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Chair

Mr. James Bezan

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● (0905)

[*English*]

The Chair (Mr. James Bezan (Selkirk—Interlake, CPC)): I will now call this meeting to order. We have quorum, but just barely. We're going to continue on with our study on the Species at Risk Act, as was assigned to us by the House.

We have a number of witnesses here with us today, and I want to welcome all of you to the table.

Representing the Canadian Cattlemen's Association, we have Peggy Strankman, who is the manager of environmental affairs. Joining her is Lynn Grant, who's the chair of the environment committee for the Canadian Cattlemen's Association. Welcome.

From the Canadian Association of Petroleum Producers, we have John Masterson, who is the manager of federal regulatory affairs for CAPP; Peter Miller, who is the legal counsel from Imperial Oil Resources; and Journey Paulus, who is the regulatory and environmental legal counsel for EnCana. Welcome to you.

From the Canadian Electricity Association, we have Eli Turk, who is vice-president of government relations, and Gary Birch, who is a senior technical adviser for B.C. Hydro.

Representing the Canadian Hydro Power Association is Ed Wojczynski, who is vice-chair of the SARA working group with Manitoba Hydro; and Pierre Lundahl, who is an environmental consultant with Lundahl Environment Inc.

Welcome, all of you.

I do ask that you keep your opening comments under ten minutes so we can have a fulsome discussion after your presentations.

Mr. Bruce Hyer (Thunder Bay—Superior North, NDP): Mr. Chair, I just wonder if we might in some way recognize, verbally or otherwise, that it's the 40th birthday of Bernard Bigras, and we should congratulate him on living that long in a political circle.

The Chair: Some day I might get to 40.

Voices: Oh, oh!

Mr. Jeff Watson (Essex, CPC): If you go back in time, you might.

The Chair: Happy birthday.

Mr. Bernard Bigras (Rosemont—La Petite-Patrie, BQ): Thank you.

The Chair: I don't know if that was a point of order, but with that, we'll move on.

Lynn, could you begin your opening comments? We'd appreciate that.

Mr. Lynn Grant (Chairman, Environment Committee, Canadian Cattlemen's Association): Good morning, Mr. Chairman, committee members, fellow presenters, and observers.

First I would like to comment that this is environment week, so in addition to happy birthday, we'll have a happy environment greeting.

Thank you very much for the invitation to present to this committee. It is important to begin comments about changes to the Species at Risk Act with a statement that the Canadian Cattlemen's Association supports the intention of the act to protect and recover wildlife species at risk in Canada. The CCA actively participated in the consultations leading up to the act being passed in 2002. We, as an organization and individual producers, continue to participate in activities that support the protection of species at risk.

This morning I will briefly summarize six issues that we think are most important to consider in effectively implementing the act. The Canadian Cattlemen's Association has elaborated on these points and others in a written brief submitted to this committee.

The preamble to this legislation strongly supports a stewardship approach to protecting and recovering species. We have presented three recommendations that will encourage and reward that stewardship. We encourage the government to do everything possible to implement an act that is truly based on a stewardship approach.

We also recommend that there be more support for good management practice, education, and awareness to landowners for implementation of this act. I think it's important to realize that if land managers, specifically the agricultural producers, have the right information, they will do the right thing. We all depend on the land and the health of our soil for our livelihood, so essentially anything that is good for the environment, for our soils, and for our ecosystems is going to be good for our bottom line as well as any species that rely on the land that we operate.

We also recommend exploring the use of economic instruments such as payments of ecological goods and services to conserve the ecosystem. I would like to turn the psychology of some of the legislation around so that we can make the presence of some of these wildlife species an asset to the land manager rather than a potential liability that might bring restrictions on his mode of operation.

We recommend that the government utilize the sections in the act that allow for conservation agreements as a way of engaging the agriculture community in their recovery of species at risk. The decisions that agriculture producers make can be positively supported to create a landscape that produces a variety of ecosystem services necessary for the long-term sustainability of agriculture and the future health and prosperity of all Canadians. A conservation agreement would allow producers to lay out a management plan according to accepted agronomic practice. It would clarify what the producer would or would not do and it would support any stewardship efforts that would be clearly defined.

A permit system for agriculture would be cumbersome and unwieldy. We have some 327,000 agricultural producers, so I guess it would be very unwieldy to get a permit system that would permit activities for that number of producers.

The definition of “critical habitat” has been a problem in the implementation of the act. As managers on the land, I guess we have a hard time defining what is critical versus what is just habitat. If we're going to use terms in the act like “critical”, then we need a little better definition of how it gets used and implemented. For those of us on the land, habitat is habitat, and we're not quite sure what you would mean as far as critical versus just regular habitat is concerned.

The act does permit the minister to pay fair and reasonable compensation for extraordinary harm. We would like to see regulations and guidelines as to how that would be implemented.

We are very supportive of the government's work to move towards an ecosystem approach. Our whole livelihood depends on a very viable, functional ecosystem rather than on pinpointing specific species within that ecosystem. Rather than management for just one specific species, a very functional, dynamic, highly working ecosystem is going to be better able to withstand any challenges to it and any of the species that rely on it.

● (0910)

For cattle producers and other stakeholders in the protection and recovery of species at risk to do the right thing and make appropriate management decisions, good information is needed. Good information through appropriate channels is a critical component of a stewardship approach. The more we learn about how our ecosystems function, the more we realize there's a lot we don't know. So we're asking that more effort be put into studying and research so we have better information to make better decisions.

Essentially, rigid prescriptions in a very diverse system like agriculture don't work. We would like the legislation and the administrators of the legislation to empower the people on the ground to make decisions. They're the ones who are working with the land managers, and we think they're going to make better decisions than somebody who is here in Ottawa making a prescriptive one.

We would like to look at the system as a coaching system, as you develop the information and knowledge we need to make better decisions. We would like to see you putting coaches in the field rather than regulators. We think a carrot approach is better than a punitive approach. We have a lot of faith in our producers and in people in general. If you provide them with the right information and the right tools to make the proper decisions, they will make the proper decision-making on the land.

We have a little information in our notes about the Canadian cattle industry, but I think you're all aware of the importance of agriculture and its association with the environment and soil. We're all on the same team. Let's just treat ourselves as a team rather than adversaries.

Thank you.

The Chair: Thank you very much, Mr. Grant.

We're moving right along and we're going to go to CAPP. Mr. Masterson, you can kick us off.

Mr. John Masterson (Manager, Federal Regulatory Affairs, Canadian Association of Petroleum Producers): Good morning. On behalf of the Canadian Association of Petroleum Producers, I'd like to thank the standing committee for this opportunity to present.

The Canadian Association of Petroleum Producers represents 130 companies that explore for, develop, and produce more than 90% of Canada's oil and gas. CAPP also has 150 associate members that provide a wide range of services that support the upstream oil and gas sector. Together, members and associate members are an important part of a $120-billion-a-year national industry.

CAPP supports protection and recovery of species at risk and believes that SARA offers an appropriate framework to achieve this end. Five years of experience with SARA and several iterations of past bills have taught us that course corrections are needed to improve the effectiveness of this act. CAPP believes that amendments to SARA are needed to allow energy industry activities to be conducted in compliance with the act and in a sustainable manner. CAPP also believes there needs to be a concerted effort to finalize policy documents to implement SARA.

I'd like to turn the floor over to Peter Miller from Imperial Oil and then to Journey Paulus. Peter will talk to permitting and recovery planning, and Journey will talk to critical habitat and consultation matters.

● (0915)

Mr. Peter Miller (Legal Counsel, Imperial Oil Resources, Canadian Association of Petroleum Producers): Thank you.

Permitting and authorizations are an important feature for industry, and they are already provided for in the legislation. CAPP agrees with and supports the key issues that are raised—and you will hear about them today—by the Canadian Hydropower Association and the Canadian Electricity Association as well as the Forest Products Association of Canada, specifically in relation to conservation agreements about which we will not specifically speak, but they are important to us as well.

The five years of experience we've had now with the legislation convinces us that the existing permit and authorization system—the exemptions systems for incidental harm—are not working effectively. These exemptions and authorizations include permits and agreements under sections 73, 74, and 78, as well as the section 83 exemptions. Authorizations should be available on a multi-species and ecosystem basis and should be more accessible under existing approval processes. So when the legislation was first drafted, we were thinking entirely in terms of specific individual species, and I think we're finding we have to look at a broader spectrum of activity in an ecosystem.

We've done a considerable amount of work on trying to understand and to make the permitting process work. In fact, we started in our meetings with the department, and we set the B.C. Hydro example, which you may hear a bit about later, as the prototype of how to make this permitting process work. Unfortunately, three years later and after extensive discussion, in fact to the point where everybody agrees on a solution, when that is presented further up the line here in Ottawa, I understand the response we get back from the Department of Justice is that the act is not clear and does not provide the certainty that we're able to implement this permitting process the way everybody agrees to it. So we think there are some simple amendments required to enable the permitting process to work effectively.

This is very important to us and our industry for major projects like the Mackenzie gas project and for all oil sands projects. We have not implemented these yet, because we're at the approval stage, but we're truly looking for the first out of the gate, the B.C. Hydro example, to work for us. And as I say, in three years it has not been able to work. We think we understand why it's not working and we believe legislative changes will fix that. You will read about those in our detailed submission.

