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Chair

Mr. James Bezan

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• (0855)

[English]

The Chair (Mr. James Bezan (Selkirk—Interlake, CPC)): We're in public session now for our study on species at risk, pursuant to Standing Order 108(2), section 129 of the act. This goes back to a motion that we passed a year ago—we were reconstituted to take on this report—but this actually goes back to 2009, when we started doing our statutory review.

We welcome to the table, from the Department of the Environment, John Moffet, director general of legislative and regulatory affairs, and Virginia Poter, director general of the Canadian Wildlife Service. From Parks Canada Agency we have Mike Wong, who is the executive director of the ecological integrity branch. From the Department of Fisheries and Oceans we have Kevin Stringer, who is the assistant deputy minister, program policy.

I welcome all government officials who are here.

I understand, Ms. Poter, you're going to kick us off, so I'll turn it over to you for your opening comments for ten minutes.

Ms. Virginia Poter (Director General, Canadian Wildlife Service, Department of the Environment): Thank you, Mr. Chair.

Good morning. John Moffet and I are pleased to be here representing Environment Canada. And colleagues, as you noted, are here with us from Fisheries and Oceans Canada and Parks Canada Agency.

I will provide some opening remarks, which will include a high-level overview and status report of our implementation of the act and some observations from the review. My colleagues and I will then do our best to answer your questions.

SARA is premised on the view that it is in our interest to protect species at risk. Canada's biodiversity is essential to the health and well-being of Canadians and our economy. For example, 13.6% of Canada's GDP depends on healthy ecosystems through forests, agriculture, and the oceans.

The Species at Risk Act explicitly recognizes that the responsibility for conservation of wildlife in Canada is a shared responsibility. Under the accord for the protection of species at risk, the federal government, provinces, and territories committed to use their own laws and regulations to protect species at risk. For the federal government this is applied to migratory birds, aquatic species, and species on federal lands. SARA is the key legislation the federal government uses to implement the accord.

SARA was put into place to prevent wildlife species from becoming extinct or being extirpated—which means no longer existing in the wild in Canada—and to support their recovery. It addresses all types of wildlife in Canada, ranging from large mammals to fish to insects to plants. As the committee has studied in some detail, the act sets out required processes for assessment, protection, and recovery of species at risk. The act also provides for monitoring and evaluation to determine the effectiveness of protection and recovery measures and to make adjustments as necessary. The ultimate goal is to delist species that have recovered.

As we described in our previous appearances, when SARA became law, 233 species were immediately listed on schedule 1 of the act. As a result, under the timelines prescribed in the act, recovery strategies were required by June 2007 for 190 species that were listed as threatened, endangered, or extirpated. Similarly, management plans were required by June 2008 for the remaining 43 species listed as “special concern”.

Although this immediate set of obligations presented a significant challenge, we are making progress on this initial backlog. As of February 4, 2011, 486 species were listed under the act. Recovery strategies have now been completed for 144 species, and strategies for nearly 190 additional species are under way. With systems, staff, and policies in place, the pace is picking up.

My colleagues and I would be happy to answer your questions about the implementation of the act to date. And I would like to now make some comments regarding the review and what we've heard so far from review of the witnesses' testimony.

We have followed very closely what the witnesses have said to this committee. Apart from detailed issues of concern that relate to the particular circumstances of individual stakeholders, we believe some cross-cutting messages emerged from the review.

None of the witnesses questioned the basic purpose of the act or the importance of protecting and recovering species at risk as an important element of conserving healthy ecosystems in Canada. There are, however, understandable and widely shared concerns about delays in getting to effective on-the-ground action.

You heard about the challenges associated with the prescriptive nature of the act and how it can be difficult to reconcile its detailed, step-by-step requirements and timelines with obligations to consult on most key decisions and with the overarching need to foster collaborative partnerships on the ground.

Industry representatives told you that they need predictable and effective ways to be able to comply with the act. And most witnesses emphasized that efforts under SARA need to work in harmony with other conservation measures, many of which require collaborative partnerships rather than the imposition of an inflexible, one-size-fits-all approach.

In addition to these key challenges, certain overarching themes may be drawn from what the committee heard.

First, it seems clear that witnesses want the goal of action under SARA to be timely and effective protection and recovery of species at risk.

Second, as stated earlier, the responsibility for conservation of wildlife in Canada is shared, and effective conservation requires cooperative actions involving all levels of governments, aboriginal peoples, and other stakeholders, including landowners and resource users. People expect action to protect species under SARA, to contribute to and align with this overall suite of public and private conservation efforts.

• (0900)

Third, a number of witnesses have talked about moving forward to more ecosystem-based approaches, or grouping species to support effective conservation actions, for example, by addressing a common threat. This would help facilitate an integrated approach to working with provinces, territories, aboriginal peoples and others. Many are already involved in managing activities from a landscape, watershed, or ecosystem-based approach.

Finally, those who participated in the committee's review expect us to look for ways to focus our efforts on the actions that would produce the best conservation outcomes on the ground, encourage the development of proactive partnerships and facilitate voluntary action to protect and recover species at risk, conserve species that are not at risk, and support broader conservation planning and protection.

In closing, I would like to assure you we take these concerns and suggested strategic directions seriously. We look forward to the advice from your report.

Thank you.

The Chair: Thank you, Ms. Poter.

We'll go with our normal rounds of questioning.

Mr. Kennedy, you can kick us off with seven minutes.

Mr. Gerard Kennedy (Parkdale—High Park, Lib.): Thank you, Mr. Chair.

Thank you, Ms. Poter, for that presentation.

I'm not going to speak for the whole committee—certainly not the yeomen folks who have been here for a period of time and perhaps have met you before, and others—but I do think there is a concern about how many of the problems that are generally accepted about SARA have to do with implementation and how many have to do with design. When you make remarks about the pace picking up, I think it would be helpful for me, and maybe some other members of the committee, to know what factors, what variables, help to deliver.

I mean, I think these numbers do have some significance: 486 listed, 144 strategies. But there is a strong sense that at the end of the SARA process, which people are familiar with here, there is grinding that takes place.

You did mention factors, but if it's possible to see it as redoubled efforts under way, that there are things happening, I'm interested in what makes that difference. Quite apart from what we do with the act operationally, what makes a difference? I would be interested to know that.

There are two things in particular. Has there been any change in not just the availability of resources, but the applications and the way they're done?

Secondly, we heard from many witnesses about regulations or their absence, or policies, definitions. When you talk about the need for partnerships in shared jurisdiction, surely it must be important to negotiate some of those things. Otherwise, you don't really have partnerships. And I think the act allows that flexibility.

The absence of the translation of the act in clear policies, definitions, has been identified by numerous stakeholders—things that people can then be on the same page with in terms of expectations. Without being leading, the first question I would like you to answer is about the pace and the factors behind it. If it's not resources and regulations, I'd like you to answer those separately.

Thank you.

• (0905)

Ms. Virginia Poter: Thank you for that question.

First, to be able to deliver on the act you need the people in place who understand what is required. Certainly Environment Canada did have a time when we were staffing, and that does take some time in the public service process. So we now have staff in place to be able to get on and do the work.

You also need guidance that is available to staff to be able to execute in a consistent manner that applies the act in a consistent manner, whether you are dealing with a plant, a fish, or whatever. So we have been developing a policy suite that was published for public comment back in 2009. Since then we have been in the process of revising the policies. We're about ready to publish the policies and we received some direction from the courts. We wanted to review the policies to ensure we were completely consistent with the direction that came as a result of judicial decisions.

As well, we've also been working on developing guidance material for our staff. For example, on recovery strategies, we have revised and revamped the templates and the specific guidance for our staff so the recovery strategies that are produced are at the right level. As well, we've been developing the more streamlined approaches to consultation that are required, given that we want to engage with the parties that are affected by any recovery planning documents that will come forward.

So we have put in place a lot of what I would call the machinery to be able to execute quickly, consistently, and effectively.

Then we can also point to the fact that we are now picking up the pace and developing recovery strategies. In the last ten months we have produced recovery strategies for 35 species, which is about a quarter of the total of the recovery strategies available. So you can see that all of a sudden we've put the foundation and the machinery in place. We have the people able to execute. So now we're starting to see progress.

I don't know if my colleagues want to comment.

Mr. Gerard Kennedy: If there are any other perspectives on that in terms of the resources and regulations....

Mr. Kevin Stringer (Assistant Deputy Minister, Program Policy, Department of Fisheries and Oceans): I would be happy to comment. I think a number of things have been a challenge.

I guess I would point to how we developed recovery strategies, a big body of the work. Initially a lot of the work was deciding the process around whether to list or not. Then the next big body of work is around recovery strategies.

