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Chair

Mr. Scott Simms

Standing Committee on Fisheries and Oceans

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• (1530)

[English]

The Chair (Mr. Scott Simms (Coast of Bays—Central—Notre Dame, Lib.)): Welcome, everybody. This is the Standing Committee of Fisheries and Oceans. Pursuant to Standing Order 108(2) and a motion adopted by the committee on Monday, September 19, 2016, the committee commences its study to review changes made to the Fisheries Act. That's what we're doing today.

Our format is as follows. Instead of having two separate hours of witnesses and guests, we will include for the whole two hours all the guests that we have today. We have five organizations. We'll expect 10 minutes from each organization, and I trust you've chosen your spokespersons.

First, we have the Government of Newfoundland and Labrador, with the Honourable Steve Crocker, Minister, Department of Fisheries and Forestry and Agrifoods. He is no stranger to this committee and has already been with us on the cod study. We also have with us Elizabeth Barlow, director, aquaculture development, Department of Fisheries, Forestry and Agrifoods.

From Manitoba Sustainable Development, we have Dr. James Duncan, director, wildlife and fisheries branch. He's joining us by video conference from Winnipeg. Dr. Brian Parker, senior fisheries manager, wildlife and fisheries branch, is also joining us by video conference.

From Ecojustice Canada, we have Margot Venton, staff lawyer and director of marine programs, who is joining us by video conference from Vancouver.

From the Atlantic Salmon Federation, we have Dr. Stephen Sutton, co-ordinator of community outreach and engagement, and Charles Cusson, Quebec program director.

Finally, from Oceans North Canada, we have Trevor Taylor, director of fisheries conservation, who is also the former minister of fisheries and aquaculture in Newfoundland and Labrador. I hope you don't mind me throwing that in. I just thought it would add some perspective.

Also joining us is Mr. Dave Van Kesteren, who is from the riding of Chatham-Kent—Leamington. He is replacing Mr. Doherty today.

As I said at the beginning, I have 10 minutes for each of you. We're going to start at the top.

Minister Crocker, will it be just you for the 10 minutes?

Hon. Steve Crocker (Minister, Department of Fisheries, Forestry and Agrifoods, Government of Newfoundland and Labrador): It will.

The Chair: Please proceed, sir, with your 10-minute testimony.

Hon. Steve Crocker: Good afternoon.

Thank you to the standing committee for the opportunity to be here regarding the review of the Fisheries Act. I have distributed some copies of my presentation. If you're going to be following along, I'll note that I may skip some sections in respect of the time limit.

The Newfoundland and Labrador seafood industry was worth more than \$1.2 billion in 2015, with aquaculture accounting for \$161 million. It directly employed over 17,000 individuals throughout our province.

Newfoundland and Labrador is experiencing a regime shift from shellfish to groundfish. The province's seafood industry will require supports to seize the new opportunities afforded by this shift, including investments in innovation, technology transfer, infrastructure, and skills development to ensure that it is sustainable and globally competitive.

Seal populations have been growing substantially since the 1970s and are having a significant impact upon our marine ecosystem.

Not surprisingly, sustainable marine resources are vital to Newfoundland and Labrador's current and future prosperity. It is imperative that the need for economic development is balanced with environmental protection.

The existing federal Fisheries Act was enacted to give the Government of Canada the authority to manage Canada's fisheries and protect the habitat that supports them.

The province supports the federal government's efforts to open the Fisheries Act to reform Canada's system for fisheries management. Opening the review to only lost protections and modern safeguards does not give the opportunity to address the issues of all stakeholders.

We have always maintained that fisheries management decisions, for which the Fisheries Act gives DFO the authority, should be based on sound scientific advice and should respect and reflect the rights of harvesters as adjacent and historical users. Therefore, I recommend that these be incorporated in legislation as key principles for access and allocation decisions.

The current owner-operator and fleet separation policies are important elements of Atlantic fisheries policy. They maintain harvester independence while ensuring that benefits from fish resources accrue to active participants. Enshrining these policies in legislation will support the viability of our coastal communities.

Newfoundland and Labrador was the first province in Canada to recognize fish harvesters as professionals. In 1996, the province passed the Professional Fish Harvesters Act, which recognized the special skills and experience required to become a professional fish harvester. Currently, DFO policy requires that a harvester be certified as a level II professional fish harvester in order to receive the transfer of a core enterprise. Our province recommends that this, too, be recognized in federal legislation.

In June 2012, the federal government passed amendments to the Fisheries Act, which DFO stated were in line with DFO's core mandate and increased regulatory efficiencies and did not obstruct economic development. Under the revised legislation, protections have been limited to fish species that can be defined as being part of a commercial, recreational, or aboriginal fishery, as well as applying only if fish will be seriously harmed. DFO is restructuring its habitat program, which is now the fisheries protection program, and is reducing regional habitat offices from 68 to 15 across the country.

The current mandate of DFO's minister includes the direction to work with relevant ministers to review the precise government changes to the Fisheries Act and the Navigable Waters Protection Act, to restore lost protections and incorporate modern safeguards, and to review Canada's environmental assessment processes. There is a good deal of interplay among these pieces of legislation, and it is important that we avoid duplication.

• (1535)

The Canadian Council of Fisheries and Aquaculture Ministers agreed to create a task group to review the changes made to the federal Fisheries Act and conduct a detailed assessment of these amendments. My officials have been engaged in a review process, and I understand that the recommendations from this task group will also be presented to the standing committee.

At this time, my department is in consultation with other provincial departments to determine what protections have been lost, if any, and what further analysis is required. Following discussions with the provincial Department of Environment and Climate Change, I have several general points to communicate on the issues of fish habitat protection.

Continued, improved, and increased engagement and collaboration between DFO and provincial and territorial departments and agencies are essential for the development and implementation of clear and effective legislative policies. Engagement and collaboration are critical to balancing the need to reduce red tape with restoring any protections that may have been lost. Our province is currently a member of an FPT committee on lost protections that consists of regional DFO officials and provincial officials from several departments. It is imperative that venues such as these exist to share information concerning potential lost protections.

DFO requires only that proponents partake in an online self-assessment to determine if their project avoids or mitigates impacts

on fish. This requirement translates to an unrealistic expectation that proponents must understand the types of ecological and biological impacts their projects are likely to cause. At a minimum, proponents should be required to register projects through a self-assessment process so that follow-ups would be possible. However, DFO staffing capacity throughout our province is small, and the majority of the regional offices have been closed. Therefore, there are not enough fish habitat specialists to do the follow-up checks to verify if the proponents' self-assessments are accurate.

Most importantly, we do not believe that the self-assessment protocol currently in place can offer full protection to inland waters, fish, and fish habitat. A more rigorous, systematic, and regionally based assessment conducted by DFO officials should be considered. In addition, from a wider enforcement perspective, DFO should provide resources sufficient to enforce the Fisheries Act at the regional level.

I would now like to discuss issues pertaining to our aquaculture industry. Balancing the needs for our aquaculture industry—so important for economic development—while protecting the environment is key. I would like to point out that the aquaculture industry has a vested interest in environmental stewardship. We are looking to the future for the opportunities that exist for new growth. The aquaculture industry provides exciting opportunities for economic diversification in Newfoundland and Labrador.

We currently have successful aquaculture operations, and we have seen great benefits for the regions and other parts of the province from this industry. This industry is an important contributor to the social and economic viability of our province and its rural communities.

The Government of Newfoundland and Labrador recently launched “The Way Forward: A Vision for Sustainability and Growth in Newfoundland and Labrador”. Throughout our vision, we have committed to growing our aquaculture industry by doubling salmon production and more than doubling mussel production. Newfoundland and Labrador is open for aquaculture development. We want to attract companies with clear plans and the ability for sustainable development in aquaculture sites throughout our province.

In 2015, after review, the aquaculture activities regulations, or AAR, came into force. Under the current regime, the activities of licensed aquaculture operations specified in the regulations are authorized and exempt from section 35(1) of the Fisheries Act. As stated, the AAR clarifies conditions under which aquaculture operations may install, operate, maintain, or remove an aquaculture facility, or undertake measures to treat fish for fish health reasons, as well as deposit organic matter under sections 35 and 36 of the Fisheries Act.

Our department is pleased with the improved clarity of the AAR in regard to aquaculture activities. Our interest is to continue to work collaboratively with DFO to improve the federal and provincial governance framework around aquaculture. Any review of the Fisheries Act should take the AAR into consideration and ensure that any proposed changes do not duplicate or conflict with the applications of the AAR.

Further discussions will be required on the implementation of this review for the aquaculture industry. In addition, I note that the Senate committee's recommendation to pursue "national" legislation on aquaculture may have unknown implications on this review and for the aquaculture industry at this point.

In closing, I am pleased that DFO has invited Canadians to take part in the online consultation on fish habitat through the Government of Canada's online consultation site. I would like to thank DFO regional staff for assisting the provincial government during this review process.

Again, thank you to the committee for this opportunity to present this afternoon.

• (1540)

The Chair: Thank you, sir. That was exactly 10 minutes—not bad.

Now, as we go to Manitoba Sustainable Development, is one person speaking, or are both?

Mr. James Duncan (Director, Wildlife and Fisheries Branch, Manitoba Sustainable Development): We're going to take turns.

The Chair: Go ahead, please, with your 10 minutes.

Mr. James Duncan: Thank you.

Bonjour. I'm Dr. James Duncan, the director of the wildlife and fisheries branch of Manitoba Sustainable Development. With me today is my colleague, Dr. Brian Parker, senior fisheries manager.

First of all, on behalf of Manitoba Sustainable Development, I'd like to say that we appreciate the opportunity to participate in the review of the Fisheries Act.

Manitoba is actively participating in the Canadian Council of Fisheries and Aquaculture Ministers task group for the review of the 2012-13 changes to the Fisheries Act. We appreciate the opportunity to collaborate with our federal, provincial, and territorial counterparts as we work toward a common goal of restoring protections and incorporating modern safeguards into the Fisheries Act.

Manitoba Sustainable Development supports the federal review and welcomes opportunities to improve the use of scientific evidence in environmental decision-making.

The federal authorization process is required for many development projects. It is an important process and should provide a balance between facilitating investment and creating local jobs and protecting provincial fisheries.

Manitoba Sustainable Development has developed recommendations with the goal of strengthening the protection of fisheries while at the same time improving clarity and reducing regulatory red tape.

These recommendations also have taken into account ongoing task group discussions.

There are five recommendations with this presentation.

Recommendation number one is about the definition of serious harm and other key terms from a sustainable development perspective.

Our first recommendation relates to how key terminology is defined under the Fisheries Act. Projects should be assessed from a sustainable development perspective, with consideration given to the balance of ecological, economic, and social impacts of the fishery. Therefore, we feel there is an opportunity to have clear definitions of key terms from a sustainable development perspective.