The timelines set out in SARA are unrealistic for larger, long-term industrial projects. Resource development projects often have a life span of twenty to fifty years, and a simple three- to five-year cycle both is inefficient and fails to provide the regulatory certainty that industry requires to make major capital investments. That short-term cycle, I think, initially had in mind specific scientific research type projects, and we've taken that concept and tried to apply that to a wildlife management legislation, which has become now a regulatory regime for all activity in the wilderness and simply doesn't apply to major resource development projects.

So again, a simple reconsideration of those timeframes would help that part of the act work effectively.

Finally, the stewardship activities you've heard about from agriculture are also very important to resource developers and should be the focus of our efforts under SARA legislation. In particular, conservation agreements must be available to us and be utilized to deal with creative solutions, but at the same time, then, they must offer an opportunity to ensure compliance with the legislation itself. We believe, as agriculture does, that species at risk will benefit more from voluntary measures from all directly affected parties than from an enforcement-based approach.

● (0920)

Speaking about recovery planning, again, five years of experience with the act has taught us that the original design of the act, the command and control, legalistic, enforcement-based approach, will not achieve the objectives of the act. The unreasonable and unattainable goals that were set in the legislation for the government to write recovery strategies for each and every species in a very short time period have been a major subject of frustration to all parties and to the government itself in these first five years.

Neither the science nor the resources existed to reasonably accomplish these goals in the timeframe that was set by the legislation. This reality has resulted in frustration on the part of all parties and in difficulties for industry in obtaining project approvals. I think when we got into seriously considering this challenge, we realized that a legislative model based on individual species is not workable. Though it is convenient, clear, and legally enforceable—and this is what I say is the very simplistic command and control model—and very efficient from a legal point of view, it is just not workable because it does not reflect the complexity of ecosystems and the interface among species. This requires, we believe, a minor amendment to change the focus of the legislation from individual species in recovery planning to an ecosystem approach and a multi-species approach.

Finally, many species are listed both provincially and federally, providing an opportunity for the efficient use of resources to specifically allow for the use of provincial recovery documents in the administration of SARA. What we have seen over the years is that the courts have interpreted the legislation to require discrete processes for each statutory decision-maker to exercise his or her responsibility. It will simply take an amendment to legislation to enable a more collaborative, efficient process.

I think the economic realities of the day that we've seen in the last year or so compel us to be much more creative than we have been in the past. We have to recognize that this legislation was drafted five years ago, but it really started 10 years ago, with a mindset of a completely different economic reality. What we are proposing today is that we be much more creative, much more efficient, and much more collaborative in the way we administer this legislation and this program.

Thank you.

Ms. Journey Paulus (Regulatory and Environmental Legal Counsel, EnCana Corporation, Canadian Association of Petroleum Producers): I'm going to speak briefly on critical habitat and consultation.

The identification of critical habitat has been a slow and very contentious process. Currently, it has resulted in our having 16 species with partially or completely identified critical habitat listed on the SARA registry. This inability to identify critical habitat has led to delays in the recovery of listed species, uncertainty for entities operating on the land base, and delays of projects.

There is no guidance provided on the process for defining critical habitat or the activities that destroy it. This has resulted in inconsistent approaches by the various recovery teams, Environment Canada, and DFO. The current approach to critical habitat does not result in the most cost-effective solutions to protect species at risk and allow for their survival or recovery. This is inconsistent with the preamble of SARA, which states: “community knowledge and interests, including socio-economic interests, should be considered in developing and implementing recovery measures”.

The definition of critical habitat is resulting in dramatically different interpretations today. In the extreme, the draft critical habitat for the Sprague's pipit, a prairie bird, included all areas with a 10% or better probability of being occupied by that bird in a specific part of its range. If this approach were taken throughout the range, it would result in the identification of most of the prairies. It is hard to understand how this is compatible with a view that this is essential to the recovery or survival of the species. A similar approach was taken for the boreal caribou. The socio-economic impact of these decisions is significant and was not considered in determining critical habitat.

SARA must be amended to clearly state that the purpose of identifying critical habitat is to ensure that human activities are managed in a way that is consistent with maintaining the functions of the habitat necessary to ensure the survival or recovery of the species. This means that human activity will not, in every case, be completely prohibited in an area. Critical habitat must only be the habitat that's actually essential to the survival or recovery of the species or ecosystem. Thus, in some cases critical habitat is not the way to effectively protect a species or an ecosystem.

CAPP recommends an amendment to SARA whereby habitat, as opposed to critical habitat, is identified at the recovery strategy stage, along with a specific plan to manage, monitor, and assess the habitat for the purposes of identifying critical habitat or other ways of effectively protecting the species at the action plan stage.

A number of CAPP's member companies that are directly affected parties have not been asked to participate in the recovery teams or to participate in any manner in the recovery planning efforts. As a result, recovery strategies have been developed over long periods of time, with many person-hours and dollars spent, with no input from directly affected companies. Companies are potential sources of valuable resources and scientific information on the species located in the lands where they operate. For example, recovery strategies for the tiny cryptanthe and Sprague's pipit were drafted with no meaningful consultation from our sector. The strategies indicated that oil and gas activities were a threat to these species. So there was an awareness that there were directly affected parties, and yet no consultation occurred.

CAPP recommends that SARA be amended to incorporate a definition of directly affected parties and that a regulation be created for one transparent, collaborative process to be followed at all stages of SARA.

● (0925)

In conclusion, a command and control approach is the opposite of what we need to have; we need a collaborative, cooperative approach. Minor changes to the act are all that are required to enable this approach. CAPP looks forward to working with the federal government to find ways of effectively amending and implementing SARA to meet all of our needs.

Thank you.

The Chair: Thank you very much.

We're moving right along. We'll go to Mr. Turk from the Canadian Electricity Association.

Mr. Eli Turk (Vice-President, Government Relations, Canadian Electricity Association): Thank you, Mr. Chairman.

Members of the standing committee, on behalf of the Canadian Electricity Association and its member companies, I'd like to thank you for the opportunity to appear before the committee this morning.

First, let me say that the CEA president and CEO, Pierre Guimond, would like to have been here, but unfortunately, a long-standing commitment prevented him from appearing today.

I'm Eli Turk, vice-president of the Canadian Electricity Association, and I'm joined today by Gary Birch from British Columbia Hydro. Ken Meade of Nova Scotia Power, who chairs CEA's SARA working group, is also here with us today. We're pleased to be here before this committee to provide the Canadian Electricity Association's perspective on the Species At Risk Act.

You've already received both a briefing note and a comprehensive legal analysis of SARA from CEA. Thus this presentation will focus on three priority issues for CEA members: first, the problem of immediate non-compliance of facilities; second, incidental effects and automatic prohibitions; and third, permit prerequisites, durations, and renewals.

● (0930)

[*Translation*]

You have already received both a briefing note and a comprehensive legal analysis on the Species at Risk Act from CEA.

So, this presentation will focus on three priority issues for CEA members: the problem of immediate non-compliance of facilities, the incidental effects and automatic prohibitions, and finally the permit prerequisites, durations and renewals.

[*English*]

The Canadian Electricity Association, founded in 1891, is the national voice of the Canadian electricity industry. CEA members generate, transmit, and distribute electricity to industrial, commercial, residential, and institutional customers across Canada on a daily basis. From vertically integrated electric utilities to power marketers, all are represented by this national industry association.

The Species at Risk Act implementation is a critical issue for the electricity industry, with cross-cutting implications for generation, transmission, and distribution functions of the electricity business. We support the fundamental architecture of SARA and are committed to protecting species that are endangered, extirpated, or threatened. In fact, the protection of biodiversity is enshrined in the CEA sustainable electricity program, which was officially launched by the CEA board of directors in February 2009.

A key commitment under the program requires members to manage environmental resources and ecosystems to support species recovery and prevent or minimize loss. However, as currently structured, SARA does not provide an expeditious way for facilities to achieve compliance with automatic prohibitions. It is vital that the electricity industry be given greater operational certainty and clarity under SARA, so that we can continue to provide Canadians with energy while continuing to protect species and comply with the act.

The philosophy of SARA is grounded firmly in a cooperative and voluntary approach to species protection, supplemented by compliance and enforcement measures. However, since the enactment of SARA, far more attention has been paid to the prohibitions and enforcement provisions than to the promotion of stewardship.

The SARA five-year review provides an opportunity for the federal government to make legislative amendments that would allow mechanisms for industry compliance with the Species at Risk Act.

With regard to automatic prohibitions, let me talk a bit about the problems facilities face with regard to immediate non-compliance. CEA members operate facilities constructed many years ago, which despite best efforts may have unavoidable incidental effects on species at risk. As currently interpreted, sections 32 and 33 of the act often present the electricity industry with an impossible choice. When a species is listed under the act, a facility with any incidental impact must either shut down or continue to operate in non-compliance with SARA. This uncertainty cannot continue. An amendment should be made to exempt facilities from automatic prohibitions, provided they have either applied for a SARA permit under section 73, engaged in recovery planning, or engaged in the development of a conservation agreement under section 11.

Let me talk a little about permitting for incidental effects. Frankly, the current permitting system under SARA for incidental effects is broken. While there have been many permits issued for scientific research and activities that benefit a species, very few have been issued under the incidental effects provision. A well-functioning permitting system must provide an expeditious way for facilities to comply with the act when, despite best practices, they cannot avoid all incidental effects on species.

Viewing the statute as a whole, it is clear that the type of incidental effect that Parliament intended to permit under section 73 is more than a trivial or *de minimis* effect, but not so serious as to jeopardize the survival or recovery of the species. CEA would encourage an amendment to the act that would allow for incidental effects that may violate the automatic prohibitions but would not be so serious as to jeopardize the survival or recovery of the species.

