



House of Commons
CANADA

Standing Committee on Environment and Sustainable Development

ENVI • NUMBER 008 • 3rd SESSION • 40th PARLIAMENT

EVIDENCE

Tuesday, April 13, 2010

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Chair

Mr. James Bezan

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• (1535)

[English]

The Chair (Mr. James Bezan (Selkirk—Interlake, CPC)): I call this meeting to order. We have a quorum.

This is meeting eight of the Standing Committee on Environment and Sustainable Development. We're continuing, of course, with our review of the Species at Risk Act.

We have a number of witnesses with us today. We want to welcome to the table National Chief Shawn A-in-chut Atleo from the Assembly of First Nations. We have the chairman of the Elders Council, Pat Marcel, from the Athabasca Chipewyan First Nation. We have Joshua McNeely, who is the regional facilitator, from the Maritime Aboriginal Peoples Council.

I want to welcome all three witnesses to the table. As I instructed earlier, you have 10 minutes each for your opening comments.

National Chief Atleo, could you start us off?

National Chief Shawn A-in-chut Atleo (National Chief, Assembly of First Nations): Thank you, Mr. Chair.

To the committee, thank you so much for accepting our request to provide a submission here. We do, of course, have our full submission. Our apologies; we only have it in English. I will provide an overview of our full submission. It does include 27 recommendations. We are very appreciative of the invitation to offer up some thoughts. I'll cover the main highlights over the next 10 minutes. I'll move very quickly through this.

Of course we feel very strongly about this five-year review that's occurring, and that we as first nations in fact have lots to offer, not only to this conversation but to this country. We have a close relationship with the land, and repeatedly offer to share what it is that our people know about the environment, with the hope that our knowledge will assist others to improve the quality of life for all.

We need to register an early concern about the lack of consultation or engagement directly with first nations thus far in considering and proposing changes to the Species at Risk Act. First nations have, as you know, a historic, current, and ongoing relationship with Canada's species, as important functions of our aboriginal right for food, social, and ceremonial purposes...many of which were captured in the treaties, the oldest of which was forged over 260 years ago and helped to in fact found the country of Canada as a whole. Our aboriginal and treaty rights include the right to practice hunting, fishing, harvesting, and trapping.

Many first nations are now currently engaged in applying state-of-the-art mapping technology to their collections of aboriginal traditional knowledge and locations of traditional and sacred sites in support of sustainable community development and planning. These are excellent developments that are occurring, which I've had some experience with personally.

We know as well—all of us—of the link to our people's food and other medicines. I want to articulate to the committee the impact that will very often occur on the lands and on the grounds when our people are pursuing their food and sustenance—for example, species such as the caribou in the north. There is a need for first nations to be involved. When there isn't involvement and when our people are out on the land, we see evidence of conflict both between nations when it's not clear, or when our people are not involved at the front end, or between first nations and other jurisdictions.

So that idea of having great clarity between a recognition of first nations treaty rights and title rights, and the interaction with other jurisdictions, is something that, through this five-year review, there's a real opportunity to address.

In moving forward, we submit that it's necessary for governments to recognize first nations jurisdiction and ownership over lands as an integral component of title.

In the written submission, it covers six general areas. I would like to very quickly highlight those six areas.

First of all, on the administration of SARA, first nations submit that the listing of species is an infringement on first nations right or treaty right that requires justification on the part of the crown. First nations are fully aware that the extinction of a species is really the extinguishment of the right to food, social, and ceremonial rights. For the purposes of SARA, first nations suggest that we must be included in the administration of the act. I again go back to the essence of what the original treaties that helped to forge and form this country were always about—mutual recognition and respect.

Provisions are made for consultation with the INAC minister in subsections 59(5) and 71(2). While these provisions address the minister's responsibility for reserve lands, they are not sufficient to allow the minister the opportunity to address the broader interests of first nations. SARA has affected more than first nations land. It has affected the opportunities for first nations to pursue traditional, cultural, ceremonial, and economic activities. Examples can be brought to bear in that area. The current provisions of SARA provide insufficient coordination with the minister over the use of reserve lands. We recommend that is something that must be addressed.

Secondly, with the NACOSAR council, the minister has sole discretion to select members to an advisory council for the purposes of section 8.1 and the discretion to determine what constitutes an appropriate aboriginal organization. It's important for us to emphasize that there must be specific recognition of aboriginal peoples as it is articulated in section 35 of the Canadian Constitution.

The term "aboriginal organization" is clearly defined within the act and is limited to the legitimate aboriginal rights holders and national organizations. In our view, NACOSAR would function better if it recognized the three distinct peoples in the Canadian Constitution—first nations, Inuit, and Métis—and went to the appropriate bodies that are representative of those three distinct groups. We, of course, are here as the Assembly of First Nations supporting the recognition of first nations governments.

Third is the engagement of first nations in aboriginal traditional knowledge. SARA does not speak to government's intention regarding the recognition of first nation governments as among the various orders of government. Our interpretation, or how we receive that, is that there is a presumption in the legislation that first nations governments are not so considered in the terminology of various orders of government, and that becomes a challenge or an issue for us.

There are also concerns regarding the reference to wildlife management boards. SARA is unclear which boards would be involved and how they would be involved and what their purposes are.

The recognition of traditional knowledge, to be very clear, is historic and long overdue. It is very much welcome, but more must be done to ensure that traditional knowledge is protected from misappropriation, theft, misuse, and being placed in the public domain.

There are a number of international instruments that speak to the issue of traditional knowledge. We can look at the Universal Declaration of Human Rights and the Convention on Biological Diversity, and I'm pleased to see that the government is moving toward endorsing the Declaration on the Rights of Indigenous Peoples. All three of these international covenants speak to the protection or recognition of traditional knowledge.

It's important to note the tremendous variety of traditional knowledge. We recommend that government move to work more directly with first nations governments when it comes to traditional knowledge. Many first nations have implemented their own governance tools to protect such knowledge and have established processes or protocols on how such knowledge can be accessed or used. That is a specific suggestion in that area.

One of the main recommendations in our submission is the creation of a first nation-specific advisory body. We submit that consideration should be given to the establishment of advisory committees under subsection 9(1) of SARA to assist the minister in the administration of the act and to provide advice to the Canadian Endangered Species Conservation Council from a first nations perspective. What we're suggesting is a move away from the closed-door discussions between federal, provincial, and territorial authorities, and to recognize the jurisdiction and value that first

nations bring and to engage them fully. Otherwise, we would submit that if first nations are not a party, there is a high probability of a breach of aboriginal or treaty rights. A committee under subsection 9 (1) could offer advice and recommendations on issues pertaining to first nations inherent or treaty rights.

Quickly, the fourth piece in our submission I want to touch upon is stewardship action planning. Current program structure really does not reflect the reality that first nations lands are home to an estimated 40% of listed species in Canada. Reserves governed by treaty and the Indian Act are unique and unlike any other lands in Canada. We strongly reiterate the strong suggestion of the need for consultation with first nations and for government to act in good faith prior to any imposition or potential infringement upon first nations. Carefully crafted stewardship agreements could in fact be very beneficial and achieve the goals of conservation. There is a need, as there has always been, to support the building of capacity for and amongst first nations to complete the work in this area, and in other areas that apply.

First nations must compete for funding to build capacity and other species at risk work by applying to the aboriginal funds for species at risk. My comment here is that it's an arbitrary process with little or no aboriginal participation or engagement. Committee members, the theme continues to be the need for direct and full first nations involvement.

I also have a few quick comments on the listing process. The imposition of SARA prohibitions infringe upon first nations socio-economic activities directly or indirectly, such as commercial or food fisheries, which I alluded to earlier, and other community events or spiritual practices relating to observances, offerings, or memorial services. So there's a gap here that we suggest needs to be filled, where first nations are substantially left out of the listing process.

● (1540)

The suggestion here is for an amendment to subsection 36(2) to recognize the Minister of Indian Affairs and Northern Development as the minister responsible for Indians and lands reserved for Indians. Subsection 36(2) must be amended to reflect the reality of the minister's responsibility for first nations and to make sure that the relevant sections of SARA include consultation. This speaks to our treaty rights and title, and indicates that first nations are seeking that government-to-government approach.

I have two points to close on.

First is compensation. Again, we call on the federal government to work with first nations directly and we call for an amendment to subsection 64(2) to provide for compensation where losses are suffered as a result of any extraordinary impact. Here there are legitimate concerns about potential infringement, and we reiterate the need for first nations to be directly involved.

Lastly, to close, there is the issue of enforcement measures. The repeated requests of communities to be involved in sentencing have not been picked up but have been ignored by the Canadian Wildlife Service's enforcement branch. The theme here is the need for first nations to be fully engaged, right from beginning through the entire process, all the way to enforcement.

There is so much more that first nations have to offer. There is tremendous potential in the areas I've described. First nations are willing to be full partners in moving forward.

Thank you very much, Mr. Chair.

● (1545)

The Chair: Thank you, National Chief. I appreciate those opening comments.

Elder Marcel, please begin your opening statement.

Mr. Pat Marcel (Chairman, Elders Council, Athabasca Chipewyan First Nation): Thank you, Mr. Chairman.

