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Chair

Mr. Leon Benoit

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● (0850)

[*English*]

The Chair (Mr. Leon Benoit (Vegreville—Wainwright, CPC)): Good morning, everyone.

As you all know, pursuant to the order of reference of Thursday, May 29, 2014, we are studying Bill C-22, An Act respecting Canada's offshore oil and gas operations, enacting the Nuclear Liability and Compensation Act, repealing the Nuclear Liability Act and making consequential amendments to other Acts.

In our study of this legislation, we begin with departmental officials who will be dealing with the offshore section of the act. I welcome you to our committee this morning. Thank you very much for coming on such short notice.

We have with us from the Department of Natural Resources, Jeff Labonté, director general, energy safety and security branch, energy sector; Samuel Millar, senior director, frontier lands management division, petroleum resource branch, energy sector; and Jean François Roman, legal counsel, legal services.

From the Department of Indian Affairs and Northern Development, we have Michel Chenier, director, petroleum and mineral resources management directorate, natural resources and environment branch, northern affairs.

We have three-quarters of an hour with these witnesses, and we will start immediately.

Do you have a presentation to make, sir, to start our study of this bill?

Mr. Jeff Labonté (Director General, Energy Safety and Security Branch, Energy Sector, Department of Natural Resources): Yes, indeed.

Thank you very much for the opportunity to be here this morning and to discuss the elements of Bill C-22.

There is a presentation that's been distributed by the clerk in French and English.

[*Translation*]

You can have it in the language of your choice.

[*English*]

Let me begin by appreciating the chance to come and speak to you about the bill and hopefully be able to answer the questions you may have, and to be followed by other stakeholders later today.

Today's focus of the presentation would be on the offshore components of the energy safety and security act, an act that amends the petroleum regime to enhance incident prevention response capability, liability, and compensation.

Just as background, the offshore legislation was developed by the Minister of Natural Resources in collaboration with the Minister of Aboriginal Affairs and Northern Development, the Minister of the Environment, and the Minister of Foreign Affairs.

This piece of legislation was also developed in collaboration with the provinces of Newfoundland and Labrador and Nova Scotia, both of which share management of the offshore with the Government of Canada and have mirror offshore legislation, both of which will be presenting similar bills in their legislatures in the coming months.

Here are some highlights of Bill C-22: Its focus is to strengthen the safety and security of our offshore and nuclear energy industries. It ensures that Canadians will continue to have a world-class offshore regime that is accountable and responsive, and both works to prevent incidents from occurring as well as provide for the compensation and liability in the event of an incident.

This piece of legislation builds on the government's agenda for responsible resource development by ensuring that we have an equally responsive regulatory regime to support responsible resource development.

The Commissioner of the Environment and Sustainable Development recognized the government's intentions previously when at committee and has found that these pieces of legislation are consistent with the fall report that made mention of the need to raise liability and compensation in the offshore sector among other stakeholders across the country.

From an economic point of view, the offshore petroleum sector is fairly significant, representing 28% of Newfoundland and Labrador's GDP and 3% of Nova Scotia's nominal GDP. There are about 13,000 jobs or 5.8% of total employment in Newfoundland and Labrador. There has been about $9.2 billion in royalties to Newfoundland and Labrador, and $2.4 billion in royalties to Nova Scotia over the past 15 years. That is to say that the energy sector and the offshore for Atlantic Canada is quite significant and important from an employment and revenue point of view.

Regarding key features of these particular amendments that are proposed for the offshore, there are themes within the bill.

If you look at one theme about improving the accountability of the regulatory system, there are proposed amendments in the bill to enshrine the polluter pays principle into law; to reinforce in statute the unlimited liability at fault or when negligent; to increase the absolute liability amount to $1 billion, up from $40 million in the Arctic and $30 million in the offshore and everywhere else; to establish in statute that operators are liable for contractors; and to allow governments to seek compensation for environmental damages.

In terms of enhancing prevention, the bill will provide for the requirement to set a minimum of $1 billion in financial capacity for operators of the offshore and create an ability for regulators to levy administrative and monetary penalties for infractions and regulatory incidents.

Moving to the sixth slide, the third element of the bill is to increase response capability and transparency. Here the bill clarifies authority for use of spill-treating agents when there's a net environmental benefit. It provides the regulators direct access to $100 million per project or a pooled fund of $250 million if the operator is unwilling or unable to respond to a spill and the regulator needs to step in.

The act will require the boards to make emergency plans, environmental and other documents public. It will also create in statute a cost recovery regime that requires industry in law to provide payment to government for the regulatory services that are provided. Currently, there's a 75% cost recovery in Newfoundland and Labrador, and 50% in Nova Scotia under voluntary agreements. This therefore puts in statute the current agreement.

The final point would be to establish the authority to manage resources that straddle two or more administrative areas in the Arctic region, particularly as we look at different opportunities and different collaborations that are happening north of 60.

In terms of next steps, the bill was introduced, as you might know, on January 30. The government and the department are currently working on regulations in the statute or in the proposed amendments that are imposed over a timeline.

Provincial versions of the bill are in development. We are working closely and collaboratively with our provincial counterparts so that mirror legislation will be introduced. We expect that to happen in the early fall in Nova Scotia's case and shortly thereafter in the cast of Newfoundland and Labrador. The entry into force of the bill will be determined with the provinces once they pass their legislation and all of the regulations are completed.

● (0855)

There's a small annex that identifies which of the federal acts are impacted by part 1 of the energy safety and security act and where the amendments apply.

The Chair: Again, thank you very much for coming on short notice and for your overview of the legislation. It's very much appreciated.

We'll start our questioning and comments from members in the seven-minute round with Ms. Block.

Mrs. Kelly Block (Saskatoon—Rosetown—Biggar, CPC): I would like to welcome all of our witnesses here today.

It is my understanding that this legislation, as you've mentioned, was developed in collaboration with the ministers of Aboriginal Affairs and Northern Development, as well as of the Environment, and of Foreign Affairs, so there was a lot of work that was done across departments. There was also cooperation with the Province of Newfoundland and Labrador and the Province of Nova Scotia.

My questions will centre around how you determined, first, the $1 billion minimum for absolute liability, and then perhaps you can comment on whether you believe it is sufficient.

Mr. Jeff Labonté: Thank you very much for the question.

It's a very good question in the sense that, when one is establishing the limits for things such as liability, there are a number of factors to take into account. In doing so the department looked very carefully at the offshore regime in Canada and in other countries with respect to liability provisions. I think it's fair to say, starting out, that each country has its unique elements of how it manages its regulatory system in its legal context. In our case we set out to look at our peer countries, countries we would consider to have the same set of interests as Canada. We looked at the United Kingdom, Norway, the United States, Australia, and Greenland, being a number of partners that either touch closely to our own jurisdiction or are very similar.

In the case of the United States and the U.K., we looked at their models in which they use strict liability as the regime behind the liability. The amounts in both of those countries are $75 million and $250 million respectively, each of which is backed by some form of pooling of resources.

In the United States there is a large spill fund that is a levy that goes on every barrel of oil that's produced, consumed, or imported. That fund is paid and is capitalized, which essentially says that companies are responsible for $75 million, and then it's back-stopped by a fund for everything else.

In the United Kingdom, it's a pooled insurance fund that's provided for. In each of those cases they use strict liability.

In our context we had absolute liability in the original legislation, so we set out to maintain that absolute liability was a preferable form of liability. We compared that to Norway and Greenland, which both have absolute liability as well. In both of those countries they have what is termed unlimited absolute liability. In the case of Norway, the regulatory regime and the development regime is one based on which the state-owned company, Statoil, is the majority owner in most of the projects and the backing of the taxpayer or the crown in Norway is implicit in all of the project undertakings. So unlimited absolute liability is essentially back-stopped by the Government of Norway and the citizens of Norway.

Greenland and Denmark have a copy of Norway's regulatory system. In both of these cases they require that the companies provide a $1 billion assurance that they are able to deal with a spill or an incident.

In the Canadian context we felt that the establishment of $1 billion was a very favourable benchmark when compared to other countries, that it certainly was world leading and world-class among our peers.

At the same time the Canadian legislation requires that a deposit be registered with the regulator, whether that's the National Energy Board or the Atlantic Canada boards. That is a unique feature in that the regulator has access directly to a deposit that does not require the approval of the company. In our instance we provided that to be $100 million, or $250 million in pooled funding.

Our feeling was that we had a very stable regime with absolute liability, a deposit requirement, and a fiscal assurance requirement. When we benchmarked and looked at all the examples we had, we established what we felt was a fairly robust and quite significant amount. That put us well within our peers to remain competitive but, by the same token, to provide for assurance that companies have the wherewithal to deal with an oil spill incident, should one ever occur.

● (0900)

Mrs. Kelly Block: I wonder, then, will these proposed requirements imposed on the operators create burdens that might result in less development?

Mr. Jeff Labonté: That's a good question as well.

When the government establishes its regulatory regime, I think it's always careful to ensure that it's protecting the environment, to ensure that safety is of primary interest, but at the same time recognizes that there's an economic aspect and an economic development component that has to be managed as well. Certainly, all of the energy players offshore are global players and, generally speaking, that requires us to be reasoned with our need to protect and preserve the environment and enable development to occur and to insist on safety as being primary.

In doing so, we feel that the amount we've established is reasoned and companies will be able to manage it. I think you'll be speaking with companies later on. They're probably best able to answer the question directly. Certainly, our consultation and discussion with them established that the majority of the companies are large. All of them behave today as if unlimited absolute liability exists for anything they're responsible for. They have unlimited liability when at fault or negligent in any case, so the sense that we had provided for a substantial amount was to demonstrate that they were ready and able, but by the same token, recognize that it would be something they had to manage and there will be costs associated with doing so.

Mrs. Kelly Block: Thank you.

Can you quickly describe for us the pooled fund and how that would work?

Mr. Jeff Labonté: Sure.

The legislation provides for the requirement of a $100 million deposit per project. There are four in Newfoundland and Labrador and there are two in Nova Scotia. There will be other projects that get under way as they move, potentially, to exploratory stages.