For example, under the Fisheries Act, proponents are prohibited from activities that result in "serious harm" to fish or habitat unless an authorization has been granted. However, the current definition of serious harm is subject to interpretation. "Serious harm" is currently defined as follows:

the death of fish or any permanent alteration to, or destruction of, fish habitat.

However, it's been difficult to determine with certainty when this prohibition applies: for example, to one fish, or to one population of fish, or to an assemblage of fish species. There is also some lack of clarity regarding the nature of impacts to habitat, specifically, what constitutes a permanent alteration and whether an alteration is necessarily implicitly negative.

The Province of Manitoba is developing drainage regulations to streamline approvals for low-impact drainage works. These regulations will authorize routine maintenance of roadside drainage channels. It is important to balance protection of fish habitat with the need for timely approvals of water management projects such as man-made drainage works. For example, an agricultural producer could offset the impact to a stream by taking mitigation actions such as riparian area soil conservation.

I'll let my colleague Brian continue with the rest of the recommendations.

• (1545)

Mr. Brian Parker (Senior Fisheries Manager, Wildlife and Fisheries Branch, Manitoba Sustainable Development): Recommendation number two is in regard to harmonization and flexibility to reflect provincial interests.

This recommendation is to ensure there is better harmonization and flexibility. For example, it is important that local interests are considered before implementing a prohibition under the act. There may be opportunities to simplify the process that provinces and territories must follow to request and use a proposed exemption to a prohibition, especially for projects or decisions that support mutual objectives.

The review of the act should also explore opportunities to improve the sharing of information on local issues and impacts. In some instances, the ability to communicate local issues and perspectives may have become more challenging due to the thematic focus within the federal fisheries protection program. For example, federal staff who are based in Manitoba may have the expertise to review a local oil and gas project, even though the project would typically be assigned to staff located in another province.

Provincial and territorial input is essential in determining impacts to the long-term sustainability and productivity of fisheries, including the determination of the cumulative impact of smaller projects. Greater flexibility in submitting and sharing information will facilitate evidence-based decision-making in support of mutual objectives.

Recommendation number three relates to the consistency of monitoring, with clear standards and rationale.

As part of the Fisheries Act review, steps could be taken to improve the consistency of monitoring requirements for proponents, which include providing them with clear standards and rationale. Consistent monitoring processes will support proponents in acquiring the data they need to move projects forward without undue costs or delays. For example, a template could be developed that provides guidance around essential information for monitoring to assist proponents in collecting high-quality meaningful information that is needed for timely decisions.

Recommendation number four relates to transparency and information sharing.

We also feel there may be opportunities to improve transparency by sharing more information with provinces and territories. In general, we believe that information should be provided to jurisdictions before it is provided to a proponent. This will give a province or territory an opportunity to facilitate or, if needed, to interject.

There are also opportunities to improve data sharing related to monitoring and compliance, especially in regard to serious harm to fish. For example, a tracking site, such as a public registry, could be developed to share information on proposals, project status, and other activities, including cumulative impacts. Additionally, improved clarity around policies and procedures on the interpretation and implementation of the Fisheries Act would be useful for proponents as well as provincial and territorial jurisdictions.

Our last recommendation relates to alignments of responsibility and related resources.

Like many other jurisdictions, Manitoba Sustainable Development has limited capacity to undertake additional activities related to assessment, monitoring, and compliance. If provinces are expected to perform additional work adequately, such as assessing risks to fish habitat, then additional resources from the federal government will be needed. That said, a more co-operative approach to the review process could also help to reduce duplication and allow jurisdictions to use limited resources more effectively.

I'll turn it back to Jim.

•(1550)

Mr. James Duncan: In conclusion, thank you again for the opportunity to provide recommendations on behalf of Manitoba Sustainable Development. If you have specific questions or comments related to our recommendations, please feel free to contact us directly.

Thanks for the opportunity to provide this input. We look forward to our continued dialogue as we move forward with this review. It is important for Manitoba to balance the protection of provincial fisheries with opportunities to promote investment and job creation through improved clarity and reduced regulatory red tape.

Thank you very much.

The Chair: Thank you, gentlemen.

Now we go to Ecojustice Canada and Margot Venton, who is joining us from Vancouver.

Ms. Venton, please, for 10 minutes or less.

Ms. Margot Venton (Staff Lawyer and Director of Marine Program, Ecojustice Canada): Thank you.

Good afternoon. I would like to thank the committee for this opportunity to present on the important issue of fish habitat protection.

My name is Margot Venton. I am a Staff Lawyer with Ecojustice Canada and also the Director of our Marine Program.

Ecojustice is a national charity dedicated to protecting the environment through the use of Canadian law. My perspective on the Fisheries Act is informed by almost 20 years of experience in advising clients and representing clients on marine species, fisheries, and aquaculture issues. I have also been counsel in a number of legal cases interpreting or seeking the enforcement of the Fisheries Act.

My presentation today will focus on the changes we hope to see through this modernization process, and specifically our recommendations for achieving a broad, precautionary, and enforceable legal protection for fish habitat in the act, through an express habitat protection provision that guides ministerial discretion to authorize harm to habitat through legislated criteria and that also addresses cumulative harm and cumulative loss of fish habitat. A more detailed discussion about why these changes are necessary will be included in our brief, which we will file with the committee later.

Fish habitat is obviously essential to healthy fish populations and, by extension, to healthy fisheries. The habitat protection provisions were added to the Fisheries Act in 1977, as you all know, in response to the devastating loss of wild salmon populations on the Atlantic Coast. The 1977 provisions were organized around the central prohibition against the “harmful alteration, disruption, or destruction” of fish habitat, the HADD provision, which cast a wide net intended to catch the myriad ways in which fish habitat can be harmed by human activities. Judicial interpretation of the HADD provision was clear that the offence was harming fish habitat, even temporarily, and did not require proof of either permanent damage or harm to fish directly.

Now, as we all know, in 2012 the provision was amended to change the focus from harm to fish habitat to “serious harm to fish”. This serious harm to fish provision is not expressly about habitat protection. The scope of protected habitat is actually limited by the requirement that it be habitat of a commercial, recreational, or aboriginal fishery, and enforcing the provision requires proof of permanent harm to habitat or death of fish.

Unfortunately, the changes to the act were also accompanied by significant budget cuts, in particular to the former habitat branch of DFO, as well as a significant policy shift toward self-assessment and streamlining of approvals.

The combined effect of all of these changes has, in our opinion, diminished the protection of fish habitat in Canada. The amendments created confusion about whether and how the law operated to protect fish habitat. As just one example, we recently received a call in our office from a community member in the Lower Mainland concerned about silt pouring into a fish-bearing creek from a construction operation. It was obviously bad, but the questions she had were, did it constitute serious harm to fish, did there need to be dead fish floating on the water, and did they have to be commercially fished fish? We didn't really know the answers to all her questions, and she could get no clear answer from DFO.

We say that the protection of fish habitat under Canadian law must be effectively restored to ensure future functioning of aquatic ecosystems and healthy fish populations for future generations, but I'd like to make the point that the previous HADD provision was far from perfect, and simply returning that provision to law is perhaps not the best option. Ecojustice would like this review and modernization process to result in five key changes to habitat protection under the Fisheries Act.

First, we would like to see a habitat protection provision that is broad and expressly aimed at the protection of habitat.

Second, we would like to see a protection provision that is precautionary: “serious harm to fish” sets an excessively high bar, in our opinion.

Third, the discretion to authorize harm to fish habitat must be guided by scientific considerations and key environmental law principles and must require some positive action on the part of DFO, such as permits or other authorization.

• (1555)

Fourth, habitat protection provisions should address, and must address, the cumulative harm to fish habitat.

Finally, the provisions must be enforceable and, of course, must be enforced.

Habitat protection needs to be broad. Protecting fish habitat by protecting commercially fished species ignores the scientific reality of viable ecosystems. All parts of an ecosystem need to be protected in order to function as a whole and support healthy fish populations, including populations of commercially fished species.

Thus, Ecojustice recommends reverting to the breadth of the previous prohibition against harmful alteration, disruption, and destruction of fish habitat. We further recommend ensuring that potential harm to fish habitat caused by fishing not be ignored under the provisions. We recommend guiding with enforceable science-based criteria the current exception in paragraph 35(2)(d) to automatically authorize any harm to fish habitat that results from doing anything authorized under the act. That includes fishing and aquaculture.

As an alternative to this recommendation, at least with respect to addressing harm to habitat caused by fishing, it would also be possible to include mandatory consideration of the impact of various fishing methods as part of the fisheries authorization process as well. At the moment, the habitat provision is the only place in the act where habitat protection is addressed in any way.

Our second recommendation is that habitat protection needs to be precautionary, because it is not always clear at what point harm to habitat translates into harm to fish. We recommend including the precautionary principle as an express principle that guides decision-making with respect to habitat protection.

Discretion to authorize harm to habitat needs enforceable limits. A broad prohibition against harming fish habitat will, of necessity, require provisions authorizing harm to fish habitat. The power to authorize harm to fish habitat, however, must be guided by clear principles based on science. Discretion under the Fisheries Act is generally a problem. Many different independent reviews of the act have flagged that issue again and again. Discretion to authorize harm to habitat under HADD, the old provision, was near absolute. The 2012 introduction of some limited criteria to guide decision-making under the act was a good thing, but it needs to go further to expressly reflect habitat concerns.

Thus, we recommend adding science-based considerations to guide any authorization of fish habitat, including consideration of cumulative effects on fish habitat of individual authorizations; consideration of the long-term stability of ecosystems; consideration of the habitat needs for struggling or recovering fish stocks and aquatic species at risk; and consideration of the predicted effect that climate change is expected to have on the habitat in question. These considerations should be set out in the habitat provision or in regulations under the act, but should not be relegated to policy documents.

As I mentioned previously, habitat protection must address cumulative harm and loss of fish habitat. The current habitat protection provisions do not require, or even really allow for, the consideration of cumulative effects of multiple activities on fish habitat. Up until 2012, cumulative effects of individual proposed works and undertakings were considered as part of the environmental assessment process that preceded the issuance of a HADD authorization. Since the amendments in 2012, authorizations of serious harm to fish no longer trigger any environmental assessment.

Thus, we recommend first some form of assessment for all of these authorizations, but as a precondition to individual authorizations and individual assessments, we recommend DFO establish science-based thresholds and objectives for fish habitat at the watershed and ecosystem level before issuing individual authorizations for those watersheds and ecosystems.

