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## **Standing Committee on Fisheries and Oceans**

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**EVIDENCE**

**Wednesday, December 7, 2016**

—  
**Chair**

**Mr. Scott Simms**



## Standing Committee on Fisheries and Oceans

Wednesday, December 7, 2016

• (1530)

[English]

**The Vice-Chair (Mr. Robert Sopuck (Dauphin—Swan River—Neepawa, CPC)):** I call the meeting to order.

There's a quick bit of committee business just before we start. I've been advised by our clerk that the legislative and regulatory affairs division of the department has said that they could provide all the online consultations to us in English only today, and the translations, if we want them, on December 9. I will ask the committee for unanimous consent to receive the information in English only today.

Mr. Donnelly.

**Mr. Fin Donnelly (Port Moody—Coquitlam, NDP):** Again, we had this discussion at the last committee meeting and I think it was quite clear that we're looking for the information in both official languages, so hopefully, that's coming on December 9. That's certainly what I will be recommending.

**Mr. Pat Finnigan (Miramichi—Grand Lake, Lib.):** If I may, Mr. Chair, I'd like to ask that we wait until Friday. Everybody was sent a notice from DFO, and I think, if everybody consents, we give them until Friday to supply both official languages to this committee.

**The Vice-Chair (Mr. Robert Sopuck):** Okay.

We needed unanimous consent and we didn't get it, so that's fine.

**Mr. Todd Doherty (Cariboo—Prince George, CPC):** We had one question from Mr. Donnelly about clarification.

**Mr. Pat Finnigan:** It's December 9.

**The Vice-Chair (Mr. Robert Sopuck):** Okay, agreed.

Mr. Arnold.

**Mr. Mel Arnold (North Okanagan—Shuswap, CPC):** Mr. Chair, before we get into our witnesses' testimony today, I would like to propose a motion. I'll give a bit of a preamble.

The committee's current review of the Fisheries Act is based on a motion passed by the committee mandating this study. Marine protected areas are the government's tool for protecting fish habitat, and so on. Today's meeting is the last meeting of witness testimony on the Fisheries Act review, and the next meetings are slated to begin the drafting of the act.

Mr. LeBlanc's mandate letter has mandated him to increase the portion of Canada's marine and coastal areas to be protected to 5% in 2017, and then 10% by 2020. The committee knows that the development of MPAs is under way, and it would be appropriate and

helpful for the committee to determine the next task as a work plan in 2017 by passing this motion.

The motion would be that the committee undertake a study examining the criteria and process being used to identify and establish marine protected areas, with the objective of ensuring that the criteria and processes are aligned to (a) achieve the intended benefits of MPAs; (b) assess the social, economic, and environmental impacts of MPAs; and (c) that all traditional uses and values are duly considered and respected in the criteria and process of identifying and establishing MPAs.

**The Vice-Chair (Mr. Robert Sopuck):** That motion appears to be in order. Is the motion in English and in French?

**Mr. Mel Arnold:** No.

**The Vice-Chair (Mr. Robert Sopuck):** Then we can't distribute it to members.

You're providing notice of this motion right now.

**Mr. Mel Arnold:** Can it not be moved at this point?

**The Vice-Chair (Mr. Robert Sopuck):** Typically we need 48 hours' notice to move a motion, unless it is directly related to the business before the committee. I'm not sure this is directly related to the business before our committee, because we're reviewing the Fisheries Act.

Mr. Arnold.

• (1535)

**Mr. Mel Arnold:** Mr. Chair, I believe the two are interrelated, so it may be appropriate that this be introduced at this stage, but I welcome others' input.

**The Vice-Chair (Mr. Robert Sopuck):** Mr. Doherty.

**Mr. Todd Doherty:** Mr. Chair, with all due respect, we have heard testimony from witnesses throughout our fisheries study. We've had the minister as well. The Minister of Transport and Minister of Fisheries and Oceans have talked about the government's marine protection plan, which they'll be introducing very shortly, in the coming days, weeks, or months, and I think it is incumbent on this committee, if we are going to be truly doing work that is meaningful, that we consider this, moving forward.

We know there are potentially some announcements coming down either prior to Christmas or in the new year. I think it would be incumbent on this group to study MPAs specifically—west coast, east coast, and all areas; these have an economic impact on all of our areas. I think this committee again should look at what the criteria are and what the study is—what Mr. Arnold is putting forth.

**The Vice-Chair (Mr. Robert Sopuck):** Ms. Jordan.

**Mrs. Bernadette Jordan (South Shore—St. Margarets, Lib.):** Mr. Chair, my concern with respect to Mr. Arnold's motion is that I see this as a totally different study, not something related specifically to this one. I therefore would suggest that it get the 48-hour notice treatment and not be moved today.

This is a totally different thing. Although we've heard about marine protected areas in the testimony we've heard over the last few weeks, I don't think that the motion is something related specifically to this study.

**The Vice-Chair (Mr. Robert Sopuck):** Mr. Donnelly.

**Mr. Fin Donnelly:** Mr. Chair, I agree. I think this is something worthy that we should absolutely look at, but that is absolutely a different study from the Fisheries Act study.

This is rather an unusual process, because normally we talk about priorities and next studies at subcommittee and then make the recommendation to the main committee.

**The Vice-Chair (Mr. Robert Sopuck):** Mr. Doherty.

**Mr. Todd Doherty:** I hear all of the discussion points that our colleagues are mentioning, but as I entered into this committee in early fall, this committee already had two studies under way, the northern cod study and the Atlantic salmon study. But pursuant to a letter drafted to this committee by both the Minister of Transport and the Minister of Fisheries, Oceans and the Canadian Coast Guard instructing the committee to review the Fisheries Act and giving a specific time frame, this committee at that time...and if you remember, at the very first meeting I suggested that perhaps we should get our priorities in place.

We have three studies under way. This study of marine protected areas, I think, is a valuable endeavour for us to move forward with. It's something that we could do fairly easily.

**The Vice-Chair (Mr. Robert Sopuck):** Mr. Hardie.

**Mr. Ken Hardie (Fleetwood—Port Kells, Lib.):** I was just going to suggest we call the question. If you're looking for unanimous consent to deal with it now, we should just call that question.

**The Vice-Chair (Mr. Robert Sopuck):** I've heard the arguments and I will make a ruling based primarily on a technicality.

What this motion is requesting is a study. I agree with Mr. Donnelly that doing studies is something our subcommittee always discusses, and then the committee discusses it as a whole. Largely because the word "study" is in the motion, which is requesting a study, my ruling is that this will require 48 hours' notice.

That's not a comment on the substance of the motion whatsoever.

Mr. Donnelly.

• (1540)

**Mr. Fin Donnelly:** Mr. Chair, I just have a question, since I believe this is the last day we'll be hearing from witnesses on the Fisheries Act. Could we get from the clerk, not necessarily right now but at some point, the number of speakers we have had to date and what groups we've heard from?

**The Vice-Chair (Mr. Robert Sopuck):** I don't see any problem with that whatsoever.

**Mr. Fin Donnelly:** Thank you.

**The Vice-Chair (Mr. Robert Sopuck):** Mr. Doherty.

**Mr. Todd Doherty:** Mr. Chair, could I ask for clarification as to when the analysts are looking to have our recommendations in on this study?

**The Vice-Chair (Mr. Robert Sopuck):** I've been advised that the drafting instructions for the analysts begin next Monday, December 12.

Mr. Arnold.

**Mr. Mel Arnold:** Mr. Chair, I wonder if the clerk could give us an indication of how many pages of submissions have been sent in or how many they're putting through translation, so we can have an idea of what our workload may or hopefully may not be over the break coming up.

**The Vice-Chair (Mr. Robert Sopuck):** I expect this will be a fairly large report.

**Mr. Mel Arnold:** Excuse me, I wasn't asking about the report. How many pages of online submissions are being translated to be provided to the committee for consideration?

**The Vice-Chair (Mr. Robert Sopuck):** I've been advised there are at least 100 documents.

**Mr. Mel Arnold:** Is there any page count?

**The Vice-Chair (Mr. Robert Sopuck):** I don't think so at this time.

Mr. Doherty.

**Mr. Todd Doherty:** Back to my earlier question regarding the analysts and the information that's needed, could you please be specific about what you'll be looking for as to the direction from each group with respect to this?

**The Vice-Chair (Mr. Robert Sopuck):** Is your question directed to the analysts?

**Mr. Todd Doherty:** Yes.

**The Vice-Chair (Mr. Robert Sopuck):** Ms. Jordan.

**Mrs. Bernadette Jordan:** I'm sorry, Mr. Chair, but I'm trying to figure out why we're discussing this now. We're supposed to be hearing witnesses. We're concerned about the amount of time that our witnesses are allocated. This sounds like committee business, which we are not in. I would ask you to please move this along, so that we deal with what we're supposed to do.

**Mr. Todd Doherty:** With all due respect, Mr. Chair, to our colleague across the way, as Mr. Donnelly has mentioned, this is our last chance before the weekend and before we move into this, so we do have questions we have to ask. It will be the last time we actually meet as a group. That being said, it's the last question I have.

**The Vice-Chair (Mr. Robert Sopuck):** I think that out of respect for our witnesses it's probably getting time for us to end.

To all of our witnesses, I'm reminded of the saying, those with weak stomachs should watch neither law nor sausages being made. Drawing laws in our country is very complicated and we tend to get into these very arcane discussions about process. Necessary though they are, they sometimes take time.

I'll do a quick introduction of our witnesses.

We have Dr. David Schindler, Killam memorial professor emeritus, University of Alberta. By video conference from Vancouver, from the First Nations Fisheries Council, we have Brenda Gaertner. The Nunavut Wildlife Management Board is with us. By video conference from Toronto, from the Prospectors and Developers Association of Canada, we have Lesley Williams and Matthew Picard. From the Pacific Streamkeepers Federation, we have Zo Ann Morten with us.

I'll go in the order of the witness list and I'll ask Dr. David Schindler to be the first witness. Dr. Schindler, we're having some technical difficulties. We can't hear you.

**Dr. David Schindler (Killam Memorial Professor Emeritus, University of Alberta, As an Individual):** Can you hear me now?

**The Vice-Chair (Mr. Robert Sopuck):** Yes, we can. Thank you.

Please proceed.

