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Chair

Mr. Mervin Tweed

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•(1110)

[English]

The Chair (Mr. Mervin Tweed (Brandon—Souris, CPC)): Thank you, and good morning, everyone.

Welcome to the Standing Committee on Transport, Infrastructure and Communities, meeting 13. The orders of the day, pursuant to Standing Order 108(2), are a study of the current status of navigation protection of the Canadian waterways, including their governance and use and the operation of the current Navigable Waters Protection Act.

As previously mentioned, we have asked the department to attend today to give us a briefing and then answer some questions.

Joining us today is Marc Grégoire, who is the assistant deputy minister, safety and security; and David Osbaldeston, who is the manager of the navigable waters protection program.

I welcome you both. I know you have a somewhat lengthy presentation, but I think it's in the best interest that we hear it, and then we'll proceed with questions. So please begin.

Mr. Marc Grégoire (Assistant Deputy Minister, Safety and Security, Department of Transport): Thank you very much, Mr. Chair. It's a great pleasure to be back here today.

Thank you for providing me with the opportunity to speak to you today on a topic that is very high on my minister's agenda and I'm sure will be of great interest to you as well.

[Translation]

With me today is David Osbaldeston, Manager, Navigable Waters Protection Program. David has been working in this capacity since 2003 and no doubt he will be able to provide detailed answers to your questions.

[English]

Our appearance today follows the request made by Minister Cannon to this committee on January 31.

We have provided you a deck and a guidance document. If you don't mind, I will flip through the deck as I speak. We're now on page 2.

We're here to discuss the modernization of the Navigable Waters Protection Act. We would like to solicit your views and hopefully your assistance in undertaking public consultation on a proposed framework for new navigation protection legislation.

[Translation]

I will call to mind certain facts and give you a brief overview of the Navigable Waters Protection Act. In addition, I will highlight some of the problems associated with the legislation. Lastly, I will detail the efforts my department plans to devote to this initiative. Throughout my presentation, I will also be highlighting some of the things we have done over the past year.

[English]

On slide 3 you will note that Transport Canada administers this act.

[Translation]

First, let me point out that this act is one of the oldest pieces of legislation in Canada. Many of its provisions have not been altered since 1882. It no longer meets ever-changing navigational needs, as evidenced by the massive increase in the number of recreational watercraft that use Canada's navigable waters and the industry's calls for clear regulations.

[English]

The legislation was originally enacted to protect the right to navigate in Canada. As you see on that slide, the legislation was expanded to include construction, alteration, or removal of obstacles.

Provincial, territorial, and municipal governments, industry, and the Canadian public with interests in Canadian navigable waterways have raised concerns for many years regarding the challenges of working within the parameters of an outdated act.

[Translation]

You will note on page 3 of the deck that although the act has remained virtually unchanged since initially drafted, over the years, the courts have broadened their interpretation and application of the expressions “navigable waters” and “works”. This is an important point since the Act, as interpreted in this manner, has required the integral approval of all secondary works built on small waterways, as well as environmental assessments, to all intents and purposes unnecessary, of these works.

The provisions of the existing act are extremely rigid and in particular, very normative. Developers are required to file their plans for proposed works with a land title office and to announce that they have done so in the *Canada Gazette*.

[English]

As you can imagine, this situation has imposed unnecessary burdens on proponents of these minor works and at the same time has caused ineffective use of our departmental resources.

My department is trying, to the greatest degree possible, to alleviate the existing pressures on the act by focusing on high-priority projects and conducting class screening for environmental assessments whenever feasible. In addition, the current act does not contain any clear inspection powers to ensure compliance, and the penalties for non-compliance are inadequate to make any real difference.

Stakeholders have called for changes to the act to reflect today's reality and ensure that we provide regulatory oversight only when and where required. We deal with a wide range of stakeholders when we talk about this act.

I would highlight that over the years many Canadians have expressed concern about the NWPA impeding their ability to conduct business in a predictable and timely manner. Their complaints are valid, as the current act has no ability to adapt to changing uses of our waters. Significant delays have been experienced in the approval of new aquaculture sites. Others protest that we are regulating works that have very little if any impact on navigation. That is the very imbalance we want to correct with a review of this act.

•(1115)

[Translation]

No longer can we take into account solely the interests of commercial navigation. The recreational boating industry has grown dramatically in the past 20 years and the growth is continuing unabated. New legislation must promote the shared use of our waterways.

[English]

In keeping with the cabinet directive on streamlining regulations, we need to ensure in the new act that our departmental resources are focused on those waters and works that require oversight and provide real value to Canadians.

Natural Resources Canada reports that over \$300 billion will be spent on new infrastructure and resource projects in the next 10 years. The large number of complex infrastructure and resource projects, along with the need for growing aboriginal consultations, have put tremendous pressure on the regulatory system. The existing backlog of approvals is impeding both economic growth and the actual construction of transportation infrastructure, which in turn is putting the government's Building Canada plan at risk.

[Translation]

We recommend the creation of new provisions to facilitate provisional approval of emergency works such as temporary bridges or the temporary closure of an area to navigation in the interest of public safety.

We face a formidable challenge today, and that is ensuring that we do not fall behind because of requests for a review, within a set

timeframe, of resource projects worth several billion dollars — projects such as the Alaska and Mackenzie Valley pipelines.

Not only do these projects require the review and approval of hundreds of works over waterways, they also require extensive consultations with Aboriginal peoples. New navigation protection legislation would help us to meet our responsibility to hold meaningful consultations with Canada's Aboriginals.

[English]

To reflect this new direction, we propose to change the name of the act from the Navigable Waters Protection Act to the Navigation Protection Act. There are some new provisions that we would like to see in this new act.

A key proposal is to remove the term “navigable waters” from the act and replace it with “waters in Canada”. Although this sounds like a minor change, it is actually the most significant element of the new proposed framework.

This would streamline the regulatory process by eliminating the need to determine the navigability of a waterway. It would allow for the exclusion of certain bodies of water or classes of water from application of the act, a move that many resource developers and rural municipalities have requested and would wholeheartedly support.

[Translation]

Transport Canada is currently conducting many unnecessary environmental assessments in light of how certain works are designated in the act. However, because certain works are expressly designated in the act, we can establish a link between the approval process, or the requirement for an environmental assessment, and how that work will impact navigation. New provisions would enable us to use those resources now assigned to environmental assessments for projects that carry a greater risk of being harmful to the environment.

Our research into other pieces of legislation related to navigation brought to light some unnecessary duplication in the way in which certain sectors are managed, for instance, port authorities which are governed by the Canada Shipping Act, or national parks which are administered by Parks Canada. We recommend that unnecessary duplication be eliminated by exempting these sectors from the provisions of the new legislation.

This recommendation has the backing of the authorities and departments concerned. In terms of compliance and application, the current legislative provisions are inadequate. We would like the new act to include new compliance instruments and more stringent enforcement provisions to correct this oversight, as we have seen with other pieces of legislation reviewed in recent years by your committee.

● (1120)

[English]

It is proposed that we charge fees for certain services we provide, such as conducting inspections and issuing approvals, to establish a derelict vessel removal fund. There are hundreds if not thousands of smaller derelict vessels that have been abandoned on our shores, where there is no significant threat of pollution and no owner is known. There are some just here near the river.

Due to the cost of removal of these vessels and lack of funding, very little has been done until now to remove these blights on our community and wilderness shorelines. The establishment of a fund that can be accessed by navigable waters protection program staff to clean up these vessels in a timely manner would be welcomed by Canadians, especially the smaller coastal communities and lakeside municipalities.

On behalf of Minister Cannon, I am here to request that members of this committee take a lead role in the development of new navigation protection legislation that is so vital to all Canadians at this time. From the massive investment in transportation and resource infrastructure to the emergence of Canada as a world leader in the aquaculture industry, there is no better time than now to modernize this act.

[Translation]

This committee is the ideal forum in which to seek the viewpoints of stakeholders who have a vested interest in a new Navigation Protection Act. The committee would provide Transport Canada with an unbiased consideration of the issues and could look at solutions from a fresh perspective. This would be vitally important to the initiative's outcome. Lastly, the recommendations arising from the committee's consultations would constitute the basis for new legislation.

On page 9 of the deck, we look at the scope of future consultations. The Navigation Protection Act impacts a wide range of Canadians and areas.

[English]

This vast area includes resource developers in the north, cross-border issues on the Great Lakes, emerging aquaculture industry on both coasts, and farmers in the prairies, so it's extremely diversified.

On the key areas of focus, new legislation must balance the needs of those wishing to construct works on our waterways with the needs of those who use the waterways. There are several key areas that we believe need to be assessed in order to develop new legislation that meets the needs of Canadians.

First and foremost is the need to ensure that the purpose and scope of the new act meet the needs of both proponents of works and mariners to allow for a balanced approach to the shared use of our waterways.

[Translation]

The application and approval process should be predictable and should be undertaken in a timely manner so that Canada's economy remains competitive globally. Conversely, sufficient notice must be given to users of our waterways.

The new legislation must provide the authority to intervene when the safety of Canadians is threatened and the guarantee of ongoing access to vital waterways. Canada's interior and coastal waterways are strewn with abandoned or derelict vessels. We need effective measures to remove these hazards from our waterways. The onus for removing these hazards should be placed on the owner or, when the owner is unknown, steps should be taken to minimize the cost to taxpayers.