We've had varying success with that. It is partly that as you identify threats to species, to critical habitat, and identify potential strategies, you need stakeholders and other jurisdictions, environmental groups, conservation groups, and industry at the table. It's a balance between whether you want to move these things quickly or whether you want to be as inclusive as we often feel we need to be able to be.

I think we're still working on that. Then there's the matter of consistency. If there's supposed to be some consistency that comes out of these recovery strategies, you need some processes to be able to do that.

I would also add that as Virginia said, those policies are now available for comment and have been on the website for quite a while, but we've also been providing guidance internally for permitting guidelines and those types of things. So piece by piece we are putting those definitions, policies, and guidelines in place both for ourselves and for stakeholders.

Mr. Gerard Kennedy: Do any of the departments affected have a perspective on what the net effect has been? In other words, has the acknowledged slowness in certain things coming together caused problems? Do we know whether there has been risk to species because we didn't get things together in terms of the beginning phase?

There's been a lot of talk about potential economic harm. Do we have any idea whether the processes have caused economic harm? Is there any way of picking that up in the sense of things? Obviously we're trying to use as much of your experience as possible to improve the circumstances going forward. I think those are some of the baseline considerations. Are we protecting species? Are these start-up delays, or is something more added? We don't want to leave the "nots" huge to deal with.

Secondly, what have we learned about those interactions that we need to deal with? Particularly, do any of the departments have studies or analysis that would help us on those factors? What do we know about the experience of the act to date that should inform any revisions? This is the chance to improve your lives here, but more

importantly the purposes of the act to deliver something that can improve outcomes.

• (0910)

The Chair: I would ask that responses be very short and to the point.

Ms. Virginia Poter: I'll take a stab at that.

At Environment Canada—or at the other two departments—we don't currently have a study that would definitively answer that question. However, an evaluation of SARA is under way as we speak. We won't have the results of it for a number of months.

The only other point I would flag is that whenever a listing decision is put before the Governor in Council, we must complete a regulatory impact analysis statement as part of the cabinet directive on streamlining regulations. In that, we need to flag socio-economic considerations for any listing decision.

The Chair: We'll move on.

[*Translation*]

The floor is yours, Mr. Bigras. You have seven minutes.

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

I want to start by thanking the witnesses for being here. I get the sense that what we are hearing this morning is somewhat similar to what we heard a few months ago, in committee. I will still take the time to ask some questions, though.

I want to pick up on a debate we had in committee on the use of scientific data versus socio-economic factors in decision-making at the various stages of the process set out in the Species at Risk Act. One camp says we should give scientific data more weight, and the other camp says we should give priority to economic considerations.

What I want to know now is whether you have a position on that. Do you have a method in place? What do you base your assessment on when you make a decision?

I get the sense that the situation has always been unclear and that you do not have an established approach. Here and now, can you tell us whether different factors carry a certain weight in the decision-making process? When do socio-economic factors enter into the implementation of SARA?

[*English*]

Ms. Virginia Poter: I'll start, but I'm sure my colleagues will jump in.

SARA is very clear on the types of information that can be taken into account. In determining recovery objectives, and so on, and the critical habitat in some cases required to achieve those objectives, it is strictly based on the biological needs of that particular species.

We can consider socio-economic factors in two portions of the act. First is in the listing decision, as was mentioned, and any regulatory change must consider socio-economic factors. The decision whether or not to list takes into account socio-economic factors. The decision on the risk level—threatened, endangered, special concern, or so on—rests on the assessment by the committee on the status of endangered species in Canada. The biological portion of the listing decision is what degree of risk a particular species is at. Then GIC makes the decision whether or not to list, based on the biology, socio-economic factors, etc.

The only other place in the act where we may consider socio-economic factors is in action planning. There is a list of specific actions to be taken to help recover a species at risk, and you can take the most cost-effective approaches to implement cost savings.

A third area where at times socio-economic factors can come into play is when the amount of habitat available to achieve recovery for a species is more than what is actually required. In those circumstances, socio-economic factors can come into play to help determine critical habitat. But for the vast majority of cases, critical habitat is strictly a biological definition.

● (0915)

[Translation]

Mr. Bernard Bigras: Mr. Stringer, do you have anything to add?

[English]

Mr. Kevin Stringer: I can jump in.

I agree with everything that's been said.

There is no formula. As Virginia says, it really is mostly at the listing time, and that's sometimes why the listing decision takes a while. There are very significant consequences to going ahead and recommending listing—or listing—so socio-economic considerations are an important factor. It is a science-based process. From COSEWIC right through the entire process it's science-based. Socio-economic considerations do come up, particularly at listing, and as Virginia says, at the other point. But there actually is no formula to say if there's this much socio-economic consideration and this much science evidence.... It is, at the end, a judgment call. But it does speak to the importance of taking it into account at that point.

One final point is that socio-economic considerations are not just the immediate costs. There are also the long-term benefits of listing. So if you were to list, then down the road there would be this socio-economic benefit to Canada. And then there's the matter of trying to figure out the cost of the social benefit and the economic benefit of habitat and those types of things.

[Translation]

Mr. Bernard Bigras: Mr. Chair, I have another question.

Correct me if I am wrong, but in recent years, in other words, from 2008 to 2009, the Federal Court ruled on certain aspects of SARA, including the designation of a critical habitat. How did what you took away from the Federal Court's various decisions shape your policies going forward?

You said this morning that you are in the development phase and that something will be forthcoming in a few months. I appreciate that

something will be forthcoming in a few months, we have been hearing that for a while now. That said, since 2008-2009, the Federal Court has handed down decisions that have clarified certain elements, including the protection statement. It ruled as follows:

A protection statement must not rely on policies, guidelines or other such instruments.

The federal court seems to be saying that you must move beyond guidelines towards a statutory instrument.

How did what you learned from the 2008 and 2009 decisions shape your public policies on protecting species at risk?

Mr. Mike Wong (Executive Director, Ecological Integrity Branch, Parks Canada Agency): Thank you for your question.

[English]

I would probably use the sage grouse example that the government faced with respect to the decision from the Federal Court. When we produced the first draft recovery strategy for sage grouse, we learned from the input of the scientific community, but we also learned from the interpretation of the act. The decision from the Federal Court placed in front of us some clarity with respect to that interpretation.

Since the court decision, Parks Canada replaced the critical habitat section for this particular species, back in October 2009. Now the critical habitat for the sage grouse is protected under SARA, section 58.2, within Grasslands National Park, where approximately 50% of the Canadian population of sage grouse reside. And we'll continue to use our scientific research to determine how best to help this species recover and to continue the implementation of this recovery strategy.

● (0920)

The Chair: Thank you.

Ms. Duncan, you have the floor.

Ms. Linda Duncan (Edmonton—Strathcona, NDP): That's most interesting.

There's a lot of material we're trying to go through on SARA. We heard a lot of very useful testimony, some of which agrees and some of which disagrees. It looks as though quite a series of reviews has been going on in the department raising the same kind of issues that were raised before us. I guess what we're looking for is what further action has been taken to respond to those. One of them has been the socio-economic issue that has been raised over and over.

A lot of people raise the concern that there still aren't the policy instruments under the act. What they are looking for, I think, are the regulations. I'd be curious to know what direction you're going in to actually solidify that. I would concur with the comments by Mr. Bigras and the decision of the court that there is a tendency within agencies to get away from the legislation and start inventing through policy documents. It's important to keep referring back to what the law has actually prescribed.

An issue that's faced in all federal environmental legislation is the federal-provincial issue. I notice there is a national framework and the department has attempted to enter into federal-provincial agreements, but there don't seem to be very many of those.

Can you tell me why there's no agreement with Alberta and what the barriers might be there?

Ms. Virginia Poter: I agree there are not a lot of bilateral agreements under the Species At Risk Act, as was envisioned, but we now have four, and the last time we were in front of this committee there were only three. Recently one with Ontario was signed.

The barrier really is about getting through the process. Every time one group or another group decides to change language, it requires yet another legal review, so you can appreciate that you get to a place where you're dotting the *i*'s and crossing the *t*'s. I think Pareto's rule always applies: that last 20% of achieving perfection can take 80% of the time. That's where we are, and we anticipate being able to see the Alberta agreement come to fruition shortly.

Ms. Linda Duncan: In the absence of those federal-provincial agreements, particularly in Alberta, where I'm from, we have the scenario where, regrettably, first nations and environmental organizations are having to go to court to get action, most notably on the woodland caribou and also on the sage grouse. It's not very reassuring to hear that the answer on the sage grouse is that they're being protected in a national park when in fact I think the issue is Alberta, where Grasslands National Park is not located. I understand there was some action taken on the sage grouse on doing the critical habitat, but the frustration is that there's still no action on the ground to protect the sage grouse in Alberta.