With regard to duration and renewal of permits, permits under section 73 are currently limited to three years and agreements to five years. This duration is not consistent with the long capital cycles in the electricity industry. Many facilities operate for 40 to 60 years, or in some cases even longer. The assignment of a three-year time limit for permits seems arbitrary and unrealistic, particularly if the lifespan of the affected species is much longer.

● (0935)

[*Translation*]

There is also no regime in place for dealing with permit renewals. Given that the maximum duration of a permit or agreement is three or five years respectively, the renewal process is absolutely critical for members of CEA with long-term facilities and operations.

[*English*]

CEA recommends that an amendment should be made to section 73, subsection (9), to allow for longer permits tied to facility operation permits and approvals granted by the regulators. The SARA permits may be reviewed and updated in respect of new risks to species and non-compliance with the terms and conditions of the permits.

Other concerns related to socio-related economic factors, definitional issues around critical habitat and residence, and harmonization with other federal and provincial legislation are covered in the CEA position paper, which I'd be pleased to discuss in the question period.

The Canadian Electricity Association appreciates the opportunity to appear before this committee to outline our key concerns on SARA. This is an extremely critical issue for the electricity industry, and we hope the committee will consider our recommendations so that the industry can better meet the objectives of SARA going forward.

Thank you. *Merci*.

The Chair: Thank you, Mr. Turk.

We'll move on to the final presenter, the Canadian Hydropower Association. Mr. Wojczynski, would you bring those comments?

Mr. Ed Wojczynski (Vice-Chair, Chair of the Species at Risk Act Working Group, Canadian Hydropower Association): Thank you, Mr. Chair.

Before I start, I wish to express appreciation on behalf of CHA and all its members for the privilege of participating in this important forum. Protection of species, and particularly the SARA, is important to the environment, to society, and to our industry, and we expect a review will assist in improving this protection.

In addition to Pierre Lundahl and me, in the audience we also have Jacob Irving, the new president of CHA, who just took over last week from Pierre Fortin, our esteemed former president, whom some of you will know.

And we have Janice Walton, of Blake, Cassels & Graydon in Vancouver, who helped us prepare our submission; and Nadine Adm of Hydro-Québec, who was one of the participants in our SARA working group.

As you already have our fairly extensive submission, which we provided about a month ago, and some more recent, briefer notes, I'm not going to waste your time going through all the suggestions in there. I'm going to give a brief summary of the one main issue we were focusing on, which we see as being critical to be dealt with in the short term. And I will provide a little bit of emphasis that's not contained in our submission itself.

But before I do that, I want to say that a lot of people don't have good background on the hydro power situation in Canada. Hydro power today produces over 60% of the electricity in Canada. And contrary to some people's understanding, there is enough potential to develop additional hydro right across the country to triple the amount of hydro power we have. So it's not a resource that has been exhausted. Some of that will not be able to be developed, for environmental or economic reasons, but a very large portion of it could be.

As evidence of that, over $50 billion in planned capital investments are actively being planned at this time. We all think of the oil sands as being a huge area for investment, while here we have $50 billion in renewable hydro.

CHA and its members support the objectives, the principles, and the fundamental structure of SARA. However, there are some key gaps in the current drafting that, first, have contributed to the implementation of SARA being slower than anybody wants and, second, in our case, have created some serious difficulties for hydro power that we believe and understand were not the intention of the original drafters.

Our recommendations would assist in faster implementation of SARA, and it would provide more effective protection for species and a resolution of the most severe difficulties for the hydro power industry. We recognize, to be realistic, that there is a low likelihood of major changes to the SARA legislation, and in our understanding, any major changes would have to come in the future. But we feel some relatively small wording changes can be done that are critical. We are making two priority suggestions that would be relatively easy to draft and are short.

The most important issue for CHA—and you've been hearing that from the other industries as well today—is the authorization of activities at existing and new hydro facilities. For the others it's not hydro, obviously. Despite all the hydro power industry's best efforts, it is not physically possible to guarantee that no incidental harm to aquatic species will ever occur. For this reason, there is a need for a mechanism to authorize the hydro power facility to operate even if incidental impacts occur. However, of course this would have to be under strict conditions designed to avoid impacts or mitigate impacts and assist in species protection.

So we could have a situation whereby an effort at a project or a system is helping the species overall to do better, but with the legislation that's set up now, the concern would be what if you kill one individual member in your facility, rather than the focus being what if you saved or created 100 or 1,000 more members somewhere else. So we think the emphasis in the implementation needs to be different, and our suggestions will help with that.

Currently SARA allows for permits or agreements authorizing incidental harm but as you've already heard, these are limited to only three or five years' duration. This is simply not viable for a hydro power facility that can take up to 10 years to plan and build and is anticipated to be operational for up to 100 years. Without adequate provision for authorization of activities, many hydro power facilities may not be able to operate in compliance with SARA once it is fully implemented. And Eli just explained that. Without the ability to have any degree of certainty over long-term permitting under SARA, some proposed new hydro power facilities may not be able to secure financing because of the uncertainty in the long term, and thus can obviously not proceed.

● (0940)

There are two areas in SARA that the CHA believes can be revised to deal with this problem. The first is the permitting provisions themselves. This is what CEA just discussed, so we won't repeat any of that. We support what they were saying.

Second is provisions in relation to conservation agreements as a stewardship tool to protect species in their habitat and to aid in compliance with SARA. What we're looking for is not a tool to avoid compliance with SARA; we're looking for a tool that would be practical for industry to work with government to make sure we can meet the requirements of species protection. So we're looking for a compliance tool.

SARA allows the minister currently to enter into a section 11 conservation agreement with an organization or person to benefit a species at risk or enhance survival in the wild. However, these conservation agreements do not provide any protection or exemptions from SARA's prohibitions and incidental harm, even though an entity is acting in full compliance with the conservation agreement.

Conservation agreements would allow for management of species in critical habitat, tailored to the needs of the species, the activities of the agreement holders, local communities, and government. The CHA specifically recommends the following: (a) allowing conservation agreements to be authorized for activities specified in the agreement, and that would be in section 11; an d(b) providing exemptions from SARA's prohibitions for entities that enter and comply with conservation agreements. That's a couple of small additions to section 83.

Of course, these conservation agreements would need to be enforceable, and there needs to be assurance of accountability. The agreements could be done in parallel with preparation of recovery strategies, or even before them, and then be reviewed upon completion of the strategy if required. This could assist in speeding up such recovery strategies rather than slowing them down.

These suggestions, as well as the ones contained in our written submission, would enhance application of SARA and protection of species for four reasons. There would be clear means for government and industry staff and other stakeholders to implement SARA. There would be reduced opposition to listing of certain species due to concern over risk of extreme socio-economic impact. So today, with the way SARA is drafted with those gaps, there will be certain species to which there would be a lot of opposition to their being listed, because of the major socio-economic ramifications. But if these gaps were addressed, there wouldn't be that same fear over what will happen if they get listed.

Third, government, industry, and other stakeholders can focus on protection of overall populations of species at risk, rather than a few individuals who might be incidentally harmed.

The fourth is that the current—and you've heard this from CAPP—conservation agreements are a good way to allow an ecological approach to deal with multiple species rather than one species at a time.

Moving forward, CHA has taken initial steps, with others, to work together with other industries to develop a multi-stakeholder proposal. The CHA anticipates that by the fall of 2009, it and the others will have developed a more detailed proposal as to how conservation agreements and permitting could be used as a compliance tool and what changes to SARA are needed to make that happen.

The CHA supports wildlife and ecological conservation and submits recommendations that we believe will enhance, not detract, from SARA's ability to achieve real results in species protection.

Thank you.

● (0945)

The Chair: Thank you very much.

We'll go to our first round of questioning. Please, Mr. Trudeau, lead us off for seven minutes.

Mr. Justin Trudeau (Papineau, Lib.): Thank you, Chair.

Through you, I'd first of all ask Mr. Miller a question.

SARA was set up specifically somewhat differently from other legislation with a reverse onus principle. The priority was first and foremost to protect wildlife, protect species at risk, protect habitat, and that would be the default position of this legislation. Does CAPP agree with that principle?

Mr. Peter Miller: I think the principle applies to hunting-type legislation, to offences where people go out and intentionally harm. Definitely, that approach is applicable there. But when that approach is taken to a regulatory setting, where we're talking about strict liability offences, things that could happen beyond your control—and then you start arguing due diligence and how much you should have done to prevent it—I think we have to look very carefully at that one extreme objective of protecting every individual of every species in every situation.

Mr. Justin Trudeau: I think SARA, even as the name implies, is not every individual of every species; it's species at risk. The philosophy and the thinking behind SARA, as I understand it, is that when species are at risk we need to default to trying to do everything we can to protect them and then figure out the consequences on a socio-economic level, along with that and according to that, but always defaulting to the position that once a species is extirpated or extinct, we can't turn that back.

So is the principle of defaulting to protection, in principle, one that CAPP supports?

Mr. Peter Miller: Yes. We don't disagree on that point, absolutely.

Again, the problem is that when the law is written as a command and control and enforcement-based approach where an offence is created for each individual impairment, that's where the problem arises. What you've heard from industry here is that we want to accomplish that goal of protection of species in a reasonable way but not be caught in the trap of enforcement and punitive actions for each and every individual event.