● (1125)

[English]

Compliance and enforcement provisions in the current act are so outdated that they are completely, totally ineffective at promoting compliance or acting as a real deterrent.

A report on the consultation efforts, containing recommendations to meet the goals I have just outlined, would be used as a basis to draft new navigation protection legislation.

Continuing on page 11,

[Translation]

we outline the support that we can give to the committee. If the committee does decide to hold consultations, it can count on the support of Transport Canada experts.

[English]

The committee may also wish to take advantage of the 18 months of internal policy development that has already taken place. Most of the work has been led by David here. A guidance document that outlines our proposed approach has been prepared, and I believe you were given copies of this document.

Thank you for providing me with this opportunity. We look forward to your questions, comments, or suggestions, but, more importantly, we hope you will accept the task.

The Chair: Thank you, Mr. Grégoire.

I think you'll probably find as you go around this table that there are a lot of people who would agree this is long overdue, and hopefully we can come to some agreement that works. I think we all have personal experiences of it being nothing but a headache to try to deal with these issues. I think it's a timely move.

Mr. Zed.

Mr. Paul Zed (Saint John, Lib.): Thank you, Mr. Chair.

I may end up running out of questions, but I'll share time with Mr. Bell, if necessary, and if not, then I will in another round.

Thank you very much for being here today.

Do you have any information you want to share with the committee at this early stage about what other jurisdictions in other countries might be doing as it relates to this subject area? Obviously, Canada, from the information you've presented, is somewhat behind, given the fact that it hasn't renovated its act in a period of time. Are we alone? Are we consistent with other countries? That was something I was interested in.

Mr. David Osbaldeston (Manager, Navigable Waters Protection Program, Department of Transport): We do have a report that was prepared over the course of the last year, which takes a look at other jurisdictions that may have similar pieces of legislation and responsibilities. None are identical in nature. Norway comes to mind. The U.S. or the U.S. Coast Guard has some. But we will make the results of that report available.

Mr. Paul Zed: Okay, and on that subject—

Mr. David Osbaldeston: Excuse me. It's in no way an extensive report. It was just a sampling we took, with some information provided with respect to responsibility and jurisdictional scope.

Mr. Paul Zed: On that, would that document also contain any issue on Canada's competitiveness as it relates to, say, the aquaculture industry? In my region of southern New Brunswick there's a great interest in aquaculture. Minister Thompson and I have ridings in a zone where there's a large aquaculture industry.

I just wondered if there were some comparisons that inhibited or affected our competitiveness in that industry.

Mr. David Osbaldeston: There are none within that report. Those studies have not been conducted internally. However, Saint John is going to be host of the Aquaculture Association of Canada's annual general meetings and conference this year.

We attend the navigable waters protection conference. It's always a heated topic down there. We sit on the aquaculture task group committee that is representative of all of the provinces. The provinces and the provincial aquaculture associations have come to us time and time again and said this is not working for them.

Their key concern, from a competitiveness standpoint on the aquaculture front, is the duration of permit. Duration of permit, in accordance with our regulations, is five years for the aquaculture industry. They have identified—and we do have a report on that—that this is insufficient time for them to provide financiers to give them the financial backing they require and the payback period they require to get their money in order to put their operations into place.

Making that change requires regulatory and legislative change.

• (1130)

Mr. Paul Zed: Thank you.

In your presentation you talked about a number of vessels, derelict vessels. Does the department have an estimate as to how many of those vessels there are in Canada, where those vessels are, and how much it would cost to have those vessels repaired, removed, or restored?

Mr. David Osbaldeston: No, we don't have a study in place at this point in time identifying the scope of the problem. We are aware of the problem. It has been somewhat of a jurisdictional battle as to whose responsibility it is to clean up the problem, between the provincial jurisdictions, municipal jurisdictions, and federally. We do not have a complete tally on the scope of that particular problem. It's definitely in the thousands.

Mr. Paul Zed: Is that right?

Mr. Marc Grégoire: They are everywhere. I personally am on the water quite often, and I see them everywhere. I've seen them in lakes. There is a big ship, larger than from here to the wall over

there, that sank just on the river. You take the Ottawa River and turn left on a small river going north towards the casino. On a small river that doesn't go anywhere, there is a big ship that sank there. It's abandoned. There are things abandoned there, cables and all kinds of things abandoned over the years, that could be a problem for navigation. We don't know anymore who's the owner, and there's no way to make an inventory.

Mr. Paul Zed: But I can remember, in the maritime provinces, we had the *Irving Whale*. It was off the coast of Prince Edward Island and it was abandoned. There were all kinds of jurisdictional issues about whether it was the responsibility of the Department of Transport or the Department of the Environment.

Surely, between the Department of the Environment—for which this could be an issue, clearly, as every colleague would know—and the Department of Transport, you must have some idea. More importantly, rather than the number, from an anecdotal perspective, are there a lot of other environmental disasters—"disasters" is a strong word—or instances that might be out there that we as a committee, or you as a department, or we as a society should be concerned about in terms of vessels, large or small?

Mr. David Osbaldeston: There are federal bodies and response mechanisms to deal with any environmental hazards associated with the wrecks, and indeed they come in and clean them up pretty readily once they're known.

I think where the difficulty arises is the fact that our particular legislation with respect to ultimately getting rid of the hulk deals only with when that particular vessel creates a hazard to actual navigation.

In your particular riding again, for example, you had the *Canima* in Shediac Bay. It sat there and was an eyesore for that particular community forever. The province tried to do something about it and the town council tried to do something about it, and they asked us if we could do something about it. But it was sitting there on the sand, in the middle of the bay, causing nobody a problem, other than the fact that it was an eyesore and it was going to get worse.

We would hope that with these types of proposals, creating the cost-recovery mechanism through the fees and thus creating the disposal fund, the removal fund...it would have helped in that instance to get rid of the *Canima*, get it out of the way of things, because what we end up with is municipalities or individuals saying, "Fine", and then in the middle of the night, all of a sudden, these things show up in the middle of the navigational channels, now becoming a hazard, and it's just not what we want to—

• (1135)

Mr. Paul Zed: I just want to put two more quick questions on the record.

Would the fund you're proposing or talking about in your presentation operate a bit like the ship-source oil pollution fund? Is there money in that fund that we might be able to pirate out of that isn't being used currently?

The ship-source oil pollution fund, as I understand it, is not specific. There are actual dollars there, as opposed to something like the employment insurance fund where it's part of the consolidated revenue of the government. There are segregated funds there. Is that correct?

Mr. Marc Grégoire: Yes.

Mr. Paul Zed: Would that money be available for something like this, or are you proposing a brand-new fund? Is it something we as a committee could pursue?

I think my time is up.

Mr. Marc Grégoire: The proposal is for a new and distinct fund. The ship-source oil pollution fund is there for a very good reason. If there is a sinking of a tanker in our waters, it's going to be very costly. That's what that fund would be used for.

What we're talking about is something more modest. It's an interesting fund, but certainly it is more modest than the one you're talking about. It's totally distinct. It's to remove the shipwrecks and the things that don't necessarily generate pollution. They're just sitting there. Many of them are just wood structures sitting there, and they're ugly. They don't create a problem for navigation and they don't generate pollution.

The Chair: Thank you.

If I may, I would ask that you table with the chair for distribution any studies or documents you refer to. I know you've made reference to a couple of them already.

Before I go to Mr. Laframboise, I want to say that it's beyond my imagination that this type of derelict vehicle would be allowed to be there. If you tried to do that on land, you'd have every jurisdiction in the country challenging you to clean that mess up. Yet we ignore it.

Mr. Marc Grégoire: There is one just out here.

The Chair: Yes. I find that almost unbelievable and unacceptable, for sure.

Mr. Marc Grégoire: That's why we need to change the act.

[Translation]

Mr. Mario Laframboise (Argenteuil—Papineau—Mirabel, BQ): Thank you, Mr. Chairman.

My questions are about the process. I am trying to understand why you insist on having the committee travel across the country. I do not have a problem with that, because I think we've come to that stage. As you undoubtedly know, duplication between Quebec and Ottawa has often been deplored. This is one case where Quebec, through its Department of Sustainable Development, Environment and Parks, could very well issue the necessary approvals without the federal government having to intervene. That is not a problem and I think the consensus in Quebec is that the time has come to modernize the act.

However, I do see a problem with the table in guidance document. You note that in 2007, Transport Canada received approximately 5,000 applications. Between 2,500 and 2,800 of these applications were approved and some, fewer than 1,000 I believe, required environmental assessments. That means that 2,300 applications were

not approved. You say you received 4,500 applications. So then, several thousand applications were rejected. Correct?

[English]

Mr. David Osbaldeston: No, and I understand the reasoning behind your question.

What this is showing is that in those particular cases we may have received the applications in that given year, but it may take longer than a year to review them and provide a decision. Many of our applications transcend a year of study. Some need 18 months. Some are two years long, for the larger projects. Others are received, for example, in the eleventh month of the twelve-month cycle, so they would be marked as received applications in that given calendar year, but they might only be approved the following year.

• (1140)

[Translation]

Mr. Mario Laframboise: The fact remains that these applications must be reviewed. Unless your table is not accurate, you received 4,000 applications in 1999 and 4,200 in 2000. That means you receive more applications than you ultimately approve. Regardless of what you are saying, or whether it is over a two-year period, the fact remains that many applications are not approved.

