Office of the Conflict of Interest and Ethics Commissioner

Commissariat aux conflits d'intérêts et à l'éthique

The Sullivan Report

made under the
CONFLICT OF INTEREST ACT

October 17, 2012

Mary Dawson
Conflict of Interest and Ethics Commissioner

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For additional copies of this publication, please contact:

Office of the Conflict of Interest and Ethics Commissioner
Parliament of Canada
66 Slater Street, 22nd Floor
Ottawa, Ontario K1A 0A6

Telephone: (613) 995-0721
Fax: (613) 995-7308
Email: ciec-ccie@parl.gc.ca

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PREFACE

The *Conflict of Interest Act*, S.C. 2006, c.9, s.2 (Act) came into force on July 9, 2007.

An examination under the Act may be initiated at the request of a member of the Senate or House of Commons pursuant to subsection 44(1) or on the initiative of the Conflict of Interest and Ethics Commissioner pursuant to subsection 45(1) of the Act.

Unless an examination is discontinued, subsection 45(3) requires the Commissioner to provide a report to the Prime Minister setting out the facts in question as well as the Commissioner's analysis and conclusions in relation to the examination. Subsection 45(4) provides that, at the same time that a report is provided to the Prime Minister, a copy of the report is also to be provided to the current or former public office holder who is the subject of the report, and made available to the public.

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EXECUTIVE SUMMARY

This report presents the findings of my examination under the *Conflict of Interest Act* (Act) into the conduct of Mr. Loyola Sullivan, former Canadian Ambassador for Fisheries Conservation.

As Ambassador, Mr. Sullivan reported to both the Minister of Fisheries and Oceans and the Minister of Foreign Affairs, and worked with officials in both of their departments. After leaving office in March 2011, he was subject to post-employment obligations, including subsection 35(2), which applied during a one-year cooling-off period.

Subsection 35(2) of the Act prohibits former reporting public office holders, during their cooling-off period, from making representations for or on behalf of another entity to any department, organization, board, commission or tribunal with which they had direct and significant official dealings during the period of one year before leaving office. I initiated my examination after receiving information indicating that Mr. Sullivan may have contravened this prohibition.

In June 2011, after consulting with my Office about whether he could take the position, Mr. Sullivan took up the position of Vice President of Resource Management and Sustainability at Ocean Choice International (Ocean Choice). In that position he had several interactions with Fisheries and Oceans Canada and Foreign Affairs and International Trade Canada related to matters of interest to Ocean Choice during his one-year post-employment cooling-off period. He also attended a consultation organized by Fisheries and Oceans on behalf of the Groundfish Enterprise Allocation Council.

During my examination I found that several of these interactions were made in order to persuade federal government officials to make a decision to the advantage of Ocean Choice and, in one case, to change a policy in accordance with the position of the Groundfish Enterprise Allocation Council. In my view, these interactions involved making representations. I have therefore found that Mr. Sullivan contravened subsection 35(2) of the Act.

Under section 41 of the Act I have authority to order current public office holders not to have official dealings with former reporting public office holders where I determine that they are not complying with the post-employment obligations of the Act. Section 41, however, appears to be aimed at preventing ongoing contraventions of post-employment obligations to which former reporting public office holders continue to be subject. As Mr. Sullivan is no longer subject to subsection 35(2), I do not believe it would be appropriate to issue an order under section 41.

I have noted in the past that there are no requirements in the Act for former reporting public office holders to report their post-employment activities to my Office or to seek advice. The only exception is when they are engaged in certain activities referred to in specific sections of the *Lobbying Act.*

More comprehensive reporting obligations, such as a requirement that former reporting public office holders inform my Office of any interactions with the federal government during the applicable cooling-off period, may have assisted Mr. Sullivan in complying with the Act.

Such reporting obligations would also assist my Office in obtaining timely and accurate details of the post-employment activities of former reporting public office holders in order to ensure that they are meeting their obligations under the Act.

ALLEGATIONS

On February 13, 2012, I received a letter from Mr. Jim Bennett, a Member of the Newfoundland and Labrador House of Assembly. In his letter, Mr. Bennett requested that I review whether Mr. Loyola Sullivan, former Canadian Ambassador for Fisheries Conservation, had contravened his post-employment obligations under the *Conflict of Interest Act* (Act) after taking up the position of Vice President of Resource Management and Sustainability at Ocean Choice International on June 27, 2011. Mr. Bennett wrote that it seemed implausible that Mr. Sullivan would be able to execute properly the duties of that position while complying with his post-employment obligations. On February 15, 2012, Mr. Bennett published a news release stating that he had asked me to review the activities of Mr. Sullivan.

While a Member of the Senate or House of Commons, who has reasonable grounds to believe that a public office holder or former public office holder has contravened the Act, may request an examination, provincial representatives do not have standing to do so under the Act. However, my Office does review all information relating to possible contraventions of the Act. I may commence an examination on my own initiative, under subsection 45(1), when I have reason to believe the Act has been contravened.