But we're in complete agreement on the objective of the act, and hopefully the broader approaches to stewardship are what will accomplish that.

Mr. Justin Trudeau: Well, let's talk about that.

You wish to move away from identifying specific species and look at a more ecosystem-based approach, a more multi-species approach. So would we then be looking at specific ecosystems at risk and say, for example, the boreal forest is the ecosystem at risk here and we need to absolutely protect that and not worry about individual species so much, simply blanket protect the entire boreal forest or entire segments and examples of that? Is that your multi-species approach?

Mr. Peter Miller: I think we will always do both, but maybe I'll ask Journey. She has worked on this one.

Ms. Journey Paulus: I think it's a combination of those, really, that you're looking at. We're looking at recovery planning. You'd still list a species. But then in terms of recovery planning, we have 425 species currently listed, and a small number of those actually have recovery plans in place. We're trying to find a way to work to efficiently protect species. Until you get these recovery plans in place, lots of the recovery planning doesn't occur, and the ability to find ways to manage human activities doesn't occur either. So we're looking for a solution to the recovery planning process.

It has been recommended by your own reports. The Office of the Auditor General, in 2008, and the Stratos report, in 2006, all came to the same conclusion, that we have to move towards recovery planning on an ecosystem basis in order to address the huge backlog, and to address multiple species in the same area could have conflicting requirements. So you have to balance those off also.

● (0950)

Mr. Justin Trudeau: Yes. Every witness we've heard who has come forward on SARA has said that SARA is somehow flawed or not doing the right things the right way. However, what I'm sensing from you on the permitting and on the need to move to multi-species is that SARA goes too far, whereas every other science-based group, from SRAC to COSEWIC to some of the other stakeholders, have said that SARA is not being implemented enough, that there are too many concerns about socio-economic impacts getting in the way of the work of actually protecting species and ecosystems that those species live in.

I'm having a little bit of difficulty connecting the fact that SARA sets out to say we protect the species first and foremost, and we fly resources into that and make things happen that way, with what I'm getting from CAPP in particular, which is, well, listen, it's going to cost too much, it's too slow to implement, it's too difficult to implement, we should be more responsible for this, getting away from what the science is recommending, what the scientists are recommending as being desperately needed, regardless of socio-economic considerations.

Ms. Journey Paulus: I don't think that's an accurate statement on what CAPP believes. I was a biologist first, and then I became a lawyer. I became a lawyer to protect endangered species. I worked on various iterations of the bill. I completely believe that we do need to protect endangered species, but you need to create a proper framework so that it can occur. We're not trying to say that we want SARA to be diluted and ineffective; we're saying the opposite.

Right now it's ineffective. Sixty-nine species have recovery plans, out of 260. We're saying if you work with us, using the same methods as your own reports have come to, the same conclusions.... SARAC itself wanted to move towards an ecosystem-based approach.

The Chair: Your time has expired. I'm sorry, Mr. Trudeau. Thank you very much.

Monsieur Ouellet, vous disposez de cinq minutes.

[*Translation*]

Mr. Christian Ouellet (Brome—Missisquoi, BQ): Thank you, Mr. Chair.

I will raise the same issues as Mr. Trudeau but, before doing that, I want to tell you that you give me the impression that, for you, energy comes before preserving our biodiversity. This is what I get from your presentations and from your answers to Mr. Trudeau.

Let us forget rhetorical questions and deal with specific cases. This will show us how much you are willing to be engaged. You say that you want to save all species and not some species in particular. Is there a specific example where you have been able to do that?

Mr. Turk.

Mr. Eli Turk: Thank you.

In British Columbia, lots of efforts are being made to try to create programs that would have very positive effects but the architecture and the provisions of the Act create problems. I will let Mr. Birch give you an overview.

[*English*]

Mr. Gary Birch (Senior Technical Advisor, B.C. Hydro, Canadian Electricity Association): The main species that we've worked with is white sturgeon, *Acipenser transmontanus*, in the Columbia Basin. We've been working with this species really since the early 1990s. We actually discovered that there was a recruitment failure going on in the course of doing some studies for capital planning work. We expanded on life history work through the 1990s. We initiated and negotiated a recovery planning process in 2000 that led to a recovery plan in 2002. At that point in time, we started initiating fairly heavy support for the life history studies and conservation culture work that was going on the species prior to our water use plan process, which began in about 2002 or 2003.

● (0955)

[*Translation*]

Mr. Christian Ouellet: You said that you were successful with the white sturgeon. Why can you not do that with all the species listed under the Species at Risk Act? Why do you want it to be very broad instead of specific?

[*English*]

Mr. Gary Birch: In our case today, in B.C., we've been dealing primarily with single species. However, I do know that on the Columbia Basin work, for example, in the not-too-distant future there will be a couple of other species listed. They're under review currently by COSEWIC, and we fully expect them to be raised in the listing process and to require at least management plans, if not recovery strategies. In those instances, looking at the hydrograph in the river that we partially control, we're quite sure that the needs of the sturgeon will conflict with the needs of those species. At that point in time we will have to come to some kind of arrangement on how we're going to deal with multiple species in that same river. Right now we don't have to. We can work on the sturgeon separately from any other species that is listed in that basin.

We are going to have to deal with this at some point.

[*Translation*]

Mr. Christian Ouellet: Thank you, Mr. Birch.

Mr. Wojczynski, you said that the situation cannot be resolved. With dams and hydroelectric facilities, technology is unable to protect endangered species. There have been many technological developments.

Is it because you do not believe anymore that technology will be able to protect those species?

[*English*]

Mr. Ed Wojczynski: Thank you for that question.

There are many technologies being applied to protect fish, both those that are at risk and those that are not. We are doing a lot of work to provide alternate habitats and improve habitats in other parts of the river. There are many different techniques. The problem with the incidental take is that you will have individual fish.

Let's use the example of lake sturgeon. Lake sturgeon are in the process of being listed in Manitoba right now. We stock tens of thousands of sturgeon ourselves. We're already members of stewardship boards. We're doing all kinds of research and undertaking initiatives and developing new technologies, but it's inevitable that there will be, for instance, some baby sturgeon or very small sturgeon that, when the rivers are flowing—even though you may have fish screens in front of the dams, even though you may have water passages, even though you may put ultrasonic techniques in to scare fish away—are going to go through the dam or propellors or turbines—even if they're fish-friendly turbines—and be damaged or killed. It is inevitable.

We are already undertaking measures—and want SARA to be changed so we can have authorization to do this—so that overall the sturgeon will be better off with what we're doing than worse off. But it will be inevitable that occasionally an individual member of the species will be killed by accident one way or another. It would be physically impossible to stop any fish from ever being killed in there, but we can help the overall species, including lake sturgeon, to do better than they would have.

● (1000)

[*Translation*]

Mr. Christian Ouellet: Thank you, sir.

Mr. Miller, you said that voluntary measures are more effective than enforced measures. However, we have not heard of many voluntary measures that were more effective than regulatory measures.

Could you give me a specific example, especially relating to species at risk?

[*English*]

Mr. Peter Miller: One of the things we've learned over the years in the development of oil field operations is that the activities we undertake, and in particular cut lines through the forest—straight lines where seismic operations run—create an advantage to predators, to wolves, to hunt the caribou. We didn't understand this at first, years ago, but we understand now that the predators, the wolves, hunt on line of sight, and they see the caribou. So an easy measure, once we understood that problem, was to create breaks in the lines so that they didn't run extensively the way they have in the past. Again, that's a voluntary measure that came out of just understanding the implications of our activities.

You asked generally what we're going to study. We've done extensive work on grizzly bears. Our industry has done extensive work on woodland caribou and on mountain caribou to understand the effects of our operations. When a major project goes through an approval process, we spend tens of millions of dollars assessing and understanding and engaging consultants to develop mitigation plans. None of those are regulated, but they're developed and proposed by the applicant.

[*Translation*]

Mr. Christian Ouellet: And you think that you could do that to in the case of fish?

[*English*]

The Chair: *Non, vous avez fini.* I'm sorry.

Mr. Hyer, the floor is yours.

Mr. Bruce Hyer: Good morning to all of you.

Like Ms. Paulus, I am a wildlife biologist ,with a particular expertise in woodland caribou. If that is helpful to any of you, let me know. I am also a businessperson. I have three small businesses and I strongly agree with your basic premise that cooperation is a lot better than non-cooperation, that carrots are better than sticks, wherever possible.

As a biologist, it seems to me that for most species at risk we need two strategies. We need a long-term strategy, which is mostly habitat protection, and a short-term strategy, which ensures the survival of gene pools and populations. I hate to see us being drawn into choosing one or the other; we really need both. Similarly, we need a long-term plan to make our industries more sustainable, but we also need to hang on to a few endangered species as well. So striking a balance is a good thing.

I noted what I think is an inconsistency. The Canadian Association of Petroleum Producers seems to be saying two things: on the one hand, you want flexibility; on the other, you want very long-term agreements so that you can do long-term planning. Those two positions are at odds. First you say that three- to five-year planning terms are too short; then you turn around and say that things change —technology changes, information changes—and we need to be flexible.

Does this seem as inconsistent to you as it does to me?

Ms. Journey Paulus: Through the use of adaptive management, you can have a long-term permit or agreement to allow the management, over a long-term period.... As you say, we need both short- and long-term strategies. You can have a plan to monitor the species on a regular basis and adapt to the information that comes in. Peter gave you the example of changing seismic lines. We can incorporate, in the use of a permit, continuously improving methods. We have long-term permits for all of our facilities already, and as new technologies become available we can start implementing them.