Our fifth and final point is that habitat protection provisions must be enforceable and enforced. Monitoring and enforcement is a critical part of any effective regulatory regime. It is extremely disheartening, from our perspective, that there have been no charges laid since the serious harm to fish provision came into force. Various witnesses throughout these hearings have mentioned that problem and have proposed different solutions, and obviously we echo the recommendation that DFO be properly fiscally supported.

• (1600)

In addition, we would recommend adding clear provisions that allow concerned citizens to request that DFO investigate an alleged fish habitat violation and to also add a provision that allows concerned citizens acting in good faith to take action in the courts to enforce the act where DFO is unable or unwilling to do so. Canada is a big country, protecting fish habitat is a huge job, and citizen enforcement provisions have worked effectively in other jurisdictions to improve compliance, enforcement, and environmental protection.

Those are—

The Chair: Thank you, Ms. Venton. I have to stop it right there. I'm sorry.

Ms. Margot Venton: That's okay. I was done. That was the end.

The Chair: Oh. My apologies. There you go. If you feel that you've missed anything, we have quite a bit of time for questions and answers following this, so you can include it at that point.

We're now going to the Atlantic Salmon Federation, with Charles Cusson and Dr. Stephen Sutton.

Are you sharing your time?

Mr. Stephen Sutton (Coordinator of Community Outreach and Engagement, Atlantic Salmon Federation): I'm going to give the presentation. I'm going to let Charles answer the hard questions.

Mr. Charles Cusson (Quebec Program Director, Atlantic Salmon Federation): Thank you for that.

Voices: Oh, oh!

The Chair: I know how you feel. I find myself in the same role on many occasions.

Dr. Sutton, please, for 10 minutes or less.

Mr. Stephen Sutton: Thank you.

Good afternoon, everybody.

The Atlantic Salmon Federation is pleased to have this opportunity to speak to the committee today. The Atlantic Salmon Federation is dedicated to the conservation, protection, and restoration of wild Atlantic salmon. We work closely with our regional councils in Atlantic Canada and Quebec and with over 100 local watershed organizations and salmon conservation groups, which represent thousands of volunteers.

Canada's wild Atlantic salmon populations have been declining for many years, largely due to the impacts from human activities. Populations in most areas are well below historical levels, and some are listed or are in the process of being listed as threatened or endangered. Many commercial, aboriginal, and recreational fisheries have been closed, and significant social and economic benefits have been lost.

Despite this, wild Atlantic salmon are still worth about \$150 million to Canada's GDP, and they generate the equivalent of 3,800 full-time jobs. These numbers of course would be much greater if populations were recovered and fisheries were reopened.

Halting the salmon's decline, recovering populations, and restoring lost fisheries will take significant resources and hard work, backed up by strong legislative and policy frameworks to address the threat from human activities. Unfortunately, at this time, we believe that the Fisheries Act and its administration are not sufficient to address some of the most important human impacts on wild salmon populations. There are several reasons for this.

First, the focus on preventing permanent alteration or destruction of fish habitat is not sufficient. Atlantic salmon have specific habitat requirements at specific points in their life cycle and at specific times of the year. Temporary alterations to key habitats at times when they are needed can have substantial and long-lasting impacts. For example, temporary disruptions to water quality, flow, or temperature at key times during the fall of the year could render important spawning habitats useless when they are needed and have significant impacts on salmon productivity for years into the future.

Despite that, such alterations to key habitat would not be considered serious harm under the current act, simply because they are not permanent. This leaves the door open for human activities to cause significant impacts on salmon productivity through temporary alterations to key habitats. We believe that legislation needs to protect key habitat at the time it is needed. It should not matter whether that alteration is temporary or permanent.

Second, the act's focus on preventing the death of fish is not sufficient. Many of the human activities that impact salmon have non-lethal effects. In other words, these are impacts that affect the long-term health and productivity of salmon populations without actually causing the death of the fish that are being impacted. Impacts from open net salmon aquaculture are a good example of this. They're only one example of this, but we will use this one.

One of the major problems with net-pen aquaculture is that farmed fish escape and interbreed with wild salmon. When those farmed fish interbreed with wild fish, the gene pool of wild populations is weakened, leading to reduced fitness in future generations and decreased abundance. All of this happens without actually causing the death of the wild fish that have been interbreeding with the farmed fish, which means that these sorts of non-lethal impacts are not considered serious harm under the Fisheries Act. We believe that legislation that does not protect fish from all of the significant ways that they are impacted by human activity will not ensure the protection, sustainability, and recovery of wild salmon and the fisheries they support.

Third, in the administration of the act, there is too much reliance on project proponents to self-assess and notify DFO regarding impacts on habitat. People undertaking potentially damaging activities are typically not qualified to understand the complexities of salmon habitat requirements or to judge when their activities may have caused serious harm. There are also disincentives for people to report harm that they may have caused, yet the self-assessment tool currently used by DFO places most of the responsibility for protecting fish habitat with the project proponents. This provides significant opportunities for projects to proceed without sufficient oversight from monitoring and enforcement.

We believe that this situation results in ongoing and cumulative habitat loss that is undocumented and unmitigated, and it makes it nearly impossible to assess future project impacts in light of previous damage. There needs to be a greater presence of DFO on site at proposed project locations to assess the potential damage prior to work being conducted, and there must be better monitoring of impacts during and after activities.

•(1605)

Fourth, we feel that the act grants too much discretionary power to the minister to exempt works, undertakings, activities, deleterious substances, and water bodies, and to grant authorizations to cause harm to fish or fish habitat. Currently, the minister's discretion can be exercised without sufficient guidance or processes to ensure that the impacts of those decisions are known, understood, monitored, or mitigated. There's no automatic mechanism to ensure that discretionary decisions are made with information about the full range of costs and benefits, or that the public is informed about such decisions and can participate.

Without a rigorous and transparent process to guide the application of ministerial discretion, it is difficult for the public to hold the minister accountable. There need to be meaningful safeguards to ensure that the minister does not consistently prioritize the desires of project proponents over the needs of wild fish and the people who depend on them.

In summary, we have a number of recommendations for changes to the Fisheries Act and its administration.

In the first instance, we believe that there needs to be a restoration of protections and administrative processes that were removed in 2012, including the following: restore provisions that prevent the harmful alteration, disruption, or destruction of fish habitat and remove the requirement that impacts must be permanent; reduce proponent project self-assessment and increase the capacity for government oversight and monitoring of projects and impacts; and, re-establish ministerial authorizations for causing harm to fish or fish habitat as triggers for an environmental assessment process.

In addition to restoring lost protection, there is also a need to introduce modern safeguards to address issues that have not been covered in previous versions of the act. In particular, we recommend the following: expand the definition of harm to incorporate non-lethal impacts; limit and guide ministerial and administrative discretion through the incorporation of clear and meaningful guiding principles and decision-making criteria, as well as opportunities for public education and public input; and, include provisions and processes for the designation of critical fish habitat that cannot be altered or destroyed.

Finally, we recommend that a revised act include purposes for restoring lost or depleted populations and re-establishing fisheries. A modern Fisheries Act should be aimed at more than just preventing impacts and maintaining the status quo. It should acknowledge that significant impacts have occurred to fish habitat, fish populations, and fisheries and aim to be restorative where possible.

Thank you.

•(1610)

The Chair: Thank you, Dr. Sutton.

Finally, from Oceans North Canada, we have the Director of Fisheries Conservation, Mr. Trevor Taylor.

Mr. Trevor Taylor (Director of Fisheries Conservation, Oceans North Canada): Thank you, Mr. Chairman.

Oceans North promotes science-based and community-based conservation of Canada's northern seas consistent with Inuit land claims and traditional practices.

My name is Trevor, as you know, and most of my working life, to put it in perspective, has been in one way or another involved with the fishery. I have spent a considerable number of years on fishing vessels as a crew member and captain. I have sat on ministerial advisory councils, including the Fisheries Resource Conservation Council, when we closed down pretty well every fishery in Atlantic Canada in the mid-nineties—an unpleasant task. I have also been minister of fisheries and aquaculture in Newfoundland and Labrador, which was a slightly less unpleasant task. Suffice it to say that I've been around long enough now to have seen just about everything once and a lot of it twice, as my former deputy used to say.

My presentation today will focus on, number one, the lack of connection between the Fisheries Act and the Oceans Act; the disconnect between habitat protection and the impact of fishing; the reliance on ministerial and departmental discretion rather than legislative direction in the implementation of fisheries policy; and finally, the public disclosure of information related to the management of the fishery.

Apart from all the criticisms that have been directed at the 2012 amendments to the habitat protection provisions of the Fisheries Act, there are two much more fundamental deficiencies in the way in which the act deals with habitat protection, which Margot alluded to.

First, relevant provisions of the act are insufficiently proactive. They have little to say about the identification and positive protection of critical habitat.

Second, as judicially interpreted, the HADD provisions of the act do not apply to fishing practices which themselves are destructive of fish habitat. This is a particular concern in marine areas since, as the West Coast Environmental Law's "Scaling up the Fisheries Act" report recognizes, "Fishing practices still have the greatest impact to marine habitat, according to marine cumulative impact studies."

DFO's own sensitive benthic areas policy recognizes the same concerns when it states that "the greatest impact to the most vulnerable benthic habitats, communities and species in a given area can be caused by the first few fishing events".

Currently, the Fisheries Act and the Oceans Act read as two solitudes. The Fisheries Act is firmly rooted in the 19th century, when it was primarily written, while the Oceans Act acknowledges the huge expansion in Canada's marine areas as a result of the Convention on the Law of the Sea in 1982 and, along with that, an important set of international responsibilities.

There is also a significant normative difference between the two statutes. While the Fisheries Act seems isolationist and fails to acknowledge the importance of principles and objectives, the Oceans Act celebrates the importance of the oceans and Canada's global responsibilities and references the ecosystem approach and other important principles. The committee might draw inspiration from revisiting the preamble to the Oceans Act and asking how the ideas and goals expressed in that statute might also inform a reformed Fisheries Act.

I'll just point out to the translators here that all of the "H's" are in that statement, but I'm from Newfoundland, and they just mightn't be in the spots that you're used to.

Voices: Oh, oh!

Mr. Trevor Taylor: These two statutes ought not to be two solitudes, and the committee would make a significant contribution if it could identify concrete ways in which the two statutes need to interact.

The act no longer has a general statement of objectives or purposes. Neither does it have a preamble to offer a statement of the shared premises on which the act is based. We have already referred to the preamble to the Oceans Act. The Species at Risk Act contains both an extensive preamble and a short and succinct statement of purposes.

While we acknowledge that it will be more difficult to draft a statement of purpose for the Fisheries Act, we think it is worth the effort, because a statement of purpose serves to highlight the important normative goals that act is aiming to achieve.