Mr. Bennett's request did not outline a specific instance in which Mr. Sullivan's duties with Ocean Choice appeared to contravene his post-employment obligations. However, after Mr. Bennett published his news release, media reported that Mr. Sullivan had attended and participated in consultations run by Fisheries and Oceans Canada.

On February 24, 2012, staff from my Office telephoned Mr. Sullivan to discuss Mr. Bennett's letter and the information published in the media. Mr. Sullivan confirmed that he had had several interactions with Fisheries and Oceans since his term as Canadian Ambassador for Fisheries Conservation had ended. These included attending a consultation organized by Fisheries and Oceans on January 12, 2012 in St. John's on behalf of the Groundfish Enterprise Allocation Council, in order to convey that Council's views on fisheries modernization.

This gave me cause for concern, as subsection 35(2) of the Act prohibits a former reporting public office holder from making representations for or on behalf of any other person or entity to any department, organization, board, commission or tribunal with which he or she had direct and significant official dealings during the period of one year immediately before his or her last day in office. In the case of Mr. Sullivan this prohibition applied for one year following his departure from public office on March 28, 2011.

Based on the information before me at that time, I had reason to believe that Mr. Sullivan had contravened subsection 35(2) of the Act by making representations to Fisheries and Oceans, a department with which he would have had direct and significant official dealings during his last year of public office. On March 6, 2012, I commenced an examination on my own initiative.

On May 4 and 29, and September 19, 2012, I received letters from Mr. Scott Andrews, federal Member of Parliament for Avalon, raising concerns related to Mr. Sullivan's post-employment obligations. I responded to him on each occasion informing him that I had already commenced an examination.

THE PROCESS

I wrote to Mr. Sullivan on March 6, 2012 to advise him that I was commencing an examination under subsection 45(1) of the *Conflict of Interest Act* (Act) and I informed him that the relevant provision was subsection 35(2). As a first step I asked that Mr. Sullivan respond in writing by April 6, 2012. Mr. Sullivan requested, and was granted, an extension until April 17, 2012.

On April 17, 2012, I received a response from Mr. Sullivan that included documents relating to his contacts with Fisheries and Oceans Canada and Foreign Affairs and International Trade Canada in the year since leaving public office.

I conducted an interview with Mr. Sullivan on May 28, 2012. As well, my Office requested written responses and documents from four witnesses. The Schedule sets out a list of these individuals.

In keeping with the practice I have established when conducting examinations, Mr. Sullivan was given an opportunity to comment on a draft of the factual parts of this report before it was finalized, specifically Allegations, The Process, Findings of Fact and Mr. Sullivan's Position.

On September 28, 2012, Mr. Sullivan sent me a letter setting out his comments on the draft factual sections of my report. He requested that this letter and his letter of April 17, 2012 be included in my report. While these letters are not included in the report, I have ensured that Mr. Sullivan's position has been represented in more detail and I provided him with a further opportunity to comment.

FINDINGS OF FACT

Mr. Sullivan was appointed Canadian Ambassador for Fisheries Conservation on January 22, 2007 and held the position until March 28, 2011. During that time he was a reporting public office holder subject to the *Conflict of Interest Act* (Act).

On his departure from public office, he became subject to the Act's post-employment obligations, including a one-year cooling-off period ending on March 28, 2012. During that cooling-off period Mr. Sullivan was not to make representations, whether for remuneration or not, for or on behalf of any other person or entity to any department, organization, board, commission or tribunal with which he had had direct and significant official dealings during the period of one year immediately before his last day in office.

In order to determine whether Mr. Sullivan contravened the Act it was necessary to understand both his role as Ambassador and the nature of his interactions with Foreign Affairs and International Trade Canada and Fisheries and Oceans Canada during his one-year post-employment cooling-off period.

Mr. Sullivan's Role as Ambassador

The position of Ambassador was created in 2005 to respond to foreign non-compliance with international fisheries governance regimes, by addressing fisheries governance and sustainability. This role also includes the promotion of Canada's overall strategy to strengthen the governance of international fisheries and oceans, and to strengthen bilateral relations with key fishing countries through multilateral initiatives and international organizations to support Canadian objectives affecting international fisheries governance.

As Ambassador, Mr. Sullivan was an official working for both Fisheries and Oceans and Foreign Affairs. He reported to the ministers of both departments and was mandated to represent them on fisheries issues. Mr. Sullivan had an office within Foreign Affairs headquarters in Ottawa and one in St. John's, Newfoundland, both of which were staffed by Foreign Affairs employees. He worked in collaboration with officials in both departments, including during his last year in office.