● (1005)

Mr. Bruce Hyer: Does anybody else want to comment?

Mr. Eli Turk: From an electricity perspective, our capital stock turnover, the amount of our investment, and the way we are permitted through other regulatory bodies call for a longer period of time. There is not necessarily an inconsistency in wanting to have a longer horizon. There could be gates along the way that make sure you're reviewing things on a timely basis and making sure you're adapting properly. With respect to the idea of agreements under section 11, where you can have a longer-term perspective, you can develop a plan that's more appropriate for that situation. So we see it in a positive light.

Mr. Bruce Hyer: I have a question for Mr. Wojczynski or other people from the hydroelectric industry.

To oversimplify, I'm a fan of hydroelectric, not everywhere but often. When you look at all the available options, it's a good one. What percentage of Canadian electrical power is hydroelectric, and what is the potential for increases? You didn't give us a percentage that we could achieve. If you did, I missed it.

Mr. Ed Wojczynski: It varies by a few percentage points from year to year, but today on an energy basis, 60% or just above 60% of the electrical energy produced in Canada comes from hydro power. There used to be a projection from NRCan that it was going to go down, but in more recent years that has actually been reversed and the hydro power percentage is going back up again. It is projected to continue doing that.

Secondly, in terms of how much hydro power potential we have left in Canada, our organization did an extensive survey with a consultant four or five years ago. It was a little bit surprising to find out how much technical potential there is, and I don't remember exact numbers, but if you developed all the technical potential in Canada you could have something like 350% of the amount we already have today. However, not all of that is going to be developable either, because it's on heritage rivers or very sensitive or just too expensive. So a doubling or tripling, probably closer to a doubling, is practical. Now, what would that do to the percentage of electricity generated in Canada? It would go up, obviously, but I don't have the percentage it would go to.

Once Ontario shuts down its coal, they have to find out where their alternatives are going to come from. There are real possibilities out there. I don't expect hydro will ever be 100%, and I don't think that would be desirable. You want to have a bit of a mix of resources. Hydro is a good backup for wind, for example. Also, for some baseload, like nuclear, there are some advantages to having hydro, which is flexible.

There is no optimal number I could give you, but we're unusually high in Canada compared to other countries, that's for sure.

Mr. Bruce Hyer: That caught my attention.

I have a question to any or all of you. I heard from a lot of you today that you think management of our activities is preferable to hard-core protection of habitat. That seemed to be a common theme. Are any of you willing to make a relatively strong statement in terms of when and where it's appropriate to be pretty firm on relatively pure habitat protection? Or is that anathema to everybody here?

Mr. Peter Miller: The one example we have already is the Cave and Basin snail. That's a species located in a very discrete area, in a national park in Banff. Absolutely, there should be complete protection of that. We've heard of specific nesting areas that are the only ones available. Absolutely, those need to be protected.

But when we're talking about species that range across the boreal forest, or that cover all the northern prairies, I think we're trying to apply the wrong concept to protection of those species. Management is a much more effective protection measure.

● (1010)

The Chair: Does anyone else want to comment on that? Mr. Hyer's time has expired, but you could have a response on that.

Mr. Birch.

Mr. Gary Birch: Yes, if I may. BC Hydro actually does everything it can to avoid the enforcement side of these things.

Our plans for white sturgeon have annual reviews with the recovery team in which their results and methods are all reviewed. We have regular reviews at five-year intervals. We've got a conflict resolution process in place that we deal with the regulators on, so if anything does come that we've done wrong, we can take it through a resolution process. That would be our preference as to how we deal with these things,when they do come up, if we're not proactive enough.

On the habitat side, we absolutely agree that critical habitat has to be protected where the science supports its protection. With white sturgeon, the spawning habitat and the early life history portions of their habitat in particular are critical, and those need to be protected.

The Chair: Mr. Wojczynski.

Mr. Ed Wojczynski: Our experience with lake sturgeon is exactly what was said about BC Hydro.

One point that I think would be useful is that the original drafting of the legislation seems to have been focused more on terrestrial species, so the concept of critical habitat worked more effectively for something that has a nest. The fish range up and down the river, and they don't typically stay in one place, ever. But there are, as was just said, some very special circumstances that become critical, like the spawning, and that is what you would protect, very specially.

The Chair: Thank you very much.

Mr. Warawa, you're going to wrap us up on the seven-minute round.

Mr. Mark Warawa (Langley, CPC): Thank you, Chair.

Thank you, witnesses, for being here. It is very interesting to hear a real, practical industrial perspective on the impact of SARA and about some of your challenges and recommendations.

The importance of certainty within the industry to see investments in technologies that are using renewable fuels and hydroelectric was touched upon. We've just come back from a study in the oil sands. We went to Fort Chipewyan, and there was a major focus on the oil sands being a cause of a lot of the issues they're dealing with. We're continuing that study next week. One of the issues was water levels in Fort Chipewyan. Some were focused on the oil sands as the cause. As we heard from more witnesses, it became convincing to me that the W.A.C. Bennett Dam may have been one of the major causes of changes affecting the levels. Hydroelectric projects can have consequences that may not be evident until years later.

For the duration, the consultation is where I'd like to focus my questioning.

Madam Paulus, you commented on the importance of consultation with industry. We are looking at recovery strategies and at very prescriptive timelines. Because of those tight timelines, often the people on the front line—industry—are not being consulted in an adequate way. We consult science, we consult the aboriginal communities, but I think I heard you say that we're not consulting you on the front lines—industry—which is creating uncertainty.

As we want to move to cleaner, better technologies, that means investments. How important is the consultation process, and how important is it that SARA have realistic timelines? That seems to be a common complaint as we're doing this legislative review. How important are those timelines, and how important is it to consult you?

Ms. Journey Paulus: Maybe I can give an example to illustrate it clearly. We were just involved in a hearing for an area that has about 18 species. At the hearing, we found out that a number of these recovery strategies are going to be drafted in the next year. That type of information could impact how we propose activities, where we drill, what types of management activities we'd like to engage in, and what types of studies we could do.

We currently fund a number of studies, for example, on Ord's kangaroo rat, on burrowing owls, and on a number of other species. If you told us in advance that you're working towards getting a recovery strategy for Sprague's pipit, then maybe we'd adjust our research priorities for that time period to also improve the science that's going into....

Projects get delayed, too, when you can't figure out whether this area is going to be protected. The sage grouse, for example, is being looked at for protected critical habitat. Should we be waiting? What area is going to be active? What area can't be active? It's hard to plan your activities on a long-term basis without knowledge of what's going to be happening in the landscape.

● (1015)

Mr. Mark Warawa: Mr. Birch, maybe you too can comment on the hydroelectric perspective. Are you being adequately consulted?

Mr. Gary Birch: I would say that more recently it has dramatically improved, at least in British Columbia. When the recovery strategy for white sturgeon was first in draft form, which would have been around 2006 or 2007, there was no consultation with industry whatsoever in the drafting of that plan or in the recovery potential assessment that came with it. We didn't even get a chance to comment on it until science reviewed it at their PSARC review, a review they undertake each summer of some of these things.

Since there was a delay in issuing that recovery strategy and it has been brought around again, we have been consulted. We can debate whether it's adequate or not, since our comments often aren't listened to, but generally I would say that we are adequately consulted now, and I think that's a credit to DFO's efforts to improve its delivery of SARA.

If I might just make a comment to the timeline issue, we're all arguing for longer timelines on permits, etc., but we're not foolish enough to assume that those kinds of permits would go on for 25 or 50 years without review. We fully expect in our case, with white sturgeons, that there will be five-year reviews at the very least, and in our latest negotiations over conservation agreements, we're in the middle of those negotiations.

We're talking about fairly significant reviews in about 10 or 15 years, so the agreement would go on, but there would be a substantial review at some significant point, at which point we would completely revisit the conditions and deliverables associated with that ongoing agreement. So we think there are ways to build in adaptive management while at the same time delivering long-term permits.

Mr. Ed Wojczynski: I think the amount of consultation will vary from region to region. In the Prairies, in Manitoba, our experience recently is that when recovery strategies and action plans are being developed, there is good consultation. There is a fair bit of consultation. We may not always agree with all the decisions, but there is consultation.

Where there wasn't as much consultation as we think would be useful was in the earlier COSEWIC process, when the scientific analysis was happening. We're not suggesting that socio-economics be brought into that. It shouldn't. We think that should be kept separate. But particularly when you have major organizations that have done a lot of research, or do a lot of resource management—and we use Hydro-Québec or others as examples—they have a lot of information, and often when the scientific process for the listing is happening, they don't access that information. We would be glad to provide it, obviously, and they would use it independently, but we feel that there could be an improvement there.

The Chair: Thank you, Mr. Warawa.

We're going to move to a five-minute round. I do ask all witnesses to keep your comments as concise as possible. The more succinct you are in your responses, the fairer it is to all the witnesses at the table. We have to get around the table to ensure all our members have a chance to participate in this discussion.

Mr. Scarpaleggia.

Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.): Thank you very much. It's a very interesting discussion, but it's one that I find is very difficult to really get a handle on, personally.

Someone mentioned—or all of you mentioned—that permits are too short-term and therefore they have to be renewed frequently. Is that correct?

A witness: Yes

Mr. Francis Scarpaleggia: Have there been cases where a permit has been up for renewal but was not renewed because of the presence of an endangered species, or are these permits sort of automatically renewed generally?

