further consequences  
41

42 MR. LEADEM: Could we have Conservation document number  
43 60, please?

44 Q Now, either you, Mr. Thomson, or you, Mr.  
45 Swerdfager, do you recognize this DFO National  
46 Aquaculture Communications and Outreach Approach?

47 MR. SWERDFAGER: Yes, I recognize it as a draft

1 document that was developed, but never completed  
2 or approved.

3 Q Do you know who prepared this?

4 MR. SWERDFAGER: I'm pretty sure this was prepared in  
5 our communications directorate with a lot of input  
6 from a consultant based in Halifax, whose name I  
7 can't remember, Mike Morandel (phonetic), I think,  
8 but perhaps I'm wrong on that.

9 Q All right. I'm going to ask you to turn to the  
10 Executive Summary on the second page.

11 MR. LEADEM: And the second paragraph, if we can just  
12 highlight that briefly, Mr. Lunn.

13 Q There's mention made in the first paragraph about  
14 aquaculture production in Canada, how it's more  
15 than doubled since 1996, what its value is, and  
16 then it says:

17  
18 To that end, the Government of Canada, has  
19 committed \$70 million over the next five  
20 years to build their aquaculture industry to  
21 make it more successful and competitive.

22  
23 That sentence is correct, is it not, Mr.  
24 Swerdfager?

25 MR. SWERDFAGER: No, part of the reason I identified  
26 this as a draft document is it's written by  
27 somebody outside the Aquaculture Program and I  
28 believe, outside the Department. The Sustainable  
29 Aquaculture Program, which is what's referred to  
30 here as a \$70 million program, does not have as  
31 its goal to build our aquaculture industry to make  
32 it more successful and competitive. The  
33 Sustainable Aquaculture Program is very much  
34 focussed on fostering a sustainable aquaculture  
35 industry in our country. A large part of its  
36 investment is in the Science capacity of DFO, to  
37 support science directly tied to a regulatory  
38 agenda. There is certainly an element of the  
39 Sustainable Aquaculture Program that is oriented  
40 towards fostering and creating the conditions of  
41 success of the industry, but this goal statement  
42 here, if you will, is too much focussed on the  
43 economic development side of the agenda and does  
44 not appropriately address the true mandate of the  
45 program, which is the sustainability dimension  
46 that I referred to this morning.

47 Q Well, you certainly would agree that Government of

- 1 Canada has committed \$70 million to promote  
2 aquaculture in Canada; is that not correct?
- 3 MR. SWERDFAGER: No, I would not. Sorry, I don't wish  
4 to be difficult, but I would not choose that  
5 phrasing. I don't think that the government's  
6 commitment is, to use your term, "to promote  
7 aquaculture." In my view, that implies, and  
8 perhaps I'm just misunderstanding your word, but  
9 that implies a whole series of marketing  
10 activities, and so on, and so on, and so on. The  
11 Sustainable Aquaculture Program, which is a \$70  
12 million program over five years, I could describe  
13 it to you if you wish, I know your time is short,  
14 so I will just simply identify that it has a  
15 strong science component to it, it's got a very  
16 strong environmental regulation component to it,  
17 it's got an innovation and sustainability  
18 component, and a strong focus on third-party  
19 certification. So I would not characterize it as  
20 something that is, "promoting the aquaculture  
21 industry."
- 22 Q Can I at least get you to agree with me that  
23 Canada has devoted \$70 million with respect to  
24 some concept of sustainability within the  
25 aquaculture industry?
- 26 MR. SWERDFAGER: Yes, I could agree with that  
27 characterization of it, yeah.
- 28 Q All right. And that that's money that Canada puts  
29 front and centre in order to promote that  
30 industry, and it's a sustainable industry?
- 31 MR. TAYLOR: Well, that word, "promote," that the  
32 witness will not accept, has snuck into the  
33 question. I don't think it's a fair question.
- 34 MR. LEADEM: Well, with all due respect, Mr. Taylor,  
35 it's a fair question because the witness has  
36 qualified the answer and now I'm trying to get him  
37 back again to show how this funding actually is  
38 part of the aquaculture and liaison between the  
39 aquaculture and DFO. Let me rephrase it, Mr.  
40 Commissioner.
- 41 Q Essentially, as I understand it, do you consider  
42 that the Department of Fisheries and Oceans, at  
43 least with respect to the aquaculture management  
44 directorate, is in somewhat of a partnership with  
45 the industry in order to further the aims of the  
46 industry?
- 47 MR. SWERDFAGER: No, I would not consider us to be in a

1 partnership with the industry. I think that a  
2 large part of our agenda is very much focussed on  
3 a regulatory component in which we enforce the  
4 law. I don't think I would characterize that as a  
5 partnership. A large part of our program is  
6 devoted to putting in place the scientific  
7 research resources required for -- do you wish me  
8 to continue, or should I stop?

9 MR. LEADEM: All right. My time is apparently up, Mr.  
10 Commissioner.

11 THE COMMISSIONER: Well, he's in the middle of  
12 answering your question, Mr. Leadem.

13 MR. LEADEM: Oh, I'm sorry.

14 MR. SWERDFAGER: Should I continue, sir?

15 THE COMMISSIONER: Yes, please.

16 MR. SWERDFAGER: And a significant component of the  
17 investment is in the research component of the  
18 Department in support of a regulatory agenda. And  
19 again, another area of investment is in third  
20 party certification. So all of this to say, from  
21 my perspective, at least, whilst we do work with  
22 industry and with others to create the conditions  
23 for a sustainable aquaculture in this industry in  
24 this country, I would say no, we are not in  
25 partnership with them. We work closely with them,  
26 they are the subject of our regulatory and  
27 management attention. Obviously, we work with  
28 them, but I would not characterize it at all as a  
29 partnership.

30 MR. LEADEM: Might this be marked as the next exhibit,  
31 please?

32 THE REGISTRAR: 1637.

33  
34 EXHIBIT 1637: DFO National Aquaculture  
35 Communications and Outreach Approach  
36

37 MR. LEADEM: Sorry, Mr. Commissioner, my hearing is not  
38 as good as it ought to be.

39 MR. MARTLAND: I have counsel for Areas D and B for  
40 five minutes.

41 MS. PACEY: Thank you, Mr. Commissioner, thank you,  
42 Panel. My name's Katrina Pacey, initial K. I'm  
43 counsel for Area D, Salmon Gillnetters Association  
44 and the Area B Seiners. I have five precious  
45 minutes. I'm going to spend most of those minutes  
46 asking questions to you, Mr. Last, and then I'm  
47 going to move over and ask some questions of Mr.



1 Thomson.

2  
3 CROSS-EXAMINATION BY MS. PACEY:

4  
5 Q We've heard over the last several days about rates  
6 of disease on fish farms and we've heard about the  
7 fact that in British Columbia, there's been an  
8 annual average of 130 fish health events that are  
9 reported by industry each year, and that 25  
10 percent or, approximately, 30 of those are  
11 considered to be classified as significant risk to  
12 Fraser River sockeye salmon. So my question for  
13 you, Mr. Last, is that during the years that the  
14 Province was responsible for the licensing of  
15 aquaculture, there were, based on the numbers I've  
16 just told you, and probably based on your own  
17 experience, outbreaks on fish farms of high-risk  
18 disease every single year; isn't that correct?

19 MR. LAST: I don't know if I would characterize them as  
20 outbreaks. I'm not a fish health expert. I'm not  
21 qualified to comment on the significant difference  
22 that I am aware of from my discussions with our  
23 fish health people about the difference between  
24 the presence of pathogen and calling that disease.  
25 That is not my area of expertise.

26 Q Okay. Then perhaps we'll just take it back to the  
27 rates of fish health events, and you'd agree with  
28 me that there are 130 or so odd fish health events  
29 per year on fish farms, correct?

30 MR. LAST: I'd have to take your word for that.

31 Q And would you agree with me if I said that, in  
32 fact, there have been no years where there were  
33 not disease and pathogens present on fish farms in  
34 British Columbia; is that right?

35 MR. LAST: Yes.

36 Q And would you --

37 MR. PROWSE: Mr. Commissioner, the witness has already  
38 stated he's not an expert in disease. We have a  
39 full panel tomorrow when the counsel can explore  
40 this. I submit this is not a fair line of  
41 questioning.

42 MS. PACEY: I can indicate where I'm going, which is  
43 merely to discuss the role of licensing and siting  
44 in the management of disease.