If an objectives or purposes section seems beyond the remit of the committee, the committee should at least consider adopting a preamble that sets out the shared premises on which the act is based. We'll not provide a complete text for either, but we offer both an example of a purposes statement and a couple of preambular clauses, all of which speak to the central significance of habitat and habitat protection, as included in the papers you have in front of you.

The law on any subject comprises both rules and principles. Principles help fill in the gaps between the rules and provide guidance to those who must exercise discretionary powers and interpret and administer the act on a daily basis. Principles also provide guidance to courts in fulfilling their authoritative interpretive role. There is no statement of principles in the Fisheries Act. By contrast, statutes such as the Oceans Act do contain useful statements of principles.

• (1615)

In the case of the Oceans Act, the statement of principles is contained in part II of the act and is dealing with the duty to develop a national oceans strategy for the management of estuarine, coastal, and marine ecosystems. Section 30 of the Oceans Act speaks to principles of sustainable development, integrated management, and the precautionary approach. Similar principles are freely acknowledged and applied in numerous DFO policy and management documents. For example, the department's sensitive benthic areas policy has a section entitled "Guiding Principles", which refers to ecosystem management, a precautionary approach, and science-based management.

Finally, it is important that the Fisheries Act acknowledge respect for aboriginal and treaty rights and provisions of modern land claim agreements, as well as the goal of reconciliation. While the act has been amended to refer to the Nisga'a agreement and some other B.C. land claim agreements, it was never amended to take into account many other modern land claim agreements, such as the Nunavut agreement. This has required the beneficiaries of this agreement and others to resort to litigation to establish that the minister's broad discretionary powers are in fact limited by the terms of Nunavut agreement and other land claim agreements.

One of the characteristic features of fisheries administration in Canada and the protection of fish habitat is that there is an unusually large disconnect between the Fisheries Act and the policies of the department. Thus, the act is completely silent on such things as the development of integrated fisheries management plans, the opening of new fisheries, the protection of sensitive benthic areas, and the allocation of quota.

The principal implication of this, of course, is that the minister and the department have an extraordinary degree of discretion over the management of the fishery and the protection of fish habitat. It also means that parliamentary oversight is reduced, in the sense that Parliament fails to direct its mind to these important issues and to direct how the balance should be struck between economic interests and environmental protection.

It also means that there is little opportunity for oversight by the courts. Indeed, what we have instead are numerous decisions by the courts commenting on the breadth of the minister's discretion and declining to interfere with the exercise of that discretion, which is not bad if you're a minister, but it doesn't work a lot for everybody else.

Oceans North therefore takes the view that it is time for Parliament to provide more direction as to how the department should discharge its responsibilities in relation to important issues such as fish habitat and new fisheries. For example, in the case of the protection of important fish habitat, the act might impose on the minister the obligation to identify and protect ecologically and biologically sensitive benthic areas. Section 37 of the act references the concept of "ecologically significant areas", but puts very little flesh on this idea, and clearly does not establish a duty on the minister to identify and protect such areas.

We recognize that the department has taken several steps to achieve the goals suggested here, including the sensitive benthic area policy and the coral and sponge conservation strategy for eastern Canada, and it has instituted closures in some sensitive benthic areas. These are significant and important initiatives; however, Oceans North takes the position that the Fisheries Act should mandate the minister to undertake these activities. Protection of marine habitat from harmful fishing activity should not be a discretionary matter.

Oceans North takes the same position with respect to new fisheries. The act has nothing to say about the idea of new fisheries, which might refer to fishing in an area where there is no history of fishing or to an existing fishery that proposes to target a new species. The department does, however, have several policies that address new fisheries. The most explicit statement is in the new emerging fisheries policy, but new fisheries are also addressed in the sensitive benthic areas policy and the policy on new fisheries for forage species. Oceans North suggests that the core ideas and process steps of these policies should be distilled and embedded in the Fisheries Act itself.

Finally, a critical piece to understanding how well our fisheries and marine habitat are managed is the timely access to information on the conduct of the fishery. Recently, the minister announced an initiative to make access to DFO fisheries science data more accessible. This is a worthwhile initiative, enabling those interested in the science on which fisheries management is based to have easier

access to it. It wasn't that this information was kept from the public domain; it was just sometimes hard to access.

The same approach needs to be taken with management information. In trying to access information on the management and practice of the fishery—unlike science, however—some of the information is purposefully kept from the public domain. The department cites protection of proprietary information as the reason for keeping some information out of the public domain. This is not a valid reason. Information relating to the fishing activity of fishing vessels, areas fished, incidence of bycatch, incidence of small fish, and so on should be available for all vessels and each vessel. Accountability can only be ensured when full disclosure occurs.

● (1620)

In Iceland, by way of example, one can visit a website called "Fiskistofa". I assume, in my superb command of the Icelandic language, that this means "fish stuff".

Voices: Oh, oh!

Mr. Trevor Taylor: Sorry for making light of this. It is a very serious matter.

You can go to this website. I did it this morning. I ascertained exactly how much each vessel that is licenced to fish cod in Icelandic waters has for a quota and how much of that quota it has landed as of today's date.

We see no reason why in Canada we couldn't do the same. In Canada, however, you cannot get information below the level of the fleet sector. If the fleet sector has less than five vessels in it, you can't get it at all. When you can get the information, it is only after formally requesting it from the relevant person in the department—once you've identified that person—followed by lengthy time periods waiting for information to be compiled and cleaned of any reference to the vessel- or fisher-identifying feature. The Fisheries Act needs to require the timely disclosure of information, both on the science on which the fishery is based, and on the fishing activities and management actions that ensue.

Thank you very much for the opportunity to present here today.

The Chair: Thank you, Mr. Taylor. We appreciate it.

May I ask you to indulge me for just one moment? Can you spell that website name for us? I know you can't distribute it because it's not in both languages. Is it possible, because I know the Icelandic language—

Mr. Trevor Taylor: I'll leave you a copy of it. It's "Fiskistofa".

The Chair: Okay. I'll distribute it accordingly.

Mr. Trevor Taylor: I'll leave you the address.

The Chair: All right. Thank you very much for that.

I thank all of our guests.

For our witnesses, before we get into the questions and answers, I want to point out two things. If someone else is answering the question and you want to weigh in on the subject, keeping in mind that we only have seven minutes, you can put up your hand and try to get the attention of the person asking the question. When I give seven minutes to one of our colleagues, they have it, and it's their own exclusively, so you need to get their attention. As for people on video conferencing, put up your hand, and hopefully we should be able to notice at that time.

Colleagues, because we have people on video conference, I suggest that you direct your questions to someone or to an identifiable group. I'd like you to avoid saying "anybody can answer". Let's try to do that to make it more efficient.

That said, we'll go first to Mr. McDonald from the government side, please, for seven minutes.

•(1625)

Mr. Ken McDonald (Avalon, Lib.): Thank you, Mr. Chair.

Thank you to our witnesses for appearing today, both here in person and by video conference.

Trevor, to your comment about the H's being there or not there, I will let you know that for the translators who are here today, at least one of them did travel to Newfoundland to do part of the cod study. He was there with us in St. John's, but we didn't feel that was good enough, so we took him to Port de Grave and to Fogo Island. He has learned by baptism of fire, if nothing else, and I'm sure he was able to keep up.

For my first couple of questions, of course, I'd be remiss if I didn't point them toward the minister of fisheries for Newfoundland, being somewhat of a colleague to some degree, I guess. I'd like to hear more explanation on a couple of things that he spoke of.

Firstly, Minister Crocker, in your presentation, you spoke about bringing the current owner-operator policy and fleet separation policy into legislation as part of the Fisheries Act. Can you expand on that concept? Also, what would the actual value of that be to Newfoundland and Labrador, especially to rural communities?

Hon. Steve Crocker: Thank you, Mr. McDonald.

In my opening, I did say that we feel that by opening the Fisheries Act and making these changes it gives us an opportunity as well to make some other changes that I think we feel are long overdue. One of those is the owner-operator and fleet separation issue.

When you look at the fishery and how it's structured in our province, you see that today we have about 9,000 harvesters, with 3,000 enterprises fishing from probably some 400 communities and adding a value of \$500 million or \$600 million per year to our economy. One of the things that fisheries minister Roméo LeBlanc did in the 1970s was to bring in the fleet separation and the owner-operator policy.

For anybody who doesn't understand it, what it really does is keep large companies from owning large portions of our industry. We feel that it's very important. I'll go back to the numbers I just quoted about the number of harvesters and the people and communities affected. It's important to make sure that the licences that are there

are maintained by professional fish harvesters in our province and are not out on the open market so that a company can come in, for example, and just consume all these licences.

Just recently, I saw an article out of a Nova Scotia newspaper, I think, about an Asian company that was advertising for lobster licences. This company was looking at our resource in Atlantic Canada in particular as an opportunity to consume these licences and have control of our fishery. One thing the owner-operator policy does is that it takes the control of our fishery and gives it to the people and the communities that were meant to have that control.

Mr. Ken McDonald: Thank you.

Secondly, Minister Crocker, in your presentation you also talked about Newfoundland and Labrador harvesters getting formal recognition as professional fish harvesters. Can you expand on that concept and tell us about the Professional Fish Harvesters Certification Board and why it would be important to have such recognition included in the Fisheries Act as well?

Hon. Steve Crocker: Again, it links back directly to the earlier comments, I guess, about owner-operators and fleet separation. We have had those people in our province since 1996, and we were the first province in Canada that looked at our harvesters as professionals.

Having this as policy but not legislation opens it up to court challenges and to challenges that may cause obstacles in the future as people become more aggressive, I guess, for those licences.

Mr. Ken McDonald: As fisheries minister—and perhaps others can weigh in on this as well, because several have spoken about the aquaculture industry—do you feel that aquaculture should have its own act and not be spread out...? We have acts for transportation, navigable waters, environment, and fisheries. Do you think aquaculture should have its own act? Why or why not?

Hon. Steve Crocker: I'll defer that to Liz.

Ms. Elizabeth Barlow (Director, Aquaculture Development, Department of Fisheries, Forestry and Agrifoods, Government of Newfoundland and Labrador): There have been a number of consultations, in a number of forums through the CCFAM and its SMC, discussing the federal Fisheries Act. It's been bartered around for quite some time now. There are some gains that could be had with the federal Fisheries Act, but as you say, there are clearly so many other departments that would come into play.

I think one of the main reasons there is such a drive for an aquaculture act is that right now we're picked up in bits and pieces by all of these other acts. There could be much more clarity and much more certainty around the aquaculture industry—and investors in the aquaculture industry—if we had our own act, but I think we're still in discussions with the other provinces and internally as to what an aquaculture act could and would look like. It's still something that we're trying to explore though the CCFAM.