In each instance the primary operator needs to register a deposit. We've provided a potential option for industry to provide efficiency for management of its capital and for resources by suggesting that we would accept and regulators would accept in the legislation a pooled fund of at least $250 million. If two or three companies pooled their resources and registered the same $250 million fund with the regulator, it'll be accepted as the deposit. In doing so, it comes with certain conditions that the fund be replenished if ever used, that it's directly accessible by the regulator, that it is segregated and real, and that it's not used as an exclusionary tool.

We've provided a way, and in some instances there are companies who operate in more than one part of the country, in Nova Scotia, in Newfoundland and Labrador, and potentially up in the Arctic. We've accepted that one deposit would accept across the jurisdictions; whereas if it's a deposit, it's per project per jurisdiction. We've tried to create a flexible instrument, but by the same token preserve the requirement and the policy need to have a deposit.

The Chair: Thank you, Ms. Block, Parliamentary Secretary to the Minister of Natural Resources.

We go now to the official opposition. Mr. Cullen, welcome to our committee and today's meeting. Go ahead for up to seven minutes.

Mr. Nathan Cullen (Skeena—Bulkley Valley, NDP): Thank you very much, Chair.

Thank you to our witnesses.

Mr. Labonté, I have some quick questions on consultation. You mentioned the Atlantic provinces were consulted, I assume in the drafting of this legislation.

Mr. Jeff Labonté: Yes.

Mr. Nathan Cullen: Was that two of the Atlantic provinces?

Let me put the question more specifically. Were all the Atlantic provinces consulted in the drafting of this legislation?

Mr. Jeff Labonté: No.

Mr. Nathan Cullen: Who was?

Mr. Jeff Labonté: Newfoundland and Labrador, Nova Scotia and Quebec.

Mr. Nathan Cullen: Quebec.

Mr. Jeff Labonté: Yes.

Mr. Nathan Cullen: Was British Columbia included?

Mr. Jeff Labonté: No.

Mr. Nathan Cullen: How come?

Mr. Jeff Labonté: There's a moratorium on offshore development in British Columbia.

Mr. Nathan Cullen: There's certainly proposals to move oil off the west coast of British Columbia. Is it not something that would be —

● (0905)

Mr. Jeff Labonté: Not applicable under this legislation.

Mr. Nathan Cullen: How come?

Mr. Jeff Labonté: This is legislation for offshore development, offshore platforms, offshore drilling. It doesn't capture or cover tankers or movement of oil.

Mr. Nathan Cullen: Doesn't the government imagine drilling off the west coast in its proposals?

Mr. Jeff Labonté: Not with the moratoria we have in place, not at this time.

Mr. Nathan Cullen: Interesting.

Let's talk about that deposit. You said $100 million is what goes in. That sounds like a lot until you start looking at what happens with oil spills.

Let's go back to the consultations for a second. Were first nations consulted as well?

Mr. Jeff Labonté: Yes. In the north we consulted with the groups. My colleague from AANDC can speak to those issues.

Mr. Nathan Cullen: I want to make sure we're talking about the same north, is it far north? North is such a relative thing.

Mr. Jeff Labonté: North of 60°.

Mr. Nathan Cullen: Prospects around inland spills and whatnot, will that be covered under other legislation or is that all under provincial jurisdiction?

Mr. Jeff Labonté: It's a mix. It would be predominantly provincial jurisdiction, depending on what aspect of the environment or whether land or property were impacted. This would be for offshore areas of federal jurisdiction, generally speaking, beyond the near coast or near shoreline.

Mr. Nathan Cullen: When was the last time we updated legislation with regard to liability?

Mr. Jeff Labonté: This liability in this particular piece, it would have been the late eighties.

Mr. Nathan Cullen: The late eighties; so we don't do this very often.

Mr. Jeff Labonté: Not to my knowledge, no.

Mr. Nathan Cullen: Is there any reason why not? A lot has changed since the late eighties—

Mr. Jeff Labonté: Indeed.

Mr. Nathan Cullen: —with respect to oil development and where it is seen as a viable place to seek oil. Every 25 years is not very often for such a developing industry.

How come it's so infrequently?

Mr. Jeff Labonté: I can't really answer the how come.

Certainly, the legislation was last updated in the late eighties, but the regulations within the legislation have been updated fairly regularly. There is a suite of regulations related to offshore diving, for example, or offshore safety operations, and a number of things. Those have been updated more frequently than the late eighties.

Mr. Nathan Cullen: Why move the liability limits up at all? What's the reason for that?

Mr. Jeff Labonté: There are a number of factors. We looked at the legislation and we looked at the liability in view of the activities that were going on, in view of the applications that were being made, in view of a review that was conducted following the number of incidents around the world, and to recognize that our liability levels were less than our peers and thus, we wanted to keep up.

Mr. Nathan Cullen: Why is that a problem, if our liability limits are less than those of our peers?

Mr. Jeff Labonté: Why is it a problem?

It's something you'd want to expect, that Canada's recognition of how liability will be handled will be commensurate with the activities that are under way and that are reasoned within the community within which we work, and the peers that we keep.

Mr. Nathan Cullen: What I'm getting at is, what's the challenge with a too low liability limit? The one we have right now on the books that the federal government deems as too low, why is that a problem?

Mr. Jeff Labonté: I guess it's not inherently a problem in the sense that if there is not an incident and there is not an issue, then there is no problem.

Mr. Nathan Cullen: I know we don't want to imagine incidents, accidents, and oil spills, but the only reason we're talking about this is in the imagination of a spill.

Mr. Jeff Labonté: Right, so in the imagination of a spill, I think providing for higher levels of liability provides a better level of protection. The higher the level of liability, the more likely that industry and actors within the community will take broader measures to be more preventative to help ingrain the safety culture that's expected of the operations.

Mr. Nathan Cullen: Right, so if the liability limit is too low, it will have an impact on the way people operate in the environment, yes?

Mr. Jeff Labonté: I don't know if that's true or not. I'd say that they're more likely to operate differently. The reverse may not be true.

Mr. Nathan Cullen: I asked why raise them.

Mr. Jeff Labonté: Right.

Mr. Nathan Cullen: You said that having too low liability limits may affect the behaviour or the operations.

Mr. Jeff Labonté: I didn't say that directly. I said that having them too low could leave us with a situation where companies may not have the resources, or we want to make sure they have the resources.

Mr. Nathan Cullen: Right. If companies don't have the resources, then what happens?

Mr. Jeff Labonté: Today or in the future?

Mr. Nathan Cullen: Today.

Mr. Jeff Labonté: Today, they'll be held liable and then taken to court and sued by those who suffer damages.

Mr. Nathan Cullen: If fault or negligence can't be proven, what is the liability limit for an offshore spill?

Mr. Jeff Labonté: The absolute liability limit today without proof or fault or negligence would be $30 million in the Atlantic and $40 million in the north.

Mr. Nathan Cullen: After this legislation, it will go to what?

Mr. Jeff Labonté: It will go to $1 billion.

● (0910)

Mr. Nathan Cullen: So, BP has set aside $42 billion for the gulf disaster.

Mr. Jeff Labonté: Indeed.

Mr. Nathan Cullen: Proving fault and negligence can sometimes be an onerous task for a government. There have been many cases around the world where the public would look at a spill and say clearly that the company is at fault because they screwed up here or here. Through the courts they have subcontractors who have proven to be at fault and they only have a liability regime and so much insurance.

Who picks up the cost of cleanup beyond any liability cap?

Mr. Jeff Labonté: I think there is a good example. In the BP case, BP is paying for all of the cost of the related spill. They have pursued the subcontractors that worked with them. I think there were two, three, or four different ones.

Mr. Nathan Cullen: They haven't challenged the idea of fault or negligence in that case, right?

Mr. Jeff Labonté: No.

Mr. Nathan Cullen: I'm talking about scenarios in which fault or negligence is challenged by the company.

Mr. Jeff Labonté: They would be taken to court.

Mr. Nathan Cullen: Right, and if the government is unable to prove fault or negligence, what is the liability limit at that point?

Mr. Jeff Labonté: I guess it would be rather difficult not to prove fault or negligence when there are a number of parties. Usually the court would proportion the fault or negligence across the parties that were applicable and responsible.

The legislation that we have proposed provides for the operators that are absolutely responsible to $1 billion. They're also responsible for all of their contractors who work for them. We've taken away the “I'm pointing to another party” potential, providing that the licence holder or the main operator is liable, and with fault or negligence and proof of such, it would still hold that they would be liable.

Mr. Nathan Cullen: Sorry, I missed that last sentence.

Mr. Jeff Labonté: In the event that they would claim that they couldn't be proven at fault or negligent, the legislation still provides that they're liable.

Mr. Nathan Cullen: Right.

The Chair: Thank you, Mr. Cullen. Your time is up.

Go ahead, please, Mr. Regan. You have up to seven minutes.

Hon. Geoff Regan (Halifax West, Lib.): Thank you, Mr. Chairman.

In the event I don't get a second round—I'm checking on that because we started a few minutes late—I would defer my 420 seconds to the second hour.

The Chair: I don't think that can really be done, Mr. Regan, but you will get an opportunity in the second hour.

Hon. Geoff Regan: Thank you very much.

Thanks very much for coming this morning.

Let me go to this question about absolute liability and the $1 billion, and whether that's really sufficient. Why is it your conclusion that $1 billion is sufficient in terms of absolute liability when we hear the number from the gulf of $42 billion?

Mr. Jeff Labonté: I guess the question would be, how many incidents have there been outside of the gulf that were over $1 billion? The answer would be none. The Gulf of Mexico incident is an incident of proportions we've not seen anywhere else in the world to date.

The amount of $1 billion in absolute liability is quite consistent with other countries. It's a significant amount of money. It's an amount that's consistent with what we would expect to be an extraordinary incident in a Canadian context. Certainly companies always have unlimited liability when at fault and when negligent.

Hon. Geoff Regan: In terms of setting it at $1 billion versus where it is now, which is much, much lower, is the thinking that you don't have to be that low anymore because the rest of the world isn't, and therefore, in terms of trying to be competitive, you don't have to do that? Is that what this is about?

Mr. Jeff Labonté: No, I don't think we would suggest that we needed to kind of....