In moving forward, where would you see that friendly federal-provincial relations are prevailing over the federal government actually intervening, for example, in the case of the woodland caribou? I've been informed that the Alberta government will not reveal what the scientific community determined. I'm wondering if that information is provided to the federal government, and in that case, is the federal government considering whether they are going to finally move in and take action on the woodland caribou in the lack of action by the province?

• (0925)

Ms. Virginia Poter: There were a number of questions in there. Perhaps I'll start with answering the first one and see if that answers some of the points that you raised.

On the caribou, I obviously can't speak too much about the particular court case because it is before the court. However, what I can say, and what was declared openly back in 2009, is that Environment Canada will publish the recovery strategy this summer for the boreal population of woodland caribou as a proposed strategy, obviously, for public comment. We'll obtain feedback and then publish the final strategy later in the year. This has required a lot of additional science work to be able to identify a critical habitat. I think all are aware that is a bit of a challenge. Work is under way in that regard.

In parallel, we have been involved in a process to engage with aboriginal peoples to gather aboriginal traditional knowledge to be able to inform the development of that recovery strategy, as well as a

massive consultation effort. We're feeling that progress is well in hand to deliver on that commitment. It does take time to do a species as complicated as the boreal woodland caribou, but it will be out this summer and it will have a clear articulation of population objectives and distribution objectives as well as critical habitat identification and what constitutes destruction.

Ms. Linda Duncan: That was one of the issues. We heard a lot of really excellent testimony, and in some cases people were frustrated that they hadn't been heard, or that people were being heard over and over, and no action. I would welcome any advice you would provide after the court cases, after working on better specific policy framework, and so forth.

I notice you read into the record exactly the same quote that was put in by Mrs. Cynthia Wright to the effect that the purpose of SARA is to take timely action to protect species, and yet exactly the opposite seems to be occurring. So our struggle is to try to figure out what best advice we can provide to the Government of Canada to break through this logjam. And it's still as clear as mud exactly where the barrier is. It's looking to me as if a lot of it is federal-provincial relationships, and of course in the case of the species we're dealing with in Alberta—the woodland caribou and the sage grouse—it's conventional oil and gas, and it's oil sands. That comes back to socio-economics.

I guess the obvious question is, do you think there will be greater movement for more openness on scientific reviews and in trying to encourage provincial jurisdictions to be making that information available, so there can be a level of confidence and transparency in exactly what criteria are being considered in making these decisions?

Ms. Virginia Poter: Certainly the federal government cannot compel Alberta to provide information or make information public, but what we can do—and I think that's what we are trying to accomplish through the recovery strategy—is a national strategy that would inform actions on the ground. I think all members here would be aware that the caribou is a provincially or territorially managed species, as opposed to a federal species such as my colleagues in DFO manage, or migratory birds that Environment Canada manages.

So we need to be mindful of the fact that this recovery strategy will help inform actions on the ground. Despite the fact that we do not have a national recovery strategy at the moment, what we do know is actions are occurring across various jurisdictions. Plans are in place. So it's not as if everything is on hold until we get the national recovery strategy in place. Actions are under way trying to address the caribou. But I will flag again the boreal woodland caribou, 39,000 animals spread across I don't know if it's half of Canada, but it certainly is a good third of the country. It is a complicated species to be able to say that this is critical habitat, and if this occurs on the landscape, they have destroyed that critical habitat. That is a challenge: to be able to define in a national context such lightly dispersed species across such a wide distribution.

• (0930)

Ms. Linda Duncan: So you're suggesting—

The Chair: Your time has expired.

The last of our seven-minute round goes to Mr. Sopuck.

Mr. Robert Sopuck (Dauphin—Swan River—Marquette, CPC): Thank you, Mr. Chair.

I have a whole bunch of questions, but I'll try to be succinct.

Over the life of SARA, how much money has been spent by all departments to implement SARA, and how many species have been recovered? And please don't use up my seven minutes.

Ms. Virginia Poter: I can start. Our records show that until the end of 2009-10, almost \$312 million has been expended on species at risk. As you can appreciate, we're still in the current fiscal year, so I can't speak to this year.

Mr. Robert Sopuck: And how many species have been recovered?

Ms. Virginia Poter: Fully recovered?

Mr. Robert Sopuck: Directly related to SARA.

Ms. Virginia Poter: Directly related to SARA, I don't believe there are any.

Mr. Robert Sopuck: And that's not a pejorative question. I appreciate, Ms. Poter, the difficulties you outlined.

Is habitat conservation the only way to recover and conserve endangered species?

Ms. Virginia Poter: No. It depends on the threat that faces the species. However, I think, as many members of the committee may be aware, the most prevalent threat, shall we say, that faces most species that are in decline is loss or fragmentation of habitat. But it is not the only threat that faces a species. Disease, invasive alien species, and so on can also be a limiting factor in prevalence of species.

Mr. Robert Sopuck: Are we short of critical sage grouse, woodland caribou, and burrowing owl habitat?

Mr. John Moffet (Director General, Legislative and Regulatory Affairs, Department of the Environment): Can we just elaborate a little bit on that question?

I appreciate you're trying to get through some questions, but the question was specifically focused on loss of habitat. Although I defer to your scientific expertise, I think it's inappropriate to characterize the issue as strictly a loss of habitat. I think it's a question of quality of habitat, because of course loss of habitat immediately raises the spectre of putting a fence around a piece of land and saying that nobody can do anything with it, as opposed to working with partners—which comes back to many of the questions we heard earlier—whether they be provincial, private, or aboriginal, and encouraging appropriate management of habitat in a way that enables species to recover and commercial or recreational activities to occur.

Mr. Robert Sopuck: I certainly appreciate that comment, Mr. Moffet, and I agree with it 100%. Management is very important, but I don't think management is something that's emphasized under the act. I think it can be safely said that for species like sage grouse, woodland caribou, and burrowing owl, habitat is quite abundant. So there are other factors. I know we can quibble about that, and whether the vast rangelands and grasslands of Alberta and Saskatchewan are all managed correctly is open to discussion.

Suffice it to say, Ms. Poter, you talked about woodland caribou being in over one-third of the country. I think the expert opinion regarding woodland caribou is that there is a predator-and-prey imbalance. If you're going to do something about recovering endangered species, I would strongly recommend that you actually do those things that recover endangered species.

I'm very concerned as well about SARA's perceived effect on property rights. I represent an agricultural constituency and a forestry constituency in which land is mostly privately owned. Do you take into account whether a piece of land you've deemed to be critical habitat is either privately owned or publicly owned, and do you see different strategies for private land versus public land?

Ms. Virginia Poter: When you're thinking about critical habitat and identifying critical habitat, sage grouse is a good example. It was found on both private land and public land. When it was found on public land, it wasn't land that—as John mentioned earlier—had a fence around it. This was actual active landscape, and agriculture in many cases. You have to stand back and think about the fact that the land use is quite consistent with the presence of the sage grouse. In many instances, what's currently happening on the landscape is very compatible with critical habitat identification and maintaining or improving the numbers of species at risk on those landscapes.

The challenge does come, though, when the current land use is going to change. For example, if it changed from grazing, perhaps, to a gravel pit, all of the sudden the land use would not be compatible with the critical habitat.

●(0935)

Mr. Robert Sopuck: I agree. But again the difference is whether that land is privately owned or publicly owned. There is a world of difference in terms of the legal rights of landowners and so on.

Going on to the private land versus public land in an agricultural area—and maybe I'm going too far with this question—wouldn't you agree that on privately owned agricultural landscape the provision of incentives to private landowners to conserve species is much more effective than is the imposition of regulations on the private use of private land?

Ms. Virginia Poter: I think it's fair to say that SARA is premised on stewardship actions. As a going-in position, that is what I think the act is founded on, and then there would be regulation and other tools in the act as necessary. I would agree that definitely stewardship is key to being able to recover species at risk.

To that end, the three departments share some funding programs to promote and support stewardship, such as the habitat stewardship program and the aboriginal funds for species at risk. Those are two examples that are part of the SARA program delivery, and they do promote various stewardship actions in the form of, for example, easements, and so on.

Mr. Robert Sopuck: Again, let's not confuse words. Stewardship is one thing, cooperative work with groups and individuals and so on, but to me the provision of incentives is quite a well-defined thing, which is the provision of financial resources to private landowners, in my particular case in an agricultural constituency, so they will do the things that we all want to conserve endangered species.

Does the listing of a species take into account a species at the edge of its range, one that may be abundant elsewhere but rare in Canada? One in particular is the sharp-tailed grouse, which is considered endangered in Colorado but is very abundant in Montana, North Dakota, western Canada, and so on. If the situation were reversed and we had a species that was rare here but abundant in the United States, would that make a difference in whether that species is listed or not?

Ms. Virginia Poter: The act is clear. It is the status of the species in Canada. So the global status is certainly a factor that is taken into account by COSEWIC when they're making their determination as to status in Canada, but, yes, there are situations where I wouldn't say a species is wildly abundant elsewhere but it could be perhaps not at risk in other parts of the world.

