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Chair

Mr. Tom Wappel

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•(1105)

[English]

The Chair (Mr. Tom Wappel (Scarborough Southwest, Lib.)): Good morning. I call the meeting to order.

Pursuant to Standing Order 108(2), we are studying the Rouge River watershed. This is our second meeting on this subject matter. I want to welcome our witnesses today. I'm going to introduce them in the order in which they're going to speak.

From the Canadian Environmental Assessment Agency, we have Louise Knox, director. From the Department of Fisheries and Oceans, we have Richard Wex, director general; Edwin R. DeBruyn, chief, habitat Burlington; and Pierre Lemieux, director, program support.

Welcome, witnesses. These are three new people from the Department of Fisheries and Oceans. We often have the usual suspects come, but it's nice to see some new faces.

I just want to warn the witnesses that I have some committee business I have to take care of, but we need a quorum. There are two different quorums. One is a quorum for witnesses, and we have that; another is a quorum for business. As soon as we have that—but not in the middle of your presentation—I will just take a few minutes. It doesn't have to be in camera, so you don't have to move anything. We'll let you finish your presentation, I'll do a little bit of committee business, and then we'll carry on.

Just so you know the rules, you may make a 15-minute presentation each, followed by questions and answers.

Thank you.

Mrs. Louise Knox (Director, Canadian Environmental Assessment Agency): Thanks for this opportunity to meet with the committee and make a presentation before answering some questions. The presentation I've prepared really explains how we at the Canadian Environmental Assessment Agency understand our role generally, and also as it relates to the York-Durham sanitary sewer project. I believe people have copies of the presentation in front of them, and I'll just follow along.

Starting with the third slide, we talk a little about what environmental assessment is from the perspective of the federal government in Canada. We outline that it's a planning and decision-making tool used by the federal government, when it has jurisdiction, to identify environmental effects and mitigation, and determine if significant adverse environmental effects of a project are likely.

There are three or four points that we're trying to make here. First, we've bolded the word “planning”. We're saying that environmental assessment is a planning tool, and the implication of that is timing. Environmental assessment is meant to occur before a project is carried out—

The Chair: Pardon me for interrupting. You referred us to slide three, but the pages aren't numbered and I can't find where “planning” is bolded.

Mr. François Côté (Committee Researcher): You've got the wrong end.

The Chair: Okay. Thank you. Normally the staple is on the other side.

Mrs. Louise Knox: I'm sorry. I apologize for that. I'll just slow down a bit and go back to it.

We're trying to set the stage here for how we understand environmental assessment federally in Canada. So the emphasis on the word “planning” is really meant to say that the environmental assessment activity informs decisions, and in order to do that it needs to be carried out before decisions are taken early in the planning stages of a project.

It's a decision-making tool. Here the implication is that some federal authority has a decision to make in respect of a project, so the environmental assessment is meant to inform that decision.

Finally, we say the tool is used by the federal government. What we mean by that is that environmental assessment is certainly used by others as well. It's used by the proponent to design its project so as to mitigate adverse environmental effects. It's used by potentially affected parties to understand the environmental effects of the project. That's why the information we provide under environmental assessment laws in Canada is accessible to all. But its formal legal use is to put a federal authority in a position where it understands the environmental effects of a project it's going to take a decision about, and where it can be in that position before that decision is taken.

Federal authorities need to answer a number of questions in order to determine whether the act applies to a project. One of them is whether there is a trigger for the project. A trigger occurs when a federal authority is considering making certain types of decisions in relation to a project.

There are four types of decisions we refer to as triggers. One is if the federal government is proposing the project, so they're the proponent. The second is if the federal government is making land available that will enable the project to proceed in whole or in part. Another is if the federal government is providing funding for a project, or considering providing funding for a project. The final one is where the federal government is considering issuing an approval, authorization, or permit that is listed on the law list. So these are the traditional triggers, and it's these decisions being considered by federal authorities that really give the federal government jurisdiction over a project. I want to expand on this point a little bit.

In the case of the York-Durham sanitary sewer project, and in many other municipal projects in Ontario where municipalities are the proponents and their activities are regulated by the province, it is often perceived that there is no federal jurisdiction in relation to those projects. Sometimes that is the case, and when that is the case we don't carry out an environmental assessment federally, and we don't have an involvement.

But when a project does require an action of a federal authority, it brings that project within federal jurisdiction. In this case, the issue is whether there is an authorization to be given under the Fisheries Act that would enable this project or components of it to proceed in whole or in part. So that's where the federal jurisdiction comes from, to the extent that there is any. If there is no authorization to be given, to my knowledge there is no other federal jurisdiction in relation to the project.

I know that the committee questioned whether there were federal financial resources going into this project. To my knowledge, there are none. That doesn't mean there never will be, but as of today I'm not aware of any financial trigger for CEAA in relation to this project.

I also want to add that there is another way in which a project can become subject to CEAA, and it involves transboundary provisions of the act. Under sections 46, 47, and 48 of the act, if a project is having effects that cross a boundary—and this can be a boundary off federal land onto federal land—the federal Minister of the Environment may have the authority to refer the project to a mediator or a review panel. These provisions only apply when there is no other trigger in relation to the project.

So transboundary provisions are not being considered at this time in relation to the York-Durham sanitary sewer collection system, because it remains uncertain whether there is a trigger under the Fisheries Act in relation to these projects. But those provisions do exist, and I didn't want to ignore that in the presentation this morning, because I know it has come up with the committee.

• (1110)

On to the next slide, "Does the Act apply?", part two. The federal authority determines whether it has a decision-making responsibility, which would require an EA to be conducted. In this case, it is Fisheries and Oceans that decides whether an authorization is required or not. CEAA does not decide that. The agency has no role in deciding that. And the Minister of the Environment does not decide whether there's an authorization required under the Fisheries Act.

I know the question also came up in a previous session with the committee of whether the federal Minister of the Environment should cause an environmental assessment to be done here. The federal Minister of the Environment does not decide whether an authorization is required under the Fisheries Act. I just want to clarify that.

The second point on this slide refers to the potential trigger under the Fisheries Act, which we've talked about.

The federal authority that is required to conduct the EA—that is, the federal authority with the trigger, and in this case, if there were an authorization this would be Fisheries and Oceans—is responsible for ensuring that the EA is conducted as early as is practicable before any decisions to support the project are made. Again, this is to emphasize the point that the responsibility and the decision-making authority lie with Fisheries and Oceans, in this case. But I think I've made that point adequately.

Finally, the agency's responsibilities include providing advice to federal authorities on interpretation of the act, meaning the Canadian Environmental Assessment Act, not the Fisheries Act, and its regulations, and on environmental assessment best practices; responding to queries from other interested parties, such as the provinces, environmental non-governmental organizations, and members of the public; and acting as a federal environmental assessment coordinator when required.

This federal environmental assessment coordinator role perhaps warrants a bit of discussion. The role was established to ensure that potential responsible authorities or departments with specialist advice are advised of a proposed project. In this case, when our office first received notification of the York-Durham sanitary sewer collection project from the proponents' consultant, we busied ourselves with understanding what the project was about, and then ensuring that federal authorities that had a potential trigger were aware of it and could consider whether they had a trigger or not.

We also promote coordination among federal authorities. Often there are multiple federal authorities in relation to a project. We ensure that the responsible authorities fulfill their obligations regarding the public registry and ensure that federal departments involved in the assessment fulfill their obligations in a timely manner.

That concludes the presentation portion. I'd be happy to answer any questions.

The Chair: Thank you.

Let me just get this clear: it's Fisheries and Oceans' responsibility.

[Laughter]

The Chair: Okay, I think I've got it.

We have quorum, lady and gentlemen, so we'll deal with some business. Just bear with me for just a few minutes; this won't take long.

For the benefit of committee members, we have the minister on Thursday, following up on the report of the 2004 sockeye salmon harvest. That will go from 11 o'clock in the morning, at the request of the minister, until 1 o'clock in the afternoon. That will be televised in room 237-C.

Is that agreed?

Some hon. members: Agreed.

The Chair: Great. Thank you.

On Tuesday morning, we will have Nunavut Tunngavik Inc. and the Nunavut Wildlife Management Board appearing with respect to the turbot quota of the Baffin Fisheries Coalition in the Davis Strait. They were originally going to appear this coming Thursday, but because of the minister's request to appear, we've tentatively scheduled them for Tuesday, June 21. Of course, that is subject to the House continuing to sit at that time.

There's a technical matter, and that is the cost of bringing the witnesses from the north. I have a motion here. I can tell you that the Liaison Committee has established a set price of \$2,500 per witness from that area, with no more than two witnesses per organization.

Obviously, with two organizations, two witnesses, that's four, so \$10,000. A nice motion would be that an operational budget in the amount of \$10,000 be approved for the committee's study of the turbot quota of the Baffin Fisheries Coalition in the Davis Strait.

