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Chair

Mr. Blaine Calkins

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● (1830)

[*English*]

The Chair (Mr. Blaine Calkins (Wetaskiwin, CPC)): I call the meeting to order.

Good evening, ladies and gentlemen. This is the third meeting of the Subcommittee on Bill C-38, pursuant to our Standing Orders, studying responsible resource development.

We have witnesses on our first panel here who are ready to give testimony. We welcome David McGuinty, a member of Parliament for Ottawa South. From the Assembly of First Nations, we have Shawn A-in-chut Atleo, national chief. From the British Columbia Coast Pilots Association, we have Fred Denning, president. And we have Dr. David Schindler, professor of ecology, in the department of biological sciences at the University of Alberta.

The way I do this, witnesses, is to go down the list of people in the order in which they appear on the agenda. You will each have up to 10 minutes to make your presentations, and then we will proceed to rounds of questioning.

I will advise committee members right now that based on some of the occurrences that are going on in the House of Commons, I would expect that we're not going to get through the full two hours of this particular panel. However, we will stretch it as long as we possibly can to make sure we maximize the use of the time of our distinguished guests who are here. We can deal with that particular issue at the moment the bells start ringing.

Let's now proceed to the witnesses.

Without further ado, Mr. McGuinty, please go ahead for up to 10 minutes.

Mr. David McGuinty (Ottawa South, Lib.): Thank you, Mr. Chairman and members of the subcommittee.

I am here to testify today on the unfortunate and short-sighted decision to close down the National Round Table on the Environment and the Economy.

For those of you who don't know, I had the privilege of serving as president and chief executive officer of the round table for almost nine years. The purpose of the round table is to act as a catalyst throughout Canadian society. Prime Minister Mulroney legislated it into existence as the principal institutional response by Canada to the Rio Earth Summit in 1992. The notion was at the time that a super-departmental institution, something above all of the line departments, would be based in the Prime Minister's office, not necessarily to row, but to steer, to help change the course of our ship of state by providing objective, balanced—

Ms. Michelle Rempel (Calgary Centre-North, CPC): Mr. Chair, on a point of order, I believe the scope of this committee is to study part 3 of the budget implementation act. I do not believe the topic Mr. McGuinty is discussing is within the scope of part 3.

Mr. Robert Chisholm (Dartmouth—Cole Harbour, NDP): On the point of order, Mr. Chairman, surely to heavens we can allow the presenter to begin to introduce his remarks without being harassed by members of this committee.

The Chair: Mr. Chisholm, members are free to bring up points of order. I will have to check the veracity of the point of order. I don't see any member bringing a point of order forward that talks about our process and the mandate of the committee as harassment.

My understanding is—and, Mr. McGuinty, this subcommittee's hands are tied. We have our mandate from the finance committee specifically saying what our mandate of research and report and our area of study should be. That is quite specific in the report that was used. It was tabled in the House of Commons. It was the second report of the finance committee, and it outlined in quite specific detail what our mandate is.

Generally speaking, I do allow very broad testimony from witnesses. So I would ask, out of respect for that mandate, Mr. McGuinty, that you keep your comments as focused as possible on the relevance of the national round table, if that's what you're here to talk about, and how it would apply to part 3 of the bill. I would very much appreciate you doing that.

Please continue, sir.

● (1835)

Mr. David McGuinty: I need your guidance then, Mr. Chair. The round table is being eliminated in the bill?

The Chair: Ms. Rempel, it was your point of order. Do you have a specific part or section that you can refer to in the bill?

Ms. Michelle Rempel: I believe the national round table is in part 4 of the BIA.

The Chair: If that's the case, let me just check with the clerk.

Mr. Peter Julian (Burnaby—New Westminster, NDP): Mr. Chair, you ruled on this a week and a half ago. We had some discussion on this last night. We had ministers coming forward who talked about a wide, wide variety of issues, touching on the environment, touching on the economy. It certainly went far, far beyond the mandate of even the finance committee.

Surely Mr. McGuinty coming forward today to talk about something that is directly impacted in the budget and the budget bill is something this committee can listen to. He has ten minutes. I would just ask you to allow him to continue and to stop the points of order, which are simply trying to, I believe, intimidate witnesses.

The Chair: Mr. Storseth, on the same point of order.

Mr. Brian Storseth (Westlock—St. Paul, CPC): Thank you very much, Mr. Chairman.

Let's look at the terms of reference given to this committee:

> A. pursuant to Standing Orders 108(1)(a) and 108(1)(b), a Subcommittee on Bill C-38 (Jobs, Growth and Long-term Prosperity Act) be established to examine the clauses contained in Part 3 (Responsible Resource Development) of the Bill....

Now, that is very specific. This topic is not in part 3.

You can also refer, Mr. Chairman, to O'Brien and Bosc, where it states:

> Members of Parliament and political parties are not allowed to do indirectly what they cannot do directly.

What the Liberal Party is trying to do by bringing this up is a backdoor way to get another part of the budget bill discussed here.

I have no problem; I look forward to hearing Mr. McGuinty's testimony. Hopefully it will be pursuant to our Standing Orders and to the topic that we're here to discuss.

This is a very in-depth topic. I understand that the opposition had trouble last night making any headway on part 3.

I think we should focus on what we were given to focus on.

The Chair: Ms. Duncan, on the same point of order.

Ms. Kirsty Duncan (Etobicoke North, Lib.): Thank you, Mr. Chair.

I would think that this committee would want to hear evidence, that they would want to hear science-based practices, that they would want to hear about consultation, about bringing the economy and the environment together. We keep hearing that they're the same side of the coin, but from yesterday we had very one-sided views. It was the economy and....

I'm not finished.

This is someone who has had direct experience. He was the president and CEO of the National Round Table on the Environment and the Economy. This is a national consultation. It is bringing the economy and the environment together. He is recognized as one of the foremost Canadian experts on brownfields, green budgeting, and the links amongst the economy, the environment, and social issues.

He has been invited here, and I think it's incumbent upon us to listen to this Canadian expert.

The Chair: Ms. Rempel, on the same point.

Ms. Michelle Rempel: To your comments earlier, Mr. Chair, I believe your comment was to have the witness stay relevant to the scope of part 3 of the BIA.

I believe, if one checks the record, the witness started off with something akin to “I'm here to talk about the national round table”, which is included in part 4 of the BIA.

The Chair: Mr. Anderson.

Mr. David Anderson (Cypress Hills—Grasslands, CPC): Mr. Chair, I think it's important that we stay inside the scope of what we were given from the finance committee. We have some fairly specific parameters here.

When Ms. Duncan says it's all fine...and she can give us the bio of Mr. McGuinty, but the activity that we have been charged with is to study part 3. If he has as much expertise as she has claimed he has, he should be able to stay inside the parameters of part 3 in his presentation and in the question and answer session as well. I think it's reasonable to expect that he....

He's familiar with this bill. He knows we're discussing it. He should be able to stay inside part 3 if he's going to make his presentation.

● (1840)

The Chair: I'd like to thank all honourable colleagues for their interventions on this.

I'm in a very difficult situation here. When I first saw the witness list being submitted, I looked at the fact that the witness who is currently testifying before this committee is a sitting member. I like to extend to members privileges in this place. It is a bit of an oddity and a rarity to have a member appear as a witness before a committee, other than during the presentation of their own private member legislation.

So we started off, and I humoured this right from the get-go, because I thought it was important that if there was something valuable to be brought to the table, then it should be heard. However, I am not at liberty to go outside the scope that was handed to us by the finance committee.

Ms. Duncan, you and Mr. McGuinty are experienced parliamentarians here. The mandate that we were given from the finance committee was quite clear in its subject content, that we were only to study part 3. The finance committee, the main committee, is studying parts 1, 2, and 4 of this bill. If Mr. McGuinty wanted to testify as a Liberal witness before the committee in dealing with the National Round Table on the Environment and the Economy, he should have made that representation before the main committee of finance.

Mr. McGuinty, I don't want to excuse witnesses from the committee. I don't think that's appropriate. However, I would ask that you stick within the purview of part 3 for the remainder of your comments, which would enable your testimony here to continue at this meeting.

Please continue, sir.

Mr. David McGuinty: Perhaps, then, through you, Mr. Chair, you can enlighten me. Just give me the parameters, please, so I can make sure I frame these to satisfy the Conservative members here.

The Chair: Mr. McGuinty, why don't we do this, then? In the interest of time, I'll move on to Mr. Atleo. In the meantime, we can find...and get you briefed, rather than using the committee's time, on the scope of part 3. We'll move on with the other three witnesses, and I'll have you back at the end of the agenda to finish your ten minutes.

Is that okay?

Mr. David McGuinty: It's fine.

The Chair: Thank you.

Mr. David McGuinty: I don't need a briefing, sir. I can adjust my remarks extemporaneously quite comfortably.

The Chair: Part 3 is going to take me some time to explain to you. I would rather that somebody explain it to you not in the use of the committee's time. That will give you an opportunity to review that. We'll move on with the other witnesses right now and we'll get back to you at the end.

National Chief, the floor is yours for up to ten minutes, sir.

Can somebody please brief Mr. McGuinty on the...?

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

[*Witness speaks in Nuu-chah-nulth*]

Thank you for that pronunciation as well. My name is A-in-chut... [*Witness speaks in Nuu-chah-nulth*]

Just a few words in my Nuu-chah-nulth west coast of Vancouver Island language to express my appreciation for being here in Algonquin territory.

Thank you for the opportunity to speak to you today about part 3 of Bill C-38.

As you are aware, I am currently national chief for the Assembly of First Nations. We are a national political advocacy organization for first nations in Canada.

In January of this year, first nations and representatives of the crown and the Government of Canada participated in a historic crown-first nations gathering. The intent of this gathering was to strengthen and reset the relationship between the crown and first nations, to move away from unilateral imposition of policies or laws that have had impacts on first nations peoples and territories to one that recaptures mutual respect and partnership.

Bill C-38 and the wide-sweeping and comprehensive changes to other pieces of legislation it contains continues historic unilateralism and imposition that we have worked, and continue to work, to overcome.

In November 2010, Canada endorsed the United Nations Declaration on the Rights of Indigenous Peoples, which reflects the recognized customary international legal standard of free, prior, and informed consent. Free, prior, and informed consent, Mr. Chair, is not mentioned anywhere in Bill C-38.

Domestic law recognizes and enforces the duty to consult and accommodate first nations when crown conduct or omission may adversely impact established or potential aboriginal and treaty rights. Part 3 of C-38 will have a direct impact on the federal government's ability to fulfill these standards.

The Assembly of First Nations, to be very clear, is not a first nations government. Consultation or engagement with the AFN does not replace or fulfill the crown's duty to consult and accommodate treaty and rights holders where their rights may be infringed. To date, first nations have not been engaged or consulted on any of the changes to the environmental and resource development regime proposed within Bill C-38. This opens the crown to future risk and will have numerous and likely unintended consequences.

The stated intention of these legislative and associated regulatory changes has been said to improve the timeliness and efficiency of environmental regulations and project assessments. In its current form, part 3 of C-38 clearly represents a derogation of established and asserted first nations rights. If enacted, it will increase the time, costs, and effort for all parties and governments, as first nations will take every opportunity to challenge these provisions.

There are a number specific concerns, Mr. Chair, with the changes proposed in part 3 of C-38, which I will outline.

As I know you're aware, C-38 changes the scope and purpose of the Fisheries Act to the protection of fish that supports commercial, recreational, or aboriginal fisheries. Previously the act had prohibited “harmful alteration, disruption or destruction of fish habitat”. The proposed change prohibits “serious harm to fish”, defined as “the death of fish or any permanent alteration to, or destruction of, fish habitat”.

I come from a fishing people, the Nuu-chah-nulth, as I said, on the west coast of Vancouver Island.

[*Witness speaks in Nuu-chah-nulth*]

In my language, core principles that we govern ourselves and live by are how our people manage aquatic resources within our respective territories. These words in my language describe an understanding about the interconnectedness of all life forms, that nothing is isolated from other aspects of life around it and within it—in essence, the ecosystem. These principles are the basis for respect for ourselves, others, and nature. In managing aquatic resources, these values bring respect for the oneness between humans and the environment and respect for all other life forms. Our obligation is to sustainably manage all aquatic life forms that exist, regardless of their perceived economic value.

The balance of resources in habitats is one that changes over time, and this is something well-known to first nations. However, only enabling the protection of aquatic species once there is certainty of their demise or permanent destruction of their habitats is likely too late and will not restore the necessary balance for their sustainability.

Specifically, C-38 would remove protection for fish habitat from the Fisheries Act and enable the minister to create regulations allowing for the deposit of deleterious substances. This may leave fish species and habitats vulnerable to destruction and prevent first nations from continued enjoyment of their constitutionally protected right to fish.

● (1845)

I feel strongly that first nations have a shared vision with all Canadians, particularly for clean water. Our watersheds provide us life, food, and health. Bill C-38 clouds that vision by creating new political discretion to poison our waters by changing section 36 of the Fisheries Act. Instead of allowing deleterious deposits to destroy our water, we must fulfill our inherent obligation as responsible stewards of the environment.

Changes to the Fisheries Act will also reduce federal decision-making about fisheries management, the effect of which will be to narrow the triggers to consult and accommodate first nations, thereby reducing the federal obligation. First nations will vigorously oppose any attempts by the crown to erode or evade lawful obligations and responsibilities to first nations, which leads to an important element regarding the honour of the crown being called into question.

The CEAA last underwent a legislative review prior to Supreme Court decisions that established the duty to consult and accommodate. The sequence here is very important to point out. It has never been updated to operationalize the duty to consult and accommodate. In this regard, Mr. Chair, CEAA 2012 is a step backward.

Under the current CEAA, projects with minor environmental effects may have profound effects on first nations' rights, which triggers the duty to consult and accommodate. CEAA 2012 ends environmental assessments for minor projects currently referred to as “screenings”.

In addition, CEAA 2012 will continue substitution of provincial environmental assessments for the federal process as well as deem equivalency of such processes, which would exempt CEAA 2012 from further application.

The government is correct to note that where relationships with first nations, provinces, and the federal government have already been established, such as the Mi'kmaq-Nova Scotia-Canada consultation process, substitution in those cases may work well. But this also raises significant concerns, and it could very well lead to more situations that I know many are familiar with, such as the Prosperity Mine project in the interior of British Columbia, which was approved through the provincial environmental assessment process but subsequently rejected following more stringent federal review.

This also invokes for many first nations—for those of you familiar with the situation across the Prairies—the Natural Resources Transfer Agreement, or NRTA, of 1930. This was a unilateral agreement between Canada and the provinces of Manitoba, Saskatchewan, and Alberta to transfer resources and lands that were never ceded or surrendered by way of treaty by the first nations—another major impact.

The impact of the NRTA has been to lesson the scope and implementation of the numbered treaties in the Prairies, and it is a source of continued and ongoing conflict and litigation over 80 years later. This is about all of us, and for Canada, learning from history. This is what the recent crown gathering was an effort to reflect on, and to do much better going forward. First nations will not stand for such unilateral actions and will take all avenues available to them to prevent further derogation of their rights.

The increase in discretionary powers afforded to the minister within the Fisheries Act and the number of cabinet decisions under CEAA 2012 and the National Energy Board Act will severely impair transparency and accountability to first nations. The broad restrictions around cabinet confidences will mean first nations will find it increasingly difficult to know how the government considered first nations rights when developing accommodation measures. This too compromises the crown's ability to discharge its duty to consult and accommodate first nations and is an area for clear challenge.

Finally, on the issue of timeframes established for first nations to respond to notices under CEAA 2012 and the National Energy Board Act, they are insufficient, not allowing adequate time for appropriate review, analysis, and response. It's unreasonable to provide first nations with only 20 days to provide comprehensive scientific and legal materials related to assessing the potential impacts of a project. Any notices under CEAA, NEB, or the Fisheries Act related to development, authorizations, regulations, or policies must be sent directly to communities in an accessible form. The use of online notices limits first nations participation and is therefore insufficient to fulfill the crown's duty to consult with first nations.

While the government has an established legal duty to consult and accommodate first nations under Bill C-38, part 3, as well as any regulations developed under the authority of the act and any new policies created to interpret the act, such consultations have not yet taken place.

● (1850)

Numerous organizations in addition to the Assembly of First Nations, including MKO, in Manitoba, and the Union of B.C. Indian Chiefs, have all registered protest to the CEA agency's call for public comments on regulations to be developed under CEAA 2012, which had a deadline of May 23, 2012.

Paragraph 62(h) of the CEAA and paragraph 105(g) of the CEAA 2012 state that one of the objectives is to consult with first nations. However, to be clear, there's been no identification of a process for funding for such consultations to take place.

In conclusion, Canada, in our view, needs to take a step back and reconsider its approach. Hastily moving forward on significant and broad changes that will impact the exercise of established and asserted rights by first nations will have long-reaching and expensive consequences, contrary to the interest in moving in this direction.

Taking time to work with first nations jointly on resource management and protection plans will achieve far better outcomes in terms of certainty and increased prosperity, and we have many examples we can point to. This is the spirit in which, as I said earlier, we participated in the crown-first nations gathering, and it's in this spirit of a renewed and respectful relationship that we urge Canada to proceed.

We have the following three recommendations:

Part 3 of Bill C-38 needs to be withdrawn to take the time to work with first nations to ensure their rights and interests are reflected and will not be compromised through such legislation. Failing that, I would recommend that the legislative amendments in part 3 be separated from the main bill to ensure appropriate study and amendments can take place with engagement and input from first nations.

Specific funding allocations should be made to engage and consult with first nations on CEAA 2012, amendments to the Fisheries Act, amendments to other legislation within part 3 of the act, regulations under the amendments, and any new policies relevant to the interpretation of amendments to new or existing environmental regulation.

Finally, any and all notices provided with regard to project reviews must be sent directly to first nations.

Bill C-38 unacceptably impacts first nations' rights. While I've been speaking about fish tonight, really I'm talking about the lifeblood that connects all of us, and that's our waterways, our watersheds.

I will close on that notion that we not forget about the need for a vision going forward to achieve pristine water in our country.

● (1855)

The Chair: Thank you, Chief.

Mr. Denning, for up to ten minutes, please.

Captain Fred Denning (President, The British Columbia Coast Pilots Ltd.): Thank you very much, Mr. Chairman and members of the subcommittee. I appreciate the opportunity to appear before you today to speak briefly on a subject that is close to the hearts of all of Canada’s 400 marine pilots—tanker safety.

I'm Captain Fred Denning, and I'm the president of the British Columbia Coast Pilots and the vice-president for the Pacific region of the Canadian Marine Pilots’ Association.

There are 110 pilots based on Canada’s west coast. They serve the entire coastline of the mainland as well as the coasts of Vancouver Island and the Haida Gwaii, formerly referred to as the Queen Charlotte Islands.

As you may know, the entire coast of British Columbia is designated as a compulsory pilotage area, and our B.C. pilots board every vessel of a certain size and type. The assignments can be long and difficult. Both our coastline and the weather can be very challenging. I’m happy to say that we manage to pilot thousands of vessels in and out of B.C. waters every year, virtually without incident.

My maritime career spans 42 years, the last 22 of them as a marine pilot licensed under the authority of the Pilotage Act, which was passed by the Parliament of Canada in 1972.

