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Chair

Mr. Scott Simms

Standing Committee on Fisheries and Oceans

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• (1530)

[English]

The Chair (Mr. Scott Simms (Coast of Bays—Central—Notre Dame, Lib.)): I call the meeting to order.

Hello, everyone. Welcome back to the Standing Committee on Fisheries and Oceans for hearings today. We're going to have two hours of hearings, and we have our guests with us.

Of course, as we mentioned before, this is a review of changes to the Fisheries Act, pursuant to Standing Order 108(2) and the motion adopted by the committee on Monday, September 19, 2016. The committee resumes its study today to review changes made to the Fisheries Act.

I would like to welcome our witnesses. We have, from the Canadian Independent Fish Harvesters' Federation, someone who is no stranger to this committee, Monsieur Marc Allain. It's good to see you again, sir. Also from the Canadian Independent Fish Harvesters' Federation, we have Mr. Graeme Gawn. They are one group and will give a 10-minute presentation.

From Lake Ontario Waterkeeper, we have Mark Mattson, president, and also Krystyn Tully, vice-president. They are joining us by video conference.

From the Mining Association of Canada, we have Justyna Laurie-Lean, who is vice-president, environment and regulatory affairs. We also have Mark Ruthven, associate biologist, from Amec Foster Wheeler.

Also, from the World Wildlife Fund-Canada, we have Elizabeth Hendriks, who is vice-president, freshwater. We understand that Mr. David Miller, CEO, could not be with us today. He was originally scheduled. We wish him the best.

Ms. Hendriks, it's good to have you here on behalf of the World Wildlife Fund.

Normally we get a 10-minute presentation from each group. I will look to you to choose your spokesperson.

Mr. Allain, will you be speaking on behalf of the fish harvesters?

Mr. Marc Allain (Executive Secretary, Canadian Independent Fish Harvesters' Federation): Mr. Chair, I'll be sharing my time with Mr. Gawn.

The Chair: Very well, sir.

You may start with your 10-minute presentation.

Mr. Marc Allain: Thank you, Mr. Chair.

Thank you to the members of the committee for inviting our federation to testify on what is, to our members, a very important topic.

Our federation is a national organization of associations that represent men and women who fish for a living, own and operate their own boats, and live in fishing communities. In Atlantic Canada our owner-operator fleets generate roughly \$2 billion a year in landed value. That's \$2 billion going directly into the pockets of fishermen and spent in small fishing communities. This money drives fishing communities on our coasts, communities that often have no other resources or industries to support them other than tourism.

I would like to address the first part of your mandate, which is to review the scope and application of the Fisheries Act. My colleague Mr. Gawn will address our concerns about habitat protection.

As was suggested by the Minister of Fisheries and Oceans when he appeared before you recently, we would like you to take a holistic and sustainable development approach to the changes to the act that are needed to restore our lost protections. Forty years ago, when we created the Department of Fisheries and Oceans, we took a holistic and sustainable development approach to our fisheries as a country. Our first Minister of Fisheries and Oceans, the Honourable Roméo LeBlanc, understood that we have fisheries for a purpose, and that this purpose should be to generate social and economic benefits to the fishing communities and the people who fish.

Mr. LeBlanc protected fishermen and fishing communities. He understood that sustainability is a three-legged stool with ecological, social, and economic legs. Mr. LeBlanc did two very important things: he put limits on corporate concentration in the fishery, and he made sure that a fishing licence was a licence to fish, that the people who received fishing licences for our coastal fisheries had to be owner-operators. Mr. LeBlanc was a man of vision, and his vision worked, especially in Atlantic Canada. His policies freed fishermen from company control and lifted them out of poverty and into the middle class.

Since then, independent fishermen and fishing communities have lost ground. The department has moved away from a holistic, sustainable development approach to our fisheries and become narrowly focused on only one aspect of sustainability, the conservation and protection of fish.

The Fisheries Act has become a one-legged stool. It tells us a lot about conservation, but virtually nothing about our social and economic objectives for the fishery. You may be surprised to learn that the Fisheries Act does not have a statement of purpose. The purposes section, section 2, was repealed in 1985. We now have a section 2 that says “Purposes”, and the rest is blank.

This is something that needs to be fixed. Our Fisheries Act needs a clear statement of purpose. The Fisheries Act should say why we conserve and protect fish and fish habitat. We have some specific recommendations on how that might be done. I believe you received this, but I'd like to table the letter we sent to the Minister of Fisheries two weeks ago outlining the details of our proposal.

In summary, we believe it's critical that the “Purposes” section of the act clearly establish the authority of the minister to manage the fishery in pursuit of cultural, social, and economic objectives in addition to the conservation and protection of fish. The absence of such a clear statement in the act creates an ambiguity regarding the scope of the minister's authority. This is very, very important. The government can correct this by drawing on rulings of the Supreme Court of Canada and the Federal Court of Appeal, as the courts have been very clear and very consistent on the broad scope of the minister's authority to manage for social and economic objectives.

In our letter, you'll see that we propose changes in other sections of the act and the fisheries regulations to make the relevance and legitimacy of social and economic objectives for fisheries management very clear.

We would also like to see the owner-operator and fleet separation policies in regulatory form to give them the force of law. We've been asking for this for 20 years. We were promised it in 2004 by the Honourable Geoff Regan—you know where he is now—when he was Minister of Fisheries. When he announced a policy framework for Canada's Atlantic fisheries, it was in black and white: regulatory form for owner-operator and fleet separation. We're still waiting.

There is a broad consensus among fishermen, fishing communities, and the provinces that fishermen's independence needs to be protected. In 2012 the legislative assemblies of New Brunswick, Nova Scotia, P.E.I., and Quebec all adopted unanimous resolutions calling on the federal government to maintain the owner-operator and fleet separation policies. A few weeks later, the Federation of Canadian Municipalities adopted a similar emergency resolution.

I want to end with a comment on the urgency of the situation.

● (1535)

We have just come through a very long period of neglect of our social and economic objectives for the fishery and for fishing communities, and much damage has been done. In British Columbia, a federal fishing licence is no longer a licence to fish; it has become a licence to tax fishermen. The situation is bankrupting independent fishermen and destroying the fishing economy of B.C.'s coastal communities.

The problem is not restricted to B.C., despite the owner-operator and fleet separation policies. The same thing is happening in Quebec, the Maritimes, and Newfoundland.

There are ways to fix this, and we hope we will see our concerns and proposals reflected in the committee's report to Parliament.

Mr. Graeme Gawn (Member of the Board of Directors, Canadian Independent Fish Harvesters' Federation): Good afternoon, Mr. Chairman.

I'm Graeme Gawn, and I have been an inshore, multi-species fisherman in southwest Nova Scotia for over 40 years.

Mr. Chairman, members of the committee, no one can have more concern for the health of our marine resources and the sustainable management of them than those closest to them. Those resources depend on a pristine environment, as do our livelihoods as fishermen and the well-being of our fishing communities. For as long as I have been a fisherman, fishermen's organizations have been at the forefront in making public our very reasonable concerns about protection of fish habitat in the face of projects proposed by others for our waters.

Where I come from, we have the Clean Ocean Action Committee, a coalition of organizations made up of 9,000 fishermen, processors, fish workers, and associated trades. Our committee has the unanimous written support of all municipal councils in our region. This committee is raising broad-based community concerns about oil and gas exploration on the Scotian Shelf, concerns we've been raising since the “no rigs” campaign of the 1990s that led to the moratorium on exploration on Georges Bank.

When we go before the government agencies that are responsible for regulating this activity, such as the CNSOPB, we are met with blank stares. In this case, we don't seek to block such projects, but we do insist that there be some objective, independent oversight on the environmental impacts of these projects on our fisheries and our communities. We need assurances that reasonable environmental precautions, monitoring, and response plans that have been accepted by the affected communities are in place first, as well as a guarantee that our fisheries are protected from any collateral damage caused by these projects.

What we are asking for is already part of the government's program. This government's own policy statement on environmental assessments states, “We will make environmental assessments credible again.” It further declares:

Canadians must be able to trust that government will engage in appropriate regulatory oversight, including credible environmental assessments, and that it will respect the rights of those most affected, such as Indigenous communities. While governments grant permits for resource development, only communities can grant permission.

With the environmental and social protections that we have lost, we have also lost our trust in government. Restoring lost protection must also restore our trust that government is working to protect us, our communities, our environment, and the economy it supports. For us, restoration of lost protection means restoring section 35 as a trigger under the Canadian Environmental Assessment Act. Without the trigger of section 35, fishing communities, coastal fishermen, and the ocean floor no longer have full protection from increasing uses of the coastal marine environment by other industries. Activities such as dredging, pipelines and cables, aquaculture operations, and renewable energy operations all impact fish habitat and must be subjected to very careful environmental impact assessments before being approved.

In the case of oil and gas exploration on the Scotian Shelf, some of our most important marine conservation areas find themselves with drilling rigs on their very borders, at the same time as we fishermen are being told to protect more areas to meet the government's commitments for MPAs. This is puzzling to us. We see several alternative energy projects operating, experimenting, and being proposed, often in sensitive areas, including wind and tidal power, and expanding ocean aquaculture plans in areas that we think should be protected. These projects, as innovative as they may be, must not be allowed to threaten or risk harming the marine environment, which sustains tens of thousands of jobs and a renewable resource that injects billions of dollars into the economies of hundreds of coastal communities and indeed that of Canada. Just for the record, we independent inshore fishermen consider ourselves part of that ecosystem too.

The Fisheries Act should be Canada's strongest environmental law and a key tool for regulators responsible for protecting the environment. In terms of lost protections, we would like to see a restoration of the wording of the act concerning the "harmful alteration, disruption and destruction of fish habitat," as it served us well in the past.

We are also asking that under the scope of restoring lost protections, you fully consider changes to the Aquaculture Activities Regulations. For fishermen, the use of pesticides in open-net salmon farms poses a direct and significant threat to our coastal lobster fisheries, the most valuable fishery in Canada. The pesticides that the aquaculture industry uses to kill sea lice don't discriminate. They kill crustaceans. They kill lobsters too.

In the past, Environment Canada successfully prosecuted the aquaculture industry for illegal pesticide use. The changes brought about by the Aquaculture Activities Regulations diminish the prospects of these kinds of protections in the future. We want to see those restored as well.

• (1540)

I want to close with comments about the broad scope of the protections we've lost and need restored.

In the last two decades, our coastal communities and the independent fishermen who live in them have been facing an assault by corporate and foreign interests seeking to gain control over our independent owner-operator fisheries. Corporate interests have influenced officials to bend, alter, and ignore the critical fleet separation and owner-operator policies to allow them to gain control

over our licences, effectively siphoning the earnings of our inshore fisheries from those coastal communities and into corporate treasuries.

In Nova Scotia, where I fish, thousands of inshore seasonal owner-operators have effectively been disenfranchised from their traditional fisheries in the drive to privatize, as the government looked the other way. This is not good public policy. It is wrong that this is allowed, and the DFO seems unwilling, or is unable, to deal with the problem.

We look forward to your report and recommendations to Parliament on how to restore our lost protections and our confidence in government.

Thank you, Mr. Chairman.

• (1545)

The Chair: Thank you, Mr. Gawn.

We're now going to go to video conference. We have Mr. Mattson and Ms. Tully.

You have 10 minutes. Who will be doing the presentation?