You move that, Mr. Stoffer? Thank you.

Now, just because we have \$10,000 allocated, it doesn't mean we'll spend \$10,000. Of course we'll be judicious.

Any discussion on that motion?

(Motion agreed to)

• (1115)

The Chair: In respect of the committee's work that we're going to try to do in Newfoundland in September, I'm having difficulty with the Liaison Committee. The Liaison Committee has difficulty with its particular envelope of money and how to allocate it. There are a number of ways the money can be allocated, and one of the ways the Liaison Committee is considering is to allocate the moneys in this upcoming quarter to committees that have not travelled in recent past—and by that I mean since 1998—or indeed have never travelled, and will be travelling within Canada. Our committee has travelled within Canada and internationally, so we're down low on the pecking order.

There are only two ways I can move up the trip possibility. One is to lower the number of days. We originally had it for four days. I don't think that's feasible; I don't think it would do justice to the topic. The only other way I can lower costs is to lower the number of members attending. Right now we have the budget set at all 12 members attending. In my view, that trip will not pass with a budget of all 12 members attending.

We don't have to make a decision today. I am going today to an informal meeting of the committee, but there's a formal meeting on Thursday. If possible, though, I'd like a decision today so the clerk could rejig the numbers and we could at least get it there. It will

likely be the last meeting, and if we can get it approved, we might be able to travel.

I'm going to suggest that we have the chair, one member of each opposition party, and two Liberals, which would be the two Newfoundland members. So it would be six instead of twelve. This would dramatically reduce the cost of the trip. There's no guarantee I'll be able to get it through, but I might be able to. That wouldn't stop any other members from coming, if they were interested, or if they were in the area at the time—the time being September 26 through October 1, assuming it all gets passed.

Mr. Murphy.

Hon. Shawn Murphy (Charlottetown, Lib.): Mr. Chairman, the point I would make is that it probably wouldn't cost much for the Newfoundland members to travel in Newfoundland if they're there. If you wanted to reduce yours to four, you would have your six, or if you went to six, you would probably have eight. It's just a point.

The Chair: That's fine. I just don't like to presume that members are going to use their own points, or whatever the case may be. I realize they'll be there, or may be there. But there will be hotel costs and that sort of thing. Why should you pay out of your own pocket?

• (1120)

Mr. Bill Matthews (Random—Burin—St. George's, Lib.): We're just generous people.

The Chair: Then we'll take your generosity.

Mr. Simms.

Mr. Scott Simms (Bonavista—Gander—Grand Falls—Wind-sor, Lib.): The hotel costs for me, certainly for the Bonavista part, are negligible. I have my own place there to stay. I'll just leave it at that.

The Chair: Can I go back to the Liaison Committee and say that we are going to keep it at four days, with six members instead of twelve? And then we may end up having eight members, as you point out.

Mr. Bill Matthews: Sure.

The Chair: Then we'll rejig whoever is going. Correct?

In that case, could I have a motion that the committee request permission of the House for six members to travel to the province of Newfoundland and Labrador from September 26 to October 1, 2005, in relation to its study of the northern cod, including the events leading to the collapse of the fishery and the failure of the stock to re-establish itself since the moratorium.

Mr. Simms, would you like to move that?

Mr. Scott Simms: I so move.

The Chair: Any discussion?

(Motion agreed to)

The Chair: So we can get this organized, I need a motion that on behalf of the committee the chair be authorized to prepare a travel budget and present it to the Liaison Committee".

Monsieur Roy?

[Translation]

Mr. Jean-Yves Roy (Haute-Gaspésie—La Mitis—Matane—Matapédia, BQ): That is fine!

[English]

The Chair: Is there any discussion?

(Motion agreed to)

The Chair: Excellent. Thank you for your cooperation.

Now we go to the Department of Fisheries and Oceans. Is it going to be Mr. Wex?

Mr. Richard Wex (Director General, Habitat Management Directorate, Department of Fisheries and Oceans): Thank you, Mr. Chairman.

As you said at the outset, my name is Richard Wex. I'm the director general for the habitat management program at the Department of Fisheries and Oceans in Ottawa.

I'm joined today by both Mr. Pierre Lemieux, who is the acting director general for enforcement branch in Ottawa, as well as Mr. Ed DeBruyn, who is the area director for the Ontario Great Lakes area for the department. In addition to his area responsibilities, Mr. DeBruyn has been involved with the York-Durham sewer project for some time now on behalf of the department and therefore is well positioned to answer your specific questions related to this project today.

I'd like to open with a brief overview of DFO's role in habitat management and enforcement as well as giving a very brief summary of DFO's involvement with the York-Durham sewer system project with a view to addressing some of the issues that were raised at the April 7, 2005, SCFO hearing.

In terms of the role of the habitat management program by way of an overview, the primary role of DFO's habitat management program is to ensure that when works are being conducted in and around water in Canada, measures are taken by proponents to protect fish habitat and specifically to avoid what is referred to in the Fisheries Act as the harmful alteration, disruption, or destruction—which many of you have heard as a HADD—of fish habitat.

I just wanted to point out a couple of general points that I think do need to be understood in terms of the legislative and policy context within which we're operating, because it has a real bearing on this file in terms of DFO's involvement with the York-Durham project.

First, under the Fisheries Act, no one may cause a HADD to fish habitat unless they are authorized to do so. However, no person—or in this case, body—is required or compelled to apply for an authorization to harm the habitat. It's the responsibility of the individual to avoid this harm to the habitat or make an application to the minister to harm the habitat.

We have what we refer to as a general prohibition under the act. We don't have a permitting scheme, whereby if people were undergoing a project, they'd need to then get a permit from DFO, and before we'd issue a permit, we'd automatically do an environmental assessment. It's a little bit different from that.

Mr. Peter Stoffer (Sackville—Eastern Shore, NDP): I have a point of order, Mr. Chair. There's something wrong with my hearing, I guess. I just want to reiterate a sentence you said, that they must apply to the minister...an application to harm the habitat.

• (1125)

Mr. Richard Wex: There is a general prohibition under the Fisheries Act that no person shall cause a harm to fish habitat unless authorized to do so by the minister.

Mr. Peter Stoffer: But you said, an application "to harm the habitat". Is that correct?

Mr. Richard Wex: That's correct.

Mr. Peter Stoffer: I just want to make sure I have my notes right.

Mr. Richard Wex: Second, unless a person or body applies for and DFO is prepared to issue an authorization to harm habitat under the Fisheries Act, DFO is not in a position to initiate an environmental assessment under the Canadian Environmental Assessment Act.

The Chair: Excuse me, Mr. Wex.

Mr. Stoffer, the state of your hearing is not a point of order.

Go ahead, sir.

Mr. Peter Stoffer: I'm sorry, what did you say?

Voices: Oh, oh!

The Chair: Go ahead, Mr. Wex.

Mr. Richard Wex: If a person works in or around water without an authorization to commit what we refer to as a HADD, and this harmful alteration or destruction of the habitat occurs, then that person runs the risk of being charged under the Fisheries Act. Once this occurs, DFO's conservation and protection branch will lead an investigation under the Fisheries Act, working closely with the program biologist. That's a quick overview of the program's mandate and the role of the conservation and protection group working with the program in the event of an occurrence that needs to be looked into.

In respect of our involvement with the York Durham sewer system, as you know, this system is a sewage pipe that has been under construction for some time, and it will continue to be under construction for many years, we understand, by the Region of York. It will provide sewage services from Newmarket to the existing Duffin sewage treatment plant on Lake Ontario.

Our understanding is that the pipe is being constructed in sections, with each section undergoing an environmental assessment under the province of Ontario's class environmental assessment process or as an individual environmental assessment. The section of the pipe that was brought to this committee's attention on April 7 by Mr. Robb on behalf of the Friends of the Rouge River, and which is now the subject of Mr. Robb's private prosecution, relates to the first phase of a section of the project that we understand is known as the 16th Avenue section.

DFO was not informed about or consulted during the provincial environmental assessment and permitting process for this first phase, which fell under the jurisdiction of Ontario's Ministry of the Environment. Again, proponents do not have to go to DFO to seek a permit for a project; there's a general prohibition to avoid harm to habitat. So at this stage we were not informed about the first phase of this aspect of the project. However, the Toronto and Region Conservation Authority, which is a provincially mandated body responsible for watershed planning and resource conservation, did review the project to determine the effects on water resources. Because we have a partnering agreement with them, as we do with most of the conservation authorities in Ontario, they did consider and look at the effect on fish habitat.

At that time, the Toronto and Region Conservation Authority determined that phase one of the project would not result in harm to fish habitat, so DFO was not brought into the picture. Under the partnering agreement, they make an assessment, and if they believe there could be harm to habitat, they bring it to the attention of DFO for further review and, if necessary, negotiation and ultimately, if necessary, an authorization.