45 Q I'll ask you, then, this question, and you can  
46 agree with me, or not, and that's that probably,  
47 at this moment, there are pathogens and disease on

- 1 fish farms operating that have not been detected,  
2 or that farms are operating with those diseases  
3 and pathogens present?
- 4 MR. PROWSE: Mr. Commissioner, the question of the  
5 licensing and fish health management plans is  
6 something that should be dealt with, in my  
7 submission, tomorrow, and not with this witness.
- 8 MS. PACEY: Commissioner, I'll cut to the punch line,  
9 thank you.
- 10 Q Is there anything in the Province's licensing  
11 regime as it was prior to the **Morton** decision that  
12 in your opinion could completely prevent disease  
13 from occurring on fish farms in British Columbia?
- 14 MR. LAST: Not that I'm aware of. Again, my expertise  
15 in that area is very limited.
- 16 Q And the licensing and regulation in British  
17 Columbia up until the **Morton** decision required,  
18 essentially, the monitoring and reporting of  
19 disease, correct?
- 20 MR. LAST: Yes, with provincial audit, as well.
- 21 Q Thank you. And in terms of the interventions that  
22 may follow a fish health event or a significant  
23 disease on a fish farm, interventions would  
24 include such things as quarantine; is that right?
- 25 MR. LAST: I'm not sure, again, whether that would be  
26 perhaps one of the tools that a fish health  
27 veterinarian would have at their disposal. I'm  
28 not sure. I don't know.
- 29 Q Then perhaps specific to the licensing question,  
30 I'll ask you this. I'm going to suggest to you  
31 that in British Columbia, there never has been an  
32 incident where a fish farm has been shut down, or  
33 had its licence revoked as a result of a disease  
34 outbreak; isn't that correct?
- 35 MR. LAST: Not that I'm aware of yet.
- 36 Q And in fact, there is nothing in the licensing  
37 scheme as it was in British Columbia when this was  
38 still a matter of the Province's jurisdiction that  
39 set out when a licence revocation could occur;  
40 isn't that right?
- 41 MR. LAST: I think that a licence could be revoked for  
42 a number of reasons. If you could be more  
43 specific, there's any number of ways or reasons  
44 for which a licence could be revoked.
- 45 Q What I'm suggesting to you is that there's nothing  
46 clearly articulated in the licensing regime  
47 regarding the fish health management plan itself

1           that would lead a farmer to understand at what  
2           point their license could be revoked?

3       MR. LAST: Specifically related to fish health  
4           management plans?

5       Q     That's correct.

6       MR. LAST: Fish health management plans were required  
7           as a term and condition of licence, in order to be  
8           in compliance with the legislative requirement,  
9           those plans had to be in place and approved by a  
10          provincial fish health veterinarian.

11       Q     So my final question is that you'd agree with me  
12           if I said that the only way in which, within the  
13           scheme of licensing and siting, that the Province  
14           can mitigate the risk of fish farms and the  
15           possibility of disease is by deciding where and  
16           when they occur; is that correct?

17       MR. LAST: No, I wouldn't agree. I think that  
18           veterinarians had or have the ability to make  
19           recommendations that could go to practices,  
20           husbandry practices that could mitigate those  
21           risks, as well.

22       MS. PACEY: Those are my questions. Thank you, Mr.  
23           Commissioner.

24       MR. MARTLAND: Mr. Commissioner, I'll just alert  
25           everyone, I think we're in a position to complete  
26           today, but we are tight on time. I'm grateful for  
27           counsel being focussed. I wonder if I can at  
28           least canvass, Ms. Gaertner's next on the list so  
29           she might rise, but I'll canvass the possibility  
30           of perhaps a five-minute break this afternoon, as  
31           opposed to the longer break. I have next counsel  
32           for the First Nations Coalition at 20 minutes.

33       MS. GAERTNER: Mr. Commissioner, Brenda Gaertner, and  
34           with me, Leah Pence. I want to put on record that  
35           subsequent to the discussion I had with you at the  
36           end of the day yesterday, I have not required any  
37           new time today. Everyone is under an extreme  
38           short amount of time, and our coalition was given  
39           no more time than any of the other participants  
40           here, despite the unique rights that First Nations  
41           have. I will not be able to finish with this  
42           panel today. I'll do my best to ask questions of  
43           Mr. Last, who will not be here. I'm going to pass  
44           on questions of Dr. Fleming, not because I find  
45           your work uninteresting, but because I do need to  
46           get through a fair bit of work with Department of  
47           Fisheries and Oceans.

1 CROSS-EXAMINATION BY MS. GAERTNER:  
2

3 Q So Mr. Last, just because you won't be here, I'll  
4 start with the primary question I have for you.  
5 To your knowledge, given that most of the existing  
6 finfish aquaculture licences along the Fraser  
7 River sockeye salmon migratory route were issued  
8 in the 1980s and '90s, and before the Supreme  
9 Court of Canada decision in *Haida*, which was in  
10 2004, can you confirm my understanding that there  
11 were no substantive consultation processes between  
12 the Province of British Columbia and First Nations  
13 regarding the location, siting, production and  
14 volume levels of these plants, or of these farms  
15 at the time in which the licences were issued?

16 MR. LAST: That was well before my time in government,  
17 and I'm not aware of what consultation processes  
18 were in place at the time. I couldn't speak to  
19 that authoritatively.

20 Q Were you aware that the consultation processes  
21 occurred?

22 MR. LAST: No, I don't have any knowledge of that.

23 Q It is something that, given your position, you  
24 would have knowledge, or you would have been  
25 advised of once you took that position?

26 MR. LAST: No, I just don't know.

27 Q You wouldn't have been advised whether the  
28 Province had engaged in a consultative process  
29 with First Nations on the siting of these farms?

30 MR. LAST: When I started working with government, I  
31 was certainly aware after that time of the need  
32 for consultation and the processes that were in  
33 place to meet that obligation.

34 Q Could I take you to Exhibit 1615, which is a  
35 document your counsel went through at some length  
36 with you today, and take you to the First Nations  
37 section, which is not marked, the pages aren't  
38 marked, item number 38. As I understand it,  
39 there, you've -- I'll ask my question. The First  
40 Nations are going to be consulted now, as of 2006,  
41 as it relates to any new sites?

42 MR. LAST: Sorry, what's your question, again?

43 Q Was it the Province's approach as of 2006 and  
44 their response to the SAR recommendations that  
45 First Nations would only be consulted as it  
46 relates to any new sites?

47 MR. LAST: No, there were consultations, there was some

1           consultation undertaken for amendments.

2       Q     Any significant amendments as it relates to those  
3           sites as it relates along the migratory route?

4       MR. LAST: I don't know specific to those particular  
5           sites. I'm not familiar with those particular  
6           files. I can only speak in general terms about  
7           the Province's approach to consultation.

8       Q     Which was developed sometime after the Supreme  
9           Court of Canada decision in *Haida*?

10      MR. LAST: Yes.

11      Q     And that's in 2004.

12      MR. LAST: Okay.

13      Q     Thank you. I'm going to turn most of my questions  
14           to you, Mr. Swerdfager and Mr. Thomson and pick it  
15           up from there, and I suffer, or we suffer from the  
16           Policy and Practice Report being a little bit slim  
17           on the work that you have done with First Nations  
18           Fisheries Council and otherwise so I've got to  
19           fill in some dates so I'm going to do a chronology  
20           with you and hopefully do that as quickly as I  
21           can, to take you through a number of documents,  
22           and then get some of the questions on siting and  
23           licensing, but I'm going to go as quickly as I can  
24           at the beginning, here.

25           You're familiar with the work of the First  
26           Nations Fisheries Council; is that correct?

27      MR. THOMSON: Yes.

28      Q     And you know that they were mandated in 2007  
29           through the Fisheries Action Plan, which is  
30           Exhibit 1189, but I don't need to take you to  
31           that, you know that?

32      MR. THOMSON: Sorry, I did not know that that was the  
33           mandate that instituted it, but my ignorance.

34      Q     All right. Are you familiar with the resolutions  
35           that were provided by the Union of B.C. Indian  
36           Chiefs in the summit to provide the First Nations  
37           Fisheries Council with the mandate to engage with  
38           senior DFO representatives on the issues of  
39           aquaculture?

40      MR. THOMSON: Yes, I am aware of that.

41      Q     And if I could take you to First Nations Fisheries  
42           Council document number 5, please. Are you  
43           familiar with this resolution? This is a  
44           resolution of the UBCIC, providing authority for  
45           the First Nations Fisheries Council to engage in  
46           these discussions?

47      MR. THOMSON: Yes.

1 Q And if I could also take you to document number 6,  
2 which is a related resolution on these matters.  
3 Are you familiar with those?

4 MR. THOMSON: Yes.

5 MS. GAERTNER: Could I have those marked as the next  
6 exhibits?

7 THE REGISTRAR: Document number 5 will be marked as  
8 1638. Document 6, 1639.  
9

10 EXHIBIT 1638: Union of B.C. Indian Chiefs,  
11 40th Annual General Assembly, September 16th  
12 to 18th, 2009, Harrison Hot Springs, B.C.,  
13 Resolution no. 2009-35, "B.C. First Nation's  
14 Statement of Solidarity on Aquaculture."  
15

16 EXHIBIT 1639: Union of B.C. Indian Chiefs,  
17 40th Annual General Assembly, September 16th  
18 to 18th, 2009, Harrison Hot Springs, B.C.,  
19 Resolution no. 2009-36, "B.C. First Nations  
20 Statement of Jurisdiction on Aquaculture  
21

22 MS. GAERTNER:

23 Q And to your knowledge, the First Nations Summit  
24 also passed resolutions in the same form and  
25 content of these resolutions?