Having mentioned the Pilotage Act, I do not want to pass up this opportunity before such a group of parliamentarians to say how well this particular act of Parliament works and serves both the people of Canada and its economy. For 40 years, Canada has had a pilotage system that is at least as good as the systems anywhere else in the world. Pilotage costs are among the lowest, serious marine incidents are few, and the service is quick, responsive, and flexible.

B.C. Coast Pilots have often been called on to provide expert advice and opinions on matters related to safe berthing and navigation of ocean-going vessels. Of course, much of this advice is provided to the Pacific Pilotage Authority, the federal crown corporation responsible for pilotage on the west coast and the agency that contracts with the B.C. pilots to deliver pilotage service.

We also work with developers and regulators in order to ensure that pilotage-related issues not only have been taken into account but have been fully understood. We have consulted on the development of new cruise ship terminals in Nanaimo, Campbell River, and Victoria.

B.C. Coast Pilots also developed a tug protocol for the safe passage of larger ships entering and leaving at Prince Rupert’s Fairview terminal. At Deltaport, just outside of Vancouver, we helped establish operational weather limits and tug requirements for the very large container ships using the expanded terminal.

More recently, and more relevant to the concerns of this subcommittee, B.C. Coast Pilots have helped develop procedures for ships to move in and out of coastal ports with the highest level of safety possible, thereby protecting and preserving the coastline and surrounding environment.

In respect of the Enbridge Northern Gateway project, we have explored a number of different operating scenarios and have developed risk mitigation strategies for those operating scenarios. In Vancouver, as a result of Kinder Morgan’s need to increase the draft of tankers transiting the harbour, we participated in a two-year risk management study that resulted in major revisions to the regulations applicable to vessel movements through the Second Narrows in Vancouver Harbour.

We have also been involved in the development of new tug escort procedures, using both simulators and live ship trials. New navigational aids were also identified to provide visual confirmation of the position of ships in the channel during transits, and I'm happy to say that these have now been installed by the port.

Another mitigation factor identified for the heavier tankers through the Second Narrows was a navigation system to be carried by pilots, independent of the ship's own equipment. This led to the development of the so-called portable pilotage units, or PPUs, which are tailored for the unique pilotage conditions on the B.C. coast and are now used coast-wide.

In all of this work, marine pilots have helped develop an approach and process that is recognized as leading edge in terms of providing for an unparalleled level of safety for ships. In all cases, marine pilots had no off-the-shelf answers or solutions to the issues or challenges they were presented with. Every time, we had to gather and study a lot of information—for example, tides, weather, currents, size, type, and number of ships, berth considerations—and then undertake simulations with actual trials. Only then were we in a position to comment on feasibility, degree of safety, and possible risk mitigation strategies.

● (1900)

None of this, however, makes B.C. marine pilots able to speak on questions related to the environmental assessment and approval process applicable to the Northern Gateway project or any other such undertaking. Similarly, as marine pilots, we have no comment on the wisdom of the proposed routing of the pipeline itself.

What we can talk about in an informed way, however, are some prudent measures that should be in place for the transit of tanker traffic in the waters of a port such as Kitimat, or anywhere else along the Pacific coast of British Columbia.

The following measures are of particular interest to marine pilots, and they will mitigate the risk.

First, all vessels entering the marine terminal should be modern and double-hulled and vetted by independent third-party agencies as meeting high safety and environmental standards. It is our understanding that this would be the case at Kitimat.

Second, vessel speed should normally be reduced in marine channels. In the case of Kitimat, transit speeds would be reduced to between eight and 12 knots, which is a speed range in which escort tugs can effectively work.

Third, an enhanced radar system would be necessary to provide coverage of important route sections. It would provide additional information to pilots and all marine traffic on the coast. In the case of Kitimat, the information we have is that such a system is to be installed, as are additional navigational aids throughout the channel.

Fourth, powerful tug escorts need to be available to assist tankers wherever there may be a need, with loaded tankers requiring a tethered escort tug for the entire passage in pilotage waters. A commitment has been made for this to be the case at Kitimat.

It will be up to the environmental review panel to assess the proposed pipeline development through northwest British Columbia to the coast. They have a big task in front of them. Ultimately they must balance real environmental concerns with Canada's need to secure its economic future.

For our part, B.C. Coast Pilots can only say that it appears that all reasonable measures to mitigate risk at Kitimat and along the coast have been agreed to. It will be up to the review panel to determine whether the measures are sufficient.

Thank you.

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

We'll have Dr. Schindler, for up to 10 minutes, please.

Dr. David Schindler (Professor of Ecology, Department of Biological Sciences, University of Alberta, As an Individual): Mr. Chairman and members of the committee, I have given Mr. Lafleur several copies of my presentation. It has some figures, and as a result I will not read it. I've always had a thing about somebody giving me something to read and then reading it to me, which is usually one-tenth as fast. So instead, I'll just hit some high points.

Figure 1 is my first point. It shows the rate of increase in the oil sands area, a doubling every 10 years. I can tell you first-hand that a lot of the environmental problems that are developing are because of that rate of development. That rate of development is only matched by China, and it's only been matched in the past during times of war. I wonder what's the hurry. I think we need to take the time to change Bill C-38 to get it right, at least the environmental part of it.

I'll show you several examples of provisions of the bill that don't make environmental or economic sense. The first is the proposed change to species of economic, aboriginal, or recreational value. I'll give you an example from the Experimental Lakes Area, which I directed when I was a scientist with DFO for 22 years. Those were the days when acid rain was considered a problem, or it was debated as to whether it was a problem.

Most of the data, when we began our experiments there, were from short-term lab toxicity studies, mostly done on the fish of interest for economic or cultural reasons. It was decided that acid rain wasn't a problem until these systems reached pH 5.

We began acidifying a small lake to see what happened along the way. We found that some of the key species of food for lake trout were ten times more sensitive. They disappeared when the lake hit pH 6. They were species that would not have been protected by this proposed wording change. Fathead minnows and opossum shrimp, a large crustacean that have co-evolved with the lake trout, are its main items of diet in many lakes. So it's an example of how these key species would not have been protected.

We nearly lost the lake trout in that lake, not because of the toxicity to them but because these other two species that were non-target species disappeared. The lake trout began to starve and they stopped reproducing and the population went into decline.

That's the kind of loophole that we can expect from the proposed change in wording. Some of the figures are of those very organisms. In that same pH range between the normal pH of 6.5 and 5, where it was believed that damage began with our whole ecosystem experiments, we lost 50% of the normal species in the lake. Most of them would not be targeted by the proposed changes.

What it meant was that we lost several key processes in that lake: key biogeochemical processes like nitrification, so we had an ammonium buildup; changes in algae, so that instead of clear water with algae that would be grazed by plankton and zooplankton and then eaten by fish, we had big balls of rolling algae on the bottom of the lake.

So expect big declines in biodiversity without this protection for fish habitat. The work done at ELA was never done solely because of the fish. It was all regarded as work on fish habitat.

● (1905)

I think it's a weakness of our current DFO that we have Environment over here studying the environment and Fisheries over here managing fisheries in isolation from the very ecosystems that support it. We're almost unique in the western world for that approach. It is outdated by 70 years. We have to realize that fish are a part of an ecosystem and need to be regulated as part of it. We shouldn't have these disparate things.

If you look at the various mandates of Fisheries, they all have cod or salmon in the top 20 priorities. There is nothing on inland fisheries at all. Yet a lot of our people—mostly aboriginal people and a lot of our recreational fisheries—depend on freshwater fisheries. I can tell you that provinces don't do any research on them, and I have lived in three provinces. It has been up to the federal government, and that mandate should continue.

In the press, soothsayers for DFO have told us about all of the nasty things that happen—how concerts have to be cancelled, and irrigation water back-flow can't be discharged because there are a few fish in it. To me that seems analogous to saying we should be throwing out murder as a charge because there were boo-boos in the Robert Pickton case, or we should get rid of police because of a botched policing action around G20. They're exceptions to the rule.

I can tell you that with 22 years as a DFO scientist, and a daughter with 10 more as a habitat officer, there are some very practical things with respect to habitat that are done. One common example that's very inexpensive to do right, but very expensive to fix afterwards, is called hanging culverts. Typically, someone with no knowledge of fisheries will put a culvert across and water flows through it. There's no regard to whether the flow might be too fast for fish to come upstream and use what is often key spawning habitat. I have seen cases in Alberta where one culvert cut off red-listed bull trout from 60% of their spawning habitat in a stream. The rate of flow through the culvert can be too high. There are simple design features to make them level enough so fish can go through them, or broad enough so the flow can be tolerated by fish—or with some resting baffles. They are very simple things to do.

My daughter was a habitat officer for DFO in the Bella Coola region. She reports that she has never had a hostile incident. The contractors there were always happy to have the design input, and proud of the fact they could put in road crossings and maintain the salmon and other species that were using those streams.

Another example given in the press was lakeshore development. I chaired a committee for the Minister of Environment in Alberta on lakeshore development in Lake Wabamun. All of the cottagers pointed at the big power plant, but we found that the main damage was due to people putting in docks and beaches where there should have been fish habitat. I give you some examples of how cottage development destroys fish habitat, based on studies done by my son in the U.S.

Much of what I have said also applies to terrestrial species. I give you two Alberta examples: sage grouse and woodland caribou. We have known for 20 years that caribou were on the skids. Now we have Environment Canada reporting that it's questionable whether we can recover them at all. The sage grouse probably is not recoverable; it's near zero. Both of them are near zero because their habitat was not protected. We don't need any further weakening of habitat revisions.

To finish, I support the idea of streamlining the review process, but not necessarily to hurry development. The way to go about it isn't to weaken our environmental laws; it's to streamline this stupid process by which the science is collected by a few students who work for consulting firms, 10 pages are hidden on a long shelf, and a committee is expected to find them and make sense of them in a year or less.

● (1910)

It's time we had an organization that did professional environmental impact assessments, based them on good long-term monitoring—we usually know in advance when those systems are going to be targeted for development—gave us an unbiased view of what the changes to those systems would be, and then went back afterward to see if their changes were correct. That's something that is not done in our current environmental impact process. It's not a science, because that self-correcting action simply does not occur.

Thank you for your time.

The Chair: Thank you very much, Dr. Schindler.

Mr. McGuinty, we're going to go back to you, and we'll start the clock over at 10 minutes. I think we have worked out some of the issues we had at the start, and I thank you for your patience.

Please begin.

Mr. David McGuinty: Thank you for your consideration, Mr. Chair, and thank you, again, to the members of the subcommittee.

I think the best place for me to begin is to talk about the fact that, of course, CEAA is being repealed in its entirety, and perhaps more importantly, the preamble to CEAA is being repealed. If you look at the preamble of CEAA by itself, it is perhaps one of the most definitive statements of Canada's objective to achieve sustainable development going forward, through the reconciliation of the environment and the economy, for Canada's ultimate well-being.

In fact, the processes by which we achieve sustainable development in this country have been led chiefly by Canada's National Round Table on the Environment and the Economy. Changes contemplated to CEAA, to the National Energy Board, and to the Fisheries Act, as well as the imposition of what can only be described as arbitrary assessment timelines, have a direct and causal connection, a direct bearing on Canada's sustainable development.

Because the round table is Canada's primary agency to help us achieve sustainable development, let me take a moment to address what the NRT might be able to do to help Canada and the government make progress in this regard. In fact, the changes that are being contemplated should be, in my view, referred to Canada's National Round Table on the Environment and the Economy. Let me say why.

First, these changes would benefit—as Chief Atleo has pointed out—from being hived off, from being separated out from the bill, so a national multistakeholder independent consultation process could be conducted. That's why, for now at least, the National Round Table on the Environment and the Economy exists: to help ground-proof the proposed changes that are being put forward by the government. It would be apropos for the Prime Minister to refer these changes to what was, up to recently, his own agency, before it was demoted, so to speak, from having the PMO to having Environment Canada as a reporting structure.

Let me talk a little about what the national round table could help Canadians with when it comes to these very significant changes. I think, first, if there was ever a time when Canada needed a multi-stakeholder body and a process that worked to reconcile competing interests as we look to strengthen our economy, enhance our ecological integrity, and improve our well-being to deal with the changes in this part of the bill, it's now.

The round table isn't merely a research institute. It's not a publication house, as several ministers would have us believe. Of course, it performs background research—and it could do so with respect to these passages—and issues reports providing advice to the government, but its most important function would be to allow for debate and deliberation. There is no substitute for a body that convenes all the important players as we look to make progress.

This is not a function the government can fulfill, because it is ultimately the government that receives advice from its own round table. It can't be accomplished by a university or a research institute or through the Internet. The value of the process conducted by the national round table is in providing advice in the form of practical options for change.

Let's talk a little about some of the options the round table might actually explore under part 3 of this bill. For example, why couldn't the national round table, on behalf of the government and the people of Canada, take part 3 and examine regulatory reform in its entirety? Why can't we, for example, look and see what is happening at the provincial level where there is duplication, where there is triplication in some instances? Why don't we actually take a long, hard look at what is happening at the provincial level to see where we can find best practices? Why can't the national round table at the same time look to international comparative examples to see what has worked in other jurisdictions? For example, let's see how many OECD countries or G-20 countries have imposed arbitrary timelines when it comes to conducting environmental assessment processes.

Let's explore what it means when the Minister of Natural Resources says that federal and provincial government regimes will have equivalency when the federal government adjudges that provinces have the capacity to conduct environmental assessments. What does that actually mean in practical terms?

● (1915)

The round table could go further. First, it could hold its hearings in public and be fully televised for Canadians, as these hearings are being televised. It could work to improve Canada's energy and environmental regulatory regimes and integration by addressing other elements. As I said, a complete examination of the interface between existing energy and environmental law and regulations: the mandate, the operations, and the funding levels of the National Energy Board and the Canadian Environmental Assessment Agency; where applicable, overlap and duplication between federal and provincial energy and environmental regulatory regimes; an examination of the fairness of the independence and the use of evidence in regulatory processes as we make these contemplated changes to the NEB.

Let's talk and have a round table address on behalf of the government, the public access, and participant funding in review processes, aboriginal consultation best practices, as Grand Chief Atleo referred to, and, as I said earlier, comparative international approaches. Let's talk about these arbitrary timelines in this sense: let's have the national round table perform an analysis of all the environmental assessments that have gone on over the last, say, 30 years. Let's look at how long they've taken, and then let's try to find out why there were such delays. Were the delays on behalf of the project proponents or on behalf of the capacity of the regulatory regime to conduct the hearings? These are the kinds of questions....

And perhaps finally, Mr. Chair, I'd like to see the national round table examine these changes under part 3 in this context: I'd like them to advise Canadians and the government on the implications of NAFTA's proportionality clause with respect to energy security.

We could even go further, building, for example, on timelines and the mandate changes that are being proposed. The national round table might, for example, Mr. Chair, advise Canadians on the notion of pricing carbon. A good point of departure for that might be asking them to examine the speech given by Prime Minister Harper in 2008, when he committed Canada to delivering a price of $65 a tonne for carbon by 2016-2018. It would be important to see what the contemplated changes in part 3 do to the government's commitment, not only in terms of pricing carbon, but also the government's commitment to achieving 17% reductions of its GHGs in the next seven and a half years. I think that would go some distance, Mr. Chair, in helping Canadians understand the massive implications of the contemplated changes.

I have a number of national processes in front of me, examples of processes conducted by the national round table, which would form, I think, wonderful precedents for the round table to rely on in order to conduct that deliberative process.

In most instances the round table engages somewhere between 200 and 500 stakeholders across Canadian society, including government officials, who often sit back and watch the deliberations so they can learn from best practices, best evidence, best research, best approaches going forward.

I can take a few minutes, Mr. Chair, to highlight some of these that I think are very apropos, but perhaps to wind up, the fact that the National Round Table on the Environment and the Economy exists is a wonderful asset for Canada. The processes it conducts have been nothing short of inspirational for over 80 national councils for sustainable development all over the world. They have been inspired by the national round table, inspired by its practices, and I think Canada and Canadians ought to be proud of what the round table has done for the country, and I think could really use its help at this stage. It's simply unfortunate the government has decided to eliminate Canada's National Round Table on the Environment and the Economy.

Thank you, Mr. Chair.

● (1920)

The Chair: Thank you, Mr. McGuinty.

Thank you to our presenters.

We're now going to proceed through the question and answer portion.

The first round of questioning is for seven minutes.

Mr. Kamp, go ahead, please.

Mr. Randy Kamp (Pitt Meadows—Maple Ridge—Mission, CPC): Thank you, Mr. Chair. Thank you, gentlemen, for taking time out of your busy schedules to appear before us on these important issues. I appreciate your being here.

Let me begin with a fellow British Columbian, Chief Atleo. We care about some of the same issues with respect to fisheries. Unless I heard you incorrectly, I thought you were characterizing the changes in Bill C-38 as removing protection of fish habitat. To be frank, I'm not sure how you came to that conclusion. I would have thought you would welcome a more focused approach to protection of recreational, commercial, and aboriginal fisheries. That protection is in a prohibition in the new section 35, which is defined as serious harm to fish, the death of fish, or any permanent alteration to, or destruction of, fish habitat.

I'm just curious, and let's take the Nuu-chah-nulth, for example, and their aboriginal fisheries. Wouldn't this include all those fisheries and all of the habitat that supports those fisheries, and place an obligation on the Minister of Fisheries and Oceans to protect that habitat in order to protect those fisheries as a clear reading of this proposed section in the bill?

● (1925)

National Chief Shawn A-in-chut Atleo: Mr. Chair, as a fellow British Columbian, this is a really important and meaningful aspect. The amendments to the Fisheries Act are not conservation-oriented. Merely protecting aboriginal fisheries from “serious harm” is not adequate to ensure continued access to sustainable healthy fish stocks. Serious harm, as is understood in this case, only prevents permanent damage, and it's unclear what we're speaking about when we talk about permanent damage.

I think a related issue is exactly to a point like this and the question that's been raised: the lack of proper funding for engagement in consultation. The Assembly of First Nations agrees with DFO's 2012-13 report on plans and priorities, where it's stated that the department “may not be able to adequately maintain public trust and confidence, and subsequently its reputation”, when it comes to the full and formal engagement of first nations. Both the question as well as the reference, in my view, suggest the need for giving effect to Sparrow, Marshall, and most recently the Ahousaht case—and I was a claimant in that case—where our rights are upheld and are in addition to the constitutionally recognized and protected aboriginal title and right, as well as the rights identified in the UN Declaration on the Rights of Indigenous Peoples.

In this case, it feels very much, Mr. Kamp, as though we're being treated as an afterthought. The entire intent of the crown-first nations gathering was to say that we've got 50 years of jurisprudence, constitutional recognition, a UN declaration, and treaties going back 267 years, and it's time we put this relationship back on a foundation of mutual respect and recognition so that we can develop a shared vision for fisheries, fish habitat, and we can arrive at a shared notion of what constitutes serious harm.

Mr. Randy Kamp: With respect, Chief Atleo, I understand your point of view, and I'm sympathetic to it. I think the question is whether a budget implementation bill in which we're making some changes to the Fisheries Act in order to support resource conservation and development is the place to address those broader issues, in terms of aboriginal issues. I would suggest it probably isn't.