Following phase one, and in light of a number of incidents that you may have heard about during phase one, the Toronto Region and Conservation Authority determined that there could be impacts from the project to surface waters, and that these could result in a harmful alteration to fish habitat during phase two. So they referred phase two of the project to DFO for our review. That's when DFO became involved in the 16th Avenue section of the pipeline—that is, when the review of phase one was completed and the review of phase two was beginning.

I'd now like to turn to phase two. We understand, from discussions with the region and the Ministry of the Environment and others, that the Region of York believes they can avoid a HADD going forward while constructing phase two of the pipeline. DFO has been involved in the review of the Region of York's environmental management plan for phase two, which is intended to mitigate any impacts with respect to fish habitat. Since the Region of York has committed to avoiding impacts to fish habitat and has not applied for an authorization under section 35 of the Fisheries Act to harm the habitat, DFO did not initiate an environmental assessment under the Canadian Environmental Assessment Act. As my colleagues from the agency explained, the regulatory trigger for an environmental assessment is the issuance of an authorization under subsection 35(2) of the Fisheries Act.

However, it is important to note—and I'd like the committee members to understand this—that we have made this point clearly to the Region of York, because we too are concerned on a go-forward basis, in light of what happened during phase one, that it's the responsibility of the proponent, in this case the region, to ensure that a HADD does not result from their project. This doesn't mean that, following the provision of our advice in the development of their environmental management plan for phase two, where they will be identifying mitigation measures to avoid habitat, we'll simply turn a blind eye, that we'll give our advice and assume that the Region of York will comply with it and avoid any harm to the habitat. If unauthorized harm does happen to the habitat, and it is reported to

the department, we will then investigate and the Region of York can be charged under the Fisheries Act.

In fact, there is already one charge before the courts against a contractor hired by the Region of York, related to an earlier infraction during phase one. The department is actively pursuing an investigation into another potential violation, which has resulted from the pumping of groundwater by the Region of York.

● (1130)

In addition to the existing charges and investigations launched by DFO because of what happened in phase one—which we only heard about after the fact—as you heard, in April Mr. Robb initiated a private prosecution under the Fisheries Act for the destruction of fish habitat, as well as for the deposit of materials that are deleterious to fish. It is a section, as you may know, that is administered by Environment Canada.

DFO has provided information and advice to the Department of Justice in order for the Attorney General of Canada to take a position before the courts on whether it should intervene and take over Mr. Robb's private prosecution. Environment Canada is also involved in advising the Attorney General of Canada on that aspect of the file because of their mandate under the Fisheries Act.

Based on the advice and information given to the Attorney General by both DFO and Environment Canada, and given the AG's prosecutorial discretion, the AG will then take a decision and inform the court accordingly, as I'm sure many of you are aware.

When this was written and provided to you in terms of this opening statement, we had understood that there was a court hearing today. In fact, we understand that disclosure is still taking place between Mr. Robb and the lawyers for the Region of York, as well as the Attorney General, I presume, once that disclosure is finished. As a result, this matter has been put over for a number of weeks.

In summary, I'd like to make three quick points.

First, DFO cannot compel a person or a body to seek an authorization to harm, alter, or destroy habitat, which would cause DFO to initiate an environmental assessment.

Second, DFO has done and will continue to work with the regulatory agencies, particularly Ontario's Ministry of the Environment, to provide advice on what steps the Region of York can take to avoid harm to fish habitat when going forward with phase two of the York-Durham project. That is our preferred approach. It is what our policy calls for. We work with proponents to try to avoid and mitigate harm to habitat, and we're working with the Region of York on their environmental management plan.

Last, DFO will continue to enforce its legislative mandate by actively investigating potential violations of the act and will take enforcement action where appropriate, as we've already done on a couple of occasions in this particular case.

Mr. Chairman, those are my opening comments. Mr. DeBruyn and others are available to help you out in terms of any questions you may have.

The Chair: Thank you very much, Mr. Wex. I thank both you and Ms. Knox for keeping within the timeframe. It's very much appreciated.

We'll begin our questioning with Mr. Kamp, for 10 minutes.

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

Thank you to our witnesses.

I'm curious about whether you like this system. It sounds to me that no one is required to do anything. It's not a permit system, as you said.

At some point, you advised them. I'm not exactly sure what triggered your advice, but if people could presumably not even come for advice, they'd just go ahead. In the worst-case scenario, they would cause a HADD and be charged, and who knows what happens after that.

Does that seem like the right system to you? Should there be some kind of system where there is more of a proactive effort to make sure no harmful alteration actually happens, rather than charging people under the act when it does happen?

• (1135)

Mr. Richard Wex: I'll start off with some opening remarks to that question, and then I'll turn it over to others.

The system is what it is. In fact, in the vast majority of cases, when you have a development project going forward, people do come to DFO. We have over 12,000 of those a year. People come to DFO because of the general prohibition and the significant penalties associated with running afoul of the act. People come to DFO to ensure they are in fact not running afoul of the act.

In the vast majority of cases, people are not out there trying to thwart the act. They know that if they do, and they don't seek our advice and input to avoid harm to habitat when going forward, they face some pretty stiff penalties by way of prosecution, which mount up pretty quickly financially, as well as some criminal sanctions associated with it in terms of jail.

Overall, our policy is one of first working with proponents to avoid and mitigate the habitat harm. We don't really want to be in a position of immediately authorizing the harm in order to launch an environmental assessment because, under the current system, we essentially have our own internal EA process with respect to at least our core mandate, which is the protection of fish and fish habitat. We work with proponents to come up with a redesign of the project and to come up with mitigation measures to avoid the harm. We relocate the project, and so on and so forth, rather than immediately assuming there's going to be harm, looking for a way to compensate for it, and going through the EA process.

We need to look at this system more carefully, but in the vast majority of cases, from what I've seen, it seems to work.

I'll turn it over to Mr. DeBruyn and others who may have some additional comments.

Mr. Randy Kamp: I would just ask this. You talked about the vast majority of cases. What is that percentage-wise for people who are proponents of a project and who actually come to you for advice?

Mr. Richard Wex: I can't give you a percentage, but I can tell you that there are 10,000 to 12,000 referrals, projects that are referred to us, on an annual basis. It has been increasing over the past number of years. Frankly, the vast majority are low to low-medium risk to habitat.

For 800 to 1,000 of those 10,000 to 12,000 referrals, we are unable to avoid the harm to the habitat. So we engage in an environmental assessment prior to the issuance of the authorization to create the harm, which is, of course, as a matter of policy, and then there is compensation, not financially but through the creation of other habitat to offset the loss to the habitat.

Mr. Randy Kamp: How many charges are laid in the course of a year for harmful alteration?

Mr. Richard Wex: There are both charges and investigations. I'll turn that over to Mr. Pierre Lemieux, the DG of enforcement, who may have the exact numbers.

Mr. Pierre Lemieux (Director, Program Support and Development, Department of Fisheries and Oceans): Are you speaking nationally? I don't have the numbers nationally, but I could certainly get back to you with those figures.

Mr. Randy Kamp: Well, what do you have?

Mr. Pierre Lemieux: In Ontario, for example, we respond to many incidents. For example, we responded to in the neighbourhood of 830 incidents in 2004.

Many of those incidents don't result in charges or prosecution. We deal with those incidents in a number of ways. We have no capacity to deal with all of those incidents through the courts. Many of those incidents turn out to be not that serious. Many of them are not HADDs at all, but we respond to them. We keep a file on all of them. We use a number of measures to try to achieve no net loss. Sometimes if it's a very minor incident, we will work immediately with the proponent to seek voluntary compliance and some restoration measures.

The actual number of charges varies a lot from year to year. In Ontario, I would say it probably averages in the neighbourhood of 10 to 20. Keep in mind that in Ontario the program has only been active for a few years. We are still ramping up. We've never been fully staffed in Ontario. We've gone through a fairly major learning curve, but we're certainly getting there.

For the rest of the country, I don't have the numbers. But I would certainly be glad to obtain those numbers, if that would be useful.

• (1140)

Mr. Randy Kamp: How many of these 830 incidents, for example, would be projects where they didn't ask for your advice before they proceeded? Is that kind of what happens?

Mr. Pierre Lemieux: These are largely incidents that are reported to us. For many of them, we get a phone call from the public who are aware of some activity and we respond. That doesn't include all the projects that are formally submitted to us, that are formally reviewed by us. These are incidents for which people choose to not go into the formal process and seek advice or an authorization from the department.

Mr. Edwin DeBruyn (Chief, Habitat, Burlington, Area Director's Office, Department of Fisheries and Oceans): I might be able to put some perspective on that for Pierre.

Most of the referrals that we get in Ontario—and I'll build a little on what Richard said as well—come to us from any number of organizations or individuals, and our staff respond to them as best as they can in terms of letters, site visits, or what have you. The largest portion of them, I would say in the order of 90% to 95%, are dealt with through letters of advice, operational statements, and other devices that say, if you continue on in the way you're doing, we're pretty happy with the mitigation that you're going to be doing to protect fish and fish habitat.