According to the Deputy Minister of Foreign Affairs, the department's Oceans and Environmental Law Division interacted regularly with Mr. Sullivan while he was Ambassador. During negotiations, this division provided Mr. Sullivan with international law and foreign policy advice. It also had direct involvement in the preparation of a speech to be delivered by Mr. Sullivan before the United Nations General Assembly on Oceans and the Law of the Sea − Sustainable Fisheries in the fall of 2010.

Post-Employment Consultation with my Office

Mr. Sullivan took up the post of Vice President of Resource Management and Sustainability at Ocean Choice International on June 27, 2011. Prior to accepting this position, Mr. Sullivan contacted my Office seeking post-employment advice.

On June 1, 2011, Mr. Sullivan telephoned my Office to discuss the job offer from Ocean Choice. He informed my Office that his role would be on the corporate side. He said he would deal with the science behind fish stocks and that his interactions with government would be in connection with the decrease and increase in stocks.

In a letter dated June 6, 2011, my Office provided Mr. Sullivan with our standard post-employment advice, which is sent to all reporting public office holders when they leave office. The letter informed Mr. Sullivan that he was subject to the post-employment provisions of the Act, including those provisions that applied only to former reporting public office holders.

Attached to the letter was a detailed information notice containing the following text:

> *Sections 35 and 36 of the Act require that former RPOHs [reporting public office holders] observe what is commonly known as a "cooling-off period" following their departure from public office. The cooling-off period is two years for former ministers of the Crown and ministers of state and one year for all other former RPOHs (section 36).*
>
> *During this period a former RPOH may not contract with, sit on the board of directors of, or accept employment with any entity outside the federal government with which he or she had direct and significant official dealings during the one year immediately prior to leaving public office (subsection 35(1)). In addition, he or she may not make representations for or on behalf of another person to any department, organization, board, commission or tribunal with which he or she had direct and significant official dealings during that past year (subsection 35(2)).*

Following a further phone call with Mr. Sullivan on June 8, 2011, my Office emailed a copy of the post-employment letter and attachments to him as he had not yet received the hard copy sent through the mail.

On June 9, 2011, Mr. Sullivan had a telephone conversation with my Office during which he confirmed details of his role as Ambassador and described the work of Ocean Choice. On the same day Mr. Sullivan sent my Office an email in which he described his anticipated role at Ocean Choice. He reiterated what he had said on June 1, 2011 – that his role would be on the corporate rather than operational side. He anticipated that he would be involved in reading the scientific information available on fish stocks and advising the company on the health of the stocks and on quotas. He anticipated that this would involve meeting with government scientists responsible for reports on stock levels and with other officials. He expected to attend meetings of government and industry as well as industry alone.

In late June 2011, Mr. Sullivan contacted my Office to say that he intended to start work on June 27, 2011. Mr. Sullivan was told by an advisor that, based on the information that he had provided, he could likely take the position because he had not had direct, significant and official dealings with Ocean Choice in his last year in office. He was told that he would receive written confirmation shortly. Based on this conversation, Mr. Sullivan started work at Ocean Choice on June 27, 2011.

On June 30, 2011, my Office sent Mr. Sullivan an email confirming that the Act would not prohibit him from taking the position with Ocean Choice, provided that he respected certain specific post-employment requirements. That advice included the following:

> *While it is our position that your mandate as Ambassador for Fisheries Conservation may have been of significance to Ocean Choice International, those dealings were not direct and based on the information you provided and confirmed, you did not have any official, direct and significant dealings with Ocean Choice International, consequently, it is acceptable for you to take position with this company.*
>
> *However, I would like to remind you about subsections 34(2) and 35(2) which states that as a former reporting public office holder, you shall not give advice to business associates or employers using information that was obtained in your capacity as a public office holder and that is not available to the public. You are also prohibited from "switching sides", which means that if you have acted for or provided advice to the Crown on a specific proceeding, negotiation or case, you may not act for or on behalf of any person or organization in connection with that specific matter. These obligations have no time limit.*
>
> *Subsection 35(2) prohibits you to make representations for or on behalf of any other person or entity to any department, organization, board, commission or tribunal with which you had direct and significant official dealings during the period of one year immediately before your last day in office. In your situation, by accepting employment with Ocean Choice International, you will be prohibited from having any dealings with the Department of Foreign Affairs, the Department of Fisheries and Oceans and any department with which you have had official, direct and significant dealings in your last year in Office, which ends on March 31, 2012.* (That date was later revised to March 28, 2012)

This written advice from my Office covered the prohibition against making representations during the one-year cooling-off period. In fact, the email stated that Mr. Sullivan was prohibited from having any dealings with Fisheries and Oceans and Foreign Affairs. This actually goes a little further than the prohibition against making representations. The email advised further that Mr. Sullivan contact my Office if he had questions or concerns.

