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Chair

Mr. Rodney Weston

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•(0850)

[English]

The Chair (Mr. Rodney Weston (Saint John, CPC)): I call this meeting to order.

I'd like to take this opportunity to welcome our guests here today, and thank them for making the time in their schedules to appear before us with very short notice. We certainly do appreciate that.

Today we're studying Bill C-45, and more specifically clauses 173 to 178. Certainly we would appreciate some comment and some feedback, and an opportunity to question our guests here as well.

I won't go on too long here this morning. I know both groups have some opening remarks, and I'll start off with the Assembly of First Nations.

Mr. Wuttke, if you want to make your opening comments, the floor is yours.

Mr. Stuart Wuttke (General Counsel, Assembly of First Nations): I thank the committee for inviting the Assembly of First Nations to be here today.

Do you want me to go through my ten-minute statement now?

The Chair: Please.

Mr. Stuart Wuttke: Once again, on behalf of the Assembly of First Nations and National Chief, Shawn Atleo, thank you for the invitation.

My name is Stuart Wuttke. I am general counsel for the Assembly of First Nations, and I appreciate the opportunity to be here today on behalf of the AFN.

I have several remarks to put forward with regard to the definition of "aboriginal fisheries", the prohibition against obstructing passage of fish or waters, and the environmental damages fund.

As a preliminary remark, we would like to note that my appearance today does not qualify as consultation with first nations. The Assembly of First Nations is a political organization and the first nations themselves are the individual rights holders of aboriginal rights and treaty rights. A robust consultation will be required by the Government of Canada with first nations across Canada on the amendments put forward for the Fisheries Act in Bill C-45.

Regarding Bill C-45, it's a concern that clause 175 amends Bill C-38 by replacing the definition of "aboriginal" in relation to fisheries. The definition in this section limits aboriginal fisheries to those fisheries practised for the purposes of using fish for food, social, or ceremonial purposes, or for purposes set out in land claims

agreements. The amendments in clause 175 specifically remove recognition of "subsistence" fisheries and added those fisheries "in a land claims agreement".

To begin with, the Assembly of First Nations is concerned about an attempt to legislate a definition as to which fisheries qualify as aboriginal. It is up to each first nation to determine the extent and nature of their fisheries. Leaving avenues open for policy to define food, social, and ceremonial fisheries may result in an infringement of first nation rights.

The government must robustly consult and accommodate first nations if it is to contemplate the nature of aboriginal fisheries.

With respect to amendments, clause 175 falls short of including all first nation fisheries protected by the Constitution Act, including fisheries set out in treaty and traditional fisheries based on first nation inherent rights.

The AFN is substantially concerned that the definition set out will freeze Fisheries and Oceans Canada's interpretations and policies in the year 1990, when the court decision reaffirmed first nations rights to food, social, and ceremonial fisheries in the Sparrow decision.

I'd like to note that the Sparrow decision included an important concept that is lacking in the government's attempt to narrowly define first nations fisheries. The Supreme Court clearly articulated that first nation rights must be interpreted flexibly so as to allow their evolution over time. It would make sense to define aboriginal fisheries in a way that allows evolution over time. Setting a definition that fails to acknowledge fisheries, reaffirmed by the Supreme Court after 1990, that fails to include wording that would allow fisheries that may be reaffirmed in the future, effectively prevents any flexible interpretation of rights and is contrary to the Supreme Court direction.

In a high-level engagement with the Department of Fisheries and Oceans, the Assembly of First Nations learned that the government intends to interpret this definition in a limited temporal scope, meaning that our fisheries that are not utilized, which often occurs for conservation purposes, will no longer be protected from serious harm.

I would argue that this does not qualify as a flexible interpretation. This is counterintuitive, and opens a door for abrogating and derogating first nation rights by allowing for species that first nations fish to continue to decline in population, potentially past the point of recovery, to the detriment of the ability to continue to exercise a right to fish.

Bill C-45 should be amended to make it clear that all traditional fisheries must be protected, whether currently practised or whether in a period of recovery to allow for future practice.

The government has argued that the definition of “aboriginal” fisheries need not include fisheries under economic components, since those fisheries would be protected under the definition of “commercial” fisheries. I caution that unilaterally deciding which fisheries are not aboriginal is contrary to the principle of self-determination, a principle embraced by Canada by virtue of adopting the United Nations Declaration on the Rights of Indigenous Peoples.

I would like to note that the separation of commercial and aboriginal fisheries is arbitrary. The Supreme Court of Canada has been clear that the commercial mainstream principle is not necessarily appropriate for determining what income is situated on a reserve, and it is clear that income attached to a reserve is different in nature from the commercial activities undertaken by non-first nations.

Since aboriginal fisheries must be clearly protected by section 35 of the Fisheries Act, the AFN would recommend that the definition be expanded to include traditional fisheries, fisheries within treaties as well as land claim agreements, and fisheries practised for the purpose consistent with an aboriginal right. An amendment noting that the minister must consult with first nations in determining which fisheries fall within a definition of “aboriginal” would assist in making the act consistent with case law.

●(0855)

On our concerns with regard to clause 174, the Assembly of First Nations is concerned about the breadth and discretion in administering the environmental damages fund for the purposes related to conservation and protection of fish, fish habitat, the restoration of fish habitat, or for administering the fund.

Specifically, the Assembly of First Nations is concerned about how these funds will be administered and used. First nations are specific resource users recognized by the act, and first nations have specific uses that differ from other resource users. It is absolutely essential that first nations rights and interests are considered when administering the fund.

The AFN would suggest that the government include first nation representatives from accountable first nations organizations on the administering body, if and when such body is created. As well, as stated with the replacement of the 1986 habitat policy, the mechanisms for ensuring a preference for like-for-like habitat when compensating for habitat damages may no longer exist.

The Assembly of First Nations recommends that the government continue to maintain a preference for like-for-like habitat in order to ensure that more utilized species do not receive preference in compensation. For example, first nations are the primary resource users of the eulachon fishery. If a project destroys or alters an

eulachon habitat, compensation should not come in the form of enhancements of walleye habitat.

On our concerns regarding clause 173, the prohibition against seines, nets, weirs, or other fish appliances that obstruct “more than two thirds of the width of any river or stream or more than one third of the width of the main channel at low tide of any tidal stream”, may result in the infringement of first nation rights.

Certain first nation fisheries require weirs that extend across entire rivers. These weirs all have mechanisms that allow for fish passage upstream. As the right to practice these fisheries is protected by the Constitution, we at AFN suggest an amendment to specifically exempt aboriginal fisheries from prohibition. I would suggest that the government also consider implications of this amendment on its own assessment weirs, which are used in much the same manner.

To recap, the AFN suggestions are the following.

First, clause 175 should be amended to include a definition of aboriginal fisheries to include traditional fisheries, fisheries within treaties as well as land claim agreements, and fisheries practiced for the purposes consistent with an aboriginal right.

Secondly, the government should ensure compensation projects under the environmental damages fund to give preference to like-to-like habitat and ensure that first nations are involved in the administration of the fund.

Thirdly, clause 173 should be amended to exempt aboriginal fisheries.

Thank you.

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

Mr. Taylor, you're no stranger to this committee. I appreciate your coming today. If you want to make your opening comments, I certainly open the floor to you at this time.

Mr. Bill Taylor (President, Atlantic Salmon Federation): Thank you, Mr. Chairman.

Good morning, everyone. It's nice to see you all again.

I very much appreciate this opportunity to appear before you regarding Bill C-45 and the amendments, specifically clauses 173 to 178. I only wish that we would have had an opportunity for further consultation on all the amendments. I'll keep my comments general, with some specific relations to Bill C-45.

With respect to the Fisheries Act consultations, the amendments to the Fisheries Act were thrust upon Canadians without consultation. In answer to public outcry, Fisheries and Oceans Minister Ashfield promised consultation with the provinces, aboriginal groups, stakeholders such as conservation groups, anglers, landowners, and municipalities, to develop the regulatory and policy framework to support the new and focused direction that is set out by those proposed changes.