A few of them will go through the authorization route. Our staff who are involved in those referrals will go out with our partners or individually and they will look at those projects on a day-to-day basis, depending on what their availability is to go out to these. Some of those projects they have been involved with do go bad, and we do take enforcement actions on some of those referrals if the proponent does create a HADD and they're unable to deal with the consequences of that HADD and do reparation. There's any number of mechanisms we can undertake.

The numbers that Pierre was referring to, the 830, may or may not include that subset of day-to-day referral business that our habitat biologists and technicians are involved in. I hope that gives a bit of perspective.

Mr. Randy Kamp: I know my colleagues will be asking more specific questions, and I might have one or two of those if I have time. But Mr. Wex, you said the system is what it is. I appreciate that, and we do have an interest in seeing that the system works the way the current legislation says it should. But I think we also have interest in asking the question, how should it work, what would be better—not just the system as it is. Really, it is a genuine question I'm asking, because you gentlemen and lady are in this business from day to day. I know you're reluctant to say so, but I think we would appreciate it if you told us how you think it would work better; or if this is exactly the way it should work, tell us that as well.

Mr. Richard Wex: Obviously part of our job is to look at how we can improve the system in terms of opportunities going forward. Some work has been done with that in mind, but until you look at a specific project you actually cannot tell in advance if it's going to impact something that is relevant to our mandate, which is the protection of fish and fish habitat. You might assume that some large infrastructure project would, but until you actually have a project description....

For example—and correct me if I'm off base—I thought maybe what you were suggesting was a different system. Where you actually needed a permit for a certain-sized project, you'd have to come to DFO, and before you could issue an authorization, you

would first have to do an environmental assessment. What I was suggesting was that in practice this system basically addresses that interest. You're not going to have a large project out there, in the vast majority of cases, that impacts fish habitat that we are not somehow brought into the picture on, and therefore working with the proponent on to avoid the harm.

Is there a better system? Perhaps, but this system, I would suggest from our experience in the vast majority of cases, does seem to address our underlying interest, which is not just to get an environmental assessment, but in our case, it's to avoid the harm to fish habitat. That's what we're mandated to do.

● (1145)

Mr. Randy Kamp: That's the right goal, I think. My question was, is there a system that would accomplish that goal better and produce less harmful alteration to habitat in the long run?

[*Translation*]

The Chair: Mr. Roy, go ahead please.

Mr. Jean-Yves Roy: Thank you, Mr. Chair.

Mr. Wex, you tell us, at the last page of your presentation, that:

In fact there is already one charge against a contractor hired by the Region of York before the courts related to an earlier infraction during Phase I, and the department is actively pursuing an investigation into another two other potential violation which has resulted from the pumping of groundwater by the Region of York.

I would like to know whether the techniques which will be used during Phase II will be the same as those used during Phase I.

Mr. Richard Wex: Thank you for your question.

Considering the specific nature of the question, I'll ask Mr. DeBruyn to answer.

Mr. Edwin DeBruyn: In principle, yes.

Mr. Jean-Yves Roy: You know that the techniques used during Phase I caused destruction of the habitat. Now, I understand that you authorize Phase II, knowing full well that Phase I caused habitat destruction.

[*English*]

Mr. Edwin DeBruyn: As a point of clarification, we have not authorized phase two, and in phase one, as I understand it, the investigation indicated that it was not necessarily the methodology for constructing the pipe that caused the harmful alteration, but it was the manner in which it was conducted.

[*Translation*]

Mr. Jean-Yves Roy: What caused the destruction of habitat during Phase I?

[*English*]

Mr. Edwin DeBruyn: I believe it was a sediment spilled from a failed sediment control plant. That was the cause. It was a sediment-related—

[Translation]

Mr. Jean-Yves Roy: Was it a sediment spill related to ground-water removal?

[English]

Mr. Edwin DeBruyn: The sediment spill was related to surface construction. It was not related to the groundwater removal. It was related to surface runoff of sediment into a stream. That's my understanding.

[Translation]

Mr. Jean-Yves Roy: Can we be assured that this kind of event will not occur again during Phase II?

[English]

Mr. Edwin DeBruyn: In the process, when we got involved in phase two, we've been working with the region and the other agencies to develop an environmental management plan. It's a fairly complex environmental management plan that includes environmental auditors to be on-site. The plan is still a draft. It has not been finalized. We're still reviewing it and we're still preparing a deficiency report against that environmental management plan.

As Richard Wex pointed out in his comments, when we were brought in for phase two we were very concerned and we wanted to make sure that if they were going to mitigate it they had a good adaptive plan that would put in some clear checks and balances to make sure they were doing what they said they were going to do. In addition to that, we feel fairly confident that they are well intentioned to do that. The proof will be, pardon the expression, in the pudding. Will they be doing that during the construction and the implementation of the project? That is something we will have to watch for as part of our role.

I want to add one other point. We've been working with principally three other environmental agencies: the Ministry of the Environment, the Ministry of Natural Resources, and the Toronto and Region Conservation Authority. All four agencies are equally concerned with this project. I don't want to minimize that concern. All of us are sitting around the table looking at this environmental management plan. There are concerns here. We don't deny that there are concerns, and we don't deny that we've been working hard with them to say, you'd better make sure that you're not affecting or impacting fish or fish habitat as a consequence. They've continued to come back and say they will do what they can to mitigate this plan.

• (1150)

[Translation]

Mr. Jean-Yves Roy: When you are talking about two other potential violations related to groundwater removal in the Region of York, what potential violations are you talking about exactly?

[English]

Mr. Edwin DeBruyn: I will speak generally, because they're both under investigation. I don't want to speak too much to them, but as I understand it, one of the infractions relates to an inadvertent shutting off of a valve by an individual, and that was a human error item. The other one we are actively working on—and Pierre may want to speak to that as well—is the individual private prosecution that Mr. Robb has brought forward. Those are the other two we are principally working on right now.

[Translation]

Mr. Jean-Yves Roy: Thank you.

[English]

The Chair: Merci.

Mr. Stoffer.

Mr. Peter Stoffer: Thank you, Mr. Chairman, and thanks to our witnesses for coming today.

I'm a bit, I guess, disappointed in the fact that we hear words like “trigger”, “if”, “maybe”, “assume”, “we hope so”, “well-intentioned”, “we don't have enough people”, “we don't have enough resources”. I've said for years that the protection of fish and fish habitat is the only reason you folks are here today. You get \$1.5 billion of our taxpayers' money to protect fish and fish habitat, and that's it. Then we hear your presentation: “we hope”, and “we're well-intentioned”, and “to start it off people have to come to us and hopefully they're well-intentioned and everything else”, and “we'll lay a charge” and “we'll do this”.

My first question is, if you lay a charge, especially in the Rouge River case, does the project continue while the charge is being laid and prosecuted in the court, or is the entire project stopped?

Mr. Pierre Lemieux: There are presently two incidents that we are investigating directly, and the project does not stop.

Mr. Peter Stoffer: It continues. You suspect—and you've already said there's one before the courts—that somebody has done something to harm fish habitat, yet the project continues. Okay.

Mr. Robb was here recently, and he told the committee that based on the review of phase one of the project, the TRCA had said that a federal environmental assessment should have been triggered, but DFO decided to ask for further mitigation to avoid the need for a federal EA. Did Mr. Robb tell the committee the truth when he said that?

Mr. Edwin DeBruyn: My response is that that's not entirely correct.

Mr. Peter Stoffer: So he misled the committee, then. Is that what you're saying?

Mr. Edwin DeBruyn: No, I'm not saying that. He perhaps misunderstood the roles and responsibilities of the federal Department of Fisheries and Oceans, as well as the roles and responsibilities of the CEAA agency and how the Fisheries Act and CEAA interconnect with each other.

Mr. Peter Stoffer: Did you receive from the TRCA a review of the project stating that the dewatering project was likely to cause harmful alteration or destruction of fish habitat? Did you receive that review?

Mr. Edwin DeBruyn: Yes, we did.

Mr. Peter Stoffer: Well, if you received it, did you ask for further mitigation, then, after you received it?

Mr. Edwin DeBruyn: Yes, when the project was first referred to us by the Toronto and Region Conservation Authority, it was at the late stages, or just at the completion part of phase one. Phase one had about 300 metres left to complete when they encountered a large amount of groundwater that they had not anticipated in their environmental assessment process under the province, or under their permit process. So York Region, the Toronto and Region Conservation Authority, the Ministry of the Environment, the Ministry of Natural Resources, and Fisheries and Oceans assembled at a meeting in July 2003 and said, we have a problem we need to sort out.

The problem was that all of a sudden they had encountered too much groundwater to safely continue the project, and they were running the risk of losing a lot of very expensive equipment and losing the tunnel, having the tunnel collapse, if they couldn't get the water to permit finishing the last 300 metres.