Mr. Sullivan addressed this advice in his letters to me of April 17, 2012 and September 28, 2012. He also addressed it during his May 28, 2012 interview with me and in a follow-up email of May 29, 2012. He told me that, at the time that the advice was provided, he had interpreted it to mean that he would have been prohibited from taking the job with Ocean Choice if he had had direct and significant official dealings with that company during his time as Ambassador. He said that he did not understand it to mean that he could not have dealings with

Fisheries and Oceans or Foreign Affairs during his one-year cooling-off period following his last day as Ambassador.

Mr. Sullivan's representations to my Office in relation to this matter are elaborated further below, in the section titled Mr. Sullivan's Position.

Interactions with Fisheries and Oceans and Foreign Affairs during Cooling-Off Period

Based on documents gathered, my Office identified a significant number of matters in relation to which Mr. Sullivan had one or more interactions with Fisheries and Oceans or Foreign Affairs during his one-year cooling-off period. These included at least five instances where Mr. Sullivan appeared to have had interactions with Fisheries and Oceans or Foreign Affairs with the aim of attempting to influence the official decisions of these departments in order to further the business interests of Ocean Choice or the interests of another organization. I will describe these five interactions in some detail.

Business Agreement Requiring Government Approval

In September 2011, Ocean Choice signed an agreement with an overseas company that would have allowed the two companies to catch and land portions of each other's quotas. This arrangement was governed by an international treaty and required federal government approval. Mr. Sullivan contacted Fisheries and Oceans in September 2011 and, on the request of a Fisheries and Oceans official, he sent details of the agreement.

In September and October 2011, Mr. Sullivan presented arguments and made suggestions to officials from Fisheries and Oceans and Foreign Affairs aimed at obtaining approval for this agreement.

In a September 22, 2011 email to an official from Fisheries and Oceans, Mr. Sullivan, citing information from another fisheries company, referred to a previous instance in which the Canadian government had approved an arrangement that, in Mr. Sullivan's view, was similar to what Ocean Choice was requesting. After meeting with officials from Fisheries and Oceans on September 30, 2011, Mr. Sullivan followed up with an email reiterating this argument and adding that the agreement was good for Canada and that it would not undermine international treaty obligations.

On October 11, 2011, Mr. Sullivan telephoned a Foreign Affairs official, who had advised Fisheries and Oceans that the arrangement proposed by Ocean Choice did not comply with the treaty, to express his own views on the treaty. On the same day, Mr. Sullivan emailed a Fisheries and Oceans official to argue that another fisheries company had told him that there was a precedent for deviating from the treaty.

On October 12, 2011, Mr. Sullivan forwarded a new draft agreement to Fisheries and Oceans. Foreign Affairs again advised that it was still not consistent with the treaty and Mr. Sullivan was informed of this.

The two departments continued to consider other possible options that would allow the deal to go ahead. After consulting with various stakeholders, a Fisheries and Oceans official advised Mr. Sullivan on November 12, 2011 that the government would not support the agreement. On

November 14, 2011, Mr. Sullivan emailed a Fisheries and Oceans official to voice his disappointment. He asked questions about the department's consultations and expressed his views on what could be done in order to have the agreement approved. Mr. Sullivan forwarded this correspondence to the executive assistant to Fisheries Minister Keith Ashfield, indicating that he wanted to make sure that all the facts were known.

Arctic Surf Clam Licence Disagreement

In the summer of 2011, Mr. Sullivan had several interactions with Fisheries and Oceans regarding the harvesting of arctic surf clams, a type of shellfish. At that time one company was licensed to catch the entire quota. Ocean Choice and a number of other companies argued that this monopoly licence holder was unable to harvest the entire quota and that additional licences should be issued to other companies. Ocean Choice wished to be granted a licence. In addition, the companies wanted an assessment of the scientific analysis behind quota-setting, arguing that higher quotas were justified.

In August and September 2011, Mr. Sullivan had a number of communications with officials from Fisheries and Oceans relating to these matters.

In a meeting on August 16, 2011 with a Fisheries and Oceans official, Mr. Sullivan discussed the quota issue. On August 23, 2011, Mr. Sullivan emailed the chief of staff to Fisheries Minister Keith Ashfield, requesting a meeting with the Minister to discuss the surf clam issue. At the end of August 2011, Mr. Sullivan contacted Fisheries and Oceans again outlining his views on appropriate quota levels.

On November 9, 2011, Mr. Sullivan and other industry representatives met with Minister Ashfield and provided him with a briefing note prepared by another fisheries company. On November 16, 2011, Mr. Sullivan obtained a slightly revised version of the briefing note and emailed it to an official from Fisheries and Oceans. In the same email he presented information about the current surf clam industry and market and argued that Ocean Choice should be granted a surf clam licence.

Mr. Sullivan raised the issue of surf clam quotas again on February 2, 2012 at a meeting of the Fisheries and Oceans' Offshore Clam Advisory Committee. He voiced concern about the quota-setting process, and questioned the science being used to decide upon the total allowable catch. He suggested alternative ways of calculating the total allowable catch and spoke in support of those alternatives.