Mr. Gary Birch: The only permits we have currently are research permits, and they are renewed reasonably automatically. We have to have discussions about what we're going to deliver, etc., but they're generally renewed. I don't believe any of us has any of the incidental effects permits currently. Some of our colleagues in British Columbia have actually applied for those permits.

● (1020)

Mr. Francis Scarpaleggia: I'm sorry, what is an incidental effects permit?

Mr. Gary Birch: It's under section 73, and the three-year permits can be either for research for the benefit of the species or for incidental effects. It means that if there is incidental harm or mortality to the odd individual, it's allowed, provided a series of conditions are approved.

Some of our colleagues—not BC Hydro but other power companies in B.C.—have applied for those, and they've been unable to obtain them so far. So as far as I know, there are no current permits. The hydroelectric industry is basically, in terms of not having permits, out of compliance right now. We at BC Hydro have been working for three years to try to get into compliance.

Mr. Francis Scarpaleggia: So there are project being postponed at the moment in the hydroelectric industry because the permitting process is not advanced enough. Is that the case?

Mr. Ed Wojczynski: Well, I guess there are two situations. The bigger concern right now is the existing system. We have all these existing projects, many of which have been built and licensed in later years, that have full-scale environmental assessments, full-scale consultation and habitat reviews, and everything. Then when the species is listed later, this project that was in compliance with everything all of a sudden becomes potentially not in compliance.

Mr. Francis Scarpaleggia: Is there no grandfathering of any kind?

Mr. Ed Wojczynski: No.

Mr. Francis Scarpaleggia: Not even in practice?

In practice, if it were found that the LG-2 facility in northern Quebec was having a deleterious impact on a species of fish that had just been declared endangered, I have a hard time imagining that this facility would be shut down. Maybe your concerns are legitimate.

Mr. Ed Wojczynski: DFO would be the one dealing with this. DFO would be reasonable in the sense that they wouldn't say, "Well, okay, now legally you're not in compliance, so you have to shut everything down."

Mr. Francis Scarpaleggia: Did they propose a remediation plan?

Mr. Ed Wojczynski: Technically, we are legally not in compliance in that situation. There isn't a good mechanism to get us in compliance, because all you have are these three-year permits. We may look at doing something, but the permit that would put us back in compliance is only good for three years.

Mr. Francis Scarpaleggia: One of you suggested that you would like longer permits, but you would still like these permits periodically reviewed.

Mr. Ed Wojczynski: We recognize that if there's going to be a longer-term permit, let's say, related to the life of the species or the life of the facility, as the environment changes, as the population of that species changes—gets better or gets worse—as new information and new technologies arrive, you'd want to look again at the situation and renew it. So you would have an automatic renewal scheme or review scheme where you have some certainty because you have a permit, but then there's a structure. You have objectives and you would review every five years or so: How is it going? Are the species doing better? Did you do what you said you were going to do? Do you need to change what you're doing? That would make sense.

Mr. Francis Scarpaleggia: I see.

Mr. Birch, in relation to critical habitat—and correct me if I'm wrong—it sounded like your definition of "critical habitat" is really spawning grounds. As I say, I may have misinterpreted you.

Mr. Gary Birch: That was the example I used, spawning grounds and early life stage habitat. We see critical habitat as those habitats that are absolutely essential for the maintenance of the species.

Mr. Francis Scarpaleggia: If I may interrupt you, because I don't have much time, I'm trying to get my point in. When it came to the woodland caribou habitat, that was backed up by science, wasn't it?

Ms. Journey Paulus: Yes, there were 18 species experts who worked for a number of years on critical habitat. So I would say there was a thorough peer review.

Mr. James Bezan: Thank you. Time has run over.

We'll move along to Mr. Woodworth.

● (1025)

Mr. Stephen Woodworth (Kitchener Centre, CPC): Thank you very much.

Mr. Chair, I'd like to begin my comments by addressing why it is that I think this is such an interesting and difficult issue. My thoughts were triggered by something that Mr. Trudeau had to say earlier, and I regret that I didn't note it down word for word. I think it's useful for us to have regard to the preamble of the act, because in fact the act itself does not set up a contradiction between the preservation of wildlife and the necessity to take into account the cost factors of doing so.

The act itself, in the preamble at least, strives to achieve the kind of balance that Mr. Hyer was talking about. I would specifically like to draw your attention to that part of the preamble that recognizes that community knowledge and interest, including socio-economic interests, should be considered in developing and implementing recovery measures. In addition, the preamble recognizes that there will be circumstances under which the cost of conserving species at risk should be shared. Indeed, elsewhere the preamble refers to cost-effective measures, and it refers to the economic reasons for preserving wildlife. I think the act itself was intended to balance those factors. I thank the witnesses for bringing to our attention the fact that the specific provisions of the act don't necessarily carry through on that.

In particular, my first question is around section 41, regarding a recovery plan and what must be in it. There is indeed nothing in section 41 that is consistent with the terms of the preamble that I read, other than possibly paragraph 41(1)(e), which says that the minister can take into account matters prescribed by regulations. I wonder—and I know this is a lawyer's question—if any of the witnesses can tell me whether there are any regulations that do set out socio-economic or cost considerations to be a necessary consideration in a recovery strategy.

Ms. Journey Paulus: I think we can easily answer that question. There are no policies, no guidelines, and no regulations under SARA for any issues, including socio-economic considerations.

Mr. Stephen Woodworth: Thank you. That's a concern to me, because it certainly seems inconsistent with the intent of the act that it shouldn't be involved.

I do well understand, Mr. Chair, that COSEWIC is there to deal with only the status of the species, but I would also like to warn the committee that there is no such thing out there as something called "the science" that is going to tell us what to do. Science, first of all, only amounts to the opinions of scientists; and the scientists, we've heard, disagree. Secondly, science is only there to state the facts. It's up to the government to weigh benefits and costs, and we can't escape that obligation by putting it off onto something called "the science".

My next area of inquiry, if I have the time, is to ask about consultation. In particular, if any of you have a notice that a species was going to be listed as endangered, and consequently the impact of SARA was to come into effect, and you might think that you had science or scientific opinion that said otherwise, can you tell me what sort of process would you be involved in in the consultation and determining of presenting that point of view and in also presenting the socio-economic impact? How long would it take you to gear up the necessary studies and response to such a listing recommendation?

The Chair: We don't have a whole lot of time, so I do ask that people keep their comments very brief.

Mr. Gary Birch: I'll try to make it quick.

With the white sturgeon, there was a process where a form was sent out to industry, local NGOs, and local communities. Then there were open houses. It was a very short-term thing, and my recollection is that there was about a two-week turnaround, which was obviously incompatible with doing anything on socio-economics.

BC Hydro at the time felt that there wouldn't be a major effect on the listing, because we operate in that portion of the river under the Columbia River Treaty, which obviously dictates certain terms and conditions for the hydrograph. That doesn't necessarily happen. There are discussions now on how we modify things. The interesting thing is that we now watch the COSEWIC list, because you can tell roughly about a year in advance of when things are going to happen.

We do our own monitoring to make darn sure that we're aware of what's going on well in advance so that we can seek the opportunities to give information to the agencies. It isn't necessarily the other way around.

● (1030)

The Chair: Your time has expired.

I understand, Mr. Bigras, you're giving your time to Mr. Ouellet.

Mr. Bernard Bigras: Yes.

[*Translation*]

Mr. Christian Ouellet: Thank you, Mr. Chair.

M. Wojczynski, I would like to come back to what you said a while ago about current technologies not being able to prevent some small fish or some species to be caught up in the turbines and to die. Would the Act, if it were passed, be an incentive to continue studying those technologies?

We know that technical studies can allow some species to be saved instead of leaving it up to the good will of people. With an Act, you are forced to do something. Would that not be an incentive to develop new technologies?

[*English*]

Mr. Ed Wojczynski: Yes, it would be, you're right. We already are doing, and I know other companies do, more research than they would otherwise have been doing once we have an idea that a species that's in the realm of our operation might be at risk.

I guess you can think of the carrot and the stick. I think, realistically speaking, the government doesn't need a stick to make sure individuals and companies do what needs to be done. In the end, what we're suggesting is that having an approach where we work together to meet the objectives of species protection and coming up with the best way of doing that by using something like conservation agreements would deal with both issues, keeping the cost as reasonable as possible while protecting the species.

[*Translation*]

Mr. Christian Ouellet: Thank you.

Mr. Turk, you have raised an important issue, stewardship. I do not know if you were referring to what is being done in the field of forestry by SFC, an international organization on forest stewardship, but I do not believe there is a similar organization for endangered species or even for fish.

What were you referring to when you talked of stewardship?

Mr. Eli Turk: I was referring to section the 11 of SARA dealing will potential agreements in specific situations. At this time, such agreements do not have legal force but the Act allows for them. I believe we should allow for establishing agreements in specific cases, with specific measures.

If that were the case, I believe that protection would be improved because specific situations would be taken into account when projects are considered.

Mr. Christian Ouellet: I agree with you but would this Act not be an incentive to do that? If the Act did not exist, I do not believe that you would do that.

Mr. Eli Turk: I believe that many companies have been asking this question for several years. Many resources have been spent to deal with this matter. Indeed, Mr. Birch referred to some of those situations. Of course, the Act is an incentive but I think you would be mistaken to claim that it is only because of the Act.