Mr. Mark Mattson (President, Lake Ontario Waterkeeper): Thank you, Chairman Simms. I'm Mark Mattson, and I'll be starting. Again, I will split my time with Ms. Tully.

Good afternoon, and sorry we couldn't be there with you today, but this seems to work fairly conveniently.

People in Canada are more likely than any other nation to say that they value water and nature, yet Canada ranks lower than most developed nations when it comes to key environmental protections.

It wasn't always this way. Canada's environmental descent is a relatively new phenomenon, prompted by a decade of deregulation and the failure of governments at all levels and of all political stripes to set policy goals that reflect people's need and desire for swimmable, drinkable, fishable water.

The Government of Canada's review of the Fisheries Act, the Navigation Protection Act, the Canadian Environmental Assessment Act, and the National Energy Board is a chance to put Canada on the right side of history. It's time to realign federal law and policy with the values shared by people all across this country so that communities can prosper.

I'm Mark Mattson. I'm here with Krystyn Tully. Our organization is Lake Ontario Waterkeeper/Swim Drink Fish Canada. In total, we represent a million people who care about swimmable, drinkable, fishable water. We have participated in and commented on every major change to the Fisheries Act in the last decade, including the omnibus hearings, brief as they were, in 2012.

Prior to that, I was a lawyer and investigated or prosecuted pollution offences under the Fisheries Act privately and with governments in Kingston, Hamilton, Deloro, Montreal, Port Granby, Moncton, Toronto, Happy Valley-Goose Bay, Sarnia, and Vancouver.

The Fisheries Act was once the heart of our work at Lake Ontario Waterkeeper. Because we gave meaning and force to environmental law, an estimated \$2 billion is being spent on restoration today in many communities across Canada.

When the law was changed in 2012, proponents argued there would be no impact on fish or fish habitat. We disputed those claims at the time, as did most experts. It is now clear that the changes do impact fish and fish habitat. What was once illegal is now legal. What was once prohibited is now permitted. It is our position that the existing act is so deeply flawed that there is essentially no federal protection for fish, habitat, or water in Canada.

Our presentation today focuses on the nine things a new Fisheries Act must do if Canadian communities are to thrive.

Ms. Krystyn Tully (Vice-President, Lake Ontario Waterkeeper): There are nine things the new Fisheries Act must do to make Canada healthy and prosperous.

The first is to protect fish by protecting ecosystems. Some of the most devastating changes to the Fisheries Act were the cuts to habitat protection provisions previously found in section 35. The changes were not rooted in science, traditional knowledge, or even common sense. In an ecosystem, all things are connected. Fish cannot be protected if their environment is not protected.

Legally, the shift is also problematic. Traditionally, the Fisheries Act placed the burden of proof where it belongs, on the proponent. The proponent had to prove their project would not harm fish or fish habitat. Today that burden rests on government and residents. Ultimately, the changes made to fish habitat provisions in 2012 will ensure that the Fisheries Act fails to protect any fish in Canada. Those changes must be reversed.

Second, we must simplify the rules against pollution. The pollution prevention provisions in the Fisheries Act once made it Canada's most important and effective environmental protection law. Subsection 36(3) once protected water from pollution by prohibiting the deposit of deleterious substances into water.

Thanks to small changes and new regulation-making powers, the Fisheries Act now allows government to do by regulation what parliamentarians didn't dare do: eliminate federal protections for water quality. We see the impacts already, from sewage to aquaculture.

This shift is problematic because the Fisheries Act was designed to protect water quality without requiring an itemized list of what substances in what amounts under what conditions could be

considered deleterious. This is the only efficient way to ensure the Fisheries Act remains relevant over time and protects all communities equally.

Microplastics, triclosan, certain pesticides, and fire retardants are all examples of substances we know to be deleterious, but they were invented after the Fisheries Act was written. That was the beauty of the previous act. The traditional deleterious substance test must be restored to the heart of all pollution prevention provisions.

Third, the Fisheries Act needs to embrace the precautionary principle. When there is uncertainty, decisions should favour the protection of fish and fish habitat. Fish are part of interconnected ecosystems we can only partially understand. The consequences of one change or one project cannot always be predicted. Emerging issues, such as the invention of new contaminants, cumulative effects of multiple projects in one area, climate change, shifting land and water uses, and population growth, make it virtually impossible to predict impacts with any certainty. For that reason, the principle of precautionary decision-making should be part of the Fisheries Act.

The fourth thing the new Fisheries Act must do is ensure Fisheries and Oceans Canada and the federal government remain responsible and accountable. The Fisheries Act must affirm the federal government's authority for protecting fish and fish habitat equally across Canada. Section 4.1 of the act, for example, doesn't belong in a federal Fisheries Act. Provinces should not be empowered to encroach upon federal jurisdiction. Within the federal government, Fisheries and Oceans should also not cede responsibility to other departments and agencies.

Fifth, protect the natural resource, not industries. The Fisheries Act had one purpose: protect fish and fish habitat in Canada. Changes have been made to the legislation that shift its purpose away from protections and towards permitting pollution and habitat destruction, especially by favoured industries. You can see this in the exemptions now being given to mining, sewage, and nuclear projects.

Six, eliminate self-regulation. Self-regulation is not appropriate to ensure compliance with a quasi-criminal statute. The federal government must be responsible and accountable, because self-regulation cannot protect fish and fish habitat. It can't prevent cumulative impacts, also known as death by a thousand cuts. It doesn't allow for public participation or take advantage of local knowledge. It will not catch the truly bad actors who are doing the most harm.

Seven, support a strong environmental assessment process. We recognize that there is a federal panel reviewing the EA processes and we support efforts to improve that legislation. The Fisheries Act should be part of a federal government culture of environmentally responsible decision-making, transparency, and public participation.

Eight, empower the civil service to enforce protections. There must be sufficient funding and staffing for enforcement activities. Enforcement officers should report to an independent supervisor, such as the Attorney General, to avoid the influences of regulatory capture.

For the most part, the Fisheries Act once did all of these eight things. Our ninth and final recommendation is to add something new. It is that the Fisheries Act should promote the development of scientific and traditional knowledge.

• (1550)

The way forward isn't just to patch the Fisheries Act and hope for the best. The Government of Canada's goal shouldn't be to prevent the deaths of a few more fish or to restore a tiny fraction of the tiny fraction of habitat that we have left. The goal should be to become a world leader in the protection of fish and fish habitat. The way forward is to develop a knowledge base that can inform not only Canadian decisions, but decision-making around the world.

We should be investing in scientific study, commercial research, and traditional knowledge to become a world leader. Knowledge—not oil, trees, rocks, or water—is the greatest gift that we can offer the world. Committing to sustainability and informed decision-making will drive innovation, and that is the foundation for Canada's prosperity.

Thank you.

Mr. Mark Mattson: Those are our submissions, Chairman Simms. We'll wait around for questions at the end of the other submissions.

The Chair: We thank you for that, and we'll address that in just a few moments. We have two more presenters.

Right now we're going to the Mining Association of Canada. We have Ms. Laurie-Lean, as well as Mr. Ruthven.

Will you be sharing your time?

Ms. Justyna Laurie-Lean (Vice-President, Environment and Regulatory Affairs, Mining Association of Canada): No, I'll make the remarks. Mark is here in case you have technical questions.

The Chair: Ah, yes. I have two of those.

Ms. Laurie-Lean, please proceed for 10 minutes.

Ms. Justyna Laurie-Lean: Thank you for this opportunity to present the Mining Association of Canada's views on the Fisheries Act.

The Mining Association of Canada, MAC, is the national organization representing the Canadian mining industry, comprising companies engaged in mineral exploration, mining, smelting, refining, and semi-fabrication. Our members account for the majority of Canada's production of base and precious metals, uranium, diamonds, metallurgical coal, and mined oil sands.

I am accompanied today by Mark Ruthven, associate biologist and assistant group head of Amec Foster Wheeler. Mr. Ruthven is a member of the MAC Fisheries Act task force and has been deeply involved in our work with Fisheries and Oceans Canada officials to understand the 2012 amendments to the act. He has direct experience with the section 35 review and authorization process.

MAC had not advocated for legislative change to the act, fearing the uncertainty and confusion that would be caused by departure from decades of jurisprudence and established practice. However, once the act was amended, we worked with DFO officials to understand how to adjust and continue to comply with the act.

In the mining industry's experience, the 2012 changes to the Fisheries Act have in practice broadened the circumstances in which the section 35 prohibitions apply and increased the circumstances in which an authorization and offsets are required.

While noting the increased burden on mining project proponents imposed by the amendments, we are not requesting that they be reversed. In our members' experience, the amendments have encouraged greater attention to sound science and the purposes of the act.

However, our experience underscores just how critical planning for, and executing transition to, amended legislation is to avoiding confusion and imposing unfair costs on companies. In the case of the 2012 amendments, there were significant challenges with the implementation and transition, and the department was not resourced sufficiently to assist project proponents. Training was not provided until well after the provisions came into force. This resulted in unacceptable delays and costs to some projects caught in the transition.

Should your committee recommend any further amendments to the act, we urge you to accompany them with recommendations for appropriate resourcing, training, and planning for future transitions, including having an implementation plan fully in place prior to the coming into force of any amendments.

Mining projects observed several problems in managing the transition to the amended act when all the amendments came into force in late 2013. DFO did not provide timely or adequate explanatory guidance and training that would have helped proponents and DFO regional staff to interpret and implement the amended provisions. That explanatory guidance, such as how to identify commercial, aboriginal, or recreational fisheries and fish that support such fisheries, or how to assess fisheries productivity, still falls short of what is necessary for clear and consistent national application.

As well, DFO reduced the number of its regional offices and staff at the same time as the amended provisions came into force, further reducing the assistance available to project proponents.

Finally, DFO did not account for the impact of the amendments on projects that had already substantially completed the studies and consultations recommended by DFO staff to prepare an application for authorization. Abruptly and without strategic use of a grandfather policy, proponents were advised that their application plans had to be modified to include more water bodies and to incorporate productivity and other new policy concepts without guidance on how those new concepts were to be operationalized.

Despite the initial challenges observed by our members during the implementation of the amendments, some members report that the application of the revised act has begun to evolve into a consistent and predictable process. We believe that the amendments have encouraged improvements to the scientific rigour of the fisheries protection measures of the act, specifically with the administration of section 35 reviews and authorizations.

The increased enforcement provisions and regulations governing applications for authorizations have resulted in an applied movement towards better-defined and scientifically defensible productivity metrics as well as project success criteria and clear and defensible monitoring commitments. The integration of contingency measures and defined thresholds directly linked to monitoring provides additional controls, ensuring that impacts to Canadian fisheries are accurately identified, appropriately monitored, and successfully accounted for by offsetting measures.

• (1555)

In light of MAC members' experience with the Fisheries Act, MAC recommends that the committee urge the government to improve and increase the department's compliance promotion capacity, including increased guidance and training.

Should the committee choose to recommend amendments, they must be accompanied by transition provisions, and for any recommended amendments, the committee should also urge the government to have in place, before coming into force, adequate implementation and transition plans, departmental capacity, and compliance promotion.

Thank you.

• (1600)

The Chair: Thank you very much.

Finally, we'll go to Ms. Hendriks from the World Wildlife Fund-Canada for 10 minutes.

Ms. Elizabeth Hendriks (Vice-President, Freshwater, World Wildlife Fund-Canada): Thank you, Mr. Chair.

Thank you, committee, for giving us the opportunity to contribute to your study. My name is Elizabeth Hendriks, and I'm the VP of freshwater for WWF-Canada.