Mr. Ken McDonald: Does anybody else want to weigh in on aquaculture? No?

That's it for me, Mr. Chair.

•(1630)

The Chair: Thank you, Mr. McDonald.

Now, for seven minutes, we're going to go to the official opposition and Mr. Sopuck.

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

I want to again correct the record. There are significant habitat protections in the new Fisheries Act, as follows. “Serious harm to fish” is defined as

the death of fish or any permanent alteration to, or destruction of, fish habitat.

“Fish habitat” is defined as

spawning grounds and any other areas, including nursery, rearing, food supply and migration areas, on which fish depend directly or indirectly in order to carry out their life processes;

The idea that the new Fisheries Act has no habitat provisions is clearly false.

I should point out that the mining industry, when they presented to us, were very clear. They said:

...the 2012 changes to the Fisheries Act have in practice broadened the circumstances in which the section 35 prohibitions apply and increased the circumstances in which an authorization and offsets are required.

They talked about the increased burden on mining project proponents.

I have also found a document that is the Auditor General's 2009 report regarding the old Fisheries Act. That auditor looked at 23 years of the old Fisheries Act. He or she says that the program's lack of success without sufficient support of science was likewise documented in the auditor's 2009 on the fish habitat management program, which indicated that the fish habitat management program actions over 23 years could not be demonstrated to have adequately protected fish habitat, and, by extension, fisheries.

We had some very interesting testimony—a week or so ago, I think—from the Canadian Federation of Agriculture, which talked about direct experience with the old Fisheries Act. Mr. Ron Bonnett is the president of the CFA. They represent 200,000 farmers across Canada. I will quote him now:

The experience that many farmers had with the Fisheries Act, unfortunately, was not a positive one. It was characterized by lengthy bureaucratic applications for permitting and authorizations, and a focus on enforcement and compliance measures taken by officials coupled with a lack of guidance or outreach...

He went on to say:

There are also many accounts of inconsistency in enforcement, monitoring, and compliance across Canada with different...organizations, which led to a confusion and indiscriminate approaches to enforcement and implementation. Even at the individual [farm] level, there were different interpretations of the act based on one's familiarity with agriculture.

... It is CFA's position that a complete revert to reinstate all provisions of the Fisheries Act as they were would be unproductive [and] re-establish the same problems for farmers, and...provide little improvement [in conservation]...

The municipal people I've spoken with right across the country express the same issues with regard to how the old Fisheries Act was done.

I'm asking you, Ms. Venton, given the problems that the agricultural community had with the Fisheries Act, the very grave problems—I represent an agricultural constituency—with inconsistencies, delays in permitting, and a general increase in costs to cash-strapped municipalities, why is it that you want farmers and

rural communities to be subjected to what was a very inadequate old Fisheries Act?

Ms. Margot Venton: Thank you for that question.

To clarify my earlier statements, we were very clear that we don't propose reverting to the HADD prohibition. We would propose reverting to “harmful alteration, disruption, and destruction of fish habitat” as the primary definition for what constitutes the HADD, or what constitutes the habitat protection prohibition, but we would add into that... I think some some of the examples you raised were really interesting ones. I would agree with you that there are huge problems with inconsistencies under the previous HADD regime, in part because of the very broad discretion under that section 35(2) authorization power. It wasn't guided by any regulatory provisions.

Also, there was nothing written down in the act to explain how the minister... When it says “minister”, of course, what it means is the dozens of delegates that the minister relies on to implement the authorization provision. They had no consistent regulatory guidance to follow, which is why we are recommending the inclusion of clear regulatory guidance within the actual provision itself—or within a regulation, if that ends up being structurally simpler—but I think some of that needs to be right in the section 35 provision, in what is now, I suppose, the subsection 35(2) exceptions category, to make clear how decisions are supposed to be made to address that challenge of inconsistency.

• (1635)

Mr. Robert Sopuck: Okay. With all due respect, that's a lawyer's view, and the world, the economy, and rural communities are not nearly that clear cut. That's the reason why we had such difficulties with the old Fisheries Act.

Minister Crocker, I must express my sympathy for you. We have had from every non-governmental organization a desire to decrease ministerial discretion, and that is something I profoundly disagree with. I think that every public sector decision has to have, at the very end of the chain, an elected official. On that one, we Conservatives on this side will always come down on the side of democracy and the role of elected officials.

In fact, I'd like to address my next question to the Atlantic Salmon Federation. You also expressed a view that ministerial discretion should be limited, but it was ministerial discretion that created the recreational fisheries conservation partnerships program, of which I think the ASF and the Miramichi Salmon Association have availed themselves. Could you describe your experiences with the recreational fisheries conservation partnerships program? Could you also comment on the impact of that program, which was created under the new Fisheries Act, on your work as an Atlantic salmon conservation organization?

Mr. Charles Cusson: On the first part of your question in regard to the partnerships program, that has been a very well-received initiative. Speaking for the jurisdiction that I represent in Quebec, many of our affiliates were able to take advantage of that program. I understand that it's going to continue, which is a good thing.

As far as the.... I've lost track of the second part of your question, Mr. Sopuck.

Mr. Robert Sopuck: Again, the point is that it was ministerial discretion that created that program. I'm constantly amazed at how non-governmental organizations want to reduce the powers of the minister when the minister's office is the one place where you have a chance to seek redress or a change in policy, or to ask for funds to do programming.

Mr. Charles Cusson: The best way I can address that is with an example. I might, at a certain point, defer to my colleague, Dr. Sutton, who is originally from Newfoundland. Recently, an aquaculture project started up on the south coast of Newfoundland. With aquaculture not being something new—it's been around for a while—we know about all the challenges that are involved in that type of economic activity. It was our contention and also that of other groups that the process to get this particular project off the ground was expedited without proper consideration for the possible ecological damage that could be caused by it.

At this point, Steve, if you want to continue—

The Chair: Thank you, Mr. Cusson. I'm sorry, but I have to interrupt there because we're out of that seven minutes.

Mr. Robert Sopuck: Thank you very much.

The Chair: Mr. Donnelly, please, for seven minutes.

Mr. Fin Donnelly (Port Moody—Coquitlam, NDP): Thank you, Mr. Chair.

I'd like to thank all the witnesses for being here to provide their testimony on this important review of the Fisheries Act.

I'll start with Oceans North, Mr. Taylor. You've introduced a very interesting idea of harmonizing with, or at least reflecting, the Oceans Act when looking at the Fisheries Act, which I'm not sure we have heard before. Thanks for bringing that in.

You did mention a purpose statement and some specifics around the preamble, etc. Is that what you're looking for? Is it modernizing the language? You referred also to the concepts that are new in the 20th century Oceans Act versus the 19th century Fisheries Act. Could you expand a bit on that in terms of the wording in the Fisheries Act that you would like to see?

Mr. Trevor Taylor: Yes, please, bring us into the light. The Fisheries Act is a very.... I can't say even say that it's a very matter-of-fact document. With all due respect to Mr. Sopuck's observation about ministerial discretion, it does rely, and very much so, on ministerial discretion. Some might argue that this is okay in a benevolent dictatorship, but I don't know that it has much place outside of that. Others' absolute discretion is not something that we particularly like lots of days, right?

Everybody needs principles to guide them, and they need to be legislative principles. I was a minister, and I also sat in opposition for a period of time. It would seem to me that the Parliament of Canada is just as important as the ministers, and the members of the Parliament of Canada and their views on legislation and how industries, fisheries, and oceans and whatnot should be managed are just as important as the views of the ministers. I firmly believe that. We elect a House of Commons to establish broad principles to govern our land and our water.

Ministerial discretion exercised outside of broad principles is like driving down the highway and seeing a sign saying "maximum 50 to 70." What does that mean? We have a sign that says "maximum 60," or we have a sign that says "maximum 100," and it tells us clearly what we are allowed to do. We need the principles. We need to understand why.... The people who manage the fishery in Canada.... I talk specifically about the marine environment, the fishery. People here are talking about the impact of the Fisheries Act on farmers and whatnot. I have nothing to do with that. It's not that I don't care, but my life has been the ocean.

We need principles that define how you should view conservation and how you should view harm to habitat, and not just serious harm. Can you imagine...? Many of us have siblings. For example, let's say my mother said to me, "Trevor, don't you do serious harm to your sister." Well, now, I'd probably push that envelope a little ways. Well, I can hurt her a little bit, according to that.

Voices: Oh, oh!

Mr. Trevor Taylor: No, seriously.... I know I'm making light of it, but we need more clarity around this. The Oceans Act provides us with principles. It talks about the ecosystem approach. It talks about the precautionary approach. It talks about integrated fisheries management and integrated oceans management. None of that language.... That language is foreign to the Fisheries Act. There's a passing reference to it, without any clarity.

Again, to go back to Mr. Sopuck's observation—sorry to take up your time—part of the reason—

• (1640)

Mr. Fin Donnelly: I was going to jump in there, Mr. Taylor.

Mr. Trevor Taylor: Okay. I'm sorry. I'll stop.

Mr. Fin Donnelly: I do appreciate your specifics, and also your humour. I'm sorry, but we have limited time.

I'll turn to Ecojustice and Ms. Venton.

Can you talk a little about what wording you would like to see in the Fisheries Act with regard to cumulative harm? It's one issue that the committee has talked about, but in terms of wording and specific recommendations.... Also, I would encourage all witnesses to provide their recommendations in writing, if they haven't already done that.

Ms. Venton, maybe you could elaborate a little on the wording of cumulative impact.

Ms. Margot Venton: Sure. I think there are many places in the Fisheries Act where you could specifically insert consideration of cumulative effects.

There's the idea that I believe we just heard about: the notion of the guiding principles. For example, you could specifically insert into the discretion to authorize harm to habitat an express requirement. As an example, we'll use the existing structure that you have in the act right now. We have section 6, which currently sets out just four criteria a decision-maker thinks about when they make a decision to authorize serious harm to fish.

Let's assume that there's a provision such as that for decisions to authorize harm to fish habitat, which, as I've said before, is a provision that we think should be a stand-alone provision in the act. The things you would have to consider when doing this would include that consideration of the cumulative impact to fish habitat. We also think there should be some other thing—either it's a provision or maybe it's in a regulation or another stand-alone provision—that deals expressly with cumulative impacts.

The real challenge is that you also must have criteria or some way to evaluate that whole cumulative effects idea, because in the abstract it's kind of overwhelming, like, what does that even mean? That's why we're recommending that DFO.... This is something that we talked about under the specific heading that you should consider cumulative impacts. DFO should, before they turn to individual authorizations, have something to measure those authorizations against. That would be a watershed level assessment or an ecosystem level assessment that would say, look, here's what this watershed can handle and here's the place we think the threshold is. When you consider cumulative effects in that section 35 authorization it has to be measured against some work we've already done to assess what is the threshold, that is, how far can we go before we're affecting the way this thing functions?