The deadline for approval of the Fisheries Act amendments by order in council is January 1, 2013, and that date is fast approaching. DFO has arranged no meaningful consultation before this.

The Atlantic Salmon Federation, ASF, recognizes that DFO staff are trying to consult with the provinces and develop the scientific data that would guide the amendments. Stakeholders such as ASF would benefit from being able to review some of the important scientific foundation work that has already been provided by DFO scientists through the Canadian Scientific Advisory Secretariat.

We request, on behalf of the Canadian public, access to these reports, and to have scientists available with whom we can discuss the scientific underpinnings to the key concepts of the amended act.

ASF is still committed to working with DFO to ensure that the implementation of the amended Fisheries Act will protect our fish and their habitats from the impacts of industrial projects in an effective and cost-efficient way, and sustain the many economic and social benefits our recreational fisheries provide now and far into the future. We cannot do this without meaningful consultation that is framed by DFO by providing its information and scientific data that spells out the rationale for protection of our fish and their habitat, amended under the Fisheries Act.

ASF recommends that to allow for meaningful, informed consultation to occur, the order in council required to have the changes to the act come into force by the January 1 date be deferred to June 2013. This extension should ensure adequate consultation and the involvement of all interested Canadians, and time for government officials to do an effective job to develop and share with stakeholders their science-based input.

ASF has prepared a preliminary report, which we have shared with DFO, on the Fisheries Act amendments. In summary, I'll speak to some of those items.

With respect to habitat, fisheries are very important, but a fishery is only as good as the health of the fish and the habitat in the ecosystem on which they depend. This should be the fundamental premise of implementation of the act. The principle of no net loss should continue and be applied consistently.

Regarding recreational fish, ASF emphasizes that protecting the recreational fishery requires not only protecting the specific recreational fish, but also the fish that support the recreational fish. There must be protection of the ecosystem, which supports the health and existence of recreational fish, and the fish that support those fish. The definition of a recreational fishery, as meaning that a species of fish "is harvested under the authority of a licence for personal use of the fish or for sport", is far too simplistic and seems to infer that populations that are not healthy enough to support a fishery will not be protected. It is important to protect not only existing fisheries but

also potential fisheries. The presence of wild Atlantic salmon in a river should be sufficient to identify the existence of a recreational fishery.

It's important to also protect fish listed under SARA. The concept of expansion in productivity of a fishery is not captured in the amended act. Enhancement and restoration of recreational fisheries must be considered, which goes beyond protecting the productivity of fisheries that exist now.

Regarding economic value, the economic and social value of recreational fisheries relies on healthy rivers and oceans, which brings us back to the importance of protecting fish and their habitat to support long-term economic benefits far into the future. It is important to protect potential economic value by protecting fish that may not support a fishery at the moment but have the potential to do so through restoration and enhancement.

Regarding partnerships, there is little information from government on how partnerships under the amendments would work. ASF agrees that efforts of the private and government sector should be more effectively integrated and carried out under a central plan. ASF sees some potential in working in partnership, and recommends that the federal government develop a paper that helps groups such as the Atlantic Salmon Federation understand what is entailed in the government's concept of partnerships and how they would potentially work.

With respect to science, science is of utmost importance in arriving at sound decisions on protection of fish and their habitat, which in turn protects fisheries.

● (0900)

ASF recommends with all urgency that DFO scientists consult with NGO scientists very soon to develop scientific criteria that will underlie decisions on fish and habitat protection in the amended Fisheries Act.

To assist in addressing the science needed to support the Fisheries Act, just as an example, the Ontario chapter of the American Fisheries Society is working with Trout Unlimited and the World Wildlife Fund to produce an independent science piece on key principles that will inform the discussion.

Again, the short timeline of January 1 challenges the effective use of such important scientific input.

Specific to Bill C-45, which is meant to clarify parts of Bill C-38, I'll offer the following comments with respect to the environmental damages fund.

This will not be the cash cow that some profess it to be. A substantial reduction in penalties has occurred, and this is expected to continue.

Because of the new subjective terms that have been introduced, such as "serious harm", "permanent alteration and/or destruction", and "ongoing productivity of a fishery", the amendments are at present legally and scientifically undefined.

It is a huge challenge to determine scientifically how “serious harm”, or causing “death of fish”, affects the productivity of a fishery. This will be a challenge when considering whether to authorize obstruction to the fish passage.

How many fish have to be destroyed to constitute “serious harm”? How do you take into account cumulative impacts? Without clear legal and scientific underpinnings, it will be impossible to get a conviction in the courts. In fact, there will be too much uncertainty in the definitions of serious harm and/or permanent damage for a judge to make a definitive ruling, or for habitat staff to lay a charge, for that matter.

With respect to destruction of fish passage, I know of no instances in eastern Canada where blockage of rivers increases the abundance of native fish. Damming rivers alters the habitat from moving water to still water, a river to a lake. The species composition for a river is very different from that of a lake, and this is often to the detriment of native fish. Although there may be an increase in fish biomass, this is often not in favour of a native wild fish. Productivity of a non-native fish to the detriment of a native fish is simply not acceptable.

Then there's the impact of serious cuts to the DFO habitat staff. These are the people who would make the charges that would lead to the convictions that would lead to the money in the environmental damages fund. We know now that the new fisheries protection program, which was formerly habitat, will have only 16 service delivery points across the country.

With respect to the Atlantic region, these offices will be located in three cities: Moncton, Dartmouth, and St. John's, Newfoundland. Prince Edward Island didn't make the list despite the province's significant impact on river habitat from agricultural runoff. In the Gulf region, we have lost the Tracadie and Charlottetown offices. In Newfoundland, five offices have been reduced to one. In Nova Scotia, at least four offices have been reduced to one.

In 2000, in the Pacific region, there were 1,800 habitat-related investigations, leading to 49 convictions. By 2010, the number of investigations was down to only 300. Convictions under the habitat provisions were down to only one.

The constant pressure of reducing staff and budgets has led to the staff being unable to do their jobs. Habitat protection has been dismantled, which leaves little hope that there will be effective control of assaults on fish habitat or much money flowing into the environmental damages fund.

I could go on, but I'll finish by urging this committee to use its influence to delay approval of the amendments by order in council to allow time to ensure that these amendments are scientifically and legally defensible and that there has been meaningful consultation with the many Canadians who want to have strong protection for our fish and fish habitat.

Thank you.

● (0905)

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

We'll enter into our question time, but before we do, I just want to ask members to please be mindful of the subject matter and to try to keep your questions and comments on topic.

I do tend to allow a lot of latitude with our questioning, but please try to cooperate. The idea here is to try to get as much information from our guests as possible. I won't belabour the point.

Hon. Lawrence MacAulay (Cardigan, Lib.): The guilty party has taken heed.

The Chair: The guilty party has taken heed: all right.

We will move into the first round of questioning, and Mr. Sopuck will lead off.

Mr. Robert Sopuck (Dauphin—Swan River—Marquette, CPC): Thanks.

Mr. Taylor, just as a little bit of clarification in terms of the consultation for this act, I would remind people that, as members of Parliament, we are constantly consulting with our constituents and interest groups. I can assure you that, at least in my case, as a Manitoba MP, I had extensive consultations with municipalities in terms of the difficulties of the old Fisheries Act.

So it's not quite correct that there wasn't consultation on this. The municipal governments across Canada, as you know, had grave questions about how the previous Fisheries Act was administered. That's just a comment.

As for the environmental damages fund, when we had officials before our committee earlier, they talked about... They expected to raise about \$1 million per year. I asked the question specifically of the officials, about what size of fund.

Would you anticipate the Atlantic Salmon Federation applying to the environmental damages fund, assuming that there will be \$1 million plus in that fund?

● (0910)

Mr. Bill Taylor: Assuming there was funding available, yes, perhaps, for habitat restoration projects; absolutely. Based on what we've seen in terms of the charges and then the moneys that have flown to the previous fund, we don't anticipate very much, but certainly if that was the scenario, yes.