•(1545)

**Dr. David Schindler:** Thank you, Mr. Chairman and members of the House committee. It is a pleasure to appear before you today.

My experience with fisheries in Canada has spanned almost 50 years, roughly half as a university professor and the other half as a member of the Department of Fisheries and Oceans, or its predecessor, the Fisheries Research Board of Canada. In preparing for this testimony, I've read a number of your previous briefs. I think, rather than go into tiny detail about the flaws that were injected into the Fisheries Act in 2012, I'll simply say that I agree with almost all the briefs that you've received. The changes made in 2012 violate the very principles of ecology. One of the fundamentals is that you do not try to protect the species without protecting its habitat. I re-documented some of the evidence for that, and I think that will suffice.

Instead, what I'd like to do today is spend my time challenging you to take a broader look at the Fisheries Act, because even before 2012, it was clear that the Fisheries Act was not strong enough. If I look back at my 50 years of experience, we lost the cod stocks, have salmon in decline on both coasts, have declines in fisheries, all sorts of problems with pollution and alien species in the Great Lakes, eutrophication in the big lakes of Manitoba, and I could go on and on to the recreational fisheries.

It's clear to me that we need a stronger, not a weaker, Fisheries Act. Some evidence that if nothing is done about this we will have continued problems includes Site C, where the proponents' own environmental impact assessment simply says that they're going to largely disrupt upstream and downstream movement of major fish stocks. It's a given, based on a dozen or more studies done in Canada, that the fishery in that reservoir will be highly polluted with mercury to the point where it will not be available for consumption by indigenous people.

A second example is the proposed liquid natural gas plant. I happen to fish in that area, and that plant is in some of the very best fish habitat at the mouth of the Skeena River, the west coast's second biggest salmon fishery.

A third example is the recently approved Trans Mountain pipeline. No one ever mentions the many fish-bearing waters that the pipeline will cross carrying dilbit. It's not just a question of crossing them, but studies have shown that we know no way of cleaning bitumen or any other form of crude oil out of water flowing under ice. I can give you several examples from the Athabasca of disasters that have happened under ice in that respect. To me these are all clear examples that business as usual does not include sustainable fisheries.

A fourth potential example is the climate change action plan that's proposed to reduce our greenhouse gas emissions by mid-century. Three of the four scenarios propose replacing fossil fuel power with 100,000 megawatts of hydroelectric power. That's considerably more than all of the hydroelectric power installations built in Canada to date. You could think of it as building 100 facilities the size of Muskrat Falls or Site C between now and 2050.

We know there have been problems with those two sites, partly ecological as I mentioned, but partly because they're in conflict with the guarantees made to indigenous people under Treaty 8. Again, most of those conflicts have to do with damage to fisheries.

•(1550)

I think it's time this act was strengthened. I have some recommendations in that regard.

The first thing I would recommend is based on my own experience with the fisheries research board and DFO. The fisheries research board was an independent organization not directly under the purview of a minister, which reported to a board of scientists who decided which were the scientifically important problems that were needed to manage fisheries in Canada. The organization was very lean and mean; probably 10% of the budget went to administration, whereas by the later years under DFO, it was more like 40% or 50%. It was possible, actually, to talk science to the leaders of that organization. It did not have the many layers of non-scientists who occupy the senior levels of DFO. It got to be very frustrating in my last years there to find that the senior officials in DFO could not understand even what you were talking about, and instead were urging you to work on scientifically intractable problems that really had very little bearing on the fisheries. So this separation of the research and regulatory arms, I think, is essential to having some clear, scientific guidance for fisheries management. It also removes the possibility of someone making a decision for other reasons and hiding the reasons under the cloak of science.

Second is to devote more resources to the fisheries. There were quite a few resources devoted to understanding fisheries in the late sixties and early seventies under the fisheries research board, and even in the first years of DFO, but in 1982, the constitutional deliberations decided that the provinces now have the purview for their inland fisheries. Those of us who worked at inland fisheries stations were told, "No, we're not allocating money for that. That's a provincial responsibility." There was talk of duplication of effort. In fact, none of the provinces ever stepped forward with a research program that would replace what was being done by the federal government. Instead of duplication, no one was minding the inland fisheries store.

The cuts continued pretty well through my whole experience with DFO, and after that, which I learned from talking to my colleagues, the most severe cuts were from 2012 when almost the entire habitat division was cut. I believe the figure is 63 stations went down to 47, with 170 personnel lost, and seven fisheries libraries closed for a total savings of a little over \$400,000. Reversing these changes and strengthening this scientific ability to manage fisheries is essential to our having a fisheries to manage in another 50 years.

**The Vice-Chair (Mr. Robert Sopuck):** You have 30 seconds.

**Dr. David Schindler:** I think it's fair to say that a strengthened science department could also be given the responsibility for monitoring Canada's fisheries which, frankly, are a mess right now, as recent experience on the Athabasca River shows clearly. Monitoring now is done by a hodgepodge of consultants and provincial agencies, many of them using outdated methods and with incoherent plans—

•(1555)

**The Vice-Chair (Mr. Robert Sopuck):** I'm afraid your—

**Dr. David Schindler:** It would be better if this were all done under one agency.

**The Vice-Chair (Mr. Robert Sopuck):** I'm afraid your time is up, but you will have time during the question and answer segment, Dr. Schindler, for sure, to elaborate on your points.

Brenda Gaertner, from the First Nations Fisheries Council, you have 10 minutes.

**Ms. Brenda Gaertner (First Nations Fisheries Council):** Thank you, Chair and House committee.

I'm here today, having been invited by the standing committee, then subsequently authorized by the First Nations Fisheries Council together with the Lower Fraser First Nations Alliance, the Upper Fraser Fisheries Conservation Alliance, the Island Marine Aquatic Working Group, and the Coastal First Nations/Great Bear Initiative. In the room with me today are representatives from both the First Nations Fisheries Council and Coastal First Nations/Great Bear Initiative. I've been authorized to speak to our November 29, 2016 written submissions.

I would like to observe the strength of this collaboration of first nations fisheries organizations at the provincial and regional levels, and the significant regional representation behind these submissions.

Besides the Indian Act, no other Confederation-era legislation has had a greater role in controlling and undermining the well-being of first nations in British Columbia than the Fisheries Act. Since 1982

and the constitutional protections provided to existing aboriginal and treaty rights, first nations are consistently engaging at both the negotiating tables inside and outside of the B.C. Treaty Commission process and the courts to better ensure the required nation-to-nation relationship regarding governance, management, and conservation of fish, fish habitat, and fisheries, and the proper respect for subsection 35(1) aboriginal and treaty rights in our Constitution.

The historic and present-day struggles between British Columbia first nations and DFO is well demonstrated by the long list of case law, direct action, and other conflicts that have arisen in the fisheries in British Columbia for much too long.

Fish, fish habitat, and fisheries are the lifeblood of first nations in British Columbia. Since time immemorial, the first nations have relied on once abundant fisheries and thriving habitats within their territories to support their way of life, including spiritual, social, cultural, and economic well-being. Indigenous inherent rights and section 35 aboriginal and treaty rights, including aboriginal title, have and will always include the right and responsibility of first nations to govern and manage the fish, fish habitat, both in the fresh and marine environments, and fisheries, and to be stewards of the rivers, lakes, and waters in their territories. These sacred responsibilities of first nations must be worked in conjunction and collaboration with DFO and the Minister of Fisheries under the Fisheries Act.

This federal government has committed to a renewed nation-to-nation relationship with indigenous people based on this recognition of their rights, the respect and co-operation and partnership, and to implementing the United Nations Declaration on the Rights of Indigenous Peoples. In the spirit of reconciliation, a more collaborative, coordinated, and efficient approach to management of fish, fish habitat, and fisheries and oceans, including co-management and associated economic opportunities, must be forged.

These submissions are presented with that honourable intention, and we have worked hard to distill the recommendations to those we see as vital.

First of all are the preliminary process concerns that we need to raise. There have been barriers to meaningful first nations participation in this Fisheries Act review, both before this standing committee process and in direct consultations with DFO. The barriers have included delayed and inadequate funding, unreasonable timelines, poor communication, and a lack of clarity on how first nations' voices will be heard in this important review.

In fact, it has been very difficult for first nations to have direct representation in front of you as the standing committee, and I really regret that. I'm here as a representative, but many first nations leadership have asked to speak to you, and as I've heard today, you're now going to be finished hearing from witnesses. That's your loss.

Given the fundamental importance of fish, fish habitat, and fisheries to first nations, Canada must ensure a robust consultation process is used to complete the work required to change the act, and your committee's recommendations must promote this outcome.

Turning now to your current mandate, there are two areas I want to focus on. One is the restoring of lost protections, and the other is on modernizing the act.

This review is welcomed by first nations, and the opportunity to work in partnership with the federal government to strengthen this act needs to happen. It's vital.

Restoring lost protections includes returning to HADD and eliminating the problematic fisheries definitions, restoring the prohibition against killing fish, restoring the environmental assessment triggers for Fisheries Act authorizations, and removing, restricting, or restructuring the regulatory authority under the act.

• (1600)

Why is all of this necessary? Simply put, the amendments that restricted protection to existing fisheries were short-sighted, dangerous, and not supported by science, traditional knowledge, or best practices. Given the objective of the act, which is to empower the minister and DFO to promote the long-term sustainability of fisheries for present and future generations, the act must protect fish and fish habitat.

Given the complexity of managing fish, fish habitat, and fisheries throughout B.C., the act has to be rightly focused, so that all the other legislation and policies around it and the day-to-day management of the fisheries can properly align. To do this, the goal of the act must protect biologically diverse fish and fish habitat. That increases the ability to have fish adapt and evolve over time to changing ecosystems and climate change. If you don't protect fish and the habitat of fish, you won't have sustainable fisheries. This is consistent with indigenous laws, and it's consistent with Canada's international and national commitments to promote and ensure biodiversity.

As found by the Cohen commission in the inquiry into the Fraser River sockeye salmon, if we focus only on the fish or fish habitat that is linked to a current fishery, such limited protection could jeopardize future fisheries by undermining precautionary protections for biodiversity. If the act focuses only on the fish that are part of a current fishery, then the careful balance between conservation and fisheries would tip toward fisheries at the expense of conservation. The Cohen commission concluded this after almost a whole year of listening to the complexity of managing one very important species, which is the Fraser sockeye salmon.