I think our context was that the absolute liability regime had been established in the mid to late eighties. At that point in time, the legislation didn't provide for an increase over inflationary pressures. If you had taken the $30 million and the $40 million respectively and added inflationary pressures, today you'd be in the order of $70 million to $80 million, which is consistent with where the United States is.

We felt that in the Canadian context we have fewer projects; we have larger companies, and we have operations that have had a record that has been quite stellar in terms of their safety. We felt that providing for the absolute liability of $1 billion was a reasonable amount of money within the context that we find in Canada.

Hon. Geoff Regan: The bill provides for the minister to have discretion to lower the limit for absolute liability below $1 billion.

Mr. Jeff Labonté: That's correct.

Hon. Geoff Regan: Why is that?

Mr. Jeff Labonté: It's very specific. It's seen as an exceptional authority, and it's in this context: should a company have a project that seems to have a demonstrably lower risk, perhaps a smaller project, they may seek a lower amount with the regulator. The regulator will do the scientific and independent assessment. The regulator can come to a determination that it's reasoned in this exceptional circumstance, and would then appeal to both ministers with recommendations. That would be the minister of the province and the natural resources minister. Both ministers would have to agree and take that advice. Then there could be a provision for a lower amount.

The example we used when we had been in our context was that there were a number of natural gas projects in the Canada-Nova Scotia offshore area where we'd find the end of a field, a project that might have a smaller amount, the environmental risk was lower, the risk to safety was lower, all the elements of the project were lower, and it was a pretty known environment. Those may be cases—may be—where there could be a consideration for those projects to allow for the development to occur but to do so while respecting that there may be a smaller amount of liability that's required as proof. Of course, the companies would remain to have unlimited liability when at fault or negligent, but in the instance of those projects....

That's one example. It's certainly one that is part of the discussion with our provincial counterparts, and part of the conversation around recognizing and balancing both the development and preservation of the environment.

● (0915)

Hon. Geoff Regan: The bill does not require an operator to provide proof that they have the financial resources to pay for the full amount of an at-fault liability. Why wouldn't you require them to have proof of that in some way?

Mr. Jeff Labonté: Well, that would hold, in common law today, that they require the ability to provide for unlimited liability when at fault or negligent. We've provided in the bill that they require proof of financial responsibility for absolute liability, the amount that we would expect.

The financial responsibility is the same level or higher, if you will, than the absolute, but we've not provided for the possibility that they be ready for an unknown amount.

Hon. Geoff Regan: Whom did you consult in the oil and gas sector on this bill and what were their views regarding the $1 billion versus no cap at all?

Mr. Jeff Labonté: We consulted with a number of industry operators. We consulted with industry associations, legal and environmental groups, first nations north of 60, and we consulted with provinces. There were mixed feelings about the amounts. Some wanted the amounts to be much lower; others were comfortable with the amount that—

Hon. Geoff Regan: I specifically asked not about governments, but about the oil and gas sector, the industry.

Mr. Jeff Labonté: Most of the operators who operate in Atlantic Canada were consulted in the discussions. Since the announcement was made, I think, last June, we've had broad consultations with all kinds of different stakeholder parties.

Hon. Geoff Regan: You were saying that some of these people you talked to had one view and wanted a lower cap and others did not. What was the view in the industry is what I'm asking.

Mr. Jeff Labonté: It was mixed, is what I said. Some preferred it to be lower, some were comfortable with what we had established. I think their view was it didn't have to be as high as it was because companies all act in the way that one would expect. But you'd have to ask them.

Hon. Geoff Regan: Why does the bill fail to provide regulation-making provisions for calculation of non-use damages?

Mr. Jeff Labonté: Why does it not provide regulations?

Hon. Geoff Regan: Yes. Regulation-making provisions for the calculation of non-use or environmental damages.

Mr. Jeff Labonté: I think we provided for the ability for governments to pursue those activities through the courts. That will allow, as we have in other elements of the bill.... There are two parts. One would be that the government may provide for a claim to courts for compensation for non-use. The second is an aggregating factor in setting the determination by the court.

I think this is consistent with other federal environmental legislation regarding non-use damages.

Hon. Geoff Regan: Is there any reason to think that a worst case —

The Chair: Thank you, Mr. Regan. Your time is up.

In the five-minute round, we have three people who will be questioning or making comments: Mr. Leef, Ms. Crockatt, and Ms. Moore.

Go ahead, please, Mr. Leef, for up to five minutes.

Mr. Ryan Leef (Yukon, CPC): Thank you, Mr. Chair.

Welcome to all our guests today.

What did the Commissioner of the Environment say about the increase in the liability limits?

Mr. Jeff Labonté: If I remember right, there were two reports, so it was the report around environmental liabilities in late 2012. I think the commissioner had established in his report that across a range of areas, the offshore and nuclear in particular, that the amounts of $75 million in nuclear and $30 million and $40 million in the offshore were set in the mid-to-late 1980s and that those levels were too low and didn't reflect what would be expected in a modern regulatory regime and in comparison with other countries.

Mr. Ryan Leef: In respect to the $1 billion limit, did the commissioner make any comments on that as a final number?

Mr. Jeff Labonté: We didn't speak with the commissioner about the $1 billion limit. I think he was here before committee.

Do you have any updates, Sam, that you could pass along?

Mr. Samuel Millar (Senior Director, Frontier Lands Management Division, Petroleum Resources Branch, Energy Sector, Department of Natural Resources): We're not aware that he commented specifically on the $1 billion in his report, but I believe that he expressed his comfort with the legislation.

Mr. Ryan Leef: Offshore boards are being made the responsible authorities. Why have we gone with that? We've been looking, over the course of time, to reduce the number of responsible agencies for red tape reduction and in the name of responsible resource development. Why the shift to go with offshore boards as responsible authorities?

● (0920)

Mr. Jeff Labonté: It's a good question.

I would recognize, of course, the move to reduce the number of responsible authorities across the regulatory regime to kind of streamline and to make more efficient reviews and to focus on the best-suited regulator, if you will. In this particular instance, the act provides that they may be designated by the Minister of the Environment; so there's a step here that the government may or may not designate. I think it's been stated publicly in the House and in other places that the government intends to move in that direction.

From our perspective, the offshore boards have been in existence for over 30 years, have demonstrated their environmental bona fides, if you will, in terms of their ability to manage environmental assessments and to be best placed to look at the environmental impacts associated with the development of the mitigating circumstances and the environmental aspects related to an offshore development project.

Of course, and I don't mean this to be trite, but in any environmental assessment there are actually a number of actors involved. Even when, if you will, the National Energy Board today, or the Canadian Environmental Assessment Agency performs an environmental assessment, a range of federal actors and provincial actors also play roles, whether it's the Department of Fisheries and Oceans, or whether it's Environment Canada, or Transport Canada. There's the lead, if you will, but each of the different players play their respective role in contributing to that environmental assessment.

In our sense, there's a strong view that the offshore boards, as a shared management with the provincial context and with the most experience, are best suited to perform the environmental assessments. I'd say as well, just for the sake of reference, in terms of the offshore, there are not dozens and dozens and dozens of projects. There are a very limited number of projects, so the number of environmental assessments is, I think, fairly limited.

Mr. Ryan Leef: The regions, provinces, and industry are comfortable with that regime.

Mr. Jeff Labonté: If my provincial colleagues were here, they would probably say that they were expecting it to happen.

Mr. Ryan Leef: Fair enough.

Mr. Jeff Labonté: Given that we share the management, there's a very sensitive...that we manage jointly together, so it gives a feeling that if the offshore boards are responsible, it's much more shared than, if you will, jointly exercised.

Mr. Ryan Leef: That's a fair point, thank you.

You mentioned in your comments around the spill-treating agents, “when there's a net environmental benefit”. Could you just expand on where, when, and how spill-treating agents might be used?

Mr. Jeff Labonté: Sure. Currently in Canada, spill-treating agents would be considered unlawful, although the evidence base is demonstrated, I think, from a number of incidents around the world, most notably in the gulf, that spill-treating agents did have a net environmental positive benefit. It's a determination that has to be made very far in advance of any incident and done in a way that's, if you will, a mitigating planned sense.

The first step is that the Minister of the Environment would need to designate specific agents as acceptable and would have to do so in regulation. The next step would be that a company would have to develop an emergency response plan and outline the specific circumstances when they would expect to use the agent and what they would expect the behaviour and the response to be. That has to be registered with the board. The board would have to approve that plan and the agents. Then in the event of an incident, the board would have to provide the conservation officer the ability to authorize the use of the agents, given the circumstances that were pre-described were present, whether it was of such a nature, at such a time, and such environmental conditions.

The Chair: Thank you, Mr. Leef.

We go on to Ms. Crockatt, for up to five minutes, please.

Ms. Joan Crockatt (Calgary Centre, CPC): Thank you to the officials for being here again. It's always edifying.

I want to explore where we sit in Canada in terms of other countries. I think we've indicated that we're kind of.... We have one of the better regimes, but where do we actually sit? Can you be a little bit more specific so Canadians know how our industry compares here in Canada?

Mr. Jeff Labonté: I think our view of it and our analysis of it would suggest that we're world-class in terms of being.... We have a strong regulatory environment, a strong legal framework, a strong regulator who's independent, a record that has not seen any significant incidents of large proportions, and a record that demonstrates that the companies have operated consistently, safely, and with concern for the environment and the development, one that's brought benefits to the country.

There was an assessment done by a consulting firm for the Gulf of Mexico in the wake of the Gulf of Mexico spill that established essentially the degree to which the regulatory system was extensive, the degree to which it made its decisions, and the speed at which those decisions were made. In this particular account, Canada, the U. K., and Norway had kind of all clustered together as being quite extensive, having significant decision-making, but taking the time to make the decisions. One of the findings in the United States example had been the speed at which the decisions were made. If the regulator doesn't respond within a certain period of time, it is deemed approved.

There was a view that, while it took time in Canada to do things, we did things right and we looked extensively at things. The record has, I think generally speaking, been quite significant in terms of demonstrating that.

● (0925)

Ms. Joan Crockatt: It's among the top three or four in the world according to that study.

Mr. Jeff Labonté: Yes.