Is that clear? I'm not sure. I'm not sure if it's specific enough.

• (1645)

Mr. Fin Donnelly: It's helpful.

The Chair: Thank you, Ms. Venton. We appreciate it.

We have to move on now. It's the end of that round.

I brought this up earlier, folks, and I'm going to have to clarify. It is www.fiskistofa. It is the Directorate of Fisheries, an agency of the Ministry of Industries and Innovation. The directorate's task is the monitoring of fisheries and the daily administration of the fisheries management system in Iceland. There you have it.

Now we'll go to Mr. Finnigan, please, for seven minutes.

Mr. Pat Finnigan (Miramichi—Grand Lake, Lib.): Thank you, Mr. Chair.

Thank you to the panel for appearing today.

My question will be for either Mr. Sutton or Mr. Cusson.

Regarding the Atlantic salmon, how would you describe the changes that occurred from 2013 until now? Has there been any damage or any problem with that? If we are to return, whether it's to the previous act, what would you say could be done to protect the Atlantic salmon at this stage?

Mr. Stephen Sutton: Thank you.

I think one of the issues with the changes made in 2012 is that proving that there has been harm or damage is very difficult, as was already brought up by somebody. It's very difficult to actually observe, in some cases, what those damages might be.

We have seen examples where there has been obvious damage to what we believe is key habitat, which has been reported to DFO, and DFO has come out, looked at it, and said, yes, that doesn't look very good, but unless we can prove that there have been dead fish—and

we don't see any—or that habitat alteration is permanent, there's nothing we can do at the moment. It seems to be “wait and see”. The question is, when does something become permanent? Rivers do have a tendency to repair harm to themselves; it may take years, or it may never happen. At what point can you say it's permanent? In the meantime, while we're watching and waiting to see what happens, there's harm to fish happening.

We believe that when there's harm or damage caused to habitat, when it's clear that the damage has been caused, and when there's a reasonable expectation that the habitat alteration or damage has resulted in some impacts on the salmon population, that should be a point at which somebody steps in to say, “That needs to be repaired.” They need to say that we don't need to wait for that to be proven to be permanent, whatever that means.

In terms of that sort of an example, we would like to see that idea that it must be permanently removed. If it's causing an impact on salmon, then that's a problem for us. It doesn't matter if it's permanent or if we actually see the dead fish or not. We know enough about salmon and the way they use habitat—and experts in DFO do as well—to know or to have a reasonable expectation to know that there has been an impact when we see those sorts of things. Whether you can actually prove it by showing dead fish or not shouldn't be an issue.

Mr. Pat Finnigan: Thank you.

Following up on that, Mr. Sutton and Mr. Cusson, you've pointed out a couple of things that affect the salmon, one being the warming of the spring waters that flow into the river. Miramichi is my area, so I know that's been an issue in terms of the warming of the pools. The other thing you mentioned is escaped salmon from aquaculture. Those are two large industries in my area.

In regard to warming of the spring waters, to me you're pointing either at forestry, agriculture, or some of those practices, and probably construction also, with building roads and all of that.

A couple of weeks ago I was very proud to announce the CAST project in Miramichi, which is a group of organizations that includes DFO, the Government of Canada, and universities, as well as the forestry and aquaculture sectors. In your words, how does that fit together? Is there a problem there?

• (1650)

Mr. Stephen Sutton: Our point there wasn't to single out any particular industry. What we are concerned about are what we call non-lethal effects on fish. There are many industries—aquaculture being one, and forestry might be another—that have impacts on salmon that don't actually cause the salmon to die right there in a way that you can see.

Our point around that was that those things at the moment are not actually covered under the Fisheries Act despite the fact that they do have significant impacts on salmon populations. We would like to see those things brought under the Fisheries Act. Some of those things have significant impacts in certain areas. I think that would help give clarity not only to us but also to those industries as to where they stand and would maybe help to provide some way forward for finding solutions for some of those things.

Mr. Pat Finnigan: On the aquaculture, we know there are issues with pesticides and with escapees and that. Maybe one day we'll be where there is no problem, but in the meantime, as you said, there is damage.

How can we keep that business going? Is moving it on land or the closed pen the only solution? In the meantime—because there is damage, and we know that—how can we, in the long term, coexist with that industry without harming the salmon?

Mr. Stephen Sutton: As far as salmon conservation is concerned, moving it onto land eliminates the issues, more or less, but I don't think we're quite there yet. Also, there are significant industries in various areas where it will continue. I think a stronger regulatory environment, whether it's provincial or federal, to ensure that those sorts of impacts are actually being addressed—and I'm talking about the actual impacts, not necessarily the activities that cause those impacts—is one way.

In the meantime, I think there's plenty of work to be done outside the legislation, work between governments and conservation, to find solutions to some of those things. I do believe we can do things a lot better. Whether some of those things would fall under the Fisheries Act or not may not matter in terms of finding those solutions collaboratively.

Mr. Pat Finnigan: I'm sorry that I'm always asking you. It could be Mr. Cusson or maybe somebody else would want to answer. I'm sorry, Mr. Chair.

On the Miramichi, for instance, the mill industries have all gone. You're saying that a lot of the damage happens inland, yet we know that only 3% of the salmon return. How much more can we do? Even if we do everything right on land or within the river tributaries, there is a lot more happening out at sea. With the act, how can we make sure that we get good returns?

Mr. Stephen Sutton: I think there's no doubt that there's something happening in the ocean with salmon that we don't fully understand yet. That certainly is having a major impact on returns.

I think our strategy at this point is to ensure that we are doing everything we can to minimize the known human impacts on wild Atlantic salmon, whether it's in fresh water or in the ocean environment, and to try to figure out in the meantime what it is that's going on out there and whether there's anything we can do about it. The issues we've identified and the suggestions we had about ensuring that the act is actually addressing the human impacts that we know about and understand is a very important part of that equation.

The Chair: Thank you, Dr. Sutton.

Thank you, Mr. Finnigan.

Mr. Arnold, go ahead, please, for five minutes.

Mr. Mel Arnold (North Okanagan—Shuswap, CPC): Thank you, Mr. Chair.

Thank you to all of the witnesses today. There's a large number of you and it's great to see a full house. We really appreciate the input.

I'll pose my first few questions to Ms. Venton.

Ms. Venton, you mentioned that your group is a charity. From where do you receive your funding for your operations?

• (1655)

Ms. Margot Venton: That would be a really.... Let me just say that all of our money comes from individual or group donors. We don't receive any government money, and we don't take any direct corporate sponsorships. As I mentioned in my introduction—maybe it was only in my written notes—we do have approximately 20,000 individual donors throughout the country.

Mr. Mel Arnold: Are those individuals or other organizations?

Ms. Margot Venton: Those are just our individual donors. We're also supported by foundations. Generally, those are our two large sources of support.

Mr. Mel Arnold: Thank you.

Have you or your organization ever undertaken actions against government?

Ms. Margot Venton: As I said, I've been in a number of legal cases that have involved the interpretation, application, and enforcement of the Fisheries Act. Some of those have been against DFO for, in our opinion—and, in some cases, the court's opinion—the failure to properly implement the act.

Mr. Mel Arnold: Thank you.

Further, in your submission today, you said:

This serious harm to fish provision is not expressly about habitat protection. The scope of protected habitat is limited by the requirement that it be habitat of a commercial, recreational, or aboriginal fishery.

For some reason you left out of the quote “or to fish that support such a fishery”. I'm just wondering why you left that part of it out, because I can't think of a fish or fishery anywhere that doesn't support, in some way, commercial, recreational, or aboriginal fisheries.

Ms. Margot Venton: If that's the way one wants to interpret the provision, I think we would be on the same page. We would agree that there probably is, from a biological perspective perhaps, no fish species out there that isn't involved in the ecological web of life that keeps the commercial fishery and all other fisheries alive. The challenge I have with this definition is that it attempts to narrow the focus, or it presents the appearance of having at least narrowed the focus, whether it intended to or not, sowing confusion into something that I don't think needs to be confused.

At least what was prohibited was clearer under the old definition. What we're aiming for in legislation is to be as clear as possible about the parliamentary or legislative intent, so that the people who are reading the act—particularly if you move towards what DFO has done recently with its self-assessment—totally understand what is supposed to be against the law and what is lawful. One of the real challenges we've struggled with since these changes, as I tried to explain in my presentation, is that there's a big question about what it actually means.

Mr. Mel Arnold: Thank you.

Ms. Margot Venton: From a clarity perspective, I think it would just be better to revert to that position, for that reason.

Mr. Mel Arnold: Thank you. I need to carry on here.

To our representative from Manitoba, in your submission you mention that “there is an opportunity to have clear definitions” and “subject to interpretation” and “some lack of clarity”. Can you elaborate a little more? Is it really better definition, within what we have, that’s really needed in this review?

Mr. Brian Parker: We come across this both with respect to proponents and within government.

When we say “serious harm to fish”, for example, if we had a population of short-nosed sturgeon that had 25 fish in it, and there were five adult females, losing one adult female would be an important loss. It would be serious harm. Conversely, if we had a population of 100,000 hammer handle pike, northern pike—they’re about 10 inches long—losing potentially 1,000 of those fish might not have a serious impact on the population.

When you say “death of fish”, and you say, “this is serious harm”, is that “death of fish” for one fish or to a proportion of the population, as I’ve said? There’s that question as to what is the exact level of serious harm. In some respects, it doesn’t have a qualifier that might say “this is some particular level that might be important”.

Mr. Mel Arnold: Okay. I think we’re all probably in agreement that there’s a better definition needed. Another place that it came up is in consistency of monitoring and clear standards. Are these new issues or have they been long-standing issues within the Fisheries Act?

• (1700)

Mr. Brian Parker: I think there have always been challenges with respect to those issues over time.

Mr. Mel Arnold: Thank you. Is—

The Chair: I’m sorry, Mr. Arnold.

Mr. Mel Arnold: Is the time up?

The Chair: I’m sorry. I was distracted there by the amount of information. I apologize. I lost track of time.

Voices: Oh, oh!

The Chair: That was actually quite good, and I mean that sincerely.

Now Mr. Taylor has me in the mood of joking around on a serious matter. Sorry.

Ms. Jordan, please, for five minutes.

Mrs. Bernadette Jordan (South Shore—St. Margarets, Lib.): Thank you, Mr. Chair.

I’d like to thank all of the witnesses for appearing today. It has been a very interesting session with a lot of questions, so I’m going to try to keep it as concise as I can.