Mr. Chairman and members of the committee, my name is Pat Marcel, elder and former chief of the ACFN. I address you today because of my grave concern, and the concern of my first nation, about the effects of industrial development, primarily oil sands development, on the woodland caribou and the wood bison habitat within the traditional lands of the Athabasca Chipewyan First Nation and the neighbouring first nations in the region. For your records, we have provided the committee with a paper on woodland caribou by Dr. Cormack Gates, written in the western scientific framework.

I'm here to talk to you as a traditional scientist about my knowledge of how we are losing the woodland caribou and the bison in our traditional lands. I'm also here to advise you there has already been significant impact on our first nation from oil sands mining, yet very little, if any, crown consultation has been initiated by the Government of Canada on these impacts.

I am grateful for the opportunity to speak to you today, because I feel the federal government is not living up to its responsibilities to consult on important matters such as the loss of bison and woodland caribou. These animals were a large part of our traditional livelihood and they were promised protection under our treaty rights.

Mr. Chairman, I was born and raised on the land. Ever since I can remember our people were nomadic and travelled after the herds wherever they moved. Until I started school I lived with my grandfather, who taught me a lot of the things I still cherish today. When I look at the woodland caribou, the perception is that every opportunity we get we are there to harvest. In the last 30 or 40 years, we knew there was a big decline in the woodland caribou, because the harvesters were reporting to the chief. We have not harvested any woodland caribou, as far as I know, for the last 40 years, yet the herd is disappearing. The impact of development that's completely wiping out their habitat is the reason.

The woodland caribou, according to some of the scientists, will not be in the boreal forest in northeastern Alberta within 100 years. That's pretty scary stuff. Even though we were not harvesting, it doesn't mean we weren't still protecting that herd. To put a herd like that to great risk in the name of development is something I cannot understand.

The Grand Chief alluded to all this development we're talking about being done without consultation. The Government of Alberta has the power to go ahead and cut down many trees, clear-cut everything, in northeastern Alberta.

Yet if I come to a body such as this, what kind of recommendations am I going to see? Am I going to go back and tell the chief and council that we are going to be part of something that's going to be developed in the future? We think right now it's not very good to be in the situation we're in, with absolutely no voice. The only voice we can have is threats to go to court and so on.

● (1550)

Now, when you talk about consultation, consultation is between two nations with equal representation, working with trust and belief in each other. If we don't have that, then we will really be lost.

The caribou is important, but the loss of habitat that is causing the great loss of all these animals is the reason for it. I'm sure most of you have seen Fort McMurray. I've seen you there, and in Fort Chipewyan as well. You know what I'm talking about when you see the total devastation of the oil sands mines and of SAGD into every corner of northeastern Alberta. We're now squeezed onto our reservations. What claim we had to traditional lands, Alberta says, no, you do not have access or claim to traditional lands. But that's not what it says in the treaty. That will be for another day of battle, I am sure.

On the importance of bison, that is really for me a tricky thing to deal with, because you have a national park, Wood Buffalo National Park, that has a herd of 5,000 bison. Anytime any animals escapes from that park, anybody is allowed to kill or harvest those bison. From my own travels in that area, I've seen helicopters being used to harvest bison and to haul them to the roads. It's not a very traditional way of doing business, or hunting.

The thing I really bring to this committee is that there's a herd that is close to one of our reserves that is being threatened right now by development. A couple of SAGD companies are there, and they admit that the bison are there on their leases. What is going to happen is that this herd will be completely harvested or cleaned out one way or another if you put roads in there. The only thing that's saving the bison right now is there is no way to get to them, and because they've been hunted to an extent where they're very spooked, they'll run at any sound.

But they have no protection whatsoever. Alberta refuses to say that they should be doing something about that herd. They say they belong to Wood Buffalo National Park, but that's not the case. That herd has been there for thousands of years outside of Wood Buffalo National Park.

I bring it up to the parks people and say, "Do a DNA test. Do something." But it's nobody's intent to do anything. It is, again, first nations raising a concern, beating our heads against the wall. I don't know what it takes to get some help, for people to come not only to the rescue of these animals, but to protect some habitat, because the bison and the woodland caribou are so threatened. What has to happen? Is there going to be a habitat established where these two species can exist in the future? I certainly hope for this.

In summary, I would like to repeat that we are losing or have lost these two important species from our traditional livelihood. Yet despite numerous requests and demands from our first nation, there has been no crown consultation on this and other important issues.

Thank you for your time.

• (1555)

The Chair: Thank you, Mr. Marcel.

Mr. McNeely, the floor is yours.

Mr. Joshua McNeely (Ikanawtiket Regional Facilitator, Maritime Aboriginal Peoples Council): Thank you, Mr. Chair, and thank you to the committee for allowing us to come and present on a very important matter to us.

The Maritime Aboriginal Peoples Council, MAPC, is the Maritimes region intergovernmental leaders forum of the New Brunswick Aboriginal Peoples Council, the Native Council of Nova Scotia, and the Native Council of Prince Edward Island, which represent aboriginal peoples who continue on traditional ancestral homelands—i.e., not displaced to Indian Act reserves. These are throughout New Brunswick, Nova Scotia, and Prince Edward Island, respectfully. MAPC and our partner native councils are affiliated nationally through the Congress of Aboriginal Peoples. I believe the committee is going to be hearing from the congress at a later date.

We've been around with the species at risk file since the early days in the nineties with Bill C-65, Bill C-33, and finally to Bill C-5, which was assented to in 2002. MAPC was a part of the first ministers round table on the Species at Risk Act in 2006. Through our Ikanawtiket aboriginal environmental respect organization, MAPC has also participated throughout the six main steps of the SARA process, commenting on numerous species assessments, proposed SARA listings, draft socio-economic impact statements, regulatory impact analysis statements, proposed recovery strategies, and proposed action plans.

We have also been directly involved in several recovery teams, as well as advanced the species at risk file in many various other activities of MAPC and our partner native councils, such as through our Maritime Aboriginal Aquatics Resources Secretariat and our aboriginal communal commercial fishing entities; as a regular topic of conversation when in consultations with federal or provincial governments on numerous natural resource issues, such as access, permits, proposed regulations, proposed management plans, and eco-certifications, to name a few; aboriginal community involvement in species at risk stewardship and education projects; and with our youth, who will be the leaders of the future, and preparing them through a species at risk workshop about how the process we currently have works.

MAPC also follows developments under the United Nations Convention on Biological Diversity with the intent to be more informed partners under the various aspects of the Canadian biodiversity strategy, such as our Species at Risk Act. MAPC follows, as best we can on our own, international and national developments on conservation, sustainable development, access and benefit sharing, and aboriginal people's involvement in these. MAPC promotes the convention and is a 2010 International Year of

Biodiversity partner and an International Union for the Conservation of Nature Countdown 2010 partner.

In preparing this brief—I gave you the long version of the brief, it's only eight pages—I kept it very simple. It's from that we drew on this long history with the Species at Risk Act and our wide breadth of knowledge and involvement to highlight the importance of SARA to our Maritimes region aboriginal communities.

I make only a few recommendations on SARA itself, the majority of the recommendations being for a better implementation of SARA. These are centred on broader biodiversity discussions and actions on conservation, sustainable development, access and benefit sharing, and reconciliation with our aboriginal peoples.

As a whole, SARA is actually very well written, we find. But when viewed strictly from a legal point of view, SARA can seem quite daunting. SARA is unique among Canadian legislation, in that it requires rapid Governor in Council action on every species assessed by the independent scientific body, the Committee on the Status of Endangered Wildlife in Canada, and if no decision is made within the short prescribed time, then the act requires the minister to amend the SARA list in accordance with the species assessment.

• (1600)

This puts SARA outside of political timelines, and at the same time prioritizes SARA listing recommendations within the bureaucracy. Both have proven problematic, especially under the uncertainties typically generated in our minority government situation. Canada continues to face court challenges for missing SARA deadlines or leaving out important information in order to meet a SARA deadline.

However, MAPC views the Species at Risk Act as a prime opportunity to learn about our biodiversity and our cumulative human impacts, and foster a new ethic of respect for our natural world. That is what Elder Marcel was talking about: an ethic, a respect. Through several other actions, including reconciliation with aboriginal peoples, Canada can dramatically improve the implementation of the Species at Risk Act.

However, SARA will fail if it is considered to be a stand-alone act or not considered to be in the forefront in all government departments, industry business plans, educational strategies, consumer purchases, and international negotiations. SARA is as much about a beginning for Canadians to understand and respect biodiversity as it is an act to save a portion of that most critically endangered biodiversity.

SARA must be considered and implemented in the context of the Convention on Biological Diversity and Canada's response, the Canadian biodiversity strategy. SARA can be both a learning tool and a point of entry for Canadians to address broader biodiversity issues, and doing so will lessen our need for a Species at Risk Act.

A meaningful SARA is an act that, through its prohibitions and its tight timelines, forces all levels and all sectors to be:

Conscious of the intrinsic value of biological diversity and of the ecological, genetic, social, economic, scientific, educational, cultural, recreational and aesthetic values of biological diversity and its components....Affirming that the conservation of biological diversity is a common concern of humankind,

That's taken right from our convention.

Through its inclusion of aboriginal peoples, industry, academics, all levels of government, and the public, and its flexibility to use new ideas and partnerships to address biodiversity issues, SARA can foster:

a society that lives and develops as part of nature, values the diversity of life, takes no more than can be replenished and leaves to future generations a nurturing and dynamic world, rich in biodiversity

That's taken from our Canadian biodiversity strategy.