Neither science nor economics will ever be able to foretell which fish and fish habitat will best and consistently respond to changes in ecosystems. That's why, in a manner consistent with indigenous laws, we have to protect all of the fish and all of the fisheries habitat

that's possible to protect in order for the sacred law and responsibility of first nations to be properly shared with Canada.

The federal government must also ensure that, through the Fisheries Act, it is living up to its constitutional obligations to first nations who rely on fish, fish habitat, and fisheries as a meaningful exercise of their constitutional rights. Shifting from fish and fish habitat to fisheries seriously jeopardizes the federal crown's ability to fulfill its constitutional obligations. I'll give you an example of that.

Many first nations will stop fishing and manage their fisheries in a way that limits very important access for social, cultural, and economic purposes, because there are weak stocks or the conservation is struggling. If those fish are no longer protected, then there's no opportunity for those fish to rebuild. That opportunity is critical for future generations.

Similarly, British Columbia's history has shown that the salmon species that we are now seeing that are robust have in previous years or previous times been weak stocks. We're often surprised by which stocks respond well to changing ecological demands. If we take a snapshot in time for fisheries management and say that the only fish we're going to protect are the ones that we're currently fishing, then we are terribly risking the ability of future generations to rely on these fish. We are definitely not meeting Canada's obligations to first nations throughout British Columbia. Maintaining a commitment to biologically diverse species is required.

Turning next to modernizing the act, first and foremost, modernizing the act—

• (1605)

**The Vice-Chair (Mr. Robert Sopuck):** Ms. Gaertner, you have 15 seconds.

**Ms. Brenda Gaertner:** Oh.

**The Vice-Chair (Mr. Robert Sopuck):** Ten minutes go by quickly.

**Ms. Brenda Gaertner:** First and foremost, modernizing the act must rise to the constitutional imperative of reconciliation with indigenous peoples. We have specific recommendations on how to make sure that collaborative management and governance agreements with first nations within the legislation are provided.

You'll see that in sections 4.1 and 4.2 of the act, the provinces were added in the most recent amendments, but they failed to add first nations.

**The Vice-Chair (Mr. Robert Sopuck):** That is your time. I'm sure you'll be able to bring out your points in the question period. I'm fairly rigid on time to be fair to all participants.

Nunavut Wildlife Management Board, you have 10 minutes.

**Mr. Michael d'Eça (Legal Counsel, Nunavut Wildlife Management Board):** Thank you, Mr. Chair.

I'm Michael d'Eça, legal counsel to the Nunavut Wildlife Management Board, which I will refer to as the NWMB or the board.

Mr. Chair, could I ask you to tell us when we have two minutes remaining?

**The Vice-Chair (Mr. Robert Sopuck):** I'd be pleased to.

**Mr. Michael d'Eça:** My colleague, Mr. Ray Andrews, and I are going to share our 10 minutes of speaking time. We're going to divide that into four related topics. First, I'll provide a brief description of NWMB's fisheries jurisdiction under the Nunavut land claims agreement. Second, I'm going to set out specific NWMB concerns regarding the changes introduced to the Fisheries Act in 2012. Third, Ray is going to briefly address the bigger picture, which is that the Fisheries Act requires more than simply a rollback of the regressive modifications in 2012. Fourth and finally, Ray and I together are going to present to you six specific NWMB recommendations for your consideration.

To begin, the Nunavut land claims agreement, which I'll refer to as the Nunavut agreement, has been in place since 1993, and it's protected by the Constitution. Accordingly, where there is any inconsistency or conflict between any government laws and the Nunavut agreement, the land claim prevails to the extent of such inconsistency or conflict.

The NWMB itself is an Inuit-crown institution of public government established by the terms of article 5 of the Nunavut agreement. It is the main instrument of fisheries management and the main regulator of access to fish in the Nunavut settlement area. That area is a massive expanse of Canada's polar region approximately the size of continental Europe. The primary purpose of the board is to protect Inuit rights and interests, while at the same time respecting the principles of conservation.

I'll move on to the board's concerns with the 2012 changes. Our first concern is actually with the process that was followed. We can get into the specific details if the committee wishes, but suffice it to say for now that the process followed by the crown lacked even minimal procedural fairness; that is, it featured no reasonable notice to the public, insufficient disclosure, and inadequate opportunity to respond. In addition, the crown at least arguably did not fulfill its constitutional duty to consult affected aboriginal peoples.

With respect to the substantive changes made to the act, the board's concerns are focused on those modifications that weakened habitat protection. The most troubling amendments to the act are those contained within revised section 35, which, as everyone knows, replaces former sections 32 and 35. Previously, subsection 35(1) protected against the harmful alteration, disruption, or destruction of fish habitat, subject to the exceptions that were set out in old subsection 32(2). New subsection 35(1) significantly narrows those former habitat protections only to fish, and only to those fish in specific fisheries and fish that support such fisheries. Of additional concern is that new subsection 35(2) goes on to significantly expand the previous and already wide authority of the government to permit harm to fish habitat through various exceptions.

The NWMB has similar concerns regarding the expansion of regulation-making powers under section 43 of the act. For instance, the Governor in Council may make regulations "excluding fisheries from the definitions 'Aboriginal', 'commercial' and 'recreational'".

To be fair, for each one of the sections and subsections I've just mentioned, along with others, the minister must, before making a recommendation to cabinet or exercising his or her own decision-making authority, consider four factors set out in new section 6 of the act. While this is a positive statutory obligation to place on the minister, the board is of the view that the factors to be considered are imprecise and quite general, and therefore insufficient in the circumstances.

Mr. Chair, I now ask my colleague Ray to continue with the presentation.

• (1610)

**Mr. Raymond Andrews (Fisheries Advisor, Nunavut Wildlife Management Board):** Thank you, Michael.

It's a pleasure to be here, Mr. Chair and members. My time in fisheries management goes back more than five decades. I had the pleasure of working as a fisheries officer and an adviser to the minister at DFO, a deputy minister in the province, and in the last 20 years, an adviser in Nunavut.

In saying that, I wish to say that, from all of my experience and all of my reviews of activity pertaining to the Fisheries Act, probably the biggest single step to modernize it that I can remember was when LeBlanc senior introduced some changes back in 1977, which protected fish and the habitat. I might add that at that time I was very close to the minister and was very pleased that he went slightly beyond fish, the habitat, and the protection of it, and said that the Fisheries Act should also be a lot about people and their communities. I think that's a very important point that we should bear in mind.

The board has a number of recommendations, including proper consultation and co-operation, as well as recognition of, and conformity with, the protected aboriginal and treaty rights. Decision-making should be based not just on good, up-to-date science but—a very basic point pointed out earlier by some people who have spoken—on traditional knowledge, especially from the Inuit community in the north. The application of the precautionary approach in ecosystem management should be guided by environmentally sound principles.

We should have emphasis on co-operation with other governments and especially land claim agencies; stronger protections for fish and their habitat, including marine biodiversity, with decision-makers' discretion bound by mandatory directions, including with respect to the making of regulations—and I'll come to that specific point shortly; enhanced protection for critical fish habitats; avoidance and mitigation of cumulative detrimental effects on fish and their habitat; and, of course, from the north you couldn't miss or ignore the recognition of climate change.

Mr. Chair and members, on another point, I would add, from practical experience, that having a good act, a modernized act, without appropriate, modern, and applicable regulations to follow is certainly where my mind is focused, to a large degree, in Nunavut. In Nunavut, in addition to the long delay in modernizing the act, we have been waiting for 23 years now to get complementary regulations even to the current Fisheries Act. In that case, efforts have been made by Nunavut Tunngavik Incorporated, the Inuit parent body, with DFO over the years 2002 to 2016, and they are still pending having the necessary regulations.

The result is that all fishing in Nunavut waters, our newest territory, is still governed by the Northwest Territories fishery regulations and the Fisheries Act. This has negatively affected ongoing fisheries and will especially impact emerging fisheries.

To end this presentation, and answer questions later, I will simply say that we have two recommendations in particular that I will leave with you.

**The Vice-Chair (Mr. Robert Sopuck):** You have two minutes.

**Mr. Raymond Andrews:** The first is that the standing committee recommend to the Government of Canada that it undertake, ideally during the 42nd Parliament, a comprehensive review and modernization of the Fisheries Act and, bear in mind—I can't help it; I have to repeat again—the appropriate regulations for it.

The second is that the standing committee endorse the nine areas of reform that we have outlined for you today.

My colleague Michael will conclude.

**Mr. Michael d'Eça:** Mr. Chair, there are four more recommendations.

The third one is that the standing committee reject as inadequate and procedurally unfair the process by which the 2012 modifications to the act were developed and brought into force.

The next one is that the standing committee recommend the following three specific revisions to the Fisheries Act.

The first is to revise subsection 35(1) to read “No person shall carry on any work, undertaking or activity that results in the harmful alteration, disruption or destruction of fish habitat.”

The next one is to reinstate the previous section 32, “No person shall destroy fish by any means”, etc.

The final one is to revise the factors to be considered by the minister in section 6 to read as follows: “(a) the precautionary approach and the principles of sustainable development; (b) fisheries management objectives; (c) whether there are measures and standards to avoid, mitigate or offset the harmful alteration, disruption or destruction of fish habitat; (d) the relevant terms of land claims agreements; and (e) the public interest.”

Mr. Chair, I think we beat the 10 minutes.

• (1615)

**The Vice-Chair (Mr. Robert Sopuck):** You did, and I am very grateful to you for that. Thank you.

For the other two presenters, I will give you the two-minute warning as well. I should have done that from the very beginning.

From Prospectors & Developers Association of Canada, Lesley Williams and Matthew Pickard. The floor is yours.

**Ms. Lesley Williams (Senior Manager, Aboriginal and Regulatory Affairs, Prospectors and Developers Association of Canada):** Good afternoon, Mr. Chair, and committee members. Thank you for the opportunity to speak with you today. My name is Lesley Williams, and I am the senior manager of aboriginal and regulatory affairs at the Prospectors and Developers Association of Canada. My colleague, Matthew Pickard, is a PDAC member, and a member of our lands and regulations committee. He will introduce himself shortly.

We speak to you on behalf of the 8,000 members of the PDAC, the national voice of Canada's mineral exploration and development industry. We are pleased to provide input on behalf of the mineral industry as you complete your current study, a review of changes to the Fisheries Act.