On the first question, I want to go to you, Ms. Venton. You’ve talked about the lack of enforcement and the closing of the habitat offices and how destructive that has been. In one of your recommendations you talk about adding “clear provisions that

allows concerned citizens to request that DFO investigate an alleged fish habitat violation” and to “add a provision that allows concerned citizens acting in good faith to take action in the courts to enforce the act where DFO is unwilling or unable to do so”. Can you expand on that? Tell me how you see that actually working.

Ms. Margot Venton: Absolutely. It’s a recommendation for two separate provisions. This approach actually exists in some other legislation in Canada. There are parallel provisions, or similar provisions, in the Canadian Environmental Protection Act. Essentially, the request for investigation simply gives those who are out there on the ground a place to report to when they think the Fisheries Act is clearly being violated—or the habitat provision, in this case—and that creates a requirement to respond.

Something you see consistently in reports about the challenges that DFO has with enforcing the act in general, and habitat protection in particular, is just a general lack of response. Within the last year or two, since the budget cuts, our office has been getting a lot of calls about this from people who are frustrated. They say they phone and report things or ask questions, and they never get a call back or anything. We don’t really know how to help them, because there is no mechanism under the act for anyone to complain or request that someone investigate. That’s the request for investigation provision. I think it’s in section 19 of CEPA, and that will be in our written brief, or you could look at the language of a provision.

On citizen enforcement, in the United States, citizen enforcement provisions are called “citizen suit provisions”. They also exist in legislation in Australia, and there’s actually one under CEPA. It’s a provision that allows people acting in good faith to take prosecutorial action, something that actually is envisioned under the Fisheries Act, in theory. In fisheries general regulations, there’s a fine-splitting provision that clearly suggests that an individual can stand in the shoes of the Attorney General and prosecute. It’s the kind of provision that essentially allows citizen groups or individuals to enforce the act if the government is not willing to do so.

If you look at some of the information we have, you’ll see that we have the report to Parliament from 2014-15 that says there are no charges being laid under the act. Even when you look at where authorizations are being given or investigations are happening—and I believe some of this was presented to the committee in an earlier brief—there’s a real regional disparity about where there are people on the ground now. I’m not from Vancouver. I live in a small coastal community in British Columbia called Pender Island. Truly, I’ve never seen a fisheries officer there, ever. There’s a real challenge. It’s a huge country, and we’ve cut back so significantly that when we see enforcement action here, there’s a huge regional disparity. We need a mechanism that will allow for people on the ground and in the water to take action, especially when there’s nobody there.

Mrs. Bernadette Jordan: If we had the restoration of enforcement and the opening of the habitat offices again, would you still see a requirement for those on-the-ground people?

Ms. Margot Venton: Well—

Mrs. Bernadette Jordan: I look at Nova Scotia, for example, where we actually have a community neighbourhood watch group because there is no enforcement. I guess I'm just looking for some insight. I would prefer to see the people who are there and trained and hired by the government to enforce the act actually being able to do it. I guess that's my question. If we were able to restore some of those positions, would you see that solving the problem?

Ms. Margot Venton: It would certainly help the situation. Unquestionably, I think that you need to properly staff and to equip the people enforcing the act to go out on the water and do that. Canada is such an enormous country that I question whether you could ever really get total enforcement in a country the size of ours. Other really big places, such as Australia and the United States, struggle with a similar challenge: it is a whole lot of land.

The independent review, court reviews of citizen suit provisions in the United States, and government reviews have all confirmed that those provisions, when used, are expanding enforcement capacity and actually improving compliance with regulation. Even if you restore those conservation officers, which is absolutely essential, I think there is still a role for citizen enforcement. Maybe it is simply the role that governments do a better job.... Government regulators can do a better job when they know someone is going to do that if they don't do their job, right? I think that would be helpful.

• (1705)

Mrs. Bernadette Jordan: Thank you.

The Chair: Thank you, Ms. Jordan.

Mr. Sopuck, please, for five minutes.

Mr. Robert Sopuck: The notion of citizen enforcement absolutely appals me: citizens with no accountability to an elected official. I can see farmers being taken to court by multi-million dollar environmental organizations. It's exactly what happened in the seal hunt. There wasn't a legal enforcement mechanism, but again, these were impoverished rural communities being faced with multi-million dollar activist groups. Citizen enforcement without recourse to an elected official at some point is something I find completely abhorrent.

Ms. Venton, you talked about cumulative effects. Presumably, you mean incremental change in watersheds as one of those cumulative effects. I don't have much time here, but is that a fair assessment? A watershed gets changed by forestry, agriculture, or urbanization, and at some point there's a tipping point. Is that what you're basically saying?

Ms. Margot Venton: Yes. It's the idea that if you have a lake, for example, a single decision to develop something or do something on that lake may itself not have an impact, but if you do the same thing 20 or 30 times where there are 30 or 40 different activities, that can create an impact, even though individually those single activities may not seem like such a big deal.

Mr. Robert Sopuck: Okay. I'm going to present three examples right now: Ottawa, Calgary, and Winnipeg. Those cities are part of very significantly changed watersheds. Ottawa has been urbanized in terms of the Rideau Canal and all of that. Winnipeg sits in an agricultural watershed and is obviously urban. Calgary is a very large urban city.

In each one of those urban areas, there are major rivers flowing through them. Each one of those rivers, in those very urbanized watersheds, is full of fish. They are very significant fisheries, especially the walleye and catfish fisheries just outside of Winnipeg. Also, the Bow River in Calgary is considered one of the finest trout streams in North America.

I've just given you three examples of a significant watershed change. Watersheds have been changed beyond recognition, yet we have three rivers that are full of a very diverse fish community and also support very significant recreational fisheries. Given your view on cumulative effects, how do you explain that?

Ms. Margot Venton: I think this is one of the reasons why it's extremely important, as we said in our recommendations, for DFO to evaluate and assess what those watersheds can handle and where those tipping points are. I also think it's really tricky for us in North America in general, where we've had rivers and streams of such tremendous abundance.

As I said, I'm from a small coastal community in British Columbia, and you could say there are a lot of fish in the water, but if I talk to my neighbours who've lived there and fished there for the last hundred years, they'll say that there are no fish now.

Mr. Robert Sopuck: Okay—

Ms. Margot Venton: It depends on your perspective on the tipping point.

Mr. Robert Sopuck: Sure.

Ms. Margot Venton: That's why I think we need to have these watershed level assessments before we issue individual authorizations.

Mr. Robert Sopuck: I just gave you three examples of watersheds that have been 100% changed, and the fish communities are very healthy.

Basically, what I'm hearing you say is that DFO, under the kind of Fisheries Act that you're hoping for, should be very much involved with urban planning. That's basically what you're saying.

Where shopping centres should go and where subdivisions should be built, DFO should be involved in every one of those decisions that any city could ever make. That's the natural conclusion, based on what you've just said. Am I correct?

Ms. Margot Venton: Well, I think what is challenging is that in the absence of having a watershed level plan, if you want to protect fish habitat, that might unfortunately be the conclusion. This is why we think watershed level planning is so essential. If you can have the regulator look at a watershed from a high level and identify and evaluate where the vulnerabilities and tipping points might be, then I think you can avoid what we have now, which is everything coming down to individual authorizations with really no ability to benchmark or evaluate.

• (1710)

Mr. Robert Sopuck: I have just one last point—

Ms. Margot Venton: It makes it more complicated.

Mr. Robert Sopuck: For us as legislators, the devil is in the details. High-level principles and broad statements that are unsupported are easy to say, but when legislation comes down, it has to be specific and geared to certain activities. Again, the inescapable conclusion, from what you've said, given your views on watersheds, which I actually share, is that DFO needs to be involved in the planning of shopping centres and subdivisions and where roads go in urban areas.

Do you think DFO will ever have the resources to do that? Would it have any effect?

Personally, in my own view, I'd rather direct resources into the direct conservation and enhancement of fish habitat, rather like what was done by the recreational fisheries conservation partnerships program, where real and measurable progress was made on the conservation of fish habitat.

Anyway, I think my time is just about up. Thank you very much.

The Chair: Ms. Venton, did you want to add to that? It looked like you were about to say something. You have a few seconds left.

Ms. Margot Venton: Really? Okay.

Mr. Robert Sopuck: I'm generous.

Ms. Margot Venton: I don't think I disagree that programs for conservation are extremely important. I just think it's very important, when we're talking about habitat protection, that we recognize the breadth of activities that can harm fish habitat, and the need, perhaps, to create some detailed regulation to deal with these individual situations, which perhaps you're even suggesting.

To my mind, it can't be an either-or. I think that's the experience that people who are struggling with the act are really struggling to figure out. There's just such a broad range of activities that can harm habitat. Only focusing on one thing, such as habitat conservation or restoration, is just not going to get us to where we need to be.

The Chair: Thank you, Ms. Venton. We appreciate it.

Mr. Hardie, please, for five minutes.

Mr. Ken Hardie (Fleetwood—Port Kells, Lib.): Thank you, Mr. Chair.

To Mr. Sopuck's comments, I could mention that there's a major stream in my riding of Fleetwood—Port Kells in Surrey. Its headwaters are in the parking lot of the Guildford shopping centre. It happens.

Ms. Venton, in another committee, we are studying the Navigation Protection Act. I hate to the cloud the thought you had about citizen action in court, but that has been available through provisions of a part of the act since the changes were made, and not one court action has taken place, simply because it is too onerous for people to proceed in that fashion.

I wanted to basically throw out a question to everybody, though, and invite you to send us material and your reactions to it through the website.

I'll specifically ask Mr. Crocker and Taylor about this, because we're dealing with an issue of balance. A lot of the changes that were made were a result of a lot of input from rural municipalities in the Prairies who were concerned about the difficulties in getting public works done. Also, the farmers were having difficulties, as were mining operations, etc., which could be tied up for a very long time at very great expense by the regime that had been in place. One of the things we have been concerned about is trying to preserve what was good in those changes but to at the same time restore protections that a lot of people at least perceive are missing, if indeed they are.

My question is for both of you, and for everybody else to respond to off-line. What will be the essential elements of provisions that protect fish and protect habitat but that at the same time permit the public works, agriculture, and the commercial activities to operate within those protections? What are the essential elements that we need to effectively modernize the act, preserving the good part of what the Conservatives brought in, but restoring the parts that shouldn't have been taken out?

Hon. Steve Crocker: I guess the important thing as it moves forward into new parts of the act is proper consultation with provinces, territories, and aboriginal groups so that everybody is at the same table. One thing we don't want to do is create red tape where there's duplication. I think that's one of the things that I pointed out in my presentation. An act that duplicates something that a province is currently doing, or that a land claim is doing, as I think Mr. Taylor pointed out.... There are other agreements in place.