Let us consider Hydro-Quebec, Manitoba Hydro or BC Hydro which have some facilities which were built more than a century ago. Steps have been taken but, as you said, we have to try and go farther on the technological side to look for solutions. I can confirm that significant efforts are being made for this.

Mr. Christian Ouellet: Thank you, Mr. Turk.

Mr. Miller, you said that the present economic situation is such that this is not a good time to pass such a piece of legislation. However, you operate in the oil and gas industry which seems to be in better shape again. The recent difficulties will have been a brief setback of a few months only.

Oil companies are making lots of money and are in a very good financial position. Therefore, why are you saying that the present economic situation is such that this is not a good time to pass a such a piece of legislation?

● (1035)

[*English*]

Mr. Peter Miller: What I was speaking about was the use of resources in society. We recognize that the way the act has been interpreted now by the courts and by the department requires every decision-maker to conduct an extensive activity of their own, an investigation. We do not have effective means to collaborate that way, both federally and provincially and within departments. We need to find a way to save public resources on the cost of transacting this business.

Another issue that has come to our attention is the fact that this duplication we see among government departments is placing a very severe burden on first nations, who have a right, a duty, to consult. They're being approached multiple times by different people discharging their statutory duties. It imposes a great burden in terms of resources and in terms of cost.

I'm simply saying that at this time, when we have to reassess the way we do things and the effectiveness of our activities, we have to apply this in the way that SARA is administered. But definitely we agree with the objectives of SARA. We want to make it work more effectively and in a way that is more collaborative and more forward-thinking, with more planning as opposed to the concern of enforcement, the concern of what might go wrong.

You mentioned incentives under the act. The real issue is that companies wish to undertake activities that encourage species to flourish in proximity to their activities, but if you do that and you increase the risk of incidental harm and punitive consequences of enforcement, that's the disincentive. If you take that disincentive away, there's much incentive to work with communities, to work with first nations, and to work with stakeholders to create good habitat, a good environment for species.

The Chair: *Merci, monsieur Ouellet.*

Mr. Calkins, you have the floor.

Mr. Blaine Calkins (Wetaskiwin, CPC): Thank you, Mr. Chair.

I certainly appreciate the opportunity to pose some questions to our panel here today. The first line of questions I'll go along is for the representatives of the Cattlemen's Association.

When the act was going through its original design, discussions, and debate, there were serious concerns regarding what would happen if the identification of species was on private land. From the cattlemen's perspective, are you satisfied with the current language in the act?

I know you have a recommendation here: "That Environment Canada immediately moves to develop appropriate regulations to permit compensation." If we look at the compensation aspects of the legislation, as cattlemen you're landowners. Are you satisfied? What, if any, are the challenges? Is there any testimony that you can provide to the benefit of this committee of any challenges that have been faced by landowners?

Mr. Lynn Grant: Currently, because the agricultural industry operates largely on either private land or provincial land and SARA specifically speaks to federal land, we haven't had any direct challenges in that way. Our concern is that we want to get the act right, because we assume that the jurisdiction that falls under the act is going to grow either through federal initiatives or provincial initiatives.

To date, we haven't seen any instances of appropriate compensation or need for compensation, but what we run into is the colonialism aspect of 1,000 years of history of our species, namely, humans. The only cost they factor in is the extraction of the resource, and we haven't learned how to factor in the real cost to the environment of that extraction. That's the compensation we haven't, so far, worked into our thinking. We've built up a deficit in the environment and we don't know how to repay it.

Our concern is that if we do find a species and it becomes at risk not necessarily from anything we're doing here. Many of the species on the prairies, where I come from, are migratory. What does the act do when a species becomes listed not through actions taken here but actions that occur elsewhere, like in a species' wintering ground? How do you deal with that? So far we haven't seen or heard anything to do with that. If it does take a major change in the method of operation of an agricultural organization or business, then we—the bigger "we" as in society and the administrators of this act—have to develop appropriate compensation so that the production of that good to society or that species to society then becomes a revenue stream for the producer of that.

● (1040)

Mr. Blaine Calkins: You're talking about environmental services provided by the agricultural sector to the benefit of all Canadians. I thank you for that. That is something that needs to be taken into consideration.

I'll move on now to a question for the hydroelectric industry.

In regard to any hydroelectric project, you need an environmental impact assessment, is that correct? Do I understand correctly that that whole process requires permits from the Department of Fisheries and Oceans and also from Environment Canada?

Mr. Ed Wojczynski: Yes.

Mr. Blaine Calkins: Those permits are obviously to address and mitigate foreseeable concerns of environmental impacts that could be obviously damaging to habitat and to all affected species. Is that correct?

Mr. Ed Wojczynski: Absolutely.

Mr. Blaine Calkins: I think you would be interested to know that Bloc Québécois members on the fisheries committee brought forward a motion and a report outlining the disappearance of eelgrass from the eastern coast of James Bay. They blame, in part, the increasing flows in La Grande Rivière leading to the disappearance of this eelgrass. If I read their report correctly, I infer from the processes that are outlined in the Species at Risk Act that distinct populations of migratory birds and fish have lost habitat, so if somebody from the Chisasibi First Nation wanted to start a process under SARA, that could easily be done.

Do you have any concerns, given the fact that you've already gone through the process, that your compliance with an environmental impact assessment really doesn't have anything to do with any of the implementations of the Species at Risk Act?

Mr. Ed Wojczynski: I wouldn't want to comment on the Quebec situation, but I can speak generally.

We do have a concern that on a project, no matter where it is or what kind of industry it is, you can go through a very thorough and exhaustive environmental assessment and the studies and the regulatory process can take 10 years. In one of our most recent projects under construction—it's a $1.6 billion project that is halfway through construction—we spent $150 million on environmental studies, in preliminary engineering and aboriginal discussions. You get a recommendation from the environment minister, then you still have to go through a process with DFO getting authorizations for what you want to do. We may have done everything to protect species, but then under SARA we're still exposed if something happens. For example, if lake sturgeon get listed and one lake sturgeon dies in our turbines, theoretically, even though we've done everything possible and gone through all the steps, we would still be not in compliance and could be charged.

The Chair: Thank you very much.

Mr. McGuinty.

Mr. David McGuinty (Ottawa South, Lib.): Thanks, Mr. Chair.

I want to go back to questions of compensation. In the briefs I've received, the CEA does not mention compensation. The Canadian Cattlemen's Association talks about the fact that there is power to compensate but doesn't speak of the merits of it. It doesn't tell us what it means to move to develop appropriate regulations to permit compensation. CAPP is silent on compensation, unless I missed something.

I want to go back to the fact that in the early debate around this act in the late 1990s and 2000 I can recall our government having asked Dr. Peter Pearse at the time, one of B.C.'s leading ecological economists, to try to help craft a way forward on how we would value, how we would move with valuation, if we were seriously willing to compensate landowners, agricultural or otherwise, for doing the right thing. It speaks to our decision as a society as to whether or not we want to put ecosystems, ecological services, and ecosystem management first.

Dr. Pearse at the time was building on the work our government had undertaken— at the time the National Roundtable, which I headed up, was undertaking—to expand the change, the tax treatment for the donations of ecologically sensitive lands in order to encourage landowners who had ecologically sensitive lands to donate them to land trusts and get the appropriate capital gains tax exemptions, the use of a fiscal mechanism to achieve a good environmental outcome. From my understanding, we're just nowhere on this compensation question. We had a debate about it in the late 1990s and the early 2000s, and we're nowhere, partly because, I understand, we're deferential to the provinces and territories for the lands that are not under federal jurisdiction. And it's hard to achieve this. I need to get some insight and some help from you.

If we're going to engage Canadians, particularly landowners in rural settings, dealing with the challenges of migratory species or otherwise, what are your insights? What are your thoughts on this compensation issue? How can we move forward to stop the fiction that we can continue managing as cattlemen, as electricity generators, as oil producers to draw down natural capital, compromise ecosystems, and not manage from a holistic point of view, understanding that we're all in this together with these species as well? How do we do this? How do we move this compensation issue forward?

Who wants to go first?

● (1045)

The Chair: Mr. Grant.

Mr. Lynn Grant: I'll take the risk of going first.

I think society has always had a challenge putting an economic and a monetary value on things that don't have a direct cost. We all do that with our personal lives. How much do you work compared to how much time you spend with your family? What's the economic return of spending time with your family? As a society we have challenges with that.

If we're going to deal with trying to get compensation for the economic and natural resource capital, maybe we have to at least do some trial projects, trying to put an economic value on it. If it's a scarce resource, the more value you put on it, maybe you start generating some revenue from that.

I will comment on donating to a conservation easement or group. Ecosystems are a dynamic, moving thing. They change, and they need to change, especially on a prairie landscape, where I am. Even our boreal forest needs recruitment and renewal. A lodgepole pine forest, like that in the Cypress Hills, needs to be burnt to open the cones so those plants can renew. We have to change the definition of preservation and protection. It needs to become a dynamic thing. If we create a mechanism by which society can pay a producer of the economic capital for producing that, it's a step forward. It will be a learning process, but it has to start somewhere.

Mr. David McGuinty: I've had that argument, Mr. Grant. I remember having a very public debate with Jack Mintz, who was then the head of the C. D. Howe Institute. He was telling me that I should prove in monetary terms that Canada's 26% of the world's wetlands had an economic worth. I said to him that they were perfect and free air and water filtration systems. He said that I had to monetize it. I said that was dishonest—not you, but Mr. Mintz and his discipline. Economists have failed us.