With one eye, we see that SARA is only a small part to meet Canada's commitments under the convention. But with the other eye, we see that SARA, as a strong piece of national legislation integrated into all other manifestations of law, policy, and decision-making, can be a banner under which Canada implements the convention. With both eyes open, we see that SARA is a powerful tool for average Canadians to begin to understand biodiversity and our cumulative impacts, and to work together toward a new and better future.

The question being asked by the standing committee is how do we improve SARA? MAPC maintains that the answer is not in rewriting sections. MAPC respectfully recommends to the standing committee that the best way to improve SARA is to improve the conditions under which SARA is implemented.

For example—I have seven recommendations—first would be the adoption of the Declaration on the Rights of Indigenous Peoples. I was very happy to hear that in the throne speech. I'm happy that Canada is moving in that direction.

Next is to adopt a national policy on sustainable development, not just a handful of departmental strategies on sustainable development but a national policy—a way to rethink how we conduct our business in Canada.

• (1605)

Canada should begin more detailed discussions, and in some cases begin discussions, with aboriginal peoples on access and benefit sharing. This idea of access and benefit sharing of genetic resources and traditional knowledge is one of the main pillars of the Convention on Biological Diversity. Those discussions are very limited so far in Canada, and we border on bio-piracy if we do not sit down and address the issues.

Develop, with other levels of government, national, regional, and local forums to broadly discuss biodiversity with all sectors. One such opportunity in our region would be the eastern Scotian Shelf integrated management plan.

Support an aboriginal review of the Convention on Biological Diversity and directly input into its implementation. This was something that was talked about in our biodiversity strategy. We've yet to see, since 1996, any movement whatsoever on this.

Actively encourage broader participation in the Species at Risk Act at all levels, including in assessments, consultations, socio-economic impact analyses, regulatory impact analysis statements, recovery strategies, and action plans. Aside from needing more aboriginal peoples participation, SARA desperately needs sociologists, marketing professionals, economists, and others who can better relate the public and industry to the Species At Risk Act.

Address the conclusions and recommendations of the 2006 Stratos formative evaluation of federal species at risk programs and the 2005 report of the Commissioner of the Environment and Sustainable Development regarding the Canadian biodiversity strategy.

With regard to the wording of SARA, MAPC maintains and is adamant that SARA must retain section 8.1, regarding the National Aboriginal Council on Species at Risk, and subsection 18(1), regarding the aboriginal traditional knowledge subcommittee of the Committee on the Status of Endangered Wildlife in Canada, as well as sections relevant to the need to consult with aboriginal peoples affected during the various stages of the SARA process.

The breadth and intent of the SARA preamble should be maintained as integral to the implementation of the act.

Thank you very much.

The Chair: Thank you, Mr. McNeely.

We'll go to our first round of questioning.

Mr. McGuinty, you have seven minutes.

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

Thank you very much, gentlemen, for being here this afternoon.

Chief Atleo, unfortunately we didn't receive a copy of your brief. It's not in both languages, I'm told, so forgive me if I've misinterpreted, in the copious notes I've taken, what you said.

Do I take it from the number of recommendations you made—I took down about 12 bullet points—that you are suggesting, generally speaking, that first nations peoples are not subject to the jurisdiction of SARA?

You opened, I think, by saying, for example, that the Government of Canada should not be able to list, or presumably delist, species at risk without aboriginal acquiescence. Are you really saying, as the Grand Chief here now, that aboriginal peoples are not submitting, or should not be submitting, to SARA's authority?

•(1610)

National Chief Shawn A-in-chut Atleo: As National Chief, I have a responsibility to advocate for and support the assertion of treaty rights and aboriginal title and rights of first nation governments. So I look to the leaders of such a first nations government, who are suggesting that our people have not been at the table.

We've not helped to shape in a real way how the legislation is drafted, delivered, executed, or implemented. It relegates first nations to an advisory role when in fact, as I've said repeatedly in my submission, this is about recognizing the jurisdiction of first nations governments. I alluded to the fact that one of the implications of non-recognition of first nations jurisdiction is resulting conflict about recognition of the application.

It's not just this act. You could take fisheries or any other acts out there. I just came from a court case on the Fisheries Act and its application in first nations, and the B.C. Supreme Court upheld the recognition of our right to those fisheries.

So I think there is a question—it's left to legal scholars, which I am not—around constitutionality and the rule of law application of statutes. But principle here is about a shared interest and respect for the environment and for the protection of species, as other panellists have said here.

The reason I also embrace the notion of this country moving towards embracing the United Nations Declaration on the Rights of Indigenous Peoples is because of the need for recognition of a government-to-government process.

We look at the act to see if it reflects that. Our suggestion here is that it must be strengthened in that respect. So I think these are constructive suggestions that are being made about ways in which that can occur. But underlying that is really the term that's been used here, which is a respect for the relationship.

I suggest very strongly that the original treaties, as was alluded to in the submission, should continually forge the foundation upon which we build our working relationships. As National Chief, I not only see the need to recognize first nations jurisdiction, but I would suggest legislation like this results in conflict between first nations, and between first nations and other jurisdictions.

The point about the park is an excellent one. It's another example of an externally imposed set of conditions, whether it's legislative or, in this case, a park, and how those conditions have impacted the involvement of the first nations jurisdictions to the point of even accessing a food source. I get these phone calls, as other leaders do in the far north, particularly when people are trying to put food on the table.

So I think the question is not only what you've asked around the application of jurisdiction or whether one group submits to it or not. I think it's a much bigger conversation than that.

Mr. David McGuinty: Thank you, Chief. If I understand you clearly, you're calling for symmetry between treaty rights and existing federal statutes in this area. I'm going to wait for your brief to get the details, if I could.

I'd like to turn to Elder Marcel for a second.

Elder Marcel, I'd like to congratulate you and thank you for coming here to tell us what you're seeing first-hand on the ground.

Just two weeks ago, we in the official opposition were deeply disturbed when my colleague Mr. Scarpaleggia put a question about water quality to the minister in the House of Commons during question period. And the minister referred—for the first time in my professional life, because I've never heard anyone, certainly not a Minister of the Environment, do this before—to scientific findings as “allegations”. It was a stunning moment, I think, in Canadian environmental political history. I'd never seen it before, and haven't seen it anywhere else.

Can you tell me, in your experience, are we as a federal government, this federal government, properly enforcing—if you know, or if you are in a position to tell us—the existing standards, whether they're under the Species at Risk Act, the Fisheries Act, or elsewhere? You made a very, very passionate and compelling case.

Mr. Pat Marcel: I'd have to say that the federal government is not enforcing any of the rules that everybody else works by in Fort McMurray. The Alberta government sets out the rules and gives the approvals. Once that happens, all the things that should be protected by the federal government go down the drain.

Everything that we live by, we live by harvesting off the lands. The lands that I'm talking about are totally devastated. I no longer eat the fish from the Athabasca River. We still use fish from the greater lake, Lake Athabasca. That advisory came down, to not eat fish more than once a month, a long time ago. That was brought down by the Alberta government.

When you look at everything else that we use for food, such as moose and ducks, everything is polluted. When you start seeing scary pictures of 1,600 ducks all covered with tar and drowned on the Syncrude site, that's only the tip of the iceberg. That 1,600 should have been something more like in the thousands, more than 1,600.

Some of our people work on those tailing ponds. When they're working there, they don't report all the animals that they've seen die there. They have a job to worry about. They have a family to feed.

When I say that, it's because I feel that we have no voice. The voice that should be dictating how the rules should be played out there is the federal government's; it has the final say. My chief and council will come to the federal government because by treaty you have to be there to protect the lands, the traditional lands of the Athabasca Chipewyan First Nation.

Right now, everything is totally devastated. I am not kidding. There's no more fur there to be had, no more muskrat. You couldn't find ten rats on my reserve, when we used to take out something like 40,000 or 50,000 in the spring of the year.

•(1615)

The Chair: Thank you, Elder Marcel. I'm going to have to cut you off there. Mr. McGuinty's time has expired.

I do ask that all witnesses be succinct in their responses to members, because they have only a limited amount of time.

[*Translation*]

Mr. Bigras, you have seven minutes.

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

First, I want to thank the witnesses for being here.

To sum up what you said—and correct me if I am wrong—you are not calling for a major overhaul of the act. I understand that you are recommending a few amendments, including some to section 36.2 to place more of an emphasis on the Minister of Indian Affairs and Northern Development. There are, however, difficulties in terms of applicability.

I understand that you presented two major issues. The first being the consideration given to aboriginal traditional knowledge in government decisions and COSEWIC's recommendations. The second issue is also of interest to me.

I listened to what you said in response to Mr. McGuinty's question as to whether you asked that the communities not be subject to SARA's authority. But I did not understand what you meant. Nations and first nations want equal representation in terms of nation-to-nation and government-to-government relationships. That seems to be what you are asking for today.

For instance, when I see that the National Aboriginal Council on Species at Risk has to appear separately before the committee in the course of meetings on COSEWIC, that it is not taking part in the discussions, and that those discussions are taking place behind closed doors between the provinces and the federal government, I think it speaks volumes about the place and consideration given to first nations in the decision-making process.

Is that not what you are asking us for today, for consideration to be given to first nations and for their full and total participation in the discussions, in other words, a nation-to-nation relationship?