Let me move on to Mr. Schindler. I thought I heard you say that there are fish that are not part of a commercial, recreational, or aboriginal fishery, and somehow they wouldn't be protected and that would be a mistake. Doesn't the wording in the new prohibition say that “No person shall carry on any work, undertaking or activity that results in serious harm to fish that are part of a commercial, recreational or Aboriginal fishery” and fish that support them?

Dr. David Schindler: How are we going to know that, when at the very time this is happening, Fisheries is cutting off its habitat officers and the people who study northern contaminants? Northern contaminants in fish is a big aboriginal concern. How will we know whether these things are happening if eliminating this from the act is used as an excuse not to study them? It's like no see 'em, no hear 'em, no do 'em.

Mr. Randy Kamp: How do you reach that conclusion when the act will clearly say that the new focus of fisheries officials will be the protection of fisheries? That includes the fish that support those fisheries and the habitat that supports those fisheries.

This will now be an obligation. It will continue to be a more focused obligation of the Government of Canada to protect those habitats and those fish that support those fisheries. Wouldn't you agree?

● (1930)

Dr. David Schindler: I would say that I don't see that being done. If that were being done, I would agree with you. But I know what's happening to Fisheries right now. I have many colleagues there. Anything to do with habitat and contaminants is being cut. So how will we ever know whether they're being contaminated or whether these non-target species are dying and causing problems?

Mr. Randy Kamp: With respect, I think that's a different issue and a different question. In fact, the minister has said that this is a new strategic direction. It's a new foundation. We need to build a policy framework that will require consultation and discussion. And that is still to come.

The Chair: Thank you, Mr. Kamp. Unfortunately, the time has expired.

We're going to move to Mr. Chisholm now and have an opportunity to hear his questions.

Mr. Robert Chisholm: Thanks very much, Mr. Chairman, and welcome to the witnesses. Thank you very much for taking the time to come here and share your considerable wisdom on the matters before us.

Chief Atleo, I want to go to you first.

I'm from Nova Scotia; I'm from the other coast. When I was thinking about this and looking at the changes to the Fisheries Act, I was wondering how I was going to understand what's going on. I picked up the phone and called somebody I think you know—Charlie Dennis, an advisor and a former chief. He is somebody who set up the Unama'ki Institute in Eskasoni. That's an organization that was formed by the five bands on Cape Breton Island for the sole purpose of looking out for the natural resources, in particular the Bras d'Or Lakes.

He told me they hadn't been consulted. He sent me a letter, and he said that the accepted observation of Mi'kmaq elders is that there are no healthy organisms without healthy habitat. He went on to say that on several occasions, the first line of involvement for the institute on an issue or development in the watershed is via an environmental assessment. He said to me that our responsibility for protecting that ecosystem of the Bras d'Or Lakes is going to be greatly hampered by what is proposed in these changes.

This is a man I have so much respect for. He has been a leader in this area, and his wisdom has not been brought to the fore.

I wonder if you would comment on the role the Mi'kmaq played in protecting and trying to improve the natural resources in Nova Scotia and in my home town.

National Chief Shawn A-in-chut Atleo: When I briefly cited some of the court cases, including Marshall...I was at the late Donald Marshall Jr.'s funeral when he passed away. He was an iconic figure for indigenous peoples, not just in this country but globally. What the Mi'kmaq and others who have led these challenges have been undertaking is really twofold, and it speaks directly to your discussion here.

When I mention Marshall, Sparrow, Nuu-chah-nulth, and Gladstone, we're talking about decisions that have yet to be fully implemented. Yet first nations, like I think a lot of people, want to give effect to a notion about sustainability. They want to have an enduring relationship with the environment around them.

I want to be very clear, though, that in this respect, first nations, the Mi'kmaq alike, are not just stakeholders and not just members of the Canadian public. They have rights. They are treaty rights holders. They have constitutionally protected rights that have yet to be implemented.

I made it very clear, when we had a visit from His Royal Highness, the Prince, that these treaties predate the establishment of Canada, and with the new UN declaration, Canada has an obligation to work with first nations to implement those rights. Going back to the original Agenda 21, Canada signed on to an international declaration stating that first nations, indigenous peoples, must be involved in defining sustainability.

The example you've cited is an example where first nations, as I said in my presentation, are prepared to work with others to accomplish that. The challenge is that even within this effort we have what we believe is an improper effort on the part of the government to create regulations that will restrict, limit, or constrain first nations fishing rights by establishing a limited definition of those rights or by failing to acknowledge inherent rights that have always existed.

That is the core fundamental challenge we have. We see under current environmental assessment processes under the National Energy Board that there at least has been some process, albeit not satisfactory. It's not fully grounded on full respect and recognition of inherent indigenous peoples' rights, aboriginal entitlement rights, and treaty rights, but it's a place to go. What we see here is a move away even from the current processes.

I can state, I think very unequivocally, that even in my cursory discussions with first nations, that first nations don't object to development; they just don't support development at any cost. I think there's a shared notion around an interest in efficiency and creation of economies and creating jobs.

We see the Mi'kmaq leading in this in so many respects, including in this area, so it is with that spirit that we come here to offer testimony. I hope that sheds some light. We want to honour our eastern relatives, the Mi'kmaq, for their leadership in this area for a long time.

● (1935)

Mr. Robert Chisholm: Thank you very much, Chief. I want you to go a bit further on the whole question of the duty to consult and accommodate, the fact that this has not been recognized in the proposed changes.

There is reference to delegating to a province, for example, but there's nothing in terms of first nations people. I wonder if you could take that a little further in terms of the implications with this language as it relates to delegating authority to only the provinces.

National Chief Shawn A-in-chut Atleo: I think that really is a two-part issue. First of all, we're not sure that the federal government can give up its responsibility to deal directly with first nations—its duty to consult and accommodate. It was the reason for the recent crown-first nations gathering. The relationship is with the crown, and in the steps that were set up in the outcome statement that the Prime Minister issued, it offers the notion that we have to work together to address a way forward, which is what this bill oversteps. This effort oversteps the sentiments that we arrived at this last January.

It relates directly that there is not support from the AFN for the government's current definition of aboriginal fisheries. The Supreme Court of Canada has routinely recognized first nations' right to food, social, and ceremonial...and in the case like mine, the Nuu-chah-nulth commercial fisheries. Many of these cases recognize first nations fishing rights. Bill C-38 does not capture the full scope of first nations fisheries, and it can be interpreted in fact in a way as to limit, prejudice, derogate, or abrogate from first nations fishing rights.

In both content and process there are substantial challenges that first nations face with this bill. Therein lies the suggestion that we do as we've done with other major pieces of legislation. We do have a track record with this government and other governments of jointly designing a way forward, and we would encourage the committee to look deeply at this.

The Chair: Thank you, Chief.

Thank you, Mr. Chisholm. Your time is up.

Ms. Duncan, you have seven minutes, please.

Ms. Kirsty Duncan: Thank you, Mr. Chair, and thank you to all the witnesses for coming.

I'll begin with Mr. McGuinty.

We know that the new act renews key triggers for federal EA. No longer will federal money cause an EA. There will be fewer environmental assessments and they'll be narrower in scope.

According to the environment minister:

> The new environmental assessment process is no different from the old environmental assessment process, except for the improvements that all three of us here today have listed for you.

He's referring to the ministers.

I wonder if you can comment on his statement, please.

Mr. David McGuinty: Thanks for the question. This is exactly the kind of statement that should be subjected to the light of day and scrutiny through an impartial arm's-length, independent, objective, fact-based, science-based, and evidence-based process. That is why these changes should be hived off and referred directly to Canada's National Round Table on the Environment and the Economy to conduct precisely that kind of ground-truthing, shall we say. There's a clear difference between the political rhetoric we've heard and the reaction on the ground.

In fairness, every stakeholder I have spoken to who's in favour of seeing this kind of process conducted is in favour of improvement. I don't think there's a single Canadian who's saying, “Yes, let's delay projects for the sake of delaying them. Let's make them more difficult and more costly.” Everyone wants to see improvement.

The question is, can we take what the ministers are saying at face value? With all due respect to the ministers, I don't, and I think most stakeholders don't. So it would be very apropos to send this to the national round table—just building on some of the comments Chief Atleo made, for example, when the question arose about consultation.

The national round table conducted a fabulous piece of work on aboriginal communities and non-renewable resource development. There's an entire section on the challenges of the consultation and how they might be overcome. This is exactly the kind of information the government would benefit from, in my view.

● (1940)

Ms. Kirsty Duncan: Thank you, Mr. McGuinty.

In the absence of a national round table, what remaining institutions could perform the evidence-based consultative analysis you're suggesting, please?

Mr. David McGuinty: In my view, having worked with hundreds and hundreds of wonderful members on the national round table, and over nine years with tens of thousands of Canadians who have participated in their processes, I don't think there is a substitute. I don't think the government by itself can conduct these consultations on these proposed changes. I don't think industry by itself can conduct these consultations.

There has to be an agora, some sort of meeting place or meeting point where these competing interests are brought together and we pick up on our common purpose of improving things. We find consensus where we can find it, and we admit that there are differences and there are tough choices to be made.

To suggest, for example, that this might be achievable by using the Internet isn't serious talk. It's not going to help Canadians come to a better understanding of the changes that are being proposed.

Ms. Kirsty Duncan: Thank you, Mr. McGuinty.

Grand Chief Atleo, you have questioned how the government's consultation would be improved simply by increasing funding for it. You have said that the internationally recognized principle of free, prior, and informed consent must be applied before projects are approved.

The environment minister has said that the Conservative government will increase its consultations with first nations through the changes in the bill, with an additional $1.5 million in funding. Do you know how the government actually plans to improve consultations, beyond money?

National Chief Shawn A-in-chut Atleo: I don't know. What I do know is that the government has already allocated $13.6 million to first nations consultation. As a threshold matter, only about $7.4 million, or just over half of that money, is actually allocated to first nations communities for consultation. The rest, as we understand it, is going to support the bureaucracy. Even worse, the funding goes to CEAA. None of it goes to DFO, the NEB, or the CNSC. We really don't know.

On the same note, we also learned, through DFO's report on plans and priorities, that funding for aboriginal programs has been cut by 47.5% this last year. So the issue of adequate consultation and accommodation comes under very serious question. We routinely register concerns about the need for proper consultation.

Ms. Kirsty Duncan: Thank you, Grand Chief.

Grand Chief, you've been very clear. Can you comment on the government's claim that the repeal of CEAA will contribute to better environmental outcomes and "improve consultations with aboriginal peoples"?

I'm hoping Dr. Schindler will step in here, as will Mr. McGuinty.

National Chief Shawn A-in-chut Atleo: As I'm alluding to here, there is not confidence, given the process leading up to the development of Bill C-38. The process for its very development has not been satisfactory, which has been stated more than once here already, such that the AFN must state that we're understandably very skeptical about any potential improvements.

The whole purpose of pursuing the crown and first nations gathering was to seek a return to a much more respectful relationship, whereby treaty rights and aboriginal title rights are respected and affirmed and where we jointly design processes going forward. That means agreeing on how to give effect to constitutionally protected rights for fish, the relationship to fish habitat and to water, and therefore to water quality. The previous processes were not acceptable, so there's a great concern with what is being suggested here.

However, a way forward as well, a solution, is that if we were to agree to take these elements, as we had suggested, remove them, and begin to work in earnest on them, first nations, as I said in my opening remarks at the January 24 crown gathering, are ready to do that work. The work rightfully belongs with first nations themselves, so that's what I would strongly recommend. Given that the AFN, even with the conversations we've had, the technical briefings...those do not constitute consultation. The deep work must be done with first nations. That's the hard work. The harder work is trying to suggest an easy way forward that is going to skip by this effort, and I fear that it's not a recipe for efficiency but rather one that suggests conflict.

● (1945)

The Chair: Thank you, Grand Chief.

Unfortunately, Ms. Duncan, your time has expired. We're almost a minute over.

We'll now move on to Mr. Allen.

Mr. Mike Allen (Tobique—Mactaquac, CPC): Thank you very much, Mr. Chair.

Thank you to our witnesses for being here today.

I have just a couple of questions. I'd like to ask Mr. Denning a question, and then, Mr. Schindler, I have a couple of questions on your testimony as well.

Mr. Denning, you talked a little bit about double-hulled tankers. I also would like to understand what you see as the key safety requirements for ships on the west coast. I'm interested because we're having a lot of this debate on the east coast as well—I'm from New Brunswick. Do you see those as adequately protecting the public and the environment?

Capt Fred Denning: The recommendations that came out of—

The Chair: Excuse me. We have a point of order by Ms. Duncan.

Ms. Kirsty Duncan: Thank you, Mr. Chair.

I'm hoping that someone on the government side can point out to me where this is relevant in part 3.

The Chair: Does somebody want to speak to that?

Ms. Rempel.

Ms. Michelle Rempel: I'm happy to speak to this, because in part 3 the government actually strengthens environmental protection by providing increased safety measures around tanker traffic, including the use of pilots, and I'm very excited to hear about Mr. Denning's thoughts around that section of the budget implementation act.

The Chair: On the same point of order, Ms. Duncan.

Ms. Kirsty Duncan: Could we have the page number for that, please?

A voice: She can read the bill—

Ms. Michelle Rempel: She can read the bill herself—

The Chair: Well—

Ms. Kirsty Duncan: It's not there.

Voices: Oh, oh!

The Chair: I'll look for that, but in the interests of time, please continue with your answer, Mr. Denning. I'll get back to it in a second and see if that section is indeed there.

Before we continue, I have here that the Canadian Environmental Assessment Act, the National Energy Board Act, the Canada Oil and Gas Operations Act, the Nuclear Safety and Control Act, the Fisheries Act, the Canadian Environmental Protection Act, and the Species at Risk Act are all involved. There was a question of tanker safety, which could have broader implications for how it would affect perhaps species at risk, or whatever the case might be, when it comes to environmental protection. So I'm going to humour this for a little while, but I'm going to ask the questioner....

Mr. Allen, if you can stick specifically to part 3 of this bill, it would be much appreciated.

Mr. Denning, your testimony was quite broad. If you can focus on those issues with respect to the environment, that would be what we're looking for here—environment, fisheries, and so on.

Capt Fred Denning: The risk mitigation factors that were identified specifically for the Enbridge project would establish standards that are as high or higher than anywhere else in the world that we're aware of. The possibility of a significant oil spill is something that none of us wants to consider.

As pilots, we all have our communities, our homes, what have you, on this coast. Our work was done specifically to look at the conditions we would face moving ships in and out of Kitimat. Now, we have been doing that for many years, and our rate of incidents is next to zero.

The implementation of the larger vessels was seen by some as increasing the level of risk. After many years of study, including many trips to some very high-tech simulators in Europe, as well as the live ship trials, it confirmed with us that if we put the risk mitigation factors in place that were recommended, it would increase the levels of safety and protect the environment, which concerns us all very much.

● (1950)

Mr. Mike Allen: Thank you very much.

Mr. Schindler, we had testimony last night from Mr. Prystay, who is an environmental engineer with the Canadian Construction Association, and he was talking about doing a lot of these environmental assessments. His company, Stantec, does a lot of these clear across Canada. He didn't look like one of these young student engineers who was doing these ten-page reports.

He talked about his experience and the work they do, and he talked about the inconsistencies across Canada, especially with DFO's habitat biologists and various projects and the level of aid that's required to support a review, the level of habitat compensation that's required when a project goes for authorization. It's quite variable across the country, and it's even reflected in the operational statements that DFO has across the different management units.

This bill is attempting to try to put some more standardization around that. Do you read anything in the bill that is not saying that, and do you see that standardization across the country as a bad thing?

Dr. David Schindler: I think the standardization would be a good thing. I think, though, the way I would go about it is more uniform training and in some regions more people. I know that at one point people in DFO were very frustrated. One of my fellow scientists who was doing reviews exclaimed that he had 400 before him, ranging from an individual road culvert up to a pulp mill in size, which he was expected to do rapid screening on and declare them as ones that could be handled by an individual officer or had to go to some higher level of review, the highest being a full federal-provincial review. So they've been manpower-limited; I'm sure they've been training-limited. It's like any police force or whatever. Standards are variable across the country. We do our best to make sure they're not, but they always are.

Mr. Mike Allen: There are a couple of interesting sections, and one of them we won't have time to get to—aquatic invasive species—but if I do, I will.

Do you see the proposed section 4.4, where the ministerial authority can undertake programs and projects with conservation organizations...? I see that as a very strong point in this. A lot of these conservation organizations—and I have a lot of them in my riding, like the Miramichi Headwaters Salmon Association—do tremendous work. Do you see it as positive that they can write these agreements for stewardship?

Dr. David Schindler: I think it's positive that they can. I would prefer to see some more specific language. I always get very nervous when I see the word “may” rather than “must”. The minister “may”, to me, means that a lot depends on who the minister is and what side of the bed he gets up on. If I look at it from the standpoint of a potential investor, that would make me very nervous because I couldn't see a clear path.

Mr. Mike Allen: It could be something specified by regulation, though.

Dr. David Schindler: I would say if it were more specified, it would be a good thing.

Mr. Mike Allen: Okay.

Mr. Atleo, what is your take on the aquatic invasive species? I know we're doing a study on this in the fisheries committee, and it's a very interesting topic. I know it affects many of your fisheries, and first nations would be worried about aquatic invasive species. This seems to be a tremendous part of this act. What are your thoughts on that?

National Chief Shawn A-in-chut Atleo: Again, in relation to what I've described, there really isn't a week that goes by when I'm not speaking with, for example, Byron Louis, of the Okanagan Indian Band in the interior of British Columbia about invasive species in that watershed. Whether it's cottage development, which has been mentioned, mining, or other developments that are happening on watersheds, each and every one of them relate to a regulation that's provincial or federal in which first nations' rights and title are being overstepped or overlooked.

We have a tremendous opportunity for first nations, like the one I just mentioned in that particular watershed, to be involved to a much greater degree to describe what sustainability looks like, including what prosperity looks like in those respective territories. For first nations, we see the challenges with both invasive species and the species at risk identification. All of these elements are being implicated in this major bill without the kind of consideration that's required.

It's less, Mr. Allen, about what I think about the invasive species in Lake Okanagan. It's more about what we need to do to make sure we are engaging with the chief, who has constitutionally protected rights and title, to give effect to their interests in the lake, which are not only water but are also food- and fisheries-related. It's resource-related.

Once again, to pull back to a specific question, we need to revisit the notion of how first nations are going to not just be consulted and accommodated, which is the current common law that we have in this country, but how they can achieve free, prior, and informed consent, which is the UN declaration and international customary law. Canada endorsed this after careful consideration just a few years ago.

● (1955)

The Chair: Thank you very much. Unfortunately, the time has gone past. We have to move on now.

Mr. Sopuck, please, for up to five minutes.

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

Dr. Schindler, related to the new subsection 35(1), it's very clear in terms of habitat protection. It says:

> No person shall carry on any work, undertaking or activity that results in serious harm to fish that are part of a commercial, recreational or Aboriginal fishery, or to fish that support such a fishery.

Of course, that last part does deal with your concerns about forage fish.

Don't you think that a sharpened focus on fisheries of concern to people will actually result in greater habitat protection for those ecosystems?