The problem is simple. You would like the committee to hold cross-country consultations and make a stop in Quebec. However, given that you reject anywhere from 1,000 to 2,000 applications each year, environmental groups will be asking me to intervene on their behalf. I wonder if you really want to stir everything up. I do not have a problem with consulting people. Really, I would be happy to do that. But seriously, there are groups listed here — associations like the Transportation Association of Canada — that could send representatives here to Ottawa. If we decide to travel, then we will need to hear from everyone, including those who asked you to intervene. Often these are environmental groups.

I am willing to hold cross-country consultations, if that is what the Conservatives want. I do not have a problem with that, but then we will hear from anyone. If 4,000 applications were received and 2,000 rejected, that means that some people wanted you to step in and would be happy to have you do so.

Mr. Marc Grégoire: Both sides are pressuring us where the act is concerned. Those wanting to build infrastructures are exerting a great deal of pressure on us. They are complaining that the process is not moving forward fast enough. Pressure is also coming from some environmental groups that use the act for environmental purposes more so than for projects. Opponents will seize this opportunity to express their opposition to projects requiring an environmental assessment.

Yes, some applications are refused, but a certain number are also sent back to the applicants, who are advised that their project requires neither an application nor approval by us.

On that note, we have prepared a number of pamphlets on policies arising from subsection 5(2) of the act that we will be forwarding to the committee. Several exempt categories were agreed on several years ago. People are not aware of these exemptions when they file an application to build a dock at their cottage. We inform them that they are not required to file an application if they comply with the standards for this type of work: for instance, if the build does not exceed certain dimensions, if it is located a certain distance from the neighbouring lot, if it extends no further than a certain number of metres from the shoreline, and so forth.

Many projects, however, drag on for several years and never come to anything. We receive applications for projects that never come to fruition. We often receive applications to build a particular infrastructure, although nothing ever comes of the project. The statistics do not take situations like this into account.

There are three categories of exempt projects: those that have been refused, those for which no application is required, or those that are extended or withdrawn by the applicant.

Mr. Mario Laframboise: I have no problem with coming up with a new definition of navigable waters under federal jurisdiction. Provinces and, often, municipalities must comply with standards in the case of certain types of projects. However, there is no need to do a cross-country tour in order to come up with this definition. That is where I have a problem. You are asking us to conduct extensive consultations, whereas your document has clearly identified the problems. You have even made recommendations to address each of these problems. Therefore, you seem ready to go forward with a bill at this time.

Mr. Marc Grégoire: Of course we can always draft and table a bill, but traditionally extensive consultations are held in the case of each piece of draft legislation.

Mr. Mario Laframboise: Really now. That is funny!

Mr. Marc Grégoire: Traditionally that is how we work. For example, the Aeronautics Act, one of the last pieces of legislation you examined, was the subject of extensive consultations with over 700 groups across Canada.

Mr. Mario Laframboise: I agree, but these consultations were not conducted by the committee.

Mr. Marc Grégoire: No, but consultations are commonplace. It is not up to us to dictate to the committee how to conduct consultations. The committee can choose to invite people here to give testimony, or it can opt to conduct cross-Canada consultations. That is the committee's prerogative. In my opinion, both approaches have merit. I am confident that groups from across the country would travel here to make representations to the committee.

If you did decide to hold cross-country consultations, as we have seen in the case of different bills recently tabled, then we think you may have to stop in at least thirty different locations in Canada to consult with groups about the bill. That may be too much for the committee, but it is not my call. All of the options have merit.

• (1145)

[English]

The Chair: Thank you, Mr. Laframboise.

Mr. Masse.

Mr. Brian Masse (Windsor West, NDP): Thank you, Mr. Chair.

According to the statistics here, what is your percentage of applications that are refused?

Mr. David Osbaldeston: I don't have a specific percentage, but I did want to address that point. Very few applications are refused actually; it is very, very low. I don't have the number on that, but our job is to attempt to find ways to share the use of the waterways and therefore to work with proponents, to work with Canadians who just want to build a dock or put a swim raft out front, to find a way to do it safely. I am pleased to say that through the expertise of our officers we normally find a way.

Mr. Brian Masse: Okay, if that's the case, then how do you explain your statistics when you say that in 2002, for example, you didn't get to more than half of them, and then in 2003, again, you didn't get to more than half of them? What happens to all of those files?

Mr. David Osbaldeston: Again, we have a group that comes in and carries over. We have a group of files that is completed that following year, and we have new ones that arrive.

Mr. Brian Masse: If you look at your chart, though, that doesn't logically make sense, because you never catch up. Every year, even if you're rolling them two years ahead, by this chart, you still never catch up.

Mr. David Osbaldeston: I cannot agree with you more.

As a matter of fact, with all of our clients that we list here and every single one of our stakeholder groups, there are two things they comment on. And it doesn't matter whether you're the provincial authority, the municipal authority, or the guy who just wants to put the dock in front of the cottage, they comment on the delay. The delay is usually—

Mr. Brian Masse: That's not my question.

My question is related to your statistics here, which don't appear to be accurate. If you follow your logic, that you do actually complete just about every file, that you do reach a conclusion at the end of the day for the vast majority of your files, given the number you have each year, even if you just move them one or two years in advance, they still don't add up to these numbers.

How many files does the department have right now that you can't get to because you physically don't have the staff to get to them? Maybe that would be a better way to get that number.

Mr. David Osbaldeston: I don't have the numbers in front of me, but I can tell you that the second concern of all of our clients and our staff is the backlog. The backlog is severe; the backlog is what causes the delay. Each of our officers has in excess of 100 files they must be working on each year.

Mr. Marc Grégoire: We will provide you with more information about this.

Mr. Brian Masse: Yes, because it just doesn't make sense. According to this, if you have double the files, they just compound and compound, but we're not seeing that shown here.

If I could go to the staffing levels, what is your current staffing to deal with this type of process? What are your staffing levels right now?

Mr. David Osbaldeston: Across the country we have approximately 40 officers designated to make decisions and to sign documents with respect to approvals.

Mr. Brian Masse: What was it, say, back in the year 2000?

Mr. David Osbaldeston: It was approximately 35.

Mr. Brian Masse: Thirty-five. So since the year 2000 you've added five officers, up to 2007.

I understand there's a need to review legislation, but wouldn't it make more practical sense, if you can reach consensus with these files, to actually increase the staffing component to be able to meet these new needs? That would be a lot quicker way of getting at some of the lower-hanging fruit, so to speak, on which you can reach consensus. It would seem to be an obvious solution.

If you've been hiring less than one person per year from 2000 to 2005, that seems to be shortchanging the general public.

Mr. Marc Grégoire: First of all, we haven't had this program at Transport Canada since 2000. This program was part of the Department of Fisheries and Oceans. I think we had it prior to 1995, but it was transferred to Fisheries and Oceans in 1995, and then we got it back in 2003.

Mr. David Osbaldeston: Yes, in 2003.

• (1150)

Mr. Marc Grégoire: In 2003 it was transferred back to Transport Canada.

I think we're making—

Mr. Brian Masse: So you've hired a person per year since then, because you had an increase of five people—if you want to go back to 2003.

Mr. Marc Grégoire: We're making the most efficient use of the resources we have, and these pamphlets are a way of reducing the pressure on our inspectors, so they can focus on the more significant pieces of work.

Mr. Brian Masse: Have you approached the minister about increasing your staffing component? Has that request been made to the minister?

Mr. Marc Grégoire: Normally, when we discuss resources, we do that in-house, and the resources are allocated after comparing competing priorities within the department.

Mr. Brian Masse: I understand that, but has the department made a request to the minister to increase the staffing component to deal with this situation?

Mr. Marc Grégoire: We've made a number of requests in various modes and in various organizations within Transport Canada over the years, but I didn't think we were here to debate the specific budget.

Mr. Brian Masse: But the evidence right in front of me now is that it's a matter of resources to clear off some of these cases, and the resources aren't getting to the department. If that's the case, I think it's something we need to discuss while we are looking at—

Mr. Marc Grégoire: Sir, the answer is not to throw in a whole bunch of inspectors; that will not resolve this problem. The answer is not there. The answer is that there is one place where there is a clear need for more resources across the country, and it's in the environmental impact assessment group, and we are looking at various options for that.

Mr. Brian Masse: Until you actually have legislation changed, would it not be helpful to have an increase in inspectors to clear off the backlog? You're simply saying it's acceptable for people to wait up to two years because we don't have the resources. I mean, there are two—

Mr. Marc Grégoire: No. We think it's more efficient to have more of these policies there and to exclude other work. For instance, we're working now on some new policies, which we hope to finalize in a few months, to help with work done on the properties of farmers.

Today, if a farmer wants to build a little bridge over a creek in which there's water only in the summer, he has to ask for an environmental—

Mr. Brian Masse: I can appreciate the review for all the different reasons you've put out, but again, to get legislation and hear consultation and make people wait simply because of that, as opposed to putting in more people to be able to clear the backlog...

We routinely do this in other types of departments, in immigration and other things of that nature, when there's been a need or a requirement. In employment insurance there's been an increase in the staffing component to at least clear up the backlogs. Your position now is that until legislation changes, you'll make people wait.

Mr. David Osbaldeston: We're currently reviewing our program in conjunction with our environmental assessment group and our aboriginal consultation group—because we three interact, as you can tell from our paperwork, on virtually every single file—to determine, with the resources we currently have on hand, how we can most efficiently and effectively discharge our responsibilities to Canadians.