The Chair: Thank you, Mr. Sopuck. Time has expired.

We're going to go to our five-minute round.

Ms. Murray, you're going to give your time to Mr. Kennedy?

Ms. Joyce Murray (Vancouver Quadra, Lib.): Yes.

The Chair: That's fine.

Mr. Kennedy.

Mr. Gerard Kennedy: Thank you, colleagues, for allowing me to follow up a bit on some of the things I had started to ask.

I want to come back to the progress versus no progress, the idea that progress is picking up. The very specific question is, 35 more species have critical habitats in the last ten months, but how many of the ones that have protection plans also have critical habitats and real protection for those habitats? I think that's what we want to understand. It's one thing to have a plan, but if the critical habitat isn't identified, where are we? As we watch the cascading delays or difficulties, we see that at the end of the day there's only a handful that have critical habitats. So out of these last 35, which are the most recent products of the act's implementation, what is their status? Do they have critical habitats identified?

Ms. Virginia Poter: As of January of this year, 41 species had critical habitat partially or fully identified in posted recovery strategies.

• (0940)

Mr. Gerard Kennedy: You can guide me better, but I think, looking at the earlier data, we were looking at much smaller numbers. Has there been an increase both among the more recent...? Just to separate the questions, out of the 35 that were completed, did they get completed with critical habitat? And then those 41, that seems to be a catching up somewhere, with critical habitats getting identified.

Ms. Virginia Poter: Unfortunately, I don't have the statistics with me. Although I thought I brought everything, I didn't bring this with me.

Mr. Gerard Kennedy: That's fine. That information can be given back to the committee. It's just in the sense that it gives us a sense of what's possible. I think a great part of what we've heard—and I think you still hear it—is genuine inquiry on the part of members as to whether this can be made to work. If the application of resources or if the knowledge or so on does that, I think we would be very

interested to know that, because that might bear some guidance for us.

I wonder if I can turn to another question here—and this is not meant to separate these things. I hope that members will all bear with me. Essentially, the act is meant to give us a biological basis to be concerned, and then a process to translate that concern into some reasonable actions. Obviously we don't want to ideologically, politically, or with our relatively limited knowledge bases be debating politically whether or not a species has patterns and so on that could lead to extirpation or to damaged success.

I think that is clear. The way I want to ask this is if you think there needs to be political judgment. In other words, there is a mediation here between economic and environmental goals. Ideally we would reconcile and we'd say that economic stuff has to bend this way and bend that way, and so on. There would be a conservation strategy here and so forth. Instead, as soon as we hear it's an either/or, then we're lost.

It was mentioned that socio-economic stuff is taken into account in the listing decision. Has there not been any sort of summary of what those things are? Because the minister I guess has that ability to take those things into account to list or not list. You have to put those things in front of the minister and say what the trade-offs could be when it comes to these other realms. By now, there should be some kind of pattern. The word is “competent ministers”, and I'm sure that's a generally applicable and deserved term for folks. The rate of listing from COSEWIC is fairly high. I think that's the case. So those factors haven't necessarily got in the way entirely, but I guess the question is we didn't need to figure out what to do with that trade-off. I'm wondering if there has been any quantification of the kinds of trade-offs that have been taken into account here.

I know that's kind of a rephrasing of my earlier question, and the answer was that there wasn't a study, but clearly that information is being collected. Every time there is a decision, the socio-economic impacts are being taken into account; the departments are coming up with them. Has no one brought together all the impacts that we have to deal with? And almost more important is the way to reconcile, the way to try to seek trade-offs and so on. Is that not part of the decision that you as the relevant staff bring before a minister?

Mr. John Moffet: I'm not sure I can directly answer your question, but I'll attempt.

First, I think you're asking if we have data that enables us to understand the impact of socio-economic considerations, for example, on certain decisions. In effect, I think the best data that we have was presented to this committee, and it wasn't generated by us. It was generated by the University of Ottawa concerning listing patterns.

As you observe correctly, the vast majority of species have been listed, and the delays have occurred primarily with respect to species that are commercially farmed or used, and species that occur in the north, where there may be some traditional or ceremonial importance attached to those species. In both cases, of course, additional considerations need to be applied to not just the listing but the actions that are taken with respect to the species.

But I think this goes to a more fundamental point. I apologize if I'm oversimplifying your point, but you suggested that some of the witnesses presented a dichotomy or a choice between commercial activities and protection of species. I think that what we're learning in the act, through the act, and what we're struggling to implement in the act is to eliminate that false dichotomy.

In some cases, of course, very hard decisions have to be made, and trade-offs have to be made. But this comes back to my response to Mr. Sopuck. I think what we want to move to in the act is rapid action, which is not always taken by the government. What we need is rapid action taken by the most effective actor on the ground. What we have is a very prescriptive act that requires us to do certain things in every case, and that has created an impression that we will be taking this action no matter what. That has created, actually, in some cases a resistance from some of our partners, whereas what we want to do—and indeed what we're moving towards—is a set of policies and a set of interactions with our partners that inculcate a different kind of relationship so that we can get ahead of the curve, so that we can move faster, and we can take better action on the ground.

But this is clearly not easy, and it's something we're wrestling with as well.

● (0945)

The Chair: Thank you.

Mr. Warawa, you have the floor.

Mr. Mark Warawa (Langley, CPC): Thank you, Chair. If I have any time left over, I would like to give it to Mr. Sopuck. I really appreciated his questioning and what was coming from that.

We heard that the goal is to delist species that are listed. We heard that SARA came into force on June 1, 2004, so it's just under seven years that it's been in force. We heard this morning that \$312 million have been spent with no positive results yet. It's not been from a lack of effort; it's whether the money has been effectively spent.

Looking back to SARA being established as legislation in Canada, it was very controversial. One of the promises that was made by a previous Liberal government was that there would be compensation for rural farmers. Mr. Sopuck talked about the importance of partnership and that there would be incentives so you can have those partnerships built. To this point, that hasn't happened. Unfortunately, that was a promise broken by a previous government.

You highlighted that you listened to what the witnesses shared. They all recommended that there be some changes because they acknowledge SARA isn't working. They don't want to see SARA scrapped, but changes are needed. Some said the timelines were too prescriptive, that they didn't allow adequate time for consultation. Some said they're not prescriptive enough and that we need to tighten the timelines and remove any discretion for consultation by the minister.

We talked about socio-economic factors. We heard that from the witnesses also. Some thought that was important; some thought it should be totally science-based.

On the importance of critical habitat, you said that in a vast majority of cases it is biologically science-based, yet we heard from

Mr. Sopuck that it may not be critical habitat that's the issue. I think you also mentioned that.

I have three questions on how we can make SARA more effective. Your responsibility is to implement SARA and not to create policy, but you are on the front line, so I think the committee would value your input in hearing about some of your challenges in implementing SARA. After \$312 million, and seven years later, we don't really have anything to show for it, other than paper. How do we make it more effective and practical?

Being very prescriptive isn't working. Would it be helpful to consider an ecosystem-based approach, supported at each step under SARA, from the assessment of COSEWIC, to the recovery planning, action, and monitoring?

My second question is what type of flexibility would be appropriate in ensuring accountability and transparency?

Third, how do we encourage partnership? I think that was what Mr. Sopuck was starting to ask questions on: how we can encourage partnership. We heard from people with hydroelectric dams that, as good partners, they introduced fish back into the stream, and now if one of those fish ends up in the turbines they are in big trouble. So how do we encourage partnership instead of punishing partnership?

● (0950)

The Chair: You've taken four and a half minutes to ask your three questions.

I'll give the officials a chance to respond.

Mr. Mike Wong: Perhaps I can start with the conversation on the ecosystem-based approach. Within our agency we have had some experience with implementation of SARA using this approach. There are a couple of examples I'd like to highlight for the committee.

There is the work we're doing in coastal British Columbia, in particular within the Garry oak ecosystem. Within this ecosystem there are numerous species at risk, and as COSEWIC continues to evaluate new species there are more added into the hopper, if you will, within this Garry oak ecosystem.

We have been working within Parks Canada land, as well as with other federal departments and the Province of British Columbia and landowners, in helping the recovery of these species. Rather than look at it in a single, species by species approach, we're looking at it from the standpoint of the recovery of this overall Garry oak ecosystem, which will include plants and shrubs as well as insects and other species. So it's quite a large variety of species that we're dealing with within the overall conservation plan.

The real key and the efficiencies within the ecosystem approach lie in the development of partnerships, whether with the province or with landowners outside the federal lands. It's really a case whereby we are having these discussions, coming up with common recovery goals, and working together to implement these recovery goals. A good example is that within the Garry oak ecosystem we have activities whereby we're engaging the local community and provincial agencies in removing one of the biggest threats to the Garry oak species, which is invasive species such as the Scotch broom out in British Columbia. In fact, we are engaging large numbers of volunteers to help us restore that habitat so that it becomes able to help this variety of species to recover.