26 MR. THOMSON: To my knowledge, yes.

27 MS. GAERTNER: Yes. Mr. Commissioner, I discovered  
28 last night that we didn't have the Summit  
29 resolutions. They were passed on September 25th.  
30 There are two almost identical resolutions. We  
31 will be providing those, but they were provided  
32 and I'll get those to you as soon as I can this  
33 week, Mr. Thomson.

34 Q Now, let's turn to Exhibit 1638, which is document  
35 number 5, and you'll recognize that this is a  
36 source of the First Nations Fisheries Council's  
37 mandate in aquaculture issues, and I'll take you  
38 to the principles on page 3 and 4 of this  
39 document. These are principles I'm sure you're  
40 quite familiar with. They're consistent and I'll  
41 take you through them, that they recognized and  
42 respected each other's autonomies. Most  
43 importantly, they need to be engaged from the  
44 initial discussions when farm sites are being  
45 considered within the territories. They wanted  
46 input into the day-to-day management of  
47 aquaculture industry. They required engagement in

1 the science that requires decision making on the  
2 management and regulation of aquaculture. As  
3 inherent stewards of their territories, they need  
4 to be involved in the monitoring and compliance of  
5 the industry. Those are matters and concerns that  
6 have been consistently raised with you in your  
7 discussions with First Nations; is that true?

8 MR. THOMSON: Yes, they have.

9 Q I'd like to take you to the Policy and Practice  
10 Report, and in particular, paragraphs 33 and 34.  
11 Now, we start in paragraph 33 and it talks about  
12 DFO's November 2009 discussion document which  
13 outlines the 27 strategic questions relating to  
14 DFO's assumption of jurisdiction.

15 MS. GAERTNER: And the discussion document is at Tab 8  
16 of the First Nation Coalition's documents. I  
17 wonder if we could bring that forward?

18 Q Is that correct?

19 MR. THOMSON: Yes.

20 MS. GAERTNER: Could I have that marked as the next  
21 exhibit?

22 THE REGISTRAR: Exhibit 1640.

23  
24 EXHIBIT 1640: Federal B.C. Aquaculture  
25 Regulation & Strategic Action Plan  
26 Initiative, Discussion Document  
27

28 MS. GAERTNER:

29 Q And this is one of the 27 strategic questions that  
30 DFO was seeking feedback on and then paragraph 34  
31 of the PPR jumps to a time when the proposed  
32 Pacific Aquaculture Regulations are posted. Do  
33 you see that in the PPR?

34 MR. THOMSON: Yes.

35 Q You'll agree with me that that movement between  
36 the November 2009 discussion document and then the  
37 posting of the draft Aquaculture Regulations  
38 misses out a fair bit of chronology and a fair bit  
39 of work that was done between DFO and First  
40 Nations? Do you agree with that?

41 MR. THOMSON: Yes, there was lots of work done between  
42 those two periods of time.

43 Q All right. I'll have the record noted on that.

44 MR. THOMSON: And prior to. And prior to, as well.

45 Q And we're going to fill that in. I just needed to  
46 mark that as it relates to the Policy and Practice  
47 Report. Correct that before DFO even released its

1 November 2009 discussion document, both you, Mr.  
2 Thomson, and Mr. Swerdfager, had met with First  
3 Nations in June 2009 to discuss the impacts of the  
4 **Morton** decision and the DFO takeover of  
5 jurisdiction for finfish aquaculture; is that  
6 correct?

7 MR. THOMSON: Yes.

8 Q And then following the release of the November  
9 2009 discussion document, DFO and the First Nation  
10 Fisheries co-hosted a series of nine community  
11 meetings with First Nations in February and March  
12 of 2010?

13 MR. THOMSON: Yes.

14 Q And clear at the time of planning those community  
15 meetings that both First Nations Fisheries Council  
16 and DFO saw those community meetings as just a  
17 first step, just the beginning of their  
18 discussions between DFO and First Nations as it  
19 related to your regulation of aquaculture and  
20 finfish?

21 MR. THOMSON: Certainly, it was the beginning of  
22 consultations, yes.

23 Q And it's your understanding that the First Nations  
24 Fisheries Council were hosting those meetings,  
25 they did not see their involvement as a  
26 consultative engagement?

27 MR. THOMSON: No. I mean, we used the services of the  
28 First Nations Fisheries Council to facilitate and  
29 host the meetings, but the discussions were, or  
30 the reason why I attended was the discussions were  
31 between the invited First Nations and myself.

32 MR. SWERDFAGER: I wonder if I could just amplify on  
33 that just very briefly. One of the things that  
34 FNFC was consistent in their views in emphasizing  
35 both to Andy and to myself, and to others in DFO,  
36 is that they did not and do not serve as  
37 representatives of First Nations and that the  
38 dialogue that we were to have is one that they  
39 were facilitating and so on, engaging, as opposed  
40 to seeking to represent First Nations, and we  
41 approached it in that manner.

42 Q And it's also accurate to say that the First  
43 Nations Fisheries Council made it clear that these  
44 community information sessions, and those that  
45 were held in February and March of 2010 didn't  
46 fulfill Canada's duty to consult?

47 MR. SWERDFAGER: They certainly emphasized the view



1           that in their opinion, there was an obligation on  
2           us to do far more than just that, that they felt  
3           that those were, as you put it, just a first step,  
4           and that they did not meet, in their view. We  
5           learned more through the report, itself, in terms  
6           of what we ought, in their view, to have done.  
7           Q     Okay. Then I'm just going to take you now to  
8           Canada's Tab number 12, which is a copy of a sworn  
9           affidavit by yourself, Mr. Swerdfager; is that  
10          correct?  
11         MR. SWERDFAGER: Yes, that's correct.  
12         Q     I wonder if I could go to paragraphs 51 and 52.  
13           And this affidavit was sworn in 2009 and provided  
14           to the court, is that correct, in Canada's efforts  
15           to extend and have a longer timeframe in which to  
16           respond to the **Morton** decision?  
17         MR. SWERDFAGER: Yes, that's correct. The affidavit in  
18           this draft is dated November 7th. I believe it  
19           was actually put before the court on the 9th, but  
20           that is the date it was sworn.  
21         Q     Thank you. And I'm going to go specifically to  
22           paragraphs 51, in which you note that First  
23           Nations are highly interested in the aquaculture  
24           domain in B.C. and have very clear expectations  
25           they will be effectively consulted in the  
26           development of any new regulatory regime  
27           established pursuant to the **Morton** decision. And  
28           that's your understanding then and it's your  
29           understanding today; is that correct?  
30         MR. SWERDFAGER: That is correct.  
31         Q     And you'd agree that consultation with interested  
32           parties and especially with First Nations would be  
33           required before DFO drafted and tabled the new  
34           Regulations for Aquaculture; is that correct?  
35         MR. TAYLOR: I object. That calls for a legal answer.  
36         MS. GAERTNER:  
37         Q     Isn't that what you swore to in paragraph 51 and  
38           52?  
39         MR. TAYLOR: Well, I think the affidavit speaks for  
40           itself.  
41         MS. GAERTNER:  
42         Q     Well, if you could scroll down to 52, I'm just  
43           confirming that this is the understanding of the  
44           affiant and the witness.  
45         MR. SWERDFAGER: So where are we, then? In 52? Okay.  
46           The point made here is that we need time to  
47           consult with people in the development of the

1 regulation.

2 Q And you were including in that paragraph First  
3 Nations, surely?

4 MR. SWERDFAGER: It says "given the range of  
5 interests," yes, so included in that would have  
6 been First Nations. And the argument being made  
7 here is that the time assigned to DFO to develop a  
8 regulation in one year was insufficient to allow  
9 us to engage fully, not only with First Nations,  
10 but with all people and parties that have an  
11 interest in the regulation, itself.

12 Q And in addition, in this paragraph, the point that  
13 you were making is that any lack of consultation  
14 or even a perceived lack of consultation or  
15 opportunity to provide input would be unlikely to  
16 engender support for the new regime and could also  
17 create legal risks; is that correct?

18 MR. TAYLOR: Well, the first part is okay and the  
19 second part's not.

20 MS. GAERTNER: It's in his affidavit.

21 MR. SWERDFAGER: I think, certainly, the  
22 characterization of it at the bottom is that there  
23 would be a potential that we could create legal  
24 risk, for sure.