Exemptions to Shrimp Management Plan

In July 2011, Mr. Sullivan had discussions with Fisheries and Oceans officials relating to a decision of the department regarding shrimp fishing by another seafood company. Mr. Sullivan told me that Fisheries and Oceans had granted that company an exemption that he believed was inconsistent with the applicable Integrated Fishery Management Plan. Ocean Choice and other members of the fisheries industry wanted to make sure that this exemption would not be continued.

Starting in July 2011, Mr. Sullivan had a number of communications with officials from Fisheries and Oceans aimed at ending this exemption, thereby increasing the quantity of shrimp that Ocean Choice could harvest.

In a July 28, 2011 email to a Fisheries and Oceans official, Mr. Sullivan set out several arguments in support of his position. In another email of August 23, 2011 to the chief of staff to Minister Ashfield, Mr. Sullivan wrote that it would be a grave mistake to continue the exemption, which allowed one company to have a monopoly on shrimp quotas.

Charter of Foreign Fishing Vessel and Request to Transfer Annual Quota

In 2011, Ocean Choice had not been able to catch its full quota of turbot because one of its vessels had been out of commission for longer than anticipated. On November 14, 2011, Mr. Sullivan emailed Fisheries and Oceans asking to allow Ocean Choice to carry over its turbot quota from 2011 to 2012. Fisheries and Oceans refused the request. Mr. Sullivan emailed again to ask Fisheries and Oceans to reconsider. Mr. Sullivan also argued that carry-over had been allowed in another circumstance for another type of fish. He said that the amount Ocean Choice wished to carry over was only a small part of the total allowable catch and that if they could not carry it over then valuable Canadian fish would be left in the water. Fisheries and Oceans again responded to Mr. Sullivan explaining why the quota carry-over was not possible.

On November 24, 2011, Mr. Sullivan emailed a Fisheries and Oceans official to seek permission for Ocean Choice to charter a foreign vessel to catch the remaining turbot quota. Mr. Sullivan asked for the request to be dealt with as quickly as possible.

On November 29, 2011, Mr. Sullivan emailed the executive assistant to Fisheries Minister Keith Ashfield. He informed him of his initial request to Fisheries and Oceans to carry over the turbot quota, which had been denied, and his subsequent request for permission to charter a foreign vessel. Mr. Sullivan explained in his email that Ocean Choice would not be able to catch its full turbot quota even if chartering of the foreign vessel was approved immediately.

Attendance at Fisheries and Oceans Consultation

Mr. Sullivan told my Office that he had attended a consultation organized by Fisheries and Oceans on January 12, 2012 in St. John's as a representative of the Groundfish Enterprise Allocation Council in order to convey that Council's views on fisheries modernization. He also told my Office that he had made statements during that consultation on behalf of that Council.

Handwritten notes from the meeting provided to my Office by Fisheries and Oceans indicated that Mr. Sullivan had argued that the government needed to change the way fishing fleets can be owned in order not to discourage younger people from entering the industry.

MR. SULLIVAN'S POSITION

Mr. Sullivan told me that he was contacted by Ocean Choice International in May 2011 with an offer of employment as Vice President of Resource Management and Sustainability. In giving serious consideration to accepting this offer he informed Ocean Choice that he would check with my Office to ensure that he would be able to accept such employment. In early June 2011 he had several conversations with my Office during which he outlined to my staff what his responsibilities had been as Ambassador for Fisheries Conservation, and what his role would be with Ocean Choice.

Mr. Sullivan told me that during several conversations with my staff in June 2011, the conversation and the advice focused on whether he had had official, direct and significant dealings with Ocean Choice while he was Ambassador. From those conversations he understood that if he had had no direct and significant dealings with Ocean Choice in his previous capacity as Ambassador there would be no impediment to accepting the position with Ocean Choice.

He made reference to the email that my Office had sent to him on June 30, 2011, the last three paragraphs of which are reproduced in the section of this report titled Findings of Fact. He said that, when he read the reference to direct, significant and official dealings in the last paragraph of that email, he thought it related to direct and significant dealings with Ocean Choice in the past. He said that, in light of the discussions with my Office, in his view this was a reasonable interpretation of that paragraph.

Mr. Sullivan said that it was only in retrospect after my Office brought this issue to his attention in 2012, that he understood our advice in respect of subsection 35(2). He said that, after he had spoken to my Office about the allegations that had been made against him in 2012, he went back to read the written advice provided by my Office in June 2011. He said that he could then see that the advice could be interpreted to mean that, if he took the position with Ocean Choice, he could not make representations to Fisheries and Oceans Canada or Foreign Affairs and International Trade Canada during his post-employment cooling-off period. However, he reiterated that this had not been made clear to him during the discussions with my Office in June 2011.