That's when we got involved in the project. We said, okay, we have a problem, but what's the best solution? The best solution is to finish the project as quickly as you can, take more water, and finish the concrete that needs to be done at 100 feet below the surface.

So all of these things were building up and we needed to find a solution for the completion of phase one. We said to the Toronto and Region Conservation Authority that yes, there is likely to be a harmful alteration. We met with the region and we said to York Region that they needed to fix the problem as quickly as possible and implement a mitigation plan to address that as quickly as possible.

• (1155)

Mr. Peter Stoffer: Under section 35 of the Fisheries Act, was there an authorization at all given to the project, to the developers?

Mr. Edwin DeBruyn: No.

Mr. Peter Stoffer: Why not? You just indicated that you had a problem, and you've also indicated that they have to have an application if they're going to harm the habitat. Mr. Wex said that. So did they at all apply for an application to harm the habitat? I love that term. It's pretty neat, you know.

You said no. May I ask why?

Mr. Edwin DeBruyn: No, they did not ask for an authorization, and we were not in a position to compel them to ask for one. We did suggest to them at that meeting that they were entitled to proceed if they wanted to but they could run a risk going with their mitigation plan, or we could ask them for an application under the Fisheries Act to obtain a Fisheries Act authorization. At that time, we also informed them that if we did issue a Fisheries Act authorization, we would also then, as Ms. Knox pointed out, be compelled to initiate a Canadian Environmental Assessment Act assessment before we could issue that authorization.

The Chair: Thank you, Mr. Stoffer.

For the second round, Mr. Simms, do you have any questions?

Mr. Scott Simms: Yes, I have just a quick one.

Go back to that meeting you talked about. I think it was in July 2003. Is that correct?

Mr. Edwin DeBruyn: Yes.

Mr. Scott Simms: What was the trigger there to get involved?

Mr. Edwin DeBruyn: Mr. Stoffer's question was related to that. The Toronto and Region Conservation Authority called us and informed us that there was a problem with the increased amount of water they were taking. They informed Fisheries and Oceans that under our agreement, they thought a HADD was likely to occur because of a new amount of water that all of a sudden they were discovering. And they thought that DFO should be brought in at that time. That was pursuant to the agreement we had with them.

They called us and we started.... I was away on holidays at the time, but some of the staff were involved in that. When I came back from holidays they said we needed to go to a meeting right away, that the meeting had been called urgently. So away we went.

Mr. Scott Simms: I'm just trying to understand the formal arrangement of how you get involved in a situation like this. I don't quite understand. It seems as if it's kind of an ad hoc process; someone cries for help and you get involved.

From what I'm reading here—and I apologize for my ignorance—doesn't there have to be a formal trigger in order to get involved, such as proponents, the transfer of federal land, that sort of thing?

Mr. Edwin DeBruyn: It's a good question. The only trigger Fisheries and Oceans has under our mandate—we have a few triggers, but the principal one that's in question here today—is subsection 35(2) of the Fisheries Act. When someone asks us for Fisheries Act authorization, and we feel that the harmful alteration that will likely occur from that request is acceptable in the circumstances, we issue it, subject to the requirements of the Canadian Environmental Assessment Act. So if the HADD is not acceptable, we don't issue the Fisheries Act authorization and we wouldn't trigger CEAA either.

Mr. Scott Simms: And in this situation, a HADD had occurred.

Mr. Edwin DeBruyn: A HADD was likely to occur. The key here, in terms of that, was that they said a HADD was likely to occur if they continued to pump water at the rate that they were.

Mr. Scott Simms: Right. And this was considering what phase, again?

Mr. Edwin DeBruyn: That was just for the completion of phase one. That meeting was a discussion about how to deal with the completion of phase one. They had about 300 metres left.

For lack of a better analogy, it's like trying to construct a straw through the middle of a sponge 100 feet below the surface of the ground. They were trying to get this straw to a 20-metre-diameter caisson that goes from the surface down about 100 feet. They were trying to get this straw to the headworks so they could stem the flow and complete the concreting in behind.

This whole apparatus is a proprietary apparatus. I don't want to spend too much time on engineering technical detail, because I'm not an engineer and I don't know the technical detail. But the company that built this machine has built it on about a 300-metre rail line that's below the ground, like a large worm, and it had to get to a certain point in order for them to continue the concreting process up to this caisson. When they had the water problem, they had to, as quickly as they could, get this machine forward and do the concreting, or else that whole tunnel would start to collapse on itself because of all the water coming in.

•(1200)

Mr. Scott Simms: It sounds to me like a very short-term solution for a problem you had, but I'm more concerned, obviously, in dealing with the environment, in the long-term effect on that. The process you described with the straw and the sponge does seem to me like something that's done at the drop of a hat, but doesn't take in too many long-term considerations.

Mr. Edwin DeBruyn: I think what was gleaned at the meeting that we had in July 2003 is that the environmental consultants and the assessments that they did, the engineering and geotechnical work.... A lot of money was spent by the York Region. They originally came up with this master plan for the York-Durham sewer system, the entire sewer infrastructure for the entire region of York.

The project that Mr. Roy was talking about—and that's the \$800-million project, the whole thing—is the 16th Avenue project. Phase one and phase two, as I understand, are something in the order of \$60 million, or something like that; I don't know what the numbers really are. So they did it in two phases, drilling from a point of departure at 9th line over to Woodbine Avenue to connect to other existing infrastructures. So it's a \$60-million project. They did phase one, but ran into a problem that their geotechnical experts hadn't encountered and expected. So they said, let's get phase one done. That's when we got involved right at the end of it, and said, before you start phase two, let's make sure there's a good environmental management plan to mitigate those impacts. So that's what we've been working on.

In fact, the York-Durham sewer system currently has nine priority projects throughout the York-Durham region, and DFO staff are involved in all of those nine projects in various capacities in providing, according to the policy that Richard Wex was talking about.... I don't know if you—

Mr. Scott Simms: It was all based on section 35, was it?

Mr. Edwin DeBruyn: We were all involved in those, because they were referred to us by the Toronto and Region Conservation Authority, or York-Durham, or whoever we brought into it. So we're involved in nine different projects right now throughout the York Region for different types of projects related to the whole York-Durham sewer infrastructure.

Mr. Richard Wex: Can I just add one point?

You asked at the outset, how do things even get to your attention, or you said that it seems ad hoc. I just wanted to try to respond to that a little bit. There is a heck of a lot of habitat across this country, but one program.

How do we better protect fish habitat? We have to enter into partnering agreements. So we try to do that. In Ontario, as I

understand it, there are some 36 conservation authorities, legal bodies. We partnered with 35 of them, so that when they review projects on a watershed basis, they are trained to look for things from a fish habitat perspective as well. If they come across something they believe is significant enough that it should involve DFO, under our partnering agreement they then forward these things to us. So we already have eyes and ears out there, but through our partnering agreements, we obviously can expand significantly.

Actually, the partnering agreements with the conservation authorities are good examples of that, where we may not have heard about this project. The TRCA didn't think there was going to be a problem when they first reviewed it. York Region ran into a significant problem with phase one, in the last 300 metres, and immediately brought us into the picture. Of course, in light of the problems they had, we were brought into the picture with phase two.

I don't know if that helps to answer how we got involved.

Mr. Scott Simms: It does.

In your opinion, do you think these partnering agreements are fulfilling their mandates to your satisfaction?

Mr. Edwin DeBruyn: Yes.

I can provide the committee with the annual reports that we've prepared in Ontario, where the conservation authorities are doing roughly 40% of the referrals that we would ordinarily do ourselves, in the streamlining and smart regulatory approach that we're trying to implement in Ontario. We have up to 10 different pieces of legislation in Ontario and a number of agencies, all with overlapping jurisdictional responsibilities. As a federal authority, we're trying to create an environment where they can do the regulatory authorities, and we can do our regulatory authorities, in a somewhat smart regulatory approach.

So in many ways, we believe they're doing a very good job. They get the same training as our own staff. On an annual basis, we go with designated biologists to their offices and regularly sit with them on referrals and say, is this something that DFO needs to be involved in or not, and so on and so forth. So it's an iterative process that goes on across most of southern Ontario, where all of the conservation authorities are.

I think it's a very good system, but in a very good system, if we get 4,000 referrals a year, every once in a while one or two referrals will come along and bite you.

•(1205)

Mr. Scott Simms: Okay, thank you.

The Chair: Thank you, Mr. Simms.

We've got plenty of time, colleagues. Would you mind if I took a round? Thank you.

Ms. Knox, did I understand your testimony to be that the Minister of the Environment cannot, under his or her own steam, initiate an investigation under the Canadian Environmental Assessment Act, that it has to be only through triggers? Am I correct on that?

Mrs. Louise Knox: The minister needs to have some jurisdiction in order to take an action in relation to a project. Usually the jurisdiction comes through a trigger or through transboundary environmental effects.