25 Q And one of those legal risks, of course, was your  
26 legal obligation to consult First Nations?

27 MR. SWERDFAGER: Those would be among them, yeah.

28 Q Yeah, thank you.

29 MS. GAERTNER: Could I have this affidavit marked as an  
30 exhibit?

31 THE REGISTRAR: Exhibit 1641.

32  
33 EXHIBIT 1641: Affidavit of Trevor  
34 Swerdfager, November 5, 2009  
35

36 MS. GAERTNER: Mr. Commissioner, I'm in your hands.  
37 Would this be an appropriate time to take the  
38 afternoon break?

39 THE COMMISSIONER: Yes, thank you.

40 THE REGISTRAR: The hearing will now recess for five  
41 minutes.  
42

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

46 THE REGISTRAR: The hearing is now resumed.

47 MS. GAERTNER: Mr. Commissioner, I'm wondering if I

1 could make this proposal to you? I've canvassed  
2 over the break with other counsel that are  
3 remaining to ask questions of this panel. I think  
4 we can finish the remaining counsels with the  
5 entire panel today. My questions, the remaining  
6 of them, are with the two DFO representatives and  
7 if we began tomorrow earlier, I think I'll need  
8 about 40, 45 minutes to finish my work, if we  
9 could do that tomorrow morning, then I think we  
10 could try to remain as close on schedule as  
11 possible.

12 MR. TAYLOR: I'm only going to raise a mild objection  
13 to the specific proposal that Ms. Gaertner raises.  
14 As to the general point, that is extending time  
15 partway through a panel, I've raised this with Mr.  
16 Martland and with others, we all get time  
17 allocations at the beginning. It's procedurally  
18 unfair to have time allocations and then change  
19 the ground rules partway through a panel. And so  
20 I raise that as a general point that I ask the  
21 Commissioner, and I have asked Commission counsel  
22 to bear in mind, and I only raise a mild objection  
23 to the specific proposal. I understand Ms.  
24 Gaertner's not finished, or not nearly so. The  
25 same is true of my questions. I left off  
26 questions and probably every other counsel would  
27 stand up and say the same thing. Mr. McDade would  
28 shout it, probably. So if there is to be any  
29 early start, or extra time for Ms. Gaertner, I  
30 think it has to be moderated, or moderate and 45  
31 minutes on 20 minutes is not moderate.

32 MR. MARTLAND: Mr. Commissioner, for our part, I will  
33 simply raise this as another consideration. I  
34 take from at least discussions with Ms. Gaertner,  
35 and she may wish to cover this now, that she may  
36 have concluded her questions of Mr. Last and Dr.  
37 Fleming who are on this panel. I'm not trying to  
38 pretend that we, by deferring the question, avoid  
39 the question. I will suggest, though, we have  
40 both Mr. Swerdfager and Mr. Thomson returning for  
41 other panels tomorrow and the day following. The  
42 proposition I put at the outset of these hearings  
43 was that counsel do their best within the time  
44 allocations. If, at the end of the testimony of a  
45 witness they're at the point where there are  
46 necessary questions, they should then raise the  
47 issue.

1 I'd suggest on that footing, given that there  
2 would be further time with those two witnesses in  
3 the next two days, I don't pretend it's very much,  
4 but there would be further opportunities with  
5 those witnesses, we're not yet at the point where  
6 we need to do that. Having said that, I note that  
7 the only objection is a mild one put by Canada.  
8 We're not raising and I don't want to raise an  
9 objection to what's being proposed. It's  
10 something within your discretion as to how we may  
11 proceed in that situation.

12 THE COMMISSIONER: If you could just clarify for me,  
13 Mr. Martland, I don't see Mr. Thomson's name on  
14 the August 31st panel list; is that correct?

15 MR. MARTLAND: He is on the August -- I'm sorry, I want  
16 to make sure I get this right. Tomorrow, we have  
17 Mr. Swerdfager returning with three fish health  
18 experts.

19 THE COMMISSIONER: That's correct.

20 MR. MARTLAND: Followed by a panel that does include  
21 Mr. Thomson on the Thursday this week, the  
22 enforcement.

23 THE COMMISSIONER: But what I misunderstood perhaps was  
24 your suggestion that they would be here together  
25 over the next couple of days. And in fact, what I  
26 see from your list is Mr. Swerdfager here  
27 tomorrow, but Mr. Thomson not here until the 1st?

28 MR. MARTLAND: That's right.

29 THE COMMISSIONER: So they're not here again together?

30 MR. MARTLAND: That's true, they're not here together.  
31 Inasmuch, though, as there were questions that  
32 could be put to one or the other, there would be  
33 time at least with each of the two within the next  
34 two days. That's right.

35 THE COMMISSIONER: I'm sorry, Ms. Gaertner?

36 MS. GAERTNER: Mr. Commissioner, I don't know if you  
37 need to hear from me again, but I just want to be  
38 very clear that as soon as I read the Policy and  
39 Practice Report, or our team read the Policy and  
40 Practice Report and as soon as we saw the  
41 materials that were filed, we put on record, we  
42 sent letters to all of them that we would need  
43 additional time on this panel that has not been  
44 provided. We can't get our work done without that  
45 additional time and I'm making the best proposal  
46 that I have to you in order to deal with this. I  
47 appreciate Mr. Taylor's comments. I'm always the

1 last on the list and I need time on this panel.  
2 THE COMMISSIONER: Well, can I do this, Ms. Gaertner?  
3 Are you finished for now, I'm sorry?  
4 MS. GAERTNER: On the issue of --  
5 THE COMMISSIONER: No, I don't mean that. I mean where  
6 are you at in your time estimate at the moment for  
7 this afternoon?  
8 MS. GAERTNER: Well, I think, given the debate that  
9 we've just had, I've used another five minutes of  
10 my time and I think that means I have three more  
11 minutes to do about 40 minutes worth of work.  
12 THE COMMISSIONER: All right. Well, thank you for  
13 putting your position on the record, and I will  
14 address this with Commission counsel as soon as we  
15 adjourn today and Commission counsel will then get  
16 back to you. Thank you very much.  
17 MR. MARTLAND: Mr. Commissioner, where that would leave  
18 us is Mr. Kelliher for the Aboriginal Aquaculture  
19 Association, 15 minutes or, indeed, under that.  
20 MR. KELLIHER: Thank you, Mr. Commissioner.

21  
22 CROSS-EXAMINATION BY MR. KELLIHER:

23  
24 Q Gentlemen, I'd like to draw your attention to a  
25 few documents, if I could.  
26 MR. KELLIHER: Mr. Lunn, could you draw up number 5 on  
27 the AAA list of documents, please?  
28 Q Now, Mr. Last and Mr. Thomson, is this a document  
29 that you're familiar with?  
30 MR. THOMSON: Yes.  
31 MR. LAST: I haven't seen this one, no.  
32 Q All right. Thank you.  
33 MR. KELLIHER: Might this be marked as the next  
34 exhibit, please?  
35 THE REGISTRAR: Exhibit 1642.

36  
37 EXHIBIT 1642: A Review of First Nation  
38 Comments concerning the Federal-B.C.  
39 Aquaculture Regulation & NASAPI  
40

41 MR. KELLIHER: Document number 2, please, Mr. Lunn?  
42 Q Mr. Last or Mr. Thomson, is this a document that  
43 either of you are familiar with?  
44 MR. THOMSON: I've seen the document.  
45 MR. LAST: I have, as well.  
46 Q All right.  
47 MR. KELLIHER: Might that be marked as the next

1 exhibit, please?

2 THE REGISTRAR: 1643.

3

4 EXHIBIT 1643: Aquaculture Development: An  
5 Economic Opportunity for B.C. Coastal First  
6 Nations

7

8 MR. KELLIHER: Thank you. And finally document 1,  
9 please?

10 Q This is a document headed, "Aboriginal Principles  
11 of Sustainable Aquaculture." Is that a document  
12 that both of you are familiar with?

13 MR. THOMSON: Yes.

14 MR. LAST: I'm familiar with the program, but I haven't  
15 reviewed this particular document.

16 MR. KELLIHER: All right. Might that be marked as the  
17 next exhibit, please?

18 THE REGISTRAR: 1644.

19

20 EXHIBIT 1644: APSA-2010-10-01, Aboriginal  
21 Principles for Sustainable Aquaculture (APSA)

22

23 MR. KELLIHER:

24 Q There is reference in your discussions earlier to  
25 the notion of consultation and, as well, to  
26 accommodation. Could you describe, please, for  
27 the Province and for the Federal Government, the  
28 parameters of the notion of accommodation as it  
29 relates to aquaculture? Can I ask Mr. Thomson to  
30 deal with that issue?