Mr. Sullivan wrote that, during the discussions with my Office in June 2011, he was not told that he could not have contacts and meetings with Fisheries and Oceans or Foreign Affairs if he accepted the position at Ocean Choice. Mr. Sullivan also told me that he would not have taken the job with Ocean Choice if he had understood our advice to mean that he could not meet with Fisheries and Oceans or Foreign Affairs. He told me that, based on his understanding of the advice, he accepted the position and started to work at Ocean Choice on June 27, 2011.

He questioned why, in light of this prohibition, he was given permission to take the job. He repeated that he would not have taken the job with Ocean Choice if he had understood our advice to mean that he could not have extensive interactions with Fisheries and Oceans.

Mr. Sullivan also made reference to his email to my Office of June 9, 2011 in which he had written:

> *My potential role with OCI would be on the corporate rather than the operational side. I anticipate it will involve reading the scientific*

information available on all stocks that OCI has an interest in and advising the company on the health of the stocks and what the Total Allowable Catch should be. It would involve meeting with govt scientists responsible for such reports and other officials. I would be expected to attend meeting of govt and industry as well as attend industry only meetings.

Mr. Sullivan argued that, in light of this information provided to my Office and the related advice, the only conclusion he could draw from our advice was that he could take the position since he did not have direct and significant dealings with Ocean Choice while Ambassador. He repeated that he did not understand that he could not have dealings with Fisheries and Oceans and Foreign Affairs in his proposed new position.

Mr. Sullivan acknowledged that he had made representations to Fisheries and Oceans and Foreign Affairs officials during his post-employment cooling-off period, in particular in relation to the business deal between Ocean Choice and the overseas company and the turbot quota carry-over.

However, with respect to surf clam and the request to charter a foreign vessel, his position is that these did not constitute representations but were instead standard administrative interactions. Mr. Sullivan indicated that he saw the interactions with Fisheries and Oceans on the topic of the surf clam licence as putting forth facts rather than making representations.

ANALYSIS AND CONCLUSIONS

Assessment of Facts

When Mr. Sullivan was Ambassador, he reported to and represented the ministers of Fisheries and Oceans and Foreign Affairs. In his official role he had dealings with officials from both of their departments, including during his last year in office.

I have taken note of the information provided by Mr. Sullivan, the advice given by my Office and Mr. Sullivan's position.

When Mr. Sullivan consulted my Office to discuss the proposed position with Ocean Choice International, he provided information about that position. He stated that his responsibilities would be on the corporate, rather than the operational side. He said that his dealings with the government would involve meeting with government scientists in relation to fishing stocks and that he would be expected to attend meetings of government and industry. The advice provided by my Office was based on this information.

While it would appear that during telephone discussions with my Office in June 2011 the focus was on whether Mr. Sullivan could accept the position with Ocean Choice, the written advice from my Office clearly addressed the prohibition on making representations to Fisheries and Oceans Canada and Foreign Affairs and International Trade Canada during his post-employment cooling-off period.

Mr. Sullivan was given written advice by my Office on two separate occasions in June 2011. In a letter dated June 6, 2011 he was given general advice that he was subject to a one-year cooling-off period. In that letter it was stated that, during that period, as provided in subsection 35(2) of the *Conflict of Interest Act* (Act), he could not make representations for or on behalf of another person to any department, organization, board, commission or tribunal with which he had had direct and significant official dealings during his last year in public office. In an email dated June 30, 2011 he was advised that he could take the position with Ocean Choice, but that the prohibition set out in subsection 35(2) would apply to any dealings with Fisheries and Oceans or Foreign Affairs during his cooling-off period.

During the course of my examination I found that Mr. Sullivan's interactions with these departments went beyond the description he provided to my Office in 2011. In particular, I found that Mr. Sullivan became involved in operational files. He made requests and put forth supporting arguments to officials from Fisheries and Oceans or Foreign Affairs on at least five occasions in the year following his departure from public office. This was done with the aim of attempting to influence official decisions or policies of those departments in order to further the business interests of Ocean Choice or the interests of another organization.

Analysis

Subsection 35(2) prohibits former reporting public office holders from making representations to entities with which they had direct and significant official dealings during their last year of public office. Subsection 35(2) reads as follows:

> **35.** (2) *No former reporting public office holder shall make representations whether for remuneration or not, for or on behalf of any other person or entity to any department, organization, board, commission or tribunal with which he or she had direct and significant official dealings during the period of one year immediately before his or her last day in office.*

This prohibition applies during a post-employment cooling-off period, which in the case of Mr. Sullivan was one year: March 29, 2011 to March 28, 2012. Subsection 36(1) provides as follows:

> **36.** (1) *With respect to all former reporting public office holders except former ministers of the Crown and former ministers of state, the prohibitions set out in subsections 35(1) and (2) apply for the period of one year following the former reporting public office holder's last day in office.*

In order to determine whether Mr. Sullivan contravened subsection 35(2) during his cooling-off period, it is necessary to assess the following elements: (1) Did Mr. Sullivan have direct and significant official dealings with Fisheries and Oceans and Foreign Affairs during his last year of public office as Canadian Ambassador for Fisheries Conservation? (2) If so, did he, once in post-employment, make representations on behalf of another person or entity to either of those departments during his one-year cooling-off period?