For half a century, WWF-Canada has worked to protect nature. Our global mission is to stop degradation of the planet's natural environment and to build a future in which humans live in harmony with nature. We create solutions to the environmental challenges that matter most for Canadians. We work in places that are unique and ecologically important so that nature, wildlife, and people thrive together.

Our recent Living Planet Report revealed that worldwide, freshwater wildlife populations have declined 81% over the past four decades. That's more than twice the population decline for land-based or ocean wildlife. Habitat loss is the number one threat to that decline.

In Canada, WWF's watershed reports also show us that habitat loss is one of the greatest threats to our watersheds. Eight of 19 watersheds in Canada have a high to very high threat of habitat loss, and six of 19 watersheds have moderate threat of habitat loss.

We're here today because we're deeply concerned about the health of Canada's species, its freshwater and marine ecosystems, and its fisheries, and about the communities across the country that depend on them.

The Fisheries Act is a critical piece of legislation, and I commend you on the important work you're doing as a committee to lead Canada through this review.

As you heard from the minister when he testified two weeks ago, without fish habitat, there will be no fisheries, and we know that healthy habitat and sustainable fisheries are needed to ensure community prosperity for so many Canadians.

I also want to take a moment to express our support for the West Coast Environmental Law submission on the review of the Fisheries Act. We understand that their excellent and comprehensive briefing was submitted to the committee last week and was mailed to each member.

I would like to deliver the remainder of our testimony today in two parts. The first is on restoring lost habitat, and the second is on the opportunity to modernize the act to ensure our environmental legislation is fit for addressing the challenges of the 21st century.

First I will speak to restoring lost habitat protection provisions.

Restoration of the habitat protection provisions is essential if Canada intends to take conservation of biodiversity seriously. Since coming into force in 1868, the Fisheries Act has been devoid of specific principles relating to biodiversity and sustainability. Prior to the 2012-2013 amendments, however, the act did offer legal protections for our oceans, fresh water, and habitat with sections 35 and 36 working together to prevent the destruction and pollution of Canada's bodies of water.

The Fisheries Act was Canada's strongest environmental law mainly because it prohibited HADD, the harmful alteration, disruption, or destruction of fish habitat. We need to reinstate HADD and reverse the narrowing from protecting fish habitat to just protecting fisheries.

Protections for all native fish and not just commercially viable fish are required to ensure that biodiversity is protected. An ecosystem approach to management requires that this—and not just fish that support an established fishery—be protected.

The 2012 repeal of section 32, the prohibition against the destruction of fish by means other than fishing, created a gap in the protection of fish. Along with the return to HADD, it is also necessary to restore section 32 as it appeared in the Fisheries Act before the passing of Bill C-38. When section 32 disappeared, so did protections from industrial activities. To modernize this act, West Coast Environmental Law has recommended adding prohibitions against sub-lethal harm, which we support.

WWF-Canada understands that mitigating cumulative effects is vital to ensuring the health of fish habitat, and this is why we contributed to a cumulative effects assessment in B.C. as part of the marine planning partnership for the north Pacific coast. Prior to the 2012-2013 amendments, the Fisheries Act worked in concert with Canada's environmental assessment legislation to ensure oversight for harmful activities resulting from industrial activity. This level of scrutiny must again be recaptured through strengthening of both the Fisheries Act and the Canadian Environmental Assessment Act to ensure that the cumulative effects of development and activities are understood, avoided, or, where absolutely necessary, mitigated.

Now I will speak about the opportunity to modernize the act. We have three core recommendations.

First, unlike other important environmental acts such as the Canadian Environmental Protection Act, the Fisheries Act has no preamble.

- (1605)

By including a preamble, we can ensure fundamental guiding principles to the act are included, such as, but not limited to, evidence-based decision-making, an ecosystem approach, the precautionary principle, transparency and accountability, co-management, and incorporation of traditional knowledge.

These principles would not only strengthen the act but would bring it into line with progressive fisheries legislation of other countries, such as the U.S. Magnuson-Stevens act and Canada's other environmental legislation, such as the Oceans Act, as well as DFO's own sustainable fisheries framework and Canada's international obligations under the UN fish stocks agreement and the Convention on Biological Diversity.

Additionally, these principles are critical to the successful rebuilding of Canada's fisheries, including some of our most iconic fisheries, such as the northern cod fishery.

The second recommendation is that these guiding principles need reinforcement by prescriptive provisions for fisheries management objectives, principles, and procedures and by safeguards to remove the absolute discretionary power of the minister of fisheries and oceans in fisheries management decision-making. For example, including quantitative definitions for overfishing and recovery, mandating recovery plans, and rebuilding timelines for overfished and depleted stocks would go a long way toward increasing political accountability and transparency.

Finally, a modernized Fisheries Act needs to ensure legal obligations for monitoring, open data, and transparency. We would like to see updating of the monitoring and reporting requirements of the act.

As the committee heard in Professor Olszynski's testimony, fish habitat monitoring has been inadequate for a number of years. In particular, we would like to see the monitoring and reporting requirements of the act updated to include provisions for citizen monitoring and enforcement. Adequate resourcing must support these provisions so that a range of communities, indigenous groups, and coastal communities can actively participate in monitoring.

Increased powers for monitoring will also help with understanding cumulative effects. For example, freshwater monitoring to demonstrate the state of the watershed reveals how effectively fish and fish habitat are being protected and can identify where improvements are needed. A framework that effectively communicates results in a report back to Canadians is vital for transparency.

Of course, a baseline understanding is required, and currently that does not exist. Here I would direct the committee to WWF-Canada's watershed health assessments, which assess at a national scale the health of watersheds—and as proxy, fish habitat—to Canada's waters. It is through this tool that governments can regularly report back to Canadians on results and progress of fish and fish habitat protection. At the very least, this framework is a tool to prioritize, but it also provides DFO with a tool as a solution towards better monitoring, communication, and transparency.

In summary, the Fisheries Act is a critical piece of legislation.

First, WWF-Canada recommends the return of HADD; protections for all native fish, and not just commercially viable fish; and reinstating section 32, the prohibition against the destruction of fish by means other than fishing.

Second are the WWF recommendations for modern safeguards to ensure that the Fisheries Act is brought into the 21st century and is an effective cornerstone in Canada's environmental legislation by including sustainable principles, and specifically an ecosystem approach; the precautionary principle; community-based management to guide fisheries management decision-making and cumulative effects; prescriptive guidance on fish management objectives, principles, and procedures; and better monitoring, open data, and transparency.

These are just our top-priority recommendations for you. We recognize that time is limited, so we will be following up with a written brief for your consideration as well.

At this point, we're ready for questions.

The Chair: Thank you, Ms. Hendriks. That's exactly where we're going: right to the questions.

As we do this, I will point out to our witnesses that we go in several rounds, each taking a turn, with seven minutes of questions followed by five minutes, and then back to seven again. It looks as if we will have time at the end for a few quick questions.

To our witnesses, if you want to weigh in on a certain topic, I would suggest that you raise your hand, but try to get the attention of the person asking the question, not me, because when I give seven minutes to someone, that seven minutes is their own. If you wish to weigh in on a subject—and this includes those watching through video conferencing—please raise your hand to our questioners.

I will ask our questioners, my colleagues, to try to mention who your question is for. Even if it's a general question to everybody, please choose someone. It's difficult for people to take part by video conference when you just open it up in general.

That said, we're going to go to the government side with Mr. Hardie, please, for seven minutes.

•(1610)

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

Thank you, everybody, for being here.

The first question will be to the independent fishers.

Can you see a situation where supporting the fishing economy, as you describe it, and promoting habitat protection are linked?

Mr. Marc Allain: Absolutely.

Mr. Ken Hardie: Okay. Can we have some details?

Mr. Marc Allain: Absolutely. They're intricately linked, intimately linked. I believe my colleague Mr. Gawn addressed this. If we don't have a healthy ecosystem, we don't have healthy fisheries. We are extremely sensitive to that.

We have a huge amount of knowledge about the ecosystem, details that actually aren't incorporated into our management system. There are distinct spawning areas, for instance, for different species—herring, groundfish, lobster—all these areas that can only come from knowledge on the ground that's accumulated over, in some cases, centuries. When we're talking about first nations people, it's from time immemorial. In Atlantic Canada, we have 400 or 500

years of occupying the territory and we've accumulated that traditional knowledge.

I can give you some examples. In the Miramichi, when the town was talking about a sewage outlet, they were going to put it into a spawning area for striped bass. They didn't know that. The fishermen knew that.

There are all kinds of examples. We need these environmental protections. We need a healthy coastal economy based on fisheries. That's what our coastal economy is based on, fisheries.

Mr. Ken Hardie: Being from the west coast, of course, I'm thinking of all the small fishing villages up and down the coast. We get the suggestion from folks like you that the corporatization, if you want to use that term, of the fishing industry there has had a largely negative impact on the small community fishing fleets. Again, and maybe this is a very softball question to you, but can you see a link between that and perhaps the inadequate monitoring of habitat?

Mr. Graeme Gawn: Well, certainly we see a link between outside corporate fleets, if you want to put it that way, coming in and fishing in waters that they don't have that local knowledge on. They bring in their fleets from outside. That's what I referred to in my comments about the independent owner-operators being closely tied to the ecosystem. These are fishermen who have inherited their licences from their great-great-grandfathers, going back as long as non-native people have lived on our shores. Nobody who is operating a corporate boat based out of Vancouver, for example, or Yarmouth or Halifax, coming into our waters, is going to have that kind of knowledge.

That is the link: the people who have been fishing those waters for generations. They learned about these spawning grounds from their fathers. We have a great deal of independent science on identifying these areas and recording this traditional knowledge that the fishermen have.

Mr. Ken Hardie: Have you noticed or have there been any specific examples of a lack of localized years in the water resulting in habitat degradation?

Mr. Graeme Gawn: I can't point to any specific examples of that, but we do see non-traditional fishing practices by these corporate fleets. The effect of doubling the effort on fish stocks is one of those things. The traditional independent owner-operator fishermen fished their gear once a day and went home for supper. These corporate fleets come in and fish around the clock. They double-stack licences, exponentially increasing the impact on those stocks that we're trying to manage, and that we have managed sustainably for 130 years in the case of lobster fishing. The evidence of how well it's been managed is right there in the catches that are continuing to rise at record-high levels ever since people started selling lobsters that they caught.

•(1615)

Mr. Ken Hardie: Ms. Hendriks, I have a question for you.

You mentioned that modernizing the Fisheries Act could maybe rely a bit more on traditional knowledge, citizen science, etc. In fact, the Waterkeepers mentioned that same point. With respect to what we've just heard from the independent fishers, does that appear at first blush to be an avenue where we could actually strengthen that aspect of management?

Ms. Elizabeth Hendriks: Definitely. As a nation, we can no longer afford to expect the federal government to do everything across the country. I think communities and first nations have been eager to play a role in their territories, to monitor and take responsibility for their land. That support and promotion of local knowledge can only be a benefit.

Mr. Ken Hardie: My next question is for our witnesses from Lake Ontario Waterkeeper.

You've seen the changes come and the implementation take place. Do you have any knowledge of anybody who's done anything, currently, that would have drawn sanctions under the old legislation?

Mr. Mark Mattson: That's a good question, and it's one that I get, as I'm sure you do, often.