Our presentation will cover a discussion of the exploration phase of the mineral development cycle; key elements of effective, efficient, balanced regulatory processes; the exploration sector's experiences with the Fisheries Act; and ways in which the 2012 changes helped to strike a balance between generating certainty for industry and sustaining protection of fish and fisheries. Matthew will then guide us through his company's experiences with the Fisheries Act.

Canada is a recognized world leader in the minerals and metals industry, which directly employs 380,000 Canadians and contributes nearly 3.5% of the GDP. In particular, Canada is renowned for its mineral exploration expertise. Mineral exploration is akin to looking for a needle in a haystack. Junior explorers, thousands of small entrepreneurial companies across Canada, often take on this riskiest stage of the mineral development cycle. Less than one in 1,000 exploration programs will make a discovery leading to mine development.

As a result of the prolonged downturn in financing, mineral exploration expenditures have fallen globally. In Canada, expenditures have fallen 66% since 2011. Canada also fell to second place, behind Australia, for the first time in 15 years as the top destination for exploration investment.

Our ability to regain first place is contingent upon a number of factors that affect the decisions made by CEOs about where to do exploration. These include geological potential, social or political risks, and access to land. Issues that impact access to land include the availability of infrastructure, land withdrawals, unsettled land claims, lack of clarity regarding the crown's duty to consult process, and regulatory uncertainty and inefficiency.

The issue of regulatory affairs brings us to the topic of today's study. At this point, I will hand over the presentation to my colleague Matthew, who will discuss the changes made as a result of the 2012 amendments and the impact of those changes on the industry.

**Mr. Matthew Pickard (Member, Vice-President, Environment and Sustainability, Sabina Gold and Silver Corp., Prospectors and Developers Association of Canada):** Thank you, Lesley.

My name is Matthew Pickard. I'm the vice-president of environment and sustainability with Sabina Gold and Silver Corporation, which is a junior mining company based in Vancouver.

Over the past seven years we've been focused on the development of the Back River gold project, a proposed gold mine in the western Kitikmeot region of Nunavut.

Over the past seven years we've also been focused on various aspects of the Fisheries Act, both before and after the 2012 amendments. Before I delve into the specifics of the 2012 amendments, I'd like to briefly go over some thoughts and key principles for an effective regulatory process.

We believe that regulatory regimes need to be balanced and should adopt integrated holistic frameworks for balancing environmental protection with conservation goals and the economic benefits. It's important to have clarity, consistency, and predictability in process, to ensure that triggers, timelines, and scopes are followed.

We believe that regulatory processes should be scalable and proportionate to the nature, scope, and duration of the project activities. We believe they should be timely, and move forward as rapidly as possible, keeping in mind the balance of participation for stakeholders and rights holders, adequate time for regulators to properly review information, and the commercial realities of the proponent. We believe they should be based on science and traditional aboriginal knowledge.

We believe that departments should be properly resourced with both the human and financial resources to undertake their work.

Finally, regulatory regimes should establish defined responsibilities with respect to the duty to consult and, where appropriate, to accommodate aboriginal peoples.

It is our view that the 2012 changes to the Fisheries Act have helped generate more certainty in the process, but have also been successful overall in maintaining the protection of fish and fisheries, for example, through the proportionality of the reviews.

Regulatory oversight called for by the 2012 act is proportional to the scope of the potential impact, in that projects that have the potential to generate serious harm to fish must still seek a section 35 authorization.

Lower-impact projects or activities have a two-step process that includes the self-assessment by proponents, and the potential of completing a request for review to get feedback from DFO in a timely manner if the project is uncertain whether a section 35 authorization is required.

On clarity, the 2012 amendments have helped to further clarify, by providing clear and predictable definitions and enhancing the opportunities for proponents to speak to Department of Fisheries and Oceans officials. They also have helped to improve the guidance available to companies with respect to identifying potential effects, by utilizing the pathways of effects diagrams.

On timeliness, some timelines have been established, specifically the section 35 authorizations, and these have proven helpful to resource development. The maximum timeline for authorization has been defined, and the self-assessment process helps to remove pressures on DFO staff to provide the previously utilized letters of advice.

On capacity, the 2012 changes now allow for the government resources to be targeted and more focused while still allowing oversight.

Finally, although the 2012 amendments were intended to lead DFO to focus on commercial, recreational, and aboriginal fisheries, in our experience, the act generally remains similar to previous versions. The requirement to protect any fish that support commercial, recreational, and aboriginal fisheries has, in practice, sustained protections for fish.

I'll use our Back River project to illustrate our experience with the Fisheries Act.

In order to develop this project, two small fish-bearing lakes and a handful of streams will require dewatering or significant modifications which will result in serious harm to fish. Therefore, a section 35 authorization will be required prior to the project proceeding. As part of the application for authorization, we prepared a conceptual offsetting plan, which includes various options or measures to counterbalance the loss of fish or fish habitat.

The ultimate goal of this plan is to improve the productivity of a local aboriginal—or in this case, Inuit—fishery. We've worked on this offsetting plan together with the Department of Fisheries and Oceans and local communities, and in partnership with the Kugluktuk Hunters and Trappers organization.

In 2012, we formalized an agreement with the Kugluktuk Hunters and Trappers organization, and initiated a study to determine if the remediation of the Bernard Harbour area, which was once a thriving Inuit fishery, could also meet DFO offsetting requirements.

•(1620)

The Bernard Harbour restoration project included a traditional knowledge study involving community members from Kugluktuk and Cambridge Bay, baseline fieldwork, development of a fisheries offsetting plan, restoration work, monitoring, and long-term management and restoration activities.

**The Vice-Chair (Mr. Robert Sopuck):** You have two minutes left.

**Mr. Matthew Pickard:** Got it.

Following this work, it was decided that Sabina would advance the remediation work on Bernard Harbour and it did so in 2016. This work was completed with 80% Inuit employment, heavily employed through the Kugluktuk Hunters and Trappers organization and we're finalizing a long-term maintenance agreement on this project.

Our experience is a good example of the creative, innovative, and community-based solutions that can come out of the 2012 amendments.

As we outlined earlier, there are a couple of things that we would like to see enhanced or potentially considered further.

We'd like to see enhanced guidelines by either reintroducing operational statements used previously for low-risk activities, or by increasing use of mitigation measures or options on the DFO website to provide further guidance. The inclusion of timelines for completing a request for a review could be considered. Although these are currently done within a timeline of 30 to 60 days, it would be helpful to have this standardized. Finally, we would appreciate enhanced clarity with respect to which projects are clearly able to proceed without a request for review. We'd also like clarification on exactly what constitutes a commercial, recreational and aboriginal fishery, that is, how this is determined.

The ability for industry to continue to generate economic opportunities and produce the metals and minerals needed for modern society will continue to depend on exploration activities. PDAC gives the highest priority to working with governments and other interested parties to those ends, and we look forward to the results of this committee's study.

Thank you for the opportunity to speak. We're happy to take questions whenever you want.

•(1625)

**The Vice-Chair (Mr. Robert Sopuck):** Well done.

Next we'll hear from Zo Ann Morten from the Pacific Streamkeepers Federation.

**Ms. Zo Ann Morten (Executive Director, The Pacific Streamkeepers Federation):** Good afternoon, Mr. Chairman and honourable members of the standing committee. Thank you for the opportunity to present on behalf of the Streamkeepers Federation on the review of the Fisheries Act.

My name is Zo Ann Morten. I am the executive director of the Pacific Streamkeepers Federation. I'm lucky to work with the thousands of volunteers who are dedicated to the protection and preservation of our local waterways and who work with DFO's salmonid enhancement program and the streamkeepers program. I

also volunteer with these initiatives, with salmonid enhancement since 1988, and with the streamkeepers since 1993. I am the product of the senior LeBlanc's initiatives in 1977.

We would like to see a stated purpose for the Fisheries Act. Without this, it's hard to stay grounded as you read the sections and subsections of the act. A simple statement such as "this act is to protect our fisheries, fish, and fish habitat for generations to come" would help.

Changes to the Fisheries Act and the resulting changes to supportive policy and programming have caused concern for the protection of fish and fish habitat within the Pacific region. Let's put in place an act that will serve us for the next 40 years. Let's start with changes to the act that hold promise—areas to keep—as you begin to draft this new act.

The premise of conditions of authorization that are enforceable should make it easier to know where there has been non-compliance as the steps are clearly written out concerning what needed to be done and whether it was done.

We recommend that these conditions be extended to such policy as the previously written operating statements, with the addition of a need to notify concerning works being done. This could be a strong and useful tool for monitoring works and compliance with conditions.

The minister needs to be able to make those tough decisions, but the process needs to be open and transparent, with clear language as to who, when, where, how, and why the minister would authorize an undertaking that would compromise our fish and fish habitat.

We would like the assurance that the project itself is reviewed and that this tool is used sparingly. Like water, people too take the path of least resistance. Let's not use this tool without strong reasoning. We recommend that the minister have the ability to make the tough choices, with the expanded need to take into account the actual undertaking as well as to provide a public record of minister's authorizations. The parliamentary report could accommodate this.

Concerning the minister's ability to do programming, the recreational fisheries conservation protection program is being used as an example.

B.C. gained on this, as we had Department of Fisheries and Oceans community advisers, restoration biologists, technical help, and engineers who have built a strong stewardship community that has the capacity to engage in this granting process. Restoration works require a long-term commitment relationship among the proponent, the property owner, and the agency. We recommend that programs such as this come with a percentage of the budget being made available to government programming, so that government can engage more fully.

As to the provision of equivalency, while we feel that DFO through the federal government has the authority and responsibility and is accountable to protect our Canadian resource, there are examples of partnerships and shared responsibilities that work to empower others, where it makes sense, to manage the landscape in support of the purpose of the Fisheries Act. Monitoring of the standards and of the on-the-ground outcomes is vital to ensuring that working relationships, shared goals, and outcomes are able to withstand the test of implementation of the policy papers. Are DFO goals being met for the protection of fish and fish habitat?

DFO will need personnel to work with their partners to ensure that this is not a transfer of work; not a download, but a sharing of policies, resources, tools, and ideals to fulfill the mandates that all partners have. Through this, we will need a strong, defensible, enforced Fisheries Act, as the others are only able to take their own bylaws and regulations to court. We still need and look for strong leadership from our federal government.