31 MR. THOMSON: Well, I wouldn't purport to be an expert  
32 in it, but as I understand it, in the assessment  
33 of any action on the behalf of the Department, we  
34 assess whether there is an impact to the rights of  
35 First Nations and through the consultation  
36 approach, whether or not there is a duty to  
37 accommodate that impact to that right. In  
38 particular, I know the Department, as part of that  
39 continuum of consultation and accommodation, also  
40 provides some funding through various programs,  
41 such as AFS and AAROM to support First Nations'  
42 involvement in those processes.

43 Q All right. And so could you define, if you can,  
44 in greater detail, what the parameters of the  
45 accommodation might be?

46 MR. THOMSON: I think in terms of the parameters of  
47 accommodation, it really comes down to individual

- 1 cases. So whether it's providing access for fish,  
2 or, you know, potentially, other measures. I know  
3 other governments provide different types of  
4 accommodation. The Provincial Government has  
5 provided land as accommodation measures. I think  
6 it's part of the discussion you would have with  
7 the First Nation as to what the particular type of  
8 accommodation measure would be, should an  
9 accommodation measure be warranted.
- 10 Q Right. And the range of accommodations to date  
11 would be what?
- 12 MR. THOMSON: Could you clarify the question and be  
13 more specific?
- 14 Q What sorts of accommodations have been provided to  
15 First Nations in the context of the issuance of  
16 aquaculture licences to date?
- 17 MR. THOMSON: For the issuance of the federal  
18 aquaculture licences, there's no form of  
19 accommodation that I know that have been granted,  
20 but you know, as I mentioned earlier, the  
21 accommodation or the amount of accommodation is  
22 based on assessment of whether or not there's an  
23 infringement of the rights and what can be  
24 reasonably accommodated, if there is.
- 25 Q Right, and do you recognize the concept of  
26 accommodation having applicability in renewal of  
27 licences?
- 28 MR. THOMSON: Again, I think that comes down to an  
29 assessment of what level of rights or infringement  
30 of rights has occurred from the renewal of the  
31 licence.
- 32 Q All right. In the context of British Columbia,  
33 either in the issuance or renewal of aquaculture  
34 licences, has there been an assessment as to the  
35 degree of infringement of rights of any First  
36 Nations?
- 37 MR. THOMSON: I would say we've assessed the  
38 infringement of rights, but no, we haven't done  
39 formal strength of claim type assessments.
- 40 Q How is it that the government would be in a  
41 position to determine whether accommodation would  
42 be forthcoming absent such an assessment?
- 43 MR. THOMSON: Our approach that we took is to limit the  
44 extent of the decision for issuance of the  
45 licences for December 19th to one year for finfish  
46 and up to 18 months for shellfish and to not to  
47 increase level of production or increase the

- 1 amount of species as a way to sort of put a hold  
2 on whatever potential infringement may have been  
3 occurring as a way to start the conversation going  
4 with First Nations over the course of this year  
5 and subsequent years to determine if there has  
6 been an infringement of the rights for that point.
- 7 Q All right. So the assessment of the measure of  
8 the right and the concomitant accommodation,  
9 that's a process that's underway now?
- 10 MR. THOMSON: Well, I think it's a process that would  
11 not only be underway now, but also ongoing sort of  
12 *ad infinitum* as we gain more knowledge not only  
13 about the industry, itself, but also, of course,  
14 you know, as there's an evolving standard of  
15 consultation or accommodation provided to First  
16 Nations.
- 17 Q Is giving First Nations a preferential position in  
18 acquiring aquaculture licences, is that a  
19 consideration for accommodation?
- 20 MR. THOMSON: I think it certainly could be a  
21 consideration for accommodation, yeah.
- 22 Q Is there any policy position adopted by the  
23 federal government that in any way puts First  
24 Nations in an advantageous position in respect to  
25 acquiring these licences?
- 26 MR. THOMSON: I would say the only policy position that  
27 speaks to it is the 2002 Aquaculture Policy  
28 Framework which guides the federal involvement in  
29 aquaculture at that time. One of the principles  
30 of that policy is to support and promote the  
31 engagement of aboriginals in conducting the  
32 business of aquaculture. So you know, we  
33 certainly have a policy direction to rather  
34 support the engagement of First Nations in that.
- 35 Q All right. Mr. Last, could you answer all of  
36 those questions serially for the Province?
- 37 MR. LAST: I couldn't. My role in government has not  
38 been specifically involved in the consultation  
39 processes.
- 40 Q All right. Mr. Swerdfager, do you have any  
41 observations, you have a vast experience in this  
42 area of activity, on the concept of consultation,  
43 and particularly accommodation, to First Nations,  
44 bearing in mind that these activities are taking  
45 place in their traditional territories and the  
46 obvious economic potential that they offer to  
47 those communities? Do you have any observations



1 in this area?

2 MR. SWERDFAGER: I think Andrew has covered the topic  
3 very well. I think that the only thing I would  
4 add is that certainly, the policy stance that the  
5 Department took in terms of developing the  
6 regulation, itself, as opposed to individual  
7 licensing decisions was one where we worked very,  
8 very hard to involve both the organization that  
9 you represent and other First Nations directly in  
10 the policy development of the regulation, and the  
11 regulation is structured in such a way as to allow  
12 us to enter into arrangements that may get into  
13 the area of accommodation. We've structure the  
14 regulation in such a way as to not close any  
15 doors, maybe is a better way to put it, and to  
16 leave many open to us so that if we move down a  
17 particular trail, as Andy has outlined, we've  
18 certainly got the regulatory flexibility to do  
19 that.

20 MR. KELLIHER: Thank you very much, gentlemen. Those  
21 are my questions, Mr. Commissioner.

22 THE COMMISSIONER: Thank you.

23 MR. MARTLAND: Mr. Commissioner, I'm going to deal with  
24 the remaining time in, really, a backwards  
25 sequence. I have spoken with Ms. Robertson about  
26 it. She'd have until 3:55. The remaining five  
27 minutes before 4:00 would be, then, for the  
28 Heiltsuk, Mr. Ralston. Thank you.

29 MS. ROBERTSON: Thank you, Mr. Commissioner. Krista  
30 Robertson for the Musgamagw Tsawataineuk Tribal  
31 Council. Mr. Lunn, if you could pull up Tab 2 of  
32 the MTTC's documents, please?  
33

34 CROSS-EXAMINATION BY MS. ROBERTSON:  
35

36 Q Dr. Fleming, I'm just going to ask you a few  
37 questions about this document when it comes up.  
38 Do you recognize that document?

39 DR. FLEMING: Yes, I do.

40 Q This is the Convenor's Report for the Speaking for  
41 the Salmon workshop that happened in 2007 in Alert  
42 Bay, and were you attending that workshop?

43 DR. FLEMING: Yes, I was.

44 Q And would you agree that it was a large number of  
45 scientists from around the world who were convened  
46 to focus on the known science related to  
47 interactions between farmed and wild fish?

1 DR. FLEMING: Yes, there were a large number of  
2 scientists, both national and international.

3 Q Thank you.

4 MS. ROBERTSON: And Mr. Lunn, if you could go to page 3  
5 of that report? And if you could just highlight  
6 that first paragraph, there. There is the  
7 Statement of Agreement, there.

8 Q I'm just going to read that to you, Dr. Fleming.  
9 It says that:

10  
11 European governments (Ireland, Scotland,  
12 Iceland, Norway and the European Union) have  
13 recognized that salmon farming can be  
14 hazardous to the environment, including the  
15 proliferation of sea lice on salmon farms,  
16 posing significant risk to wild salmonids.

17  
18 Now, B.C. or Canada is conspicuously missing from  
19 that last, I submit to you, and I note you made  
20 the point earlier in terms of the lessons learned  
21 that government's getting to sort of a base point  
22 of accepting risk is helpful. Would you agree  
23 with that?

24 DR. FLEMING: Yes, I think that's a first step, is  
25 accepting risk.

26 Q Unfortunately, we don't have a lot of time to  
27 delve into this so I'm just going to mark this as  
28 the next exhibit, please.

29 THE REGISTRAR: 1645.

30  
31 EXHIBIT 1645: Speaking for the Salmon,  
32 Summit of scientists on aquaculture and the  
33 protection of wild salmon, January 25-27,  
34 2007, Covener's Report  
35

36 MS. ROBERTSON: And if we could move on to Tab 3 of the  
37 MTTC's documents. If you could just go to the  
38 next page, please?

39 Q So Dr. Fleming, I'm just going to read you the  
40 title of this document and ask you if you're  
41 familiar with it. The title is, "Even the Evil  
42 need a Place to Live": Wild Salmon, Salmon  
43 Farming and the Zoning of the Icelandic  
44 Coastline."