Something we worked on in Moncton, the causeway back in 1968-1969, is one of the great examples we have of local knowledge and discussion about fish and fish habitat not being taken into consideration in a project. When they went ahead with the causeway, they didn't apply for a Fisheries Act permit to destroy fish habitat or for a Navigable Waters Protection Act permit. They didn't get any of the information from the local community about fisheries. It was about a decade later when the salmon fishery disappeared from the Petitcodiac River.

When we put together our case to support a new assessment of the project to see if they needed free flow in Moncton, I went out and collected evidence from all the old fishermen, who were now in their seventies, because there wasn't a consolidated or aggregated area where this evidence was collected, evidence such as who caught salmon and how often. We collected that as affidavits. That was a great example of a project that for 30 to 40 years really did incredible damage to the 17 rivers upstream and to all the species of fish in that river, because it exempted itself from the type of environmental law that the Fisheries Act now requires—well, it did require it until 2012, and now it doesn't again.

I see how prosperous that community has become since it opened up the causeway gates. When I look to the future, I think now of what's possible under the new Fisheries Act. If you put up “no fishing” signs in your community, on your river, in your bay, in your harbour, the Fisheries Act no longer applies, and the habitat protection provisions no longer apply, because there isn't a significant commercial, recreational, or indigenous fishery.

What sort of knowledge are we excluding? What sort of information are we missing out on? What sort of traditional ecological knowledge are we just ignoring? It's hard for environmental groups like ours to prove the damage, but we know from experience that it's happening. I think it's going to be a real onus on all our groups to make sure that we truly do a better job of documenting those changes and bringing them forward to government. Unless we're able to carry that burden forward with the

government, it's going to be very hard to answer questions about what we are losing and what damage is being caused.

The Chair: Thank you, Mr. Mattson. I'm sorry that I have to leave it at that, but we have to go to our next questioner.

We're going to go to the opposition, to Mr. Sopuck.

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

I want to thank Mr. Mattson for pointing out how inadequate the old Fisheries Act was when he used an example from 35 years ago.

A number of the presenters talked about the lack of any habitat protection. On the contrary, under the new Fisheries Act, serious harm to fish is defined as “the death of fish or any permanent alteration to, or destruction of, fish habitat”, with fish habitat defined as spawning grounds and areas, etc., so this idea that the new Fisheries Act has no habitat protection is completely without foundation.

I should also point out that the Blake law firm, in an analysis of the new Fisheries Act, made the point that:

...the federal government's constitutional authority to regulate impacts to fish and fish habitat flow from its powers under the Constitution Act, 1867 over “coastal and inland fisheries”. Canadian courts have confirmed, more than once, that these powers are limited to fisheries, as a resource, and do not mean the federal government has the power to regulate over all fish or fish habitat in Canada. In this respect, the new prohibitions are, to some extent, a codification of that which already exists at law.

I was very interested in the testimony of the Canadian Independent Fish Harvesters' Federation. Of all the presenters, they took the people-first approach, which I think is the right approach. Our new Fisheries Act focuses on fish productivity. My assumption, Mr. Allain, is that your members and your communities are intensely interested in fish productivity.

• (1620)

Mr. Marc Allain: In the productivity of our fisheries, yes, they are very interested.

For example, in 2009, our members entered into a strategic partnership with 15 Canadian universities that were looking at the health and productivity of our ecosystem. This was done under a very interesting program that was put in place by the last government. Research monies were made available to academics provided that they could come up with some collaborative research projects with their industry partners. As the owner-operator fishery, we were very successful in engaging in a whole pile of research projects with universities that were looking at the question of productivity, because it is very important. A healthy ecosystem is critical to fisheries' productivity.

Mr. Robert Sopuck: That is why we had as a policy, under our government, the replacement of any lost productivity. You can do that in many ways through various fish management projects.

I'd like to now go to the Lake Ontario Waterkeeper to follow up on a question from my colleague, Mr. Hardie. Can you give me a specific example of any serious harm to fish or fish habitat that happened as a result of the new Fisheries Act?

I'm not interested in answers related to consultations or studies or how many scientists. I want a specific example of a specific harm to an actual fishery directly related to the changes we made to the Fisheries Act.

Mr. Mark Mattson: Sure. Just to be clear, Mr. Vice-Chair, the Moncton stuff occurred before the Fisheries Act, so it was afterwards, when the Fisheries Act was in place, that the meaning and force was given to it.

It is about people.

One of the great examples is the nuclear power plants. They don't have closed-cycle cooling. They have open-cycle cooling, so they kill fish 24 hours a day, seven days a week, and there was no permit given by DFO. As a result of the changes to the Fisheries Act, the CNSC is now able to give that permit, and gave such a permit last year, turning what was illegal—and something that was pushing the industry to move to closed-cycle cooling, as all other nuclear power plants in North America and around the world have been moving to over the last three decades—into something that was now legal.

Our group was at those hearings. We argued against it. We gave that example before the changes were made to the Fisheries Act, and now what was illegal at all three major plants is now legal.

That is one great example. I can give you more.

Mr. Robert Sopuck: Has a fishery been destroyed because of that? Can you name it?

Mr. Mark Mattson: Millions and millions and millions of fish are killed every year by those plants, and yes, the indigenous native fishery is fighting it up in Bruce County and here on Lake Ontario, where the fishery is destroyed already. For a couple of families down in Prince Edward County, there isn't a fishery left that is really able to fight from a commercial point of view, so we, from a recreational point of view—because there is still very strong recreational fishing in Lake Ontario—are standing up for those fishermen and those people and trying to protect those fish.

Mr. Robert Sopuck: It's interesting that there's a strong recreational fishery in spite of the example you used.

I'd like to turn to Ms. Hendriks now.

Mr. Mark Mattson: Why is that interesting?

Mr. Robert Sopuck: Excuse me; I'm the questioner here.

Mr. Mark Mattson: I was just wondering why that was interesting.

Mr. Robert Sopuck: I was actually appalled, Ms. Hendriks, at your testimony when you so blithely dismissed fisheries. You called it “just fisheries” as if the people who fish or depend on those fisheries really don't count.

I should make a point. In your testimony, you were mistaken when you said this new Fisheries Act only applies to commercial fishing. It was specifically directed to aboriginal, recreational and commercial fisheries, so I would recommend you do your research.

One thing I was quite shocked about in your testimony was on page 3, where you said you want to have “safeguards to remove the absolute discretionary power of the Minister of Fisheries and Oceans in fisheries management decision-making.” Are you saying that fisheries management decisions should be decided by unelected officials, and fishermen and fishing communities should have no access or recourse to a decision that a fisheries agency may make?

I would suspect that the fishing communities, especially in Mr. McDonald's constituency, would be very concerned if they had no recourse to deal with a decision that a fisheries agency had made and had no elected official to finally deal with. Are you really saying that the Minister of Fisheries and Oceans should be removed from fisheries management decision-making? That's what your testimony says. It's quite clear on page 3.

• (1625)

Ms. Elizabeth Hendriks: Well, now that you've put the most negative light on my testimony—

Mr. Robert Sopuck: I just quoted to you your words.

Ms. Elizabeth Hendriks: —I would suggest having principles that guide decision-making and take it out of political power. I'm not saying at all that we're removing the empowerment of communities to make comment. I'm saying it shouldn't be by political will that decisions are made.

Mr. Robert Sopuck: Again, to use an example, there's a shrimp quota allocation issue off the coast of Newfoundland right now. What you're saying is that the fisheries minister should not be allowed to adjudicate who gets the shrimp or who gets the cod. I find that absolutely astonishing.

To me, the decision-making principle—

Ms. Elizabeth Hendriks: I didn't make any comment on—

Mr. Robert Sopuck: —that elected officials have the final say is absolutely sacred.

How much time do I have, Mr. Chair?

The Chair: You have 10 seconds.

Mr. Robert Sopuck: For the Mining Association, in your testimony you made the point that the new Fisheries Act has strengthened provisions that “have in practice broadened the circumstances in which the section 35 prohibitions apply”, so what you're saying is that the changes we made to the Fisheries Act actually strengthened the provisions of the Fisheries Act to protect habitat.

Do I read that correctly?

Ms. Justyna Laurie-Lean: That was the practice of our members' mining projects. In practice, they were asked to account for more water bodies.

The Chair: Thank you, Mr. Sopuck.

Now we go to Mr. Donnelly for seven minutes, please.

Mr. Fin Donnelly (Port Moody—Coquitlam, NDP): Thank you, Mr. Chair. Thank you to all our witnesses for being here and for providing your important testimony on this important subject of amending the Fisheries Act or hearing consultation about amending the Fisheries Act.

I would like to start off with the Canadian Independent Fish Harvesters. I believe you made five recommendations, but you also talked about restoring section 35. One question I will ask everyone is, have you submitted your wording for the recommendations in writing to the committee?

Mr. Marc Allain: We have submitted our letter to the minister and to the committee, and we intend to follow up with a written submission, both to the committee and to the department. We have learned that there is a separate consultation going on by the department. We will be submitting our detailed recommendations to you in writing.

Mr. Fin Donnelly: That's great. I would encourage you to do that, because it is critical that not just witnesses but anyone who is proposing changes to the Fisheries Act through this process makes sure to send their recommendations in writing, in both official languages, to this committee. As you've alluded to, there is some confusion, and folks may think that just submitting it to the website, the ministry, or the minister's office is adequate. It's really important that it also come to this committee.

Mr. Allain, with regard to the wording you're suggesting on restoring.... I think Mr. Gawn recommended that section 35 should be restored and that HADD be included in the wording. I would encourage you to include the specific wording that you would like to see as well in your recommendation, .

Mr. Marc Allain: Yes, we will be providing very specific recommendations.

I have a question to you. Do we have to submit written submissions in both official languages to the committee and as part of your online consultation?

The Chair: Just to let you know, Mr. Donnelly, I've stopped the clock, seeing there was a question put my way.

Mr. Fin Donnelly: Okay.

The Chair: No, that is not necessary. We can do the translation. The rule is straightforward in the sense that distribution amongst the committee has to be in both official languages, English and French. Your submission to this committee, to our clerk, can be done in one language, if you choose. We will do the translation when we distribute. I hope that answers your question.

In the meantime, back to the clock.

• (1630)

Mr. Fin Donnelly: Maybe I should have said "in either official language". Make sure it is in one of them. Certainly for us, we need it in both.

Mr. Gawn, you talked about pesticide use and fish farms in Atlantic Canada. I'm wondering what you feel is the solution to dealing with that issue.

Mr. Graeme Gawn: We think the solution for dealing with that issue is for the Government of Canada to require the people who are using those pesticides to find the solution.

These are newcomers into the waters. They've developed an aquaculture industry there. If they're having a harmful effect on the environment and on the existing fisheries, they should be required to deal with it. That's what we see as the solution.

Mr. Fin Donnelly: I have a more specific question. Would you support something like closed-containment technology?

Mr. Graeme Gawn: Yes, certainly. Of course we would support any practical solution. I think we will all find out that closed-pen contained systems are the way of the future. The technology is being developed for that.

At the same time that is happening, we have governments, provincial governments especially, that are busy handing out more of our oceans to the same systems that are currently being used.

Mr. Fin Donnelly: My last question is to the independent fishers.

Are you hoping that changes to the Fisheries Act will address the issue of owner-operator and fleet separation on both coasts? Certainly in Atlantic Canada, the situation is far different from what it is on the Pacific coast. On the Atlantic side, we have owner-operator and fleet separation. We don't have that in British Columbia. Do you want to comment on that?