Dr. David Schindler: I might if I didn't see what's happening to the departments in parallel. I don't see how it can happen when all of the habitat people for DFO are getting pink slips. The DOE projects to work on habitat are being cut. They've had very few biologists at all. I really don't see how any but those key species will even be looked at.

Mr. Robert Sopuck: But again, we're here to discuss the wording of the legislation. It's clear that under that legislation it is possible that increased habitat protection programs could result. Going back to your example about the culvert placement, you talked about the B. C. contractors being very keen on proper culvert placement. Under this particular regulation, I would argue that more attention will be placed on things like culvert placement and habitat protection for fisheries such as those off the B.C. coast that are of significance for commercial, recreation, and aboriginal purposes. Don't you think that's possible?

Dr. David Schindler: I suppose it's possible. I would prefer to see it specifically worded in the legislation, though, and not left to the whim of a minister who has no scientific background, period.

Mr. Robert Sopuck: That leads to the larger question that ministers are elected and responsible to the citizens at large, and that's something I'm very comfortable with, actually.

DFO's expansion, Dr. Schindler, across Canada started in 1999. As somebody who's had a career in fisheries management, I recall that the fisheries in prairie Canada, for example, where my work was, were in pretty good shape, by and large. One does wonder what the value-added of the expanded DFO habitat programs was.

Could you comment on that?

Dr. David Schindler: I can comment for Alberta, which is where I was. DFO did very little, but the province did very little as well, specifically on the oil sands. We heard all the rhetoric about duplication and four million data points being collected. After six panels reviewed the data, they found that we have not had a reasonable monitoring program, period. We don't know where the baseline was and we don't know where the baseline is today. That's what I'm afraid of with ambiguously worded legislation.

● (2000)

Mr. Robert Sopuck: I have done environmental work in the oil sands myself and have heard the hyperbole that the companies operate willy-nilly, irrespective of provincial and federal legislation. As someone who was part of enforcing that legislation, I find it appalling that this kind of rhetoric is out there.

But in terms of the oil sands, I think some perspective is in order. The total area of the oil sands is some 143,000 square kilometres, of which 600 square kilometres has been exploited, less than one half of one percent, and 60 square kilometres of that has already been reclaimed. If we look at hydro developments in Manitoba, Ontario, and Quebec, we are looking at approximately 35,000 square kilometres of land that has been inundated in the boreal forest. Which of the two had a more serious impact on fish?

Dr. David Schindler: Obviously the flooding of reservoirs did, if you count things like high mercury and the abolition of food for native people, but we don't want another case of that happening. The problems with the Athabasca fishery are that they haven't been properly investigated. We know from both the word of native fishermen and Environment Canada employees who worked in that area for 30 years that there has been an increase in tumours in the fish. We don't even know if those reflect increased levels of contaminants. We don't know if they're reflected in numbers because nobody has studied the numbers sufficiently well.

I'd say that what we should be getting right now is an enhanced level of investigation. We've had a handshake between provincial and federal ministers. I have not seen a document to support any agreement. Certainly there are no federal-provincial studies ongoing, although they were promised last July. I'm very uncomfortable with the expansion that's going on. These 600 square kilometres that you're referring to are the pits. In-Situ is going to take in a much bigger area. It shouldn't affect surface water quality. Nobody has looked to see whether it affects ground water quality, but they have looked to see that it's a big problem for habitat, for creatures like woodland caribou and the seven species of large predators in the area.

The Chair: Thank you very much, Mr. Sopuck. Your time has expired.

Mr. Julian, go ahead, please.

Mr. Peter Julian: Thank you very much, Mr. Chair

Thanks to all the witnesses for being here this evening, and particularly to Chief Atleo and Dr. Schindler. You've had the most compelling presentations that we've heard thus far on the reasons why there is so much controversy around Bill C-38.

I'd like to start with you, Chief Atleo. You've said that this reduces that duty to consult and to accommodate. You said that first nations certainly oppose the bill, and you requested that the government withdraw part 3. The government has not been thus inclined so far. Hopefully that will change with any sort of accommodation or amendments on the bill.

My question to you is, what is the logical outcome? Lobbyists might say this process that we want to put into place would create more certainty. But given the exclusion of large bodies of the public, given the very compelling testimony that you've given us tonight, does it not mean that we will have more potential uncertainty around approval projects because of how the government has approached this?

National Chief Shawn A-in-chut Atleo: First nations often experience this notion that first nations are being sought to deliver certainty somehow to somebody else, whether it's the market or whether it's process, etc. Really, I think if we dig deeper to certainty, we're looking for clarity of process, first of all, so comments around what consultation and accommodation are. How do you give effective implementation of the spirit and intent of the treaty right, of the constitutionally protected right?

I think the UN declaration offers an excellent framework for defining a way forward that could forge a path towards certainty. I said earlier that first nations aren't opposed to development; they're just not supportive of development at any cost. We have excellent examples, perhaps not perfect: the James Bay Agreement forged with the Cree; Minister Penashue, in a former iteration, forging agreements in Labrador; and the leaders in Haida Gwaii forging agreements in their respective territories.

First nations being involved from the very beginning and working in full partnership, as our rights suggest, must occur. To have a shift from before, under previous processes, where our traditional knowledge was included, to the proposed changes that they may be included sends a very strong signal that we're moving away from, not towards, the notion of mutual respect and recognition of aboriginal title and rights. There is enhanced uncertainty, and in fact perhaps greater conflict.

The Prosperity Mine example in British Columbia stands as an example of what we need to be learning from. What I see occurring here is that rather than working together to achieve a shared sense of what certainty means going forward, this is creating a great uncertainty for first nations. As I said, and I have to really emphasize this, the economic uncertainty and potential conflict remains, I think, a very real outcome of an effort we're seeing here.

● (2005)

Mr. Peter Julian: Thank you very much.

The Chair: Can we stop the time for a second? I don't have any choice in the matter. I must seek unanimous consent of the committee, pursuant to the Standing Orders that we run by. The bells summoning members to vote are now ringing. I would need unanimous consent for this committee to continue to sit for another 10 or 15 minutes. That would let us get through your questions, Mr. Julian, and perhaps two or three more questioners.

Do I have unanimous consent from the committee to continue for another 10 minutes? Is that fine?

Mr. Anderson.

Mr. David Anderson: No more than 10 minutes. I think Mr. Julian finishes one more round. We need to get going.

The Chair: I have unanimous consent to go for your questions and one more questioner, if that's okay with the committee. Thank you very much, committee colleagues.

Mr. Julian, you still have a couple of minutes.

Mr. Peter Julian: Thank you very much, Mr. Chair. I hope we could ask the witnesses to remain for another round or two after we vote, if they are willing.

The Chair: The problem, Mr. Julian, is if we do that, then the next set of witnesses who are supposed to appear would be starting significantly later than scheduled. We would be going well past the scheduled committee time of 10:30. I would suggest that we finish this panel and start the second panel immediately after we return. We have a rather large group of witnesses appearing in the second panel.

Mr. Peter Julian: Perhaps we can talk offline, Mr. Chair.

I will continue with my questions.

The Chair: Very good.

Mr. Peter Julian: I thank the members of the committee for allowing me to continue.

Dr. Schindler, you raised the spectre of how not looking at the fishery habitat can lead to the destruction of it. You gave a compelling example of the food source that ultimately leads to the destruction of the fishery. Do these changes represent a backdoor way of destroying the fisheries? We're not taking into consideration all of the elements that contribute to healthy fisheries.

Dr. David Schindler: I think that's right. If it were just the wording of the bill, I would probably not be concerned. As someone who has spent 22 years in Fisheries and knows how ministers and deputy ministers interpret wording, I know that once the word “habitat” is out of there, there would be no attention paid to it.

Mr. Peter Julian: Thank you for that. We have four former fisheries ministers—including Conservative Minister Tom Siddon and Conservative Minister John Fraser—who have taken a strong stand against the bill. They consider it completely irresponsible on that point.

My follow-up question is, given those opinions...we've had some people say it's not a problem. What would you say to those individuals who say we don't need to worry about the habitat changes?

Dr. David Schindler: I was a member of Fisheries and Oceans when those same two ministers put the habitat revisions in the bill. As I am sure they will tell you, there were some very good reasons for it.

Mr. Peter Julian: It represents a major step backwards.

I believe I have a few seconds left.

The Chair: Keep going.

Mr. Peter Julian: Mr. Denning, I come from British Columbia, as you do. What we have seen under this bill is a closure of the B.C. oil spill response centre and B.C.'s environmental emergency program, which had over 100 calls last year. It's being moved to somewhere in Ottawa. You leave a voice mail, I guess, if you have an environmental emergency. We also see the closure of the Kitsilano coast guard station, which has saved lives every day since it was put in place. Do you feel those are responsible actions? I know you can't comment on the environmental assessments, but these are of concern to British Columbians. Do you share those concerns?

● (2010)

Capt Fred Denning: The Kitsilano coast guard base deals almost exclusively with recreational boaters and fishing vessels. As to the movement of commercial ships, we have little or no interaction with that station. Our major interaction with the coast guard is through communications.

The Chair: Thank you, Mr. Julian. We're at six minutes now. I've been very lenient.

Mr. Anderson.

Mr. David Anderson: Mr. Chair, I appreciate the opportunity.

Witnesses, thank you for being here tonight.

We had a witness last night who seemed to have a good understanding of the bill and the definitions, and who had apparently spent a fair amount of time studying them. He made the point that, and I'll quote him:

> With respect to the fish habitat itself, the definition hasn't really changed between the current version and the proposed version. It has been clarified, and I think the definition of serious harm also clarifies a lot of the areas that have been kind of grey zones within the current Fisheries Act.

He also pointed out that this new structure incorporates an ecosystem-based approach. We keep hearing from some folks that this is not the case. Does anybody have anything specific to the wording of the bill that will contradict that? The bill seems to back that up, as Mr. Sopuck has pointed out as well.

Dr. David Schindler: I think you should get a list of the Department of Fisheries' priorities and see how many times the word "habitat" appears in them. I haven't seen it in 20 years. I'll bet nothing has changed. There's very little in it, if anything, that has to do with fish habitat.

I know when they hand out the funding, if you're not at the top of the list...as for the situation at the central region, I believe there were 160 pink slips handed out in your region, Bob, a region that's had successive cuts under both parties in government for the past 25 years.

Mr. David Anderson: I find it interesting. We're here tonight to talk about the legislation; when we come down to the details of what's wrong with the legislation, we don't hear any. We hear opinions of what this might do. You've said a couple of times that you think the bill is okay. You're worried about the consequences of whether there are enough people to oversee it or not, but it sounds as if the content is okay.

A gentleman last night also pointed out that the definition of serious harm has been a point of contention with a lot of people. It's been pointed that it's defined in the legislation and includes the death of any fish or any permanent alteration or destruction of fish habitat. He points out that fish habitat is also defined as spawning grounds, food supply, nursery, rearing areas, all the way to migration areas on which fish rely directly and indirectly.

Again I want to ask the members if there is anything specifically in the legislation where you don't agree that's the case. Because I think we're pretty clear that we're protecting fish habitat; we're protecting the commercial, recreational, and aboriginal fisheries. Yet there seems to be some consensus out there that this is not happening.

I want to make that point. These things are protected in there. Dr. Schindler, you pointed out that the bill is pretty good, apparently; you just don't like how you think it might be applied in the future.

Dr. David Schindler: I would say that's right. My advice is if your objective is to see that fisheries are protected, make the regulations very specific. Don't leave anything to chance. A very conservative minister or a very left-wing minister have different interpretations. What we want as citizens is consistency and consistent good habitat protection.

Mr. David Anderson: That's what we heard last night as well: they like consistency of application across the board, consistency of definition. Again I go back to the section that says "For the purposes of this Act, serious harm to fish is the death of fish or any permanent alteration to, or destruction of, fish habitat". That seems to be as far-reaching as anything that was in there before. So I think we need to make that point.

I want to make the point that we haven't had a discussion tonight about what's wrong with the content of the bill; we're talking about whether people agree with where it might go in the future or not.

I would like to go to Mr. Denning with a question as well. Your folks are very much intertwined with responsible resource development, especially off the west coast, where tankers are the medium by which a lot of our resources are going to be transported. Your chapter sometimes has been working to combat misperceptions about what you do and the safety of tanker traffic. I'm wondering if you could review some of the common misinformation you hear and what the reality is about that situation.

● (2015)

Capt Fred Denning: We've had many comments about compulsory pilotage, for instance. There's often a misconception about the requirement for pilots to be on board ships. In the case of all Canadian waters, any waters designated as compulsory pilotage waters must have a Canadian pilot on board. These pilots must be licensed under the appropriate authority, and there are no exceptions to these rules. These encompass all the waters of Canada, and obviously the Pacific coast is very much in that. These rules regarding compulsory pilotage are very consistent.

The Chair: Excuse me, Mr. Denning, I have a point of order.

Ms. Duncan.

Ms. Kirsty Duncan: Thank you, Mr. Chair. I'm sorry to interrupt the witness.

I did ask where the tanker and the safeguards for tankers appeared in the budget implementation bill. I am aware of where it occurs in the budget. Could we have an answer on that, please?

The Chair: Thank you, Ms. Duncan.

This is in response to...Mr. Anderson, would you like to respond?

Mr. David Anderson: I think Ms. Duncan should be thanking us rather than criticizing us. We allowed Mr. McGuinty to give his presentation about the round table. We never stopped him when he was clearly far off track on what is involved in part 3. We were willing to let him make that presentation.

I think we should be willing to let Mr. Denning answer the question. His part of the west coast is extremely important in moving resources, and he's trying to give an explanation of why tanker safety is adequate on the west coast.

The Chair: Thank you.

Mr. David Anderson: That's actually fish habitat, by the way.

The Chair: Thank you, Mr. Anderson. Thank you, Ms. Duncan.

Ms. Duncan, your point of order is one of relevance in regard to tanker safety with respect to part 3 of the bill. The parts of the bill that deal with navigable waters fall under the Canada Oil and Gas Operations Act. The specific nature of those amendments to that act deal with pipelines.

Mr. Denning, you did address some of the issues with pipelines in your presentation. However, in the lines of questioning, unfortunately I can't go back, but the questions should be focused specifically on that.

With regard to your comments, Mr. Anderson, I'd like to thank Mr. McGuinty for his nimbleness in changing his presentation so that he was able to stay within the jurisdiction of part 3 of the legislation.

Colleagues, we're going to use up the rest of the time that we have discussing points of order rather than getting to another round of questioning.

Ms. Rempel, quickly.

Ms. Michelle Rempel: Mr. Chair, in part 3, division 1, under proposed subsection 19(1)(a), “the environmental effects of the designated project, including the environmental effects of malfunctions or accidents...and any cumulative environmental effects that are likely to result” is mentioned.

The relevant portion of the budget that talks about tanker traffic and the appropriate environmental protections that are strengthened through part 3 are directly relevant through this proposed subsection.

The Chair: I will take that into consideration. The questions have already been asked and the testimony has already been given. At this point in time it looks as though I don't have consent to continue with this meeting, unfortunately, pursuant to our Standing Orders.

I would like to thank our witnesses, Mr. McGuinty, Grand Chief Atleo, Mr. Denning, and Mr. Schindler. Thank you so much for coming here. And thank you, colleagues.

We will suspend this meeting. We will resume this meeting with the witnesses in the second panel after we return promptly from votes.

● (2015)

(Pause)

● (2055)

The Chair: Ladies and gentlemen, we will resume meeting number 3 of the subcommittee on finance.

I would like to thank our witnesses for their patience. We had to exercise our democratic responsibility here as members and vote in the House of Commons. However, I believe we will have a period of uninterrupted time now to conduct this very important subcommittee business.

With us on our second panel is Mr. Terry Quinney, a provincial manager of fishery and wildlife services of the Ontario Federation of Anglers and Hunters. From Ecojustice Canada, we have Mr. William Amos, director. From the Canadian Federation of Agriculture, we have Mr. Ron Bonnett, president. From the Pacific Pilotage Authority, we have Mr. Kevin Obermeyer, president and chief executive officer. From the Office of the Auditor General of Canada, we have Mr. Scott Vaughan, Commissioner of the Environment and Sustainable Development. From the First Nations Tax Commission, we have Clarence Jules, chief commissioner and chief executive officer.

The committee procedure is that we will have up to 10 minutes of testimony from each of you, and then we will start with rounds of questions and answers by members.

Our subcommittee has been tasked very specifically to deal with part 3 of the legislation, so I will ask witnesses to keep their testimony as relevant as possible to that part of the budget implementation bill that's currently before us.

Mr. Quinney, we will start with you for up to 10 minutes.

● (2100)

Dr. Terry Quinney (Provincial Manager, Fish and Wildlife Services, Ontario Federation of Anglers and Hunters): Thank you, Mr. Chair.

Good evening, ladies and gentlemen. Prior to this evening I submitted my presentation to the clerk for translation. I trust that you will receive a hard copy of my presentation very soon.

My remarks will be exclusively devoted to the theme of amendments to the federal Fisheries Act.

On behalf of the more than 100,000 Ontario Federation of Anglers and Hunters members, supporters, subscribers, and our 675 member clubs, the OFAH thanks you for this opportunity to address changes to the Fisheries Act. As mentioned, I'm Terry Quinney, provincial manager of fish and wildlife services for the OFAH.

I'd like to illustrate the OFAH commitment to fisheries conservation with three brief examples from our conservation programs, our fisheries management activities, and our local community-level participation.

First, in partnership with the provincial government's Ontario Ministry of Natural Resources, the federal Department of Fisheries and Oceans and Environment Canada, along with Ontario Power Generation, conservation authorities, and many others, we are restoring Atlantic salmon to Lake Ontario and its tributaries. We are rehabilitating cold-water fishery streams through our community stream stewardship program, and we're assisting to prevent harmful invasive species through our invading species awareness program.

We are also working to improve recreational fishing by assisting the efforts of the Great Lakes Fishery Commission, participating in Ontario's fisheries management zone advisory councils, and helping to improve the international Great Lakes Water Quality Agreement.

OFAH member clubs, such as the Thunder Bay Salmon Association on Lake Superior, the Bluewater Anglers of Port Huron on Lake Huron, the Sydenham Sportsmen's Association on Georgian Bay, the Port Colborne & District Conservation Club on Lake Erie, and the Central Lake Ontario Sport Anglers of Brighton on Lake Ontario stock important fish species for the benefit of everyone. Did you know that the annual Salmon Spectacular of Owen Sound, hosted by the Sydenham Sportsmen's Association, attracts more than 55,000 people and results in over $3 million in local economic spinoffs every year?

Next I'd like to identify our key messages to you with regard to changes to the Fisheries Act. We have five key messages.

First, the supply of healthy fish habitat, both freshwater and marine, is critical for our fisheries.

Second, what is known as “free passage of fish”, where appropriate, is also critical to our fisheries.

Third, fisheries supply benefits to Canadians and Canadian society. Government of Canada statistics show that more than three million Canadians participate in recreational angling, resulting in economic benefits exceeding $8 billion annually.

Fourth, conservation is the protection, use, and management of natural resources to supply benefits at optimal sustainable levels for present and future generations of Canadians.