Ms. Joan Crockatt: You did mention too that our record has been quite stellar. I'm wondering, has there ever been a significant oil or gas spill from offshore operations in Canada?

Mr. Jeff Labonté: That's a good question.

There have been a few spills of oil in the offshore. The most significant one was back in 2004 when about 1,000 barrels of oil were spilled in the Terra Nova offshore development.

Ms. Joan Crockatt: What was the next largest spill that we've had in Canada?

Mr. Jeff Labonté: Of oil? Thirty-eight barrels.

Ms. Joan Crockatt: Thirty-eight barrels was the next largest. That may put something in context.

What would be the average size of spills that we see in Canada?

Mr. Jeff Labonté: There have only been three that have been over a barrel.

Ms. Joan Crockatt: There have only been three that have been over a barrel. Really?

Mr. Jeff Labonté: Twenty-eight, thirty-eight, and one thousand.

Ms. Joan Crockatt: Wow, I had no idea that it was that minimal. This safety regime really is being put in place for the very, very unlikely instance of a larger spill.

Mr. Jeff Labonté: Correct.

Ms. Joan Crockatt: I'm also interested in spending my remaining time on the spill-treating agents. I had an opportunity to speak on them in the House and I found that fascinating. I wonder if you could tell us a little bit about how they work and why they work.

Mr. Jeff Labonté: I'll do my best, but I have to admit my technical knowledge in this area is limited. I have some colleagues who could probably jump in.

Ms. Joan Crockatt: There are enzymes that eat up oil.

Mr. Jeff Labonté: The challenge when there's oil in the environment is how to clean up the oil, if you will, soak it up and absorb it. Machines and equipment do that kind of thing. Then there are challenges about how you can break up the oil and its properties so that it's more easily absorbed, consumed, vacuumed, and cleaned up. There are enzymes that break down the carbon chains and the oil, if you will, in the water. There are enzymes that separate the water from the oil to try to make it easier to get the oil to the surface and absorb it.

There are also different techniques. The research in STAs, spill-treating agents, continues around the world. Certainly Canada is contributing to that research again to help improve and develop our ability to deal with it if an event ever occurs in water. It also takes into account whether it's salt water, whether it's fresh water, or the nature of the oil spill.

Ms. Joan Crockatt: How do you decide what kind of spill-treating agent to use, and who decides that?

Mr. Jeff Labonté: It's the Minister of the Environment who would make that determination, based on evidence and research and the science from the community at large, both here in Canada and around the world. The body of evidence, of course, is unfortunately growing, because there are spills. Spill-treating agents are some of the new tools to deal with spills. Certainly there was extensive use of STAs in the gulf incident in the United States. Some of those circumstances are not present here. The water is warm and the nature of the water is different from the nature here. But there are other circumstances, for example, in Norway and the U.K., where the water is very similar to here. It's cold, and it's sea water, and it's a little bit rougher, if you will. They have examples in those jurisdictions and others where STAs are used.

The Chair: Thank you, Ms. Crockatt.

We go now to our final questioner of the departmental officials, Ms. Moore, for up to five minutes.

[*Translation*]

Ms. Christine Moore (Abitibi—Témiscamingue, NDP): Mr. Labonté, you can take notes, because I have some questions for you.

You mentioned the polluter pays principle. Does that principle apply in your department as a general rule or did you decide to apply it to this specific bill?

You said that you used certain accidents to determine the level of liability. The Piper Alpha accident in the United Kingdom cost $1.2 billion. If you consider inflation, that comes to $2.83 billion. For Ixtoc 2, the cost was $3.4 billion. Those amounts exceed $1 billion.

Which accidents did you use to determine the costs of liability? Would recovery operations in the Arctic, in Canada’s far north, cost a lot more? Did you include those operations in your scenarios and your calculations?

The legislation has not been changed for 30 years. We are presently studying Bill C-22 so that we do not have to amend the legislation for a while. So why does the bill not provide for an annual indexing formula for the liability amount so that we can avoid a situation whereby another 30 years might go by without the amount being indexed and with it no longer reflecting reality? Would it be possible to include an indexing formula in the bill? If so, what would you suggest?

● (0930)

Mr. Jeff Labonté: Thank you for your questions. I think I have everything noted.

For your last question, the bill provides for the indexing of compensation levels. Additionally, the regulatory agencies have the ability to increase the level of financial liability if they determine that it is required on the basis of what has been presented to them.

Your first question was about the accidents on which we based our analysis. We reviewed the accidents that have happened in Canada and elsewhere in the world. It turns out that a comparison was quite difficult to do. Systems of jurisdiction are not the same in all cases. For example, compensation may involve people, companies, the environment, or it may even be the result of offences committed or the follow-up work required. Sometimes, there is also an oversight period following an accident. So it is difficult to compare the amounts exactly.

Our analysis shows that, for Canada, the amount of $1 billion is appropriate in our situation. The amount is the same as in Norway, the United Kingdom and Australia.

Do you have any other questions?

Ms. Christine Moore: I would like some clarification about the accidents. If I understood you correctly, you said that a liability limit of $1 billion is appropriate for Canada but that it is not out of the question for that amount to be exceeded in certain cases. Is that what you are telling me?

Mr. Jeff Labonté: If I may, I will answer in English.

[*English*]

We haven't suggested that $1 billion is the limit of a spill in Canada. We've suggested that $1 billion in absolute liability is a reasonable limit that establishes what we think companies should demonstrate they have the ability to have and that they would be liable without fault or negligence.

Certainly there's the possibility of an incident being more than $1 billion. Companies would be completely liable for those incidents when at fault or negligent. That's an unlimited amount.

We didn't try to, if you will, establish an amount that would capture any and all possibilities. We established an amount that we believed was reasoned for the context.

I think it's important to underline the difference between $1 billion in absolute liability and unlimited liability. Companies are subject to unlimited liability. Proving fault or negligence would be, I believe, although I'm not a lawyer, fairly straightforward. If a platform in the middle of the ocean is producing oil, somebody is at fault if there's a spill. Determining who is really the question. That's something that would be pursued in the courts.

However, in the example that's been used around the world, the Gulf of Mexico incident, as the big incident in which you would expect there'd be a great problem, the company accepted responsibility before it ever being proven. The company then pursued all of its partners and all of its subcontractors in a way in which the companies organized themselves to fight about who was responsible for what percentage of the liability.

Who pays was never at question. It was British Petroleum who paid in that instance. The examples that we've seen in other jurisdictions like Canada around the world have proven the same thing. The companies have accepted the responsibility and paid for the damages, whether they were $1 million, $100 million, or, as in the incident in the Gulf of Mexico, several billion.

● (0935)

[*Translation*]

You also asked a question about the polluter pays principle. The principle exists in our legal system. It is important to stress the significance of the principle in terms of company liability in the wake of an accident. We included that aspect in this legislation in order to highlight the importance of the fact that companies are liable if there is an accident. So it has to be in the act.

At federal level, other legislation includes the principle. We will see whether including the principle will be accepted in order to underline its importance. But the principle exists in our system, for sure. We were establishing a context for it that is a little more visible and thereby emphasizing its importance.

[*English*]

The Chair: Thank you.

Merci, Madame Moore.

I want to thank all members of the committee for excellent questions and very good questioning of the witnesses.

I particularly want to thank the witnesses, who are very professional, quite frankly, and for very competent, concise answers to the questions. I want to say, you do us proud in reflecting the professionalism in the public service. Thank you all very much.

We're going to suspend now for a couple of minutes as we get our witnesses online and get on with the second part of the meeting.

● (0935)

(Pause)

● (0940)

The Chair: We resume our committee meeting with witnesses on Bill C-22.

We have three witnesses with us.

First of all, here in person from Ecojustice Canada, we have William Amos, director, Ecojustice Environmental Law Clinic at the University of Ottawa. Thank you very much for being here again. We've had you before the committee a couple of times, I believe. Welcome.

By video conference from St. John's, Newfoundland and Labrador, from the Canadian Association of Petroleum Producers, we have Paul Barnes, manager, Atlantic Canada and Arctic. Welcome to you, sir, and thank you for being with us today.

We have by video conference from Toronto, from the Canadian Environmental Law Association, Theresa McClenaghan, executive director and counsel. Welcome to you. Thank you very much for being with us today.

We'll have the presentations, for up to five minutes, from witnesses in the order that you are listed on the agenda.

We will start with Mr. Amos from Ecojustice Canada.

Go ahead, please, sir, with your presentation. Again, thank you for being with us today.

Prof. William Amos (Director, Ecojustice Environmental Law Clinic at the University of Ottawa, Ecojustice Canada): Thank you, Mr. Chair. Thank you to all of the members. I appreciate the opportunity again.

This is an important issue, and I'm very happy that we have legislation on the floor of the House. This is long overdue, but I'm very glad that we've reached this stage.

I'm with Ecojustice, which is Canada's largest public interest environmental law organization. We've focused on this issue since July 2010. We've been studying it carefully. I've circulated an article that was published by the *McGill International Journal of Sustainable Development Law and Policy*. Two students here are working with Ecojustice this summer and are on the board of the journal that published the article.

We have invested significant energy into this issue, and our reactions to the bill are not off the cuff. We have provided significant input to this government on this issue. Proactively we interacted extensively with the officials who just came before you, and I would agree, Mr. Chair, that they're very professional, very knowledgeable. I know they have worked very hard on this file to help bring the government to a place where it could table strong legislation. I'd like to point out what I feel are the positive aspects and also some areas of concern.

On the positive side, obviously increasing the liability cap is a good thing. It had to happen. The absolute liability cap was ridiculously low. I know we'll get into discussions of this. It is our position that the notion of the polluter pays principle, which has been incorporated into the preamble, is a good thing. However, we don't feel that as a matter of public policy or as a matter of international or domestic law that restricting the polluter pays principle by having an absolute liability limit of $1 billion is appropriate. They're incommensurate in our opinion.

The second aspect to comment on positively is the inclusion of loss of non-use values relating to a public resource. This is an issue that we worked very hard on with Natural Resources Canada and other departments. We're very glad to see this included, because until now, under domestic law in Canada, the only way the government could seek to claim non-use environmental or ecological damages would have been through the invocation of the Supreme Court decision in Canadian Forest Products Ltd. That decision enabled non-use damages to be claimed, but there was no statutory basis for it and having a statutory footing is important, so that's a positive.