For purposes of hiring, to bring on the numbers of staff we would need to deal with this load would take us a year or a year and a half. We don't need to meet that load if we change the legislation. We don't need to have excess staff on board once the legislation is changed. We need to have a reasonable complement to do what Canadians expect and to deal with the new responsibilities that the act would bring to us.

Mr. Brian Masse: I don't disagree with that, but the reality is that although legislation could come quickly, it may not come at all. It's good that you're going through some other types of mechanisms to improve the situation, but I find it hard to believe that...this is a staffing component that would be successful to move through the system.

I want to move on quickly to another question—

The Chair: Actually, I'm going to have to stop you there.

We'll go to Mr. Shipley.

Mr. Bev Shipley (Lambton—Kent—Middlesex, CPC): Thank you, Mr. Chairman.

Thank you, witnesses, for coming out.

I'm interested to know that you've been working in the background for a year and a half or so and that the minister has taken the initiative. Quite honestly, all of us around this table know that something has to be done with the antiquated act we have in front of us.

I'm wondering about the process a little bit. My background is in Ontario. Not only was I a farmer in the past, but I was also a municipal mayor. I can tell you that in both venues there's a fairly significant level of frustration. It's not necessarily people understanding the navigable waterways legislation, but also the reference that comes to the Department of Fisheries and Oceans, trying to follow that particular legislation.

Can you just help, though, with the process a little bit? What we're trying to do here is understand the duplication we have in place, which causes the high cost of projects because of the delay. Quite honestly, all of us are here to understand responsible environmental concerns. We can't sweep that under the rug. It will be an issue, and responsible environmental concerns have to be addressed.

Can you just help us a little bit? We have municipalities, the provinces, territories, and the federal government. From the federal government come transportation and DFO. Can you help us a little bit with the process, so that it's on the record? Maybe people will understand the process we have and how we can simplify it, in short.

• (1155)

Mr. David Osbaldeston: Sure. An application for anything arrives in the door.... Is this the process you're speaking of, Mr. Shipley?

Mr. Bev Shipley: Yes.

Mr. David Osbaldeston: An application will arrive in the door at a government department that has a potential responsibility. It could come in initially through a Fisheries and Oceans application because there's a concern or knowledge on the part of the proponent that there is fish habitat involved. Most things that go in the water have fish habitat involved. In the case of pipelines, it could come through the National Energy Board, where an initial notice of project comes through. We'll just call it a notice of project, as opposed to an application.

As government departments, we share information amongst ourselves. Those government departments that receive the application take a look at the project proposal. They say, well, there are a bunch of other departments that will be implicated by this, an interest in those departments that it should be reviewed. They take those and they refer them out. It could be through the environmental CEAA, the environmental agency process as part of a CEAA review, or it could be from regulator to regulator, passing the information over. We work quite closely with Fisheries and Oceans.

Once those departments have those pieces, each of the regulators look under their particular legislation at their regulatory authority to make a decision. In our case, it would be with respect to navigational concerns, as to whether or not the project imposes either substantial or very little interference to navigation, and, depending on what it does, if we can find a way to make the project go and approve the project with certain terms and conditions. If we can, we generate the approval. If we can't, an approval is not issued.

Meanwhile, while we're doing that work, in the case where an environmental assessment is required, you will have the environment assessment agency involved—relative to posting the environmental assessment requirement and information pertaining to review of those materials—and you'll have the fisheries department looking at the fish and habitat concerns associated with the project. You may have other departments, depending on what the project is.

All of that material, which ultimately comes together under an environmental assessment indicator, or an environmental assessment, where it's been called upon and required, would come out as either a positive or a negative. We would get the results of that environmental assessment, in our particular case, where called upon. If the environmental assessment comes out as negative, we cannot, by law, under the Canadian Environmental Assessment Act, issue our approval. If it comes out with a positive and we have a positive navigational capability here, based on certain terms and conditions, then we would issue our approval. That's generally the normal course of action. Fisheries, as well, issues a letter of authorization or other documents associated with the fisheries. All of it glues together for the proponent.

There's no doubt that there are about four or five different areas at times—government departments—that need to make a determination or a review. We would hope, under a new piece of legislation—and I think it's identified within our guideline document—that we could start to delegate some of our authorities in carrying out those functions.

When we were with Fisheries a while ago, prior to 2003, we actually started that, by cross-training fisheries officers and our officers. We could do some habitat assessments for them and they could do some navigational assessments for us, on the smaller projects where extensive qualifications and knowledge base were not required, and based on certain criteria that we would cross-train each other on.

We've transformed that now, in our department, to these minor works policies. We're actually having the proponents self-assess themselves in certain areas. But we would hope with the new legislation, as identified within the guidance document, that we would be able to get a capability to delegate certain authorities to other agencies, such as fisheries officers and perhaps some municipal inspectors. We don't know exactly to what level we'd take it. That is something that would have to be discussed and consulted upon.

Right now, we don't have the capability to do that within our legislation. It does not provide it, because back in 1882 when it was developed, you just didn't do that.

• (1200)

Mr. Bev Shipley: Could there be a delegation of authorities that would go not just to municipalities but to provinces and territories to actually reduce duplication?

Mr. David Osbaldeston: I personally don't see why that can't happen if they would be willing to take it on. I think the biggest obstacle, in a way, is our legislation, and the last modification, amendment, or change doesn't allow it. We'd love to do it.

Indeed, we've got many agencies that we work with hand in hand. There are associations such as the forestry industry, the pipeline industry—they're out there self-regulating themselves in certain areas, doing their own evaluations on behalf of other regulating bodies on a regular basis. We'd be willing, and they've told us, to take some of that on, but we just don't have the mechanism to do it within our legislation.

Mr. Bev Shipley: You spoke earlier about high-priority projects. Some of these may not be associated with smaller agricultural or municipal projects. They may not be as significant to those individuals or municipalities. I suspect they do not rank very high on the priority list. How does this get dealt with? Am I assessing this correctly?

Mr. David Osbaldeston: There lies the frustration of the farmer who wants to put a culvert in to get drainage from one field to another, or the municipality that's having great difficulty and simply wants to repair a bridge.

I do not understand, in our legislation, why we would treat a foot bridge going over a golf course creek the same as the Confederation Bridge going to P.E.I. Why should we have to run them through the same process? It doesn't make sense. In a similar vein, your five-foot culvert between two farmers' fields requires the same process.

How does it get dealt with now? For the most part, for the little stuff, people don't apply. It breeds non-compliance with the legislation. So by rights their work is unlawful. It's illegal, and they're criminals. And I'm not saying that to be facetious.

The trick is, we don't want to be in the little-stuff business. We think that with the little stuff, if you tell people how to do it, they'll do it correctly and up front. If they don't, we want the capability to act. If we find out that there is a problem, through complaint or our own inspection, we need to be able to go in and regulate it to see that it's corrected and made safe. That's how it should be done.

Mr. Bev Shipley: Yes, the weekend fixes are not what we want to have happening.

Mr. David Osbaldeston: No.

The Chair: Thank you. I think there is some agreement at this table.

Mr. Maloney.

Mr. John Maloney (Welland, Lib.): We have a lot of shared boundary waters with the United States. Do changes need to be coordinated with state or federal jurisdictions on the U.S. side? Do we have to consult them and make sure that what we're doing is not in conflict with their practices?

Mr. David Osbaldeston: That would need to be done. You're right, we have the St. Lawrence Seaway, the Great Lakes, common boundaries going through these areas. We have crossings going over the waterways, which are regulated.

There is a new International Bridges and Tunnels Act in place that's relevant to this point. That would have to be reviewed, and they would have to be informed of what we're doing.

Mr. John Maloney: What if there is a conflict?

Mr. David Osbaldeston: I doubt if there would be conflict, but if there was one, we would have to deal with it. That's what we need to

know for any proposed change to legislation. We need to bring these things to light.

Mr. John Maloney: I'm interested in definitions and your inclusion and exclusion lists. You have an exemption for “minor works”. Is there a definitive way to determine what a “minor work” or a “waterway” is?

• (1205)

Mr. David Osbaldeston: The proposal would be to include all Canadian waters in this legislation. There is a reason for that. The reason right now is that it takes time to determine what navigable water is. You have to do a navigability assessment, and the criteria for navigability have never been clearly identified.

Right now, in accordance with what the courts have determined, if you can float a canoe or a kayak, regardless of how long or how far, it's navigable. And if it's man-made, it's navigable.

So if I closed the door to this room and we filled it halfway with water and put a canoe in here and floated it, I would by rights, under this law, be regulating this room, which is ridiculous.

Mr. Marc Grégoire: Let's do it.

Mr. David Osbaldeston: So for “navigable”, I don't have a good definition. The one we have now, provided by the courts, is not working. Indeed, it is creating much of this backlog, because it's dealing with waters that need to be determined to be navigable. It's also dealing with a lot of waters we know aren't navigable. But we have to prove it in order to say, “You don't need to come”.

I'm sorry, what was your second piece? It was a definition and it's slipped my mind.

Mr. John Maloney: How would you determine whether something was a minor work, which would be exempted?

Mr. David Osbaldeston: We would define “minor work”. It would be defined under a specific set of criteria. “Minor work” right now is pretty much defined as something that already has a predetermined fate—work that will be approved as long as you build it in a specific way in a specific type of water.