•(1620)

[*English*]

National Chief Shawn A-in-chut Atleo: Well, to be succinct, yes. Nation to nation, government to government, acknowledge and support and respect the treaties.

Also, we have to remember, and be reminded, that none of us created the Indian Act or reserve system or the status/non-status system. We inherited that. It was acknowledged by all parties, by the federal government in the apology in the summer of 2008, that historic approaches that were unilateral, and externally imposed, did not work. Not only that, they caused great trauma and great harm.

So what we hear from the elders and from indigenous peoples across all of the country is that we must be full partners going forward. I think that's the spirit of the space that we're entering into, a

period of reconciliation between and amongst our peoples and between and amongst indigenous peoples and governments.

What better area than the area of species at risk in caring and concern for the environment? I grew up with those teachings with my late grandfather. We can't take the seals like we did when I was a kid because of the poisonings. In my territories, 27 of the rivers are gone. It doesn't matter where we go. Indigenous peoples are everywhere. We're throughout the entire country. We have that close relationship. It makes sense. In fact, it adds, as I said right at the outset, tremendous value.

I believe not only are there strong constitutional recognitions of treaty and title rights issues; I think what we're missing here is incredible potential, which is yet to be tapped in a way that would benefit all and benefit the environment.

That was a little bit more than succinct.

[*Translation*]

Mr. Bernard Bigras: After discussing jurisdiction, I want to get into traditional knowledge. When you read the act, it is clear that section 15(2) is, among other things, supposed to ensure that aboriginal traditional knowledge is taken into consideration in preparing species' status reports. So the act provides for that consideration.

In actual fact, how do you see aboriginal traditional knowledge being taken into consideration in terms of assessment and species' status reports? Is there a problem? I would imagine there is. How can we ensure that aboriginal traditional knowledge is indeed taken into consideration in assessment reports?

[*English*]

National Chief Shawn A-in-chut Atleo: Again, just to reiterate, I think it's about recognition. It does flow back to the recognition of the jurisdiction. Over 633 first nations governments, all working to rebuild their nations, are coming out from a legacy of disconnection and internal conflict and divide, perpetrated in large part by children being taken from their homes and not having the opportunity to spend time with grandparents out on the land, with the environment. I think it's incumbent on us, in the spirit of reconciliation, in the spirit of the residential school effects, to move back to full inclusion and involvement.

To reiterate the suggestion we made on the point that you're asking about, we have examples of first nations who have implemented their own governance tools to protect such knowledge and to establish processes or protocols on how such knowledge can be accessed or used. We would suggest that this is a way to recognize, and embrace and involve, and respect the protocols of not only the knowledge that first nations hold but the implementation of the treaties.

We have to remember that we're in an exercise of helping to rebuild families and communities here, with the recognition that governments, through legislation and policy, unleashed tools that divided. We need to recognize, throughout all of our work, that in fact we're supporting the rebuilding of nations and communities. We have to respect the history that we heard the elder articulate here.

So with great respect, I'm just suggesting that there's still a strong link between the jurisdictional recognition aspect.

Mr. Joshua McNeely: The Committee on the Status of Endangered Wildlife has a number of scientists on it. The aboriginal traditional knowledge subcommittee is a committee of 12, and they review all assessments. The work that the COSEWIC does is a lot of library work, of reviewing reports and talking to a few people. The work of the ATK subcommittee is a lot of going out onto the land, talking to elders, having meetings. It's a lot of that initial research, if you will.

The COSEWIC does not have the money for that initial research, and you alluded to section 15(2). It's a totally different world when it comes to accessing or learning about traditional knowledge.

One area where we can improve that is to better create contracts with the government, or what have you, to learn traditional knowledge. We've been trying that on the east coast with our Atlantic salmon. There's an instance where several of our aboriginal communities went to work with COSEWIC and worked with the traditional knowledge subcommittee to learn more about salmon or to share more about the salmon for that assessment, which is coming up in the fall. However, we run into the problem of working as an intermediary. The federal government and the legal and intellectual property rights qualifications that the government requires of us is a huge roadblock to sharing our traditional knowledge about the salmon when it's very clear that we want to, we want to be a part of that assessment and to help in that assessment with COSEWIC. But it's an intermediary of the federal government that is the stumbling block because of this relationship we have had over the years with the federal government.

• (1625)

The Chair: Thank you.

Your time has expired.

Ms. Duncan, it's your turn.

Ms. Linda Duncan (Edmonton—Strathcona, NDP): I also want to thank all three of you for being here. We've been waiting for quite some time to hear from you, and it's very appreciated that all three of you took the time from your busy schedules. I wish we had a whole day or more days with you. That's the frustration of our committee, that we have so much on our plates. We value every word that you're giving and appreciate your written briefs. We look forward to receiving the Grand Chief's brief as well.

I want to say at the outset, Mr. McNeely, that I really appreciated your drawing the connections between the biodiversity convention, the obligations of the federal government with regard to the biodiversity convention, and SARA. I have heard from a number of organizations that are hoping they can also appear and draw that connection, so I appreciate your bringing that to our attention as well as mentioning the Declaration on the Rights of Indigenous Peoples and how they are connected.

It's very interesting to hear the testimonies together. When you piece them together, I think you're making a really cogent case for the contradiction in the fact that in implementing the obligations under the biodiversity convention, the federal government, in its wisdom or otherwise, has enacted the separate act to protect

endangered species, but it appears to be disassociated from all the other powers of the federal government to intervene to protect species at risk and their habitats.

Mr. Marcel, on behalf of his first nation, I think, is making that very clear through his case study of the woodland bison and the woodland caribou in that area. So we have a scenario where we have—and I draw this to what Grand Chief Atleo is saying—the problem of the timing and the respect due to the first nations as an order of government, not just some organization or other entity that simply advises.

I look to the case that Elder Marcel has raised, and I look at additional documents that have been filed by the federal government. In 2008 the Government of Canada identified that all caribou herds in Alberta were non-self-sustaining, that the impacts were seen most in Alberta, that the declines were the result of cumulative impacts on the caribou range, and that the expansion of the oil sands was having a critical impact on caribou and possibly could be contravening SARA.

The problem we see is that the federal government has transferred over to the provincial government responsibility for making the decision on what kind of habitat will be designated for this species when, in fact, as Grand Chief Atleo has pointed out, there's a very clear relationship between Canada's first nations peoples and the Inuit and the Métis and species that are of value to those first nations.

That raises a bigger question. Are the delays we're seeing in the implementation of the designation of habitat for these species at risk associated with the federal government failing to intervene when the first nations are asking them to intervene, when there are project approvals? I'm wondering if in your experience you are seeing some kind of a contradiction or a problem in the delay at the point in time when first nations are being consulted.

What's happening in the relationship between...? There may be species that are about to be listed, which you would like or not like to be listed. There are recommendations that habitat should be protected. There are delays and in fact violations of the act inasmuch as they aren't keeping with those deadlines, and yet, in the meantime, there are projects going forward that may impact the continuance of that species or of the habitat.

It's a big question, but I think you're raising some interesting questions about the place of the first nations peoples in the delivery of this act. It sounds as though there's frustration that even where there are designated committees, you're only being partially consulted and maybe too late in the game.

I'm wondering if you could speak to that, about the relationship between developments that are going forward, other federal responsibilities, and the delivery of responsibilities under this act.

• (1630)

The Chair: Ms. Duncan has used over four minutes of her time, so there are only a few minutes left.

Were you directing that to anyone specific, Ms. Duncan?

Ms. Linda Duncan: I would like to hear from all three of the witnesses, because I think they've raised a very clear question. They feel that their role under this act is perhaps not being respected in the way that it should be, and they have raised specific issues about impacts of particular projects on species at risk. I welcome their recommendations on how we should be pursuing this.

The Chair: We have only a couple of minutes left, so if everybody could make a brief comment, I'd appreciate that.

National Chief Shawn A-in-chut Atleo: Thank you for the question.

Just to suggest what's needed, we've listed a number of sections that we suggest be amended to include that consultation must occur with affected first nations—of course, that means in a timely fashion.

We've also suggested the recognition of a relationship with the crown through the INAC minister in a formal manner, because of the connection with reserve lands, these being federal in nature.

I link back to the previous question and the suggestion of a first nations-specific advisory body as a place to help address and deal with timing and implementation issues that are being raised here.

Mr. Pat Marcel: I've been involved in a lot of organizations in the Fort McMurray area, all of these organizations that monitor the environment. The government really holds them to task—or so it seems—to make sure that everything is protected, and that no species will be lost and stuff like that.

Now, that power that I'm talking about, that they have, is an organization that is 47 members at a table. We were there at one time. I had formed an elders committee as they requested. When I started working with my elders on that committee, the government and industry didn't know what to do with us. The knowledge that they have....

I told them that the knowledge they were talking about in oil sands development and what they were doing was 50 to 60 years old. The knowledge I was talking about was thousands of years old. There's a big difference.

So if you really want to look at the environment and what's happening and make sure that it's sustainable development and if you want to save the species, talk to the people who've been there and who have used these resources for thousands of years.

Don't go to an academic and say, "Well, okay, this guy knows." The way he knows is that he read it someplace else. That's how he knows. The way I know is that I lived that life—for 72 years.

Thank you.