45 MS. ROBERTSON: And maybe, Mr. Lunn, if we could zoom  
46 on the abstract, there?

47 Q I'm just going to read on the record a sentence

1           there. It's summarizing what they do in the  
2           article, it says:  
3

4           We then discuss how Iceland has sought to  
5           balance the benefits of salmon farming with  
6           the benefits of and risks to wild stock  
7           management, valuable recreational fisheries,  
8           and protection of native wild fish fauna.  
9           Under regulations enacted in 2001 and  
10          expanded in 2004, the coastline is zoned with  
11          respect to salmon cage-rearing; cage-rearing  
12          is not permitted in the bays and fjords into  
13          which the most valuable salmon rivers drain.  
14

15          Dr. Fleming, could you talk a little bit more  
16          about this based on your experience in Iceland?

17       DR. FLEMING: I was invited in 2000, December 2000,  
18          just before I was moving to Oregon, to talk to  
19          various officials and scientists in Iceland with  
20          regards to management of salmon. They were just  
21          beginning a second expansion of a salmon  
22          aquaculture in Iceland and one of the things that  
23          they wanted to address was how to maintain or have  
24          the coexistence of a viable farming industry, as  
25          well as protect their very valuable wild salmon  
26          stocks, and zoning was one of the issues that came  
27          up and we talked about extensively.

28       Q          And in your view, has this brought some kind of  
29          peace to the debate, or at least gone some  
30          distance to address the concerns and risks to do  
31          with protection of wild stocks in Iceland?

32       DR. FLEMING: I'm not sure I could speak to what the  
33          current situation is in Iceland at the moment. It  
34          probably has helped, but I don't think it has  
35          totally ameliorated all the concerns that exist.

36       Q          All right. Thanks.

37       MS. ROBERTSON: May I mark this as the next exhibit,  
38          please?

39       THE REGISTRAR: Exhibit 1646.  
40

41                 EXHIBIT 1646: "Fisheries" pamphlet, American  
42                 Fisheries Society, Volume 34, No. 10, October  
43                 2009  
44

45       MS. ROBERTSON: And then, Mr. Lunn, if we could go to  
46          MTTC Tab 4, please? Now, this has already been  
47          marked as an exhibit. If we could go to page 9,

1 please?

2 Q Dr. Fleming, you talked a little bit earlier about  
3 your opinion on that one-kilometre distance, a  
4 siting policy, so farms are one kilometre from  
5 salmon streams, and your comment as I heard it was  
6 that it was somewhat arbitrary, there wasn't a  
7 good scientific basis for this. Now, I believe  
8 you've read this audit. Was this audit provided  
9 to you?

10 DR. FLEMING: No, it was not, the details of the audit.  
11 I've seen a summary of the audit.

12 Q Okay. Well, maybe we can just look briefly at  
13 paragraph 2, there.

14 MS. ROBERTSON: Mr. Lunn, if you could highlight that?

15 Q So as we've noted, this is an audit of the salmon  
16 regulation in British Columbia, and criterion 1 is  
17 around this siting policy. That paragraph, there,  
18 says:

19  
20 A workshop of DFO habitat scientists noted  
21 that siting criteria which have been adopted  
22 in B.C. to protect vulnerable wild fish  
23 stocks were not scientifically based.

24  
25 And then if we could just go down to paragraph 5,  
26 please, Mr. Lunn? And I'll just read that:

27  
28 MAL concedes --

29  
30 That's the Ministry of Agriculture and Lands B.C.:

31  
32 -- concedes that the B.C. regulation on  
33 minimum distance was not determined strictly  
34 as a matter of scientific investigation.

35  
36 But then it goes on that:

37  
38 B.C. argues no other jurisdictions have based  
39 their minimum distances or exclusion zone  
40 policies on scientific studies.

41  
42 But then the auditor goes on to say, well, it's  
43 actually documented in other countries and we've  
44 heard somewhat about that, that they have, in  
45 fact, undertaken some siting studies.

46 MS. ROBERTSON: And lastly, if we could please go to  
47 page 11? Maybe just so we can see the whole page

1 there? Thank you.

2 Q So you'll see there that the audit score given for  
3 B.C. is one point out of 10, and the reason being  
4 that there's basically no scientific criteria for  
5 that. Now, Dr. Fleming, if we could just look at  
6 that paragraph, there, that starts with "MAL  
7 officials," it's the third paragraph up:

8  
9 Where the MAL officials assert that whereas  
10 European salmon aquaculture countries, in  
11 these countries, there's a single migration  
12 route to the sea from salmon streams, in  
13 B.C., there's multiple channels.

14  
15 Now, Mr. McDade asked you a little bit earlier,  
16 when we were comparing Norway zoning with B.C. and  
17 you were talking about the uniqueness of B.C.,  
18 could you discuss that a little bit more? I'm not  
19 sure that that came out very clearly. What's the  
20 unique situation? I mean, first of all, do you  
21 agree with this statement?

22 DR. FLEMING: Well, when I think mainly in terms of  
23 what's happening out in the Fraser River and the  
24 populations on the, you know, inner part of the  
25 coast, here, that they're having to travel  
26 through, a large number of salmon, a large number  
27 of salmon populations are travelling through one  
28 constricted area whereas in Norway, yes, in  
29 certain areas, they would travel through the  
30 length of a fjord, but there would be a smaller  
31 number of salmon populations passing in that area.  
32 I think one of the things with the science type of  
33 criteria that have been done, and I think they've  
34 been adopting elsewhere, is to try to look at it  
35 as a site-by-site basis, rather than a single  
36 statement as to, for instance, one kilometre, but  
37 rather an environmental impact assessment, for  
38 instance, being undertaken to assess what is the  
39 appropriate types of mitigation that should be  
40 done and in terms of licensing and locating  
41 siting.

42 Q Right. Thank you. And I think you were making  
43 the point that in Norway, where you can have a  
44 fjord zone to not have salmon farms, but you have  
45 salmon coming out and then they're in the open  
46 ocean, whereas in contrast, in British Columbia --

47 DR. FLEMING: Yeah.

1 Q -- where I think we have fjords, as well, in  
2 British Columbia, you have salmon coming out of  
3 fjords, because of the position of Vancouver  
4 Island, all of those salmon coming out, including  
5 the Fraser River sockeye, are going through sort  
6 of basically the same migratory corridor, which is  
7 different than Norway, because they're all being  
8 funnelled through the same channel, so to speak?

9 DR. FLEMING: Yes. Yes, very much so on the scale of  
10 things.

11 Q Thank you. And so when we're looking at this  
12 paragraph, here, this comment about MAL officials  
13 saying, "Well, in B.C., there's always multiple  
14 channels," really, we're not really focussed on  
15 the Fraser River sockeye at that point, they're  
16 really contemplating sort of small localized  
17 streams up the coast where there may be a number  
18 of migratory channels, but the point is ultimately  
19 that the Fraser River sockeye and these smaller  
20 fish up the coast, they all do end up in the same  
21 migratory route?

22 DR. FLEMING: I presume that that's what they were  
23 thinking, but I can only presume, of course.

24 Q Okay. That's fine, thank you.

25 MS. ROBERTSON: If we could just turn to page 12,  
26 please, then, of that document? If we could just  
27 highlight the criterion there?

28 Q Mr. Thomson, these questions are for you in my few  
29 minutes remaining. So this is Criterion 2. This  
30 assesses, here, the degree to which cumulative  
31 environmental impacts on an entire bay or other  
32 ecosystem are considered in siting decisions.  
33 Now, just in the interests of time, I note that  
34 the auditor gave five points to B.C. there on that  
35 one, and the main reason being is that he talks  
36 about the **Canadian Environmental Assessment Act**,  
37 and **CEAA**, and we've looked at some **CEAA** screening  
38 documents there and how they do actually consider  
39 cumulative effects as one component of their  
40 environmental screen. Do you agree with that?

41 MR. THOMSON: Yes.

42 Q And so we've heard evidence now, what I understand  
43 is what's changed in DFO taking over the  
44 regulation of aquaculture and the licensing of  
45 aquaculture is there is no longer **CEAAs** that are  
46 going to happen through a **Fisheries Act** trigger.  
47 Basically, if you get an aquaculture licence, you

1           have an environment assessment, you don't need to  
2           go there any more?

3       MR. THOMSON: Well, there may still be a trigger,  
4           triggered by the **Navigable Waters Protection Act**  
5           licence issuance, which has really been a very  
6           common trigger for most shellfish and finfish  
7           aquaculture sites. But in developing our licence  
8           criteria and regulations and conditions licence,  
9           our intent was to take the environmental impacts  
10          associated with our mandate around fisheries and  
11          fish habitat and incorporate the screening, if you  
12          will, or the assessment of those environmental  
13          impacts into our process for licence issuance. So  
14          we're trying to incorporate what was seen in the  
15          **CEAA** screening into our conditions of licence.  
16          But getting back to my first point, there may  
17          still very well be a triggered **Canadian**  
18          **Environmental Assessment Act** screening on the  
19          basis of the issuance of the **Navigable Waters**  
20          **Protection Act** permit.

