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CANADA

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

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**EVIDENCE**

**Tuesday, November 6, 2012**

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**Chair**

**Mr. Rodney Weston**



## Standing Committee on Fisheries and Oceans

Tuesday, November 6, 2012

• (0850)

[English]

**The Chair (Mr. Rodney Weston (Saint John, CPC)):** I call this meeting to order.

I'd like to thank the officials from DFO for joining us today. As per the orders of the day, pursuant to Standing Order 108(2), we are studying the subject matter of clauses 173 to 178 of Bill C-45, A second Act to implement certain provisions of the budget tabled in Parliament on March 29, 2012 and other measures.

Mr. MacAulay.

**Hon. Lawrence MacAulay (Cardigan, Lib.):** Mr. Chair, I'd like to move my motion and deal with it first before we get into dealing with the department, if that's acceptable to the committee.

**The Chair:** Mr. MacAulay has provided proper notice of motion to the clerk, and as per the standing rules of this committee, once proper notice of motion has been....

Do you want to do that first, Mr. MacAulay, or do you want to wait until—

**Hon. Lawrence MacAulay:** It will only take a couple of minutes. I'd like to do it first.

**The Chair:** Okay.

I'll ask the clerk to distribute copies of Mr. MacAulay's motion.

It's been moved by Mr. MacAulay:

That the Committee immediately begin a study of the Cohen Report made public on October 31, 2012, and that the first witness be the Honourable Bruce Cohen, Commissioner.

Mr. Woodworth, do you have a point of order?

**Mr. Stephen Woodworth (Kitchener Centre, CPC):** Yes, I suppose you could call it a point of order.

Just pursuant to our usual practices, I move that we suspend and go in camera in order to consider a motion that has to do with future committee business.

**The Chair:** Thank you.

It's been moved by Mr. Woodworth that this committee proceed in camera to consider the motion of Mr. MacAulay.

Those in favour?

**Mr. Philip Toone (Gaspésie—Îles-de-la-Madeleine, NDP):** I'd like a recorded vote.

**The Chair:** We'll have a recorded vote on the motion to go in camera.

(Motion agreed to: yeas 6; nays 5)

[Proceedings continue in camera]

• (0855)

\_\_\_\_\_ (Pause) \_\_\_\_\_

• (0910)

[Public proceedings resume]

**The Chair:** I call this meeting back to order. As I was saying earlier, this committee is convened today for the study of the subject matter of clauses 173 to 178 of Bill C-45.

I want to welcome our guests today. We have officials from the Department of Fisheries and Oceans.

Mr. Stringer, I believe you are going to lead. I would ask you at this point in time for any opening comments you might have. If you want to introduce your associates with you here as well, that would be terrific.

Thank you very much. The floor is yours, Mr. Stringer.

**Mr. Kevin Stringer (Assistant Deputy Minister, Ecosystems and Oceans Science Sector, Department of Fisheries and Oceans):** Thanks very much.

We have very brief remarks to start. I am joined today by David Balfour, who is the senior assistant deputy minister for ecosystems and fisheries management, and by France Pégeot, who is a senior assistant deputy minister for strategic policy. I, the thorn between two roses, am Kevin Stringer, the assistant deputy minister for ecosystems and oceans science.

We have a few opening remarks, and then we will be happy to answer any questions you may have with respect to the proposed changes to the Fisheries Act that are included in this bill. These proposed amendments are pursuant to the Fisheries Act amendments that were made in the former Bill C-38, the Jobs, Growth and Long-term Prosperity Act, which was passed in June.

Specifically, the proposed amendments in Bill C-45 are very targeted and focused. There are very few of them. For the most part, they are to provide greater legal clarity and more legal certainty regarding some of the Fisheries Act amendments that were approved in June.

The former Bill C-38, therefore, is the context for this act. You will recall that the original amendments to the Fisheries Act provided in that bill provided for a regime that focuses on protecting Canada's commercial, recreational, and aboriginal fisheries—a regime that provides protection from serious harm to those fisheries, which would impact on their ongoing productivity; a regime that addresses managing threats to those fisheries, from challenges to habitat to aquatic invasive species and other threats; a regime that provides enhanced tools for compliance and protection of those fisheries; a regime that enables partnerships with provinces, territories, conservation groups, and others, so that our work at DFO can be better aligned with their work to achieve better results in terms of overall fisheries protection for Canada.