Speaking from the Atlantic Salmon Federation's perspective with respect to consultation, there has been very, very little consultation with us. Certainly we've had meetings with DFO, which I want to recognize and appreciate, but DFO has been under the gun as far as timing.

In terms of the consultations that we have had, while DFO staff may describe them as consultations—in our mind consultation is give-and-take, and taking the time for groups like ours to understand the implications of these changes—I can tell you that the couple of meetings we've had have been very brief and there's been no give, on our part, or response to questions.

Mr. Robert Sopuck: Of course, conservation groups across Canada have always been asking for earmarked funds to be specifically directed towards conservation programming, so I think the environmental damages fund, the earmarking of that fund for conservation work, is a direct response to the desires of conservation groups.

Can you talk about the kind of habitat and fish population enhancement work that the Atlantic Salmon Federation does? It's no secret that I belong to the ASF, and I'm very interested in what the organization does. I think the rest of Canada needs to hear about the work that the ASF has done.

Mr. Bill Taylor: I'd be happy to. I can be briefer and take further questions if need be.

Just very quickly, the Atlantic Salmon Federation is truly a federation. We have provincial councils in Quebec and the four Atlantic provinces, under which there are 125 local river associations like the Hammond River Angling Association, the St. Mary's River Association, and so on and so forth. There's a lot of habitat restoration work, which is volunteer-driven.

A prime example would be on the West River of Sheet Harbour in Nova Scotia. The whole southwest coast of Nova Scotia has been decimated. The wild salmon population was decimated by acid rain. The Atlantic Salmon Federation, working with the Nova Scotia Salmon Association, has spent almost a million dollars, and then volunteer labour on top of that, on an acid rain mitigation project on the West River of Sheet Harbour. Since that project's been in place, the last six years we have seen each and every year a dramatic increase in both the insect life in the West River, and also the brook trout life, and the young salmon life as well. That is an example of a river that, right now, does not have a healthy salmon population, but it's on the rebound. In 10 or 15 or 20 years, it could support a lucrative recreational fishery. That's one example.

There are many other rivers in all five eastern provinces where the Atlantic Salmon Federation and our regional councils, volunteer-driven, are restoring habitat, making sure there are culverts under road construction and so on, streamside planting of willows so you don't have bank erosion, and many, many cases. The volunteer labour on top of the staff time runs into the many millions of dollars.

Mr. Robert Sopuck: I must say, I commend you for that kind of work. In my view, that's real environmentalism in action. Too many groups and people just talk. I really appreciate the work that groups like the ASF do.

I would assume that you have partnerships with DFO in some of those projects?

Mr. Bill Taylor: We do.

Mr. Robert Sopuck: Could you describe some of those partnerships?

Mr. Bill Taylor: DFO is a partner on the acid rain mitigation project that I spoke about on West River Sheet Harbour.

In Labrador, we are working in partnership with DFO and a couple of first nations communities on trap-net fisheries, so we can hopefully work with them to move away from destructive gillnet fisheries that catch and kill every single thing that swims into their path, to trap-net fisheries that catch everything alive and you can release large spawners or non-target species.

We're also working with DFO on developing a genetic database on all of the rivers in Labrador.

We are working with DFO in ocean research where we are sonically tracking young salmon from the Grand Caspédia,

Restigouche, Miramichi rivers, way out into the north Atlantic, to determine migration patterns, impacts of changing ocean conditions, predator-prey relationships, and several other examples as well.

We work with DFO, we work with the provinces, we work with first nations, we work with local river associations, communities, anybody who shares our mission, our goal of enhancing, restoring, conserving the wild Atlantic salmon populations.

• (0915)

Mr. Robert Sopuck: I appreciate the concerns you expressed earlier in terms of the focus of the Fisheries Act, and you're obviously nervous about it.

Having said that, I would argue very strongly that a focus on recreational, commercial, and aboriginal fisheries, and it also says the fish that support those fisheries...and it's very clear that the forage fish are part of that in the act, so I would recommend you look at that definition. It is equally likely that a sharper focus on fisheries that support people and communities could eventually lead to even more habitat protection for those important fisheries.

That is conceivable, isn't it?

Mr. Bill Taylor: Possibly, yes. Possibly.

You made a very good point, Mr. Sopuck, that I would like to expand upon. One example is that whether it's an aboriginal fish, recreational fish, or commercial fish, the quick response from most of us is, okay, we need to protect the fish that, as an example, Atlantic salmon eat, which are caplin, sand eels, and so on. Fine.

Another dynamic to healthy wild Atlantic salmon populations is the juvenile salmon heading out of the river in the spring, called smolt. There may be 10,000 or 20,000 out of a small river, there may be hundreds of thousands out of a river like the Miramichi. They all exit the river in a very short window of time.

If there is not predator cover...and the predator cover for wild Atlantic salmon smolt in the spring is healthy runs of alewives, herring, and shad that are coming into the river. We can't improve on nature, and nature has worked over the millennia to make sure that the young smolt going out of the river are going out at the exact same time that healthy runs of millions and millions of alewives and shad are coming in. The reason for that is so that the cormorants and the seals and the striped bass that are in the estuaries feeding at that time of the year are going to focus on the abundant prey species like herring and not so much on the smolt.

So it's not just the fish that support the fish in terms of food; what about the fish that support the fish in a healthy ecosystem?

Mr. Robert Sopuck: Excellent point.

The Chair: Thank you very much.

Mr. Chisholm.

Mr. Robert Chisholm (Dartmouth—Cole Harbour, NDP): Thank you very much, Mr. Chairman.

I want to thank our guests today for taking time, with very little notice, to come and make this presentation.

I want to be clear, however, that while it's extremely important that you be here, and are able to make a public presentation about these changes and the process, this is very much a flawed process in that we're being asked, as a committee, to look at these particular clauses in a very short window of time. We're going to have a handful of hours, in effect, before the finance committee is ultimately going to be dealing with Bill C-45 in its entirety, which is well over 400 pages, to prepare it to refer it back to the House.

We have our authority, in effect, under the committee. The finance committee referred these clauses to us to look at. We have no authority, however, under our Parliament, to make any amendments whatsoever as a committee. Through Parliament and the rules of order, we take our direction from the House. So if the House refers....

We had asked that these provisions get split off and referred to this committee by the House in a separate bill, for example. Then we would be able to hear evidence and make recommendations back to the House on the kind of things that you have suggested with regard to amendments.

Unfortunately, under the process that has been imposed upon us by the government, we're not in that position at all.

I just think it's important that you understand that while I believe, and certainly my colleagues on this side believe, that your presence is extremely important, there are dozens if not hundreds of other groups across the country who are directly involved in the fishery and in protecting fish habitat who would have important things to say about these clauses as well, and they should be here. Your presence is extremely important to us. I want you to understand that where it will go, or where it might go....

It largely is a public process to express your views, and that's probably about the end of it. I just wanted to be clear, and again, I want to thank you very much for agreeing to come to talk about these things.

I'm going to be sharing my time. My colleague is going to direct a couple of specific questions.

Before that, I want to just ask not just Mr. Taylor but all the witnesses about the whole question of the regulations that are right now before DFO to enact the proposed changes in Bill C-38.

Mr. Taylor, you referred specifically to a deadline of January 1, 2013. We've heard likewise that while the minister and government members of this committee made serious commitments that there would be consultation, that there would be extensive consultation before those changes finally went through, before the regulations were changed through order in council, what we've heard is that there haven't been consultations.

Now, I guess if the government is thinking about consultations in terms of what Mr. Sopuck said, that he's consulted with municipalities in his riding, and so that constitutes consultations for these purposes, then maybe the government thinks it has consulted.

● (0920)

I would ask you, Mr. Taylor and Mr. Wuttke, if you have any comments. Just how important is it that in fact consultation does happen before these changes are enacted? How important is it that we insist that the government delay imposing those changes before January 1?