Mr. John Maloney: You're going to include all Canadian waterways. But how does that get us away from the situation where you have a little creek and you do your little canoe trip up there?

Mr. David Osbaldeston: Then you start to pull things off with exclusion lists. In other words, I know Red Tail Creek, say, in Saskatchewan only trickles during a large rain, and yes, during that rain it could probably support a canoe, but nobody is going to travel 600 miles to get to Red Tail Creek to float the canoe for the two hours it trickles enough water to float it. Very specifically, on the exclusion list, there's no need to apply Red Tail Creek, and that's your “no need to apply” list.

You could also put “no need to apply” on that list with certain portions of waterways. I don't think anybody is going to build a dock in the middle of the Deschênes Rapids out here or have a swim raft out there, but we can very specifically say “no need to apply” because there's no navigation on the Deschênes Rapids. I'm using that as an example.

Mr. John Maloney: Isn't that a monumental task, to specifically exclude specific creeks, rivers, rapids, or whatever across this country?

Mr. David Osbaldeston: Not if you have a workable set of criteria to do it with, and indeed we're working on a minor works policy right now that would do that. It sets up a number of criteria: sinuosity, how quickly it turns, depth, width, and the number of deadfall going over.

We're talking very small waterways to start to pull this stuff off, waterways that right now require the forestry industry, for example, which goes into an area it wants to cut every spring, to build 3,000 temporary bridges over these little creeks that nobody has ever taken a canoe or a kayak into and would never ever want to because it takes so long to get into them. By our law, every single one of those requires a dedicated application and approval, which takes time.

As long as you get your criteria right up front, and we've been working with the Forest Products Association of Canada, the Transportation Association of Canada, and other associations to try to work on criteria whereby we could define those types of very minor waterways to start such a list—waterways that do not support navigation, that nobody wants to navigate down and foreseeably never will.

Mr. John Maloney: Why are we going to exempt port authorities?

Mr. David Osbaldeston: First of all, the port authorities are already exempted from our act in accordance with their own legislation when they're building the work themselves. Where we currently get involved is if they have a tenant who decides he wants to build a wharf, and all of a sudden the tenant inside the port authority boundary must come to us for approval. Our current thought on this is that the port authority is there to look after the business of navigation and economics in and out of that particular port. The port authority will not do anything to hinder that navigation because in so doing they would be hindering their own business and objectives; therefore, let the port authority look after all their interests inside their own port boundary, including their tenants.

•(1210)

Mr. John Maloney: You referenced a jurisdictional problem when referring to derelict hulks in waters. By our establishing a fund from fees, are we assuming that jurisdiction, or where do we stand there? Do we have that jurisdiction, or is it just the cost you balk at in removing these hulks?

Mr. David Osbaldeston: We claim—for financial reasons right now, I think—that we don't have that jurisdiction. Again, the age of the act...it doesn't define it.

The other jurisdictions come at us and say, "You're responsible for removal of obstacles and hazards." When we claim that it's not an obstacle, it's not a hazard, it's not in the navigational channel, they reply, "It is an obstacle to me, an eye obstacle, and it's a hazard to our enjoyment of the beach, so come and clean it up." The argument continues in that grey area.

What we're saying is let's stop the arguments. Especially when we start to have threats and to have experience with these things being dragged off the beach and sunk out in the waterways, to become

navigational hazards that we have to come out and clean up, let's stop the arguments. It's not getting anybody anywhere.

So let's go out and start to clean these things up. We recognize that indeed they can become hazards—much like the *Canima* in Shediac Bay, and I can name a number of other ones across this country—so let's clean them up. We are in the navigational safety business, and as long as we have the finances to do it...

It's not that we're against doing it, but nobody has ever been funded nor clearly, within legislation, had the responsibility to do it.

I'm not speaking here, by the way, of just the stuff that's on the shoreline or sitting at docks, left abandoned and sinking, blocking the small east coast docks—or wharves, as they call them there. I'm talking as well of accidents that occur. In the Ottawa River here, at the mouth of the Richelieu, we had a tanker that cut a concrete sailboat in half, and the two halves of the sailboat went down. Unfortunately there were souls lost. But it costs money to go and pull those things up, and they were blocking the mouth of the Richelieu River and could have posed a very serious threat to navigation.

Well, we don't have any funding aside to go and do that right now. The argument that always comes around is where are we going to get the funds if we do it? If we had an obstacle removal fund, we could say let's contract it immediately and get those halves lifted and out of here. Truthfully, navigational safety is our number one priority.

The Chair: Thank you.

It does remind me a little bit of the abandoned gas stations where the tanks are in the ground. I understand that the environment...went after the original owners for a lot of that cost.

Are you proposing that we absorb that cost as a government?

Mr. David Osbaldeston: Absolutely not. Our very first approach is always to the ownership. Even if things had to be removed on an urgent basis, such as the two halves of the ship I just mentioned, we would be dealing with the insurer subsequently. If we couldn't deal with them immediately, we would deal with them subsequently to recover costs.

The Chair: Monsieur Carrier.

[Translation]

Mr. Robert Carrier (Alfred-Pellan, BQ): Good day, Mr. Grégoire. Good day to you also, Mr. Osbaldeston. We have not had the pleasure of meeting before today.

I would like to discuss a particular case with you which has been a point of contention for my constituents, namely the construction of a bridge on Autoroute 25 across the Milles-Îles River. This major infrastructure project has been under discussion for many years in Quebec.

Public consultations were conducted by Quebec's Bureau d'audiences publiques sur l'environnement. I heard through the grapevine that the Department of Fisheries and Oceans was also concerned about whether or not this project would be approved, mainly because of concerns over fish habitats. There was some question of relocating a sturgeon spawning ground. I was informed by the department that an environmental assessment was required and that one had yet to be completed because the project developer had not yet supplied all of the information.

I found out only yesterday about this legislation, through a Transport Canada public notice issued on December 14, 2007. Quebec's Department of Transport was seeking your approval to move forward with this venture. I would imagine this type of project is one not listed in your table and one that will surely be examined. You mention applications filed in the 11th month of the year, but this particular one was filed in December.

• (1215)

Mr. Marc Grégoire: That must be...

Mr. Robert Carrier: It must be...

Mr. Marc Grégoire: It must be one of the applications we received.

Mr. Robert Carrier: Precisely. That is what I understand, except that it doesn't answer all of my questions, because it is public knowledge that the work on the river will begun in March, that is in one month's time.

I have never been able to get confirmation of the project's approval by Fisheries and Oceans Canada. Now I find out that your department will also be conducting some studies and environmental assessments. There seem to be many public servants working on this project, and it is not really clear who is responsible for what or when the approvals will be given.

Speaking of this project, you seemed to be saying earlier that there was a certain amount of cooperation taking place between federal government departments. I imagine that Fisheries and Oceans Canada had already advised you of this project before December 14 last and that you have started to share your observations with the department.

I would appreciate some answers or some details about this particular project that directly interests me.

Mr. Marc Grégoire: We cannot give you any more details about this project today, but we can certainly pass the information along to the committee clerk in the coming days. However, as David explained earlier, as many as four or five departments may be involved in this process.

In this particular case, Fisheries and Oceans would need to give its approval in so far as the sturgeon spawning grounds are concerned, to ensure compliance with federal legislation respecting fish habitat. I do not recall the exact title of the act. An environmental impact study is required in this case since a federal permit is needed to go forward with the project. The impact of the project on the environment must also be considered. The same applies for us. When we issue a permit, even one for a provincial project, the environmental impact assessment process is initiated. However, we

cannot deal with navigation questions until the environmental issues have been addressed.

We can do some checking for you with the Quebec region. No doubt our colleagues from the Quebec region are the ones coordinating this project. Otherwise, you could get in touch directly with Quebec region officials to find out more about this or any other project.

Mr. Robert Carrier: Nevertheless, I would still like to get some answers from Transport Canada about this particular environmental impact assessment. It is important.

Do the two departments join forces to conduct one single environmental impact assessment, or does each department do its own study?

Mr. Marc Grégoire: No. Most of the time, the two parties join forces to conduct a single environmental assessment.

Mr. Robert Carrier: So then, I should be able to get an answer or some information about this project quickly?

Mr. Marc Grégoire: Yes, you should be able to have some information quickly. I am not sure whether these studies have been completed, but we should be able to give you a status report.

Mr. Robert Carrier: It is natural to have some questions, since this Quebec project seems to be moving forward smoothly. In fact, it was announced that work is scheduled to begin in March.

Are you aware of that? In a case like this, are you asked to fast-track the process so that at the very least, approval to start the work has been given? That's my concern. As the Member for this area, I would like to be able to at least say that our federal government is monitoring the situation closely and will issue some directives accordingly. I'd like to be reassured a little.

Mr. Marc Grégoire: Standard procedure is being followed. However, I am not familiar with this particular project. We will get some answers for you.

Mr. Robert Carrier: Could you get them to me quickly?

Mr. Marc Grégoire: If we have answers to your questions, yes, of course.

[English]

The Chair: You've committed to getting him the answer, or do you have the answer?

Mr. David Osbaldeston: I just wanted to let you know, Mr. Carrier, that these things are done concurrently—the navigational study and the environmental assessment. The results of our navigational study, our navigational concerns, have to form part of the environmental assessment. So they're not done in a linear format but concurrently. I just want you to rest assured that our work is already under way on that, if not already completed, and we've fed that environmental assessment. The details with respect to the exact status, as Monsieur Grégoire has indicated, we don't have here handy, but we can let you know to the best of our knowledge.