● (2105)

Fifth, an important role for governments—local, provincial, territorial, and federal—is to participate in conservation activities; the Fisheries Act is an example.

For a considerable period of time, the Ontario Federation of Anglers and Hunters has been seeking improvements to the protection of fish habitat and the successful passage of fish in Ontario.

Let me illustrate with two examples.

Because we have never been shown evidence that demonstrated the success of the longstanding DFO policy of no net loss of productive capacity associated with the fish habitat protection provisions of the federal Fisheries Act, we have recommended that strong standards be developed by DFO, in association with the Province of Ontario, in association with industry, and in association with organizations such as the OFAH, to ensure the protection of fish habitat.

The Ontario Green Energy and Green Economy Act promotes the development of new energy production projects in Ontario. In fact, we understand that over 40 new hydroelectric facilities will be installed very soon in many parts of our province. We need an effective means to ensure appropriate free passage of fish associated with these new energy projects. So in October 2011 we asked DFO Minister Ashfield directly that strong standards to ensure the protection of fish habitat be developed; that fish passage technologies be supported; that federal regulations to prevent invasive species, such as Asian carp, from entering Canada be completed; and that adequate resourcing be guaranteed to ensure the aims and objectives of a new Fisheries Act are fulfilled.

Now, in May 2012, we appreciate that the Government of Canada has explicitly recognized that Canada's fisheries are important to Canadians and that the government is committing to improve protections associated with our fisheries, including regulations that will prevent harmful aquatic invasive species, such as Asian carp.

We also appreciate that the government has made it clear to us that we share fundamental principles as we collectively move forward, namely, to avoid harm to our fisheries, to protect the productivity of our fisheries, and to improve habitat protection and fish passage.

To assist your deliberations further, I've attached to our presentation a backgrounder as an appendix, which provides further details for you.

With that, I thank you for listening, but I wish to extend an invitation to each of you, if your busy schedules permit you tomorrow, to walk across the street to the Westin Hotel where the Ontario Federation of Anglers and Hunters is hosting the nation's very first National Fish and Wildlife Conservation Congress. Please join us if you can.

Thank you very much.

● (2110)

The Chair: Mr. Quinney, thank you very much for that. It's good that you got a plug in there for your organization. We thank you for the great work you do.

Mr. Amos, for up to 10 minutes, please.

Professor William Amos (Director, University of Ottawa - Ecojustice Environmental Law Clinic, Ecojustice Canada): Thank you, Chair, and thank you, members. I appreciate the opportunity.

My name is Will Amos. I'm a lawyer and professor. I work with a charitable organization called Ecojustice. We have offices in Calgary, Vancouver, Ottawa, and Toronto.

We consider ourselves to be Canada's leading non-profit public interest environmental law organization. We use the law to protect and restore the environment. For 20 years our lawyers and scientists have represented, on a pro bono basis, community groups, citizens, first nations, municipalities—in effect any group that has as its goal to protect the environment. We hold governments and corporations accountable for the implementation of environmental laws in this country, both provincial and federal.

I'm here not only wearing my Ecojustice hat but also as the director of the Ecojustice environmental law clinic, which is a partnership between the University of Ottawa's faculty of law and Ecojustice. The faculty of law at U of O deemed a partnership with Ecojustice to be a strategic one because it wanted its law students to learn what it is that Ecojustice does. Students have been working with us in the preparation of these materials.

Although the timelines were short, and that's why we weren't able to get our materials translated in time, I do have four legal backgrounders that we would like to provide this committee. If it would be possible to have them translated so that the francophone committee members could read them, that would be great.

[*Translation*]

I will be very happy to answer questions in French. I apologize that I will not be making my presentation in French, but I am always very happy to communicate in that language.

[*English*]

It's difficult in the six minutes I now have left to communicate—

The Chair: Eight.

Mr. William Amos: Oh, eight. That's fabulous. Thank you, Mr. Calkins.

It's difficult to know where to start with this bill. I'm going to do my best to provide what Ecojustice believes is a broad-brush stroke critique of Bill C-38 and of the contents of part 3.

Effectively, what we're looking at are weakened federal protections for fish and fish habitat, an entirely new and entirely less comprehensive federal environmental assessment regime, and greater discretionary powers vested in ministers and in cabinet. We believe there will be less accountability and fewer opportunities for the Canadian public to participate in processes that ultimately lead to sustainable development.

It's our opinion that this is the most significant and devolutionary set of environmental law reforms that have ever been presented to Parliament. There is no law that we can recall that has ever, in such a broad and structural manner, changed the federal environmental governance regime. Thus, our main message here is that Canadians are not ready for this. Parliament is not ready for this. There has been inadequate process to consider the transformative changes that are being proposed.

We would urge this committee to recommend to the finance committee that part 3 of Bill C-38 be excised and be separated and retabled, if the government deems appropriate, in a stand-alone bill.

Now, I understand it is less than likely that this government is going to move in that direction. However, both for the sake of environmental protection and also with a view to social licence going forward for Canadian industries...it's not good for Canadian businesses when environmental laws federally are eviscerated without sufficient buy-in from a number of communities. That isn't to say that the environmental community couldn't appreciate the need for amendments to the environmental assessment process and that, if necessary, we couldn't proceed with changes to the Fisheries Act. Indeed, there are changes that are needed, but the scope and the depth of the changes that are being proposed are simply unacceptable.

● (2115)

To go specifically to the Fisheries Act, this is at the core of Canadian environmental protection. Habitat protection through the Fisheries Act is really where environmental protection started federally, back in the mid-19th century, when the river immediately to our north was being polluted by the sawmills, the industry of the day, with all of its sawdust causing impressive losses of fish, destruction of fish habitat, and actual property damage as well. This history is well documented.

One of the key raisons d'être for the enactment of the Fisheries Act one year after the enactment of the British North America Act was to protect the environment. As a matter of historical process, the protections to the environment have only increased over the years. In particular, in 1977 the Honourable Roméo LeBlanc proposed changes that were adopted to ensure habitat protection and to ensure that deleterious substances wouldn't impact fisheries as well. So this was a progress towards greater protection.

What we're seeing with the amendments proposed in Bill C-38 is a reversal of direction, and we don't think that is in the Canadian public interest. I'd like to quote Roméo LeBlanc, then the Minister of Fisheries and the Environment, who said:

> Protecting fish means protecting their habitats. Protecting the aquatic habitat involves controlling the use of wetlands. The banks of streams, the foreshores of estuaries, provide nutrients to the larger eco-system of lakes and oceans in amounts far out of proportion to their size.
>
> The main effect of the changes would be this: for landfill, dredging, excavation, or other such projects in these sensitive areas, we would be able to examine the plans first, and to require modification or, if necessary, prohibition. Instead of accusing someone, after the fact, of destroying fish habitats, we would be part of the planning to save them.

The point of this comment is that three years after I was born, the then Minister of Fisheries made amendments to allow for habitat protection of fish, with a view to establishing a planning and environmental protection regime that would ensure we weren't trying to solve environmental problems after the fact. We are reminded of this when it seems that every month there is some other disaster that happens in this world, whether it's the *Exxon Valdez* spill, the BP disaster, or nuclear incidents in Japan. We're reminded constantly that better decision-making up front saves us money and ultimately is better for the economy.

What I see and what Ecojustice sees with this legislation is a return to an era when this kind of planning in advance is going to be lost, in large measure, whether it be for protection of fish habitat or environmental assessment processes that are no longer going to be done, and we're very concerned about that.

Ecojustice is extremely concerned by the provisions in Bill C-38 that would provide for ministerial regulations exempting certain water bodies and certain classes of works from the application of the fish habitat protection provisions. This has been done before. We've seen it done back in 2009 in the context of the Navigable Waters Protection Act with amendments that were also smuggled into the budget bill.

Also, we know from the ministerial order issued pursuant to the NWPA that certain types of works, such as pipeline crossings, and certain types of waters—the famous drainage ditches, but there are others as well—have been exempted from the authorization process required under the NWPA. In relation to the Fisheries Act, we're expecting that there will be regulations passed exempting these kinds of waters and these projects—like pipeline crossings—from fish habitat protection.

● (2120)

That's clearly not going to ensure that habitats are protected, and we have serious concerns in that regard.

I'll conclude by suggesting—and maybe for the purpose of this comment I will wear my University of Ottawa hat, as a professor there—that this government really does not have any mandate to make the fundamental amendments it's proposing in Bill C-38. The Conservative Party 2011 platform, prior to their majority election, mentioned nothing in the way of environmental law reform. We don't believe there is a mandate to make any amendments, let alone far-reaching amendments. We don't know right now whether risky activities such as offshore drilling in the Arctic or offshore drilling in the Gulf of St. Lawrence—

The Chair: Mr. Amos, you've already exceeded your ten minutes. Would you conclude, please?

Prof. William Amos: Sure.

We don't know whether there are going to be environmental assessments now for such projects as offshore drilling in the Arctic and the Gulf of St. Lawrence. This is a matter of great concern. It's not about process for process's sake; it's not about consultation just to consult. We know there need to be amendments, but there needs to be an appropriate process to evaluate them.

Thank you for your time.

The Chair: Thank you, Mr. Amos.

We'll get to the crux of some of your questions, I'm sure, in the questioning rounds.

Mr. Bonnett, you have up to ten minutes, please.

Mr. Ron Bonnett (President, Canadian Federation of Agriculture): Thank you, and thank you for the opportunity to present to the committee. I think I've met a number of you.

Just so you're aware, the Canadian Federation of Agriculture represents farmers right across the country, representing all provinces and a number of commodity groups.

We were supportive of some of the changes that had been proposed with respect to Bill C-38 in part 3. I'm going to try to keep my comments focused on why some of these have such an impact on agriculture.

There are several acts that are changed or amended: the Canadian Environmental Assessment Act, the National Energy Board Act, the Canadian Environmental Protection Act, the Fisheries Act, and the Species at Risk Act. I will likely be concentrating most of my comments around the Fisheries Act, although the Canadian Environmental Assessment Act will also have implications for agriculture.

With respect to proposed changes in the Species at Risk Act, we don't see a major impact on agriculture from the proposed Species at Risk Act contained here. However, we understand that changes are being contemplated to the Species at Risk Act later this year and that there will be some changes that we will be commenting on at that time.

We fall under the act because agricultural activities are identified in the context of physical works. It's mainly in the case of drainage ditches and irrigation canals that we fall under it. For a long time there has been a lot of frustration in the agricultural community about the complicated, costly, and convoluted process that is in place to get approvals. We have multiple levels of authority: we have municipal governments, provincial governments, different departments, and the Department of Fisheries and Oceans, all with a role to play in not only constructing drainage ditches, but also in doing ongoing maintenance, which is necessary.

I think it's key to understand that the whole issue of drainage is so important to agriculture that it was among the first kinds of legislation put in place by provinces when they started putting agriculture into the country, recognizing that they had to get rid of excess water. Maybe, to give a better understanding, I should describe the drainage ditch life cycle. These drains in many cases are put together with a very structured process, including some environmental assessments for the initial construction.

They try to describe how the drains are going to be constructed—the standards for construction, mitigation of environmental impacts—but along with that they also have to make provision for maintenance. When most drains are constructed, they have about a 15-year life cycle before they start to fill in again and have to be maintained.

You have to get your mind around the fact that before the dirt ditches were dug there was no fish habitat there. It was basically wet, soggy land with no fish habitat in place. As soon as the drainage ditches were done, naturally the fish swam up those streams. But in order to keep the drainage working and in order to make sure that ongoing fish habitat is maintained, you also have to have maintenance take place from time to time. At any one time, as I said, one in maybe fifteen drains is subject to maintenance.

But the existing description of destruction of habitat under the Fisheries Act basically leaves an opening, at the discretion of offices at the local level, to stall projects that can have a real impact upon farm operations in making sure those drains are properly maintained.

The Fisheries Act provides for protection of the fish and fish habitat. Under section 35, the act talks about “undertaking that results in the harmful alteration, disruption or destruction of fish habitat”. Then in subsection 35(2) it allows the minister or Department of Fisheries and Oceans officials to allow for permitting of clean-outs. This is where the problem is, because the description of “harmful alteration” or “disruption” gets married with this need for permits, and that puts a whole complex situation in place whereby there are extra costs built into the system with no added value.

● (2125)

I think the changes they're proposing actually do give some indication of the types of things that need to be protected. They talk about the new factors, the contribution of relevant fish to ongoing productivity of commercial, recreational, or aboriginal fisheries. It talks about fisheries management objectives. It talks about whether there are measures and standards to avoid or mitigate and offset serious harm to fish. Then it talks about the public interest.

I think that will give more clarity to the minister in making decisions. I think the next step, though, is looking at the regulations that are developed. I think in some of the discussions we've had with others, the development of the regulations is something that's going to have to be looked at to make sure the intent of the changes to the act actually meet the objectives.

The changes to section 35 prohibitions are going to come in two steps. I think the first step is when the act is implemented. They look very similar to the description in place now, but one of the things that has changed is that it's not going to only prohibit works and undertakings, but it will also prohibit activities. That is the first step, when the act is put in place. The second step will occur at some point in the future, through an order of cabinet, when the existing prohibition against harmful alteration, disruption, or destruction would be changed to read “serious harm to fish that are part of a commercial, recreational or Aboriginal fishery, or to fish that support such a fishery”; “serious harm to fish” is a new concept defined as “death of fish or any permanent alteration to, or destruction of, fish habitat”. I think the key issue here is that they're removing the strict interpretation of “harmful alteration or disruption”.

If I go back to the drain maintenance issue, we know that in order to maintain one drain, you're likely going to disrupt that fish habitat during that maintenance period. However, you're actually creating habitat for the future years. But the way the act is worded right now, it leaves a situation where you have to go through a whole complicated process to get the approvals in place.

On final comment. I think Bill C-38 puts in place a process to bring improvements about how the Fisheries Act is implemented on minor works so that you don't get hung up with frustration, costs, and overlap of jurisdiction. I think there's clearly scope to improve the efficiency and effectiveness of the Fisheries Act. It has been something that has been going on for years. There is still uncertainty in how the changes will be implemented and the final impact of the regulations.

I think that's something there will have to be engagement on as the regulations are developed. I think, ideally, on drainage ditches, we should be looking at management through a stewardship approach, with clear guidelines on the best practices for maintenance in instances where they do support a fish population. Then not all drainage ditches should be treated equally, but the maintenance needs to be the main priority.

Thank you. That summarizes my comments.

● (2130)

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

Mr. Obermeyer, for up to 10 minutes, please.

Captain Kevin Obermeyer (President and CEO, Pacific Pilotage Authority): Thank you, Mr. Chairman and members of the subcommittee.

I'm going to confine my comments today to who we are and what we do on the west coast with respect to the marine environment. We are the Pacific Pilotage Authority, one of four pilotage authorities across Canada and a federal crown corporation operating under the Pilotage Act of 1972.

Our mandate is to provide a safe and efficient pilotage service on the west coast of Canada on a basis of financial self-sufficiency. We do this by working in partnership with the pilots and the shipping industry to protect the interests of Canada.

Our area of operation extends from the Washington State border in the south to the Alaskan border in the north. As a rule of thumb, if you extend each major point around that coast by two miles and join them all together, that will be the area of operations we have as our compulsory pilotage area. Within this area, all vessels over 350 gross tonnes, about 150 metres, will require a licensed pilot. In every instance, any new projects and terminals will require consultation with the pilots and the authority to ensure that navigational safety is not compromised.

We have developed guidelines and standards for many of the more difficult passages on the coast. The marine pilots on the coast of B.C. are all masters in their own right, with many years of experience in local waters. We provide marine pilots to all vessels over 350 gross tonnes. They're a resource for the master and the bridge team, providing them with expert local assistance. They are responsible to the master for the safe navigation of the vessel while it is in compulsory pilotage waters. The exceptions to the 350-tonne rule are government vessels such as those manned by DND and the coast guard.

On the west coast there are two groups of pilots, the BC Coast Pilots Ltd. and the Fraser River Pilots' Association. The BC Coast Pilots Ltd., about 100 FTEs, are a private company—and you heard from the president earlier—that contracts its services to us through a service agreement. They cover all the coastal assignments from Stewart in the north to Victoria in the south and all ports in between. The Fraser River Pilots, of which there are seven, are employees of the authority and operate as specialists in fast-water conditions on the Fraser River from Sand Heads to Mission.

We're extremely proud of our safety record, which regularly exceeds a 99.9% success rate. In 2011 we handled 12,144 assignments and had four minor issues, for a 99.97% success rate. This success is not accidental. The exam process is one of the most stringent the candidate will face, and an enormous amount of time and money is spent on training to maintain our level of safety. In order to become a pilot, you need to pass two written exams and an oral exam with a minimum of 70% in each. The emphasis is on local knowledge. Once passed, you are placed on a waiting list until you start your career as an apprentice pilot. The apprenticeship can last from six and a half months to two years, and it involves hands-on training with a senior pilot as well as—

● (2135)

The Chair: Can you just hold for a second?

Ms. Duncan, do you have your hand up to raise a point of order?

Ms. Kirsty Duncan: I do, Mr. Chair.

I apologize for interrupting. It was brought to our attention that they want the committee to stay very strictly to part 3. The parliamentary secretary has said that the tanker traffic provision is 19 (1) of the new CEAA, and that provision reads:

> (1)The environmental assessment of a designated project must take into account the following factors:
>
> (a) the environmental effects of the designated project, including the environmental effects of malfunctions or accidents that may occur in connection with the...project and any cumulative environmental effects that are likely to result from the designated project in combination with other physical activities that have been or will be carried out;

I think this is a stretch. I think this is relevant to page 98 of the budget, and it's not the budget implementation bill.

The Chair: We'll hear from Mr. Anderson and then Ms. Rempel on the same point of order.

Mr. David Anderson: Thank you, Mr. Chair.

Mr. McGuinty clearly wasn't prepared when he came tonight. Maybe Ms. Duncan should have checked a little bit deeper.

I'd like to go through the half dozen acts that impact shipping, and perhaps she can look these up as well. Part of the Environmental Violations Administrative Monetary Penalties Act, speaks specifically of ships complying with provisions and orders that are given to them. The Fisheries Act speaks of vessels regularly throughout it, including ships. It speaks of marine inspectors and their authority, and the expectation that vessel operators cooperate with them. The Canadian Environmental Protection Act, which is being amended, talks directly about the operation of ships. This may not have something directly to do with it, but also the Antarctic Environmental Protection Act talks about shipping as well. I don't think we have to deal directly with that today. The Canada Oil and Gas Operations Act, which is being amended, also addresses the issue of safety in navigable waters. Fisheries protection and pollution prevention also address issues of shipping.

I think we've got a number of places that we can talk about shipping and vessels. If you'd like me to go on, I could get into quite a bit more detail on each of those acts, and we could have that discussion as well, but perhaps we should just let the witness go ahead with his presentation.

The Chair: Thank you.

Ms. Rempel.

Ms. Michelle Rempel: My colleague stole the words right out of my mouth.

The Chair: Now we have theft.

Thank you, Ms. Duncan. I appreciate your point of order. I understand what motivated you to make that point of order.

It's my understanding that the environmental approval process for something like a pipeline that is going to transport oil from an origin source all the way through would involve various aspects. My understanding is that part of that approval process would be that nobody would build a pipeline to a coast if shipping wasn't part of the entire approval process. I would imagine there would be some salient points of this. The question is whether or not it's in the scope of part 3 of the particular legislation, which is what our mandate is.