Mr. Marc Allain: Thank you for asking that question and clarifying.

We're asking for two things.

We're asking that the general principles underlying the owner-operator and fleet separation policy be brought into regulations. As I said, this was promised to us by the Government of Canada in 2004.

We're also asking for changes both to the Fisheries Act and the fisheries regulations to recognize the authority of the minister to pursue social and economic objectives very clearly, both in the act and in the regulations, and to link it to conditions of licence. That would then become enabling legislation and regulations for the type of detailed protections that you need on a fishery-by-fishery basis, whether it's in B.C. or in Atlantic Canada, through our integrated fisheries management plans, IFMPs. That is something that could work.

The situation in B.C. is disastrous. It will require a made-in-B.C. solution. For that, we are asking for an independent review of fisheries licensing policy in B.C., an independent panel that could make recommendations to the minister based on consultations with stakeholders in B.C. on how to get out of the situation there. The panel should hear from the people in B.C. on that question, because the system is not working. It's not delivering on Canada's objectives for social and economic development of our fishing communities.

Mr. Fin Donnelly: I'll do two quick questions to the Lake Ontario Waterkeeper.

You presented nine recommendations, excellent recommendations. Thank you for submitting those. Are you also submitting those in writing to this committee?

Mr. Mark Mattson: Yes, Mr. Donnelly, we'll be submitting a written piece later, along with other waterkeepers, riverkeepers, and baykeepers in Canada. We'll try to do that jointly.

Mr. Fin Donnelly: Thank you.

In the remaining time, I want to switch to the World Wildlife Fund for their comments, because I was looking at the excellent recommendations you have put in here. We can review those. Thank you for submitting them. They're in both languages.

I want to finish by asking about this removal of the absolute discretionary power from the minister. In other jurisdictions around the world, do others do this?

Ms. Elizabeth Hendriks: It's a very good question, and thank you very much.

I represent both oceans and fisheries and I will get back to you. I would like to consult my oceans expert, but I believe the U.S. act does restrain the political power over that.

Thank you.

The Chair: Thank you, Mr. Donnelly.

Now we go back to the government for seven minutes.

We're going to Mr. Morrissey, I believe.

• (1635)

Mr. Robert Morrissey (Egmont, Lib.): Thank you, Chair.

I will direct my question to the independent harvesters. You made the comment that the review should be a holistic approach to reviewing the act and not focus just on the habitat side of it.

Could you elaborate a little on that, Marc?

Mr. Marc Allain: That's the basis of our whole point. We believe our Fisheries Act and the Government of Canada in its approach to fisheries should consider this as a resource, and that's what the courts have said. The government and the minister have to see fisheries as a resource that the government conserves, manages, and develops in the public interest and for the benefit of Canadians. That is pretty close to a sustainable development approach, and the Canadian government is committed to sustainable development.

That was a big breakthrough at the UNCED meeting, the Earth Summit in Rio in 1992, when they said going down the road of just economic development doesn't sense. You have to have social development and you have to protect the environment. You need all three of those things. That's why Roméo LeBlanc was way ahead of his time. He took a sustainable development approach before it was a concept that was broadly made popular in Rio. That's what we need.

We have an act right now that's just focused on conservation. We know where this happened. It happened because of the cuts that were made. There was the fiscal crisis of the government in the mid-1990s, and you had to cut. The Department of Fisheries and Oceans looked at that and said they were just going to focus on conservation and *que le diable m'emporte le reste*.

Mr. Robert Morrissey: I have one clarification. You said that fishers have lost ground as the department has focused on different areas. I think you're using that comment in relation to the owner-operator policy, where there are things going on that are not being enforced by DFO. Am I correct in that interpretation?

Mr. Marc Allain: Absolutely.

Mr. Robert Morrissey: Could you explain that?

Mr. Marc Allain: We've been working on this for 20 years. We had these really good policies saying that the fishing licences go to the individuals and that the individuals have to fish them themselves and live in coastal communities. We need that for the social and economic development of our coastal communities. It hasn't been

working. People have been finding workarounds. We come up with all kinds of measures with the department that are on the policy side of things. They're not in the regulations or the legislation, and they don't work.

I was talking to the person in the department responsible for this last week, and he said they'd devised a Rube Goldberg machine to deal with this, and I didn't know what a Rube Goldberg machine was.

Mr. Robert Morrissey: What is it?

Mr. Marc Allain: It's a big contraption where you put something in and it moves all these gears and maybe after a little while you get a result. They've designed a Rube Goldberg machine for PII/CAF, and it doesn't work. They announced new measures in September.

Mr. Robert Morrissey: Do you mean last year?

Mr. Marc Allain: No, it was this year, and it was based on recommendations we made two years ago to the department on tightening up the vacation provisions and the in-season stacking of licences. Within hours of the department's having announced it was going to tighten up on that, the violators of the owner-operator and fleet separation policy had a new workaround, and they got all their approvals through. Because it's in policy, we have no recourse. It's in very soft law.

Mr. Robert Morrissey: You want to see it in the act.

Mr. Marc Allain: We want to see it in the act. We want to see it in the fisheries regulations. We saw it in the conditions of licence. If you bring it into the conditions of licence and you violate those conditions of licence, you have committed a criminal offence.

Mr. Robert Morrissey: Should any part of the Fisheries Act changes be kept? I want to start with the independent fishers, because you're the ones who I think are most affected.

• (1640)

Mr. Marc Allain: I can say, Mr. Morrissey, that our members have not raised issues with us around things that they would like to keep from the changes. We have a lot of concerns about things that were done and are very problematic. On the pesticides issue in agriculture—

Mr. Robert Morrissey: That's an interesting comment.

Mr. Marc Allain: One of the things people haven't talked about is that the DFO labs that did the toxicology research were closed down. You can't do the research for that. We asked, through our partnerships with universities, to be able to rent the labs so we could do the research. We were refused. Brand new labs in St. Andrews designed for that purpose were closed down, and those are assets that are sitting empty right now. We can't provide the proof because we can't do the research, and we have to provide the proof. There was a lot of serious damage done there, sir.

Mr. Robert Morrissey: I have a question to the Waterkeepers. You were making the comment that all that's left is a recreational fishery, that the commercial fishery has pretty well disappeared in Lake Ontario, if I'm quoting you correctly. Could you expand on that a bit for me?

Mr. Mark Mattson: Just factually, there are only a few families with nets down in Prince Edward County and Wolfe Island, sort of where the river and the lake—

Mr. Robert Morrissey: What kind of a catch would they be sustaining?

Mr. Mark Mattson: The American eel was big. They're no longer there in enough numbers to sustain a fishery. There's still perch, walleye, pike, catfish, and some carp. On the American side the fishery is completely closed, and for the rest of the Canadian side it's closed as well, which is a red flag when you think that the St. Lawrence Market in downtown Toronto was built to bring in the boats from Lake Ontario and sell the fish there for over a century, and now it sells no fish from Lake Ontario whatsoever.

I think our organization would love to see the Fisheries Act not only protect where we still have fisheries in Canada, but also do something about restoring what we lost. Otherwise, those communities that are denuded in terms of fisheries and the environment really have little hope. Under the old Fisheries Act, there was hope that the act would still be aggressive in restoring fisheries in this country, and we hope that gets put back into the legislation through our suggestions.

The Chair: Thank you, Mr. Morrissey.

We'll now go to the opposition.

Mr. Doherty, are you splitting your time?

Mr. Todd Doherty (Cariboo—Prince George, CPC): I am, yes. Thank you, Mr. Chair.

Thank you to our guests. I do appreciate the differing views and testimonies we are hearing, not only today but throughout the whole course of this study.

My first question is for you, Ms. Hendriks, and I'll take a completely different try at this. During the northern cod study that we did, when we were back east, we heard time and time again of WWF's contribution or of your being at the table, working with the fishers, working with the government. What is WWF's role on the east coast in terms of working to develop policy in those areas?

Ms. Elizabeth Hendriks: We work with communities across eastern Canada, bringing science-based, evidence-based decision-making to the table.

Mr. Todd Doherty: In lieu of DFO, WWF is there?

Ms. Elizabeth Hendriks: No, we work across departments. I think it's a multi-stakeholder approach to solutions.

Mr. Todd Doherty: Okay.

The other part I want to ask you about is this. You in your testimony and others in theirs talked about engaging communities, indigenous groups, and coastal communities so that they can actively participate in the science, the local science—the “citizen” science, I think was the word. During the northern cod study as well as our

salmon study, we heard time and time again—maybe not so much with the salmon, but with the northern cod—that the numbers are there, and the fishers just want to get out and get fishing.

Is it your testimony today that we should rely on the local knowledge and the local science and then open up the northern cod study? I'm just using that as an example. That's what we're dealing with here, when we have local knowledge and local science and fishers are saying the numbers are back to where we've never seen them before.

Ms. Elizabeth Hendriks: I would say that there's not one science that's better than the other. I think you need to bring all science to the table and have a discussion to make sure that it's an evidence-based decision and that communities and government and all stakeholders are comfortable with the decision-making.

Mr. Todd Doherty: Ms. Laurie-Lean, during the course of the testimony from our other witnesses, I noticed that you were taking notes and listening intently. I also noticed a few reactions to some of the testimony from our Lake Ontario witnesses and others.

I'm wondering if maybe you can provide some insight on your reaction to some of the things you're hearing.

• (1645)

Ms. Justyna Laurie-Lean: Oh, dear. I have a very mobile face.

One of the things that puzzled me about the Waterkeeper testimony was ascribing the section 36 regulations to the 2012 changes. They have been in existence for quite some time. The predecessor to the metal mining effluent regulations dates back to the 1970s. I believe the pulp and paper effluent regulations and some of the other ones all date back to the 1970s. There was very little change made to that section in 2012, so I was just very surprised by that.

The other part of the surprise, which Mr. Ruthven may want to expand on some more, is that our experience in the interpretation of the changes has been very different. We did not experience the narrowing, and we're not sure why our experience was that different. We did put in the effort to work with DFO to understand what the amended act said.

Mr. Todd Doherty: Thank you.

Go ahead, Mel.

Mr. Mel Arnold (North Okanagan—Shuswap, CPC): I have just a couple of questions, if I can fit them in quickly.

Ms. Hendriks, can you tell us how much in foreign funds comes into WWF in Canada? How much of the funds are spent in Canada? I want to know the ratio of how many foreign funds are being imported into your operations in Canada versus what we actually spend here.

Ms. Elizabeth Hendriks: It's actually very little. WWF-Canada is part of an international network, but WWF-Canada's programming is within Canada. The freshwater program is all Canadian funding. The other programs are majority Canadian funds.

Mr. Mel Arnold: Okay. Thank you.

Mr. Mattson, you referred to the power projects that are killing fish, and you stated that what was illegal has now been made legal.

Could it not also be made illegal? Is it not the case that someone has done an assessment, determined that the impact is manageable, and has made that operation legal?

Mr. Mark Mattson: Thank you for the question, because I think it cuts to the whole heart of what we're talking about.

Under the old act, killing fish, depositing a deleterious substance in waters frequented by fish, or destroying fish habitat was illegal unless the proponent could prove that it wouldn't have an impact on fisheries, etc. They couldn't do that. That's why they never had.... There were lots of opportunities to apply for those permits at the time.

It's only since the changes to the act that now industry looks at the fishery in Lake Ontario, sees that it's depleted, sees that there is no commercial fishery, and says there isn't a value in changing open-cycle cooling to closed-cycle. It now has permitted them to kill the fish 24 hours a day, seven days a week.