Right now, within the Garry oak ecosystem we are looking at the recovery of 43 species. So we are moving away from the species-by-species approach and are looking at greater efficiencies and greater engagement of similar partners and stakeholders.

Another example is within Grasslands National Park, where we're looking at the recovery of the sage grouse, the swift fox, the short horn lizard—all at the same time—within that national park ecosystem.

The Chair: Thank you very much.

Monsieur Ouellet.

[*Translation*]

Mr. Christian Ouellet (Brome—Missisquoi, BQ): Since the last time you were here, I have noticed that the questions and discussion have shifted away from the scientific aspect and now focus almost exclusively on the economic side of things.

I would like to refer to something you said earlier. You said that the \$312 million had not produced any positive results and that the money would be misused if left there. Mr. Wong's answer ties in with my question.

There are species in my riding that have been listed as “species at risk”. I saw that Environment Canada did not even take them into account, rather, the community as a whole did. That was not mentioned. I think you shot yourself in the foot earlier when you said that there was nothing to show for the \$312 million that was spent.

I take issue with that, and I would like to hear your comments. The community has produced results. People realized that certain species needed to be saved. They joined forces with farmers, lobby groups, and hunting and fishing groups. They worked with all the groups on site. So I would not say that \$312 million was wasted in my riding, or even \$1 million. I think your financial investment did indeed help to protect an ecosystem.

And I would like some confirmation from you that we did see those kinds of results.

• (0955)

[*English*]

Ms. Virginia Poter: Thank you for the opportunity to clarify my point.

When I was responding to Mr. Sopuck, I had understood the question to be, for the money that had been provided, what species

had recovered whose recovery was completely attributable to SARA. At this point in time, we can't point to that.

But as you point out, Monsieur Ouellet, the actions that start to occur now through programs such as the habitat stewardship program, which fosters development of green bylaws for municipalities and fosters community efforts whereby they'll go in and pull out weeds that don't belong in a particular ecosystem and so on—really facilitating engagement by a broader community—definitely make a difference.

So I very much appreciate the opportunity to clarify my point. We have made a fair bit of difference on the ground, I believe, through programs such as the habitat stewardship program.

[*Translation*]

Mr. Christian Ouellet: Thank you.

I would like you to clarify something else for me.

Earlier, we discussed land that was privately versus publicly owned. I would like to know whether the species belong to the private land owners if the animals are on their property. In other words, if frogs are on private land and the next year wind up on public land eating things that the owner does not approve of, do those frogs belong to the private land owner or to the community's overall ecosystem?

I would like you to make that clear because we are having a similar debate in my riding involving deer. Some say that if the deer are on their land, they belong to them. I disagree, but I would like you to clarify that point.

[*English*]

Mr. John Moffet: I'll answer that question indirectly. The act does not address ownership. What the act does is establish protection of species, and that protection arrives in different ways and has different status depending on the species itself and its location. If the species is on federal land, then certain protections apply automatically. If the species is not on federal land, then the nature of the protection depends on whether the species is subject to federal jurisdiction or not. Then, of course, additional protection may apply as we work our way through the process in the act developing recovery strategies and action plans, working with partners, including importantly the provinces, and then ultimately, in extreme cases, possibly making a determination as to the effectiveness of the protection that the province has applied.

I apologize; it's not just a question of ownership. But there is an important question as to what protections there are, or in other words what restrictions are placed on the ability of a private person, for example, to do something to that species, its residence, its habitat. I can't tell you more than that it depends: it depends on the species and it depends on the location of the species.

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

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

I've had plenty of opportunity to discuss this in the past, but I will just ask one quick question as I go through the schedules, and then I'll hand my time over to Mr. Sopuck.

You mention in your opening comments, Ms. Poter, the intrinsic value of nature and so on. I don't think anybody comes to Canada to look at the Nooksack dace. I'm pretty sure they don't come over to look at the brook lamprey. I'm not so sure the three-spined stickleback is one of those economic driving forces in our country, given the fact that you can find a nine-spined stickleback in virtually every lake and river in the western basin.

I'm being a bit facetious here, but I do believe that when Canadians look at a species at risk act, they're asking themselves, is my government stepping in when we're down to the last 30, or the last 50, or the last whatever? This act, in my opinion, steps in way too soon. That might be nice from a preventative perspective, but I'll make the case, and I've made it before, that if we had looked at just the population of the Fraser River sockeye salmon prior to last year or for the previous two or three years, COSEWIC could have easily made an assessment that the Fraser River sockeye salmon population could have been classified as endangered, and yet last year we had one of the best returns in, I think, a century.

Given what we know, given the various life cycles... Certain organisms reproduce in a matter of hours; other organisms, such as bears, reach the age of eight to ten years before they're sexually mature. The act has a prescription to do things in a certain timeline that simply doesn't make sense with the way nature operates at all.

I'm very frustrated with the way the act is being used. I think your people's hands are tied. I think you have a really tough job. I want you to be open and frank and honest with us here at this committee. I know sometimes you want to be careful about what you say, but just give it to us; just hit us over the head with it. I think everybody around this table wants to do the right thing with this legislation to make sure that it's usable and functional and serves the needs of not only the environment but of the Canadian taxpayers at all.

Mr. Sopuck asked you a question. Are there any examples you can give us of areas in which the department has spent money on a strategy or on an assessment of a particular species whose geographical range is outside or beyond Canada's borders as well as within Canada's borders and in which the bulk of the population or the natural habitat or the natural range is not within Canada's boundaries, and in which we may have spent any money on an assessment or strategy to recover a species of which a subset or— notwithstanding migratory species—a smaller segment of that population lives within the Canadian jurisdiction? Are there any examples?

• (1000)

Ms. Virginia Poter: I'm sorry, I can't provide one to you. I certainly could provide one in follow-up. There are examples of what we call fringe species: the northern edge of the range of that species tips into Canada, so the bulk of the range is south of the border, for example.

Mr. Blaine Calkins: As a typical example, you might find four specimens of a vascular plant at Point Pelee, which is the southern-most tip in Canada, and yet you'll find a couple of million of these things—a billion of these things— living perhaps in the continental United States or wherever.

Are we spending money on doing assessments on those kinds of things? Is that because of the nature of the act?

Ms. Virginia Poter: Yes.

I wouldn't speak necessarily to the millions versus four plants. But the concept can happen that we may have a very small proportion, say 2% or less, of the population in the world in Canada, and our population is more at threat than the populations in other parts of the world. Yes, given that they are on the list, resources were dedicated to assess them. Then resources will be dedicated to develop a recovery strategy for them as well, or a management plan, as the case may be.

Mr. Blaine Calkins: I'm just going to ask you a couple of questions. I have a limited amount of time left.

Mr. Mike Wong: Could I just very quickly add to that response?

Let's use the Point Pelee example where we have a species called the tiger salamander. It's not been seen in the park since 1919. We produced a very brief, succinct report and it recommends that it would not be successful in terms of recovering that species so we didn't spend any more money on that.

Another example would be the prickly pear cactus. It's a listed species within the legislation. It was one that was reviewed by COSEWIC, yet, as you pointed out in your example, across Lake Erie in the State of Ohio it is considered a weed. We're not spending any more money in terms of helping it recover because it is at the limit of its range. We are spending money on the priority species that we feel have a good chance of recovery.

• (1005)

The Chair: Thank you.

Mr. Scarpalleggia. No? Okay.

Ms. Murray.

Ms. Joyce Murray: Thank you, Mr. Chair.

I want to respond to Mr. Calkins' comment about everyone around the table wanting to do the right thing. I agree completely that my view of the right thing I think is very, very different from Mr. Calkins', because I don't share the view that we intervene too soon and that there are species that we should just write off because tourists don't come to see them.

Mr. Blaine Calkins: Point of order.

I usually give people great liberty to say what they want to say around here, but at no time during the transcript did I say, ever, that we would write off a species. Those were not my words. You can try to paraphrase if you want, Ms. Murray, but if you want to do these kinds of things then I will start calling questions of privilege if you're going to try to put words in my mouth.

Mr. Chair, this is unacceptable. I certainly didn't make any reference to any other members here at this table during my deliberations. I said nothing about that. I simply spoke about how it affects my constituency. I certainly didn't make any attempt to disparage anybody around this table. I'm getting a little tired of it, actually.

The Chair: We are respectful to the other members of the committee. It's fine to make comments about your points of view, but—

Ms. Joyce Murray: Okay. Thank you, Mr. Chair.

I will just note that when someone speaks on my behalf, which was included in his comments, I need to be able to clarify whether I agree with that or not, which is what I did.