• (1220)

[*Translation*]

Mr. Marc Grégoire: I do want to reassure you, Mr. Carrier. From my limited knowledge of the Rivière des Prairies and the neighbouring waterway, it is highly unlikely that the response will be negative. There is every reason to believe that a permit will be issued in the case of these navigable waters since there are already several bridges spanning this river. This is merely one more structure. Small pleasure craft navigate these waters, not large commercial vessels. The odds are that approval will be forthcoming.

Mr. Robert Carrier: The one exception is Fisheries and Oceans because of its reservations about fish habitat.

Mr. Marc Grégoire: That's different. However, Transport Canada can approve a project even though there may be concerns about fish habitats.

Mr. Robert Carrier: I see. Will you be confirming all of this to me?

Mr. Marc Grégoire: Yes.

[*English*]

The Chair: Thank you.

Mr. Jean, you have five minutes.

Mr. Brian Jean (Fort McMurray—Athabasca, CPC): My understanding is, first of all, that the average process takes about 11 months from the start of receiving the application to putting it through. On the average, that's my understanding. Is that correct, very quickly?

Mr. David Osbaldeston: For a larger project with substantial potential interference to navigation, you're probably about right.

Mr. Brian Jean: So it could be possibly two years for some projects?

Mr. David Osbaldeston: For major dams, it could, absolutely. For Lower Churchill hydro-electric, for example, or Voisey's Bay—major projects—it could absolutely.

Mr. Brian Jean: I have one question, in essence, and I would prefer to have answers in writing if they exist. It seems to me that it could take the committee two or three years to do a good job on this particular act. It just seems like a tremendous, amazing, huge task. It's 100-year-old or older legislation, and it could take us that long to do the job right, in my estimation.

Mr. Marc Grégoire: The minister was kind of hoping you would give him a report by June.

Mr. Brian Jean: That's nice. I don't know if there are that many hours in the day.

Mr. Marc Grégoire: It was also specified—

Mr. Brian Jean: I have heard something about the Liberals taking us down in the near future for an election, so you never know what can happen.

I'm wondering if the department has a short list of low-hanging fruit that may be available. For instance, my understanding from reading some of the material is that a change in the definition of “navigable waterways” might be one way to do that, as would a list excluding some areas.

Does the department have low-hanging fruit or quick fixes that would be of a temporary or permanent nature, which could be done quickly? Is there some low-hanging fruit that this committee could grab and put into legislation and make a change that would help?

Mr. Marc Grégoire: Yes, absolutely there is, and that could be the recommendation the committee would set forth. But rather than doing some patchwork on this very old piece of legislation, we would really prefer to promulgate a new act and to delete this one entirely.

Mr. Brian Jean: I understand, and I would ask that the department provide the committee in writing with that low-hanging fruit. I understand what the department is saying, and I agree, but at this stage there are so many variables. Quite frankly, this is the number one complaint I get in my riding in northern Alberta. I've heard that from many other people, from Quebec to New Brunswick to B.C., that this is the number one complaint. This is where the federal government is not doing the job. I would prefer to see a fix, rather than waiting three, four, or five years to have it happen.

Mr. Marc Grégoire: Our experience in the past with amending legislation is that if we open a piece of legislation for some quick fix, our chances of getting back for a big look at it are very slim. We think there are so many problems, it's really worthwhile to do a major overhaul to this act.

Mr. Brian Jean: I only have two minutes left. I do understand that, Mr. Grégoire, but I would appreciate a list of those quick fixes, just for the committee's information.

The second line of questioning I would like to pursue is the issue of abandonment that was brought up earlier. I use the rivers and lakes a lot in northern Alberta. In fact, just about every weekend I go camping with a jet boat, and I find boats abandoned. It's very common. In fact, my Conservative association has what we call “clean up Canada day”, on which we go into the river valleys and clean up barrels, grocery carts.... It's unbelievable the number of things people leave. We have hundreds of volunteers who do that, and it's a very good effort. But no matter what dent we make, we find that the next year it's back.

I believe in the “polluter pays” principle. Has the department looked at some way of making those people who allow, for instance, grocery carts or fast food refuse or things like that...making them pay to clean it up, using some sort of a refund scheme? Is there some way to make them liable for that? This is a huge issue to Canadians, not just from a beautification perspective, but the long-term environmental impact to the fish stocks and to the habitats is also tremendous.

• (1225)

Mr. David Osbaldeston: If the item is in the water and posing a hazard to navigation and an owner can be found, we process that. Most times, that's not the case. I think what you're really speaking of is stuff on the shoreline, and that's outside of our jurisdiction.

Mr. Brian Jean: Is it within the mandate of this legislation that it could possibly become part of that jurisdiction?

Mr. David Osbaldeston: Again, we're looking for vessels for the most part here. Vessels and other man-made obstructions to navigation are covered for the waterway. When we start talking about the shoreline cleanup...again, the target of this was vessels, which are obviously within the Transport mandate.

Mr. Brian Jean: I do understand that, but it seems as though there's a no man's land somewhere in between, and nobody has taken responsibility for it. I don't like creating more government, but if there's no responsibility for it, it seems that it's a no-brainer as far as fixing it.

My understanding is that under the Canada Shipping Act, a vessel is not considered abandoned until it's actually been 12 months. So under the Canada Shipping Act, somebody can go in and grab a vessel that's been abandoned, but it has to be 12 whole months or 18 months—I think it's 12 months—and then they can go in and grab that vessel. For instance, I've seen jet boats in 12 feet of water, underneath the water because they've gone over rapids, and somebody just leaves them there. They take the registration and stuff so nobody can find it, or they actually leave a snowmobile out in the middle of a river because they broke through the ice. They just won't go and get it because there's no value to them.

Mr. David Osbaldeston: As part of our navigable waters protection program, we also regulate under the Canada Shipping Act as the receiver of wreck for Canada. Those items are covered under that particular jurisdiction and legislation. It's not so much that they have to stay there for 12 months; they have to turn the items into the receiver of wreck for Canada. If no owner is found after 12 months, it can be disposed of.

The Chair: Thank you.

Mr. Bell.

Mr. Don Bell (North Vancouver, Lib.): Thank you.

I have a question to Mr. Grégoire with respect to the timing. You say the minister would like a report in June 2008. The problem with the time is that we have to do our rail safety report. We're waiting for that report to come in, and then we want to have adequate discussions. I'm looking at the legislative calendar between now and the normal summer break—forgetting the fact that my colleagues may lay a trap to cause an election—and my concern is that we don't really have time to start touring the countryside. We're waiting to consider that rail safety report and then decide what we want to do further. Do you have any indication as to when that might be?

Secondly, I would support the low-hanging fruit approach that Mr. Jean suggested as an alternative to that. Then perhaps we can come back in the fall to get serious about this and do the proper public meetings that are being suggested.

I'd like a comment on that first, and then I have some other questions.

Mr. Marc Grégoire: With respect to the first question, the report should be ready in a few weeks. The minister should be able to make it public before the end of the winter. I don't have an exact date yet, but it is the intention to render the report public this winter. So with winter ending March 21, that's a few weeks away.

Mr. Don Bell: I thought that report was supposed to have been received by last December.

Mr. Marc Grégoire: It had to be translated and it had to be printed. This is being done now.

Mr. Don Bell: I see. Okay.

The next question is with respect to a comment I heard from Mr. Osbaldeston about the sequencing of departmental approvals. You indicated that your input goes into the environment ministry's assessment. I thought I heard you say earlier that you do an assessment and you get the environmental report. If the environmental report is yes, then you look at it from your point of view and say yes or no. If the environmental report is no, then it doesn't matter what your recommendation is because they have priority in terms of protection. Yet you're saying your report goes into their report. Can you explain that to me?

• (1230)

Mr. David Osbaldeston: Sure. I understand the confusion, because it's very confusing how these various pieces of legislation work.

We do our navigational assessment and provide it as part of the environmental assessment. The impact a project has upon navigation is one of the components of an environmental assessment, but we're only one of many components that is evaluated under that environmental assessment.

If in the overall picture of the environmental assessment, from all the information gathered on all of those components, the decision is made that the project proposes no substantive impact to the environment and therefore a recommendation is positive on an environmental assessment, at that point, if we wish, we can issue an approval document.

Mr. Don Bell: I see. Okay.

What about private wharves within port areas? I'm thinking of greater Vancouver now, the Vancouver Port Authority, and the private wharves in my riding of North Vancouver, which are adjacent to residential properties. Because they're not part of the port operation, do they come under your jurisdiction?

Mr. David Osbaldeston: That's correct. If they're not part of the port operation, if they're not constructed by the port for the port, they are under our jurisdiction.

Mr. Don Bell: My understanding is that the ones in North Vancouver have been licensed by the port. That's the water lot leases, or whatever is required. Is that something separate and different?

Mr. David Osbaldeston: We don't deal in leases. We are approving the actual construction and placement of the work.

Mr. Don Bell: And would aesthetics be considered a factor from a municipal point of view? I'm a former mayor, and the residents were concerned because of the low tide aspect and because of the eel grass, or whatever it is. Some people wanted to run these docks out 100 feet into the water.

Mr. David Osbaldeston: A 100-foot dock on a 105-foot river is not a good idea.

Mr. Don Bell: This is on the ocean.