However, there are no regulation-making powers associated with non-use values, damages, and that really does ultimately restrict the government or the crown in how it can move forward to enunciate specifically what types of non-use damages will be claimable under what conditions. There's a lack of specificity in the legislation itself, which isn't necessarily problematic, but the fact that there's no regulation-making power around it doesn't enable that specificity to come into play. I think that additional aspect should be entertained.

Finally, to include another positive, the new sentencing principles added to guide courts, which include aggravating factors of causing risk of damage or damage to the environment, including loss of non-use values, is really helpful. I think that's a useful provision.

I think I've made my simple point on the absolute liability limit. That issue has been debated back and forth. I sense the $1 billion number is literally picked out of thin air. Conversations we had with the government were not dissimilar to the question of what's the right number. We said there is no right number; it should be unlimited liability.

● (0945)

It seems to me that at a certain point there has to be a recognition on the part of the government that, if there is going to be a functioning free market, then entities that want to engage in risky activities, for example Arctic offshore drilling, they should be able to pay the full freight.

I think it is unlikely that we could expect the crown to recover all of the damages caused, including non-use damages, if there were a worst-case scenario off any of Canada's coasts.

I'll leave my remarks at that and I appreciate the opportunity.

Thank you, Chair.

The Chair: Thank you, Mr. Amos from Ecojustice Canada.

From the Canadian Association of Petroleum Producers, we have Paul Barnes, the manager for Atlantic and Arctic Canada. Thank you very much for being here with us today.

Go ahead please, Mr. Barnes, with your presentation, for up to five minutes.

Mr. Paul Barnes (Manager, Atlantic Canada and Arctic, Canadian Association of Petroleum Producers): Thank you. Good morning, Mr. Chairman and members of the committee.

My name is Paul Barnes. I'm the manager of Atlantic Canada and Arctic, for the Canadian Association of Petroleum Producers, sometimes referred to as CAPP.

We represent Canada's upstream oil and gas sector, basically those companies involved in the exploration, development, and production of oil and gas. We appreciate the opportunity to offer our perspectives regarding Bill C-22 today, specifically those sections of the bill related to the offshore oil and gas industry.

Safety comes first in Canada's offshore oil and gas industry. Offshore operators assess every activity before beginning it, with safety in mind. Similarly, protecting the environment is a key consideration in everything we do. Operations are designed to mitigate potential risks to our people and the environment. To put it simply, our industry is committed to developing offshore resources safely and responsibly.

We are therefore supportive of this bill, which aims to enhance accountability for safe operations and to modernize aspects of the offshore oil and gas regulatory regime so that Canada's offshore can maintain its world-class safety and environmental performance.

I'll begin by talking about the polluter pays principle and offshore liability.

Bill C-22, as you know, is founded on the polluter pays principle. This principle is supported by CAPP and is consistent with other federal legislation that applies to the oil and gas industry throughout the country.

One of the most significant changes resulting from this bill is an increase in offshore liability limits. It's important to differentiate between absolute or no-fault liability versus liability for incidents where fault or negligence by industry is proven.

In any case where fault or negligence is proven, the industry has unlimited liability, meaning that we are fully responsible for the costs of cleaning up the incident. This has always been the case in Canada, and this bill does not suggest any change to at-fault liability.

The increase in liability, however, that we are talking about or referring to is in absolute liability, meaning the amount companies will be required to pay, even if they are not at fault for an incident. The amount companies must provide to government so they can get unfettered access to use it, if needed, in the event of an incident has also increased.

It should be noted that industry works diligently to prevent incidents from occurring, so it is our hope that we never find ourselves in a position where liability for an incident comes into play. At the same time, we understand and accept the rationale for increasing the absolute liability limits. Likewise, we understand that this bill also brings new requirements for companies to demonstrate that they have at least $1 billion in financial capacity to undertake work in the offshore. Again, we accept the rationale for these changes.

We do wish to have further dialogue with governments and regulators as regulations and guidelines related to financial responsibility are further developed, as industry would like to see some flexibility in some of the financial instruments that are available in the financial market today, such as insurance and parental guarantees, which would be acceptable in order to demonstrate financial capability or capacity.

I will now comment on dispersants.

As I mentioned, offshore operations are designed with a prevention-first philosophy. While our primary focus is on preventing incidents like spills from occurring, it is also important that we be prepared to effectively respond in the unlikely event of a spill.

We are encouraged that the federal government, through the bill, is taking the steps necessary to enable the use of spill-treating agents in Canadian waters in the event of a spill. Industry has been advocating for the acceptance of dispersants as a viable spill countermeasure in Canada for several years. Several recent reports and reviews have also recommended that Canada facilitate dispersant usage where there is a net environmental benefit, including a recent report by the Commissioner of the Environment and Sustainable Development from the Office of the Auditor General of Canada.

Dispersants are a common spill countermeasure in other offshore jurisdictions. In fact, over 75 countries around the world identify dispersants as a first- or second-response option. These proposed changes in the bill bring Canada in line with other countries and current global practice.

The key to effective spill response is having access to a variety of tools that can be used in a particular spill scenario. Dispersants provide another tool in the tool box to spill responders, thereby improving our capacity to respond effectively to a spill and minimizing environmental impacts.

● (0950)

I also want to point out that this bill supports the concept of the offshore petroleum boards in Newfoundland and Labrador and in Nova Scotia as the best-placed regulators for the offshore industry in Atlantic Canada.

Industry has always advocated for a single-window regulatory approach for the offshore, meaning a regulatory structure that has industry engaging with one primary regulator. This approach ensures cohesiveness and clarity in the regulatory model, and is in line with the original intent of the Atlantic accord acts.

Bill C-22 provides additional authority to the boards in the areas of environment, and health and safety, and makes the offshore petroleum boards lead regulatory authorities under the Canadian Environmental Assessment Act. In our view, the boards are the best-placed regulators for conducting offshore environmental assessments, so we are pleased to see this authority being granted to the boards. It also brings them in line with the National Energy Board, which was granted this authority many years ago.

The bill also provides additional authority to the boards to release environmental reports and other documents to the public. Generally, we are supportive of efforts to improve transparency. In fact, in CAPP's own annual “Responsible Canadian Energy” report, we voluntarily published performance data related to environmental safety. However, further dialogue is required as the bill does not define specifically what documents will be released, and some information could be commercially sensitive. We look forward to having some further dialogue with governments and the boards as they develop regulations and further information about the release of these documents.

To conclude, I want to reiterate CAPP's support for Bill C-22. The bill demonstrates government's commitments to ensure public safety and environmental protection, and is in line with industry's own commitment to develop resources safely and responsibly.

Thank you for the opportunity to present to you today, and I look forward to questions.

● (0955)

The Chair: Thank you very much, Mr. Barnes, from CAPP.

Our final witness at the committee today is Theresa McClenaghan, who is the executive director and counsel of the Canadian Environmental Law Association. Thank you very much for being with us today. Go ahead for up to five minutes, please.

Ms. Theresa McClenaghan (Executive Director and Counsel, Canadian Environmental Law Association): Thank you very much, Mr. Chairman.

Thank you to the committee for inviting CELA to speak to you today about Bill C-22, the energy safety and security act.

CELA is a 44-year-old national ENGO, and when we're looking at conventional sources of energy, the areas we're focusing on are usually around things like liability, safety, emergency planning, and environmental health.

Today I'm going to focus on the liability aspects of the bill. You are focused on offshore oil and gas in your study today and on nuclear energy on Thursday, as I understand it.

First I want to look at the bill as a whole, because there's a significant contrast between the approaches in the two sectors of the bill. The areas I'll address are the polluter pays principle, which we've been hearing about this morning, absolute liability, liability for negligence beyond absolute liability, and supplier and contractor liability.

First of all, with respect to the polluter pays principle, CELA too supports this principle and is very pleased to see it included in several oil and gas statutes as part of their purpose statement, so that it will now be part of the purpose of all of those regulatory statutes.

However, the polluter pays principle is not included in Bill C-22 on the nuclear side of the bill. We would submit that it is poor policy that a bill that espouses the polluter pays principle does so only in respect of one type of energy source in the bill, oil and gas, and not in respect of nuclear.

With respect to absolute liability, both sides of the bill, oil and gas and nuclear, require minimum insurance or other demonstration to show that an absolute liability amount could be paid in the event of an incident. We agree with that, although we also agree that $1 billion is not enough in either sector.

The difference is that in the case of oil and gas, licence holders or their suppliers and contractors may be liable beyond the absolute liability in the case of negligence, as you heard described. That may sound obvious, but on the other side of the bill, negligence and liability beyond the absolute liability are not provided for on the nuclear side. On that side, the billion dollars or whatever the phased in amount is, would be the absolute maximum that an operator would ever have to pay for an incident even if it drastically exceeded the liability of the incident.

In the case of the negligence side of the bill with regard to the oil and gas sector, the damages would have to be proven. We recognize there are issues with proof, but nevertheless the fact that claims can be brought for proven damages in cases of negligence even beyond absolute liability is entirely appropriate in our view. We would submit that this should be done as well on the nuclear side of the bill.

A section analogous to clause 19 of part 1, which amends the act by changing section 26 of the Canada Oil and Gas Operations Act, should also be included in the nuclear side of the bill.

The other big difference is with respect to supplier and contractor liability. Both aspects of the bill channel supplier and contractor liability to the operator or the licence holder for that absolute liability portion, but only on the oil and gas side is liability ever possible against suppliers and contractors in their negligence. On the nuclear side, that's never possible. The nuclear suppliers to that entire supply chain never have to consider the consequences of the decisions they are making around risk, and on the nuclear side as well as the oil and gas side, decisions are made every day around risk.

The other thing I want to focus on today has to do with the proposed amendments to the bill. In addition to the amendment I suggested, which would insert a section analogous to section 26 of the Oil and Gas Operations Act into the nuclear side, I would also say, with regard to the nuclear side, that in clause 120, proposed section 9 and all of the subsections there that have the words "and no person other than an operator" should all be struck out. Then proposed section 24 should be amended to increase the absolute liability amount similarly on the oil and gas side.