There is a section of the Canadian Environmental Assessment Act, section 28, that permits the minister to refer a project to a panel review or a mediator without a trigger, but it has never been used. I believe a minister would find it awkward and would be very reluctant to use that section of the act in the absence of any form of jurisdiction other than his own interest or her own interest.

The Chair: Obviously, when Parliament passed the act, it provided for a fail-safe mechanism in case that particular section was ever needed for something.

Mrs. Louise Knox: I imagine that might have been the thinking behind the provision.

The Chair: Generally, there has to be a trigger before the Minister of the Environment will do anything under this act; is that right?

Mrs. Louise Knox: Yes. Even then, if the trigger belongs to a federal authority, the Minister of the Environment might have no role in the environmental assessment at all. If the environmental assessment is a comprehensive study, then the Minister of the Environment does have a role. But if it's a screening-level assessment, which more than 95% of the environmental assessments are across the country, the Minister of the Environment really doesn't have a role to play.

The Chair: Mr. Wex, could you just refresh our memory: what are the maximum fines under the Fisheries Act?

Mr. Richard Wex: My understanding is the maximum fine is \$100,000 per infraction, and that can continue on a daily basis. I believe upon summary conviction it's six months—

The Chair: Of jail in York Region.

Mr. Richard Wex: No, I'm talking about the provisions of the Fisheries Act in general.

The Chair: Mr. Robb was telling us about a number of indigenous fish species, and they're rare. Once that fish species is extinct as a result of something, it can't be brought back. A million-dollar fine is useless in that instance.

Is there no responsibility on the part of Fisheries and Oceans to try to ensure that there is not going to be the extinction of a species, as opposed to relying on the ability to fine people who destroy a species, negligently or otherwise?

Mr. Richard Wex: I'll just start off by saying that we are as concerned as the members in this committee about phase two. We are doing what we can under the act by working through the environmental management plan. We could start looking at the options. The alternative is to issue an authorization so that we can conduct an environmental assessment. If we look at the interest that serves, we have just authorized harm to fish habitat.

What we are trying to do with the tools we have available to us right now is to work with the Region of York, who I understand seem to be interested, although they believe at the moment they have sufficiently mitigated to avoid harm to habitat, going forward. We have some disagreement on that. We are working with them on this environmental management plan on a go-forward basis.

Make no mistake; we have made it very clear to the Region of York that this is high now on our radar screen. There have been problems with phase one. We want changes to their environmental management plan. Should they not agree to those changes, there will be enforcement action.

• (1210)

The Chair: Mr. Wex, just so you know, it's high on our radar screen as well.

Mr. Richard Wex: I appreciate that.

The Chair: To follow along Mr. Simms' line of questioning, is there no provision under the Fisheries Act for you to be able to stop a project until your concerns are dealt with, in order to prevent the extinction of a species?

Mr. Pierre Lemieux: There are provisions to issue a stop work order, but in the situation we're in right now, as Mr. DeBruyn has explained, we have to consider what the implications are of stopping the work. Basically, the department gets involved in a project that's under way. There's a hole in the ground, and it's sucking a bunch of groundwater into this tunnel, much more than was anticipated.

The Chair: Excuse me. My time is running out.

I understand; there are choices. These are parts of the decision-making process. You answered my question: yes, the Department of Fisheries and Oceans can stop a project; it has the legal authority to do so in the event that all these considerations you're talking about conclude it should. That was your answer, correct?

Mr. Pierre Lemieux: Yes.

The Chair: All right.

Prior to the TRCA notification you got, was DFO ever notified by anyone—interested members of the public, Mr. Robb, or any of his people—about potential concerns? If so, when?

Mr. Edwin DeBruyn: I'm not certain I can answer that question for you, sir.

My understanding is that we were not involved in the review of phase one, the environmental assessment process, that went on under the provincial EA. Phase one of the 16th Avenue project was not presented to us for our comments or review. That's my understanding.

The Chair: I know that, but it's one thing if you weren't asked to be involved by those people. I'm asking if anyone else in the public asked you at that time to be involved.

Mr. Edwin DeBruyn: I don't have an answer to that question. My understanding is that no one else did ask us, but I can't say that for certain.

The Chair: All right. Would you be able to investigate that question and get back to us, and see if anyone in your area had brought any concerns to your attention, and if so when, and what was done about it?

Mr. Edwin DeBruyn: I will do that, yes.

The Chair: Thank you.

We've been hearing about staff cuts at DFO. Are staff cuts in Ontario going to affect you and your work specifically, Mr. DeBruyn?

Mr. Edwin DeBruyn: Excuse me?

The Chair: We've talked to the minister and the deputy minister about staff cuts in various departments over various periods of time in various areas. Are staff cuts at DFO in Ontario going to affect you and your department and what you do?

I'll ask both Mr. Wex and Mr. DeBruyn. Are anticipated staff cuts going to affect either your specific work or you as directors general?

Mr. Edwin DeBruyn: Truthfully, if you have fewer staff you are able to do less work with your staff.

The Chair: Do you anticipate any fewer staff?

Mr. Edwin DeBruyn: At this point that is the direction we're going in.

The Chair: In other words, yes, you are anticipating fewer staff?

Mr. Edwin DeBruyn: Yes.

The Chair: Mr. Wex, what about you?

Mr. Richard Wex: Yes. I'd like to broaden the context for that. There are staff reductions. There are also new investments coming in. We are changing the way we're doing business. Are there going to be fewer fisheries officers in Ontario and the Prairies region? Yes, there will be over the next number of years. We are also getting significantly new resources within the program with respect to the habitat management program to focus more on monitoring.

Right now we are, frankly, thin on the ground for monitoring across the entire country. In addition, when you look at the ratio of fishery officers in the central and Arctic region—which is where Ed DeBruyn is—compared to other parts of the country, the ratio is higher for fishery officers to, let's say, habitat program biologists. What we are trying to do is move forward with the modernization of the program. We have a risk management framework. We have heard from this committee and others that we need to focus on higher risks and the priorities of Canadians. We're beginning to do that just now, and we are streamlining the low-risk activities. What that means in terms of enforcement, frankly, is that we have not been fully resourcing or perhaps even adequately resourcing the entire compliance continuum from education and training to monitoring all the way to enforcement and prosecutions.

We are going to reduce the number focusing specifically on prosecutions so we can focus on cases like this and other high-risk cases, and not the culvert installations and other things that members of this committee have heard about in the past, but we will significantly increase our monitoring in other aspects also on

medium and high risks so that we can get in front of the problem and work with proponents in advance, rather than waiting until the tail end of the continuum.

So are there going to be staff reductions? There are in terms of fishery officers on a go-forward basis. There are also new investments on the habitat management side in terms of monitoring. That reflects a shift in the direction of the program, and a shift in our priorities.

• (1215)

The Chair: That was just a superb answer from a bureaucratic point of view, just excellent. Not for me, but just excellent.

The final question of this round: has the Province of Ontario conducted any formal full environmental assessment of this project; and if so, what type?

Mr. Edwin DeBruyn: You're referring specifically to the 16th Avenue project?

The Chair: Yes.

Mr. Edwin DeBruyn: Yes. They did a class environmental assessment under the Ontario Environmental Assessment Act.

The Chair: Is that a full assessment, a class environmental assessment?

Mr. Edwin DeBruyn: Perhaps my colleague Louise Knox can expand on this after I'm finished.

As I understand the Ontario Environmental Assessment Act, the only full environmental assessment that's undertaken in Ontario is called an individual environmental assessment, which Richard referred to in his opening remarks. The 16th Avenue project went through what they call a class environmental assessment, and that is a subset environmental assessment approach under the provincial EA.

The Chair: Thank you, sir.

Mr. Kamp.

Mr. Randy Kamp: I have a quick question or two.

I'm not sure quite what to make of what I've heard. I think probably all of us have had farmers in our offices who are being what they call "hassled" by DFO for trying to clean their ditches, or being fined or in the middle of a prosecution. To us, it seems like fairly small potatoes, and something like this seems much larger. So I'm not sure what to make of all that.

Mr. Wex, you referred to the environmental process modernization plan. Is that under the smart regulation agenda? Just where is that, and is that what's being used now, or are we heading toward that? I guess an update on the status is what I would like.

Mr. Richard Wex: Thank you. That's a pretty broad question, but I think it's timely.

The environmental process modernization plan is a comprehensive plan to make this program more effective and efficient, frankly. We too have heard the criticisms that you and other committee members have heard in terms of either the timeliness of the decisions, the predictability and the consistency of decisions, or frankly, are we even focusing our efforts on the priorities that we need to focus on? You gave one example.

We looked at the program from top to bottom and we have made a number of changes. There are six elements to the program. The first, which I mentioned, is a risk management framework. Not all habitat, frankly, is of equal value in this country, and not all activities have the same degree of risk. We need to realign our resources to protect the habitat that Canadians care about and focus on the activities that have the biggest impact to habitat. That's one element, this risk management framework.