Mr. Bill Taylor: I would say it's absolutely critical. I would hope this committee would have some influence in getting adequate time, an extension, so that real consultation can take place. I certainly wouldn't want to speak to the consultations that Mr. Sopuck alluded to. If that's taken place, that's great. I can only speak for what's happened in eastern Canada, either with the Atlantic Salmon Federation or with the many groups we represent. There have been a couple of very brief meetings. There has not been consultation.

If groups like the Atlantic Salmon Federation are expected to play a role in the delivery, expected to develop partnerships, expected to continue to invest time, energy, and resources in habitat restoration and habitat protection and wild fish protection, then we need to understand fully the implications of these changes. If we are expected to make contributions, which I think we can—be it from volunteer labour or scientific perspectives—it is very difficult to find a positive way to deliver on that contribution if you don't fully understand the implications of the changes that are taking place.

Mr. Robert Chisholm: Mr. Wuttke.

Mr. Stuart Wuttke: Thank you.

Before I answer, I'd like to introduce two of my colleagues, Dan Pudjak and Audrey Mayes. I would also inform the committee that I have an engagement with some colleagues at Corrections Canada at 10 o'clock, so I'll be leaving around 9:50 a.m.

With respect to the question, we would agree that consultation in its proper form, especially with respect to the criteria set out by the Supreme Court regarding first nations communities, hasn't really been met through the engagement DFO has undertaken to this point. With respect to meetings with the Assembly of First Nations and DFO, there has basically been two conference calls and three face-to-face meetings. AFN was given a high, broad overview of what's in the act, but nothing really specific as proposed to the content of the act or the policies.

We've asked for information and documentation from the Department of Fisheries and Oceans. To date they have informed us that they could not release documents to us because they haven't had the authority to release those documents yet. So when it comes to the specifics of the regulations and what the Department of Fisheries and Oceans is going to be pursuing, we really have limited access to what exactly that is.

With respect to the broader consultations, we do appreciate that the Department of Fisheries and Oceans has engaged the Assembly of First Nations and other political organizations, such as the Assembly of Manitoba Chiefs and others, but again, these are very high-level organizations. Discussions were at a high level. We would reaffirm that the specific rights holders are the first nations communities themselves and the first nations citizens. Engagement with them has been very short and very limited. We would recommend that proper consultation, especially within the guidelines set out by the Supreme Court, are acknowledged and pursued by the Department of Fisheries and Oceans.

Other than that, I don't know if my colleagues have anything else to add.

• (0925)

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

Mr. Kamp.

Mr. Randy Kamp (Pitt Meadows—Maple Ridge—Mission, CPC): Thank you, Mr. Chair.

Thank you to the witnesses for appearing before us as we consider these clauses to amend the Fisheries Act.

As you've heard, I think, the primary purpose of these clauses in Bill C-45 is to provide greater certainty and clarity to the changes that were in Bill C-38. These are not a substantive change to the old Fisheries Act, as such. In that respect, perhaps I can just begin with a clarification.

I understood, Mr. Taylor, that you're somewhat pessimistic about the environmental damages fund and how much money might be available there. But to clarify what happened there, the intent of the changes in Bill C-38 was to align the penalties section of the fisheries protection program with the Environmental Enforcement Act. To be frank, as I understand it, it kind of overlooked the necessity to specify that those monetary penalties would go to the environmental damages fund, as it does with the Environment Canada violation. So this is just to correct that.

I think it could be argued, as well, that the legal requirement to report harm, which was in Bill C-38, the legal requirement now to deliver on the commitment you make when you receive an authorization.... There's the fact that the penalties are increased, they're significantly higher. Now there is a minimum. There wasn't before.

So I think we're more optimistic than you are that there might be a significant fund that groups like the Atlantic Salmon Federation could benefit from.

I guess the other comment that needs to be made, because I think there is some misunderstanding on this score, is that, to my understanding at least, there has been no January 1 commitment to roll out these changes. The commitment that was in Bill C-38 was only that they would come into force at a later date, to be decided by order in council, by Governor in Council, by cabinet. And cabinet, I assume, will do that when it believes that it's ready to do it and that we have all of the necessary things in place to transition into the new regime.

So as to the notion that it's January 1, 2013, I know that internally the department has said that they have set that, themselves, as a target to have the things in place. When the cabinet believes that everything is in place is quite another matter.

But we do appreciate your feedback about the need to delay until we're ready to roll. We would agree with that.

I will turn to Mr. Wuttke for a bit, if I could. I just want to make sure I understood what you were saying, and reflect, as well, what we were told by a departmental official.

We were told that the term "land claims agreement" kind of subsumes within it the notion of a treaty. Yet your comment made it sound as though you didn't agree with that. I wonder if you, as the AFN's general counsel, could provide any clarity to this committee on that.

• (0930)

Mr. Stuart Wuttke: With respect to the land claim agreement and the definition, as you know, land claim agreements are usually done where there's no treaty at this point. That will mainly be in parts of Quebec, Atlantic Canada, and B.C.

With respect to other treaties, such as the numbered treaties and the pre-Confederation treaties, there's a whole slew of areas within the Canadian land mass that may not fall into the land claim type of definition.

If you look at the numbered treaties in particular, they aren't pursuant to land claim agreements at this point. What you would have in the Prairies are treaty land entitlement processes or other types of claims.

We feel that when it comes to rights that are enshrined in the numbered treaties in particular and other pre-Confederation treaties, those clauses or those promises should be protected, as well, and not just subsumed in the land claim agreement or in a modern type of context.

That relates to our earlier comments with respect to the definition of aboriginal fisheries, where there's exclusion of some commercial aspects and putting that into the commercial box. That may be problematic to some first nation communities.

Again, we feel if there's consultation and accommodation with respect to first nation interests, there may be a balanced approach. We would definitely prefer that, and we would recommend that consultation and accommodation take place in order to alleviate any potential problems that may exist in the future.

Mr. Randy Kamp: I think the department wouldn't disagree with that.

This change in Bill C-45 was made because feedback was received from some first nations groups and others that the definition in Bill C-38 would exclude some aboriginal fisheries, and the intent in the fisheries protection section of the act was to make sure that fisheries that involve fish that are fished, that are important to Canadians, be protected, and not to find a way to not protect some of those fisheries.

The advice was that by using the word “subsistence”, there would be some other fisheries.... The Nisga'a was one that was mentioned by the department official. Because they have a fishery that is commercial-like but doesn't have a commercial licence, it wasn't clear how a fishery like that would be caught by the terms “recreational”, “commercial”, and “aboriginal”. We were told that this broader term of “land claims agreement” would cover fisheries like that as well as arrangements that were made under treaty.

If you differ with that interpretation, perhaps you could say so, and if we have time—

Mr. Stuart Wuttke: I mean, clearly we would like it to be as clear as possible. By indicating that they hoped they would fall into a definition....

We'll have to see if that's the case, but clearly if it's spelled out properly in the act it would provide more certainty to first nations communities.

There's also an issue with respect to the ongoing evolution of aboriginal fisheries as new technologies and those types of things come into play. Clearly we want those protected in the aboriginal fisheries as well.

There is an issue with respect to “sustenance” and what that is. Recent Federal Court of Appeal cases with respect to taxation of first nations fishers in Manitoba was released just a couple of weeks ago or last week. They state that there may be commercial activities, but they also may be integral and tied to a first nations community. Again, we want to ensure that those types of arrangements are captured in the act and contemplated, and also consultation and accommodation result in those activities as well.

We agree that clarity and certainty are preferred, and if the act can be changed to make things clearer, that would be our preference.

Thank you.

• (0935)

Mr. Randy Kamp: Thank you.

The Chair: Thank you very much.

Mr. MacAulay.

Hon. Lawrence MacAulay: Thank you very much, Mr. Chairman.

Welcome to the committee on short notice. That will be my introduction.

First of all, I feel, whether correctly or incorrectly, that you have a different view of consultation than possibly the government has of consultation. I would like you to comment on that.

Also, it's been indicated that the recommendations might not be rolled out on January 1, but I'd like you to comment on what difference it makes when they're rolled out if you have no input into what is rolled out. That is the problem.