We have to make sure of that as you work towards this goal, so that we can have a sustainable economy. That's an important thing you're pointing out there: we need to work with industry. I think that's very important. To go to the aquaculture industry for a minute, one of the major proponents and one of the major supporters of making the aquaculture industry environmentally sustainable is the aquaculture industry itself. These companies have nothing to benefit from by damaging the ecosystem or the environment. It's very important, I think, that we work with all the stakeholders who are involved.

• (1715)

Mr. Ken Hardie: Mr. Taylor, do you have any further comments?

Mr. Trevor Taylor: Yes. First of all, I think clarity is an important word, as has been iterated by others here today. I think some of the back-and-forth that we're witnessing here today is as much about lack of clarity—or probably more about lack of clarity—in the act and in the interpretation of the act than it is about differences of opinion on protection of fish and fish habitat, which is some of the frustration that you see on both sides of the equation.

I'll go back to our observation. I don't foresee this Parliament, or probably any future Parliament, taking away the discretion of the minister in much of these matters. However, ministerial discretion needs to operate within principles that we all believe are worthy: sustainable development, ecosystem approach to.... I speak about fisheries, so it's difficult for me to relate to shopping malls and farms in many respects.

For example, if there is not clarity and there's not a reference to an ecosystem-based approach and protection of sensitive areas and critical habitat, how can we ever have regulations that sufficiently safeguard fish habitat in the marine environment from fishing, from fishing activity? I'm a fisherman. I was a captain of a shrimp trawler. I know that there are certain places that shrimp trawlers should not be allowed to go, but if you have to be able to demonstrate serious harm to fish before you can be stopped from going there, I will never be stopped from going there.

The Chair: Thank you, Mr. Taylor. I have to end there.

Mr. Donnelly will be the last person in this round. Following that, we'll have about 10 minutes or thereabouts. I've asked around, and it looks like we do have an acceptance of three minutes, three minutes, and three minutes at the end, but in the meantime, we'll end this second round with three minutes from Mr. Donnelly.

Mr. Fin Donnelly: Thank you, Mr. Chair.

I live in a city that borders on one of the greatest salmon rivers on the planet, the Fraser River. I think that DFO is and should be involved in watershed planning. I'll give you an example. I was a councillor for seven years for the City of Coquitlam. We eventually changed from having to mandate.... We mandated that that watershed plans have to happen before development plans. That was to work with DFO and with the province to focus on those cumulative impacts on one of the greatest salmon rivers in the world, and we're just one city of many along that river.

My question comes back to Ms. Venton. We know that fish kills happen all the time. The dumping of paint and other toxic chemicals in streams has resulted in the death of fish. Sometimes it's a small kill, and sometimes it's a large kill. We also know that there have been no prosecutions under the new act.

We also know that houses and other buildings are built along streams. We know that roads are built and bridges go across these streams, right through fish habitat, and that's just in an urban setting. All of these examples have nothing to do with resource management along streams, at least in my home province of British Columbia, in terms of industries like forestry, agriculture, and mining, which all have impacts as well.

I'm wondering if you could talk a little more about that serious harm provision and how that needs to be changed in order to determine what we talked earlier in terms of cumulative impacts, or how to make the changes more specific in the new Fisheries Act if it does get revised.

• (1720)

Ms. Margot Venton: I think I echo the comments of several presenters who have suggested that the serious harm to fish requirement—the death of fish or permanent harm to habitat—just sets too high a bar to be useful for the protection of fish habitat for

several species. Salmon is an obvious example. We think that just needs to be changed, full stop.

You could add a definition, or when you replace that definition—which, again, I think, must happen—you could expand and explain what cumulative harm means. You could include reference to cumulative harm in whatever your new habitat definition is. Even defining what cumulative harm means in the act, in the interpretation section, section 2, would be quite useful because it's a term that's tossed around quite a bit. Those are all opportunities.

I think it's really important that we align our definition about what is not allowed—the definition of what the prohibition is about—with something that is useful for fish, for protecting the kinds of fish species and the vulnerabilities that we all already know about, and that we clarify those terms where there is ambiguity. “Cumulative effects” is one of them. Throw a definition of cumulative harm—of what you're trying to avoid, of what you're asking people to look at—into the act so that it's something that we can all understand when we read it.

The Chair: Thank you, Ms. Venton.

Can I get the committee's unanimous consent, as it looks like with the three-minute structure I laid out earlier that we're going to go past 5:30 by a few minutes? Are we okay? Any objections?

Okay. Seeing none, we're going to go to Mr. Morrissey for three minutes.

Mr. Robert Morrissey (Egmont, Lib.): In listening to the presentations given here today, I noticed that there were some consistent themes. One is that the changes to the act left key enforcement areas too vague to allow for prosecution within the courts. The other is the significant reduction in DFO staff at the same time.

Now, as we're looking at the act and at what changes may take place in it, I would go to Ms. Venton, who I believe raised this, and probably to Mr. Sutton, as well as to Minister Crocker. How would you rate the two? Change the act but without staff...? Or do they have to go together?

Ms. Margot Venton: I think that both are essential elements. It really worries me that the new provision requires proof. If you read old HADD decisions, there's a whole discussion in the court about the fact that you don't need to prove that you are harming fish. That's an integral piece of why prosecutions were successful, because it's really hard to do.

Maybe that is the reason that no prosecutions have been brought. Prosecutors simply think that they can't meet the standard, that there's no way they can prove it within the time they have under the act to bring a prosecution. At the same time, it could be equally true that there's nobody in the office and therefore no prosecutions are filed. Unquestionably, you have to deal with both, but if you just restore personnel, I don't think you're going to see a lot more enforcement of the act until you create a threshold that is both enforceable in a meaningful sense and also works to protect fish.

Mr. Robert Morrissey: Mr. Sutton.

Mr. Stephen Sutton: I think I would agree with that. I think you have to have the legislation there first, but on the other hand, legislation that has nobody out there to enforce it is not going to do you much good. I do think that you need to have both. There's no question.

Mr. Robert Morrissey: Minister Crocker.

Hon. Steve Crocker: Yes, I would concur. Legislation without somebody to enforce it doesn't work. If you look at it, we went from, I think, some 50 offices down to 16, and with a self-policing model. If you're going to have legislation, you need bodies to enforce it. If not, it's not worth having.

The Chair: You have 30 seconds.

Mr. Robert Morrissey: Thirty seconds? I'll give it up, then, Mr. Chair.

The Chair: Mr. Arnold, you have three minutes, please.

Mr. Mel Arnold: Thank you. I may be splitting my time with Mr. Sopuck.

I'll get back to you, Ms. Venton.

You made reference to, and there has been reference, the authorization or the exemptions allowed by the minister and so on, and about how decisions in terms of harm must be based on science and not be strictly left up to ministerial decision. What would you have to say when social issues come into play, say, regarding flood mitigation or the seal cull? We've heard multiple times, not just in this study, about the impacts that seal populations are having on fish populations. Those decisions possibly have sometimes been made due to social influence rather than science. How would you react to those two specific instances of flood mitigation and seal populations?

• (1725)

Ms. Margot Venton: I don't think anyone is suggesting that there should be no other considerations in authorizing harm to fish habitat, especially, for example, in those—

Mr. Mel Arnold: Yes, I think you did suggest that.

Ms. Margot Venton: No. What I'm suggesting is that just to be clear what we need to add into the existing very discretionary system are some science-based criteria to guide decision-making. Generally, with respect to flood mitigation and other emergency measures and even in the Species At Risk Act, there are provisions for natural disasters and emergencies. I think those should be written into the act, absolutely. They are extremely rare events relative to the majority of exercise of the discretion—

Mr. Mel Arnold: Okay. Can you—

Ms. Margot Venton: —and they shouldn't be—

Mr. Mel Arnold: —narrow your response down to the seal cull or seal management?

Ms. Margot Venton: I'm not sure I understand what you're proposing, so I can't give you a specific example.

Mr. Mel Arnold: Are you saying that in that case we should maybe ignore the science and let the social influence take over?

Ms. Margot Venton: I don't think we should ever ignore science. I'm not suggesting that there are no circumstances in which other factors may be important as a balancing. It's just that at the moment there's nothing that requires the minister or his or her delegates to turn his or her mind to science-based decision-making when making decisions that generally are about protecting living, functioning systems, and those are mostly scientific decisions.

Mr. Mel Arnold: Thank you.

If I have any time left, I'll pass it over.

Thank you for your time, everyone. I appreciate it.

The Chair: Mr. Donnelly, please, for three minutes.

Mr. Fin Donnelly: Thank you, Mr. Chair.

On November 23, 2016, the committee heard from Otto Langer on the definition of “serious harm” in the current act and how it could have affected the Pacific Northwest LNG project. Ms. Venton, I'm going to ask you this question. On Flora Bank, where it was determined to have a low probability of resulting in serious harm to fish and fish habitat, would reinstating HADD to the act lead DFO to a different assessment of the effects of that project on fish and fish habitat?

Ms. Margot Venton: It's entirely possible. I don't know without looking at the reasoning in more detail. I can't say that they found clearly that it would have harmful alteration or would harmfully disrupt fish habitat, but maybe not lead to serious harm to fish. It depends where that balancing is. I think we've heard that example. I believe it was Mr. Taylor who suggested there are a lot of circumstances where, from a fish perspective, a devastating and harmful impact results from an activity that is temporarily disruptive.

It's possible, yes, that in that case it would meet that threshold, but I couldn't say definitively without looking at the actual full decision.

Mr. Fin Donnelly: Thanks.

In the few seconds I have remaining, I have a question for Minister Crocker. We talked about a separate aquaculture act. Would you recommend that it be within DFO or in a different ministry such as agriculture?

Hon. Steve Crocker: That's an interesting question, because there are obviously two sides to that. If you talk to people in the aquaculture industry, they often compare themselves more to the agriculture industry. I guess that decision would be made at a higher power than mine. It's not really something, to be quite honest, that I've given any serious thought to, but I know the industry has. In a lot of cases, the industry does reflect itself more upon the agriculture industry, rather than the fishery.

Mr. Fin Donnelly: Thank you.

The Chair: We're actually finishing under time.

I want to thank our guests today: Minister Crocker and Ms. Barlow from the Government of Newfoundland and Labrador; Dr. Duncan and Dr. Parker from Manitoba Sustainable Development; Ms. Venton from Ecojustice Canada, joining us from Vancouver; Mr. Cusson and Dr. Sutton, from the Atlantic Salmon Federation; and, from Oceans North Canada, Mr. Taylor.

Thank you, everybody. We'll discuss this again. We'll have more witnesses on Wednesday at 3:30. We'll see you then. The meeting is adjourned.

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