Now, they have put nets out front to stop the bait fish from dying

Mr. Mel Arnold: But that's—

The Chair: Sorry, Mr. Arnold, but I have to cut you off right there. You're well over five minutes at this point in your response. You can get a chance to do it later. We have quite a bit of time left, so we'll circle back to you later.

Go ahead, Ms. Jordan, for five minutes, please.

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

I'd like to thank the witnesses for appearing today. I think this has been extremely interesting testimony.

For my first question, I'm going to go to Mr. Mattson, because I would like to have his response to the comments that were made earlier by Ms. Laurie-Lean.

Mr. Mark Mattson: Yes, the 2012 changes made it possible to make new regulations that exempt specific industries under subsection 36(3). Those regulations have come into force since then, particularly for waste water effluent regulations, for sewage treatment plants. That's why there was a lot of confusion around whether Montreal was able to release sewage into the St. Lawrence and whose responsibility it was—also under nuclear power—and there are others who were able to apply for those exemptions.

The changes were made in 2012 to allow for specific industries to apply under the regulation to make exemptions for their industry, and they've been taking advantage of it.

Second, it has changed who has the authority to do it. For example, now the provinces can apply for what's called—

•(1650)

Ms. Krystyn Tully: Equivalency.

Mr. Mark Mattson: —an equivalency agreement.

If they have laws that deal with the same subject matter as the Fisheries Act, the Fisheries Act no longer applies. That's why we say that there is no longer a Canadian law that applies in all provinces across the entire country. As a result of the changes, they've

downloaded that onto the provinces, and each province has its own ideas about what it wants to protect and where it wants to put its priorities.

Mrs. Bernadette Jordan: Thank you.

I'm going to go now to Mr. Gawn.

You have been a fisherman for 40 years. Do you still fish?

Mr. Graeme Gawn: I do. I've been a fisherman for 41 years, and I still fish.

Mrs. Bernadette Jordan: My question to you, then, is this. You've seen a lot of changes over the last 40 years. I grew up in a fishing community on the south shore. I watched the last boats go out of Lunenburg, so I know what it was like.

Can you tell me how you see enforcement now compared to over the years? How has it changed in terms of DFO?

Mr. Graeme Gawn: Certainly there is more enforcement today than there was 40 years ago. However, of course, there are also more things to enforce. We still have shortfalls in enforcement in a lot of areas.

Just in the last year, we have seen a stepping up of enforcement efforts in our area, with multiple prosecutions for illegal fishing in my particular part of the world. That's a good sign, but it has been a long time coming, and there is more room for improvement.

Mrs. Bernadette Jordan: Where do you see the shortfalls?

Mr. Graeme Gawn: What we got at earlier was the enforcement of the fisheries licensing policy, which over time has slipped. The actual enforcement of the fishing regulations on the ground has not increased. We're starting to see a bit of improvement now, but there's much more to enforce as well.

Mrs. Bernadette Jordan: Where do you see the shortfalls in enforcement?

Mr. Graeme Gawn: The biggest shortfall we see is in the failure to enforce these licensing policies that are supposed to protect people. It's a one-way street. When those protections are lost, it's very difficult to get them back. When owner-operator licences are allowed to be sold to corporate interests, which are not owner-operators, how do we get them back? Those have been a heritage of our coastal communities for hundreds of years, and that's the *raison d'être* for our communities. You know it as well as I do, because you come from there. People in B.C., in the coastal communities, have the same situation.

We're looking at something that could lead to what has happened in B.C., which is a disaster. We're going to fight to the very last day to preserve the nature of our coastal communities in Atlantic Canada. The fact that their policy is not law allows officials—not the Government of Canada, but officials in the regions—to bend and twist those policies to allow things to happen that aren't supposed to happen under those policies.

Mrs. Bernadette Jordan: I'm going to go to Ms. Hendriks.

You had mentioned reinstating sections 32 and 35 in the Fisheries Act, but you also said that the Fisheries Act needs to come into the 21st century.

Do you think that there are provisions or changes that were made by the last government that should be kept? Do you think that we just automatically reinstate what we have, or should we expand?

Ms. Elizabeth Hendriks: Thank you very much for the question.

I do believe there is some reinstatement, but I think there is an opportunity to modernize in three ways. I would suggest monitoring, open data, and transparency, and then prescriptive guidances, and then our last one was specifically around the preamble in ensuring sustainable principles as a guiding light for the act.

The Chair: That's it. I'm sorry.

Mrs. Bernadette Jordan: Thank you.

The Chair: Mr. Sopuck, you have five minutes, please.

Mr. Robert Sopuck: It's interesting, Mr. Allain, that you mentioned the Earth Summit in Rio. I'm showing my age, but I was a delegate at the Earth Summit in Rio, and it was quite the experience. I agree with your views that the role of sustainable development, which I strongly believe in, came really to the fore.

Regarding Lake Ontario, commercial fishing, and the Water-keeper's testimony, I would submit that it's because of fisheries allocation that there is little commercial fishing. I know from personal experience that the sport fishery across much of Lake Ontario is thriving.

Regarding the testimony of Mr. Mattson regarding the millions and millions of fish that are being killed by this nuclear warm water outflow, why haven't there been any media? Why haven't there been any pictures of these millions of dead fish? Even under the new Fisheries Act, that can be stopped. You're not allowed to kill fish in that regard. Why hasn't more been made of that? Where are the pictures of these millions of dead fish?

• (1655)

Mr. Mark Mattson: They are both good questions.

We participate in all the CNSC hearings. We've brought in evidence. We've spent thousands of hours trying to bring this to the attention of the public. It's all on the record. It's admitted by the industry. They've done their own cost-benefit analysis, and they've indicated that the fish that they're destroying don't have much commercial value. There's no commercial value on the lake, so it's not under the new Fisheries Act. It really wouldn't require them to spend a lot of money to prevent them from killing it.

Regarding the other point that you make, it is a Great Lake. It is one of the 10 greatest freshwater lakes in the world and, yes, there is still a sports fishery, but the commercial fishery is gone. That's a fact. You can look back at the numbers and the nets and when it disappeared, but it's not something to argue about. It's something to try to fix, to put our minds towards doing something about restoring this great freshwater paradise as a lake. If we do that for Lake Ontario, there's hope that we can prevent so much other damage across this country.

Mr. Robert Sopuck: I should note as well that the Ontario Federation of Anglers and Hunters has been doing great work on restoring Atlantic salmon in Lake Ontario.

Mr. Mattson, talking about deleterious substances, a number of years ago there were some extremely heavy rains in Prince Edward

Island, and there was a pile of potato field runoff into streams. There were thousands of fish killed inadvertently, obviously, but it happened. There were deleterious substances deposited in those waters. Should those farmers have been charged or perhaps thrown in jail?

Mr. Mark Mattson: I don't know about being thrown in jail. The courts are pretty open when you hear the evidence and what happened—

Mr. Robert Sopuck: Should they have been charged?

Mr. Mark Mattson: You know what? I don't know the facts of the case. Under the old Fisheries Act, if there was a point source and somebody, through due diligence, should have been prepared to not allow that to go into the river and should have expected that there would be fisheries death, the way it is currently is that it's upon those who caused the damage to prove that they took all reasonable action and all reasonable steps to prevent it. If they didn't, it can go to sentencing. We've seen sentencing of one dollar, but currently the act is, I think, up to a million dollars a day and six months in jail.

Mr. Robert Sopuck: Of course, I'm surprised you don't realize that any runoff from agricultural areas that's non-point source pollution is clearly not point source.

Regarding the old Fisheries Act, I'd like to talk—

Mr. Mark Mattson: That's why you need proper land use planning. You need to work hard to ensure that what you are putting on the field doesn't run off. That's exactly what the Fisheries Act is intended to fix, and it was, under the old act.

Mr. Robert Sopuck: You tell the potato industry in P.E.I. that it is a very important part of the economy. Those of us on this side protect agriculture.

I'd like to ask a question of MAC and Ms. Laurie-Lean. In the testimony, when we were going through the act, Mr. Kevin Stringer talked about how they were having 12,500 referrals per year under the old Fisheries Act. He was implying that they were clearly swamped. Every little dock and every small walkway was considered a referral under the Fisheries Act. They were completely swamped.

Do you think they would have been able to deal with 12,500 referrals a year, year in and year out?

Ms. Justyna Laurie-Lean: I don't know. We would not be familiar with their internal operations.

Mr. Robert Sopuck: It's just that, when we asked that... The Fisheries Act was interpreted, at the time, to mean every single little activity near or close to a water body. That's how we ended up with an unmanageable set-up.

I'll go back to Mr. Mattson.

You were kind of scathing about provincial jurisdiction and provinces taking a role in fisheries conservation. I'm from Manitoba, and I clearly don't want somebody from across the country to have a say in how fisheries in Manitoba are allocated.

Don't you think that provinces should have the final say in how fisheries in their jurisdictions are managed?

•(1700)

Mr. Mark Mattson: Let me be very clear, sir. This is about Canadians and people. This is a quasi-criminal statute that protects every Canadian. There is nobody who should be ignored just because there are so many people having—

Mr. Robert Sopuck: I wasn't ignoring anybody. Nobody is ignoring anybody.

Mr. Mark Mattson:—deleterious substances put into their water, destroying their swimmable water, or destroying fisheries and fish habitat. You shouldn't claim that there is too much red tape to deal with those people's voices. It's very important that this quasi-criminal statute protect every Canadian, whether they are in Manitoba, Ontario, or B.C., and no province should be able to put forward its own exemptions such that it would take away the right to fishable waters.

This legislation was put in place in the early 1970s as a result of many damages that went on in the 1950s and 1960s. We learned from it. The federal level had powers, criminal and fisheries. They joined the two together to create sections 35 and 36. It's not the time, in 2016, to undermine that with arguments about jurisdiction. This act protects every Canadian and gives everyone the right to clean fisheries. There is no fishery, no matter how small the pond or how big the ocean, that is exempt from this act. I wouldn't want it to be so.

Mr. Robert Sopuck: This is a clear case of winning the argument by definition, if I've ever seen it.

The Chair: As entertaining as that may have been, I have to cut it off there.

I'm going to go to Mr. Finnigan now. Sir, you have five minutes. Please proceed.

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

[*Translation*]

I will ask my question in French.

Mr. Allain, in the Atlantic provinces, and in my riding in particular, I think things are going fairly well for independent fisherman. It seems to be going well. They each have their boat and everything is going well.

Can you give me a specific example to illustrate that the policy is not working? Why should that be included in a law?

Mr. Marc Allain: Thank you, Mr. Finnigan. That is a very good question.

The fisheries are going well right now in the Atlantic provinces. This is especially true because of shellfish, lobster in particular. Lobster landings have doubled in the past 10 years and the price has risen. This is good for everyone, but not everyone is benefiting equally. If you ask fishermen in your riding, they will say landings have increased by 30%, 40% or 50%, or perhaps they have even doubled.

In other areas, such as Mr. Gawn's area, landings have increased even more. That is where the problem is. Where the fisheries are the most lucrative, companies are interested, and not only Canadian

companies. There are also foreign investors. There are newspaper ads now to buy lobster licenses in zones 33, 34 and 35. These fishing areas are all in Nova Scotia, a province that accounts for 40% or 50% of all lobster landings in Canada.

Mr. Graeme Gawn: It is 60% in fact.