Mr. Taylor was talking about scientific information in order to put the criteria in place with the habitat protection, and looking at the loss of personnel in Prince Edward Island. I'd like him to indicate what effect he sees that having.

If I understood you correctly, Mr. Wuttke, you were talking about species that first nations fish. Were you indicating that some species might not be on the DFO list, or were you talking about underutilized species that might not be protected? That type of thing is what I'm interested in.

Could we start with you, Mr. Taylor?

Mr. Bill Taylor: Thank you.

I can give you my personal definition of “consultation”—

Hon. Lawrence MacAulay: I'd like that.

Mr. Bill Taylor: —and certainly what my staff and the volunteers whom I represent consider consultation.

Hon. Lawrence MacAulay: If I could add to it, Mr. Taylor, could you add your input to the committee with regard to, first of all, how important it is to have fisheries groups? I appreciate community groups and business organizations having a say, but when you're talking about change to the Fisheries Act, I would think that fisheries groups and organizations might be people who could provide some input into it, along with the scientists.

Thank you.

Mr. Bill Taylor: I would concur entirely.

Consultation is a lengthy discussion between at least two parties, with an opportunity to ask questions and to have questions answered. If you do not understand the answers or the implications of the answers, you work with each other, and at the end of the day, in our case, you walk away from a consultation understanding the implications of the amendments being proposed.

I realize and fully appreciate that senior DFO staff are under a very tight deadline in this. While I can respect that, and maybe have sympathy for that—

Hon. Lawrence MacAulay: Mr. Taylor, that—

Mr. Bill Taylor: —it does not change the fact that substantive changes are being made to an absolutely critical fisheries protection bill that has implications across the country, has implications for all Canadians, has implications that are social, environmental, and commercial.

For the Atlantic Salmon Federation, being the main representative of wild Atlantic salmon on the east coast of Canada, having two very short meetings with senior staff, without the opportunity for discussion and have questions answered, to my mind is not consultation, and that would be shared by all of the people I represent.

Sorry.

Hon. Lawrence MacAulay: Are you going to comment on the habitat protection and the cut staff?

Mr. Bill Taylor: You mentioned the January 1 deadline.

Hon. Lawrence MacAulay: I'd also like to indicate to you that it's a man-made timeline, it's not from somewhere else. This is a decision made by government. You're talking to a committee that supposedly advises government.

Mr. Bill Taylor: Right.

Hon. Lawrence MacAulay: That's what I would hope and expect that you're here for, not just for the good of your health. You're here to advise government on how you think it should go forward.

Or have we just gone forward and that's it?

Mr. Bill Taylor: What scares me is that we appear to have gone forward, and the time is fast disappearing.

If anything, I'm here to the detriment of my health, not for the good of my health.

You made a very good point. DFO has said to us that by the January 1 deadline, everything may not be ready to be rolled out by then but they're going to be ready. That tells me that whatever is going to take place with regard to meetings, consultations, amendments, delivery mechanisms, and so on, will have been done, so even if it's not rolled out for six more months, what difference does it make? That is our deep concern.

You did mention, sir, the loss of habitat staff in Prince Edward Island. No, there would be no habitat staff on Prince Edward Island. The Charlottetown office will be closed. As far as the east coast of Canada, we're going to be down to only three offices, Moncton, Dartmouth, and St. John's, Newfoundland.

If I had appeared here and spoken to you two years ago about the situation in eastern Canada, I would have said at that time we did not have enough habitat staff. Habitat staff are being dramatically decreased, and delivery opportunity is going to be next to nil.

You asked specifically about Prince Edward Island. All summer long, all fall long, there have been serious problems in Prince Edward Island with respect to agricultural runoff. I do not know how that will be handled without staff in Prince Edward Island.

• (0940)

Hon. Lawrence MacAulay: Mr. Wuttke.

Mr. Stuart Wuttke: I'll start off by talking about consultation, then I'll move on to your second question.

With respect to consultation, first nations and Canadians have a special relationship. We tend to view it as two societies coexisting in a land mass. That is consistent with the historic treaties and the modern treaties that are being developed, the modern self-government agreements.

The way we see consultation is that first nations themselves are rights holders. The land itself, the land mass, is based on our ancestors, and our ancestors have been buried there for thousands of years. When it comes to consultation, we would like the department to basically share information with us, give us a common period where we can actually look at the document, make recommendations, and propose changes. We would like for there be some joint process where first nation interests can be accommodated, especially with respect to habitat protection and environmental protection.

From there, hopefully changes will be made, and then, if not, we can look at possible other avenues of accommodation. But just keep in mind, too, that first nations themselves are scattered throughout Canada when it comes to the habitat. Most Canadians live close to the border. I think many first nation communities are agreeable to working with the department, the government, and other Canadians

in habitat protection. They're ideally situated throughout the whole ecosystem across Canada, whereas other Canadians are not. I think that provides an excellent opportunity to look at the overall health of Canada as a biosphere.

With respect to your second question on first nation species, we are concerned. There have been some past practices where habitat has been destroyed and there have been remediation projects. What we found in those projects is that, rather than restocking all the fish that were lost in a particular habitat, the habitat of certain commercially viable or sports viable fisheries had been restored in other areas. If you look at walleye, salmon, and pickerel, all those highly commercial types of fish, the fish that those fish rely on, in terms of food and other protection of the habitat itself, have not really been restocked in new areas. Some of those fish, such as the eulachon, are utilized by first nation fishers as opposed to non-first nation fishermen. It's in those areas that we feel that there has to be some focus to ensure that first nation interests in use of all fish and fish habitat is protected, and protected not only for the current generations, but also for future generations, to ensure that the aboriginal treaty rights can be practiced by future generations.

So when it comes to listing certain species as well, fish stocks should be restored. We agree with that. Conservation of the fish is important. But secondly, we don't want conservation and other practices, such as the sports fisheries, to override first nation interests. Sports fishermen are given a lot of time to go out to do the sports fishing. It's economically viable for the provinces. They come in from the States, they rent hotels, they eat at restaurants, and that type of thing. So there's always been an interest to ensure that those interests are protected above first nation interests, and we want to ensure that first nation interests are accommodated throughout this whole process as well.

Hopefully I've answered that.

• (0945)

Hon. Lawrence MacAulay: Thank you very much.

The Chair: Thank you.

We'll move to the five-minute round, and we'll start off with Ms. Crowder.

Ms. Jean Crowder (Nanaimo—Cowichan, NDP): I'll be sharing my time with Mr. Toone, and I just have a very brief question.

I have a very quick comment first. The UN Declaration on the Rights of Indigenous Peoples has a clause that talks about free, prior, and informed consent. What we've watched the government do consistently is move to calling something engagement, not consultation, because I think it's fairly clear that, from the Supreme Court decisions, they're not meeting their commitments under the Supreme Court decisions about what constitutes consultation.

Mr. Wuttke, I thank you for laying out more clearly what, in your view, would constitute consultation. I think we would all agree that hasn't happened either on this particular piece of legislation or on Bill C-38, or on the changes to the fishing regulations.

Have you had an opportunity to examine whether the parallel harvesting agreements on land claims—Tsawwassen is one of them, where the harvesting agreement wasn't incorporated into the land claims agreement, it was a parallel agreement—would be included in this definition?

Mr. Stuart Wuttke: I haven't looked at those. No, we haven't looked at those particular aspects. Again, this was very rushed. As far as we're concerned, we hoped we would have had more time. But again, that would be something that this committee could potentially ask the affected the first nations themselves to get their thoughts on that.

Ms. Jean Crowder: I think that highlights your concerns, though, around how this definition could move forward. There are questions: whether the Inuit also are protected under this particular clause, because there are viable fisheries—food fisheries, ceremonial, and subsistence fisheries—there as well.

I'll leave it at that and turn it over to Mr. Toone.

Mr. Philip Toone (Gaspésie—Îles-de-la-Madeleine, NDP): Thank you.

Thank you for your answers. Your exchanges have been very informative.