Mr. Joshua McNeely: The socio-economic impact analysis statement is key and is a missing component in the SARA. Under the cabinet directive for streamlining regulations, Canada has to produce the SEIS and the regulatory impact analysis statement, which largely takes from that socio-economic impact analysis statement.

But if you read the latest one that came out, I think it was this past January, the government rejected the three populations of winter skate. When you read through that regulatory impact analysis statement, it's an economic statement. There's no social part in it,

there's no cultural part in it. If you go to your departments, the Department of the Environment and DFO, and ask them how many social economists or whatever they have, they have economists who can tell you how much it's going to cost in landings for fish or how many jobs it's going to cost, but they can't tell you the social benefits of listing or not listing a species.

It's very tough. Internationally, there are a lot of measures to do this, though we haven't yet done it with our Species at Risk Act.

• (1635)

The Chair: Thank you.

Mr. Warawa, you can bring us home on the seven-minute round.

Mr. Mark Warawa (Langley, CPC): Thank you, National Chief Atleo, Elder Marcel, and Mr. McNeely. I appreciate your being here, each of you.

There are three things I would like to ask, and probably I don't have enough time. They concern consultation, a little discussion on whether the timeframes within SARA are realistic, and then the socio-economic factors being considered. First, I'll deal with consultation.

Elder Marcel, it was wonderful meeting you, almost a year ago now in, I believe, Fort Chipewyan, or perhaps Fort McMurray. I forget where it was, but it was a pleasure meeting you and hearing your testimony.

When was the previous time you had a standing committee of the environment actually coming and meeting with the elders, and consulting and hearing from you, from your experience, the traditional knowledge? When was the previous time that this happened?

Mr. Pat Marcel: Previous to that, I don't think we've.... I don't remember this committee, anyway, being there.

As far as Alberta is concerned, they leave most of the consultation to a third party, so you never see the Alberta government in the community.

Mr. Mark Warawa: Elder Marcel, you're sharing with us that this was the first time that you can ever remember a standing committee of Parliament coming to listen to you and consult with you?

Mr. Pat Marcel: Well, you've been in the community of Fort Chipewyan; I think it was last summer.

Mr. Mark Warawa: We were there, but was there a time previous to that which you can remember?

Mr. Pat Marcel: I can't remember. I don't think you were ever there.

Mr. Mark Warawa: Well, definitely the federal government needs to do better, can do better, and I think our coming there and listening to you was a step in the right direction. Would you agree?

Mr. Pat Marcel: I agree. But the thing that this committee has to understand is that when you transfer the power to do the consultation to another party, like the Alberta government, which in turn transfers it to another third party, which is industry, to do the consultation, the industry players have no authority to do any consultation with us. We are a first nation; we are a government. "Industry" is just exactly what they are: it's industry.

For a consultation to be true and meaningful and respectful of both parties, it has to be from government to government, just the way the treaties were made. When the treaties were signed, it was the government with our first nations.

Mr. Mark Warawa: Elder Marcel, thank you so much for sharing that.

National Chief Atleo, I have a question for you regarding consultation. I can see from the time that I'm not going to get to the other topics.

Could you share what your relationship is, with the Assembly of First Nations, at COSEWIC—your involvement in the subcommittee, what that consultation looks like, and how you can see it improved?

National Chief Shawn A-in-chut Atleo: I want also to touch on this question that is being asked, because the timelines are in fact not realistic. This has been evidenced in court. It has had to go to court with Nooksack, out west. We've been suggesting what the remedies are here: the idea of stewardship action plans, bilateral agreements that respect first nations jurisdiction, the treaties, and that advisory committee.

I think what we need to do, as you said, is strengthen those processes, recognize the jurisdictional aspects. That includes doing so with participation. If we see a first nations-specific advisory committee, we can then help address the interactions with a number of the other committees that are in existence. I forget what section allows for a minister to establish such an advisory committee.

And on the point you're making here about the relationship between first nations and the government and work in this area, what we need to do is get on with the kinds of remedies that will not have us just be concerned with the NACOSAR, which has within it inherent issues or challenges. We need to strengthen this relationship, and what I'm here to suggest is that we have ways to strengthen the participation. We should be learning from the experience over the last number of years, some of which is challenged by the historical non-recognition of the jurisdictional aspect—the treaty rights and the aboriginal title and rights. The question of actual government-to-government consultation will continue to come back. This isn't anything that goes away. The jurisdictional recognition element must be there.

As for the international covenants, let's go back to Agenda 21. We've been seeking for this country to step forward and define ways in which it's going to embrace indigenous people's defining of "sustainability". This is an excellent example of a case we should be describing in those terms. It is not just about these committees. We need to embrace the notion of treaties and the implementation of title and rights. That we have thousands of years of expertise is added value.

On the issue of fisheries, there's the notion of integrated local management. Whether you've been a fisher in the Atlantic for five or six generations or are like me—I can trace my roots back 26 generations in where I come from—you have people who care about what's happening. Having us designing approaches that engage people, where the responsibility is shared so that we don't have

external imposition, is the role that I think these committees can help with. They can facilitate the engagement process more effectively.

● (1640)

Mr. Mark Warawa: Is there any time for the chief to mention the importance of socio-economic considerations in the designation of critical habitat?

National Chief Shawn A-in-chut Atleo: Again, it's just to relate it to the need for first nations to be involved in the designation as well as in the listing. The experience thus far is that the involvement isn't sufficient. The experience we have is that when people are out seeking their winter supply of caribou.... I will again reflect back to the points made earlier about other jurisdictions, provinces or territories, taking steps and exercising their jurisdictional obligations, which overlap with and compete with treaty and aboriginal title and rights, and with the very right of an individual to get food for the winter.

We have this situation right now. I'll be speaking soon with the chiefs up in northern Quebec, in the Innu territories. We have to pay very close attention to the correlation between this act and sustainability, title and rights, and access to food, and we need to respect and support the involvement of the peoples who are closest to the land.

Mr. Mark Warawa: Mr. McNeely, I look forward to discussing socio-economic impacts, and I appreciate your comments. You've identified that there's a very short time period for critical habitat, and also for the Governor in Council to deal with it.

I think I'm out of time, and I want to give others a fair chance—unless you want to make a quick comment on that.

The Chair: Do you have a brief comment?

Mr. Joshua McNeely: The timelines are only short in our current implementation of it, in that environment. If we increase the timelines to three years, it wouldn't be enough. Five years wouldn't be enough. What is sorely needed is an ethic of respect, of sustainable development, first and foremost looking at our Convention on Biological Diversity. It's not a convention that sits alone; it's very much integral to the movement on human rights, the movement of environmental protection, the movement of sustainable development. When you move to that environment, the timelines suddenly are not going to be nearly as much of a problem as they are in the environment we're in right now.

The Chair: Thank you very much. Time has expired.

We're going to go to the five-minute round now.

Mr. Scarpaleggia.

Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.): Thank you, Chair.

I'm trying to get a grip on all of these issues, and you've brought up many important points.

Is the issue here that the act would, for example, list a species that aboriginal communities might feel should not be listed, based on traditional knowledge, and then that sometimes the reverse would happen, with a species not being listed that should be listed? Is this the core of the issue here?

I don't know whether I'm making myself clear. Is it just a one-directional issue, that we should be listing species and protecting habitat that we're not listing or protecting and that aboriginal traditional knowledge would tell us we should? Is that the issue, or does it cut both ways?

• (1645)

National Chief Shawn A-in-chut Atleo: Are you asking each of us?

Mr. Francis Scarpaleggia: I'm asking whoever would like to answer.

Mr. McNeely, you seemed to be interested in that.

Mr. Joshua McNeely: It's not so much a listing of an individual species; it's about the habitat. With aboriginal peoples, it's always about the habitat. We are interconnected and interdependent with the habitat, so it's as much about us as well. It's about our culture, our identity, our knowledge. It's not just a question of listing a species or not. It's very much an entry point to our being a part of this federation of Canada. We've had that since 1982, but this is an opportunity to actually implement it.

Mr. Francis Scarpaleggia: I'm veering off now on a tangent, I believe, but when it comes to the polar bear, I can't remember what its status is. Has it been listed as endangered? I think the government was looking at that. Could you just inform me about that?

Mr. Joshua McNeely: I believe it was listed as of special concern. There was a lot of talk about this, but I'm not....

Mr. Francis Scarpaleggia: It's not listed yet, I believe.

Mr. Joshua McNeely: It's been discussed, anyway.

Mr. Francis Scarpaleggia: Grand Chief?

National Chief Shawn A-in-chut Atleo: I'll just comment on this question of whether, as I think you put it, it "cuts both ways".

Mr. Francis Scarpaleggia: It was just my way of phrasing it, I suppose.

National Chief Shawn A-in-chut Atleo: In some ways, there are a couple of examples, one right at home: the sea otter. We call it *k'wak'wak*, which means it eats the best of everything. Everything that you would love to eat, the sea otter will outdo you on: urchins, clams, all the shellfish. It's completely thrown out of balance back home where I come from, in Ahousat. It's always a mystery to our people how it is that we come to list species.

Of course, we have a deep and long-standing relationship with the sea otter, where more recently the Okanagan nation is talking about the chinook, the need to protect the chinook.

So it really is both, isn't it, where you get species that are identified and species that are not, even when the first nations are suggesting, based on their interaction, their social, their food, and rights and title. Of course, again I go back to the court case that I just came out of in British Columbia for my own community of Ahousat.