Then a provision like clause 19 of part 1 of Bill C-22, which provides for additional liability beyond the absolute liability in the case of negligence, as I already said, should be included.

● (1000)

To conclude, because I know time is short and you have questions, with respect to this bill, we agree that the amount for the absolute liability portion of the bill is insufficient. We agree that there should be an amount for absolute liability in both sectors. We also agree that there should be liability for negligence beyond the absolute liability. Our submission is that this should apply in both sectors as well.

Thank you.

The Chair: Thank you very much, Ms. McClenaghan, from the Canadian Environmental Law Association.

We will start our seven-minute round of questioning with Mr. Trost. Then we will go to Mr. Cullen and then to Mr. Regan.

Go ahead, please, Mr. Trost, for up to seven minutes.

Mr. Brad Trost (Saskatoon—Humboldt, CPC): Thank you to all the witnesses for excellent presentations.

Mr. Barnes, if someone came up to you on the street and said that this legislation is something they had heard about in the news and were to ask you what, practically, is going to change.... Are your member companies going to change their operations, and if so, why, and if not, why not?

To the average person on the street, what are the practical implications of this legislation?

Mr. Paul Barnes: I would say that the most practical piece for us and the change for our industry would be the availability for use of dispersants. Their use has been restricted in Canada. In the event of a spill, the ability to use a dispersant has been a challenge in Canada as compared with the case in other countries around the world.

With this bill, our industry and our members are able to carry stockpiles of dispersants that can be used immediately upon an incident's happening at the offshore scene, rather than not being able to use it.

Mr. Brad Trost: If I'm summarizing this correctly, then, you would say that it gives you a better ability to protect the environment in the event of an accident.

Mr. Paul Barnes: Yes, that is correct. It provides another what we would refer to as a tool in a tool box to respond in the event of a spill.

Mr. Brad Trost: Of course, one of the major interests in this bill, one that people are talking about, is the financial liability implications. As was said earlier, people are quite happy with the limit's being raised to a billion dollars.

What impact will that have on offshore drilling? Your companies are fairly large. A billion dollars sounds like a lot of money to most people, but these are not exactly small projects. Talk to me about the implications. How hard will it be to get insurance? Will this factor into any competitive decisions made by companies that are planning to drill offshore?

Mr. Paul Barnes: The vast majority of our members who are active in the offshore tend to be large multinational companies that have the ability to carry large amounts of insurance or even to self-insure, such that in the event of a major or any incident, they have the financial capacity to respond and to clean up the incident.

I think the area in which some challenge may occur is there are sometimes, in some areas of the offshore, in Canada, for instance, in offshore western Newfoundland, some small junior companies that want to explore and develop in the area, but which may find that the financial insurance instruments, such as insurance or other letters of credit or other financial instruments are more of a challenge for them than they would be for the majority of companies that work in the offshore.

● (1005)

Mr. Brad Trost: You raise an interesting point. I've been on this committee when we have dealt with effectively the other portion of the bill, the part dealing with nuclear power plants. Depending on the year we were dealing with it in the committee, there were mixed responses concerning the availability of insurance.

Is finding insurance going to be a problem for the juniors, or is it going to be a problem for the juniors to pay for insurance? Which will have the greater impact upon their business models for being offshore?

Mr. Paul Barnes: I think it may be more of a challenge to find insurance. Insurers these days want to ensure that the companies they sell policies to have a certain amount of financial capacity. Some of these junior companies do not have that capacity. I think that will be the biggest challenge for them.

What I suspect their business model will be is to look for a business partner, a major company that can be a partner in their activity and backstop some of the financial obligation.

Mr. Brad Trost: Thank you.

As everyone knows, you have the companies out there drilling, but on every platform you have subcontractors and contractors dealing with the situation. How do you think this legislation, the change in insurance, etc., will affect the way the majors deal with their contractors and with their subcontractors?

Safety standards are fairly high, and we see a very good record, but implications now can be greater. How will this impact upon dealings with the subcontractors we see in the oil patch offshore now?

Mr. Paul Barnes: I think there will be extra scrutiny applied to contractors at the time the contractor is hired to ensure that the contractor being hired has a reputation for good environmental practice and good safety performance. There will probably be an extra level of scrutiny to what we have seen in the past.

Mr. Brad Trost: I anticipate that when you have a subcontractor or contractor, you check to see whether they have appropriate levels of insurance. Is that a correct assumption? If it is, would changes in liability in this bill affect what they need to get by way of insurance?

Mr. Paul Barnes: No, I don't believe that changes in this bill will affect what contractors will be required to have by way of insurance, but I think there will be an extra audit scrutiny put on the contractors by the operator. The operator will require more documentation from them and will likely audit them more frequently than we have seen in the past.

Mr. Brad Trost: As was pointed out by the Department of Natural Resources officials, Canada has a very good record concerning spills. We have had one of 1,000, one of 38, and another of 28 barrels of oil; everything else has basically been immaterial.

With that in mind, though, how is the industry planning for the scenario that the public is I think most frightened of, a British Petroleum gulf type of incident? How is the industry incorporating this bill into their worst-case scenario plan for a major disaster?

Mr. Paul Barnes: Obviously, each operator has oil spill response plans in place and has always been required to have spill response plans in place, so this bill doesn't really affect that. What we have been seeing since the Gulf of Mexico incident is a greater need for having well containment equipment available at short notice to manage a major blow-out or catastrophe such as we saw in the gulf. All operators in Canada now have to have access to such equipment to handle a blow-out of that magnitude.

The Chair: Thank you very much, Mr. Barnes and Mr. Trost.

We go now to Mr. Cullen, for up to seven minutes, please.

Mr. Nathan Cullen: Thank you to our witnesses.

Mr. Barnes, the notion of unlimited liability has been raised today. What would the concern coming from CAPP be under such a regime?

Mr. Paul Barnes: We have no concern over unlimited liability. We've been under unlimited liability ever since the offshore has opened up here in Canada. If there is an incident, we're totally—

Mr. Nathan Cullen: Pardon me, I used the wrong term; it's absolute liability. The question is around whether there should be a cap at all in terms of absolute liability for accidents from an offshore platform. You believe there should be a limit on the liability held, if a company is able to prove it is not at fault. Is that true?

● (1010)

Mr. Paul Barnes: If the company is not at fault, then what the bill currently lays out is $1 billion of absolute liability. This lines up with most other countries around the world that have similar fields to Canada's offshore. It puts Canada—

Mr. Nathan Cullen: I'm sorry.

Mr. Amos or Ms. McClenaghan, are there countries that have no limits on this type of liability?

Ms. Theresa McClenaghan: On the nuclear side I know there are. On the oil and gas side, Mr. Amos might be more familiar.

The difference—

Mr. Nathan Cullen: I'm sorry; for today's purposes—I know there's a tendency to want to bring in the nuclear component, but we're going to be dealing with that a bit later—maybe I'll turn to Mr. Amos on the oil and gas side, please.

Prof. William Amos: There are other jurisdictions with unlimited absolute liability. Norway offers the prime example. I think, to be fair, that there is a distinction to be drawn, because Norway's oil and gas industry is a crown corporation, with Statoil engaged. There are distinctions to be drawn. However, I think by the same token that the industry in Norway is very clear in its mind that it's going to be paying the full shot, no matter what. That is a distinction.

I think the question is well posed to Mr. Barnes: why not more? What would be the problem with unlimited absolute liability?

Mr. Nathan Cullen: Mr. Barnes, let me put that question to you. What would be the problem with unlimited absolute liability?

Mr. Paul Barnes: I think it would be a challenge to get that type of insurance for our members. We can get insurance if we're at fault, but to get insurers to insure us for not at fault, would, I think, pose a challenge.

Mr. Nathan Cullen: Ms. McClenaghan, you said something about how under the current legislation one of your concerns was the minimum demonstration of insurance. Can you expand on that, please?

Ms. Theresa McClenaghan: The concern there is that the amount is insufficient. I have a slightly different view in that I agree there should be an absolute liability amount in both sectors. What I also think is that there should be negligence beyond the absolute liability amount in both sectors, but I don't think a billion dollars is sufficient, in any way, shape, or form, in either sector. For example, in the *Deepwater* gulf situation, we saw the President introduce a $20 billion fund right after that accident. A billion dollars might be a drop in the bucket in the Arctic context. The issue about demonstrating adequacy of resources means that you have to make sure that those resources are available right away for the absolute liability amount, both to deal with the implications of the spill, as well as the impact on livelihoods that's happening right away.

Mr. Nathan Cullen: Could you clarify the “right away” component? Why is “right away” such a concern for you?

Are you worried about extended court proceedings and not having the money flow fast enough? We have $100 million that's going to be put aside under this legislation.

Ms. Theresa McClenaghan: Yes, you can deal with a few months or a few weeks with people whose livelihood is on the land or tourist operators or others who might be impacted, but the issue is, if they're embroiled in longer claims periods, they could well eventually obtain their funds but they may be out of business by then, or so far set back they can't recover. In addition, the ability to mitigate on the part of the governments and having access to that funding from the oil and gas sector is critical because if the business is a tourist operator or a fishing operator or another operator that relies on the natural resources, then you may have a situation where if they're not addressed immediately, the cleanup now takes years and years instead of potentially months. That's the difference.

Mr. Nathan Cullen: This is a slight switch of topics but it's incorporated in this. There was a report a couple of years ago that some of your members had been quietly petitioning the government to remove the in-season relief well requirements that are now on the books in the Arctic. Is that CAPP's position, or is that just a couple of member companies that had taken that view of the world?

Mr. Paul Barnes: That CAPP's position is that a same-season relief well is required; is that the question?

Mr. Nathan Cullen: That's right.

Mr. Paul Barnes: We support the NEB's recommendation that a capability to have a same-season relief well is required. We support that recommendation.

● (1015)

Mr. Nathan Cullen: Mr. Amos, you talked about whether this is commensurate or not. It's a legal term used in court, to some Canadians. One thing that surprised me, and I wonder if you might be able to comment on this, is that the government official said there hadn't been another incident that had exceeded a billion dollars outside of the BP disaster in the gulf. When one starts to go through accidents, adjusted for proper dollar terms, the Piper Alpha, the Ixtoc I, which preceded the gulf by 40 years, one in excess of $3 billion and one approaching $3 billion....