To get back to the question of consultation, I'd like to point out that I'm not sure that political MPs going off to their ridings to meet with municipal officials constitutes DFO consultations. I think that was the whole question at hand: whether the ministry had been consulting with you, rather than MPs.

As far as I know, apart from the Supreme Court decision especially as it pertains to first nations in *Haida v. British Columbia* and other decisions, the definition of consultation is fairly clear. Even in other situations, a consultation as far as I understand it is supposed to be an actual exchange of ideas with experts, not just having DFO make a conference call and give us the lowdown on what they think is the future of the Fisheries Act. I don't think we're meeting the definition of consultation in any way here.

Nevertheless, I'm glad you're here today to speak to Bill C-45, which we keep hearing is a fine-tuning of Bill C-38. Ultimately, what we're trying to do is have not just a predictable regulatory structure, but one that also accommodates.

I'd like your input on where you think we're going. Are we going toward a more predictable structure? Are we going toward one that accommodates the needs especially of first nations? Or are we going in the other direction?

Where is the combination of Bill C-38 and Bill C-45 leading, in your opinion?

Mr. Stuart Wuttke: I'll try to answer that.

We feel that the act itself definitely has some problems. It can definitely be improved in certain areas to provide more certainty in, as I mentioned, the definition of aboriginal fisheries and how it applies to some of the historic treaty provisions and promises. We want to ensure that the act itself can be amended so that it provides clarity on these points.

The impacts themselves are pretty great, especially when you look at what we have. We feel that if DFO had engaged first nations sooner and engaged us more effectively, there definitely would have been suggested changes that could have been accommodated.

In and of itself, the act is flawed in some areas. I know the intent is to modernize the fisheries and to improve the old, archaic Fisheries Act. With further engagement, it can be done more appropriately for first nation concerns and accommodate first nation interests. I believe there is an interest on the part of the federal government and also the Department of Fisheries and Oceans to do that, but within the current mechanisms it's just not there.

• (0950)

The Chair: Thank you very much.

Mr. Taylor, do you have a quick comment on this?

Mr. Bill Taylor: I would say that the objectives of modernizing the act and improving clarity and predictability are all objectives that the Atlantic Salmon Federation would support. The fact of the matter is that we simply have too many questions on definitions and delivery. On the fundamental premise of the act in respect to habitat, we feel very strongly that the no net loss principle somehow has to be maintained.

The Chair: Thank you, Mr. Taylor.

Mr. Allen.

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

I know that Mr. Wuttke has to leave soon, so I'll put my first question to him.

In our testimony the other day, Mr. Stringer spoke, and he said, in response to a question from Mr. Toone:

The other thing I would say is that aboriginal groups are an absolutely key partner with respect to the implementation of this act. The act says that we will be protecting commercial, recreational, and aboriginal fisheries. Where exactly there's an aboriginal fishery, we'll be needing to work with aboriginal groups on that, on a case-by-case basis.

He goes on to talk about some of those relationships. Especially in the inland, where they have 300 of these relationships, they're going to have to continue to do that.

Do you believe, on that statement that they're going to carry this out, that this would give you the kind of certainty that you were talking about before—the importance of that certainty to first nations?

Mr. Stuart Wuttke: It's a tough question to answer.

We've heard that from DFO for a while now, and there have obviously been a number of Supreme Court cases since 1980, since section 35 was introduced into the Constitution.

We're hopeful that further engagement does occur and that the Department of Fisheries and Oceans, like all of government, works in first nation communities to accommodate first nation interests, and also works on other projects such as economic development ventures and on how first nations can alleviate some of the poverty constraints they currently find themselves in. Clearly that's an interest of many first nation communities and the Assembly of First Nations.

On the case-by-case basis, again, you may have two communities living in the same treaty area, say Treaty No. 5, for instance. You may have DFO applying certain standards to one community and different standards to the other community even though they exist under the same treaty. There may be inequities in those relationships as far as licensing and other things are concerned.

There may be some positive aspects about that, but there also may be some problematic aspects of this case-by-case relationship. Again, we would encourage that the federal government work with first nation communities to provide greater certainty to all of first nation communities.

We agree that, based on ecosystems, there may be some differences in the fisheries, but again by and large the aboriginal and treaty rights are fairly consistent in broad areas and we would hate to see differences in DFO's treatment between certain communities and certain classes of fishers.

Mr. Mike Allen: That's helpful. Thank you very much.

Mr. Stuart Wuttke: On that, I do have to leave. I apologize.

My two colleagues are here.

Thank you.

Mr. Mike Allen: Mr. Taylor, I'll engage you on this a little bit. The other day Mr. Stringer talked about Bill C-38, and Mr. Kamp referred to it before. It will take effect when the Governor in Council decides it will take effect. The January 1 deadline was one the department had kind of set for itself, which is obviously good, for government to set a target.

The three areas they were talking about were, one, information requirements for an authorization; two, the timelines; and three, aquatic invasive species. Those are the three very limited regulatory things they're actually doing right now.

He also stated:

With respect to the other regulations, there is a set that we would anticipate going forward with. They are not required,

—at least initially—but they would probably come later and would also be subject to public engagement.

So to your comment of June 1 as being another date, I think it's important to recognize that there is significant other consultation that will have to happen.

Just as a question on this, and on some of the testimony Mr. Stringer gave to the Senate committee, going back when I was younger in the seventies and eighties when I used to fish the Nashwaak River, the St. John River, and the Miramichi River, obviously there was quite a number of salmon and other species at that point in time. I've seen generally over the years that we might have a bumper year in some cases, as we did last year in the Miramichi—not so great this year—but we've had some good years. But generally in the other rivers—I use the Nashwaak as an example because there is not a dam there from that standpoint—we've seen these go down.

Mr. Stringer talked about the Fisheries Act and called for a regime to protect Canada's commercial, recreational, and aboriginal fisheries; provide protection from serious harm; address managing

threats to these fisheries from challenges to habitat, aquatic invasive species, and other threats; and provide enhanced tools for the compliance, and also the partnerships agreement.

I guess when you look at an act from 1868, it seems to me that hasn't worked very well for us and that some of these changes, in terms of focusing on the fish, would be better.

I'd just ask for your comment on that.

• (0955)

Mr. Bill Taylor: We would hope so and expect so. I would say that the Atlantic Salmon Federation certainly is supportive of a modernization of the act, and we would welcome greater clarity and understanding and predictability—all worthwhile goals and objectives.

As an example, when you spoke, actually very accurately, about the state of wild Atlantic salmon populations in the Nashwaak, Miramichi, and St. John rivers, as an example New Brunswick has over 100 scheduled Atlantic salmon rivers. Over half of them are closed to angling because there aren't enough fish in them.

Once, the St. John River—I'm not trying to date us here, but not in your lifetime, or even my lifetime—

Mr. Mike Allen: Or even Mr. MacAulay's lifetime.

Voices: Oh, oh!

Mr. Bill Taylor: —was one of the most productive Atlantic salmon rivers in the world. Dams destroyed that. There are three first nations communities on the St. John River that cannot fish for food, social, or ceremonial purposes because there aren't enough fish. The once lucrative recreational Atlantic salmon fishery in the St. John River has closed.

If we look to Nova Scotia, there are 120 Atlantic salmon rivers. Two-thirds of them are closed because there aren't enough fish. That means that there are no recreational fisheries but also no first nations fisheries on a lot of those rivers. How will the revisions in the act improve that?

We have rivers that have Atlantic salmon populations, but they're threatened with extinction or are protected under SARA. Will the act protect those fish? There's no commercial fishery. There's no aboriginal fishery. There's no recreational fishery. Where does the Nashwaak fall? Where does the Medway River in Nova Scotia fall? Those are legitimate concerns.

We're not saying that there should not be a modernization of the act at all. We're just saying please give us the time to truly consult, exchange information among the experts and among the scientific community, and figure out what the partnerships will look like.