We recommend there be a continued ability to share the responsibility for fish and fish habitat in cases in which other jurisdictions meet or beat the federal standard, while ensuring that the federal standard is comprehensive, strong, and adaptable to the diversity of fish and fish habitat across our country. We also support the ability to pull out of these agreements when the partner is not able to meet or beat the standards set out by the Fisheries Act and supportive policy.

Here are a few comments and recommendations from the community to bring into the present a strong, enforceable Fisheries Act.

We are looking to have “harmful alteration”, “harmful disruption”, and “harmful destruction” put back into the act. As we know and have heard again in these proceedings, fish do not always die right away after having an encounter with humans. I am envisioning an incident within a chinook-rearing habitat and trying to make the case that there was serious harm done to fish or to the recreational fishery. This is an animal that lives in fresh water for a portion of its life and then heads out to the ocean, returning to spawn anywhere between three to five years later. One would have a hard time saying that the returns were diminished by an incident.

●(1630)

Under the new act, DFO's involvement comes in only when there needs to be an authorization to do serious harm to fish. They are not notified of the multitude of changes taking place in and around our waterways on a regular basis. There was a time that the department was there to assist people to help them not cause a HADD, to help them work towards mitigation, to help them determine good compensation plans, to share their knowledge of local waterways, but as Canada grew, this task became too great, and streamlining processes were developed. We've heard of the hardship of farmers wanting to clean drainage ditches, and there were municipalities wanting to do this as well.

When the department reviewed the most common request for authorizations, around 2006, it became very clear that the majority of their time was spent on about 13 different activities being done routinely across the country. This is where the operating statements

were written with clear guidance as to how to undertake these tasks so as not to cause a HADD.

A piece we found lacking in these was that there was no need to notify DFO when works were being done. This made it very difficult to monitor, to ensure that the steps put forward were indeed being followed and that they were working. These operating statements were removed when the new act came into place and were replaced by an online tool about working in and around waters to help guide citizens to know if they need an authorization, but these are through the lens of causing serious harm to fish in the CRA. Section 2.1 of the act speaks to habitat, but this gets lost in the instruction that says that section 35 is the main habitat protection provision against carrying out projects causing serious harm to fish. There are limiting words in that. With studies showing that over half the developers in North Vancouver did not know that their storm drains on the street were carrying the development waste directly to the local streams, I find it hard to imagine that the average person could self-determine if they might cause serious harm to fish or to a fishery, whether it be local or at sea.

Using the minister's regulation-making powers for compliance, we would like to see the past self-assessment tools be reviewed with HADD in place of serious harm, and the addition of a modern update. Proponents can check the boxes to indicate that they have read and understood the questions on the form, and when they are finished, they submit it. One copy would go to themselves so they know they have gone through the process, and one copy would go to DFO. The form would act as a notification to the department that activity was taking place. GPS coordinates would generate a map to indicate where certain activities are occurring regularly. This would help form a work plan for monitoring. How can we expect compliance when the authorities don't even know any changes are occurring in our watersheds?

**The Vice-Chair (Mr. Robert Sopuck):** You have two minutes.

**Ms. Zo Ann Morten:** We recommend the legal requirement for notifications and the ability to easily see where works are occurring for planned monitoring of authorized and non-authorized works. Bringing back the former section 35, the HADD, would bring with it the precedents from past court cases and build on a foundation. Policy that supported the previous section 35 had as its objectives the net gain of habitat for Canada's fishing resources.

I want to mention again that DFO staff were also there to help people prevent causing a HADD and stay on the right side of the Fisheries Act. They were there to provide local knowledge to municipalities, to participate in decision-making, and to assist with meaningful mitigation or compensation plans. Granted, there was some head-butting, but by having strong regulations and knowledgeable people and the occasional pot of money for restoration works, people came together to find solutions to work on mutually beneficial projects. Agricultural areas found ways to work with their channelized waterways to accommodate fish populations while protecting their stream banks from erosion. This is a win-win for farmers and fish, but it takes partnerships and the long-term commitment by the agencies and the land owner. Restoring a stream is not cheap. Proactive protection is the preferred pathway.

Canada is the second largest country in the world with the second largest amount of fresh water. We would be expected to have strong, enforceable protection measures. The purpose of the Fisheries Act is not to stop development. It is to set conditions under which the development can occur, but it is to have a focus on the protection of our fish and our fisheries.

We look forward to reading your recommendations and continue to work with government under the new Fisheries Act. We also look forward to the re-establishment of the habitat management program to administer habitat protection provisions under this new act.

Thank you.

● (1635)

**The Vice-Chair (Mr. Robert Sopuck):** That was absolutely perfect, 10 minutes on the nose. Thank you very much.

We're going to start our first round of questions. I should point out to our guests that our questioners are the committee members. They will usually direct the question to one or perhaps two of you. If any of you would like to weigh in, just put your hand up. However, it will be up to the member, not me, to recognize you because this time belongs to the MP, not the chair. They can choose to recognize or not recognize you when you put your hand up.

Our first round for seven minutes will be on the government side with Mr. Morrissey.

**Mr. Robert Morrissey (Egmont, Lib.):** Over the past number of weeks, we've heard from a broad range of witnesses on two sides of the spectrum: those that develop and those that participate in the fishery and protect the fishery. Their views were different, but I was impressed with the degree of knowledge and the depth of knowledge and passion that everybody presented. On that, I have a specific question for Dr. Schindler and to Ms. Morten.

A question that came up numerous times, and I want your opinions on it, was whether man-made habitat should be defined and enforced the same way natural habitat is. My second part of that question would be that there appeared to be a lot of comments that parts of the act are not clear. One area I'll refer to is where it says "death of fish". Is it one fish, or should it be more than one fish? Could both of you comment on those parts?

**Dr. David Schindler:** I would say that if a man-made habitat proves to be equal to the natural habitat, and in my experience it's often permitted by at least the old Fisheries Act as a replacement for

habitat that cannot be otherwise restored, such as in the dewatering of lakes, then it should be permitted. I would counter that by saying, though, that my experience is that even habitats designed by DFO scientists were often pretty inadequate.

With respect to fish, I think the concern should be the long-term future of fish populations. I don't think the death of individual fish is of concern here. In my view, the mandate of the Fisheries Act and this committee is to see that it is truly sustainable, that my grandchildren can come back and expect to rely on the same degree of fisheries for food, or recreation, or subsistence that we can today. There are other acts, presumably, that will counter that. This is not the mining act. It is not the agriculture act. Your charge, in my view, is to see that our fisheries are sustainable, whatever it takes.

**Ms. Zo Ann Morten:** It depends on what the function of the water was prior to man taking account. If it's a dug-out, it's not attached to anything, and it's just full of water, of course that wouldn't be anything to do with the Fisheries Act. But if you've actually channelled a functioning stream and turned it into an irrigation ditch or a drainage ditch, that would of course need to be covered under the Fisheries Act.

Think of the man-made end of things as well. I'd have to say "person-made", because I actually made a fish-bearing stream, and yes, I would like it to have the protection of the Fisheries Act. We changed a leachate ditch in the District of North Vancouver from a drainage ditch that took the leachate to Lynn Creek to a fish-bearing stream, and I would like to have that under protection. That was the intent of it.

● (1640)

**Mr. Robert Morrissey:** On the definition of fish or fishery, this has come up as an ambiguity in what we've been told. The harm where you would be charged, is it the death of one fish or multiple?

**Ms. Zo Ann Morten:** That's very tricky, and it's funny that you should say that, because I actually asked that question when I found out about the duty to report.

I was at a meeting and I was a bit terrified, because the day before, I had killed a fish. We were digging out our man-made structure that is designed for fish. We had done all the trapping. We had done everything we could to remove the fish. What on earth a chum salmon was doing there in the middle of the summer, I have no idea, but we took this fish and it went in the back of the dump truck, and I didn't know about the duty to report.

I was with Fisheries and I said that I would report it. They asked if I was sure that it died. I said, "Yes. I dug it out. I put it in the back of a dump truck. I dumped it in the landfill. I'm sure it's dead." I still don't know what it was doing there. They asked if it was one fish, and I said, "Yes." They said, "Don't worry about one fish." I asked, "What if it were two? Do I worry about two? What if it were three? What is that magic number?" There wasn't one.

**Mr. Robert Morrissey:** That's a good point.

**Ms. Zo Ann Morten:** That was the trick. There wasn't one, because these were actually hatchery fish. I run a small enhancement facility, and it was a hatchery fish, and we had already bumped the numbers up a bit.

Where does that come into play? The definition of fish and fish habitat and harm to that is much easier.

**Mr. Robert Morrissey:** Is that something the committee should be looking at, or is it in this recommendation?

**Ms. Zo Ann Morten:** You can look at it. I don't know if you'll find an answer.

**Mr. Robert Morrissey:** Again, following on the theme, from those who were on the development side of witnesses appearing, regardless of whether they were farmers, miners, loggers, or municipal developers, they felt that the 2012 changes more clearly defined sections to the act that they were dealing with. Groups from first nations communities and from all the fisher groups felt that those changes opened the act too widely to destroying habitat without any protection in place. So, you have the two different parallels.

Complicating that was what seemed to be the most negative impact, that at the same time that the 2012 changes were made to the Fisheries Act, there was a significant reduction in the number of personnel who could enforce what was there.

I would like to get comments from Ms. Gaertner on that, as well as from the witnesses from Nunavut Wildlife Management Board.

**The Vice-Chair (Mr. Robert Sopuck):** You only have 10 seconds.

**Mr. Robert Morrissey:** That's the end of my question.

**The Vice-Chair (Mr. Robert Sopuck):** For the witness, as well.

**Mr. Robert Morrissey:** Yes. Ms. Gaertner.

**The Vice-Chair (Mr. Robert Sopuck):** Ms. Gaertner, I'm afraid you don't have much time, but go ahead.

**Ms. Brenda Gaertner:** If I've heard the question correctly, it is correct that it's difficult to measure precisely the implications of the amendments in 2012 and 2013, because it was tongue and groove with the decline in capacity of the Department of Fisheries and Oceans. You have to take a longer view on where we're going with the Fisheries Act to actually decide if that's where you want to be going. You can't just take the two or three years after its implementation.