Mr. Marc Allain: That is the target. Agreements are used to take control of licenses that are supposed to be for individuals who are supposed to have full control. Secret agreements are used to reap the benefits of the licenses. This is happening in southwestern Nova Scotia, in southwestern New Brunswick, in the Bay of Fundy and in Newfoundland, in the crab fishery.

We provide evidence of this to the department. We tell officials where to look, we tell them that we know the source of the problem, and that we know people and businesses who are circumventing the rules.

We are talking about criminal acts. It is like a Rube Goldberg machine. If there is a control agreement, that is a criminal offence under the Fisheries Act. People say there are no agreements and that all fishermen must sign a statement attesting that they do not operate under a control agreement, but we know they do.

Mr. Pat Finnigan: Thank you, Mr. Allain.

Mr. Marc Allain: The situation is not the same everywhere, though. In your riding, there are people and investors who buy lobster licenses. This is not as serious as in the other speaker's area and elsewhere, but it is happening in your riding also. This problem must be checked before it spreads and what is happening in his area also spreads to yours.

•(1705)

Mr. Pat Finnigan: Thank you, Mr. Allain.

[*English*]

Mr. Gawn, you spoke about the damage that aquaculture does to many species of fish in our environment. Are you opposed to all aquaculture, if we're talking about the oyster industry and all that? Do you have any issues with some of the other forms of aquaculture?

Mr. Graeme Gawn: As I said in my comments, all of these projects we're not opposing. We're just demanding proper oversight and environmental assessments and responsible ways of carrying out these projects, whether it's oil or gas or any kind of aquaculture that's happening in our oceans.

First and foremost, we have to protect the wild fisheries. The number of jobs and the revenue coming into our economy from that for the last hundreds and hundreds of years cannot be risked for some pie-in-the-sky scheme that may damage that.

We're not opposing these projects. We're opposing the fact that they're allowed to write their own rules when it comes to the environment and the habitat of fish.

Mr. Pat Finnigan: Thank you.

Going back to Ms. Hendriks with the World Wildlife Fund, there was a question asked, and I think you never had a chance to answer. There was an assertion made that WWF doesn't want the minister to make management decisions.

Could you elaborate and clarify your organization's position on that view?

Ms. Elizabeth Hendriks: Sure. I think at this point there need to be some constraints around ministerial powers. I think evidence-based decision-making shouldn't be swayed by politics, and there are ways to ensure, within the act, that we are bringing the best science to the table to make decisions across the country.

Mr. Pat Finnigan: Thank you.

[Translation]

The Chair: Thank you.

[English]

Now we're going to go to Mr. Donnelly for three minutes, please.

Mr. Fin Donnelly: Thanks, Mr. Chair.

I have three minutes, so not a lot of time. I think we'll have another round and some more time.

I would ask all of you to submit your recommendations to the committee so that the committee captures all of what you have to offer in terms of the changes to the Fisheries Act and what is being consulted on here.

However, if you have to provide your top priority, what would your top priority be, of all the recommendations that you've given?

I'm going to start with the independent fishermen.

Mr. Marc Allain: I have to be Solomon.

Mr. Fin Donnelly: Remember, I have three minutes.

Mr. Marc Allain: We would take a sustainable development and a holistic approach, so we would say that you have to protect the social and economic development and coastal communities by also protecting the environment on which their economy rests.

Mr. Fin Donnelly: Thank you.

I'll go to the Lake Ontario Waterkeeper for your top priority.

Mr. Mark Mattson: Thank you for a great question.

Our top priority would be to protect habitat by switching the onus back onto the proponent to show how and what they're going to do in terms of protecting fish and fish habitat instead of what it currently is now, where it's switched back to the public to show why they shouldn't get the permit.

Mr. Fin Donnelly: Thank you. Now I'll ask the WWF.

Ms. Elizabeth Hendriks: I think we would go with a preamble, to make sure we have guiding principles to ensure that all decisions in the act follow suit within those guiding principles.

Mr. Fin Donnelly: Thank you. Now I'll ask the Mining Association of Canada.

Ms. Justyna Laurie-Lean: It would be capacity and guidance. You can write the most beautiful legislation in the world, and if the department does not have the capacity to deliver it, it's not going to be delivered.

Mr. Fin Donnelly: Great. Thank you very much. I'm sure I'm pretty close.

The Chair: You have a minute.

Mr. Fin Donnelly: I have a whole minute. Fantastic. Look at how co-operative the witnesses can be.

I will only ask a question that I'm going to run out of time for, but it will be the preamble to perhaps a longer amount of time. It's on how the Fisheries Act can be improved to deal with cumulative impacts. I'll probably ask Waterkeeper to start and WWF, and then open it up to others who want to provide comment. Perhaps Waterkeeper could start off until the gavel comes down.

• (1710)

Mr. Mark Mattson: It's a really great question as well.

The old subsection 36(3) and the way it's currently worded, if the exceptions weren't given, was to prevent the deposit of a deleterious substance into waters frequented by fish. It did prevent cumulative impacts because it didn't allow the proponent to sample from the receiving waters. It had to sample from the actual discharging waters.

The idea was the precautionary principle was built into it. As long as no one put in deleterious substances—those that kill fish in 96-hour acute lethality tests or whatever else you want to use, such as *Daphnia magna*—and you didn't discharge water that was acutely toxic, then there wouldn't be a cumulative impact problem.

Now, with the new changes to the act, the government is going to have to find new ways to take into account cumulative impacts, how it's going to measure it, and how it's going to monitor it. With self-regulation it's going to be even harder, because the government somehow needs to be in charge to keep an eye on what's happening generally, aggregating that information and ensuring that the laws are put in place to prevent real destruction of fish and fish habitat. We shouldn't wait until that happens before we act.

The Chair: Okay. Thank you very much. I'm going to have to cut it there. We do have time, as Mr. Donnelly pointed out, for a round of seven minutes each, as has been our custom. Each party will get seven minutes to end this off.

However, given the math, we will be approximately three or four minutes over time. Can I have consent from the entire committee that we can go over time by about three or four minutes?

Okay. Let's start with Mr. McDonald for seven minutes, please.

Mr. Ken McDonald (Avalon, Lib.): Thank you, Mr. Chair. I just have a couple of questions, so I'll share my time with Mr. Finnigan.

My first question would be to Ms. Hendriks.

In your opinion, should rebuilding plans for depleted fish stocks be legally required by the Fisheries Act, and why?

Ms. Elizabeth Hendriks: Yes. I will flesh this out in our final submission. Can you just repeat the question, because I want to make sure I'm answering it? Plans for depleted...?

Mr. Ken McDonald: Should rebuilding plans for depleted fish stocks be part of the Fisheries Act, and why?

Ms. Elizabeth Hendriks: Yes, because I think that's the role of mitigation and trying to address what has been lost, which should be a cornerstone of the Fisheries Act.

Mr. Ken McDonald: How should requirements for stock rebuilding plans be incorporated into an amended act?

Ms. Elizabeth Hendriks: Again, please repeat it, just to make sure.

Mr. Ken McDonald: How should requirements for stock rebuilding plans be incorporated into an amended act?

Ms. Elizabeth Hendriks: I'm going to give you a half-answer, because I want to make sure I consult the oceans experts. I would say again to go back to those principles. If we have guiding principles within our act, that would be half the answer. How are we including sustainability and precautionary principles into any recovery plans?

Then the specifics, I believe, would have to be in consultation with locals. Canada is large, and every fishery is slightly different. You would want to make sure you are consulting a broad range of stakeholders.

Mr. Ken McDonald: Thank you. My next question would be for Mr. Gawn or Mr. Allain.

Being from the east coast, of course, as far east as you can get, I keep hearing—and even people around this table will hint—that we have an owner-operator policy that works, but I believe it doesn't. The west coast MPs will say that they want the east coast, what Newfoundland has, what Nova Scotia has. It doesn't work.

Why is not working? I know of instances of licences being held by the fish plant, by major corporations, or by someone who sits in a condo in Florida. Why is not working, and what do we have to absolutely do to fix it?

Mr. Graeme Gawn: I'll answer that.

Clearly it's not working because the policy that prohibits those corporations from owning those licences has not been enforced. That's why we're asking for those to be enshrined into law or regulation. These policies came out and they worked for a little while, but you'll find out that as the areas that don't have this problem yet start making more money in the fishery, these corporations will be targeting every place where there's money. It's about money and it's about control.

Owner-operator fisheries have worked exceedingly well for generations. That's been the traditional way. That's why fishermen are so in tune with their environment. It's because they're owner-operators. They've handed it down through generations, and that's what's missing.

It's about the ability of officials—not the Government of Canada, not this committee, not the minister of fisheries. It's the officials in the region who are able to bend those policies. That's what they've done in every case when these corporate interests have been able to gain control.

Fleet separation and owner-operator only protects one sector. The offshore sector has already gone privatized. Foreign companies own them today. Mink farmers own part of the herring allocation in our area. A Scottish company owns part of the herring allocation in our area. We're only talking about the inshore sector that's protected under fleet separation and owner-operator. That inshore sector is the lifeblood of hundreds and hundreds of communities along the coasts

of the Maritimes and in Newfoundland, so that's why it's important that these policies become regulation.

• (1715)

Mr. Ken McDonald: Go ahead, Mr. Allain.

Mr. Marc Allain: They could work, and we're proposing a way to make them work. We think they could work by bringing these principles into the regulations and making them conditions of licence, because then they become legally binding. Presently they aren't. People can look the other way, and it leaves us at a disadvantage because we have to go through administrative ways to try to deal with the problem, as opposed to legal ways.

Mr. Ken McDonald: It's your turn, Mr. Finnigan.

Mr. Pat Finnigan: Thank you.

Before the changes to the act, in the old act there was a prohibition against destroying fish by any means other than fishing or carrying on any undertaking that would result in “harmful alteration, disruption or destruction” of fish habitat, or HADD.

On the new concept of “serious harm”, would you say that it adheres to the precautionary approach in managing our fish habitat?

I'll leave that open to anyone who would like to talk about it.

The Chair: Go ahead, Mr. Mattson.

Mr. Mark Mattson: Thank you. It's a great question.

The change in legislation to “serious harm” is my point. It's putting the onus on the public to prove serious harm. What does that mean? They don't have access to the information and they don't have the money to actually be there and fight a lot of these causes. They also do not have the money to do the research necessary on the balance of probabilities to prove these things, but the proponent does. It's the proponent who needs to have the onus to show that they're not going to conduct serious harm, and if they do, they need to show how they're going to limit it and what they're going to do to replace it. That was the way the old act was structured.

The current legislation allows them to go ahead and destroy fish and fish habitat unless serious harm can be proven, but I'm not sure who does that. It's not clear from the law now. It's a very troubling situation that I think is unworkable. That is why I list it as the number one thing that needs to be changed as a result of the changes from 2012.

The Chair: Thank you, Mr. Finnigan, and thank you, Mr. Mattson.

We'll go to Mr. Doherty for seven minutes, please.

Mr. Todd Doherty: Thank you. Again, thank you to our guests today. I find the testimony very interesting.

Ms. Hendriks, and to Mr. Mattson as well, it must have been fairly frustrating for you—given both of your organizations, or I guess more with WWF's close relationship with our Liberal government previously and today—that within 20 days of being a government, there was the release of 8 billion litres of raw sewage in the Montreal area. Our government took a strong stand and did not allow that and asked for them to reconsider their plans, so I'm wondering how frustrating that must have been for you and if you took a stand on that.