You've talked about whether a billion dollars is commensurate or not. The question around this, for industry, is, whether a limited liability cap is in effect a subsidy, in which any cost beyond that cap is in effect a subsidy by the taxpayer to clean up an accident. There have been other [*Inaudible — Editor*] over a billion dollars. Why did you paint that as not commensurate right now as drawn up in this bill?

Prof. William Amos: For me, what isn't commensurate is the notion that the foundation of the legislation would be the polluter pays principle, but then on the other hand, the only guaranteed payment pursuant to this legislation would be the absolute liability of one billion dollars. Thereafter, fault or negligence would have to be proven.

You're referencing historic spills. None has been as horrific as the *Deepwater Horizon* event, but as you point out, there have been others that were very serious. I think that once one starts to examine the impacts of these catastrophic spills through the lens not only of economic damages incurred, but also in terms of the environmental damages that are now, much more so than in the 1970s, 1980s, or even the 1990s, being quantified in ecological terms, in terms of damages to ecological systems, from plankton all the way up through, once one starts to calculate those kinds of damages, I think it's fair to say that the damages of these past spills have reached—

The Chair: Mr. Cullen, you are out of time.

Mr. Regan, you have up to seven minutes.

Hon. Geoff Regan: Thank you very much, Mr. Chairman, and thank you to all the witnesses for joining us today.

Mr. Amos, if you were asked to give three recommendations to strengthen the bill, what would they be?

Prof. William Amos: I'll give you four.

First, remove the $1 billion cap on absolute liability in accordance with the polluter pays principle. That's proposed subsection 26(2.2).

Second, and I haven't mentioned this so I'll put special emphasis on it, eliminate the discretion of the Minister of Natural Resources to reduce absolute liability levels to below the legislated level of $1 billion. Pursuant to advice from the NEB, we don't think that's appropriate.

Third, we have concerns around the elimination of the relief from liability, in specific cases, for the effects of the dumping of toxic chemicals, which are qualified as treating agents, into marine environments. If there is a spill and millions of litres of toxic chemicals are dumped, that is going to be an environmental calamity.

Fourth, we would support the introduction of a requirement for an operator to provide proof that it has the financial resources to pay for the entire amount of at-fault liability, that is, where wrongful conduct is demonstrated, so, much more significant proof of financial resources.

Hon. Geoff Regan: Thank you very much.

Ms. McClenaghan, would you have a different list?

Ms. Theresa McClenaghan: The points I would add would be the ones I made about making sure the principles are consistent between the oil and gas side and the nuclear side of the bill. There's a huge inconsistency in the approach right now, where polluter pays is not in the purpose statement of the nuclear side, and there's no supplier and contractor liability, ever. Also, there's never any ability to go beyond the absolute liability in case of negligence, so I would make it consistent across the bill.

Hon. Geoff Regan: Thank you.

Mr. Barnes, what have you heard from your members about the ability to get insurance at a level of $1 billion for absolute liability, and also what about...?

● (1020)

Mr. Paul Barnes: For absolute, the majority of our members have no issue with getting insurance coverage. Many of our members are large multinational companies that probably have greater financial capacity than some of the insurers that insure them. But the ability to get some aspects of insurance to cover the absolute is a challenge, and it will be an extreme challenge, for some of the smaller junior players that are tending to be more active now in the offshore.

Hon. Geoff Regan: With respect to all of them, if it were unlimited liability for absolute liability, what would be the impact? Would they be able to get insurance in that case?

Mr. Paul Barnes: No, there would be challenges in getting some insurance when it comes to absolute liability, for sure. Insurers just wouldn't provide it.

Hon. Geoff Regan: If there were no cap on absolute liability, what problems would that create? What would be the impact on the industry in places like Newfoundland and Labrador?

Mr. Paul Barnes: I think it would cause an issue of not being able to do work and a competitive issue of not being able to do work in Canada versus other jurisdictions around the world.

Hon. Geoff Regan: Mr. Amos, what's your thought about what the impact would be in a province like Newfoundland and Labrador if you had unlimited liability for absolute liability?

Prof. William Amos: I think the critical point to make here is that there is a certain kind of drilling where it's better for companies to be self-insured, and where the only way Canadians can trust that we should move forward with any drilling is if they're able to pay themselves. If there are smaller companies that simply can't get insured, maybe they shouldn't be in the business. If the risks are just that high, then that's the reality of the business.

So I, and I think many Canadians, would feel very uncomfortable with the idea of a junior company trying to drill in the deep water of the Arctic. If they can't pay the bills, they can't pay the bills.

Hon. Geoff Regan: As you'll recall, my question was about Newfoundland and Labrador.

What would be the impact on Newfoundland and Labrador if you had the regime you're suggesting, which is unlimited absolute liability?

Prof. William Amos: My understanding is that with shallower water drilling, which is less dangerous, less technical, those are circumstances where smaller companies or mid-size companies are more easily able to participate because the challenges are less serious. However, as many of us know, Chevron has drilled very, very deep wells in the deep water off of Newfoundland, and those are areas where you probably wouldn't want a junior company playing ball.

In some respects, I think we need to identify specifically where these junior or mid-size companies would be looking to engage and where it would simply be the majors. I think that's important.

Hon. Geoff Regan: Let me pursue that for a second.

What you're suggesting is that a major would pursue it despite the unlimited absolute liability, whereas a smaller player wouldn't. What is the basis for that conclusion that a major would pursue it, even though they perhaps couldn't get insurance or would have to self-insure, as I think you're suggesting?

Prof. William Amos: Whether they pursue it or not would be a business decision. However, I think they would be less constrained by the question of affordability of insurance because they would simply be looking to their own resources. I think it's simply a matter of looking at whether or not a company is going to determine for itself the relative risks and benefits.

The crux of this legislation, and the crux of the idea of modifying liability, is that we want industry actors to engage in the free market of offshore drilling. If there are subsidies that relate to the damages they're going to have to pay, then that unbalances the free market. If the companies are evaluating the risks and benefits on the basis of what they're going to have to pay, and knowing that they're going to have to pay the full costs and that they may not necessarily be able to get insurance for that, that it's going to come right off of their bottom line, then that is going to impose decision-making that is based on reality, the real risk.

I think that's the most important thing for Canadian taxpayers. We don't want the Canadian taxpayers to be bearing any of that burden.

● (1025)

The Chair: Thank you, Mr. Regan.

We go now to the five-minute round, starting with Ms. Block, followed by Mr. Leef, and then Ms. Moore.

Go ahead, please, Ms. Block, up to five minutes.

Mrs. Kelly Block: Thank you very much, Mr. Chair.

I do echo the comments of my colleagues in terms of thanking each one of you for being here. I appreciate the comments you have already made, as well as the answers you've provided to some of our questions.

We heard earlier that this legislation was developed in collaboration with a number of ministries, as well as three provinces.

Mr. Amos, you referenced a number of issues that you worked very hard on, both with NRCan officials as well as through conversations with the government. We know that there was consultation outside of government.

I'm wondering if you had an opportunity...or did you submit a brief or provide any guidance during the drafting of this bill?

Prof. William Amos: Ecojustice was consulted by Natural Resources Canada, and was invited, along with the Canadian Environmental Law Association, to a closed-door session, in October 2012, if I recall, along with representatives of the regulators and the offshore industry, including contractors, not just the operators. I think there is significant credit to be given particularly to the officials of Natural Resources Canada, who worked hard on this. I feel as though this is a good example of where the department actually recognized that there were serious issues with the Canadian regime.

That said, at the end of the day, there are political decisions that are being made around the core issues. I think those are key to focus on.

I have one final comment on the consultation issue. I'm not aware, and I would be pleased to hear from the government, what level and nature of consultation occurred with first nations on these issues, particularly in the north, where the Inuvialuit, for example, pursuant to the Inuvialuit Final Agreement, have very specific liability provisions built into their claims agreement. It is not clear to me what the nature of consultation was there. Obviously, these are integrated regimes. Their liability regime intersects with the one that's being proposed here.

Mrs. Kelly Block: Thank you.

Were you able to provide in written form any recommendations to the government or to NRCan?

Prof. William Amos: Yes, we provided a number of recommendations that are consistent with those we've provided today.

Mrs. Kelly Block: Were any of the recommendations that you made prior to today included in the bill that we have before us?

Prof. William Amos: Yes, for example, the inclusion of the polluter pays principle. That's an important inclusion. It was included in the preamble. It could have been included in the purpose or objectives of the act. That would have been preferable.

Also, the issue of non-use damages or non-use values was incorporated, and that, as I said, is a positive thing. We're making sure that we give credit where credit's due. However, we also have to make sure that our perspective is also heard clearly when there's no regulation-making power available around non-use damages. That's a real challenge because right now we don't have any clarity as to what kind of non-use damages can be claimed or how they will be calculated. The legislation doesn't enable that clarification.

Mrs. Kelly Block: Thank you.

Given everything that you've said today, I do believe I've heard you agree that $1 billion of absolute liability is definitely better than the $30 million for Atlantic Canada and $40 million for the Arctic. I'm wondering if you would then be able to comment on the unlimited liability for at-fault accidents and your perspective on that.

● (1030)

Prof. William Amos: The liability regime for offshore spills has always been characterized by having unlimited at-fault or unlimited fault-based liability. That's nothing new. That wasn't the issue before and nor is it the issue now.

I'm struggling to find the appropriate analogy. I'll simply say that $1 billion is just not enough; $1 billion of absolute liability is simply not going to cut it.

Mrs. Kelly Block: But it is better than $30 million or $40 million. Correct?

Prof. William Amos: The new limit is better than it was previously. Obviously $1 billion is more than $40 million, but in light of recent catastrophic incidents and in light of the fact that the government now acknowledges that non-use damages can be claimed, that is an insignificant amount in the grand scheme of things.

The Chair: Thank you, Ms. Block.

We have three questioners left: Mr. Leef, followed by Ms. Moore, and then Ms. Crockatt.