I was very struck by Mr. Moffet's comment that what you're looking for is rapid action, not necessarily by government. I'm familiar with the complexity of the different orders of government working together with communities, with non-profit groups, with first nations, and with scientists. It's very critical that there's a collaborative approach. I've seen that in the south Okanagan-Similkameen conservation, Garry oak, etc., a number in British Columbia.

Mr. Moffet, what is the main barrier? Given that there are those two forces pulling at you—rapid action, not necessarily by government, but how powerful partnerships are, and how much gets done by people working together with a common objective—what are the barriers to rapid action? What are some thoughts that the panellists might have about recommendations that you would like to see in our report that address these challenges?

Mr. John Moffet: I think that's an excellent question. There are some very fundamental decisions, if you will, that the committee needs to make about the kind of advice it provides to government about the act.

I think we have tried to suggest to you that in implementing the act and in the learning process we've gone through, we've struggled to balance a number of things. One, of course, is the environmental protection imperative in the act. The other is the enabling of partnerships and the provision of long-term predictability to our partners. That occurs no matter what the environmental legislation is; that's a common theme across all of our legislation. The relative emphasis we place on those two is something that this committee should—if you don't mind me giving advice—comment on. And advice is needed.

The additional challenge that this particular piece of legislation poses to us is the highly prescriptive nature of the legislation and the requirements to take a very process-specific set of steps for every species. There are important judgments that government needs to make, and that we make on a day-to-day basis in terms of our implementation of the act.

As my colleague Mr. Wong has explained, it's not that our hands are completely tied. Of course we make judgments. When a species has been listed but does not exist, is there any merit in taking additional action? No. But we've had to go through certain steps to get there, and we have expended taxpayers' dollars to get to that point.

• (1010)

Ms. Joyce Murray: Okay.

Perhaps you or one of the other officials could clarify this. When you say that some of that...what I think you're referring to as the linear, the step-by-step, when you say "prescriptive". What is the description of an approach to that aspect of it that would better meet the goals that would serve the objective of the act?

Mr. John Moffet: Here, I'm afraid, we're getting on thin ice for officials. I think we're trying to outline for you some thematic concepts that you may want to consider. Whether that translates into

specific implementation directions that we take, or indeed into some legislative reforms, those are decisions that the committee needs to take rather than us.

We have tried to suggest that we're trying to go in a certain direction where we adhere to the legal requirements but provide the folks implementing the act with the ability to work with partners, and focus on priorities, and focus on actions that will make the most difference for perhaps the ecosystem or a collection of species, as opposed to a slavish focus on each individual species regardless of its priority, regardless of its ecological priority.

How far we take that, whether that's the right direction, whether we can do that through implementation, whether law reform is needed—those are the critical issues that this committee is wrestling with, I think, and where we need your advice.

Mr. Kevin Stringer: They're issues that public servants are struggling with as well. We have an example that our colleague from Parks spoke to, about trying to take an ecosystem approach. We have a couple in Fisheries, where we've tried to do it and lumped together species into one recovery plan, one recovery strategy for both.

You've asked us about the lessons learned. The big lesson learned is that it does require partnerships to be able to address these issues. We don't have all the jurisdictions or all the means to be able to address it. The incentives to get partners to the table, given some of the prescriptive nature of the act, has been a challenge.

That said, it is an act that is supposed to be protecting species. That's the balance that I think John is referring to. A couple of people have spoken to a couple of examples. On the Columbia River, for example, some of the partners we've worked with have provided an enormous amount of funds and support to be able to reintroduce or support species at risk, and yet our act suggests that if one fish—a 1.8, I think, in this case—is lost a year, then they are potentially charged. It does make it somewhat difficult for them to be at the table.

That said, we do have good partners. We do have good relationships. It can always be better, and that's the challenge we're facing.

The Chair: Thank you. Time has expired.

Mr. Armstrong, your turn.

Mr. Scott Armstrong (Cumberland—Colchester—Musquodoboit Valley, CPC): Thank you.

Thank you all for your presentations this morning.

I have two quick questions and then I'm going to try to cede my time to Mr. Sopuck. On the first one I just want to clear things up for myself and maybe others. It does discuss the prescriptive nature of the legislation currently, and also concerning the open range of species in Canada that may just exist over the Canadian-U.S. border, in particular.

Does the department, under the current legislation, have the leeway to decide whether to intervene if a species is at risk in Canada but is plentiful just over the border in the United States? Is that currently the leeway you have in the act, or is that something we should consider as a recommendation for part of this review?

Mr. John Moffet: The critical decision that triggers action under the act is listing. The Governor in Council has discretion as to whether to list a species. Once a species is listed certain steps have to be taken. For the level of effort that we provide to each step, of course there is broad discretion, and that's what Mr. Wong was describing. A species was listed, we took the necessary steps, but the action that we took in the step we think was commensurate with the level of risk and the importance of the issue. But the fundamental discretion there has to do with listing the species or not.

• (1015)

Mr. Scott Armstrong: My second question is more of a budgetary one. We heard that \$312 million has been spent so far in implementing this legislation, roughly \$40 million a year. What's the current budget per year of implementing SARA? Can anyone elaborate on that?

Mr. John Moffet: At the moment the federal government has allocated across the three organizations—and it's important to emphasize that there are three, Parks Canada, Fisheries, and the Department of the Environment—approximately \$100 million per year up until next spring, at which point in time some of the funding expires.

Mr. Scott Armstrong: You discussed early in your presentation that you've ramped up, you have staffed up, you have processes in place, and there has been some learning from experience, as there would be when any new piece of legislation is implemented. Wouldn't you now see the cost of it, per year, going down, or is that determined literally by how many species we're dealing with per year? What are the cost pressures you face in implementing this legislation? That's basically what I'm asking.

Mr. John Moffet: There are a couple of important factors. Yes, we have invested a lot in staffing up, in developing policies, and frankly in working our way through the legislation, in learning how to prepare cabinet for listing decisions, in learning how to do recovery strategies, and fundamentally in working with our partners. The partnerships predated the act, but now we have to engage in a different relationship based on the presence of the act. So there are lots of upfront investments. You could say on the one hand those investments were made, the foundation has been built, and now we can focus on the structure of the building.

On the other hand, the volume of work is increasing. We are now at the point where we are just tipping the scales in terms of the number of recovery strategies that we're developing or promulgating per year versus the number of new species that are being listed. It's going to take us a while to eat into that backlog that we inherited when the act was brought into force. Additional species are being listed each year. And finally, of course, in a couple of years COSEWIC will start through a mandatory re-evaluation of species that have been listed. So the annual burden continues to grow.

And then of course once you've listed a species, developed a recovery strategy, and developed an action plan, you don't just walk away from it. Notwithstanding my earlier comment that one of the things we're trying to do is encourage action on the ground by partners, the federal government can't walk away from all of those activities. We need to continue to have staff engaged. We may need to continue to fund partners. We need to monitor. You can't walk away from a species that's been listed. So the overall burden is

growing even as we've enhanced our efficiencies and put in place the appropriate kinds of foundational activities.

Mr. Scott Armstrong: Thank you.

Mr. Kevin Stringer: I would note as well that those recovery strategies and the action plans all include further work that should be done. They commit us and they commit others to do this science piece, that policy piece, this program piece, and in the meantime we get a new batch every year of species to start the process. And that, I think, is where the bulk of the financial support is required going forward, in terms of implementing those recovery strategies and action plans.

The Chair: The time has expired.

The last of the second round is Mr. Woodworth.

Mr. Stephen Woodworth (Kitchener Centre, CPC): I'll give my time to Mr. Sopuck.

Thank you.

The Chair: Mr. Sopuck.

Mr. Robert Sopuck: Thank you very much.

I want to just again reinforce what Ms. Poter said. My earlier question was very specific to her about how many species have actually been recovered, and she answered it quite appropriately, in my view.

I'm a big fan of the habitat stewardship program. In my own constituency I have a number of HSP programs, especially if the HSP also includes a management component whereby landowners or agriculturalists are able to do management activities that not only enhance their own bottom line in their farms but also recover species. To me that's the ideal form of conservation.

My first question regarding the HSP would be that right now there's a specific endangered species trigger to release funds under the HSP—I think I'm correct in that. What I hear you say is that you prefer sort of, if I could say, an ecosystem trigger, whereby an HSP project would have positive ecosystem results for a multitude of species. Is that the direction you would recommend we move in?

• (1020)

Ms. Virginia Poter: Currently the habitat stewardship program and AFSAR can accommodate an ecosystem approach. Every year the selection of projects is done regionally, and we do try to identify what are the hot spots for a particular species at risk, trying to come at it in a more strategic way. In the early days it was quite a bit about each individual project, but as we've built up awareness as to what's happening across the landscape, we're better able to sort of focus in on what types of actions or what types of projects would best benefit species at risk. So we've updated criteria for assessing project proponents' proposals.