It really does reflect back then on, and speaks to, the earlier question about COSEWIC. There's participation with COSEWIC but not an adequate level in terms of how traditional knowledge is accessed or used. How is it brought to bear? We're suggesting here a shared notion that we need to be much more involved and strengthen that respect or recognition of not only the information, but also the

jurisdictional aspects that need to be brought to bear when we're talking about listing.

We have a fundamental, out-of-balance situation back home right now when it comes to sea otter in my territories. I'll be home again hopefully soon, and once again, it's always falling on the local communities—the fishers, our fisheries community—about how we're going to respond to this externally imposed notion about protection of a certain species.

So it's important to examine this as adding value. Somehow we get caught up in this idea that it's going to take away value or that it's disrespectful of other jurisdictions. No, we're looking at a mutual respect and recognition.

Mr. Francis Scarpaleggia: Now, when it comes to habitat protection, the federal government has—and remind me of what the act says, I guess—obviously jurisdiction on its lands. But when it comes to habitat that either straddles federal and provincial lands or is completely on provincial land, where do the federal government's powers begin and end?

For example, when it comes to the oil sands, you say there has been a major decline in woodland caribou, and we've heard the same from people like Dr. Schindler who say that even with SAGD technology, it can scare the caribou for hundreds of miles. All this exploration is taking place on provincial leases, yet it's affecting your treaty rights with the federal government.

How do we handle all of this? I think it's frustrating everybody. How do we handle the situation when it's in provincial jurisdiction yet it's affecting Treaty No. 8, which the federal government has a fiduciary responsibility for? How do we make sense of it all?

• (1650)

The Chair: Mr. Scarpaleggia, your time has expired.

Mr. Marcel, could you very briefly reply to his comments on the woodland caribou?

Mr. Pat Marcel: Thank you.

The problem I'm having is that when you have a species such as the woodland bison, it's a threatened species, yet Alberta will do nothing to protect that herd outside its parks. The federal government has parks. Within those parks, the bison are protected. Anytime it's outside, Alberta will not protect it. It's only a matter of time before the last bison in the wild will be killed.

The Chair: Thank you, Mr. Marcel.

Your time has expired, Mr. Scarpaleggia. Thank you very much.

Mr. Calkins, it's your turn.

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

Thank you to our guests for coming here.

I've listened with keen interest. I want to preface my comments by saying that I spent much of my previous life—before I came here—as a conservation officer, as a national park warden, as a fisheries technician, dedicating a lot of my time to the conservation and preservation of our wild lands and spaces and species. So I'm going to ask, with all sincerity, these questions, but I need to understand what it is that's missing.

Subsection 7(1) of SARA—and that's what this is about, it's a review of the particular legislation—sets up the Canadian Endangered Species Conservation Council, which consists of the ministry of environment, the Minister of Fisheries and Oceans, the Minister of National Parks, which in our particular government's case is the same as the Minister of the Environment.

Section 8.1 of the act creates the NACOSAR, which is the National Aboriginal Council on Species at Risk, which consists of six individuals who are strictly from the aboriginal community. They have a twofold role: to advise the minister on the administration of the act and to provide advice and recommendations to the Canadian Endangered Species Conservation Council, strictly.

Then we have a section of the act, section 14, which strikes up COSEWIC. Subsection 15(2) of SARA addresses issues pertaining to aboriginal people insofar that COSEWIC must carry out its functions on the basis of the best available information, and so on, through the scientific community. Aboriginal traditional knowledge is mentioned there.

Subsection 15(3) states COSEWIC must take into account and apply provisions of treaty and land claims agreements when carrying out its functions. Subsection 16(2) deals with the composition of COSEWIC and specifically states each member must have expertise drawn from disciplines such as conservation biology, yada-yada-yada, and it gets down to aboriginal traditional knowledge of the conservation of wildlife species.

Subsection 18(1) states COSEWIC must establish subcommittees of specialists to assist in the preparation and review of status reports, and it says it strikes a subcommittee specializing in aboriginal traditional knowledge.

Then subsection 18(3) talks about the composition of those particular subcommittees and how they may be appointed by the Minister after consultation with any aboriginal organization he or she considers appropriate.

Those are just the sections of the act that I could find in a few minutes here, just before I had an opportunity to ask questions. So I found a complete section of advice strictly limited to aboriginal people to advise the Endangered Species Conservation Council. I can find at least five sections in the act that refer to aboriginal people and how they must be consulted, and they have to be part of COSEWIC.

Can you please tell me, in spite of all of the things that I've just mentioned, how this is not working for aboriginal people?

Mr. Joshua McNeely: Let me just try to wrap your head around this. In Canada we have 53 aboriginal languages. We have seven language families. In all of Europe there's one language family.

There's a huge diversity of aboriginal people across the land, just as there's a huge diversity in our ecoregions across the land. Freshwater, saltwater, mountain ranges, plains—any sort of thing you can think of around the world, we have it in Canada.

Aboriginal peoples are, as the French say, the *autochtone*, of the land. That diversity is very hard to.... You know, you can't just come up and say here is the aboriginal voice or the aboriginal view on this issue. There is no such thing. There are many, many views across the land.

Six members of a national aboriginal committee on species at risk have a very tough time, when they're scattered all across the land, to come together to learn from each of those communities what the issues are. They're not really supported by any sort of secretariat. Environment Canada controls every small little aspect of what that committee does. They're not really given the tools.

The traditional knowledge subcommittee of COSEWIC is the same thing. You have 10 people doing the work, or 12 people doing the work, the same amount of workload that all the other scientists on COSEWIC are doing. Again, they have a secretariat. They have one-and-a-half people versus COSEWIC, which has hundreds and hundreds of scientists and research documents behind them.

It's the tools. As we said, the act is well written. There are spots where we can be involved in the act; it's having those tools to actually be involved in the act.

It's going to be a long road. There's a lot more that needs to be done in order to get there; yes, I agree.

• (1655)

Mr. Blaine Calkins: Is my time up, Mr. Chair?

The Chair: Yes, it is. It's just expired.

Mr. Blaine Calkins: Oh, that's too bad.

Thank you.

The Chair: Mr. Ouellet, *s'il vous plaît*.

[Translation]

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

I want to thank the witnesses for meeting with us. You can see just how interested everyone is in asking you questions, and with good reason.

Mr. Marcel, you said earlier that traditional law is the most important thing. I am talking about legislation regarding animals. You have had it for a great many years, for that matter.

What do you think your laws could have done? Mr. McNeely said there are numerous first nations groups in Canada. This law could have prevented the disappearance of animals. In other words, your traditional law could have protected animals that were at risk.

[English]

Mr. Pat Marcel: Yes, my comments about our use of the animals for centuries and thousands of years are very real. The laws that guide us are the laws that the animals themselves have. Animals would not ever let themselves be overpopulated to extinction. Nature controls nature. We all know that. There are predators and there are prey. They will survive because of that function.

When we come in and start putting in laws on how to control the populations that I've mentioned, and the very work of men is threatening those herds, then you understand what I'm getting at.

[Translation]

Mr. Christian Ouellet: So why do the three of you not ask, on behalf of Canada's first nations—not just one first nation, but all of them—for the legislation to be totally and completely withdrawn? Why do you not ask that your lands not be subject to it? Tell me why you are not calling for that today.

[English]

Mr. Pat Marcel: I am not really clear on your question.

Mr. Christian Ouellet: Why don't you ask to be out of this law and make your own law?

Mr. Pat Marcel: Well, if we were to apply the laws of the first nations, especially mine, we wouldn't see the devastation that's happening up there now. Everything would be sustainable. They have committees like this that can control that, how much development happens. But if you're here in Ottawa and somebody is destroying that land and we don't do anything about it, then what's the use of this committee?

● (1700)

[Translation]

Mr. Christian Ouellet: Okay.

Mr. McNeely, in response to my colleague's question earlier, you said there were species you would like to see on the list so they are protected and that it would be less important for other species to appear on the list.

Why do you not ask to be totally and completely exempt from this legislation, that the legislation state that first nations lands are not subject to it and that you make your own laws?

[English]

Mr. Joshua McNeely: The Species at Risk Act was pushed very much by the aboriginal peoples of this country, the first few bills and the latest one, Bill C-5. We know that species don't know boundaries. Right across Canada they come and go as they please. We are a part of that cycle.

By pushing a species at risk act, hopefully in Canada we can begin to implement our Convention on Biological Diversity. That's why we are here at this table. That's why we've been recognized internationally under Agenda 21, under the Johannesburg statement on sustainable development, under the Convention on Biological Diversity, as vital to that whole process.

We understand those terms: “precautionary approach”, “sustainable development”; that's in our language. In Mi'kmaq we have a word called *netukulimk*. In English it quite often gets translated to

“harvest”, but it's a lot more than that. It's harvesting for what you need today, leaving for tomorrow, leaving for future generations. It's respect of what you are taking. It's in the definition.

[Translation]

Mr. Christian Ouellet: Why then do you not ask for...

The Chair: Excuse me, but your time is up.

Mr. Christian Ouellet: My question is brief, and you can give me a brief answer.

Why do you not want to leave the federal government and join the provinces? That would give you a greater sense of territory.

[English]

The Chair: Quickly, Mr. McNeely.