Go ahead, please, Mr. Leef, for up to five minutes.

Mr. Ryan Leef: Thank you very much, Mr. Chair.

Mr. Barnes, do you know how many companies operate in the offshore industry?

Mr. Paul Barnes: Worldwide or in Canada?

Mr. Ryan Leef: In Canada.

Mr. Paul Barnes: We have, I would say, seven or eight that are active and probably another seven or eight that are not active but are partners with those that are active.

Mr. Ryan Leef: How many years of activity have the companies been involved in offshore work?

Mr. Paul Barnes: Offshore exploration first began off Newfoundland in 1966 through a seismic operation. The first production didn't come until 1990.

Mr. Ryan Leef: The first production was in 1990.

Mr. Paul Barnes: Yes.

Mr. Ryan Leef: Do you have a ballpark figure of how many wells have been drilled?

Mr. Paul Barnes: I don't have those stats with me, but in Newfoundland it's over 200 wells and close to 100, I believe, in Nova Scotia. It's a smaller number in the north.

Mr. Ryan Leef: How many spills have there been? How many accidents? These would be reportable accidents and spills.

Mr. Paul Barnes: Actually anything that gets spilled greater than one litre is reported. It could be a diesel spill from a platform. Everything gets reported. I don't have the numbers, but I believe there have only been two or three spills of any significant quantity, greater than 1,000 litres.

Mr. Ryan Leef: Greater than 1,000 litres.

We've heard discussion today about risk and the liability being commensurate with the risk. I think it's important to distinguish between risk and consequence. Without a doubt, the consequences of a major spill are serious, but would you agree, Mr. Barnes, that historically the risk is low in this industry, albeit the consequences are high?

Mr. Paul Barnes: That's true. The risk of a spill is low and that's because of a lot of prevention measures that go into preventing a spill from occurring.

Mr. Ryan Leef: Mr. Amos, you've heard my discussion on that, that we're talking a lot about the risk. One could play semantics here, but there is a definite distinction between risk based on history and context, and safety regimes, and the consequences of an action. We have to deal with some level of reality in terms of the actual risk and what history tells us about the safety of this regime, and then put that into context with the actual consequence of that.

Most certainly, as I've articulated, consequences can be high. I don't think, as you mentioned, that the Canadian taxpayer should be on the hook for the cleanup of some consequential thing, but I don't think we should overblow the actual reality of that occurring.

In that vein, let's say these companies operate for 50 or 60 years. There's certainly a net benefit to Canada in terms of jobs, GDP, and economic return, both direct and indirect, and induced benefits. From that, we collect royalties and those things.

Canada is benefiting from having these companies operating. Would it not then translate that after 50, 60, 70 years, in the unlikely event of a spill occurring, that the Canadian taxpayer, who has enjoyed 50, 60 years of benefit, wouldn't have some vested interest in putting some of that return into making sure a cleanup was done effectively and properly, and that it shouldn't exclusively and entirely befall the company where there's no fault of the company?

● (1035)

Prof. William Amos: If you're asking me, should the Canadian taxpayer welcome the shouldering of some burden of a catastrophic spill as a form of thank you for many years of royalties and jobs created, I'd say no.

Mr. Ryan Leef: I wouldn't characterize it as a form of thank you, but Mr. Cullen characterized it as a subsidy, and I wouldn't see the taxpayer.... Where we've had 60 years of royalty return, jobs, economic prosperity, and a clear, defined safety regime where there's no fault of the company in terms of some spill, in the worst-case scenario, I wouldn't characterize it as a subsidy as much as I'd dare to characterize it as a thank you.

The Chair: Thank you, Mr. Leef. Your time is up. There's no time for a response, but I'm not sure you're looking for one based on your last comment.

Madam Moore, for five minutes.

[*Translation*]

Ms. Christine Moore: Thank you very much, Mr. Chair.

My questions go to Mr. Amos and Ms. McClenaghan.

My first question is about absolute liability, unlimited liability, that is. What are the consequences for business practices in that context? Could the lack of a limit mean better prevention? Would it allow rapid response measures to be put in place to limit the damage as much as possible?

Often measures like that are put in place in order to reduce the costs of insurance. The company provides its insurer with proof that it is ready and prepared for any disaster. The insurer can then trust the company and reduce the amount of insurance coverage.

What are the consequences for investment? Will the lack of a limit make investors more inclined to finance a company? They could conclude that a company like that is prepared to deal with anything, compared to another company that could go bankrupt.

Generally speaking, what are the consequences for investors doing business with a company with limited liability, compared with a company that assumes the entire responsibility for its actions?

I would like Mr. Amos to answer that question first.

Prof. William Amos: The goal of any extracontractual liability regime is to make sure that an operator’s actions in terms of prevention are at the highest possible level and to make sure that the company itself, not the Crown or the taxpayers, assumes the clear risks. Certainly, when a regime is based on the polluter pays principle, and when the provisions of the legislation require the company to pay a greater part of the damages in the case of a catastrophic spill, the company will take steps in advance to modify its behaviour. In this case, modifying the behaviour of those with a financial stake is most important. As Mr. Leef mentioned, the cases we are talking about are quite rare, but it makes sense to ensure that those involved act prior to an accident as much as possible.

● (1040)

Ms. Christine Moore: Can it be said that, the higher the limit of liability, the safer the operations are likely to be?

Prof. William Amos: Yes, I think that is a reasonable conclusion. I imagine that Mr. Barnes would also like to comment on that.

When absolute liability limits increase, the costs of insurance increase too. The government has clearly chosen to limit absolute liability, reasoning that the costs for the operators increase when that kind of limit is imposed. However, we feel that the costs are necessary and should be paid by the companies through their insurance.

Ms. Christine Moore: I have a question for you.

You said that the amount is insufficient if we do not move towards total and unlimited liability. What do you feel would be the appropriate amount for liability of this kind?

Prof. William Amos: That is the same question that officials from Mr. Oliver’s office and Prime Minister Harper’s office asked us a year ago. There is no good answer to that question. In our opinion, the only way to apply the polluter pays principle is to have no limit. If you pick a number, it could be $1 billion, $5 billion, $10 billion or $40 billion. You could take the final estimated costs of the Deepwater Horizon spill, but, really, you could have a spill in the Arctic, in the Beaufort Sea, that would cost a lot more. It really is impossible to determine.

[*English*]

The Chair: Thank you, Ms. Moore.

Finally we go to Ms. Crockatt, for up to five minutes.

Ms. Joan Crockatt: Thank you very much to our witnesses for being here today.

Mr. Amos, I just want to follow up briefly in the time I have left on some questions that Mr. Leef was getting at. Unfortunately, you didn't have the benefit of being here beforehand to hear our Natural Resources officials.

We've talked a lot about the risks of a catastrophic spill here and the possibility that we should insure for that. What is your assessment of the risks? In your view, what is the risk of a catastrophic spill offshore in Canada?

Prof. William Amos: Low probability, high consequence, and I think it's interesting to note that, yes—

Ms. Joan Crockatt: I'm just trying to see if we can quantify. What would low probability be, in your mind?

Prof. William Amos: I don't think it's fair to attach a number to it, and industry typically does try to do this, one in *x* number of thousand wells drilled, etc.

Ms. Joan Crockatt: Do you know the statistics?

Prof. William Amos: I don't know them offhand here.

What is reality is back in 2009, when the offshore industry was seeking to have the National Energy Board dispense with the same-season relief well requirement, at that very time the *Deepwater Horizon* incident occurred and the Montara incident occurred off the western coast of Australia, both catastrophic incidents.

Ms. Joan Crockatt: I just wanted you to focus on Canada because that's what we're talking about here. Do you know what the risks of an oil spill in Canada's offshore are?

Prof. William Amos: The risk of an offshore spill in Canada would be calculated looking at all different.... It's a global industry and it would be best done by looking across jurisdictions, as industry does itself.

Ms. Joan Crockatt: I don't mean to put you on the spot, so I'll tell you what they are, just so you know.

We've had two incidents of any consequence, the largest one being 1,000 barrels in 2004, and the next largest being 38 barrels. The average size of a spill is less than one litre.

Are you aware of those statistics?

● (1045)

Prof. William Amos: I'm aware that Canada has not suffered the same catastrophic type of spill that Australia and the United States or Mexico have. However, it is not a stretch for anybody to anticipate that one could occur, especially if we're drilling in the deep water off the coast of Newfoundland or in the Beaufort.

Ms. Joan Crockatt: Good. I just wanted to leave those statistics with you so that you are aware. Thanks.

Do I have more time, or am I finished, Mr. Chair?

The Chair: One more question.

Ms. Joan Crockatt: Mr. Barnes, have you ever been involved in any spill cleanup with spill-treating agents?

Mr. Paul Barnes: No, I have not.

Ms. Joan Crockatt: Have you heard about the spill-treating agents? Can you give us a quick synopsis of what you think they might bring to the industry in Canada in the very unlikely event of a spill, as we've heard?

Mr. Paul Barnes: Yes, for sure.

A spill-treating agent, basically, is a chemical that one can apply immediately upon the spill of oil, in particular. It dissipates the oil from being together, spreading it out a little further into the ocean, which allows for it to dissolve more quickly. That's the true benefit of a dispersant.

Ms. Joan Crockatt: Are you looking forward to being able to utilize these in the industry? How does the industry feel about them?

Mr. Paul Barnes: We feel very positive about it because, as I mentioned, it gives us another tool in the tool box to use in the event of a spill. We feel that in certain circumstances it also provides a better environmental benefit than just leaving the spill on its own or cleaning it up with other measures.

Ms. Joan Crockatt: Thank you very much.

The Chair: Thank you, Ms. Crockatt.

Thank you very much to all the witnesses for being here today and giving your knowledge and expertise in the answers to the questions that were asked today.

We have, from Ecojustice Canada, William Amos. Thank you very much for being here.

We have, from the Canadian Association of Petroleum Producers, Paul Barnes. Thank you very much for being here.

We have, from the Canadian Environmental Law Association, Theresa McClenaghan, executive director and counsel. Thank you very much for being here.

We'll be back on Thursday to take a look at the nuclear side of Bill C-22.

The meeting is adjourned.

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