Mr. Robert Sopuck: In terms of the HSP, I would assume that within the overall budgetary envelope, in terms of activities that the various departments do, a certain amount is related to administration, enforcement, and all that stuff, and then there's project funding under the HSP. I suppose it's possible to reorient the budgetary priorities and increase the budgetary allocation for the habitat stewardship program, and given that we're in the time of restraint, to decrease the enforcement activities by an equal amount. What I'm getting at is I would assume there's potential to reorient the priorities.

Ms. Virginia Poter: We certainly can reorient priorities, and we have done so for the program.

Mr. Robert Sopuck: Right. Okay, because that's certainly a direction I would like to go in. Again, habitat stewardship, working with people on the land and listing them as allies in the conservation of endangered species, is far more effective than the enforcement approach, keeping in mind if you're down to the last 30 individuals, obviously it becomes a rescue operation. I think we can safely say that apart from species like the woodland caribou, the endangered species action is primarily on the privately owned agricultural landscape, given how intense agricultural land use can be. Again, I think the private land areas of Canada are the areas where we should focus and really use the habitat stewardship program approach as the primary goal.

Regarding Mr. Ouellet's question about the ownership of wildlife, I will certainly concede that to me the answer is very simple: that wildlife is a publicly owned resource. To me there's no question about that.

In terms of the definition of habitat, it's a pretty elastic thing. We tend to think that habitat is just something you put lines around: that's critical habitat, and this is non-critical habitat. Again, with certain agricultural activities, with zero tillage, for example, we end up with monoculture wheat fields that are managed without tillage, and lo and behold, you get all kinds of species nesting there. Because the land is not disturbed, we end up with some endangered species or rarer species coming back because of that land use.

One can also look at peregrine falcons in downtown cities. All of a sudden does that become critical habitat? I think that's a silly example, but nevertheless a legal definition of these kinds of things gets us into all kinds of trouble, and that's where an ecosystem approach is much more appropriate.

Given that's the case, will the department consider other tools to recover endangered species, such as actively encouraging nesting structures for burrowing owls, for example, or support for predator control when predators have gone out of whack? And I think the wolf predation on woodland caribou is a big factor. Will you consider these other tools, apart from a very narrow definition of habitat?

Ms. Virginia Poter: Yes. All three departments, in developing a recovery strategy, look at the threats in terms of what is causing the decline or threatening the species at risk under discussion. So we would look. In some cases, it's habitat—loss, fragmentation, or the poor quality of the habitat available. But in other cases it might be disease. In other cases it might be disturbance of beach fronts—I'm thinking of the piping plover—and so on. Different species face different threats. The 486 species are all different. They all have their

own biology. They all face their own threats, depending on where they are located across the country. So management actions are definitely a key piece in how to recover a species.

Speaking to the legal description of “critical habitat”, if you are going to have a legal description of “critical habitat”, you need to be able to define it in specific terms. That's just part of the implementation of the act.

• (1025)

The Chair: Thank you. Your time has expired.

I just want to follow up on Mr. Sopuck's question.

Ms. Poter, you mentioned the piping plover, which actually occurs in a habitat in my riding. Lake Winnipeg, which has an abundance of beaches, is a critical habitat for the piping plover. Manitoba Hydro manages the lake levels through the Jenpeg Dam at the north end of the lake. If they keep the lake artificially high and it is affecting the habitat that's necessary for piping plover, would they be in contradiction, then, of the act and possibly at risk...? We always talk about hydro in relation to fish species, but here we are with them at the ultimate...they have an environmental permit to use Lake Winnipeg as a reservoir. Would they be in a potential conflict so that they could be fined or directed to lower the lake levels?

Ms. Virginia Poter: In situations like this, we try to build awareness so that at certain times of the year it's not a problem for the piping plover that the dam is keeping the reservoir at high levels and essentially, I guess, covering the piping plover habitat. At other times of the year it is more important that the water level be lower. And we try to work with the key stakeholders to inform them so that they can use best management practices to accommodate the needs of the species.

The Chair: I have two other questions I want to ask.

In your testimony and in response to some of the committee members' questions, you mentioned the direction we've had from the courts. There have been at least three or four decisions in the last few years that impact not only the... We're talking around the table here about social and economic conditions versus protection of critical habitat, from a scientific basis. It's my understanding that the direction from the courts has been that habitat trumps social and economic conditions. So I want to get feedback on that, on how the two departments are viewing those decisions and the direction we're receiving from the federal courts.

The second point is with regard to a decision that was made about the habitat of the orca and the conflict that has risen between the Fisheries Act and SARA itself. How has that changed the focus of how you deal with habitat, especially when it comes to species in the water?

Ms. Virginia Poter: I'll start with sage grouse, and I'll leave the aquatic cases to my colleague from DFO.

The sage grouse is an interesting case. The decision really was clarifying. I think we already had a sense that this was where it was. But regardless of where critical habitat occurs, it should be identified, based on best available information. So we may not know a lot about where a species occurs, but when we know where it occurs we are to identify it, presuming the habitat has the required features that species need to survive and recover.

In the case of sage grouse, it was clear we had to identify critical habitat beyond the boundaries of the park. We did so. What that meant was we went out and engaged with a lot of private landowners, held public meetings, sent out lots of letters, and so on, just to make those private landowners aware of the fact that their lands had some of the key habitat for sage grouse.

In part of our communications certainly what resonated with the agricultural sector was that what they were doing was clearly compatible or very likely compatible with the needs of that species, because it existed there. So as long as the farmers continued to farm as they had been, it would be very compatible for the sage grouse. They could persist in that landscape while agricultural activity was being undertaken.

Kevin, do you want to...?

• (1030)

Mr. Kevin Stringer: On the aquatic side, some of this stuff is still before the courts, so I have to be very careful about what comments I make, particularly about the Fisheries Act piece of it.

Three or four decisions have come down that have provided direction that our department and the others are reflecting on, partly around best available information. The second area is around when you need a protection order, when you can use a protection statement, and when it's appropriate to move forward in either of those two areas.

Perhaps most significantly, we are reflecting on what's included in habitat. What do you need to consider when you're defining critical habitat? It says it's not just a geographic area; it is availability of prey. In the case of the killer whale it includes aquatics generally, but also acoustics, etc. We're now going back to look at the protection statements and protection orders we've issued and reflect on whether they are sufficient. Going forward we will have to think about those pieces as well. It makes it more complex, but the courts have decided those things.

The Chair: Last summer I was out riding through the pastures with my daughter and we came across a painted turtle. I'd never seen one in my pasture before. I actually went back to the house and checked it on the Internet. The western painted turtle is quite abundant, but it is listed as a species at risk or of interest in British Columbia. Would B.C. have made that decision?

We're talking about range and whether or not certain species are worth protecting, especially if it's just a sub-species. The painted turtle is abundant across Canada, but within British Columbia it's a species of interest. I'm pretty sure it was actually on a federal website that I saw that. I just wanted to get comments on whether that is the case, or maybe it was a British Columbia decision.

Ms. Virginia Poter: I'm not exactly sure about the painted turtle status. I don't keep all 486 in my head. This may well be federally listed, but I don't believe so. However, on the way the legislation and the accord works, each jurisdiction can—and in many cases does—have their own endangered species or species at risk legislation. For example, in Quebec or B.C. they have legislation, and they may list species provincially that may or may not be listed federally. Even if it is listed provincially and federally, it may or may not be at the same status, because in one jurisdiction it may be highly endangered, and in another jurisdiction it may be of special concern.

The Chair: Thank you.

We'll go to our third round of about four minutes each, in the interest of time.

Mr. Kennedy, you have the floor.

Mr. Gerard Kennedy: Thanks, Mr. Chair.

I want to thank the deputants for their testimony. I think it's been helpful. You may still pick up a little frustration from people, in the sense that we're trying to come to a landing on what's possible here. In other words, will the act unbundle itself?

As the discussion on budget says, if we had \$100 million going in, how much of that is going to dead-end process? How much of that has gone to laws that weren't properly formed into regulations that require processes on an ongoing basis that don't lead to a productive end?

The problem here is that if the implementers in the bureaucracy can't provide us with that, you're going to get inaccurate decisions made. After seven years of experience, I know that four or five of them might be just the catching up of the implementation initially of the act. We want to give some life to it.

I have two questions. I have a number, and I'll try to unbundle them for you.

Do you have faith that this will unbundle itself, in the sense that we'll have the serious boundaries we want and the process will be there? Are there intrinsic things in the way of that process smoothing itself out, being able to work with the other partners, and so on? Very specifically, are there dead-end elements here because of the way the act was designed that maybe were put in because there wasn't adequate protection in one place or another? We can deal with.... Maybe they were there for a good reason, but do you find in your implementation that you do a lot of things that just don't add to the net bottom line of protection? I assume that everybody at this table speaks for the protection of species.