Direct and Significant Official Dealings

As set out in the section titled Findings of Fact, Mr. Sullivan, while he was Canadian Ambassador for Fisheries Conservation, reported jointly to the Minister of Fisheries and Oceans and the Minister of Foreign Affairs. He had regular direct and significant official interactions with both of their departments during his last year of public office, which was from March 29, 2010 to March 28, 2011.

These interactions included working with both departments to set goals and plan how best to fulfil the mandate of his office. During international negotiations, Foreign Affairs provided Mr. Sullivan with international law and foreign policy advice. This department also had direct involvement in the preparation of a speech to be delivered by Mr. Sullivan before the United Nations General Assembly on Oceans and the Law of the Sea – Sustainable Fisheries. It is clear that these interactions, in addition to being direct and official, were also significant, within the meaning of subsection 35(2).

Making Representations During Cooling-Off Period

In light of the fact that Mr. Sullivan had direct and significant official dealings with both Fisheries and Oceans and Foreign Affairs during his last year in public office, he was prohibited from making representations to those departments during his one-year cooling-off period.

Five specific instances are set out in the Findings of Fact where Mr. Sullivan had interactions with both Fisheries and Oceans and Foreign Affairs during his cooling-off period. Subsection 35(2) contemplates representations being made for or on behalf of another person or entity. It is clear that four of these interactions were made for and on behalf of Ocean Choice and the fifth one on behalf of the Groundfish Enterprise Allocation Council.

The remaining question is whether these interactions constituted making representations within the meaning of subsection 35(2) of the Act. There is no definition of "representation" in the Act. The *Shorter Oxford English Dictionary*, 3rd ed., Clarendon Press, Oxford, gives a general definition of "representation" as follows:

> *Representation*
>
> [...]
>
> 4. *The action of placing a fact, etc. before another or others by means of discourse; a statement of account, esp. one intended to influence opinions or action.*

The French version of subsection 35(2) uses the term "intervenir". *Le Petit Robert 2012* provides the following definition of "intervenir":

> *Intervenir*
>
> [...]
>
> 2. [Translation] *Take part in an action, in a matter in progress, with the intention of influencing its outcome.*

In my view, "representations" in subsection 35(2) would include formal legal representations to boards, commissions and tribunals, and also less formal representations to departments and other entities. An important aspect of these communications is that they be made with a view to influencing official decisions, opinions or actions. Conversely, merely providing information such as fisheries catch numbers for departmental statistics would not amount to making representations.

I believe there is ample evidence that representations were made.

International Business Agreement

In the fall of 2011, while working at Ocean Choice, Mr. Sullivan had a number of interactions with both Fisheries and Oceans and Foreign Affairs in relation to an agreement

between Ocean Choice and an overseas company. The agreement required federal government approval under an international treaty.

Mr. Sullivan put forward several arguments in favour of the agreement and a number of suggestions on how it could be facilitated under the treaty. He identified a previous instance in which the federal government had approved an arrangement that, in Mr. Sullivan's view, was similar to what Ocean Choice was proposing. When he was advised that, based on advice from Foreign Affairs, the agreement did not comply with the treaty, he contacted the relevant Foreign Affairs official to express his views on the treaty and discuss the matter further. He also raised these matters with the office of the Minister of Fisheries and Oceans.

These were clearly statements and arguments made with a view to convincing the two departments to authorize the agreement by approving it under the treaty and would therefore constitute representations within the meaning of subsection 35(2) of the Act. Mr. Sullivan has agreed that these were representations.

Arctic Surf Clam Licence Disagreement

As set out in the Findings of Fact, in the summer of 2011, Mr. Sullivan had a number of interactions with Fisheries and Oceans concerning the fishing quotas set by that department for arctic surf clams and the fact that only one company had a licence to fish them.

Mr. Sullivan presented his views to Fisheries and Oceans on appropriate quotas and also raised this issue with the Minister's office. He requested and attended a meeting with the Minister to discuss the matter, along with other industry representatives. He provided the Minister with a briefing note written by another company and forwarded a similar version of that note to departmental officials, with an email in which he set out the reasons why Ocean Choice should be granted a surf clam licence.

Mr. Sullivan's view is that he was simply putting forward facts and was not making representations. In my view, these communications were clearly made to convince Fisheries and Oceans to change their quota and licensing decisions with the aim of securing a surf clam licence for Ocean Choice and, for that reason, they constitute representations within the meaning of subsection 35(2).