Mr. Anderson has cited several passages in part 3 of the bill that do pertain, in a broader context, to shipping. I think out of interest and respect for the witness who is already here, I'm going to allow his presentation to continue. However, I will be very focused. I would ask that we focus on those relevant and salient points pertaining to the mandate the subcommittee has.

Thank you very much, colleagues, for your points of order. It was much appreciated and very helpful to the chair.

Please continue, Mr. Obermeyer.

Capt Kevin Obermeyer: Thank you, Mr. Chair.

In the interest of time, I'm going to jump ahead slightly.

I think the question comes down to why have pilots at all. In short, it's a country's insurance against a marine disaster. By placing a pilot on the vessel, you're ensuring that at least one member of the bridge team has an in-depth knowledge of the local dangers, is not fatigued, and is a knowledgeable resource in the event that something does occur. Last, the pilot adds an additional level of safety on the vessel.

There are usually three levels of safety on every vessel. The first level of safety is the ship itself. A well-maintained, well-run ship will provide this first level. By tankers coming in as vetted, that is a certain level. The second level of safety is the bridge team, the master and the officers. A well-trained and engaged crew will provide that second level of safety. The third level of safety is the pilot himself. The bridge crew is more wary if there's a stranger in their midst, and the pilot not knowing the bridge team is just as wary. This is a positive situation, as everybody will remain on their toes.

For most vessels, that's where it stops, but where tankers are concerned, there's a fourth level of safety when an escort tug is utilized, as the escort has the ability to assist the vessel should there be a failure.

In closing, I've been with the pilotage authority for 13 years, and during this time there has only been one oil pollution incident with a pilot on board. This was a freighter that happened to be pushed back onto the dock during a squall and a piece of metal punched the ship's side. There has never been an incident involving a tanker, and we've never had an oil spill from a tanker on this coast.

Thank you.

● (2140)

The Chair: Thank you, Mr. Obermeyer.

Now we will hear from Mr. Vaughan, who has much experience in testifying before the committee, for up to 10 minutes, sir.

Mr. Scott Vaughan (Commissioner of the Environment and Sustainable Development, Office of the Auditor General of Canada): Thank you, Chair. I hope it will be under 10 minutes.

I also hope it will be useful for the committee to refer to three past audits of relevance to the current deliberations. As you can understand, I cannot comment on any policy matters related to this discussion, so I hope it is relevant.

In 2009 we examined how the government's fish habitat policy was being implemented. We noted that protecting fish habitat was critical to safeguard places where fish spawn, feed, grow, and live, as well as to support aquatic and terrestrial wildlife and to protect the quality of fresh water for Canada's lakes and rivers.

[*Translation*]

We found that Fisheries and Oceans Canada and Environment Canada could not demonstrate that the fish habitat was being adequately protected. For instance, Fisheries and Oceans Canada did not measure habitat loss or gain. It also had limited information on the state of fish habitat—that is, on fish stocks, the amount and quality of fish habitat, contaminants in fish, and overall water quality.

We reported that past streamlining efforts to focus limited resources on projects that pose a higher risk to habitat showed little signs of success. For example, monitoring of mitigation measures by DFO was rarely done. We also reported that Environment Canada actively enforced only two of the six pollution regulations under the Fisheries Act.

[*English*]

Turning to our past work presented to Parliament related to the Canadian Environmental Assessment Act, in 2009 we examined the overall implementation of the act. Our findings were both positive and negative. For comprehensive studies and panel reviews we observed compliance with the act's requirements. However, various problems hindered the most common category of assessment: screenings.

Screenings are currently used to assess environmental effects for a wide range of projects. These are often small projects; however, screenings are also currently conducted for more significant undertakings such as mines, dams, and some offshore energy development projects under a certain production threshold. Although mitigation of negative environmental effects were required in over 75% of the screenings we reviewed, there was little evidence that mitigation measures were actually completed.

[*Translation*]

In the fall of 2011, we examined how cumulative environmental effects as referenced in the Canadian Environmental Assessment Act were being considered. Specifically, we examined projects in the oil sands region of northern Alberta.

The audit found information gaps over the past decade—gaps in scientific data that is needed to determine the combined environmental effects on multiple projects in the same region. These include impacts on water quantity and quality, air quality, on fish and fish habitat, as well as more general effects on land and terrestrial and aquatic ecosystems.

[*English*]

We noted the significant progress the government has made in announcing in 2011 a new environmental monitoring system for the region. This system would be capable of establishing baseline environmental data critical to understanding the cumulative impact of projects.

In conclusion, let me suggest some questions the subcommittee members may wish to explore in relation to the changes to CEAA and the Fisheries Act.

First, the subcommittee may wish to consider reviewing what types of projects will be included and excluded under the proposed changes to the Canadian Environmental Assessment Act, including the threshold or criteria used to establish the project list. The subcommittee may wish to explore whether certain projects now requiring a screening-level environmental assessment will be excluded from the list of designated projects to be finalized with the regulations. Examples that come to mind include offshore oil and gas projects and activities, certain mining developments, and aquaculture.

● (2145)

[*Translation*]

The subcommittee may also wish to identify how assessment of cumulative effects will be carried out, in light of substitution and equivalency to be handled by the provinces.

[*English*]

Finally, on the proposed changes to fish habitat, a general question is how the proposed focus on commercial, recreational, and aboriginal fisheries will align with assessing aquatic biodiversity and ecosystems more broadly.

Mr. Chair, that concludes my statement.

Thank you.

The Chair: Thank you very much, Mr. Vaughan. You came in at half time.

Mr. Jules is next for up to 10 minutes, please.

Mr. Clarence T. Jules (Chief Commissioner and Chief Executive Officer, First Nations Tax Commission): Thank you, Mr. Chair.

My name is Clarence Manny Jules. I'm a former chief of the Kamloops Indian Band, and currently I'm chair of the First Nations Tax Commission. I want to thank all of you for this opportunity to make this presentation.

As you are undoubtedly aware, one of the areas that I am promoting is the first nations property ownership initiative, which this committee had supported and which was in the last budget announcement in March.

As a chief, obviously I'm very familiar with a lot of the issues that have been discussed here this evening, but what I want to focus on is the fact that first nations have to be an integral part of the economy. The sustainability of Canada's living standards, pensions, and social programs depends upon improving the productivity of first nations.

The failure of our investment market means that first nations do not share in the full benefits of resource development. Generally, about 10% of the total economic and fiscal benefit of resource development is provided through royalties. The remainder is paid out as salaries, wages, and profits, and corporate taxes paid by resource companies and their suppliers.

The inability of first nations to share in investment makes it more difficult to reach agreement on many issues and projects. First nations simply do not receive the benefit, only the costs.

We proposed solutions to this committee to address these issues: develop and pass the first nations property ownership act and develop and implement the first nations fiscal relationship.

Supporters of the first nations property ownership initiative mostly believe that the federal government's proposal to streamline the environmental assessment process will help address market failure on reserves. Parallel systems make it difficult to hire professionals, and they create the need to duplicate many procedures. They lack single points of accountability. Consequently, they often add to the administrative and compliance costs, and they may actually result in reduced standards of environmental protection and oversight.

An improved first nations fiscal relationship would amplify the benefits of FNPO. In a typical government setting, investment creates jobs, business opportunity, and government revenues. This creates capacity for improving local services and infrastructure. Improved local services and infrastructure support further improvements in the investment.

The current fiscal relationship for first nations cuts short this cycle. We can fix this short-circuit by creating clear and exclusive revenue authorities and expenditure responsibilities for all governments towards first nations. First nations need more revenue authorities that are tied to local investment successes, such as my proposal for a property transfer tax. These need to be linked to service responsibilities. Transfers need a transparent formula linked to a national standard.

I believe very strongly that if first nations are not involved in the Canadian, and therefore global, economy, you will see in the future many more “conflicts”, I guess, over resource development and expansion in the country. First nations, in order to be part and parcel of the economy, need to be part of the solution.

Thank you very much.

● (2150)

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

That concludes our opening comments. We will now proceed to the rounds of questions.

From the Conservative side, we will start with Ms. Rempel, for seven minutes.

Ms. Michelle Rempel: Thank you, Mr. Chair.

Thank you to all the witnesses for being part of this process and being with us at such a late hour tonight. It's much appreciated, the time you've taken away from your families to be here today.

I'll start with you, Mr. Vaughan. Thank you for coming today and for your testimony, refreshing us on some of the work you've already done.

I want to speak to the oil sands monitoring project that you brought up. It's my understanding that the review you completed in the fall of 2011 did not include the oil sands monitoring framework that was announced in February of this year. Is that correct?

Mr. Scott Vaughan: It was included in the sense that we had referenced it as a subsequent event to the period of the audit. We also included it in the perspective at the beginning of that report, where I said what I've just said now: significant progress on behalf of the government.

Ms. Michelle Rempel: Were you aware that since we've announced this, over the next five years it will add up to 22 new water sites, 11 new air sites, and over 7 new biodiversity sites?

In your research of the monitoring requirements related to the oil sands, would you say that it's good progress?

Mr. Scott Vaughan: I would absolutely say it's good progress. We've looked very closely at what the government released in March 2011 and July 2011, and the six different chapters and the plan they've announced are significant, rigorous, robust, and peer-reviewed. We're looking forward now to its implementation.

Ms. Michelle Rempel: Thank you.

In your comments, you also talked about how the subcommittee might want to identify the assessment of cumulative effects. In light of substitution and equivalency, are you aware of some of the land use planning work that has happened in the province of Alberta and other jurisdictions around the country?

Mr. Scott Vaughan: I am, and I think what the Province of Alberta is doing on regional planning and land use planning is very important. We don't have the mandate to audit what the provinces are doing.

If I may, though, it was a very simple point, and it was simply that one of the issues that led to the government announcing its 2011 plan to revamp the monitoring system was because there were different jurisdictions putting in different data sets and different points. One of the questions in the regulations is that if substitution and equivalency are going to move to the provinces, it would be important at the outset to make sure the data can talk to each other.

Ms. Michelle Rempel: You are aware of some of the work that's being done. Acknowledging that it's out of scope of some of your research, would you say that cumulative impacts are being put into land use planning frameworks at a provincial level?

Mr. Scott Vaughan: Absolutely. Yes.

Ms. Michelle Rempel: Great. Thank you.

Mr. Obermeyer, you made a comment. I think it was something akin to, “We've never had an oil spill with a pilot on board.”

Can you expand on that? I maybe misheard you, and I wanted to clarify that a bit.

Capt Kevin Obermeyer: Absolutely. First of all, we've been handling tankers for 50 years and we've had no incidents with tankers at all. The only spill we had was one that was purely accidental. There was a bolt sticking out of the dock when the vessel was pulled back alongside the dock.

But from that perspective, nothing—

Ms. Michelle Rempel: And in what time period was that?

Capt Kevin Obermeyer: I've been on the coast for 20 years, so I'll speak from that perspective, and I've been with the authority for 13 of those 20 years.

Ms. Michelle Rempel: The government did make changes to CEAA in 2010, so we've seen changes in process. Some testimony was heard earlier tonight that further changes to the Environmental Assessment Act, especially related to the process showing predictability and timeliness in the process, would lead to environmental catastrophe.

The two examples that were given were the Exxon point and BP. Do you foresee any major changes in safety, especially in light of some of the safety provisions that have been included in this new act?

Capt Kevin Obermeyer: From the authority's perspective, we don't get involved with the CEAA part of the project. What we deal with is TERMPOL, and there are no changes to that.

Ms. Michelle Rempel: Now the changes to this legislation address the fact that we are going to make some of the rules around tanker operations, including piloting, a bit more strict.

Do you think that's a positive thing? Would it help to ensure that this positive track record you have right now will continue?

Capt Kevin Obermeyer: Yes.

Ms. Michelle Rempel: Great. Thank you.

I want to talk to Mr. Jules. Thank you so much for coming tonight. You spoke about aboriginal Canadians sharing in the wealth created by our abundance of natural resources in this country, and in the energy sector. I want to ask you a few questions to explore that.

Last night we had the Mining Association of Canada here, and they testified they're one of the largest private sector employers of aboriginal Canadians in the country. You spoke a little about what benefits the aboriginal Canadians could see with new resource projects moving ahead. I'd like to give you an opportunity to expand upon that.

● (2155)

Mr. Clarence T. Jules: We have in Kamloops and in Skeetchestn an incredible agreement with New Gold mines, which is situated within our traditional territories and just outside of the city limits of Kamloops. What we've got through the agreement is a comprehensive training program, an employment program for aboriginal men and women. It's an incredible opportunity of being a joint venture partner in the mine development itself.

So you take risks, but you also reap the rewards later on. It's going to be an incredible number of jobs that are created for the first nations. It has led to an agreement with Thompson Rivers University for training of those individuals.

So not only do the first nations communities benefit, but the entire region. I see that happening as a potential right across the country. Availability should be made for first nations to be equity partners in resource developments, because, as I mentioned, when we just look at the royalty perspective, it isn't enough to encourage first nations to come forward and be supportive of a development moving forward. You have to be a business partner.

Ms. Michelle Rempel: Thank you.

We also heard last night about the capital intensity of some of the major resource projects and how when proponents are going to decide whether or not they're going to move forward with it, they have to consider the window to market.

The challenge becomes this. How do we ensure that the integrity of the environmental assessment process is maintained, but also ensure that there's timeliness and predictability for business review? Given what you've just said, do you think the changes that are in this section of the budget implementation act could lead to increased jobs for aboriginal Canadians?

Mr. Clarence T. Jules: The short answer, of course, is yes. I think people will benefit from any opportunity where you have the streamlining of reviews and what not.

I say that because of the experience I've undertaken dealing with tax issues right across the country. We provide model by-laws, where there is a single point of entry for first nations when it comes to property tax. And if you apply that to how the legislation is looking for further development, of course, the answer would have to be yes.

The Chair: Thank you, Ms. Rempel. Seven minutes have elapsed.

Ms. Leslie, for seven minutes.

Ms. Megan Leslie (Halifax, NDP): Thanks very much, Mr. Chair.

And thank you to all the witnesses for being here tonight, again, as my colleague pointed out, so late.

My first question is for Mr. Vaughan. I've only been in this role of environment critic for a year, so I'm still learning a little bit about what your office does. I know you're mandated to review certain things because it's a legislated review, for example, but my understanding is that you also take on projects of your own to review or to do an assessment of.

Am I correct in that? Do you have that kind of autonomy?

Mr. Scott Vaughan: That's absolutely correct, yes.

Ms. Megan Leslie: Have you, or has your office, done a review of the budget bill, of Bill C-38?

Mr. Scott Vaughan: No. Our office would not be mandated to look at a bill. Our office would only be mandated to look at when an act is finalized, because a bill is policy and we stay out of policy. So that would be outside the scope of our office.

Ms. Megan Leslie: So you wouldn't have looked at the environmental proposals in this bill and done an analysis?

Mr. Scott Vaughan: We're starting. Obviously, we're looking at this with great interest, and we've had various interviews with departmental officials because it's going to affect some work we have under way right now. One example would be the offshore petroleum boards for both Newfoundland and Labrador and Nova Scotia. So the changes in CEAA are going to affect them as responsible authorities. Because of that and some other work we're doing, we've had various interviews.

So we've done some analysis, yes.

● (2200)

Ms. Megan Leslie: Okay.

When I see this list of things that you suggest the subcommittee should review, obviously they've piqued your interest in some way. I want to ask you about paragraph 15, where you propose that we think about the changes to fish habitat and assessing aquatic biodiversities and ecosystems more broadly. What are your concerns? What are the red flags that appear for you?

Mr. Scott Vaughan: Again, and I wouldn't say “red flags”, but I would say—

Mr. Brian Storseth: Chair, a point of order.

The Chair: Mr. Storseth, a point of order.

Mr. Brian Storseth: Thank you, Mr. Chair.

It's my understanding that Mr. Vaughan is a public servant. I would like to make sure to remind the committee of page 1068 of O'Brien and Bosc, which says:

> Particular attention is paid to the questioning of public servants. The obligation of a witness to answer all questions put by the committee must be balanced against the role that public servants play in providing confidential advice to their Ministers. The role of the public servant has traditionally been viewed in relation to the implementation and administration of government policy, rather than the determination of what that policy should be. Consequently, public servants have been excused from commenting on the policy decisions made by the government.

Including what those policies should be.

The Chair: Did you want to respond to that, Ms. Leslie?

Ms. Megan Leslie: I would like to respond to that.

Thank you to Mr. Storseth. I am well aware of what's in that section. I'm not asking for a policy decision. I am merely questioning Mr. Vaughan.

The Chair: Colleagues, I appreciate your interventions.

My understanding, Mr. Storseth, and I stand to be corrected here, is that Mr. Vaughan is part of the Auditor General's office, which is an office that reports to Parliament and is not ministerial staff or a deputy minister of government staff.

Ms. Leslie, your questions, though, must stick to what is in the purview of Mr. Vaughan's ability to answer. Mr. Vaughan was quite clear in his opening remarks that he will not be addressing policy issues. His role, if my understanding is correct, is to discuss what his department under his supervision has done insofar as auditing the various aspects that fall under the environment commissioner's purview.

Mr. Vaughan, your answers would have to stick to the mandate, of which I am confident that you are fully aware.

Ms. Megan Leslie: Thank you.

My question is, is this something you think the subcommittee should focus on or should be questioning? What exactly should we be looking at here?

Mr. Scott Vaughan: Let me just say that it would be very similar to what both Mr. Bonnett and Dr. Schindler said. It's not a concern, but it is an area of clarification that will need to be sorted out during the development of the regulations. The proposed changes to the fish habitat policy make reference to habitat, as well as to individual fisheries, as well as to an ecosystem approach. They can be seen as distinct approaches between a fishery-specific approach and how they fit within a broader ecosystem. It's as simple as that. How is this going to fit together in the changes to the fish habitat policy?

Ms. Megan Leslie: Thanks very much.

My next question is for Mr. Amos.

Section 35 of the Fisheries Act has had some successes in that it has empowered DFO to monitor or to retain regulatory oversight over some key habitats. Could you describe some of these successes —situations where we have seen section 35 work? What do you think would happen to those examples if these proposed changes go through?

Prof. William Amos: Certainly. Thanks for the question, Ms. Leslie.

As I mentioned, back in 1977 an important decision was made to amend the Fisheries Act to allow for habitat protection. That has enabled the Department of Fisheries and Oceans to engage in protection of potentially harmful activities such as gravel mining in the Fraser River—that kind of activity can pose grave threats to pink salmon and sturgeon populations at risk—to oil sands mining and pipeline development in Alberta. This can destroy fish-bearing creeks. It can render fish inedible, and it can create significant risks to water resources generally.

Then, obviously there are matters of large-scale hydro development habitat impacts on local fish and benthic species in relation to finfish aquaculture in B.C. These are examples of activities that, pursuant to section 35 as it currently exists, as it is broadly construed, fall within the purview of the subsection 35(1) protections of fish habitat. These are examples of where it is working.