In terms of an update on that, there is a risk management framework document now available for staff, and training is under way this fall for all staff on that.

The Chair: Could we get a copy of that?

Mr. Richard Wex: Yes. It's a draft copy, Mr. Chairman. I believe the final version will be out in time for the training, which is being launched this fall. We'll give you what we have now.

The Chair: Thank you.

Mr. Richard Wex: The second element is streamlining measures, and it's tied to the first element. I mentioned that we have 10,000 or 12,000 referrals a year. We refer to that internally as a referral treadmill. We're spending so much of our biologists' time...we have 450 program biologists across this country, and 85% or 90% of their time is spent behind their desks reviewing these referrals, a majority of which involve routine, low-risk activities. We need to streamline those reviews so these guys can get out into the field, do more monitoring, and focus on the high-risk reviews, the major projects and things like this.

So by way of an update, we have developed what Mr. DeBruyn referred to as operational statements to streamline these reviews. Rather than reviewing each and every one of these, we have some generic statements that go out to our partners and to the public, which basically say that if you follow these environmentally friendly guidelines for these activities, you'll be in fine shape, and there's a bottom-line decision that you will not be running afoul of the Fisheries Act.

We have worked hard as a result of the federal-provincial meeting a year ago to integrate those operational statements into provincial permitting systems and achieve this one-window approach. We've now developed about 20 of these operational statements that, as I understand it, cover off the vast majority of these low-risk referrals. So that's by way of an update.

The third area deals with environmental assessments and major projects. You've heard things in terms of the environmental assessment process. It's a very complicated process, as we're seeing here today. With respect to major projects, we need to manage them differently from routine projects, frankly, in a way that's commensurate with their social, economic, and environmental impacts. We have made a number of policy and organizational changes in the

department now to focus on major projects, to give much more senior management attention to these projects as well as direction to staff on policy matters. Without going into the details, a number of those policy and organizational changes are now in place.

The fourth element deals with partnering. As we said earlier, there's a lot of habitat in this country. It's very difficult for 450 people across this country to protect the all the habitat in this country. We need to emphasize our partnership relationships with others, to increase the amount of education out there with industry sectors, aboriginal organizations, NGOs, and conservation authorities—that's another example. We've entered into a number of these partnering agreements for a number of years now. We've emphasized it specifically, and there's been a number of recent memoranda of understanding and agreements that we've entered into since we launched the EPMP about a year or two ago.

The other element involves a lot of internal changes to increase the consistency with which we're making decisions. We've launched a mandatory training program that, as I said, will be fully implemented beginning this fall. Over three years, every single one of our staff across the country, from senior management all the way down, will be exposed to, and will need to take, courses related to their activities. There have been a number of other changes internal to DFO and the program to increase the predictability and consistency in decision-making.

The last element, very quickly, goes to the chairman's question about reductions. We are modernizing the compliance aspects of our program to make sure that, rather than spending a lot of time on these routine paper reviews, we're getting more people out into the field to do monitoring. Will we have enough monitoring officers out there? Of course, from a program perspective, you always want more; but what we will have, under this compliance initiative, is more people monitoring over time than we do now. In terms of enforcement, they'll be focusing on the high-risk cases that impact the sensitivity of the habitat according to our risk management framework.

We want to adequately resource the entire compliance continuum, so we're modernizing the compliance aspects of our program. In a real nutshell, that is what the EPMP is about. I hope you've heard from stakeholders that were being seen to be making some good progress in all areas.

• (1220)

The Chair: So there.

Mr. Randy Kamp: Another good answer.

The Chair: Another good answer.

[Translation]

Mr. Roy, please.

Mr. Jean-Yves Roy: You said earlier that you were very concerned about Phase II. Do you think that Phase II of the project could have the same effects as Phase I?

[English]

Mr. Edwin DeBruyn: I think the potential is there, and that is why we are concerned that they implement a mitigation plan that is effective and responsive to those environmental concerns.

[Translation]

Mr. Jean-Yves Roy: A mitigation plan is used after the damage occurred. Please explain me what you mean. I understand that it is a mitigation plan but, as the chairman said a little earlier, if a species disappears, the mitigation plan comes too late.

How are you going to do to adopt a mitigation plan which has the least negative impact possible on the environment and on the habitat? That is the question. The broad question is there.

You tell us that you are very concerned about Phase II, that in short you will let it go ahead till the end and that you are going to adopt a plan making it possible to have hardly any negative impact. I am sorry, but I cannot believe it. We saw the results of Phase I and however much you try to convince me that Phase II will have less negative impact, I'll always have some difficulty to understand to what extent a mitigation plan can create the least possible risk now. At the present time, this is the concern of the people in that area.

• (1225)

Mr. Edwin DeBruyn: This is a simple question.

[English]

But the answer is not as simple as the question.

It doesn't matter what project one has; you cannot have any kind of project without some environmental effect. That's a given. For this project, the environmental effects and the prediction of them are large and serious. Mr. Robb's comments to this committee are genuine. He feels that there is a concern. Mr. Wex has said that and I've said the same. Fisheries and Oceans has a genuine concern. We're involved in nine projects throughout York-Durham, looking at these things.

The mitigation plan needs to be implemented. It is now being implemented in its draft stage, as they're starting phase two. We still have work to do today, tomorrow, and next week with the Ministry of the Environment and the Ministry of Natural Resources to make sure the elements of that mitigation plan are truly put into place while they're doing the construction.

There is one species that's of concern—the reddsides dace. It's on schedule 3 of the Species at Risk Act, the COSIWIC. The reddsides dace is not particularly rare and endangered. It seems to be cropping up all over the province. Every time we turn around, there's another reddsides dace. Yet there is a genuine concern for the reddsides dace; I don't want to be too glib about it. It crops up a lot, but wherever it crops up, the habitat it utilizes is a concern.

Part of our mitigation plan addresses how the region will adaptively look at mitigating the impacts to reddsides dace. That mitigation plan is designed to maintain 80% of base flows throughout the project. It's designed to very broad elements. It's

also designed to guard the range in temperatures of groundwater that's being discharged into the streams. Those types of mitigation efforts are going to be put in place. It's a complex mitigation plan. I don't want to belabour all of the details here, and I'm not that familiar with it, but the key elements are that we told them to maintain base flows, not to dewater the streams, and to make sure they're not creating a temperature environment that's going to be prohibitive to the fish that are in there.

Mr. Robb talked about Robinson Creek. It is an intermittent stream. What this means is that sometimes, at some seasons, it runs dry. Regardless of whether people are around or not, it dries up on its own because of weather and climate. So what are the temperature ranges and the tolerances for flows for species living in the stream when it dries up? Those are the things built into this mitigation plan. I'm not saying that the region's plan is a great plan in this regard, but the region is planning to augment and maintain 80% of base flows throughout the duration of the project. This means that what normally was intermittent now won't be intermittent any more, because it will be having some base flows.

It's a simple question, but there's a complex plan we are working on as diligently as we can to try to understand all this.

On the flip side, would we give them an authorization to destroy that habitat? Mr. Wex talked about this. If we did that, we would then be allowing the destruction of habitat. That's not our principal objective. Our policy and our principal objective is to mitigate these impacts, and we're working hard towards that.

The Chair: Merci, Monsieur Roy.

Mr. Stoffer.

Mr. Peter Stoffer: Thank you again, Mr. Chairman.

I only wish that the finance department had to have a trigger mechanism before they'd pull my taxes away from my paycheque.

I'm going to say this with the greatest respect, and I know this is not what you're saying, but every single time I hear “enforcement officers”.... You say we have 450 people to protect the habitat of the nation, but we also have DFO enforcement officers. Don't they also monitor and survey the situation? So we have a lot more, not just 450 people doing it.

Mr. Lemieux, you said—and correct me if I'm wrong—there were 10 to 20 charges that you were aware of in Ontario.

• (1230)

Mr. Pierre Lemieux: That's based on statistics for the calendar year 2004.

Mr. Peter Stoffer: Very good.

So that's 10 million people in the largest province in the country and only 10 to 20 charges. I find that quite astonishing. Either the people of Ontario and the people who visit Ontario are very respectful of the fish habitat or, as I believe you said, you simply don't have the manpower or resources to do the job that Canadians expect to be done, which is the protection of fish and fish habitat.

I'm hoping one day—and I've been here for eight years—somebody from DFO is going to be able to say, without being in camera, look, if you want us to protect fish and fish habitat, we're not the department that can do it, because we simply aren't doing it effectively. I hear all this—and I say it with great respect, Mr. Wex—bureaucratise coming at us, yet everywhere I look across the country, the fish are being attacked in ways that are unprecedented.

In southwest Newfoundland, you're about to authorize the possibility of draggers being re-entered into the fleet.