Mr. Joshua McNeely: It's just because of what I stated before. We are a federation. We are part of this federation and we want to be a part of that solution, not try to make a million different types of laws, because that's the situation right now. We've got jurisdictional issues, but it needs to be a part of that accord we have.

The Chair: Thank you, Mr. McNeely.

I think, Chief Atleo, you have a different opinion of this. I'm reading through your brief here—I have an advantage over the rest of the committee members, as I do have copies of the briefs—and you're asking that SARA be exempt from first nations.

National Chief Shawn A-in-chut Atleo: That's right.

The Chair: So it's quite different.

National Chief Shawn A-in-chut Atleo: That's right. Again, it comes down to jurisdictional recognition. It does link to earlier points about the jurisdiction of provinces and territories. The safety net provision, if provincial or territorial legislation does not cover, that within SARA there is a section that can be applied, a safety net provision, from what I understand has yet to be applied.

So in terms of earlier comments made about the inter-jurisdictional aspect, they could have been, but have not yet been, addressed in a manner that the act actually provides for. That's why we would reiterate the idea, as we move forward, of a first nations advisory group that could tackle and facilitate or handle or help address the inter-jurisdictional issues. But make no mistake about it, the treaty and the title and rights, we go back to that foundation that first nations lands should be exempt from SARA's application.

The Chair: How do we get things to flow here? As Mr. McNeely has already said, species do not know boundaries. They think about overall habitat. We're talking about multi-jurisdictional levels. We're going to add this layer that first nation communities have their own laws in place, bylaw or legislation or however they decide to proceed.

How do we make that mend and melt together with the other jurisdictions, being the federal and provincial governments?

•(1705)

National Chief Shawn A-in-chut Atleo: The stewardship plans that I was alluding to are one such example, where treaty, title, and rights are respected, with first nations jurisdiction respected. And there are others in the territories in those areas.

That is something that is really just developing. There's a phenomenal work, *Living Proof*, which Terry Tobias authored in partnership with the Union of BC Indian Chiefs. It's a tremendous effort to map out what the relationship is of first nations to their territories. When we say first nations lands, there are two elements. The recognition of INAC is there for the recognition of the relationship through the Indian Act to the Minister of Indian Affairs. But our lands are not restricted to those reserve lands. There are still unfinished and outstanding land issues that exist throughout the entire country.

I just flag that as an issue. When we think about our indigenous brothers and sisters in the Atlantic, those are the oldest treaties that exist here amongst all of our peoples; they're in those areas. We have yet to see a place where...the elders are constantly calling for the implementation and enforcement of agreements that all of our respective ancestors forged. What we're not doing is that when we forge legislation, particularly when it's done without recognizing the jurisdictions.... It results in conflict.

So it's a matter of here we are: we're looking to make constructive suggestions about the recognition of the jurisdiction of first nations.

The Chair: Thank you, National Chief.

Mr. Woodworth, you do have the floor. I just wanted to get those clarifications first. Your time starts now.

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

Thank you to the witnesses for being here. As you can see, the time limits we are faced with prevent a really satisfying discussion about some of these very complex issues.

I want to congratulate National Chief Atleo on his election. It doesn't seem to me like it's been more than a few months. I know it was an exciting one and I'm sure, from the degree of articulation that I've heard, it's a well-deserved election.

I want to comment that I was interested to hear that in fact there's recognition that sometimes listing recommendations can be disagreed with. That seemed obvious to me, and I was rather struck by some of the rather outrageous and simplistic remarks of one of the Liberal members opposite about the fact that the minister wouldn't necessarily put a single scientific opinion on a pedestal, because I think there can be disagreement.

I want to say, especially to Mr. McNeely, that I took note of your comments that in the current context, without the necessary tools and without the necessary ethic, it can take a long time to reach conclusions sometimes about the species at risk listings, and I took note of your comment that there are many views across the land, and therefore to gather in only six people to COSEWIC isn't necessarily the end of the matter.

I agree with you, and I would go maybe further and say that once COSEWIC reaches a recommendation or comes up with an assessment and it goes to the minister for consultation, there are any number of questions that need to be asked, in fact. Does the assessment correctly identify the species as being at risk? How do you reconcile any disagreement over that that might exist? Where is the habitat of the species? What are the activities within that habitat? What first nations might be involved in that habitat and those activities? What non-first nations persons? What methods of protection should there be, and where can there be remediation?

I'm concerned because I think one of the issues on the table for our committee is how much time should be allowed for those consultations. I regard them to be quite complex, and I think that they do need to involve socio-economic considerations.

So I would be grateful, particularly from Mr. McNeely, since you've already alluded to this question, to get your point of view. Assuming we're in the present situation, without that ethic of reconciliation and without those additional tools, if I were asked how much of a timeframe I should place on the minister to conduct those consultations, what would be the best answer I could give from a first nations point of view, keeping in mind that we would need to go to the first nations, in my opinion, in those consultations? How much time do you think would be required, with the present tools, to come up with answers to those questions?

•(1710)

Mr. Joshua McNeely: One of the tools we have for that in the Atlantic, under the Department of Fisheries and Oceans, is the aboriginal aquatic resource and oceans management program, and also the aboriginal fisheries strategy. Both of these programs were implemented from court decisions, forcing DFO to work with aboriginal communities to work out aboriginal treaty rights to fishing.

That building of that relationship is fundamental to our implementation of the Species at Risk Act in the Maritimes region, or in the Atlantic region in general. When SARA came in, it was very easy for us to call up the Department of Fisheries and Oceans and say, "What's coming down the tubes? What should we be consulting about right now?" We knew who those people were. We had a relationship with them, not only just a working relationship but also fiscal arrangements, substantial contribution agreements, so we already had built on that relationship, and the Species at Risk Act just dovetails right into that quite nicely. We know what's coming down the tubes long before it even gets to the COSEWIC assessment process, and we've been able to feed into that process.

Right now, actually—I was talking about socio-economic analysis and including the social—we were talking with the Department of Fisheries and Oceans about some people up there in Ottawa coming down to our region to work out a process of how to include traditional knowledge on the social side. So that's a good key.

Now, on the land side, Environment Canada, we haven't had that relationship, so we haven't been able to feed into any of that, on the birds or the animals or the plants that are being listed. On the marine fish, yes.

Mr. Stephen Woodworth: Have you come to a conclusion about what would be a reasonable length of time for me to recommend, if I'm asked to give a recommendation?

Mr. Joshua McNeely: From our working arrangement, the current lengths of time are adequate as long as we have that prior engagement and that prior relationship, as we do with the Department of Fisheries and Oceans.

Mr. Stephen Woodworth: But if not? In the case of lands and birds, and considering some species are national and spread across the country....

Mr. Joshua McNeely: If you're using SARA as the initial point of contact and the initial consultation, then yes, it could take quite a length of time to grab some of those views, and it's species-by-species specific.

The Chair: Mr. Woodworth, your time has expired. I know it goes by fast when you're having fun.

Ms. Dhalla, the floor is yours.

Ms. Ruby Dhalla (Brampton—Springdale, Lib.): Thank you very much.

I'm a member visiting this committee for the first time, so I'm going to defer my questions to my colleagues. They have been working very hard on behalf of our caucus and will ask further questions of our guests.

Mr. David McGuinty: Thank you.

Thank you very much, Chair.

Mr. Chair, before going forward I want to clarify for the record something I made reference to earlier in the interest of Mr. Woodworth's recollection. It's very important for us to acknowledge that there are scientific differences and that evidence-based decision-making is important going forward on SARA, and writ large when it comes to environment. But for the record, I've never heard a Minister of the Environment anywhere refer to scientific evidence as "allegations". That's exactly what our Minister of the Environment said on the floor of the House.

Let me go to Chief Atleo for a second. I want to get a sense, Chief, if you can help us understand this. I know it's putting you in a difficult spot because I think your assertion is that Treaty No. 8 and other treaty rights, writ large, preclude the application of SARA to first nations territories, but I want to get a sense of how you envisage compensation.

So far the language, in the basically silent passages of the act that deal with compensation, only speaks about extraordinary cases, the extraordinary cases in formal fettering of lack of land.... I don't subscribe, for example, to the view that's manifested by many people on the very far right of the political spectrum, who talk about enshrining property rights in the Constitution and so on. I just don't think that's in line or in tune with the 21st century knowledge we have about things such as species at risk that move and migrate.

What is your understanding about compensation? For example—let me put you in a tough spot—would you think that going forward at another time we should be providing pecuniary compensation, financial compensation? Should we be compensating folks who are taking different measures to protect species? Should aboriginal land

or first nations territories be compensated for good stewardship of what is, after all, a global form of natural capital?

● (1715)

National Chief Shawn A-in-chut Atleo: I'd actually be interested in the elder's thoughts about this, personally.

Just quickly, I think about emerging carbon market trading systems, for example, and the idea that one might, in an emerging market, be compensated for leaving a tree standing. It's an interesting concept that is just emerging. It's a new conversation, but make no mistake about it, from a personal Ahousaht Nuu-chah-nulth perspective, it's a conversation about what's been lost. We don't have any bison in our territories, but we have lots of other things that we can't access any longer, and that has tremendous health, economic, and social implications. How do you quantify those?

I like to share this story: only about 15 years ago, when I was in a Stanford executive management program, the professor waggled his finger at me and said, "Issues of environmental and social justice do not belong in the market economy." That wasn't that long ago, in one of the top Ivy League schools in the world, so it feels as though we're still at the baby-step stage around points that we're talking about here.