The concern is that by narrowing the habitat protected, and by providing for ministerial regulations that allow for the exemption of certain activities in certain waterways, which won't even be subject to those proposed narrowed habitat protections, what we will end up seeing is a series of activities in water bodies that get less or no oversight. For those activities where there is oversight, it would be reduced.

Specifically, one can imagine that there would be types of activities that would no longer get that habitat protection. That can only be for the worse, from a planning perspective and from a perspective of ensuring sustainable development. It's not a question of saying no to projects; it's a matter of saying that this is how they ought to be done. These are the best practices.

● (2205)

Ms. Megan Leslie: Would you say that's your legal opinion or the legal opinion of Ecojustice?

Prof. William Amos: Yes, certainly Ecojustice will be advising anyone who is seeking our services that if this legislation is passed there will be increased risks to fish habitat and the potential for harm to fish habitat pursuant to any number of activities in specific waterways.

Ms. Megan Leslie: In the time I have left, Mr. Vaughan, back to you. I'm wondering if, in any of your analysis of these aspects of the budget bill, there are things you don't understand, if there are gaps you are still trying to work through and figure out what it means.

Mr. Scott Vaughan: In my opening statement in paragraph 13, where departmental officials are still looking for clarity, this again will be in the regulations, so what is the project list going to be?

My understanding right now is that the comprehensive studies project list will essentially be the basis for the projects eligible for assessments under the revised CEAA. The critical issue is that for those screenings for which mitigation measures are required, under the plan, as far as I can understand it, those screenings would be dropped.

There's a list of them. Where the threshold is under 3,000 tonnes for metal mines, that would not be subject to a federal EA, or for oil sands under 10,000 cubic metres a day, or for any offshore exploratory wells or seismic.... Those are specific areas where I think probably the agency would be better at answering this.

I'll wind up, Mr. Chair, simply by saying the upper threshold screenings, as far as we understand, will be dropped entirely. Where the screenings are close to comprehensive studies I think is an important area to be elaborated in the regulations.

The Chair: Thank you, Ms. Leslie.

Ms. Duncan.

Ms. Kirsty Duncan: Thank you, Mr. Chair, and thank you to all our witnesses.

I'll begin with Mr. Amos. According to the environment minister, and I quote, “The new environmental assessment process is no different from the old environmental assessment process, except for the improvements that all three of us”—and he's referring to the three ministers—“here today have listed for you”.

I'm wondering if you could comment on that statement, please.

Prof. William Amos: Ecojustice's legal opinion is that the Canadian Environmental Assessment Act is going to be significantly weakened if these proposed amendments are approved. Ultimately—

● (2210)

Ms. Kirsty Duncan: That's in direct conflict with what the ministers have said.

Prof. William Amos: Clearly, the legal opinion of lawyers at Ecojustice is at odds with the opinion of the minister, but at the end of the day this isn't about a matter of law; this is about a matter of philosophical and policy direction for the environmental governance regime Canada has. This is about the federal role in relation to environmental assessment.

Clearly, by shifting away from a trigger-based environmental assessment regime toward a project list environmental assessment regime, the ultimate result is that far fewer federal assessments will be done. As Commissioner Vaughan has pointed out, there are significant uncertainties going forward. It is only going to be pursuant to a project list regulation that we're going to discover the activities subject to federal environmental assessments. Right now we don't know. Will an environmental assessment be required for offshore exploratory drilling?

I suggest that this is a matter of significance, because if there is ever to be industrial activity that is socially and environmentally controversial, if we're going to move forward with proposals, we need to know there's a robust system that allows for consultation, that allows for opinions to be aired so we can achieve some form of consensus, or if there is no consensus, then at least achieve that level of understanding of the disagreement. If there's no assessment, if there's no process by which those disagreements can be aired and by which a degree of consensus can be reached, then I don't see where that's going to be achieved. I don't think that's for the better on the economic development side or on the environmental protection side.

Ms. Kirsty Duncan: Thank you.

Are you aware of whether there's been any assessment of the adequacy of the environmental assessment process in each province and territory?

Prof. William Amos: The simple answer is that environmental assessment is patchy across this country. Some provinces do it reasonably well; other provinces do it relatively poorly. It would require a province-by-province and territory-by-territory analysis of the various laws in question. But it's clear to us that one has to understand environmental assessment in this country.

It's not a matter of whether it is a provincial responsibility or a federal responsibility. What we have generated over the past 30 years is an interconnected web of environmental assessment processes that have developed over time so that there can be as little duplication as possible. Indeed, the Supreme Court of Canada noted in 2010, in the MiningWatch case, that there are already provisions in the Canadian Environmental Assessment Act to ensure that duplication and overlap don't occur.

We've been around this mulberry bush, and we know there is a need to reduce overlap and duplication. This kind of work can always be improved. At the end of the day, there is a role for federal environmental assessment, an important role, particularly in regard to its constitutional jurisdiction over different aspects of the environment. But we need to ensure that we have both levels working together, because the entirety of Canada's environment is not protected when one level of government is doing the environmental assessment. We need both levels of government doing it, and we need them to do it efficiently.

Ms. Kirsty Duncan: Thank you, Mr. Amos.

Commissioner Vaughan, do you think the provinces are ready to take on the larger role in environmental oversight that has been handed to them by Ottawa?

Mr. Scott Vaughan: You would have to ask the provinces.

What I would say in answer to your previous question to Mr. Amos is that I know that our provincial counterparts in British Columbia, Ontario, and New Brunswick have looked at the provincial environmental assessments and have said there have been challenges in their implementation of the provincial requirements. So there are already challenges they are facing.

I think one of the other areas the committee may want to look at, in the clarification of the regulations, is substitution and equivalency. Those, again, will be critical areas.

● (2215)

Ms. Kirsty Duncan: How can that be done? If the government hasn't done an assessment of adequacy, how is it going to determine equivalency?

Mr. Scott Vaughan: I think that would be for the government to answer.

Ms. Kirsty Duncan: I agree with Mr. Amos that this should be hived off. But if it does go forward, I have concerns about how it's going to be put into practice. For example, Ottawa's own experience with the oil sands shows that the direct effects of resource development can be spread far and wide and can accumulate significantly as new projects come on line.

Also, how will Ottawa define the kinds of small projects that will no longer get environmental hearings? What does “directly impacted” mean, and how will it be put into practice?

Mr. Scott Vaughan: Again, I think that would be for the government to clarify. My understanding of the bill is that the NEB will provide public consultations for the public that is directly affected by a project. There are transboundary effects that are also in the bill. The question then is what “directly affected” means in terms of the geographic scope of those consultations. I think that's, again, a question that needs clarification.

The Chair: Thank you, Ms. Duncan.

Thank you, Mr. Vaughan.

We'll go to Ms. Ambler, for five minutes, please.

Mrs. Stella Ambler (Mississauga South, CPC): Thank you, Mr. Chair, and thank you to all of our witnesses who are here this evening.

Chief Jules, I wanted to talk to you about one of the four key pillars of the responsible resource development plan in Bill C-38, which is to strengthen consultation with aboriginal Canadians. We want to better integrate the consultation process with aboriginals by designating a lead department or agency to be the point agency, or the federal coordinator, for all projects. How will it help aboriginal communities to have one point of contact during the consultation process rather than having to repeat the same message to many different departments?

Mr. Clarence T. Jules: That's the answer in and of itself. I used to be an adviser on the Auditor General's advisory panel on first nations issues, and when you're dealing with first nations issues, you have a myriad of reports. You've got numerous federal government departments to contend with on a daily basis, and just having one lead on these issues would be a tremendous burden off the shoulders of the local first nations communities.

Mrs. Stella Ambler: A simplification, I suppose?

Mr. Clarence T. Jules: Absolutely.

Mrs. Stella Ambler: That is a big factor. It would be very helpful?

Mr. Clarence T. Jules: That's right, it would be.

Mrs. Stella Ambler: Thank you. I appreciate that.

Mr. Bonnett, your organization has stated that:

> Canadian farmers have...faced regulatory uncertainty regarding the management of drainage ditches and irrigation canals on their land, so the proposed changes are a positive development for the agricultural community. Farmers rely on the proper maintenance of drainage ditches to ensure their farms remain productive and viable but the Fisheries Act did not recognize this.

This is from a news release approximately a month ago.

How would the changes in part 3 of Bill C-38 affect your stakeholders' ability to create and improve habitat? What types of difficulties, setbacks, or holdups have your members encountered when dealing with the Fisheries Act?

Mr. Ron Bonnett: I think it goes back to the changes I described.

Right now in the Fisheries Act, it is very clear that if there is any harmful alteration or destruction or disturbance, immediately you're in contravention of the Fisheries Act. Just to go through basic maintenance on a drain you're going to be disrupting and making changes to that habitat during the period it's under construction.

Even though you go through the approval processes at the local conservation level or the local municipal level, what we were finding is that quite often there would be a fisheries officer who basically read this legislation to the letter of the law and went through a process of demanding extra reviews and permits before you could proceed.

Quite often, there would be a drain that was scheduled for maintenance and they'd go through the process, and then all of a sudden they'd find that it was getting bumped sometimes a year or two years ahead. I'll use another example from the province of Ontario, where they decided to go through what they call a class environmental assessment for drains and they tried to categorize which drains would be subject to what types of approvals. They set that up, but still, at the end of that, some drainage supervisors were finding that Department of Fisheries officials were coming in and making them go through an additional process again.

It boils down to the fact that the wording of the act was so strict on the habitat issue without having an understanding that in order to keep these drains as habitat for fish, they have to be renewed on a regular basis. An outright ban on any disturbance actually works against creating fish habitat.

That type of issue really was a concern.

● (2220)

Mrs. Stella Ambler: It's a good example of the intention not being fulfilled, really, in the law.

Mr. Ron Bonnett: That's right.

Mrs. Stella Ambler: Okay. Thank you for that very comprehensive answer. I appreciate it.

Dr. Quinney, how would you characterize the impacts to fishing and hunting from the environmental assessment process in part 3 of Bill C-38? I know your remarks concentrated a bit more on the Fisheries Act, but I know that you know a lot about the EA process as well, and the regulatory changes. So how would those changes affect your stakeholders' ability to create an improved habitat?

Dr. Terry Quinney: I have just a brief comment, perhaps.

Firstly, new efficiencies in environmental assessment overall in Ontario would be welcomed. Some have used the word “harmonization”. Professionally, I think those efficiencies would be good for the Province of Ontario. It is our hope that the federal Fisheries Act—and the changes to the federal Fisheries Act—will continue to inform, in fact, the environmental assessment process, as they should.

Mrs. Stella Ambler: Thanks.

The Chair: Thank you, Ms. Ambler.

Mr. Allen, for five minutes.

Mr. Mike Allen: Thank you very much, Mr. Chair, and thank you to our witnesses for being here.

Dr. Quinney, I just want to pick up with you. One of the comments you made during your testimony was in regard to the dubious benefit of the no net loss provisions. Could you just comment a little bit about that?

From your standpoint, do you view fish management practices, like stocking and things like that, as something that is very worthwhile, in terms of fish stocks and that type of thing?

Do you see the new section 4.4 in the bill, where the minister can actually work with conservation organizations and have agreements for financial assistance, as being beneficial to organizations like yours?

Dr. Terry Quinney: Thank you. I believe you've asked a three-part question.

First, we as an organization are very results oriented. We believe that legislation like the federal Fisheries Act should be results-oriented as well. Committee members have talked sometimes about perhaps the less than optimal match between intent and outcome. We see a potential for direct improvements in that regard.

Absolutely, on the question of fish stocking, the answer is that multiple benefits are produced from judicious fish stocking. Those can be benefits to ecosystems but also great benefits to people and society as well.

Third, to your question with reference to a new creative idea that may in fact result in more resourcing for conservation initiatives, we appreciate the creative thinking involved there. We have been assured, though, that the requisite monitoring and assessment will be in place and that that suggestion is value-added, so to speak—an entirely new way to enhance contributions, for example, to assessment monitoring and direct habitat enhancement.

● (2225)

Mr. Mike Allen: Thank you very much.

I know that a number of my colleagues and I are very much in support of fish management and support conservation organizations.

You came to our fisheries committee, as we were studying the Asian carp, and you talked about the economic benefits of the fishery, almost $8 billion and three million people fishing, and the tremendous value to Canada and the tremendous potential negative impact that invasive species can have. Can you just talk a little bit about that?

There's a section in the bill here that talks about the invasive species, and the legislation proposed will allow for the creation of regulations to specify the types of invasive species. Is that what the Ontario federation was looking for?

Dr. Terry Quinney: Absolutely. That's highly progressive. We're very pleased that the Government of Canada is going to pursue regulations, for example, to prevent the import and transport of Asian carp across this country. That's a very significant and important step in the right direction.

I would just finish for now by mentioning that my comments have really dealt with the importance of recreational fishing to Canadians. Many OFAH members organize their lives around fishing and hunting and fish and wildlife conservation. Yes, recreational fishing is very important in this country, but commercial fisheries and aboriginal fisheries are very important in this country as well. So there is a very significant collection of important fisheries in every province and every territory.

Mr. Mike Allen: I'll put a plug in for the $17.5 million to control the Asian carp.

The Chair: There we go.

Dr. Terry Quinney: Excellent news.

The Chair: We've got plugs all over the place.

[*Translation*]

Ms. Quach, you have five minutes.

Ms. Anne Minh-Thu Quach (Beauharnois—Salaberry, NDP): Thank you, Mr. Chair.

I thank the witnesses for being here.

My first questions are addressed to the Commissioner of the Environment and Sustainable Development, Mr. Vaughan.

You stated that your 2009 report pointed to several environmental assessment gaps, especially with regard to screenings. You said on this that in 75% of cases, there was little evidence that recommended mitigation measures for projects were actually completed.

Do you think that Bill C-38, which reduces the number of environmental assessments, will be bridging the gaps pointed out in 2009?

Mr. Scott Vaughan: No. As you said, we noted in 2009 that there were a lot of gaps, in particular with regard to environmental assessment reviews and mitigation. There are some shortcomings with regard to follow-up. Finally, we don't know what problems were identified by the assessments and whether they have disappeared. In fact, we rather expect that these problems will still be there.

Ms. Anne Minh-Thu Quach: Indeed.

Bill C-38 also indicates that environmental assessments will be reduced because of jurisdictional overlaps that make the process too long. Do you think that is the case?

● (2230)

Mr. Scott Vaughan: We noted in the chapter on environmental evaluation that there were delays, but that they were due to poor coordination among the various federal departments. For instance, some delays were due to the fact that they do not agree on the type of assessments to be done and their outcomes. In that chapter, we cite a lot of examples of poor coordination, in particular between Fisheries and Oceans Canada, Transport Canada, Industry Canada and Natural Resources Canada. We stated that that was the main cause of the delays.

Ms. Anne Minh-Thu Quach: Do you think that Bill C-38 is going to solve that coordination issue?

Mr. Scott Vaughan: In the current system, more than 100 agencies and federal departments are involved. Under the new system, there are going to be four. So the cause of that problem will probably be eliminated.

Ms. Anne Minh-Thu Quach: Thank you.

On May 8, 2012, that is to say in the most recent report, you stated that there were several contaminated sites and that this was due to the lack of environmental assessments.

In your opinion, what impact will the reduction in the number of environmental assessments in Bill C-38 have on the issue of contaminated sites?

Mr. Scott Vaughan: In the report I submitted last May 8, I noted that there was now an important environmental deficit of more than C$7 billion. This is due to projects that antedated environmental assessment, for instance abandoned mines, and industrial sites from the 1950s, 1960s and 1970s. That is the legacy we have to deal with now.

Ms. Anne Minh-Thu Quach: If we eliminate environmental assessments, there may indeed be more contaminated sites in the future. Is that correct?

Mr. Scott Vaughan: With your permission, I am going to answer in English.

[*English*]

One thing I can say is that without environmental assessments, Canadians are facing billions of dollars in environmental liabilities. The changes will be up to Parliament, and how those changes are made. What is clear is that there will be significantly fewer environmental assessments. The range is from, currently, 4,000 to 6,000 per year to probably 20 to 30 per year, which will be under the federal regime.

[*Translation*]

Ms. Anne Minh-Thu Quach: Thank you.

My question is for Mr. Amos.

There has been much talk about economic and energy efficiency, and so on. We heard it said that the reduction by the federal government in the number of environmental assessments was not necessarily beneficial for companies economically speaking, and that it could on the contrary prove to have serious adverse consequences.

[*English*]

The Chair: Mr. Amos, the time has expired, but give a brief answer, please.

[*Translation*]

Prof. William Amos: My comment will be almost the same as the one made by Mr. Vaughan. Indeed, if we do not perform analyses before promoting or going forward with a project, we run the risk of having to foot the bill later. If we do not do rigorous and complete environmental assessments, we are going to have to foot the bill in terms of contamination, or spills, and so forth.

[*English*]

The Chair: Thank you very much.

Thank you, Madam Quach.

Mr. Sopuck, you have five minutes, please.

Mr. Robert Sopuck: Thank you.

Mr. Amos, I take very strong exception to your conclusion that there's no habitat protection under the Fisheries Act. Proposed subsection 35(1) says:

> no person shall carry on any work, undertaking or activity that results in serious harm to fish that are part of a commercial, recreational or Aboriginal fishery, or to fish that support such a fishery

That is a very clear statement of strong habitat protections for key fisheries. How do you square your conclusion with what the bill actually says?

Prof. William Amos: Thank you for the question, Mr. Sopuck.

I believe that once our legal memoranda have been circulated, you'll have a more nuanced understanding of the position we're taking.

I haven't suggested that habitat protection is going to be eliminated in any respect. What I've suggested is that it's going to be greatly weakened, and that it's going to be narrowed, and that there is potential for exemptions for particular waterways and for particular activities in works and undertakings.

What we're seeing here is a shift away from a broad regime of habitat protection that protects against the harmful alteration, disruption, or destruction of fish habitat. That definition is proposed to be changed such that the protection to habitat would be limited to serious harm and only for fish that are considered part of or related to aboriginal, recreational, or commercial fisheries. Already what we're dealing with here is a reduction in the fish that are protected by subsection 35(1), and after that we're dealing with a situation where, instead of it being a harmful alteration, that whole protection around alteration is going to be changed, because now it's only going to be for where there is serious harm. So that is entirely different.

I can cite some examples for you.

● (2235)

Mr. Robert Sopuck: Thanks. I think short answers are the best because we don't have much time here.

I think a focus on key fisheries that people are actually interested in is a good thing, and habitat protection will actually be strengthened for fisheries that people actually care about.

You made the astonishing statement, and I wrote it down: “That environmental process will no longer be conducted”, and I wrote that; you said that, verbatim. You said as well that there is an exemption of pipelines from the Fisheries Act. I find that astonishing, because with the current definition, subsection 35(1) is very clear on the protection of habitat for significant fisheries.

How do you square what you said with what the bill actually says?

Prof. William Amos: The proposed amendments provide for—and this would be at the proposed subsection 35(4)—ministerial exemptions to certain classes of works, undertakings, or activities, or to specified waters. Pursuant to the enactment of Bill C-38, what would be provided for would be a regime of exemptions that wouldn't be subject to the Statutory Instruments Act; it would go directly to *Canada Gazette II*.