Mr. David Osbaldeston: I can't speak to that. I'm just facetiously giving you the example that we would take a look at the size of the dock. As opposed to the aesthetic aspect, we would determine whether or not the length of the dock was substantially interfering with navigation and if possible find a way to work around it.

Mr. Don Bell: So aesthetics is not one of your criteria.

Mr. David Osbaldeston: Our criterion is navigational safety, not aesthetics.

Mr. Don Bell: So if the municipality wanted to object to the aesthetic impact, who would it speak to?

Mr. David Osbaldeston: I don't know.

Mr. Don Bell: So you're basically saying you have the authority, but aesthetics isn't one of your criteria.

Mr. David Osbaldeston: It's not one of our criteria. They go through building permits to put these things in the water, so I would just assume they are looking at that.

Mr. Don Bell: Yes.

Mr. Marc Grégoire: I have to specify, related to your question, that we have a policy and therefore a little pamphlet on docks. It specifies the maximum size and at what distance a dock can be built. If a private owner meets the criteria there, he can build his dock without ever talking to us, and we're happy.

Mr. Don Bell: I would like to get a copy of that.

Do I have time, Mr. Chair?

The Chair: No, your time is up, Mr. Bell.

Just further to that, I've experienced instances where neither the municipality nor the community jurisdiction would intervene on a dock that was being applied for. Basically that person was left in limbo with nobody taking responsibility. So what you're saying to me is very confusing.

Mr. Fast.

Mr. Ed Fast (Abbotsford, CPC): In your departmental briefing documents that each one of us has received, you refer to the current legislation as being a command-and-control type of legislation. Could you expand on that a little bit?

Mr. Marc Grégoire: We're trying to come up with performance-based legislation and regulation. This one is extremely prescriptive. It tells you exactly what you need to do, and there's no margin for manoeuvres. In a nutshell, that's what we mean.

We would like to move this to a performance-based piece of legislation.

• (1235)

Mr. David Osbaldeston: I can give you some hard examples of that, and it's referred to in the document. Our act, not our regulations, tells you that you must deposit your plans with the public land registry offices. There are no longer public land registry offices in many jurisdictions. In order to change that requirement, we have to change our act.

Our act tells you that every proponent—the guy who wants to put the dock in front of the cottage or the swim raft out for this kids—is going to have to post ads in two local papers and the *Canada Gazette*, at his cost. Very few people read the *Canada Gazette*, and in

some areas there aren't two local newspapers. So again, we are setting them up for not applying.

Mr. Ed Fast: Prescriptive.

Mr. David Osbaldeston: It tells this in the act, not in the regulations. So in order to change that requirement, we need to change the act.

Mr. Ed Fast: So the legislation you would like to see come into force would provide the department with greater flexibility to adapt to a changing environment through regulation, as opposed to having to change the act. Is that correct?

Mr. David Osbaldeston: Absolutely. Perhaps not even through regulation, perhaps through administrative policies and procedures, memorandums of agreement, or agreements for delegation of authority with other jurisdictions. But we need to change the act to allow us that flexibility. The act of 1882 didn't know anything about smart regulation or about streamlining regulations. It was looking after rivers as highways and only for commercial purposes.

Mr. Ed Fast: Let me just talk a little bit about the environmental process. There's been a fair bit of discussion here. I still don't quite understand it. Is an environmental assessment something your department is charged with? Is it something the ministry of the environment is responsible for?

Mr. Marc Grégoire: It depends on the project. If it's a very small project, we will do it ourselves in Transport Canada. If it's a little bigger project, it may involve only two departments: maybe only Fisheries and us. If it's a little bigger still, it may involve four departments, and the lead may be with another department. So it really depends on the project, the scope and size of the project.

Mr. Ed Fast: But you're not specifically charged with protecting our fisheries resource.

Mr. Marc Grégoire: Absolutely not.

Mr. Ed Fast: I want to make sure we don't raise expectations, because there are communities right across this country where there have been ongoing battles between municipal councils, farmers, and DFO when it comes to protection of the fisheries resource. These are farmers who have dug ditches to improve drainage, and now those drainage ditches have become water courses, essentially attracting initiatives that are intended to protect fisheries resources.

That is not going to change DFO's position on those kinds of issues.

Mr. Marc Grégoire: No, not at all.

Mr. Ed Fast: I just want to make that very clear.

I was also very attracted by some references around this table to removing some of the red tape that presently stands in the way of a timely development approval process. Can you comment on the kinds of applications you think will receive faster approval by moving toward a more streamlined act?

Mr. David Osbaldeston: I'll try to put it into context here.

We'll talk about Infrastructure Canada and the building funds. Let's say you're going to re-deck a bridge that's been there for 40 years and the bridge was approved when it went in. In re-decking that bridge, you're not hanging anything underneath it and there's no scaffolding there, so why are you coming to us? You're just on top; you're not changing the structure or diminishing the envelope of the navigational channel underneath it.

On building small bridges over those little creeks and waterways, right now if you refurbish a highway and replace all the culverts, every culvert that you can stick a canoe or kayak in, regardless of whether the culvert is five feet long or 500 feet long.... Even if it were 500 feet long but only 20 feet high, I don't know many people who canoe or kayak who would want to go through that culvert. For those sorts of projects, as long as we can establish the type of criteria whereby navigation could be reasonably anticipated or expected....

Projects that fall outside of that, and ones that do not affect the navigational channel that already exists for refurbishment, alteration, or repair would be streamlined. Under this new style of legislation we propose a tiered approach to our approval system based on perceived ultimate impact to navigation: no impact, no process; little impact, little process; big impact, big process. We would be able to define for you exactly what those levels of process would entail from both an overall time standpoint and a performance standpoint on our part.

On the cost-recovery aspect, I have gone across the country talking to all these associations listed here and average Canadians with concerns. All of those people expected that we had fees associated with our approval processes, because that's the course. We have the only building permit I'm aware of that's absolutely free of charge, although in the Mackenzie Valley it might cost \$1,000 in chopper time and over \$20,000 to take one flight to look at something. But they expect it and are surprised we don't have it.

When you can start assessing these costs against the level of service provided, which you have to in accordance with the User Fees Act, if we don't meet the level of service, we can't charge Canadians the cost. It forces us to be honest. It provides clarity to the situation for our proponents, and ultimately it's just better government.

• (1240)

The Chair: Thank you.

Mr. Watson, you're the only person on the committee without questions. You have five minutes. Then we'll go to a round of questioning by everyone.

Mr. Jeff Watson (Essex, CPC): You mean I'm the only member who hasn't asked questions.

The Chair: Absolutely. Sorry. You have many.

Mr. Jeff Watson: Well, I have a few anyway, Mr. Chair. Thank you very much.

Thank you to our departmental officials.

Of course, an initiative like this may be important to municipalities of all sizes, but I can tell you that improvements will be very important to smaller municipalities, particularly to rural municipalities.

We have a number of projects. I can think of two that came forward to the department. One was for a pedestrian pathway bridge over what could generously be called a ditch, but it was a large enough waterway, if you will, to have a railway trestle a few hundred feet upstream. The pedestrian bridge had higher clearance than the rail trestle, and they still haven't received approval, and I think we're into our second year of waiting for something like this.

In one of my other municipalities, at one of the major ingress/egress points in the community, they had to repair a bridge over a small creek. It took them many, many months to get approval. Of course, traffic reroutes around the town were quite significant.

There are a lot of issues for our municipalities to deal with, and of course they're raising their hands saying this is crazy, there should be a much more sensible process.

You've provided, in your guidance, a document to this committee. You were able to outline for us how many applications you've received, how many applications have been processed, and how many environmental assessments have been conducted.

Can you tell this committee how many of those applications are for what you'd call minor works or minor projects versus large, major infrastructure types? It can be a percentage; it doesn't have to be a number. Are we talking about 80% of what you deal with being minor things and 20% being major things?

Mr. Marc Grégoire: We're not able to do it, but we'll try, because the information comes from five administrative regions throughout the country. So we have to gather the information. We already committed at the beginning to Monsieur Masse to come back with more information on how many we refuse. So we'll try to provide the committee with more information at large and with more of a breakdown and more ways to look at this data.

• (1245)

Mr. Jeff Watson: I'm a little disappointed, because you've already anticipated a tiered approval process, which you're talking to us about. So you obviously have some idea of the nature of the projects coming through.

Mr. David Osbaldeston: Mr. Watson, this is strictly off the top of my head, but if we have three tiers, say 30%, 30%, and 30% and you're doing pretty well. But you know, for the 30% of 40 staff members out there, that time and effort wouldn't have to go to the lowest tier because those projects would be treated as minor works—as long as you do this, no need to apply. That level of effort subsequently applied to those major projects at level one, which we already know are coming on strong with the infrastructure fund and with the mining and energy development stuff we have to look at, goes a long way towards a serious improvement.

Mr. Jeff Watson: Over the century, courts have expanded the definition of navigable waterways. If we were to narrow the definition, do you have any idea as to what types of waterways or what classes of waterways could be defined out, if you will, as you set the parameters for what a navigable waterway is?

Mr. David Osbaldeston: Yes, we do. As a start, I think I alluded earlier to our minor waterways policy, which is just about ready to be put in place.

If it winds back and forth so often that it takes you a week to go five feet forward, there's no need to apply, because nobody's going to want to do that. It just doesn't make sense. If there's so much natural deadfall across the waterway or so many natural obstructions in the water that you're portaging more than you're in your boat, there's no need to apply. If the depth of the particular waterway for the bulk of the year—and we have measures for this—is so minimal that you won't be there, there's no need to apply.