As this country embraces the recognition of indigenous peoples, there is unquestionable harm; the residential schools were a tool used under the guise of education as a tool of destruction. We're talking about people's food and medicine, and the fundamental balance being thrown out of sync. Is it anything that can really, truly, ever be compensated?

The points being made here are about the restoration of balance between people and the environment, first of all. Second, there is no question that first nations seek justice when it comes to land and the access that's now being lost, and they seek to reconcile that with the market system that was developed around us and brought into our territories. Previous to it, we had a market system that was otherwise operable, but in a different manner.

Mr. David McGuinty: I share your frustration, Chief, because I remember having a very public debate with the C.D. Howe Institute's chief economist one year in a public setting. He asked me to prove in dollar terms how much a wetland system was worth. I said to him publicly that it was intellectually dishonest, and that as the social scientist/economist he was, he had to prove to me that those wetlands were worth zero. Once he proved they were worth zero, we could talk. Of course he had no answer.

In the discipline of economics and business, you're right, the free market has not found a way to factor in natural capital services, eco-services, the intrinsic worth of the DNA we sit on, the 70,000-odd species in this country. We don't even know if it's 70,000. We now have about 7,700 under consideration.

I'm trying to get a better sense, through your wisdom and perhaps with Elder Marcel's insight, of how might go about stopping the fiction that all this is to be drawn down, that it's a limitless form of capital. Species can be put at risk, species can be made extinct, but we have no calculation for it. We don't track it. There's no dollar value assigned to it. GDP keeps going up, natural capital keeps coming down.

How can we crack this nut? I still believe it's the challenge of this next 100 years.

The Chair: Mr. McGuinty, your time has expired.

Elder Marcel, you can respond briefly.

Mr. Pat Marcel: You've raised something with me that I and the elders haven't even gotten to yet. We're more at the stage right now of preserving the habitats and the species. That's right in the forefront for us.

A while ago, when I made a presentation, I asked, "Is there another place where these animals can actually survive?" You're talking about compensation. If you're destroying this land, you have to be able to provide land someplace else for these species at risk.

• (1720)

The Chair: Mr. Armstrong, you have the floor.

Mr. Scott Armstrong (Cumberland—Colchester—Musquodoboit Valley, CPC): I want to thank the witnesses for being here today. I listened with great interest to your presentations.

Grand Chief, a great deal of attention to consultation with first nations has concluded already. I think Mr. Calkins explained a lot of the different functions they have in consultation.

You spoke of a first nations advisory body to advise the minister. How do you work together in your organization to ensure all first nations issues are being taken into account? Whatever consultation model you use across the country, can a similar one be used in SARA?

National Chief Shawn A-in-chut Atleo: Firstly, I think it's important to take the question in its rightful context. I know that when I was B.C. regional chief, we'd always get asked the question, "How do we consult with all 203 first nations?" The leadership there would say, "Well, we didn't create the 203-system structure." It was externally imposed by governments. Now governments are telling us we're really hard to consult with. As we heard earlier, it's complex.

We're talking about ecosystems that are complex, and issues of species protection listing and habitat protection that are complex. We're talking about the ability to potentially tap into the knowledge of people who are closest to the land and territories who have by and large been left out.

The Assembly of First Nations was created over 25 years ago, in part as a response to an approach that has been in place since the royal proclamation. As opposed to dealing with indigenous nations as nations—the over 50 that were referred to before—deal with them as individual communities. It helps to separate them out. We're dealing with the implications of that historic approach, which you and I have both inherited.

When we talk about how we're going to address issues of listing or the application of SARA and what consultation means, it's really a matter.... As I've been suggesting all along, we have the elder who is here representing his first nations government. It's incumbent under the treaty and title and rights for federal governments and their respective jurisdictions to work with first nations governments.

The Assembly of First Nations is an advocacy body. I am not the head of the first nations government, as I think you have picked up

on in my interventions here. I am more akin perhaps to the Secretary-General of the UN, or an advocate, somebody who has been appointed by a number of heads of state, government leaders.

On the question that committees that are national in scope, where the sole jurisdiction is under the minister's authority to appoint, do not or cannot take into account the complexity, I think the point has already been well articulated. That is the reality. To be effective in our work, to give effect to the United Nations Declaration on the Rights of Indigenous Peoples.... It doesn't refer to the term "aboriginal"; it talks about indigenous peoples, and I think the recognition of peoples is the era we're now entering into.

We are looking to committees like this, to statutes like this one, to support the rebuilding, if you will, of nations, and to support the relationship between indigenous peoples, the nations and the federal government. We can combine that with the very brilliant notion of greater local integrated management of systems. Developing a top-down approach is far from satisfactory, not just for indigenous peoples, but I think people in fisheries management are saying they need to be a part of it. Decisions taken in Ottawa or a small group, such as NACOSAR, they can't possibly know the intricacies of every situation.

I think it's time for us to move past this notion that we can create a singular small body that's easily managed and will give us the kinds of results we're looking for. I don't think we are anywhere near tapping into the potential of the country. We are short-sighted when it comes to this.

I'm suggesting that the Assembly of First Nations, even though it's connected with the Indian Act band structures—I come from a hereditary chief lineage myself—is a very diverse community. We need support and recognition for us to help organize appropriate consultation approaches that involve first nation government authorities.

• (1725)

The Chair: Thank you.

Your time is expiring now, Mr. Armstrong, and we are getting near the end of the meeting.

Mr. Watson, you have the last five minutes.

Mr. Jeff Watson (Essex, CPC): Thank you, Mr. Chair.

Thank you to our witnesses for appearing today.

I have a brief question, and the balance of my time I'd like to cede to my colleague Mr. Calkins.

If I'm hearing correctly, there's a call for increased consultation with first peoples and the government in this process. Yet I know we've heard criticism from other witnesses that in fact timelines are taking far too long to protect species. I'm having a little trouble squaring the circle between the two. I hear the call for more consultation, and it sounds like more time, yet we heard criticisms saying it's already taking too long.

How do we accomplish both in some fashion? Can you take a stab at that for us?

Mr. Joshua McNeely: In 1997 the Royal Commission on Aboriginal Peoples recommended the reconstitution of the original nations of this land so that we can have meaningful consultation in all aspects of our governance. The reason consultation takes so long right now is that, as the National Chief noted, there are so many different bodies. With whom do you consult, and who has jurisdiction or responsibility for this or that?

It is a national discussion that needs to happen, but we still have this insane act on the books called the Indian Act that we're still patching up today. The McIvor case from B.C. is now gone. The federal government has to still put another band-aid on that piece of legislation. It's that whole relationship that needs to be worked out.

The Chair: Mr. Calkins.

Mr. Blaine Calkins: Thank you, Mr. Chair.

I have a couple of questions. I don't know how much time we'll have left, but I'm just going to propose this to the Grand Chief.

There is nothing that I can see anywhere that you can't make a recommendation to the various nations across this country to put forward a representative to work as some kind of national committee outside the frame of any national legislation that could provide direct consultation to NACOSAR. That is something you could indeed do without having to change national legislation on that matter. I'll leave that with you.

Also, Mr. Marcel, I do appreciate your comments and your concerns about the woodland caribou and the bison, but my understanding, going back to when I was in university learning from folks like Dr. David Schindler, is that the population of bison in Wood Buffalo National Park is actually a genetically diluted population, a mixed hybrid of plains and wood bison that started when the plains bison were introduced, I believe, in 1925. The concern up there is that the population is rife with tuberculosis and anthrax and there are very small populations that seem to be growing, like the Hay-Zama population of a true wood buffalo or wood bison that need to be protected from coming into contact so that there isn't further genetic dilution of that very valuable pool of genetics when it comes specifically to wood bison.

I'm not sure I understand the nature of your concerns. There are special hunts that are being put on by the Province of Alberta to deal

with an ever-expanding population of bison, and it seems to me your testimony would be in direct contravention of that. Who is right in this particular case?

Mr. Pat Marcel: The Province of Alberta will not protect any bison outside of the parks, and that is our problem. The bison has been declared threatened in Alberta. It is not only threatened by the hunter but also by development. Their habitat is being destroyed.

The bison herd I am talking about has been there for as long as I can remember. My grandmother talked about that herd, so we're going back, even in my time, at least 200 years that these bison have been used by my people.

If you start destroying something that is threatened, the only bison you will have left in Alberta will be the ones inside national parks, and in the biggest one there, Wood Buffalo National Park, they are diseased. You can test 50 buffaloes. They will all test positive, every one. But when you do the operation and stuff, not one of those animals is really diseased with. It is the simple contact with one another that spreads it so that the reading will always be positive. If the herd is that sick, you know...it's increased now to 5,000. And it's increasing every year.

Something has to be done at least to get Alberta to understand that the bison that's in the wild in Alberta is a threatened species. Something must be done to protect it.

● (1730)

The Chair: Thank you.

Time has expired.

I want to thank all our witnesses for appearing today. Your comprehensive presentations, your recommendations and of course, the knowledgeable witness testimony that you brought today and the discussion you had in the committee is greatly appreciated.

National Chief Atleo, Elder Marcel, and Mr. McNeely, thank you very much.

With that, I have a motion to adjourn from Mr. Ouellet.

We're out of here.

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