I can only speak for the Atlantic Salmon Federation and all the people we represent. We've played an important role until now. We'd like to continue. We're ready, willing, and able. What will that role look like? Where will our volunteers fit? Where will our science community fit? Those are the questions we're asking.

The Chair: Thank you very much.

Mr. Toone.

Mr. Philip Toone: Me again?

The Chair: You again.

Mr. Philip Toone: All right.

Mr. Taylor, you mentioned earlier that you were having some difficulties getting some reports from DFO. Could you elaborate on that?

Mr. Bill Taylor: We were having some difficulties...?

I'm sorry, you'll have to....

Mr. Philip Toone: No, I'm so sorry, it was Mr. Wuttke. I have it under the wrong heading.

Mr. Bill Taylor: I know I'm tired, but....

Voices: Oh, oh!

Mr. Philip Toone: Sorry. My notes could have been clearer.

Would you be able to comment on Mr. Wuttke's original testimony?

Ms. Audrey Mayes (Senior Policy Analyst, Environmental Stewardship, Assembly of First Nations): Yes.

We had requested some background materials so that it would assist us to formulate our own analysis of what was contained in Bill C-38, and now we're faced with Bill C-45.

We suggested during our brief technical meeting with DFO...to produce four helpful documents that we could disseminate to first nations as well as take a look at so that it would assist us in doing our outreach with first nations. We requested a powerpoint deck-type of overview. We asked for a comparison document.

I'll also note that this is the first time we've had any definition of "aboriginal fishery" contained in the bill. Previous attempts to change the Fisheries Act over the years have not looked at or examined the definition of an aboriginal fishery. This is a very new clause for us, and we wanted to have a little bit more of a conversation with the department and have the time to talk to first nations across the country about what that means to them.

We have a lot of case law to look at. We also have various complex self-government agreements and treaties. We have the peace and friendship treaties and the numbered treaties as well as new treaties that are being negotiated.

There's quite an array of different complexities. We thought that by requesting some of this background information from the department, it would assist us in providing information to first nations so they could understand what is being proposed.

Thank you.

• (1000)

Mr. Philip Toone: At this point those reports, those presentations, have not been provided, right?

Ms. Audrey Mayes: That's correct. We understand they don't have permission to release to us any information, any documents.

Mr. Philip Toone: The information being requested therefore exists. Do you know of reports that exist that you're trying to see, or are you asking for a compilation that hasn't been created yet?

Ms. Audrey Mayes: I understand that they've been working on things within the department. In fact they referenced a three-pager that they're trying to seek permission to release to us.

So we do know that there are some documents and things that they have been using with their engagement sessions. Unfortunately, those powerpoints or those materials have not been shared with first nations or the public, as far as we know.

Mr. Philip Toone: Has there been an explanation as to why the three-pager hasn't been released? They've been told not to release it?

Ms. Audrey Mayes: They've just told us that they don't have authorization to release those documents.

Mr. Philip Toone: Okay.

Is there any way for the committee to enquire as to what the reason is for the withholding of that document?

The Chair: The committee would have to move a motion to ask the department.

Mr. Philip Toone: Can I move that motion?

An hon. member: [*Inaudible—Editor*]

Mr. Philip Toone: I would like to move that motion.

The Chair: The motion being...?

Mr. Philip Toone: The motion being that the committee instruct the Department of Fisheries and Oceans to release the document that Ms. Mayes has just made reference to.

Ms. Audrey Mayes: [*Inaudible—Editor*]...that document is, I understand that there was a powerpoint used by Mr. Kamp at some meetings. I believe there was one at the AMC meeting; the Assembly of Manitoba Chiefs had referenced it.

So some of these meetings that have occurred... I believe there was also one referenced in the Yukon as well.

I believe there's a powerpoint that is circulating, and that would be helpful, just to know what is contained in these briefings.

The Chair: Committee members, we have a motion partially on the floor here, at this point in time.

Mr. Toone, you might want to withdraw your partial motion and get some clarity on what it is that you want to move. This is the chairman's advice to you, that you might want to get some clarity, because we need to be very specific if we're going to request a document. We need to know specifically what document it is.

So my advice to you would be to retract your motion—

Mr. Philip Toone: How about the motion be that DFO officials be invited to come and explain what documents are available?

The Chair: That, again, is not very specific, Mr. Toone.

And I'm not here to advise you on...when you say "how about a motion". Please make your motion very specific. I

I'm trying to give you a little advice, Mr. Toone. You're perfectly within your right to propose a motion, and the committee will entertain the motion, but the motion needs to be—

An hon. member: [*Inaudible—Editor*]

The Chair: I don't want to say “definite”, but yes, it's got to be definite, Mr. Toone.

Mr. Toone, do you want to take a few moments? I mean, at the end of our questions, you can propose your motion, certainly, but we have two more questioners at this point.

If you want to take a few moments here, and put together your motion, then we'll....

Thank you, Mr. Toone.

Mr. Weston.

• (1005)

Mr. John Weston (West Vancouver—Sunshine Coast—Sea to Sky Country, CPC): *Monsieur le président, merci.*

Thanks to our witnesses, Ms. Mayes and Mr. Pujdak, for being here today.

I'm going to concentrate my questions on you, Mr. Taylor.

[*Translation*]

I would like to begin by applauding your efforts to promote the development of the fisheries sector.

[*English*]

Thanks for your efforts that groups like yours across the country do. In my own part of the country it's the Pacific Salmon Foundation and groups like that.

The government is in the difficult position of having to fulfill its campaign commitments of reducing deficit, of staying on course to boost the economy, and therefore reducing costs while fulfilling its mandate to build the sustainable fisheries. Certainly the government is vulnerable to criticism, because no matter what it does, one can say it's reducing in one area or another, because that's exactly what the government sought to do and got the mandate to do.

At the same time, I agree with you that we need to concentrate our resources to do the things that you're trying to do through your foundation. I'd like to ask you a couple of questions.

Firstly, what benefit do you see in concentrating on these three fisheries—aboriginal, recreational, and commercial? Secondly, we've talked about the engagement, and you've raised some very specific concerns about the level of engagement. Perhaps part of that would be to get out some of the information, such as in P.E.I. You may not know that there will be four conservation and protection offices set up in Alberton, Charlottetown, Souris, and Summerside.

My question for you is this. What are some of the best practices that you can refer to based on your previous experience with DFO—or with MPs? How can that engagement be better, given that we will have timeframes that will find everybody having to move fast? This is a government that is trying to get things done. Give us some examples of how you think this engagement should work.

The first is the concentration on the three fisheries; what advantages do you see we can achieve, in obtaining a sustainable fisheries, by doing that, being strategic?

Secondly, how can we operate going forward to improve on this engagement that is of such concern to you and me and my colleagues?

Mr. Bill Taylor: Thank you. I will do my best.

With respect to focusing or identifying the three fisheries that the new act will focus on—commercial, recreational, and our first nation aboriginal fisheries—I'm not yet comfortable that this is the best approach. I'm concerned that there are other important fisheries that may not have a commercial, aboriginal—

Mr. John Weston: I'm going to interrupt, just because the time is so short. This is where we're going. That's the direction. We're committed. The government believes this is the best way to obtain a sustainable fishery.

So now that we're doing that, how do you see that as an advantage—rather than go back to what you might have preferred?

Mr. Bill Taylor: I guess the quick answer, because we're short of time, is that I don't see the advantage. I've given one example already that deeply concerns the Atlantic Salmon Federation, and that is with regard to the wild Atlantic salmon populations, in hundreds of rivers in Quebec and Atlantic Canada, that do not support, that don't have a healthy enough population to support, either a first nations fishery, a commercial fishery, or a recreational fishery. Where do they fall, and how will they be protected, in the act?

As an example, we do not have a commercial fishery for Atlantic salmon on the east coast of Canada. There are only recreational and first nation fisheries. But there are hundreds and hundreds of rivers where there are neither first nations nor recreational fisheries because of the population. There are salmon in the rivers, but just not a healthy enough population to fish for them. Where do they fall?

That's a serious question that we have.