Then the systemic kinds of changes that need to happen include not only the changes to the Fisheries Act but also the changes to the Department of Fisheries and Oceans' commitment to monitoring, compliance, and ensuring a robust collection of baseline data, all of the things that were struggling under the previous act but that were

completely gutted, or very strongly gutted, under this act. You do have to look at both of those actions.

**The Vice-Chair (Mr. Robert Sopuck):** I'm afraid the time is up.

Keep in mind, for the questioners and our witnesses, that the time allotted includes the answers, as well. It's incumbent upon me as chair to be as fair as I can and give everybody enough time. I know seven minutes isn't very much, but if everybody could keep their questions and answers concise, we will get a lot more of both in each round.

We have Mr. Doherty for seven minutes.

**Mr. Todd Doherty:** Once again I just want to say thank you to our witnesses. I'll echo Mr. Morrissey's comments in terms of the variety of witnesses we've had over the past weeks on this study.

I do have a couple of comments I want to make prior to my questions, though.

Ms. Morten, we have heard a couple of times about the stated purpose, and I think that is important. I'm hoping we will give direction to that as we move forward, as well as the operating statements. A couple of witnesses have said that.

I understand that the Pacific Streamkeepers Federation was initiated in my hometown of Williams Lake in May 1995, so I commend you on that, as well.

I do want to go to Ms. Gaertner and the First Nations Fisheries Council. I sense the frustration in your voice. I do think it needs to be noted that there are those on this side of the table who suggested earlier on that this study take place for a longer term and that, indeed, we meet with all groups—even meeting with them in their communities, as well, going to Mr. Andrews' comment about people in communities. This really is what this is about, and it is what it impacts.

My question for Ms. Gaertner, right off the bat, is, how many meetings has your group had with the government on fisheries or with respect to our first nations fisheries in the province of British Columbia?

● (1645)

**Ms. Brenda Gaertner:** Do you mean meetings as it relates to the revisions to the Fisheries Act?

**Mr. Todd Doherty:** Yes, over the last year.

**Ms. Brenda Gaertner:** I think there were less than four or five information sessions regionally, provided by the Department of Fisheries and Oceans which introduced this review, but they were just introductory meetings to provide a purpose of the review and the nature of the statutory changes.

**Mr. Todd Doherty:** Were those throughout the whole year? What was the time frame?

**Ms. Brenda Gaertner:** The actual meetings began in the fall and happened over a period of one month.

**Mr. Todd Doherty:** Did you say they were regional meetings?

**Ms. Brenda Gaertner:** There were five regional meetings in British Columbia.

**Mr. Todd Doherty:** Ms. Gaertner, can you tell me how many meetings—

**Ms. Brenda Gaertner:** I also note—

**Mr. Todd Doherty:** Go ahead, sorry.

**Ms. Brenda Gaertner:** I also want to note that at the time of those meetings, the funding had not been put in place. The first nations had no opportunity to review ahead of time and seek the advice they would need on amendments to the Fisheries Act. They were basically receiving information from DFO and needing to go back and consider it.

**Mr. Todd Doherty:** Okay.

Can you tell me whether the First Nations Fisheries Council has been consulted with respect to the government's move to marine protected areas and the increase to hit their international targets of 5% in 2017 and 10% in 2020?

**Ms. Brenda Gaertner:** The First Nations Fisheries Council will have been informed about those steps, but they will not have been consulted. The first nations fisheries organizations are not rights and title holders. They provide capacity and assist first nations in considering these matters, but they're not a body that does the actual consultation.

**Mr. Todd Doherty:** Okay.

**Ms. Brenda Gaertner:** They engage.

**Mr. Todd Doherty:** Okay, perfect.

This question is for Mr. Schindler.

We have also heard over the course of the testimony that there is perhaps too much ministerial oversight. In your testimony today, are you of the mind that there should be ministerial oversight or no ministerial oversight?

**Dr. David Schindler:** My mind is that the science should be done with strictly scientific oversight and the science passed on to the minister, so that it's crystal clear where and why the decisions are made. Certainly, the elected minister should have the final oversight, but the taxpayer should be sure of where the decision is coming from.

I've often seen bad decisions passed off as bad science when anyone who knew the science knew that was total nonsense.

•(1650)

**Mr. Todd Doherty:** My next question is for the Prospectors and Developers Association of Canada.

We've heard varying testimonies from different sides, and I think all are measured. However, we have heard that the 2012 changes have allowed industry to go—I guess I'll have to use this term—willy-nilly or amok, and it made it easier for projects to proceed.

Would your testimony today be that it was the changes in 2012 that made it easier for your membership to get their projects approved, or was it status quo and perhaps even a little more onerous?

**Mr. Matthew Pickard:** Thank you for that question.

There was a change in the process between 2012 and currently. The fact is that previously there were letters of advice utilized. That was a process through Department of Fisheries and Oceans. Currently, we use our own self-assessment and a request for review process.

In the end, the process has streamlined; the mitigation has not changed. Our membership still utilizes operational statements and previous mitigation that would be either general to the industry or site specific. There haven't been changes in mitigation, but process has changed.

**The Vice-Chair (Mr. Robert Sopuck):** I'm afraid that's time.

We'll move to Mr. Donnelly for seven minutes.

**Mr. Fin Donnelly:** Thank you to all of our witnesses for providing testimony on the Fisheries Act review. It's extremely helpful.

I will just recommend to everyone who has presented here to submit your recommendations in writing to the committee if you haven't already done that. It will ensure that we have all those recommendations in writing, so please send those to us.

Ms. Gaertner, I wanted to add that I did make recommendations to this committee on a number of issues. One was in terms of travelling. I thought this committee should have travelled to the coasts to hear from witnesses. I also suggested that we expand the time frame. It's a very tight window for us to hear from witnesses and produce a report.

We've essentially heard, I think, from 40 or 50 witnesses. I know there were many more, including a number of first nations. I only got a chance to raise a few, the Lower Fraser Fisheries Alliance, the Heiltsuk Nation, and the First Nations Fisheries Council who wrote to this committee regarding speaking to us. We have only a set number of witnesses. We have heard from a number of excellent witnesses so far, but I know, and I take your point, that there are many other first nations who wanted to present to the committee directly. I find that it is unfortunate that we are under a compressed time frame, and we aren't able to hear from many more on such an important topic as the Fisheries Act. Unfortunately, I lost that battle.

**Dr. Schindler,** in your opinion, did the 2012 changes to the Fisheries Act increase or reduce protections for fish habitat?

**Dr. David Schindler:** It's pretty clear that they reduced the protections for fish habitat.

**Mr. Fin Donnelly:** Why would you say that?

**Dr. David Schindler:** I don't think, however, to date, you would expect to see any effect. One of the reasons was mentioned earlier. If you don't have people in the field to observe, you're not going to see any effect by definition.

Number two is that only a few years have gone by. Most large projects require several years to develop, and if they're bad projects, they probably require several more to have an effect on fisheries.

I think it's very timely to get in and reconsider and hopefully restore biologically sensible bases for the Fisheries Act now before any significant damage is done.

• (1655)

**Mr. Fin Donnelly:** Thank you, Dr. Schindler.

You also mentioned a number of projects that have already been essentially approved under the current Fisheries Act, so your point is well taken.

I will now turn to Ms. Morten.

Everybody has provided very good testimony, by the way. It's been very helpful, and we've heard the recommendations.

One additional issue that has come up is the cumulative impacts for streams and watersheds, and also the wild salmon policy as it relates. We heard about the importance of regulations and not having them.

Could you comment both on cumulative impacts, and how that's tied to the Fisheries Act and/or the wild salmon policy?

**Ms. Zo Ann Morten:** An impact is a hard one to do when you don't know what's going on in the area. One of the things that they talk about is what changed in things. We had a harmful alteration, in my mind, in that Fisheries used to be with our municipality to work on different projects. I was counting fish one day and came around the corner and found an excavator in the creek digging out the gravel. I was counting salmon, and they were excavating gravel. It's a timing issue. Those kinds of cumulative effects would not even be known had I not been out walking with my friends counting salmon that day. We wouldn't have known that that was going on.

With the wild salmon policy—

**Mr. Fin Donnelly:** I'm sorry. If I could just add, that's probably enforcement and having enough resources for the department to be able to monitor what's going on.

**Ms. Zo Ann Morten:** If it's not going to cause serious harm to fish, it's hard to say that it needs to be enforced.

**Mr. Fin Donnelly:** Right.

**Ms. Zo Ann Morten:** It was a timing issue with the municipality no longer working with the department to realize there were pink salmon in the channel at that time. It was just a timing issue. They wanted to wait until the children went back to school rather than pay attention to the Fisheries Act. It's a bit of a difference. If you don't know when these things are happening, it's hard to determine cumulative effects, but we do see the effects on the waterways and on the fisheries as we count fish coming back, as well as on the water with their levels either going up or down.

The other thing is that the wild salmon policy is up for review and it is just going through the process now. The department is going around the province asking about the renewal of the wild salmon policy and where it fits in with the new Fisheries Act.

**Mr. Fin Donnelly:** Maybe I could ask the Nunavut Wildlife Management Board representatives to comment.

You used the term “regressive changes” with respect to the Fisheries Act and you outlined some concerns about still waiting for the complementary regulations. Do you want to expand on that a little bit?

**Mr. Raymond Andrews:** I could say in respect of the regulations that if you're in a jurisdiction like Nunavut and you are managing on the basis of what went on on the northwest coast in the B.C. area, and you take into consideration the Atlantic regulations pertaining to the act, it's near impossible to have a practical application of the act when you don't have “made in Nunavut” regulations or regulations made for any other jurisdiction. That's why I said it's critical to supplement the act with appropriate regulations.

**The Vice-Chair (Mr. Robert Sopuck):** Thank you very much.

Next is Mr. Hardie.

**Mr. Ken Hardie:** My thanks to the witnesses.

I have a number of questions, and I'll ask you to keep the answers fairly brief so we can get through them.

Ms. Morten, one of the things that's come up any number of times is that we've been looking for specific examples of where the changes to the Fisheries Act actually resulted in something unfortunate taking place. You just mentioned one a moment ago. Is that the only example of something where we're dropping the ball?

**Ms. Zo Ann Morten:** It's very difficult to say what changes have happened in that we haven't gone through a full salmon cycle since the act was changed, except for pink salmon. It's very difficult to say exactly.