We started with five. We actually had the Forest Products Association of Canada test this in the field for us. Could they self-measure this and therefore self-regulate? They came back last summer and gave us some input. We've modified it, and I think we're working now on six.

It wouldn't be that you would hit, for example, one criteria and then pull yourself off. When we say no need to apply, we're taking it off that navigability map forever. So you have to hit two, not just one, criteria. You'd have to hit two. That's what we're working with right now as our proposed policy statement on this. That would create, for example, that lowest level of approval in that new world we envision.

Mr. Jeff Watson: If I understand this correctly, you wouldn't be excluding, say, ditches. You would be excluding things based on their current navigability. You wouldn't exclude a class of waterways. You would exclude waterways of various classes based on their navigability. Is that what I'm understanding?

Mr. David Osbaldeston: No. We would be classifying the waterway based on its capability to actually entice navigation, and the bottom line is that it doesn't entice navigation.

We also have another policy, which we're just about ready to drop, on drainage ditches. If it wasn't built for purposes of navigation, if it is not wide or deep enough to support navigation, if it cannot accept navigation the year round, then it's not a waterway suitable for navigation and there's no need to apply.

Mr. Jeff Watson: Thank you.

The Chair: Thank you.

With the time we have left, we will have a series of rounds.

I have Monsieur Laframboise, Mr. Maloney, and Mr. Masse.

[*Translation*]

Mr. Mario Laframboise: Thank you, Mr. Chairman.

First of all, I want to quickly address the subject of wrecks. No doubt you have read some articles about an airplane that crashed in Lac Simon. The story received extensive media coverage. Apparently, a float plane crashed 50 years ago and the wreck containing the skeletal remains of three people was discovered last fall. I seem to recall reading that Transport Canada would not be taking on the job of salvaging the wreck. Why is that?

[*English*]

Mr. David Osbaldeston: That actually falls under our Canada Shipping Act and receiver of wreck, so it's a different jurisdiction.

In that particular situation, if somebody found it and wanted to pull the plane up, we would deal with the salvor. But we would first be dealing with whoever owned the plane and the families to determine how they're going to extract the remains onboard. Only after this had been done would we be dealing with the salvor to actually salvage the aircraft. This would be under the receiver of wreck function.

• (1250)

[*Translation*]

Mr. Mario Laframboise: Otherwise, we leave the remains there. If no one claims the bodies, then we leave them be.

[*English*]

Mr. David Osbaldeston: Yes, if it doesn't cause any interference to navigation.

[*Translation*]

Mr. Mario Laframboise: I understand.

My final question concerns the bridge on Autoroute 25. Earlier, my colleague asked a question about this structure. If Quebec applies for a permit, to ensure legislative compliance, can it begin construction without the actual permit in hand, or must this permit be issued before the work can start?

[*English*]

Mr. David Osbaldeston: It's unlawful to commence work without Navigable Waters Protection Act approval.

[*Translation*]

Mr. Mario Laframboise: I understand. Thank you.

[*English*]

The Chair: Mr. Maloney.

Mr. John Maloney: From your discussion this morning, it's apparent that you've had some preliminary consultations with someone. Was there a report prepared, and would you share it with us?

Mr. David Osbaldeston: Over the course of the last year and a half we've been working quite extensively within the program to pull together comments, issues, concerns, and recommendations from the Canadian public and our industrial clients in the event that we need to consider new legislation. We have completed this work, and we have some pretty substantive reference materials. These would be made available to the committee, should the committee wish to take this task on for us. The materials include a public consultation document and discussion paper, which we've drafted for public consultation. The paper contains a clause-by-clause analysis of the current legislation as well as remedial recommendations and our reasons for them. All of this would be made available to the committee for further review. As experts on the subject, we would be pleased to discuss this matter with the committee.

Mr. John Maloney: That would be good.

Have any concerns about downloading responsibilities been expressed by the provinces, the municipalities, or the conservation authorities through the provinces?

Mr. David Osbaldeston: We have to enter into discussions with them to determine that. But of this there is no doubt: out of all of the agencies and interested parties you've just named, there is nobody, virtually in the last five years that I've been leading this program, no agency, no government body, no municipality that hasn't come to me and said, "Change that bloody act". How they want to partner with us, and their willingness to do it, has not yet been explored. It should be.

Mr. John Maloney: Thank you.

The Chair: Thank you.

Mr. Brian Masse: In your previous testimony you noted as an example a forestry project that required 3,000 temporary bridges. Later on you mentioned you're working to self-regulate with the forestry sector already. What oversight would there be about those, and could you maybe be specific about which one it is? How would you determine they were correct on those 3,000 bridges?

Mr. David Osbaldeston: Quite often, these areas they go into.... I'll just use the forestry industry to set an example, because I think it points to our other problem, the other problem being that our current legislation requires that every work—work being every one of those bridges—requires a dedicated approval document.

Suppose MacMillan Bloedel wants to go into a piece of New Brunswick. They're going to cut here this year, and it's away out in the boonies someplace. It's three hours from anybody. In the past they used to come in and say they were going to clear-cut up here, and were there any navigational concerns? They'd show us their boundaries. We'd take a quick look at it and we'd say no—just go. They'd go in and they'd do their thing with their temporary bridges. They'd pull whatever they had out and they'd move on for the next year. That's one company.

Then came the introduction of ISO standards. ISO certifications require all these companies, in order to maintain their certification, to prove they've got all their required approvals, permits, and certifications in place and to produce them. All of a sudden we start having these guys show up with 3,000 applications in hand, saying now they need us to produce 3,000 pieces of paper for them on waterways that for the most part would be covered under these minor waterways that nobody's ever going to put a canoe or a kayak on.

In one case we went with the Forest Products Association of Canada by helicopter two hours north of Prince Albert and landed on the bridge. I looked under the bridge and I said, "The water's absolutely navigable, but other than your lumber trucks, who's up here?" There is nobody around for 300 to 400 miles.

• (1255)

The Chair: So ISO—

Mr. David Osbaldeston: So the ISO certifications were pushing that, and that's why we have to try to find a method whereby we can deal with that requirement. In a changed act, one way would be that if you had 3,000 bridges that really mattered, all on a similar type of waterway on a given project, you could come to us and maybe we'd review it and issue you one document for the 3,000 bridges—maybe. We'd have to look at it.

The Chair: Go ahead, Mr. Fast.

Mr. Ed Fast: Mr. Chair, I just want to get a brief clarification.

There was an exchange between you and Mr. Masse in which Mr. Masse talked about the number of employees you have working under this particular program. I believe you referred to a couple of thousand.

Then there was a question regarding the number of people who actually have the ability to give approvals. I believe you said the number was 40 across Canada. Is that correct?

Mr. David Osbaldeston: Yes. Actually, I think currently there are about 67 people involved in the program directly, including management staff and clerical staff. Of the 67, approximately 40 are officers able to make decisions and to issue approval documents.

Mr. Ed Fast: You said the number had increased by about five over the last four years or so. Is that right?

Mr. David Osbaldeston: That's correct.

Mr. Ed Fast: But that increase of five isn't the total number of staff that's been increased for the department or for the navigable waterways program. Is that correct?

Mr. David Osbaldeston: That's the total number of staff that have been increased in the navigable waterways.... We haven't brought on new clerical staff or managers simply because we really need to put our limited resources on officers.

Mr. Ed Fast: So your total contingent is about 67 and it's been increased by about five—is that correct?

Mr. David Osbaldeston: Correct.

The Chair: Mr. Bell, can you do this in one minute?

Mr. Don Bell: Yes.

You mentioned partnerships with other organizations. You were talking there about municipalities, but does this include private businesses, private enterprises? You mentioned persons or organizations, including municipalities.

Mr. David Osbaldeston: The organizations I was thinking of were the recreational boaters group, for example, if we're going to regulate private moorings. They're out on the water; they can help in that regard.

Mr. Don Bell: Okay.

The other one was aquaculture. If DFO covers the fishy aspect of it—the pollution and the sea lice and all that—what do you cover? Is it whether it'll interfere with navigable waters?

Mr. David Osbaldeston: All of these works are placed in navigable waters, by their very nature, and we cover all of the markings for the private buoys around them to show that they're here and that there's a navigational channel to get through them. In the case of the larger ones in Prince Edward Island, they cover full bays, for example. We cover all the markings around them.

Mr. Don Bell: Okay, thank you.

The Chair: Thank you.

I would suspect that we will ask you back, probably more than once, to continue this discussion and dialogue. I appreciate your time. We'll talk to you soon on navigable waters.

Just for the advice of the committee, the subcommittee is meeting on Thursday. I would ask, if you can get your heads around this a little bit, for a list of witnesses that you'd perhaps like to see, and perhaps areas that we would like to visit specifically, if we decide to go on the road—and where we might be able to plan. We have to help our clerks here to make some calls and to start making a budget if that's the case.

Mr. Maloney.

Mr. John Maloney: Have we agreed to the study?

The Chair: I think the subcommittee will make that decision on Thursday.

I'm just throwing it out here. I always like to get a little bit from other people.

Is everything good?

Mr. Don Bell: To clarify this, does the subcommittee make a decision to have a tour, or would they bring a recommendation?

The Chair: This would have to come as a recommendation to the whole committee.

The meeting is adjourned.

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