• (1035)

Mr. John Moffet: I'll try to answer that.

Let me be clear that we don't have a mandate to come to you and say this part of the act is broken, or you should recommend fixing this part of the act or that part of the act. We can't do that. You've heard from witnesses. I do think, however, that we try to articulate some basic themes, principles, goals, directions that we share and most of the witnesses who appeared before you share. We believe that our job is to implement the act in those directions.

There are some basic policy choices that have been made about the direction in which we will push the implementation of the act. We're still working in that direction.

You've heard from many witnesses, and I think we've identified areas where we've bumped up against the limits of the legislation. They have to do with the prescriptive nature of the legislation that requires specific steps to be taken for every species that's listed, regardless of the nature of the threat, regardless of whether that species could be addressed better through an ecosystem approach, or through an approach that deals with a group of species that may in some cases require delaying action on that species so that we can take action on a group of species.

You've also heard about limits that we've bumped up against in terms of the objective of being able to work with partners, while also providing the kind of long-term certainty some commercial activities need in order to be willing to make commercial investments, and also to engage in best management practices on the land that may benefit more than just an individual listed species, but where the act itself only allows us, for example, to provide a three-year permit. I think we've identified there are both thematic limits and specific limits in the act.

In terms of our advice about what to change and what not to change, I apologize, but we can't go that far.

The Chair: Mr. Kennedy, your time has expired. In the interest of fairness for the rest of the members, we'll continue.

Monsieur Bigras, *s'il vous plaît*.

[*Translation*]

Mr. Bernard Bigras: Thank you, Mr. Chair.

I want to pick up on the aquatic species issue raised by the chair, Mr. Bezan. I think it is a very interesting area that would be worthy of an in-depth discussion. I would like to compare the Species at Risk Act and the Fisheries Act. As everyone knows, the Fisheries Act predates SARA. Section 35 of the Fisheries Act deals with the protection of fish habitat, and section 36 talks about the deposit of deleterious substances.

I would like to hear your interpretation of the December 7, 2010 ruling on protection statements. Do you think that, according to that decision, a protection statement must apply to aquatic species if the conditions are similar to those set out in SARA?

My question, therefore, is for the Environment Canada officials.

The Department of Fisheries and Oceans issued a protection statement on killer whales in September 2008. Mr. Moffet, referring the question to Mr. Stringer suggests that the federal government is of the opinion that, in light of the December 7, 2010 ruling, if DFO establishes protection statement conditions equivalent to those set out in SARA, the Fisheries Act applies.

Basically, I want to hear your opinion on that, because it covers quite a significant portion of the species requiring protection.

[*English*]

Mr. Kevin Stringer: As I said, part of that is still before the courts, specifically the relationship between the Fisheries Act and the Species at Risk Act, and the application, so I really can't speak to that.

I can tell you that we have contemplated significantly the relationship between the Fisheries Act and the Species at Risk Act.

In a number of species where we managed the fisheries under the Fisheries Act—and I'll use the examples of cod and salmon—the link between the Species at Risk Act and the Fisheries Act is enormously complex, not least of which because of the issue of bycatch. In the fisheries, as opposed to terrestrial species, the issue of bycatch is gigantic. It's pretty much impossible to go fishing for Atlantic halibut and not catch cod. Even if it's a small number, then you're breaking the Species at Risk Act. We've contemplated that.

With respect to the very specific issue you've asked about, I believe that's still before the court, so I can't speak to it, but it is an important issue and one we're attending to carefully.

• (1040)

The Chair: Bells are ringing. Standing Order 115(5) says: "Notwithstanding Standing Orders 108(1)(a) and 113(5), the Chair of a standing, special, legislative or joint committee shall suspend the meeting when the bells are sounded to call in the Members to a recorded division, unless there is unanimous consent of the members of the committee to continue to sit."

Is there unanimous consent to finish off our rounds? You guys are okay, but I need unanimous consent to do it. Do I have unanimous consent to sit to finish off the last few questioners? We are within five minutes of the House.

Seeing that nobody is saying no, we will continue with this and finish with the last two questioners.

Ms. Duncan, you have the floor.

Ms. Linda Duncan: There has been a lot of discussion about this interest in working with partners. There has also been a lot of discussion about all of the steps necessary to go through in SARA. And there is also the issue that Mr. Bigras, in his usual informative fashion, has introduced—the idea of the relationship between other statutes.

Environment Canada, DFO, and Parks Canada have the power to intervene in environmental impact assessments and to look at cumulative impact assessments. So you don't have to sit and wait for something to be listed. I haven't heard any mention of that.

If you had partners and a lot of people interested in moving forward, and if by some miracle the provincial government was willing to work with you, is it possible that under the statute you could expedite the process? In many cases that's what came out of a lot of these court decisions. The government was saying they couldn't identify the critical habitat, but it was evident that under the definition of the term it had already been identified.

I'm a little frustrated to hear that as a result of the court action the government went out and again started to identify critical habitat, when it was known that oil and gas was one of the major impacts on the sage grouse mating.

We now hear that despite the boreal agreement, which is lauded as a great agreement with all partners working together, there is now a logging permit about to be issued in the area where the logging company agreed to protect the habitat.

Does it not make more sense to have the legislated regulatory initiatives by the government operating in tandem with the partnerships? In most cases those partnerships are not binding and enforceable. It puts the species at further risk when we have to take another 10 or 20 years for the government to do its work.

Mr. John Moffet: We have to manage so that we deliver on the legal obligations and also engender partnerships. There are instances of partnerships that haven't worked out. But one of the things we're trying to bring to your attention is the way in which relationships with partners were chilled by early interpretations of the act on our part together with misperceptions of the act on the part of others. What we're trying to do is overcome that chilling. This would allow us to move to the front end of the process and encourage activities that would make it unnecessary to implement the act. The ideal is to take preventive actions through partnerships.

Ms. Linda Duncan: Are the officials working in endangered species being consulted in the cumulative impact assessments of major resource development?

Ms. Virginia Poter: I can speak for Environment Canada. Canadian Wildlife Service staff who are part of Environment Canada contribute to advice provided on environmental assessments that are coordinated across the department. We take into account species at risk as well as migratory birds.

• (1045)

The Chair: Mr. Sopuck.

Mr. Robert Sopuck: Mr. Wong, given that you have neighbouring communities, often agricultural—for example, I live right next to Riding Mountain National Park—do you ever think you'll see the day when Parks Canada funding will go outside a national park to assist local stewardship programs that local people are trying to initiate with other partners?

Mr. Mike Wong: Certainly. With respect to species at risk, there are existing funds such as the habitat stewardship program, the aboriginal fund for species at risk, and interdepartmental recovery funds. So at Parks Canada, when we work with our partners outside, we explore the possibility of using these funds in order to enhance the recovery of species at risk. Of course, given that our funding is focused on the management of national parks and national historic sites, it is a challenge for us to move beyond our borders.

Mr. Robert Sopuck: I understand that, but Parks Canada is always talking about working with local communities and how what goes on outside the park affects what happens inside the park, and

vice-versa. Yet the funding seems to stop at the park boundary. But that's something for folks like us to work on.

My second question regards litigation that is possible under the Species at Risk Act. In terms of what's happening in the U.S., with whole communities shutting down because of the draconian implementation of their endangered species act—I'm thinking of irrigation in California, the spotted owl issue in Oregon—carried to a logical or illogical conclusion, would the shutting down of whole communities be possible under this act were things to carry in that particular direction?

To be really simple, can the spotted owl thing happen in Canada?

Ms. Virginia Poter: I'm sorry, I'm not familiar exactly with what's happened in the United States, so it's hard to comment—

Mr. Robert Sopuck: What has happened is because of the listing of the spotted owl in Washington and Oregon, thousands of logging jobs were lost, ostensibly to bring back this endangered species.

I'm asking, if litigation under SARA were carried out far enough in Canada, would the same thing be possible in Canada whereby a listing results in basically the essential destruction of a local resource-based economy?

Mr. John Moffet: I don't think we can speculate on the ultimate outcome of decisions that are not strictly limited to listing. Again, there are decisions as to how to implement, and of course the particular impact on forest-based communities extends beyond certain environmental statutes, and there's a global kind of downturn in the forest sector at large.

The Chair: Thank you. Time has expired.

I want to thank our witnesses for coming in today to give us an update, a briefing, especially for our new members.

Mr. Warawa, do you have an update you can share with us about whether or not the minister is available?

Mr. Mark Warawa: Yes, the minister is scheduled to be here on March 8.

The Chair: That is to deal with supplementary estimates (C), which our motion was very specific to. As you know, supplementary estimates (C) only really cover a few areas of the budget.

The meeting is adjourned.

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