We had a couple of examples. One is on the tributary to Maple Creek, where a 10,000-square-foot home with a 3,000-square-foot garage caused the person who owned that property to want to move the stream to another area. They were given authorization to do that and they said it wouldn't cause any harm to the commercial, recreational, and aboriginal fisheries. However, nobody paid attention to the fact that they wanted to change the fish habitat for a 10,000-square-foot home and a 3,000-square-foot garage. Those are the things I think we need to do: we need to look at the actual project that's compromising our fishery.

• (1700)

**Mr. Ken Hardie:** That wouldn't have happened under the old regime?

**Ms. Zo Ann Morten:** I don't think it would have. I think there would have been enough eyes and ears out there to make a difference within fisheries.

**Mr. Ken Hardie:** Comment briefly on the state of the DFO, as I know you've worked closely with them.

**Ms. Zo Ann Morten:** Well, I go to a retirement party about every day. People are leaving en masse. The corporate knowledge loss right now is absolutely huge. The people who came into Fisheries and Oceans Canada and are nearing the end of their careers at 30 years had a passion for fish and fish habitat and for the people. Now we are losing that corporate knowledge. They feel they are not able to protect anymore. They're feeling that they can't look people like me in the eye and say they're doing the best that they can. It's making a difference.

**Mr. Ken Hardie:** There is a loss of relationships, too, I suppose, between DFO and the people they're supposed to be helping, advising, or overseeing.

**Ms. Zo Ann Morten:** We have the SEP community workshops coming up in Quesnel, May 19 to 21, and hopefully you can come out to that. That's for the salmonid enhancement community to come out and celebrate with Fisheries and Oceans Canada all the great things that the community has done under Minister LeBlanc and now Minister LeBlanc's oversight.

**Mr. Ken Hardie:** Thank you for that.

Ms. Gaertner, has there been any visioning about the role that first nations have in a modernized Fisheries Act environment?

**Ms. Brenda Gaertner:** Yes, at the treaty tables or non-treaty tables about how we're moving forward in collaborative management, there have been opportunities identified throughout British Columbia on how better to work with the Department of Fisheries and Oceans. That's why we're promoting the revised language to the act to modernize it and to include an opportunity for meaningful governance agreements with first nations.

You'll see in our appendix A that we have language for all of our suggested recommendations including the purpose section. In recommendation 7, we're recommending that the act enable the Department of Fisheries and Oceans and the minister to enter into direct agreements with first nations governments in a manner that would allow them to facilitate collaboration among first nations, the province, and the federal government as it relates to the management of fish, fish habitat, and fisheries.

There has been quite a lot of thought around that.

**Mr. Ken Hardie:** Sure. I hope, as Mr. Donnelly suggested, that you submit all of that to us, if you haven't already. That would be useful.

One of the things we've been drilling into during this study is the origin of the changes, mainly to speed up public works, to reduce administrative burdens, and to take a 3,000 project backlog off of DFO's plate. On the one hand, we want to restore some things, but on the other hand not necessarily lose some of the beneficial aspects of the changes that really had a lot to do with streamlining processes and perhaps reducing the triggers for environmental assessments.

Do you have any comments on how we can get the protections in place, but still have a more streamlined and nimble system?

**Ms. Brenda Gaertner:** I think one of the things is to be careful about death by a thousand cuts. You streamline, assuming that small projects have little effect, and that's an incorrect assumption. Small

projects, many of them, can have very detrimental effects to migrating salmon and other fisheries. One has to be careful about that assumption.

The better way of looking at it is to provide meaningful guidelines under the Fisheries Act for the kinds of things that the minister should be doing. I'll stress that it's the November 29 submission that's before you already in writing, and it contains all the amendments we're suggesting. In that submission, we're suggesting that the purpose of the act is to give more clarity around what your goals are under the act, and we have a specific purpose section.

When making decisions under that, including for regulations, there are specific objectives that we're suggesting the minister be charged with meeting. That's going to provide the context that's necessary for applying the Fisheries Act in a modern way.

You're not wasting anybody's time—

**The Vice-Chair (Mr. Robert Sopuck):** You have one minute.

**Ms. Brenda Gaertner:** —and you're focusing on fish and fish habitat.

• (1705)

**Mr. Ken Hardie:** Thank you for that.

I have a final question for Dr. Schindler.

You mentioned separating science and regulations. Can you expand on that briefly for us?

**Dr. David Schindler:** Yes, I think the separation of the two under the fisheries research board, which did science to best support Canadian fisheries and was entirely governed by a board of senior fisheries and freshwater and oceanographic scientists, produced very good science. That was then handed off to the departments as a piece of science, and that was incorporated into the decisions.

That first organization had variable overhead. We probably had seven staff, overall, for a scientific staff of 100 people. That changed when we were taken into DFO to about 50% support people of various sorts, and it confounded the expenditure of money for doing the science efficiently.

**The Vice-Chair (Mr. Robert Sopuck):** Thank you very much.

Next, we'll have Mr. Arnold, for five minutes.

**Mr. Mel Arnold:** Witnesses, I'll echo the sentiments of the members around the room. We certainly appreciate the time you've taken to prepare your submissions and bring them to us. I also want to echo the statements from Mr. Donnelly about the time frame and deadlines that have been imposed on us here, such that we had to trim our witness list requests significantly. We're having a struggle obtaining the online submissions in a timely manner so that we can include them in our report. I certainly appreciate the time you've made, and I hope you can appreciate the value of having you here.

One of the first things I'd like to address is the act prior to 2012 and the act after 2012. I was familiar with fisheries issues, and one that I followed closely was the gravel extraction on the Lower Fraser River and the issues that were taking place there. In some cases, millions of pink salmon eggs were killed when portions of the river were dammed for gravel extraction.

I'm wondering, Mr. Schindler, if you have any history with that. If you do, then could you explain why the old act wasn't able to prevent that at that point in time?

**Dr. David Schindler:** I don't have any direct experience with that. I expect it was probably the same thing that we experienced at all fishery stations. Problems were multiplying, and the number of staff expected to handle them was going down.

**Mr. Mel Arnold:** Thank you.

The point I'd like to make is that significant issues were happening prior to the changes in the act. This act looked at clearing up some of the backlogs there.

Mr. Pickard and Ms. Williams, you mentioned the need for operational guidelines. I think we've heard more than once throughout the hearings that we need regulations, operational guidelines, and some objectives.

Could you perhaps elaborate on that? I guess we can't get into the specifics of what those guidelines need to be, but in general terms, what might be included in recommendations for regulations?

**Mr. Matthew Pickard:** Yes, with respect to the previously utilized operational guidelines, those helped resource development, primarily exploration and prospecting, ensure that they could utilize operational guidelines for minor works within the requirements. Those commonly include things like drilling on ice, water takings, even up to dock structures that may be required for landing aircraft. Those types of things were useful because we could scope our activities to stay in line with them. Then if we needed more significant activities, we could engage the Department of Fisheries and Oceans for letters of advice.

Those standard mitigations are still useful to us. Understanding them and ensuring they're available to all companies and all users would be very useful.

• (1710)

**Mr. Mel Arnold:** Thank you.

Mr. Schindler, I believe I heard you correctly. You said that in our proposed transfer away from fossil fuels we may be looking at 100 projects the size of Site C or Muskrat Falls. Is that correct?

**Dr. David Schindler:** That's what the math would say. They're proposing 100,000 to 130,000 megawatts of additional power

generation between now and 2050. That would be three to four large dams per year. I don't think it can happen. My recommendation would be that this plan needs to be revisited.

**Mr. Mel Arnold:** Thank you very much.

**The Vice-Chair (Mr. Robert Sopuck):** You have 10 seconds, so I think that will be it.

Ms. Jordan, you have five minutes.

**Mrs. Bernadette Jordan:** I would like to thank all the witnesses who have appeared here today for their testimony.

With regard to the study, this is only one way that the department is looking at the revisions to the Fisheries Act. I really appreciated hearing from the witnesses. We've at least listened to witnesses. We've heard from people and not brought in legislation in an omnibus bill.

Mr. Pickard and Ms. Williams, could you please walk me through, quickly if possible, how that self-assessment process works?

**Mr. Matthew Pickard:** Essentially a self-assessment is determining what activities are planned on site, utilizing general mitigation, which can come off the DFO website or off more standard mitigation that is used for similar projects, then looking at mitigation specific to your location, your activity, fish in the area, habitat. Following that, you would ensure that information is available should DFO request it. Ensure that the mitigation you've identified is in place. That's the process, essentially.

**Mrs. Bernadette Jordan:** DFO doesn't have to see that process before you go ahead with whatever project you're working on? Is it available if they ask for it?

**Mr. Matthew Pickard:** That's correct. It's available, should they ask for it, much in line with how the standard operational procedure statements were utilized previously.

**Mrs. Bernadette Jordan:** Has anyone from DFO ever asked you for a self-assessment? Have they ever asked to see any of your project self-assessments?

**Mr. Matthew Pickard:** For my specific projects, no, but within the exploration industry, yes, they have.

**Mrs. Bernadette Jordan:** Thank you.

My next questions are for Ms. Morten.

You said you've been with your organization now for quite some time. With regard to the changes that were made to the Fisheries Act in 2012, were you asked about the changes and how they would affect your habitat, your studies, your work? Did anyone from DFO contact you and tell you what they were considering changing in the Fisheries Act and ask how it will affect you?

**Ms. Zo Ann Morten:** I think it came as a surprise to most people.

**Mrs. Bernadette Jordan:** The other question I have is with regard to defining and definition. We've heard here today about serious harm to fish. How do you define that? How do you define what is serious harm? We did have one witness who appeared earlier who said it would be like his mother saying, "Don't hurt your sister." How do you define what that means? What do you see as serious harm to fish?

**Ms. Zo Ann Morten:** I think Dr. Kristi Miller brought up the best points on that one, about how hard that is to determine. Just having stress factors within our lives and within fisheries' lives causes them to go through a period of not being able to maybe transfer from a freshwater fish to a saltwater fish.

It's something such as Beaver Creek in Stanley Park. The water levels there go up to 27° in the summer time. It's lovely to swim in, but not so good for fish. It makes it so their internal bodies don't change over and they have a difficult time changing. Instead of keeping salts in their bodies, they expel salts. They go through quite a process in smoltification. It's those kinds of struggles that they go through because of stressors that happen. Even something as simple as water quality changes can cause stress that makes them unable to go to their next stage in life.