21       Q       Right, and that would be contingent on an  
22           assessment of the transport officer as to whether  
23           or not there was a significant interference with  
24           navigation. So from a Fisheries or protection  
25           point of view, there really is no trigger for an  
26           environmental assessment any longer?

27       MR. THOMSON: No, there isn't a trigger under the  
28           **Fisheries Act** authorization, no, which was the  
29           previous trigger that was used.

30       Q       Would you agree with me, then, the IMAP process,  
31           the Integrated Area Management Plan (sic) is what  
32           DFO was really proposing as the means to have a  
33           cumulative effect assessment, an area management  
34           approach, an ecosystem-based approach?

35       MR. THOMSON: Yes.

36       Q       Are IMAPs the way to do that?

37       MR. THOMSON: Well, certainly from the outset of design  
38           of the regulatory process and the regulatory  
39           system that we wanted to put in place, I think we  
40           recognize that we'd like to move to a more  
41           ecosystem-based approach, as opposed to the  
42           site-by-site-based approach, even though there was  
43           cumulative effects assessed. And so the IMAP  
44           process that is in development currently is  
45           designed or is being designed to look at the  
46           aquaculture activities occurring in defined  
47           geographic areas as part of the overall management

1 of that area as opposed to looking at one  
2 individual site.

3 Q All right. And I mean, that really, I think,  
4 would be the only process that would come into  
5 existence. It hasn't existed previously where  
6 larger migratory routes, for instance of the  
7 Fraser River sockeye, would be considered in  
8 licensing?

9 MR. THOMSON: Well, certainly, I think, you know, the  
10 migratory routes of wild salmon populations, all  
11 these things had been considered in the past in  
12 environmental assessments at times. I'm not going  
13 to say in every single environmental assessment  
14 because I'm not familiar with each one, but yes,  
15 the intent of developing the Integrated Management  
16 Action Plan is we would look at ecosystem  
17 indicators within a defined area, and one of those  
18 indicators is certainly very likely to be wild  
19 salmon.

20 Q All right. So I mean, would you agree with me  
21 that there's a lot resting on those plans, then,  
22 being developed in terms of these larger kind of  
23 area planning processes, ecosystem-based  
24 processes?

25 MR. THOMSON: I would certainly agree with you that  
26 it's a large job ahead and it's a rather ambitious  
27 direction the Department's taken, but you know,  
28 I'll say this, the current regulatory program  
29 that's in place is still a very stringent  
30 regulatory program and it requires a lot under  
31 conditions of licences.

32 Q All right. So in December of 2010, it was you, I  
33 believe, who was the decision maker in issuing, I  
34 think it was 130 finfish licenses in the province?

35 MR. THOMSON: I signed the licenses, yes.

36 Q And they were issued for a period of one year; is  
37 that correct?

38 MR. THOMSON: Yes.

39 Q And that was to allow DFO time to continue to  
40 develop the regulatory regime?

41 MR. THOMSON: Yeah, it was -- yes. That would be the  
42 short answer.

43 Q And can you confirm that the Province used to  
44 issue aquaculture licenses for a one-year period,  
45 as the previous --

46 MR. THOMSON: That would be a better question for Mr.  
47 Last.



1 Q Mr. Last, can you confirm that?

2 MR. LAST: Yes.

3 Q For a one-year period?

4 MR. LAST: Finfish aquaculture licenses.

5 Q Thank you. But under the **Fisheries Act**, Mr.  
6 Thomson, licenses can be issued for up to nine  
7 years; is that correct?

8 MR. THOMSON: Yes.

9 Q So we're coming up to December fairly quickly  
10 here, and you've acknowledged that there's a lot  
11 that goes into these integrated area management  
12 plans, and I mean, where are you at with those  
13 plans? I'm going to put it to you that you're not  
14 very far along. I've seen a draft document from  
15 headquarters of July of this year sent to the  
16 Region, saying, "Here's a draft guideline for  
17 development of IMAPs. Why don't you send us a  
18 draft back?" So it looks like we're quite a long  
19 ways from getting to the point where you're  
20 actually going to be able to define the areas  
21 where you're going to do the planning. You're a  
22 long way away, aren't you?

23 MR. THOMSON: Well, I would submit that we have a  
24 fairly comprehensive, though with some gap,  
25 document that will start the process for an  
26 integrated management aquaculture plan, however,  
27 you know, I've been very clear all the way along,  
28 and I think the Department's been very, very clear  
29 that, you know, this is the start of a  
30 developmental process so what the IMAP that's  
31 developed for this year, I expect will look very  
32 different from the IMAP that we have in five years  
33 because what is the argument to not doing so as we  
34 have a continual improvement process to develop a  
35 better and better IMAP as we go forth.

36 Q But there's no IMAPs in existence right now, we're  
37 quite a ways away from having even one?

38 MR. THOMSON: Well, I don't know how you judge "quite a  
39 ways away." We will have a draft IMAP for  
40 consultation this fall.

41 Q So come December, does it make sense to you to,  
42 when you're poised to make decision to replace  
43 these 130 licences, or consider replacing them,  
44 does it make sense to you that you may consider  
45 only replacing them for a shorter period of time  
46 again, or what's your thinking on that?

47 MR. THOMSON: Yeah, it would make sense, depending on

1 the level of consultation and the level of our  
2 knowledge bases going forward and also, of course,  
3 with respect to the Cohen Commission, itself, and  
4 the recommendations that may come from this  
5 Commission with respect to aquaculture.

6 Q Certainly, but we've heard evidence that DFO said  
7 they're not going to issue any new licences, but  
8 there's 130 salmon farm licences, and that's  
9 really largely what we've been talking about this  
10 entire commission, I put to you so you're  
11 considering, then, not issuing them for a longer  
12 period of time again, until further work has been  
13 done on this critical area of planning that --

14 MR. THOMSON: Yes, that's under consideration.

15 MS. ROBERTSON: Thank you. I think that's my time.

16 MR. RALSTON: Thank you. Benjamin Ralston for Heiltsuk  
17 Tribal Council, that's R-a-l-s-t-o-n, first  
18 initial B.

19  
20 CROSS-EXAMINATION BY MR. RALSTON:

21  
22 Q Okay. Today, my questions will be for Mr.  
23 Swerdfager, as well as Mr. Thomson of DFO. With  
24 respect to the siting and licensing of fish farms,  
25 could you tell me if DFO has a protocol for  
26 consultation with First Nations that specific to  
27 aquaculture?

28 MR. THOMSON: I wouldn't say we have a protocol  
29 specific to aquaculture for consultation with  
30 First Nations. We have had, in the past, guidance  
31 documents developed that provide some level of  
32 assistance in guiding our staff in conducting  
33 consultations, but I wouldn't characterize it as  
34 protocol.

35 Q Okay. Is there any attempt been made at creating  
36 aquaculture-specific protocol?

37 MR. THOMSON: We are receiving advice currently, both  
38 internally and with our other government agencies,  
39 as to developing such a protocol, or at least  
40 greater guidance in conducting consultations, yes.

41 Q Okay. And so how much work has been done to date  
42 on that? Could you speak to the general tenor of  
43 the discussions that have been had?

44 MR. THOMSON: I'm at an awkward point because a lot of  
45 the discussions and advice is coming from the  
46 Department of Justice and so I'm not really sure  
47 if that's something that I can share without

1 releasing --

2 Q Fair enough. Fair enough.

3 MR. THOMSON: Yeah.

4 Q Okay. In terms of just giving general guidance on  
5 what you think would make for a good consultation  
6 protocol on aquaculture, now, under your Best  
7 Practices Guide, information sharing is one aspect  
8 of consultation; would you agree?

9 MR. THOMSON: Oh, I would agree that information  
10 sharing is a good practice, whether it's of  
11 consultation or generally, yes.

12 Q Okay. So specific to consultation with First  
13 Nations on aquaculture, what types of information  
14 would DFO be sharing with First Nations, or have  
15 been contemplated to share?

16 MR. THOMSON: Well, I think the type of information we  
17 want to share with First Nations is a very similar  
18 type of information we want to share broadly with  
19 the public, which is, you know, as we've been very  
20 clear, and Mr. Swerdfager's already testified to,  
21 we had a very clear objective to increase the  
22 transparency around this industry so we've already  
23 to start to put a great deal of more information  
24 on our website than was previously publicly  
25 available about the aquaculture industry. And  
26 ultimately, we're going to continue to increase  
27 that. So for example, one of the areas that I  
28 think that would be useful to get into is to start  
29 having a public website that shows the  
30 applications for aquaculture sites so there's an  
31 opportunity for First Nations and others, of  
32 course, to understand what's being applied in  
33 their traditional territories or the areas of  
34 their interest.