Exemptions to Shrimp Management Plan

In July 2011, Mr. Sullivan was involved, on behalf of Ocean Choice, with a number of other offshore shrimp licence holders, in interactions with Fisheries and Oceans to try to prevent the renewal of an exemption that had been granted to another fishing company.

Mr. Sullivan's position was that the exemption was not consistent with the applicable Integrated Fishery Management Plan adopted by Fisheries and Oceans. He sent an email to departmental officials, setting out his position. He sent another email to the office of the Minister of Fisheries and Oceans stating that it would be a grave mistake to continue with the exemption.

Mr. Sullivan told me that he did not consider that he had made any representations on this issue. In my view, these interactions did constitute representations, in contravention of

subsection 35(2) of the Act, as they were made with the goal of persuading Fisheries and Oceans to end the exemption, thereby increasing the shrimp catch for Ocean Choice.

Charter of Foreign Fishing Vessel and Request to Transfer Annual Quota

Mr. Sullivan had interactions with Fisheries and Oceans in November 2011, seeking authorization for Ocean Choice to carry over its 2011 turbot quota to 2012 and, when that was refused, seeking approval to charter a foreign vessel to catch the remaining quota.

Mr. Sullivan's view is that he made representations with respect to the turbot carry-over but that the foreign charter request and approval process were purely administrative. In my view, both interactions were made in order to persuade Fisheries and Oceans to make a decision in favour of Ocean Choice, and both constituted representations under subsection 35(2).

Attendance at Fisheries and Oceans Consultation on behalf of Groundfish Enterprise Allocation Council

On January 12, 2012, Mr. Sullivan attended a consultation meeting organized by Fisheries and Oceans as a representative of the Groundfish Enterprise Allocation Council in order to convey its views on fisheries modernization. At that meeting, he made statements arguing that the government should change the rules relating to ownership of fishing fleets in order to avoid discouraging young people from entering the industry. In my view these are also representations within the meaning of subsection 35(2) of the Act, as they were statements made to persuade the department to change its current policy.

Conclusion

Based on the above, Mr. Sullivan clearly contravened subsection 35(2) of the Act by making representations during his one-year cooling-off period, which ended on March 28, 2012. He made representations for and on behalf of Ocean Choice, to both Fisheries and Oceans Canada and Foreign Affairs and International Trade Canada, as well as for and on behalf of the Groundfish Enterprise Allocation Council to Fisheries and Oceans. Mr. Sullivan had had direct and significant official dealings with both of these departments during his last year in public office as Canadian Ambassador for Fisheries Conservation which ended on March 28, 2011.

Observations

I have authority under section 41 of the *Conflict of Interest Act* (Act) to order current public office holders not to have official dealings with former reporting public office holders where I determine that they are not complying with the post-employment obligations of the Act. Section 41 reads as follows:

> **41.** (1) *If the Commissioner determines that a former reporting public office holder is not complying with his or her obligations under this Part, the Commissioner may order any current public office holders not to have official dealings with that former reporting public office holder.*

(2) *All current public office holders shall comply with an order of the Commissioner made under subsection (1).*

Section 41 appears to be aimed at preventing ongoing contraventions of post-employment obligations to which former reporting public office holders continue to be subject. Obligations set out in sections 33 and 34 apply for an indefinite period of time, but section 35 only applies to former reporting public office holders during a cooling-off period of either one or two years.

In the case of Mr. Sullivan, I have found that he contravened subsection 35(2) of the Act. His one-year cooling-off period ended on March 28, 2012. As he is no longer subject to subsection 35(2), I do not believe it would be appropriate to issue an order under section 41.

I have noted in the past that there are no requirements in the Act for former public office holders to report their post-employment activities to my Office or to seek advice. The only exception is when they are engaged in certain activities referred to in specific sections of the *Lobbying Act.*

More comprehensive reporting obligations, such as a requirement that former reporting public office holders inform my Office of any interactions with the federal government during the applicable cooling-off period, may have assisted Mr. Sullivan in complying with the Act. Such reporting obligations would also assist my Office in obtaining timely and accurate details of the post-employment activities of former reporting public office holders in order to ensure that they are meeting their obligations under the Act.

SCHEDULE
(List of Witnesses)

INTERVIEWS AND WRITTEN SUBMISSIONS

Interview

Mr. Loyola Sullivan
Vice President of Resource Management and Sustainability, Ocean Choice International
Former Canadian Ambassador for Fisheries Conservation

Written Submissions

1. The Honourable Keith Ashfield
   Minister of Fisheries and Oceans

2. Mr. Bruce Chapman
   Executive Director, Groundfish Enterprise Allocation Council

3. Ms. Claire Dansereau
   Deputy Minister, Fisheries and Oceans Canada

4. Mr. Morris Rosenberg
   Deputy Minister of Foreign Affairs, Foreign Affairs and International Trade Canada