I'm trying to find where your stance was on that, but I don't see it. I'm wondering if you were fairly vocal on that issue. Were you blaming the previous government, because we took a strong stance?

• (1720)

Ms. Krystyn Tully: Just to clarify, Mark and I actually did co-author an article that ran nationally in the *The Globe and Mail*. We were very vocal about our concerns related to the Montreal sewage issue, and I'll let Mark speak to that in a moment.

We don't want to comment on partisan politics or which party is responsible for what, but in terms of chronology, it was the changes made in 2012 that created the conditions for all the confusion surrounding what happened in Montreal more recently—

Mr. Todd Doherty: Sorry, Ms. Tully; it was also our government that actually put a stop to that and told them not to release it. It was only after Mr. Trudeau came into power that it was released. Is that not correct?

Ms. Krystyn Tully: I can't speak to which party made which decision—

Mr. Todd Doherty: Sorry, but you would agree with me that the release was after the Liberal government came into power. Isn't that correct?

Mr. Mark Mattson: I'm not sure, but if that's factually correct, it's correct.

Mr. Todd Doherty: November 20, I believe it was.

Thank you. That's great.

Ms. Hendriks, could you comment on that?

Ms. Elizabeth Hendriks: Comment on WWF's relation to government or—

Mr. Todd Doherty: No, just on how frustrating it must have been when you saw that happen, given your strong advocacy. Again, you're here today talking about protection of the environment, and you have a government that is newly in place and works collaboratively, and all of a sudden they are saying okay to the release of 8 billion litres of sewage.

Ms. Elizabeth Hendriks: WWF did put out a statement saying that we, of course, were disappointed on the release of sewage into the St. Lawrence River, yes.

Mr. Todd Doherty: Would you say that was something that is fairly frustrating, obviously?

Ms. Elizabeth Hendriks: Yes. That's why we are presenting to the Fisheries Act.

Mr. Todd Doherty: Ms. Hendriks, I find the information you've provided is very good. A lot of the stuff you are saying is okay.

We've heard time and again witnesses expressing an interest in DFO focusing not only on protecting fish habitat and preventing harm, but also on rehabilitating habitats and fish stocks that have been negatively impacted. We see in a lot of forestry practices that if you are cutting down trees, as part of your forestry practice you're also replanting as well. Is that something you think the next version of the Fisheries Act should include with regard to rehabilitation, by making sure that replenishment is there as well?

Ms. Elizabeth Hendriks: First of all, thank you. I am an expert and was invited by this committee as an expert witness, so my testimony is from an expert perspective.

In terms of rehabilitating habitat, yes, there is legislation around that. The Fisheries Act should be around protecting fish habitat. Yes, that's true.

Mr. Todd Doherty: It should also be on replenishing the fish stocks, obviously, and rebuilding fish habitat and building that too.

How far should we expect the act to go on replacement of those fish stocks?

Ms. Elizabeth Hendriks: That's a very good question. I can't speak to local fisheries. As I've said before, it needs to be consulted on and planned out and thought out, and science has to be brought to the table to ensure we're making decisions that are best for the community.

Mr. Todd Doherty: Thank you.

I'll pass it over to Mr. Arnold.

Mr. Mel Arnold: I have two minutes, so I'm sure you're not all going to have a chance to answer this question, but I would hope that maybe you could include it in a submission to us. As a committee, we've heard time and again that we need measurables and goals, accountability and so on, and I think if we're to do anything with this Fisheries Act review, that's one area I would really like to see. I would like to see us set some goals, have some measurables, and have some accountability afterward. So far we haven't seen that.

With regard to what Mr. Doherty just mentioned, when we looked at the Atlantic salmon, the question was how far we should go to restore the fish stocks. I asked if we were going to restore it to a level of commercial viability. There didn't seem to be any appetite for that from the other side, but we heard testimony today that we should be restoring the Lake Ontario commercial fishery. Where do we find that balance within the act? Those are the types of things I would really like to see put forward to the committee so that we can have some accountability, some measurables down the road, and we know what we've done has been correct.

If anybody has a 10-second answer, I'd love to hear it.

• (1725)

Mr. Mark Mattson: In my organization, we believe that Canada's water should be swimmable, drinkable, and fishable. That's our vision. We're building a network of people around working towards that very goal.

We'd like to see the Fisheries Act be very strong in its commitment to restoring fisheries for every single Canadian across this country. That's the goal. That's the vision. Certainly, this is the only piece of legislation that the federal government has at its disposal to help us achieve that vision. We hold a lot of hope in this and have put a lot of expectations into this act. We hope it can help us get there.

The Chair: We're just about out of time, Ms. Hendriks, but would you like to respond very briefly?

Ms. Elizabeth Hendriks: Very briefly, I hope—and I put my faith in this committee—that you put the Fisheries Act in a place that ensures we don't have collapses of fisheries like we've had in the past.

The Chair: Thank you.

Mr. Donnelly, you have seven minutes, please, to conclude.

Mr. Fin Donnelly: Thank you, Mr. Chair. I have a few questions.

I'll come back to the cumulative impacts, but I want to raise an issue. I received a letter from the Lower Fraser Fisheries Alliance, dated November 3. It was addressed to the minister and to you, Mr. Chair. I was cc'd on this. They have brought up the issue of feeling that there isn't enough time for adequate consultation with their members. They represent first nations from Hope to Vancouver, an area along the Fraser River, which is one of the greatest salmon rivers on the planet. There are a number of first nations there.

Their concern is that with the deadline being the end of November, they feel there's not enough time to provide adequate consultation for all of the different nations along the river and not enough time to organize a response on such an important topic. I hope the committee will look at and respond to this letter. They suggest moving the deadline to the end of March of 2017.

Certainly I've brought up that concern. I've received numerous requests from witnesses right across the country to be part of this process. I hope that you, Mr. Chair, and the committee will respond to their frustration and their concern.

I also have a concern about having four witnesses at this committee. Because we have so few committee meetings to hear from witnesses that we maximize the number of witnesses we can hear from, I was hoping to take advantage of this. Today we're hearing from four; I think we probably would have had time for six. That's certainly a concern I'd like to address going forward: that we take advantage of the short time this committee has chosen to adequately hear from as many Canadians and organizations across the country as possible.

Returning to the issue of how to improve the act in terms of the cumulative impacts, I want to go to the Lake Ontario Waterkeeper witnesses to ask them to perhaps finish where they were at.

If you've already finished, I could move on to the WWF and hear their comments.

Mr. Mark Mattson: Thank you. I don't think we have much else to add.

I think our point is twofold. Under the current act, with the changes, we don't have a lot of tools in the Fisheries Act to look at cumulative impacts. The one tool that we did have under subsection 36(3), the test for “a deleterious substance”, has been changed through the regulations such that it can be exempted at the provincial level or industry can exempt itself.

I think it's a really great point to focus on cumulative impacts, because that's where the real damage will occur.

Mr. Fin Donnelly: Thank you.

Ms. Hendriks, did you want to provide some comment on how the act might be improved to deal with this?

Ms. Elizabeth Hendriks: Yes, I would point to the lack of monitoring and the importance of monitoring and transparency in understanding where the measuring stick is. Also, in each watershed, how do we understand holistically the impacts on the watershed? How can we look back and understand the impact over time? It's about having tools to be able to do that.

There are solutions out there. I hope the government is encouraged by this committee to explore the solutions that are out there to promote a holistic look at the watershed.

● (1730)

Mr. Fin Donnelly: In the remaining time I have, to the Independent Fish Harvesters' Federation, Mr. McDonald brought up a good point and said that even on the Atlantic coast he feels the owner-operator and fleet separation policies may not be working as well as he would like.

I think that on the west coast, we're not even close to that. We have ITQs, individual transfer quotas. The issue in the past has been essentially the concentration of power and accumulation of licences, i.e., fish and access to fish. In other words, excluding other fishermen from fishing is the issue.

That's a real problem. I've heard loud and clear about the issue about slipper skippers, those who have little to no interest in the fishery and are perhaps interested just in their financial benefit. We're talking about a philosophy of how we allow....

What I heard clearly was fish are part of the commons. They belong to the people of Canada, and they want access. That's what I think we're discussing. Who should get access? In the remaining seconds, Mr. Allain, could you comment on that?

Mr. Marc Allain: I think our point is that the Government of Canada has more than conservation objectives for its fisheries. Fisheries are a resource. They are adjacent to communities that have the capacity to harvest them for broad social and economic benefits to those communities, and they need public policy instruments to ensure that happens. By focusing exclusively on conservation and ignoring these other aspects, the Government of Canada is not able to deliver on its broad suite of objectives. It took us a long while to go down that road of ITQs, but it doesn't serve the purpose. It doesn't give the results in the broad suite of objectives the government has.

Scotland regained control over their fish resources in the last two years. First they had a review of their fisheries policy, because they found that access to the adjacent resources was not in Scottish hands but in corporations that were elsewhere. They said they had a wide suite of objectives. The current system was not serving that, so they wanted a broad consultation on how they should change things, and one option they're not going to consider is what's there now. They are the first government to do that. We went down this road in the 1990s. It's essentially neo-Liberal ideology and economic theory. It hasn't worked. Hopefully Canada will follow Scotland and step back from that.

The Chair: Thank you very much.

Mr. Donnelly, I'll address your issue in just a few moments, since we're officially into overtime and allowed to be there.

First of all, I want to thank our guests for being here today. Thank you to Mr. Gawn, Mr. Allain, Madam Laurie-Lean, Mr. Ruthven, and Ms. Hendriks, and for joining us by video conference, Ms. Tully and Mr. Mattson. We appreciate your time today and the expertise and the testimony you bring.

Mr. Donnelly brought up a point about the witnesses and how we're doing thus far. A lot of the invitations we've sent out, suggested by you, have not been responded to yet. Some of them have said no. I don't want to get into details as to who they are right now, but since we have some concern around the table, I would suggest that in the first hour on Wednesday we have the minister to talk about the supplementary estimates (B), and in the second hour we hope to conclude our study on Atlantic salmon.

Following that, can we use five to 10 minutes to discuss the witness list? I did say to Mr. Sopuck in the last hearing, when the minister was present, that we would talk about it. It is not written in stone. We can be somewhat flexible. Therefore, I ask you to do one thing as a homework assignment: can you bring me two or three names that you would like to bring forward? I would like us to talk about it in camera. We'll talk about some of the witnesses we would like to bring in addition, if we have the space. By Wednesday we may be able to conclude that some spaces are available for people who wish to be witnesses.

Go ahead, Mr. Doherty.

●(1735)

Mr. Todd Doherty: Mr. Chair, are you able to provide us with the list of witnesses who are not responding? We might be able to contact them if they are indeed witnesses—

The Chair: We can do that through your email accounts.

Mr. Todd Doherty: Thank you.

The Chair: Go ahead, Mr. Donnelly.

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

I have just a quick question. Do we need to go in camera for that, given the motion?

The Chair: Yes. We're doing the Atlantic salmon study. What I suggested was having it on the back end of that study, which means we would still be in camera. If you feel you want it to be public, you can put forward a motion to that effect at that point.

Mr. Fin Donnelly: Okay.

The Chair: Is there anybody else on that issue? Are we okay with that?

Bring just a couple of names, and we'll see where we are at that point. We will have an update. Actually, when we start, I'll bring an update as to who has responded and who has not.

Thank you to our witnesses again, and thank you, colleagues.

The meeting is adjourned.

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