I said to Mr. Mintz. “You must prove to me that wetlands are worth precisely zero. When you prove to me that wetlands are worth zero, we can talk. Stop putting the reverse onus on me to prove that this has an economic worth.” We know this is crazy. It's a vicious circle. It's the limited social science discipline of economics that has failed us here.

The challenge about which we now need to hear from you is how we do this. Stop the fiction; stop putting the onus on nature to put an economic evaluation on itself. How do we put an evaluation on it that reflects the fact that if we don't have functioning wetlands, for example, we're not going to have air and water filtration systems? How do we do that?

● (1050)

The Chair: I'm going to cut Mr. McGuinty off, unfortunately, because we have two more members to engage in questions. We are quickly running out of time here.

But I will ask all witnesses to answer that question in writing and submit the answer through the clerk.

Mr. David McGuinty: It's your homework.

The Chair: I love assigning homework.

Mr. Braid, you're up.

Mr. Peter Braid (Kitchener—Waterloo, CPC): Thank you very much, Mr. Chair.

Thank you to all of our witnesses for being here, and to those of you who have travelled to see us as well.

I'll get right to my questions. I'd like to start with the CEA presentation. On page 3, under section (A), you indicate: "As soon as a species is listed, a facility with any [incidental] impact on a listed species must either shut down and disrupt the supply of essential electricity...". Has this situation ever occurred? Are there situations, examples, cases where...?

Mr. Gary Birch: One of our colleagues in B.C. went through the CEAA process for a new plant, initiated the new plant and was testing it. During the course of the testing, a sturgeon found its way into the turbine blades and was killed. They were investigated and they immediately shut down all testing. It was for a number of months that they shut it down, until they could come up with a process to exclude sturgeon from the intakes. That's not a prolonged shutdown, but it certainly indicates the kind of thing that we could see.

Mr. Peter Braid: What were the consequences of that particular case?

Mr. Gary Birch: There were both enforcement consequences and better planning consequences. They have a process by which, whenever they shut down the units now, they monitor fish moving into the units. They actually have video cameras and pattern recognition software that's able to designate when a sturgeon goes in. They have to make sure the sturgeon comes out before they'll start the units. They also went before a community justice forum to deal with the consequences of the dead sturgeon.

Mr. Peter Braid: What about the business consequences?

Mr. Gary Birch: I don't know that I should speak to the losses, in terms of power, but they certainly have contracts to supply power, and for the duration of the time that they had to remain shut down, they couldn't meet those provisions.

Mr. Peter Braid: On the last page of your written brief, you indicate that harmonization with other federal and provincial legislation is covered in the position paper. I think you indicated in your presentation that you might have examples of this. In my mind, opportunities for harmonization and eliminating or reducing duplication are critical. We need to seize those sorts of opportunities.

Could we get a couple of examples?

Mr. Gary Birch: I'm sorry to keep returning to the white sturgeon, but we went through a water use planning process with white sturgeon. It's under our Water Act in B.C. New facilities or facilities that meet a certain threshold are to go through a water use plan, which is a sharing of the water; you revisit the balanced use of the water. BC Hydro, being a crown corporation, chose to put all of its plants through water use review when this provision was first added to the Water Act.

We went through that entire process. That finished off in the Columbia in about 2004. About two years in advance of the white sturgeon being listed, we knew it was coming, so we went through a process of including approaches to dealing with the white sturgeon recovery needs in that particular plan, with the hope that the water licence we would receive, the order that went with it, and by extension the fisheries authorizations from DFO that would go in that package would meet our needs under SARA once the listing came forward.

In fact, it has turned out that this is not the case. We still have to get a separate permit or conservation agreement or whatever to deal with sturgeon. We are still in discussions now. Whether our understanding of the $34 million-odd that we committed over 12 years to sturgeon in that agreement and—

● (1055)

Mr. Peter Braid: I'm sorry, I have a final question before I run out of time. I apologize for interjecting. This is a final question, for all of you or for those who can latch on to this one.

A common thread through many of the presentations was that there's opportunity to improve and to speed up the recovery process. I'd like to hear from each of you on the one best, most effective way to do that.

The Chair: Can I ask everyone to do it as briefly as possible?

Mr. Ed Wojczynski: Put in place a conservation agreement as an authorization for the activities, including research and mitigation measures, and then let them be in place for a significant period of time related to the life of the species and of the project.

Mr. Gary Birch: I'll add to that by saying that they should be attached to the recovery strategy, not to the action plan, which is the way the act is currently written.

The Chair: Ms. Paulus.

Ms. Journey Paulus: I'd say to move towards having consultation early in the process with stakeholders. Engage them in recovery planning right off the bat. The second you list a species, start contacting all the directly affected people you know and get them in the room early.

The Chair: Thank you very much.

Mr. Grant.

Mr. Lynn Grant: We would agree that you need to have effective conservation agreements that can be put in place and the guidelines to support their becoming an effective and moving tool.

The Chair: Thank you.

Mr. Watson, take us home.

Mr. Jeff Watson: I'll bring the car around back, then.

Some hon. members: Oh, oh!

Mr. Jeff Watson: Thank you, Mr. Chair.

Thank you to our witnesses, of course, for appearing as this committee undertakes the statutory review of the Species at Risk Act.

As an opening question, since we are reviewing the legislation and taking a look at our approach to how we will assess it, is the basic framework of SARA sound? Are we looking, for example, at simply making some adjustments to it, or is its fundamental approach in the wrong direction? Should we be looking at a different approach to it?

This will help us assess where we are, at the five-year mark, with this law. Is its fundamental approach right? Is the architecture sound and we just need to look at making some minor adjustments, or are we looking at perhaps a new approach to this?

The Chair: Mr. Wojczynski.

Mr. Ed Wojczynski: Fundamentally we think it's sound, but there are some major critical gaps—not big wording gaps, but they're critical gaps that are preventing it from being implemented efficiently and leaving it not workable for long-term industrial activity in the country.

Mr. James Bezan: Mr. Turk.

Mr. Eli Turk: I would agree with that. The architecture is sound, and we said that in our opening comments. But as Ed points out, a few tweakings are needed. Specifically we talked about section 11. Conservation agreements and permitting times, I think, are the two key issues we would highlight as things that need to be addressed.

The Chair: Mr. Miller.

Mr. Peter Miller: We started this process years ago with a command and control model based on the American Endangered Species Act. Through a lot of consultation with the public, we shifted into the stewardship, conservation, cooperative, collaborative approach. Those features were tagged on at the end and were not fully developed.

What we're saying today is that after five years of experience we realize there are certain things that need to be done, and we are asking for small changes to the act to really give effect to those, because they were not fully thought out. What we had in mind was a very clear historic command and control model, and we recognize we need to have that as a part of the act for enforcement purposes, but we really need to work on those other effective sections of the act that will allow us all to participate.

The Chair: Mr. Grant.

Mr. Lynn Grant: We believe that the architecture is workable, but as one of the members suggested earlier, we need to work on the wording in the preamble—the stewardship, the cooperation, that sort of thing—to make it actually work, rather than just give it some wordage and let it lie. We need to make the good parts of the preamble effective.

● (1100)

Mr. Jeff Watson: The basic framework, if I understand this fairly correctly, is focused on individual species, and this is why I want to get into this question. When I listen to this, what I'm hearing from a lot of you is that while perhaps other broader considerations take us away from necessarily individual species—whether we take an ecosystem approach, whether man's activities are considered fairly enough in the process—I would submit that those issues may rise out of the fundamental architecture of the act, taking an individual species approach.

Am I correct in that assessment? I'm asking again, is the fundamental architecture of the act sound or not?

The Chair: Just a very quick response. We are out of time.

Mr. Ed Wojczynski: We suggest that the stewardship or conservation agreements are flexible. They can deal with the ecosystem, they can include socio-economics, they can deal with the short and long terms, and they can deal with multi-species. So they're flexible. They can do all of these things and deal with what the preamble is dealing with, rather than the strict prohibitions under the permitting process.

The Chair: I'm going to cut if off there, because our time for this meeting room has expired.

I want a quick clarification from the CCA. In your brief, you say that just over 21 million hectares of land is in pasture and the percentage is about 31%. Is that 31% all agricultural land?

Mr. Lynn Grant: Yes, it's Canadian agricultural land.

The Chair: Okay, Canadian agricultural land is 21 million hectares.

I do thank all of the witnesses for coming in today. You gave us a lot of great recommendations in very specific detail to help us with our study on SARA. We appreciate the comments you made about managing species at risk through an ecosystems approach, and we do appreciate the stewardship role all of you play in the interaction between the human race and all wildlife.

Mr. Scarpaleggia wants to raise a point.

Mr. Francis Scarpaleggia: Just very quickly—and perhaps Mr. Warawa can help us with this—we invited Dr. Alfonso Rivera, the head of the groundwater mapping program at NRCan, to appear. But I'm told we're having trouble getting a positive response. I should mention that we had also invited someone else from the groundwater unit at NRCan to appear before the committee in Alberta, and our invitation was declined.

I don't know if Mr. Warawa can speak to his counterpart at the Department of Natural Resources, but it's very important that Dr. Rivera appear. In fact, you and I both agreed he should be invited. So if you can push that along, we'd really appreciate it.

The Chair: Is there any news on that, Mr. Warawa?

Mr. Mark Warawa: We'd like to meet with you, the chair, and the clerk on that.

The Chair: That sounds good.

With that, I'll entertain a motion to adjourn from Mr. Trudeau.

The meeting is adjourned.

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