• (1715)

**The Vice-Chair (Mr. Robert Sopuck):** You have one minute.

**Mrs. Bernadette Jordan:** Thank you, Mr. Chair.

This question is for Ms. Gaertner from the First Nations Fisheries Council. You had said something about focusing on constitutional recommendations. Could you expand on that a little, please?

**The Vice-Chair (Mr. Robert Sopuck):** Sorry, you have 30 seconds.

**Mrs. Bernadette Jordan:** I don't think she can hear me, Mr. Chair.

**Ms. Brenda Gaertner:** I did hear you. I'm just trying to figure out my response.

I do want you to focus on constitutional obligations, and those obligations include obligations to first nations under section 35 protected fisheries rights. Under the Fisheries Act, the minister should be charged with exercising his discretion in a manner that meets the requirements of the Fisheries Act and meets the requirements of subsection 35(1) of our Constitution as well as the United Nations Declaration on the Rights of Indigenous Peoples. Those kinds of clarities under the Fisheries Act would be useful.

**The Vice-Chair (Mr. Robert Sopuck):** Thank you very much.

Now we'll go to Mr. Doherty for five minutes.

**Mr. Todd Doherty:** I want to apologize to our witnesses. Obviously, you are hearing some very partisan comments back and forth. You are also hearing some frustration from the opposition side where we feel that this process has been rushed, and we wanted, indeed, to have a very inclusive consultation and review from coast to coast in looking at our first nations, our traditional fisheries, as well as our commercial fisheries on both sides of our country. Again, I do want to apologize. I think you've heard from Mr.

Donnelly, Mr. Arnold, and earlier me, our frustration is that this is a rushed process.

Ms. Gaertner, I again apologize that we seem to have been cutting you off. To Mr. Donnelly's comment, there have been a number of first nations groups, as well as industry and commercial groups, that have not had the opportunity to appear before this committee. I do apologize for the partisanship that you are seeing and experiencing. I want to once again reaffirm that this is very important to all sides, and we are taking this very seriously. Unfortunately, we have very little time to do this, now that I have used two minutes of my time to make some soapbox comments.

I'll go back to our friends with the Prospectors and Developers Association. Our colleague across the way, in her leading questions, was trying to get you, in your testimony, I believe, Mr. Pickard, to say that somehow the changes in 2012 weakened the Fisheries Act and made it easier for industry to do business. I want to once again give you an opportunity because I think you were cut off. You started to say that it was much the same as the operational statements in the previous Fisheries Act. Can you elaborate on that, please?

**Mr. Matthew Pickard:** Yes, thank you.

Within the exploration and prospecting community, the mitigation used for any potential impact to fish or fish habitat, whether that be commercial, aboriginal, recreational, or otherwise, has remained very much the same. There isn't a variation. We still use the standards coming out of the previously utilized operational statements. We use mitigation that's appropriate—you've heard it before—for an individual area, whether it be mitigation proposed in B.C. versus Nunavut, which would be very different. Protection levels, in our opinion, remain the same. There is a different process involved within DFO, but protection is the same.

**Mr. Todd Doherty:** Thank you. That is consistent with what we're hearing from other proponents as well.

Whatever remaining time I have I'll turn over to Mr. Arnold.

Thank you.

• (1720)

**Mr. Mel Arnold:** Thank you.

I have one question. We probably don't have time to get to everyone, so perhaps I will direct it to Mr. Andrews, and if anyone else wants to chime in, please do.

What we're tasked with here is to develop one act that will cover this entire country from coast to coast to coast. This is a pretty daunting task when we take in the incredible variance of fisheries right across this country.

If you could, in probably 30 seconds, what is the one thing we should focus on in the review of this act?

**Mr. Raymond Andrews:** I would think that fish and their habitat, as we've all talked about, is probably key to it all simply because, without the proper protection for those two aspects of the fishery, there isn't any downstream activity pertaining to, as I said earlier, people, communities, and the jurisdictions in which those things are found. That's obviously a focus.

**Mr. Mel Arnold:** Do you think it's possible to cover the entire country in one act?

**Mr. Raymond Andrews:** It's been done, but it's difficult.

**Mr. Mel Arnold:** Thank you.

**The Vice-Chair (Mr. Robert Sopuck):** You have 20 seconds.

**Mr. Mel Arnold:** Would anyone else care to provide one key recommendation?

**Dr. David Schindler:** I would think the obvious answer to that is that this is what regulations are for. Regulations are commonly tailored to individual fisheries and areas. I don't see a problem with one overreaching act, if the regulations are tailored to the problems of specific regions, as the witness from Nunavut suggested.

**The Vice-Chair (Mr. Robert Sopuck):** Okay, thank you very much.

We have Mr. Finnigan for five minutes now.

**Mr. Pat Finnigan:** I thank the panel for appearing in front of us today on this important act.

I'd like to reiterate the statement that Ms. Gaertner said that there is never enough time to consult, especially with first nations. I have four first nations in my community. I did invite someone from the Mi'kmaq council to be here, but again, because of a shortage time....

I find it very disturbing to hear on the other side especially that there's not enough time to consult. The last time there was absolutely no consulting with anybody, including first nations, and the act was passed in an omnibus bill.

I'd like to ask you, Ms. Gaertner, about your reference to traditional knowledge. How would what's missing now be added to the act? How could we add traditional knowledge to the act to make sure that's incorporated in the new act?

**Ms. Brenda Gaertner:** I do agree it's an improvement, what we're doing this round, by the way, rather than no consultation, improved dialogue. We just need to get stronger.

In terms of traditional knowledge and how it could be directly referred to in the act, we see it in two places. We've made recommendations for clear standards and objectives for guiding decision-making. As one of those, we recommend the best available scientific and technical information, including traditional knowledge and indigenous laws, be included in the decision-making under the act. You'll see in the appendix to our submission the specific language that we're recommending to make it very clear that knowledge be included in decisions under the act.

The second place that I would recommend that you see this is in the direct agreements that we're suggesting the minister be

empowered to make by entering into agreements with aboriginal governments. You'll see that—

**Mr. Pat Finnigan:** Thank you, Ms. Gaertner.

I'll ask Michael to comment on that.

**Mr. Michael d'Eça:** Thank you.

I would suggest there are some statutes that have recognized traditional knowledge in decision-making and so on, that are already in place. I would recommend, for instance, the Species at Risk Act, or if you go up to Nunavut, in our Nunavut Wildlife Act. There are precedents out there. Of course, Canada is obliged to, in my view, through international treaties like the biodiversity treaty, to make that effort, to place that within the act, and it will be very helpful to decision-makers. At its best, science and traditional knowledge are very complementary areas that are actually very closely aligned, so it will be a really positive step forward.

• (1725)

**Mr. Pat Finnigan:** To follow up on that, Mr. d'Eça, what specific activities in the north do you feel might not be incorporated, either in the past act or in the last 25 years? What specific things that occur in the north are very different from the south coast to coast?

**Mr. Michael d'Eça:** I'm not sure if they're so different, but we have a land claims agreement that lays out an allocation system and a management system and the recognition of Inuit systems of wildlife management and so on, which we try our best to rely upon. But you have to have implementation legislation to make that all flow smoothly and for all parties to follow. That is one of our concerns with the Fisheries Act, as well as, which Mr. Andrews mentioned, the regulations, which give you much more specific details. We've worked as hard as we can for the last 16 years, without success, to try to get Nunavut fishery regulations in place, and so far, we've come up empty-handed.

We have a lot of those details that you're asking about in our land claims agreement. What we seek is an act that implements that, that is in line with the land claims agreement, which, of course, is protected by the Constitution, as I mentioned earlier. We very much seek that next level, which has been discussed a couple of times, the development of appropriate regulations flowing from the act.

**Mr. Pat Finnigan:** Thank you.

**The Vice-Chair (Mr. Robert Sopuck):** That's your time.

The last questioner is Mr. Donnelly, for three minutes.

**Mr. Fin Donnelly:** Again, thank you to all the witnesses.

In my home province of British Columbia, over the past year we've seen the federal government sign off on at least three major projects. Dr. Schindler, you mentioned those: the Site C dam proposal, the Pacific Northwest LNG, and just of late, the Kinder Morgan pipeline project. This is all under the 2012 Fisheries Act. Obviously, time is of the essence to make those changes.

While on one hand we want to consult and hear from many people, on the other hand, we're having major, major projects going through this country. We have energy east up next, and we still haven't made any changes to the Fisheries Act. We've heard some comments about that.

Ms. Gaertner, I would like to ask you for any final comments, or any departing thoughts or top priorities you want to leave with the committee, on changes to the Fisheries Act.

**Ms. Brenda Gaertner:** Given the importance of restoring the lost protections, the first nations coalition that came together to create the submission before you wasn't saying, "Don't do anything." They're saying, clearly, "Do something, and do it properly." The important thing is to restore the HADD provisions and introduce more protective measures in the modernizing of the act, such as a purpose section, and as I've mentioned, the aboriginal government section. I think those are ways in which we're really going to restrict discretion of the minister.

On the earlier question around gravel and why gravel slipped under the radar, one problem with the old act was the unstructured

discretion of the minister under the act. What we're proposing are very structured processes for the exercise of that discretion. I think it's going to become a much more operative way of implementing the act to protect fish.

First nations definitely want better and restored protections under the act.

**The Vice-Chair (Mr. Robert Sopuck):** You have 40 seconds.

**Mr. Fin Donnelly:** I'll just ask Dr. Schindler for his final thoughts.

**Dr. David Schindler:** I would like to agree with that last statement. I think one reason we've had a Fisheries Act that has not maintained a sustainable fishery is ministerial discretion, which sometimes has had terrible consequences. I've seen environmental impact statements where the proponent's own EIA, environmental impact assessment, said they would be doing major damage to fisheries, and DFO's assessment said that, but when it came down to the final approval, the minister wrote off on the thing and approved it. I don't see how that sort of thing can happen. A strong law is worthless if it's not going to be used.

• (1730)

**The Vice-Chair (Mr. Robert Sopuck):** On that, the time has expired. It's 5:30 p.m.

I want to thank all of our witnesses for their excellent testimony and the time that they devoted not only to preparing it, but also delivering it to us, and answering the questions from the committee.

This meeting is adjourned.

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