• (1010)

Mr. John Weston: In terms of the engagement, the best practices; you've had some good experiences, I'm guessing, but we'd like you to comment on them, whether it's with DFO officials....

Mr. Toone puts his emphasis there, which is arguable. I like what Mr. Sopuck said as well, that an MP's role is to engage. I've certainly been doing that in the riding of West Vancouver—Sunshine Coast—Sea to Sky with stakeholders.

What do you see that we should be doing, going forward?

Mr. Bill Taylor: I think we need more of it, whether it's with the federal officials, DFO officials, MPs, or provincial governments. We all have a stake. We all have a role to play in the protection of our wild fisheries and fish habitat.

I gave just a few examples of certain engagements and partnerships that we have had that have been productive, and we look for more opportunities in the future.

One example that DFO has given with the amendments is the expansion of partnerships. We have no idea what that will look like. It would be great to have some direction from DFO, whether it's a paper or a powerpoint or whatever, when they speak about enhanced partnerships: what does that look like, and what does that mean?

Mr. John Weston: What would you like that to mean—

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

Mr. MacAulay.

Hon. Lawrence MacAulay: Thank you very much, Mr. Chair.

Mr. Taylor, looking at the obstruction of the passage of the salmon, could they be, in your opinion...? I'd just like to have your view, possibly looking at Bill C-45 and Bill C-38, on whether they have made any changes that will help the situation. Do you think that it could obstruct fish from the feeding grounds or spawning grounds?

I'd like you to comment on the minister's authority to allow fish to be killed. Do you see any time or any reason that this should happen? If so, I'd like you to explain to the committee how you think the minister would have that authority. He has the authority, but what would be a good enough reason to allow these types of things to happen?

Also, if you have some recommendations to expand upon, go straight ahead. I expect you have a lot.

Mr. Bill Taylor: But I don't have a lot of time.

Hon. Lawrence MacAulay: That's right.

Mr. Bill Taylor: Speaking to the minister's authority, to when is an appropriate time to kill fish, I don't know what that would be.

Hon. Lawrence MacAulay: But it's there.

Mr. Bill Taylor: But it's there. And I can't give you an example of what would be an appropriate opportunity, so that is deeply concerning.

With respect to obstruction of fish passage, I can't speak to all fish on the east coast of Canada, but I can with respect to Atlantic salmon. They are an anadromous fish, meaning they go from our freshwater rivers to the ocean and back again to spawn. Atlantic salmon need to have free passage and access to the spawning beds in the headwaters and the juvenile rearing areas, and safe passage out to the sea and back again.

On the east coast of Canada, I cannot give you an example of where an obstruction in a river, such as a dam, has led to an increase in salmon production or fish production.

Hon. Lawrence MacAulay: Or a decrease?

Mr. Bill Taylor: There is always a decrease when it comes to wild Atlantic salmon. There are examples where fish biomass increases, and certainly in the St. John River, one of the great salmon rivers of the world just 30 or 40 years ago, the salmon are virtually gone. There is a huge enhancement program, a hatchery on the St. John that DFO operates, and we still have very poor returns of Atlantic salmon, despite a multi-million dollar hatchery program.

We now have all kinds of pickerel, pike, and smallmouth bass. That's great if you're a smallmouth bass fisherman. The problem is that nature did not intend the smallmouth bass, the pike, and the

pickerel to be in the St. John River. That is an Atlantic salmon river and a brook trout river. The wild native species are going down the tube at the expense of a fish obstruction. There is an increase in fish biomass, but not wild native fish.

Hon. Lawrence MacAulay: Thank you very much.

The Chair: Thank you, Mr. MacAulay.

Mr. Philip Toone: I'd like to move...*[Inaudible—Editor]*

The Chair: Did I...? Mr. Toone, I'm going to thank our witnesses at this time, because I know Mr. Taylor has a flight to catch.

To our witnesses, I want to thank you for coming today and for appearing before this committee and providing us with your thoughts on Bill C-45, clauses 173 to 178. We certainly do appreciate it. Again, on such short notice, we do appreciate your time.

Mr. Toone, I told you I would come back to you and give you the opportunity to propose a motion, so the floor is yours now.

• (1015)

Mr. Philip Toone: Thank you so much—

Mr. Randy Kamp: Mr. Chair?

The Chair: Yes.

Mr. Randy Kamp: If it's committee business-related, I move that we go in camera.

Mr. Philip Toone: This follows the testimony of the witnesses. I think it would be interesting for the public to hear it.

The Chair: You're moving, Mr. Kamp, to go in camera?

Mr. Randy Kamp: Correct.

The Chair: It has been moved by Mr. Kamp that the committee move in camera.

Mr. Robert Chisholm: Can we have a recorded vote, Mr. Chairman, please?

The Chair: All those in favour—

Mr. Philip Toone: Mr. Chair?

The Chair: Sorry—

Mr. Philip Toone: I was already moving a motion. Can another motion be presented while my motion is being presented?

The Chair: I'm sorry; you didn't present your motion, Mr. Toone.

Mr. Philip Toone: Well—

The Chair: I recognized Mr. Kamp—

Mr. Philip Toone: —unless this was a point of order that pertains to what I was actually going to be presenting, I don't really see the pertinence of his motion on mine.

I think I made it very clear to the committee that I wanted to present this motion, and I think it's important that we debate it immediately.

The Chair: I recognized you, Mr. Toone. We were having a discussion.

I recognized Mr. Kamp. He proposed a motion.

Mr. Philip Toone: Mr. Chair, with all due respect, I never withdrew my motion.

The Chair: With all due respect to you, Mr. Toone, you didn't propose a motion, so you didn't have the opportunity to withdraw a motion.

You were sitting, contemplating a motion, and I asked you—

Mr. Philip Toone: I did say that I so move.

Mr. Robert Chisholm: He did, if I may—

The Chair: Mr. Chisholm, thank you for your input here.

Mr. Robert Chisholm: I didn't have a chance to make it.

The Chair: No, and I'm not recognizing you, I guess is what I'm saying. Please shut the mike off.

We're having a discussion here, at this point, Mr. Toone. You asked about a motion.

To be very frank, the motion that you so moved—if you want—is not in order. I gave you the opportunity to—

An hon. member: You didn't rule that.

The Chair: I didn't rule it. I understand I didn't rule it. But I gave you the opportunity.... You didn't have a motion, to be very frank with you, Mr. Toone.

Mr. Philip Toone: I beg to differ.

If the motion needs to be amended, I'm perfectly open to amendments.

The Chair: I would like to understand how you can amend something when I said you didn't propose a motion.

Mr. Philip Toone: The motion was on the floor.

The Chair: You can't amend when—

Mr. Philip Toone: You said that we were going to get back to it. I'm back to it right now.

The Chair: Mr. Kamp came forward with a point. I recognized Mr. Kamp. He has moved that this committee proceed in camera. I'm at the point right now of calling the question on it. It's not debatable.

Mr. Philip Toone: I challenge your ruling.

The Chair: Thank you. You can do that. You can go to the Speaker. You can challenge the ruling. You have that prerogative.

I'm the chair of this committee—

Ms. Jean Crowder: On a point of order on this procedural piece, speaking as a former committee chair, the chair's been challenged. Now I believe the committee has to either sustain the ruling of the chair or...whatever.

The Chair: What we're dealing with here right now is that we need to confirm whether my ruling that Mr. Kamp has the floor is sustained by the committee. I would call the question on that ruling.

Mr. Chisholm, you asked for a recorded vote, but I believe that was on the other motion.

Mr. Philip Toone: We are calling for a recorded vote on this one as well.

The Chair: Thank you. That's what I was trying to ascertain.

(Ruling of the chair sustained: yeas 6; nays 5)

The Chair: The ruling stands.

Mr. Kamp, you have moved that this committee proceed in camera. A recorded vote was requested. I will now call for the vote.

(Motion agreed to: yeas 6; nays 5)

The Chair: The motion carries.

This committee will suspend for a few moments and proceed in camera.

[Proceedings continue in camera]

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