There would be no requirement for notice, no requirement for public consultation pursuant to such ministerial exemptions—for example, for certain activities such as pipeline crossings—if the model that has been used in the Navigable Waters Protection Act is followed. They have provided for the exact same type of exemptions under that act in the last two years, so there is precedent established for exemptions. In this case, under the NWPA, by ministerial order they've exempted certain classes of works and undertakings, and in the case of the Navigable Waters Protection Act, they have gone and exempted pipeline crossings.

What I'm suggesting is that there is no reason to believe that this government would not choose, pursuant to the enactment of Bill C-38, that an activity such as a pipeline crossing would not also be subject to the written exemptions to the protections of section 35.

Mr. Robert Sopuck: By focusing on key fisheries, we will be strengthening habitat protection for fisheries that people actually care about.

My recommendation, Mr. Amos, is that you talk to Ron Bonnett, who has a very common sense approach to the effect the old Fisheries Act had on agriculture.

The Chair: Mr. Sopuck, we'll have to finish with that comment. Your time is up.

Mr. Robert Sopuck: Thank you.

The Chair: Mr. Julian.

Mr. Peter Julian: Thank you very much, Mr. Chair.

Mr. Vaughan, I want to get back to the stunning statement that I think we all heard only a few moments ago. You were saying—I hope I'm getting this accurately—that what this legislation does is reduce the number of environmental assessments at the federal level from 4,000 to 6,000 annually down to 20 to 30. Did I hear you correctly?

Mr. Scott Vaughan: Yes.

That's why in the opening statement...in the development of the regulations to figure out exactly where the scope is going to be.... Right now, how I understand it is there are currently three different categories. There's screenings, comprehensive studies, and panel reviews. Under the amendment to CEAA, that category of screenings that represents 99.9% of environmental assessments will no longer exist. Therefore, what's left are comprehensive studies; those are about 10 to 12 a year, and panel reviews are about 4 to 5 a year. So right now there are I think currently 38 comprehensive studies that are ongoing, multi-year, and there are 4 to 5 review panels.

● (2240)

Mr. Peter Julian: If alarm bells weren't going off in households across the country, they certainly are now, to know that's behind this government attempt.

What type of debt does that leave future generations if this government eviscerates environmental assessments to the point at which there's only a handful done across the country every year? Is there a liability created for future generations when all of these eliminated assessments are not done?

Mr. Scott Vaughan: That's a question probably for Environment. Similar to the answer to the honourable member, I would say there's currently already $7.7 billion in environmental liabilities that will be paid for, not for decades but for centuries to come, from some sites that preceded strong regulation, strong reviews, strong assessments. What I have said is those are very expensive cautionary tales to make sure these things aren't repeated.

Mr. Peter Julian: This is appalling. This is the height of your responsibility. This is something the government hasn't revealed, and we're so thankful to actually get this information out in the public domain. Canadians certainly need to know about this.

I'd like to go further on the issue of public participation, because that's part of the underpinning of ensuring environmental assessment and project assessment. We now have a government that is going to exclude a wide variety of individuals, depending on where they live or what they plan to say. What does that do to weaken additional protections for Canadians, if Canadians are excluded because of what they think or where they live, by this government's attempt to say that you have to be directly impacted? I'm talking about energy assessments. You have to be directly impacted for the government to permit you to speak out or participate in public evaluation.

Mr. Scott Vaughan: Again, I would say this would be something on which the committee may seek clarification. What does “directly affected” mean, particularly since the bill has a very strong statement on assessing cumulative effects. Previously it was “consider”; it's now “must”, which is a clarification in a positive direction. But given the focus on cumulative effects, what does “directly affected” mean?

Mr. Peter Julian: Mr. Amos, could you comment on what we just heard as well, the reduction in the number of assessments, the evisceration, as you mentioned in your testimony, of the number of assessments, and the debt that is going to be created that future generations are going to have to pay as a result of this irresponsible action of the government?

Prof. William Amos: Let's take a concrete example. The Taseko Mines project in northern B.C. proposed a gold mine. The B.C. environmental assessment office approved the project. They gave it the stamp of approval. The current federal government, under the jurisdiction of Minister Prentice, took a hard look at the project, and, based on the recommendation of a joint review panel, said, “No, this project ought not to go forward. It's not in the public interest.”

If that assessment had not been done federally, that project would have gone forward. It may still go forward. It's being reviewed again. The idea here is that there is a federal role for environmental assessment. If it's not done, then we're going to enter a new era in which decision-making around projects is reviewed only by one jurisdiction for a certain limited number of factors, and it won't necessarily be comprehensive, the way it can be done now. That's not to say that the situation right now is perfect. By no stretch of the imagination can it be said to be a law that can't be improved. Certainly, there are processes that could be improved.

The Chair: Thank you very much, Mr. Julian. You're half a minute over time already.

Ms. Rempel, go ahead for five minutes, please.

Ms. Michelle Rempel: Thank you, Mr. Chair.

Mr. Vaughan, could you briefly define for the committee what a screening currently entails under the Canadian Environmental Assessment Act?

● (2245)

Mr. Scott Vaughan: Briefly it is—

Ms. Michelle Rempel: What types of projects would be conducted under a screening?

Mr. Scott Vaughan: It's largely for smaller projects or projects that will—

Ms. Michelle Rempel: Could you give an example of a small project that you've encountered that would be under a screening?

Mr. Scott Vaughan: I can give you different examples. Do you want a big one or a small one?

Ms. Michelle Rempel: One of the examples we heard about during the review of the Canadian Environmental Assessment Act was a maple sugar bush operation where there was a desire to plant an additional sugar bush, and that required a screening. Adding a park bench in a national park required a screening. I think it's important to note that these are the types of projects—projects that have limited environmental impact—that were included under the screening category.

Would you categorize that statement as being correct?

Mr. Scott Vaughan: I'd say it's partially correct. I'd say there are also larger projects, which is what I had mentioned: exploratory wells; seismic wells for offshore drilling; pipelines under 75 kilometres would be under screenings.

Ms. Michelle Rempel: But now, under the new act, there are different categories of assessment, including standard, etc., which would still require environmental assessment.

Would that be correct?

Mr. Scott Vaughan: I think that's the critical question, and that's what I said in my opening statement. That's why I think the project list will be critical. My understanding now is that the project list is going to be based on the comprehensive study, not on larger screenings.

Ms. Michelle Rempel: So the short answer is yes.

Just to go back to the statement that 99% of current environmental reviews are based on those smaller screening projects, that's correct?

Mr. Scott Vaughan: Ninety-nine point nine per cent of EAs are screening levels.

Ms. Michelle Rempel: We've heard a lot of talk about allocating resources to the Canadian Environmental Assessment Agency. Would you suggest that allocating resources to larger environmental projects, many of the projects that Mr. Amos talked about tonight, would perhaps be a good use of the Canadian Environmental Assessment Act's resources?

Mr. Scott Vaughan: Absolutely.

Ms. Michelle Rempel: Excellent.

So then would you characterize us transferring resources from the 99%, which my colleague is very concerned about, to perhaps focus on the larger projects as a good use of resources?

Mr. Scott Vaughan: Yes.

Just so we're clear—

Ms. Michelle Rempel: Thank you.

To clarify, moving from 6,000 to a lower number of environmental assessments would actually help the Canadian Environmental Assessment Agency use its resources more effectively?

Mr. Scott Vaughan: You'd have to ask the agency.

Ms. Michelle Rempel: Thank you.

Mr. Chair, I'd like to share my questions with Mr. Kamp.

The Chair: Mr. Kamp, there are a couple of minutes remaining.

Mr. Randy Kamp: Thank you.

Let me just go back to Mr. Amos.

Let me ask you a simple question to start. Are you satisfied with the status quo in section 35?

Prof. William Amos: In short, no.

That is because, one, insufficient resources are dedicated to habitat protection, and, two, the discretion that the Minister of Fisheries and Oceans has to authorize harmful alteration, disruption, and destruction of fish habitat pursuant to subsection 35(2) is very broad, and it has resulted in a number of authorizations over the years that simply result in important habitat damage.

Mr. Randy Kamp: We believe the status quo is inadequate. We've presented a way forward, and that's what we're debating here. I think we disagree on whether that's adequate or not, in your opinion.

You seem unhappy about the fact that there might be some kinds of works, perhaps very minor, some kinds of waters, like perhaps seasonal things that freeze to the bottom during the winter, which the minister could prescribe by regulation—not by ministerial order, as you said, but by regulation—and that these fall outside of the purview of the protection. Most people we've talked to, and I think Mr. Bonnett would be one of them, would say that's a common-sense thing to do, and that we don't have the resources to look at every piece of water—for example, a slough on a farmer's field that only has suckers in it—and expect Fisheries officers to show up on that property, with guns drawn in some cases, we've been told—we hear horror stories—and enforce section 35 of the act.

In our view, this is a common-sense approach to being able to focus the resources in the areas where they need to be.

I think I'm out of time.

● (2250)

The Chair: A brief answer, Mr. Amos.

Prof. William Amos: Sure. I appreciate the point. I think that focusing resources is an important objective. The issue is how one solves a problem. Does one solve it legislatively, or does one solve it through guidelines and policies?

Ecojustice Canada would suggest that the objective of avoiding the harsh application of prohibitions and requirement for legal authorizations under subsection 35(2) could be avoided. Issues related to, hypothetically, drainage ditches, could be avoided. What we have here is a situation where, for instance, it may be legal to temporarily remove vegetation from a spawning stream, or disrupt the gravel, or add sediment through roadwork. Those kinds of activities could wipe out an entire year class of salmon, even though it doesn't permanently alter the habitat. We would suggest that the fallout of trying to solve the "drainage ditch" problem is that there are going to be important impacts on habitat that weren't intended.

With respect to the objectives that were set out, I think that focusing government expenditures on those habitat issues that are really important is a laudable goal. I couldn't agree more. The point is how you go about doing it.

The Chair: Thank you, Mr. Amos.

Colleagues, again I must seek unanimous consent for the committee to continue on with these deliberations, as the bells summoning members to the House of Commons for a vote are now clearly ringing. We have two more members on the list, which would finish the second round completely. My suggestion is that should take approximately 10 minutes, which should give us lots of time within the realm of 30-minute bells to do that, at which time I think our committee hearings would be over. I think it's fair. Every member of the committee would have had a chance to ask questions at that point in time.

Let's continue on. I sense there is consent.

Mr. Chisholm, for up to five minutes.

Mr. Robert Chisholm: Thank you, Mr. Chairman.

Mr. Vaughan, I would like you to clarify an exchange you just had about the 99% of assessments. It was insinuated that these weren't important, and that we're just going to go after the big ones. Would you explain the types of screenings that may be picked up in that 99%? What is the potential impact of allowing those projects to go forward without any assessments?

Mr. Scott Vaughan: Just to reiterate, Ms. Rempel is absolutely right. The majority of screenings are very small projects for which there are no significant adverse environmental impacts. The agency has estimated that 94% of screenings would not pose significant adverse environmental impacts. We had a different number, but at the end of the day, the question is for screenings of larger projects. I name some of them: metal mines below 3,000 tonnes, oil sands below 10,000 cubic metres, offshore projects including exploratory drills of 75 kilometres, all aquaculture projects, all bridge projects. Those are also under screenings. Those are larger projects. Those are projects that can pose significant adverse environmental impacts.

From what I understand, it may be useful to get the agency and ministries before the committee. Our understanding is that because all those are under screenings, they will no longer fall under the federal EA process.

Mr. Robert Chisholm: Thank you for that.

You made a comment earlier in your testimony and I want to follow up on it. The Canada-Nova Scotia Offshore Petroleum Board, I believe, is looking at the Old Harry site. You indicated that the changes in this bill would affect whether or not those boards would be required to do an assessment under those circumstances. Could you please explain that?

Mr. Scott Vaughan: Under the bill they are moving from the current regime of 100 responsible authorities to three, which are named. There is a fourth one, which is an agency which will carry out regulatory responsibilities. Our understanding, from discussions with the boards, is that they would then retain their responsible authority powers, if you will, under that fourth category, both the Nova Scotia and the Newfoundland offshore boards. We're actually meeting with them on Thursday to clarify what their understanding is of these changes.

● (2255)

Mr. Robert Chisholm: Unfortunately, we'll be done here.

Mr. Scott Vaughan: By Thursday?

Mr. Robert Chisholm: By Thursday, by the time you seek clarification.

As you may know, there's a fair bit of controversy around what is being proposed with respect to Old Harry, the fisheries, P.E.I., Quebec, and the coast of New Brunswick. If we were ever to go forward and there were a spill, it would be a catastrophe that would make the *Exxon Valdez* look like a minor incident.

Mr. Scott Vaughan: What I will say is that we are doing an audit right now, so I can't comment on it, but we will be reporting later this year on what the strategic environmental assessments are for both boards, as well as the environmental assessments, and that would include, then, what has been done to date on Old Harry.

Mr. Robert Chisholm: Thank you.

Mr. Amos, I wanted to also ask you about these changes, as they deal in particular with the offshore petroleum boards in my neck of the woods, and also about the implications of them being as Mr. Vaughan has described—not having the authority to do those assessments.

Prof. William Amos: I appreciate the question.

In the interests of full disclosure, I note that I represent three different groups on matters pertaining to the Old Harry proposal: the strategic environmental assessments being undertaken by the Canada-Newfoundland and Labrador Offshore Petroleum Board and the screening process that is also currently being run by that same board as the responsible authority. My opinions will reflect those of our clients.

The situation right now is nothing short of uncertain. We're not certain, as Mr. Vaughan has suggested, whether or not the board will be a responsible authority, so we're not sure what impact that may have on the screening assessment process. It won't impact the strategic environmental assessment process because that EA process is in fact not even legislated under the Canadian Environmental Assessment Act. So it won't be changed.

But in regard to the screening assessment, who's to say? In fact, we don't know, because we don't have a project list regulation in front of us. We don't know, going forward, if exploratory wells, whether they take place in the Gulf of St. Lawrence, in the Beaufort Sea, or anywhere else in Canada, for that matter.... We don't know if proposals to drill will be subject to environmental assessment federally.

I think the point that was made earlier by Mr. Vaughan is really important, which is that among the thousands of environmental screening assessments that currently are taking place, there are many projects that are on a very small scale—they're bridge crossings. So I appreciate the line of questioning from Ms. Rempel. On the other side, there are important and significant projects that are subject only to a screening. If such projects as exploratory well-drilling, for example, and it's that kind of well that caused the Macondo blowout.... If those projects are not subject to federal environmental assessment, the question is, who's going to do it?

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

Mr. Chisholm, we are almost at seven minutes. I've been very lenient.

Mr. Anderson.

Mr. David Anderson: Thank you, Mr. Chair. I appreciate that.

We're talking about screening here. I'd like to spend another couple of minutes on it.

Ms. Rempel mentioned a couple of examples of the types of EAs that needed to be done. I have an example as well. The RCMP Musical Ride came to Fort Walsh in Alberta. That was their base for many years. They did a re-enactment there. They were actually forced to do an EA to see whether they could use the parade grounds. I think maybe that's one of the examples you're talking about in regard to the 94% you mentioned that have little or no environmental impact. That percentage was 94%, I think?

Mr. Scott Vaughan: That's what the agency is using—

Mr. David Anderson: Yes, and we've increased funding to CEAA, so I would suggest that we're actually increasing the capacity to take a look at the bigger projects that have been talked about here, the projects that Mr. Amos was speaking about.

I would like to talk a bit about social licence. It came up a little earlier. It also came up last night

Mr. Quinney and Mr. Bonnet, you're on the ground. If we come out with a proposal to have one project, one review, and set timelines, average people can understand that, right? We'd come out with a clear EA process.

Clearly, last night's testimony indicated that there would be an EA process that would be clearer. The outcomes would not be changed. The process may be changed, but the outcomes would be similar. It would be with a focused definition of fish, fisheries, and fish habitat, and a very serious and focused definition of serious harm. As well, we understand that we need consistent application and we need appropriate regulation.

Do you think that's going to increase social acceptance across this country of what we're doing? Or do you think that will decrease it?

● (2300)

Mr. Ron Bonnett: Anything that can be done to increase clarity would really build public confidence in the process. I come at this not only from the agriculture perspective, but in a previous life I was a municipal counsellor. Trying to get your hands on what an EA process was going to be, what the regulations were going to be, and what the definitions were going to be was a moving target all the time. Anything that can be done to bring clarity and certainty to that and establish timelines will build public confidence.

Mr. David Anderson: Mr. Quinney.

Dr. Terry Quinney: I really don't think I have anything to add there.

Mr. David Anderson: That's fine.

We've heard again and again that the outcomes will not change, but the process will change. I think that's to strengthen the process. Definitions may be amended, but environmental results are going to be similar, if not more effective.

I want to ask you a question that may have partially been asked before. Do you think your drainage ditch should be treated the same as a salmon fishery? Do you think changing a culvert municipally should be treated the same as putting a pipeline across a river?

Mr. Ron Bonnett: No, and I think that goes back to when you developed the regulations. We need to get some definitions on the types of projects that should be subject to more thorough reviews than others. Basically it's a waste of resources to go through a full-blown review on those types of projects.

Mr. David Anderson: Does anybody else want to respond to that?

Everything is treated basically indiscriminately right now; everything is applied the same across the board. I see Mr. Vaughan shaking his head there or agreeing with me.

Does it make sense to give the minister the power to provide enhanced protection for ecologically sensitive areas? Is that a good move, rather than everybody treating your drainage ditch the same as a salmon fishery, or treating your culvert the same as a pipeline crossing a river? Isn't it a reasonable thing and a good idea for the environment minister to be able to move to protect ecologically sensitive areas?

Dr. Terry Quinney: I have two quick comments. As you know, we have members in all corners of Ontario, and for some time the status quo has not been working. We need improvements. We're certainly willing to cooperate with whomever wishes to make improvements. So we appreciate that commitment by the federal government.

Mr. David Anderson: One of the things we haven't talked much about tonight is enforcement. Fines can act as deterrents to any kind of ecologically damaging actions, and they're only effective if they're stringent enough. This proposed legislation is going to align infractions under the Fisheries Act with the environmental enforcement act, which actually provides higher maximum penalities.

Do you see that as a reasonable thing to do? Is that going too far? Will that be beneficial for Canadians?

Mr. Vaughan, go ahead.

Mr. Scott Vaughan: I certainly would agree with you. The fines are a very clear signal within the act. We looked at fines in the past and said in past reports that they were low enough to have no effect. So increasing those fines would be aligned with something we found in past audits.

Mr. David Anderson: We've heard that from people for a number of years, and Mr. Sopuck mentioned it. We've moved in that direction.

The Chair: Thank you, Mr. Anderson.

Unfortunately, the five minutes have gone by. This brings to an end the second round of questions.

I would sincerely like to thank our witnesses for staying here, travelling here, and being here this late at night. If it is any consolation, Mr. Jules, Mr. Vaughan, Mr. Obermeyer, Mr. Bonnett, Mr. Amos, and Mr. Quinney, most of us who are about to leave will probably be here until 2 a.m. or 3 a.m. conducting business in the House. So while we have sympathy for you, we're not asking for any sympathy in return. We sincerely thank you for your presentations and your help in guiding us with our deliberations.

Colleagues, well done tonight, and we'll see you tomorrow.

The meeting is adjourned.

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