In the Taku River watershed, which you and I have discussed, there's a possibility of allowing a penny stock company to build a road 160 kilometres through the most pristine area in the country, with the possibility of destroying fish and fish habitat.

The quarry in Digby Neck, Nova Scotia, everybody knows will hurt and destroy lobster grounds, yet you're allowing the project to proceed on an informational basis.

There's dragging off our east coast—marine-protected areas that may be protected, but only from certain activities. We may allow other activities to go in there.

There are the Great Lakes and no proper ballast exchange legislation, no proper buffer legislation.

I'm not blaming this on you. This is the political side of it. But it is so frustrating for us when we get people like Mr. Robb and other people who take time out of their lives and truly have in their heart of hearts the protection of fish and fish habitat. And I know in your soul that's what you want as well, but the reality is that it isn't happening.

You allow a project to continue while charges are happening. That's like saying you're watching a person rob your house; we're going to charge them, but they'll continue robbing the house.

Maybe I'm off base here and out of line, but I'm just frustrated at this. I wish you folks could stand up and say, look, we don't have the money to do the job; if you want us to do the job, get us more money. If you said that, that would be music to my ears, because then we could go to Mr. Regan on Thursday and say, look, here's what those folks said.

I just give you my final statement, which you don't have to respond to at all. When we were in B.C. and we asked Mike Henderson of the coast guard if they had enough resources to do their job, he said money wasn't a problem, that they were okay. Then we went out to the field and heard an earful, completely the opposite. I suspect if we had enforcement officers or monitors in Ontario here before us, they would tell us a different story from what you're telling us now.

So please, whatever it takes, protect not only the Rouge River area, but do everything in your power... Scream, yell, or resign, if you have to. It's simply not being done.

I'm sorry to rant on like this, but it is frustrating to be here eight years and everywhere you look—you read the papers, you talk to folks across the country—more habitat and more stocks are being destroyed, and the Canadian Environmental Assessment Agency says, well, you know, we need a trigger. The Minister of the Environment really can't do anything unless they're told.

The Minister of Fisheries and Oceans, if he wanted to, could stop sewage from going into the Halifax Harbour or Victoria—if he really wanted to. He has that authority, but he won't, because they don't want to mitigate other economic concerns.

It always seems, in my view, that fish and fish habitat take a back door when it comes to economic activities of other areas. That's why many people say that the DFO has become the department for fish farms and oil.

Sorry.

The Chair: My goodness. That was five minutes.

• (1235)

Mr. Peter Stoffer: You don't have to respond if you don't want to. I just had to get it off my chest.

Belledune is another one.

The Chair: I think resignation is entirely too strong a recommendation, no matter what your philosophical...

Mr. Peter Stoffer: I think you have to. But in protest to the minister...I know funding doesn't come from you guys. I know that if you had more money you could do more things.

The Chair: I see my colleagues are anxious to leave, but Mr. Murphy wanted me to ask a couple of questions on his behalf, and I have a couple.

Mr. Murphy says Mr. Robb made the allegation that this is all about money and who you know. Of course this is a huge project for York Region, we know this; thousands of people are moving into the area. He said, I believe, the developers or their representatives and their lobbyists met with the appropriate Minister of Fisheries at the time and met with the Ontario cabinet.

Does anybody across from me know whether or not that is true, and can you say whether you know?

Mr. Richard Wex: I'm reluctant to say too much because, to be honest with you, Mr. Chairman, I don't know too many details on that.

My understanding is that the Region of York or their representative did meet with the minister. I don't have details on that; I was not at that meeting. My understanding of what happened at that meeting was that the minister made it very clear that they'd better avoid harm to fish habitat.

My understanding, again, is that Mr. Robb, if he did not meet with the minister, did meet with his staff and was also referred to the appropriate people in the Burlington office with respect to technical matters, but I don't have too many details around either of those meetings.

The Chair: That's more or less what he said. Of course you can appreciate his frustration that York Region and the lobbyists get to meet with the minister but not poor old simple citizen Jim Robb. That's annoying.

I just wanted to ask this. On its website York Region states that the deep gravity sewers have the lowest risk of failure. The organization Environmental Defence has stated that instead of using a crude gravity feed system, York Region should be forced to spend a little more money and build the big pipe in a way that won't destroy the Rouge River and its tributaries. Assuming that's true, are there other potential disadvantages to a gravity sewer system?

Mr. DeBruyn.

Mr. Edwin DeBruyn: I can't answer that question. I'm not technically familiar with the nuances of one methodology versus another one. Our typical approach in reviewing impacts is to ask the proponent to provide the most environmentally friendly project going forward and to mitigate those impacts. That's our view.

The Chair: Thank you.

In your presentation, Mr. Wex—and I'm following up on what Monsieur Roy was saying—you indicated on page 2, in the second-last paragraph, "Since the Region of York has committed to avoiding impacts to fish habitat, and has not applied for an authorization... DFO did not initiate an environmental assessment...."

Is it too late to initiate an environmental assessment now if DFO wants to?

Mr. Richard Wex: I'll take a crack at that, Mr. Chairman.

As I tried to say earlier, the ultimate end is not conducting an environmental assessment. I don't think any of us just want that piece of paper; we want the interest of fish habitat addressed.

I don't think it's technically too late to ever launch an environmental assessment, but as Ms. Knox said, environmental assessment is intended as a planning tool. The timing is awkward now, given that they're into their project. In order to launch one, we would need to have the legislative or regulatory trigger, which is an authorization, which gets us into that problem of, do we want to authorize the harm or do we want to continue to work with them to avoid the harm? That's the dilemma, if you will, we're in right now.

To answer your question succinctly, I can say there are ways. If we were of the view that a HADD was likely to take place, my understanding is that we could then launch an environmental assessment. I'm not sure we're at the stage where we know there will likely be a HADD, given that we're working on their environmental management plan.

• (1240)

The Chair: Thank you.

Yes, sir.

Mr. Edwin DeBruyn: This is supplemental to what Mr. Wex has just said.

In many ways the amount of work and effort our staff and the other agencies are putting into this project to develop an environmental management plan is tantamount to an environmental assessment process. All of the things we would do in an environmental assessment process are the same sorts of things we do under our policy and our Fisheries Act review, to say, what are the things you're going to do to mitigate this project? In many ways we're capturing many of the nuances that would come up as part of an environmental assessment. We're already doing those as part of our regular day-to-day Fisheries Act review.

It's important to understand that just because it's not going through a formal federal EA or provincial EA, we are not asleep at the switch, so to speak. We are doing a lot of work in terms of providing input to this plan.

To put it in context, I can say the provincial EA was completed in, I believe, January 2002, so it was well before we were engaged in this project. They had already gone through their provincial EA process.

The ability to harmonize is just not there, so to start one again would be inopportune at this point. I think Mr. Robb's comments to this committee that we didn't want an environmental assessment were made in the context of phase one, right at the end of a project. Everybody's trying to do damage control.

The comment was made that there was no sense doing an environmental assessment to finish this 300 metres; get it done and let's fix this problem. That's what everybody has been really trying to do, and they have been fairly diligent with that.

The Chair: Thank you.

Mr. Lemieux, could DFO issue a stop work order without an EA to back it up under the Fisheries Act?

Mr. Pierre Lemieux: The stop work order is not related to the environmental assessment process. It's an order pursuant to the Fisheries Act.

The Chair: Finally, on page 3 of your comments, Mr. Wex, you were talking about DFO providing information and advice to the Department of Justice in order to help the Department of Justice decide whether or not the Attorney General should take over Mr. Robb's private prosecution. Are you in a position to tell us what the advice you gave was?

Mr. Richard Wex: No, Mr. Chairman, I can't. That's subject to solicitor-client privilege, and it's up to the Attorney General to exercise his discretion accordingly.

The Chair: Who's the solicitor and who's the client?

Mr. Richard Wex: The client in this case is both Environment Canada and DFO on behalf of the Crown.

The Chair: How about the Attorney General deciding whether or not to take over the private prosecution?

Mr. Richard Wex: Well, the Attorney General of Canada has conducted the litigation on behalf of the Crown, and the client in this case is the Crown as represented by DFO and Environment Canada.

The Chair: We'll consider that and we'll see if we want to go anywhere.

As of now, you do not know whether or not the Attorney General has made a decision?

Mr. Richard Wex: No, we don't, and those of you who have ever worked with the federal prosecution office will know they guard their prosecutorial discretion very carefully, so no, we don't know where they're at. The disclosure, as I understand it just as of last

night, hasn't been completed, so I don't know if they've even made a decision yet.

The Chair: Are there any other questions?

Gentlemen, thank you very much for coming.

I want to thank you for reviewing Mr. Robb's testimony. It's obvious you did. I appreciate that, because you were able to then address some of the concerns he brought forward. We do appreciate your coming and giving the benefit of your views. Thank you so much.

We'll meet on Thursday at 11 a.m. with the minister.

We're adjourned.

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