35 Q Okay. What about fish health data, is it  
36 contemplated that that will be shared with First  
37 Nations?

38 MR. THOMSON: Well, again, on our website, we are  
39 currently posting some fish health data regarding  
40 sea lice counts and we're in the process of  
41 developing other pieces of fish health data to  
42 share publicly, as well as potentially with First  
43 Nations. I mean, First Nations being, obviously,  
44 a part of the public, as well.

45 Q Mm-hmm. Will there be anything in addition to  
46 what's publicly shared, shared with an individual  
47 affected First Nation, in particular to those fish

1 farms in their territory?

2 MR. THOMSON: I would think it would depend on the  
3 request coming from the First Nations as to what  
4 type of information they would want to be shared  
5 and then, of course, the constraints of the  
6 **Privacy Act** that we also fall under for  
7 information that we receive so --

8 Q Okay. Fair enough. Another aspect of  
9 consultation is accommodation, would you agree?

10 MR. THOMSON: Accommodation can be part of the --

11 Q Mm-hmm.

12 MR. THOMSON: -- can be part of it.

13 Q Okay. What type of accommodation could be reached  
14 for a First Nation that is opposed to any amount  
15 of finfish aquaculture in their traditional  
16 territories? How could their concerns be  
17 addressed?

18 MR. THOMSON: Well, I think that their concerns could  
19 be addressed through a consultation process where  
20 we can gain insight into the concerns they have,  
21 provide advice back from our best knowledge as to  
22 what we believe are the factors that mitigate  
23 those concerns, or not. Talk to them about  
24 potential research projects, those type of things,  
25 that can be used collaboratively to address issues  
26 of their concern. But you know, in terms of  
27 actual examples of what types of accommodation, I  
28 think it really does go to, you know, an  
29 assessment of whether or not there's been an  
30 infringement of their rights and what type of  
31 accommodation would be suitable to address that  
32 infringement.

33 Q Okay. One more question. Would you agree that  
34 First Nation often need funding in order to  
35 meaningfully engage in consultation?

36 MR. THOMSON: I would agree that I've been informed  
37 many a times that First Nations require funding to  
38 engage in consultations, yes.

39 Q Mm-hmm. Would you agree, though, that in the  
40 specific context of aquaculture, which is rich in  
41 science, that it's feasible that First Nations may  
42 need funding to access and interpret that  
43 information?

44 MR. THOMSON: I think that it would be, obviously, for  
45 First Nations to provide advice on some of the  
46 scientific matters, accessing additional  
47 scientific advice or advisors would be beneficial,

1 but you know, ultimately, when we're trying to  
2 assess the impacts of a decision, it's really the  
3 impacts to the rights of an individual First  
4 Nation and so, you know, some of that can be done  
5 through our interpretation of their telling us  
6 what impacts they've seen and are witnessing.

7 Q Okay.

8 MR. RALSTON: So Commission counsel's given me the sign  
9 that I'm out of time. Now, because we've only  
10 been given five minutes out of our 30 minutes  
11 requested, we had talked to Commission counsel  
12 about possibly bringing an application to have the  
13 remainder responded to in writing. I just want to  
14 put that on the record and we'll deal with that  
15 when we do. That would be it for my questions  
16 today.

17 MR. MARTLAND: Mr. Commissioner, the total requests  
18 were just shy of three days for this panel. We've  
19 been ambitious, that's deliberately, and there's  
20 trade-offs to it. With respect to the point  
21 that's been in raised and, indeed, Ms. Gaertner's  
22 outstanding question with respect to the time that  
23 she sought for panel members, I don't know if we  
24 want to start into this at four o'clock with  
25 respect to our submissions. Let me suggest as a  
26 very practical matter the following. First of  
27 all, Dr. Fleming and Mr. Last, unless Mr. Ralston  
28 had a necessary question that nobody through the  
29 course of today has asked of those two witnesses,  
30 I expect those two witnesses could be excused.  
31 Both, as I said earlier, Mr. Swerdfager and Mr.  
32 Thomson, although on different panels, are  
33 returning and so in terms of whether we're  
34 adjourning until the regular time of 10:00, or  
35 9:00, or 9:30 tomorrow, that's something that's in  
36 your discretion. I suppose, equally, if the  
37 default were the 10 o'clock, but we can  
38 communicate with participants if that time were to  
39 change. Mr. Lunn gives these daily update emails  
40 and we could communicate that immediately by email  
41 if there were a change on that. I'm in your hands  
42 with respect to the appropriate time we adjourn to  
43 at this point.

44 THE COMMISSIONER: Yes, I think you've got it. The  
45 latter point was the correct one, Mr. Martland,  
46 we'll adjourn now and if there's any change to the  
47 10 o'clock start time, Mr. Lunn will so advise

1 participants' counsel. Thank you.

2 MR. MARTLAND: Thank you.

3 MR. TAYLOR: I'm seeking a point --

4 THE COMMISSIONER: Just a moment. I'm sorry, just one  
5 moment. My apologies, Mr. Taylor, I'm sorry.

6 MR. TAYLOR: Mr. Commissioner, I'm rising simply to  
7 seek your direction. Mr. Swerdfager and Mr.  
8 Thomson are not clearly finished cross-  
9 examination. They're coming back on other panels  
10 individually. Those are on different topics, but  
11 obviously, related topics. So in these  
12 circumstances, I'm seeking direction on what are  
13 the ground rules for speaking with the witnesses  
14 or the witnesses speaking with anyone? I'm not  
15 sure at this point whether they're still under  
16 cross on this panel, and maybe we'll hear later  
17 tonight, but we're still going to do some things  
18 in the meanwhile. And if they are under cross,  
19 what are the ground rules going to be about  
20 speaking with them to do with getting ready for  
21 the next panels?

22 THE COMMISSIONER: Well, I think, Mr. Taylor, this  
23 perhaps has arisen in prior panels and my  
24 suggestion to counsel has been that with respect  
25 to matters upon which, and you're talking about a  
26 new topic that they're going to be addressing, I'm  
27 content that you be permitted, and other counsel  
28 be permitted, if they wish, if they witnesses on  
29 these panels, to address matters pertaining to  
30 that new panel without any reservation around  
31 that. In other words, counsel are free to speak  
32 to the witnesses about evidence they're about to  
33 give, they haven't given yet, and it's a new topic  
34 and they're going to be examined by participants'  
35 counsel.

36 With respect to matters that they've  
37 testified upon, I think my suggestion has been,  
38 and I think these witnesses have not heard it, but  
39 others have, that I've been using the usual, if I  
40 can call it that, warning that witnesses are given  
41 under cross-examination not to talk about their  
42 evidence with any party unless the court is so  
43 informed and can deal with any matters that arise.  
44 So my way of dealing with that in the past has  
45 been to say this, I'm content to leave it in your  
46 capable and competent hands, as counsel, to know  
47 that if you wish to address a matter upon which

1 they've already testified with them, or a matter  
2 pertaining to their return to be cross-examined on  
3 matters they've already testified upon, that you  
4 would let Mr. Martland know that and that between  
5 you, you will sort out whether there's any need to  
6 bring a matter before me for some direction. I'm  
7 quite content to leave it with you and your  
8 colleagues, counsel here in the Commission  
9 hearings, to sort that out with Commission  
10 counsel. But should there be some disagreement  
11 around the protocol for that, I'm content to give  
12 a direction, but I don't have any concerns about  
13 it in the absence of being told that there's some  
14 reason to have a concern and, therefore, a  
15 direction may be required in that context.

16 MR. TAYLOR: Thank you, that's helpful direction.

17 THE COMMISSIONER: Okay.

18 MR. MARTLAND: Thank you, Mr. Commissioner, I believe,  
19 then, we can be adjourned until 10:00 a.m.,  
20 subject to the possibility of a change in the  
21 timing tomorrow.

22 THE COMMISSIONER: Yes, that would be fine. Thank you  
23 very much.

24 MR. MARTLAND: Thank you.

25 THE REGISTRAR: The hearing is now adjourned until  
26 10:00 a.m.

27  
28 (PANEL NO. 58 EXCUSED)

29  
30 (PROCEEDINGS ADJOURNED AT 4:05 P.M. TO AUGUST  
31 31, 2011, AT 10:00 A.M.)

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34  
35 I HEREBY CERTIFY the foregoing to be a true  
36 and accurate transcript of the evidence  
37 recorded on a sound recording apparatus,  
38 transcribed to the best of my skill and  
39 ability, and in accordance with applicable  
40 standards.

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45 Diane Rochfort  
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1 I HEREBY CERTIFY the foregoing to be a true  
2 and accurate transcript of the evidence  
3 recorded on a sound recording apparatus,  
4 transcribed to the best of my skill and  
5 ability, and in accordance with applicable  
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20 and accurate transcript of the evidence  
21 recorded on a sound recording apparatus,  
22 transcribed to the best of my skill and  
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24 standards.

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