The amendments in Bill C-45 for the most part seek to provide greater legal clarity and certainly with respect to a few of those elements that were in the previous bill. I should note that most of the significant changes that were included in the Fisheries Act amendments that were passed and adopted in June have not yet come into force. Some of them are in force, but the most significant ones—the focus on commercial, recreational, and aboriginal fisheries, the focus on serious harm, and the focus on ongoing productivity of fisheries—are not yet in force. It is proposed that should the further Fisheries Act amendments proposed in Bill C-45 be adopted, they would come into force at the same time that the previously approved amendments come into force.

[Translation]

This initiative amends the Fisheries Act and the Jobs, Growth and Long-Term Prosperity Act to provide legal clarity to previous amended sections and to provide a transitional authority for existing authorizations for harm to fish habitat.

For example, a provision is added to section 40 to direct all fines collected under section 40 of the Fisheries Act to the existing Environmental Damages Fund, to be used for proactive initiatives to further advance the protection of Canada's fisheries.

[English]

There is also a proposed amendment to the definition of “aboriginal” with respect to fisheries, which effectively replaces the term that was in Bill C-38, the term “subsistence”, with the term “purposes set out in a land claims agreement”. This will help to ensure that we are clearly capturing the responsibility to protect fisheries that are defined in current and future land claims agreements.

With respect to fish passage, it is proposed that sections 20 and 29 of the Fisheries Act be amended to provide greater clarity so that it's clear that the main prohibition in the Fisheries Act—section 35—applies to fish passage. It applies to barriers to fish, dams, etc.

●(0915)

There are also transitional provisions to clarify that if we provided an authorization under the previous act, that it continue under the current act, and there's an opportunity for people who are subject to the conditions of those authorizations to have that tested against the new prohibition requirements.

With that, that's a high-level overview of what the changes are, and we're happy to take any questions from the committee today.

**The Chair:** Thank you very much, Mr. Stringer.

We'll start off with Mr. Kamp this morning.

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

I thank the officials for appearing before us to try to answer some of our questions.

Mr. Stringer, you've told us from a high level what the changes are. Can you tell us how these changes came about? You've said they have to do with the follow-up to changes that were previously made in June, in Bill C-38.

How did it come to your attention that there needed to be further clarity or certainty, as you said?

**Mr. Kevin Stringer:** I would say it depends on the section, but in different ways. We heard from stakeholders, both when Bill C-38 was going through the House in the spring and after it was passed; we heard virtually all of the sections asking questions.

Our view was that the act, as passed in Bill C-38, would address most of those issues, but it was pointed out that there was some legal uncertainty in a few of the sections. Those were pointed out by a number of stakeholders, by some aboriginal groups, some industry groups, some conservation groups.

**Mr. Randy Kamp:** So it's fair to say that all of these changes have to do with providing clarity to the changes that were made in the spring. None of them are substantive changes to the Fisheries Act as it was before.

**Mr. Kevin Stringer:** That's correct. The only addition I guess I would make is that the environmental damages fund is a new addition, although it, too, is in some ways a legal clarification. The courts already have the authority to direct that penalties go to the environmental damages fund. The adjustment suggests that all funds from penalties would go to the environmental damages fund.

So that would be somewhat of an exception in that regard.

**Mr. Randy Kamp:** Okay. Thank you for that.

My colleague Mr. Sopuck has a special interest in the environmental damages fund, so I'm going to leave all questions on that to him.

With respect to the change to the definition of aboriginal, can you give us a bit more information about why the word “subsistence”, on reflection, didn't appear to be adequate, or protecting all of the fisheries that needed to be protected?

**Mr. Kevin Stringer:** Thanks for the question. I'll start with why it was in there, why we included it. Then I'll explain why we think the proposed version in Bill C-45 is better.

When it was being decided what fisheries we wanted to ensure were protected, we wanted to ensure that we were protecting all fisheries that are fished by Canadians. That certainly includes commercial and recreational fisheries, regardless of whether they're fished by aboriginal groups or by others. But we knew that if we just said "commercial and recreational fisheries", that wouldn't cover everything we wanted to protect. We wanted to make sure that we were protecting food, social, and ceremonial fisheries, but there are a number of land claims in place that have used the word "subsistence" fisheries, which is not necessarily covered by either "commercial and recreational" or "food, social, and ceremonial" fisheries.

So the language that was proposed and adopted in Bill C-38 said that we would be protecting food, social, and ceremonial fisheries and subsistence fisheries. That was specifically to pick up the land claims agreements that use the language "subsistence".

It was pointed out that future land claims agreements may use different language from "subsistence", so we wanted to make sure we were covering whatever is in a land claim agreement with respect to fisheries. As a result, we used the broader term of anything else that is in a land claim, as opposed to just "subsistence", so taking the very specific piece...in addition to which there was some confusion about what "subsistence" fisheries might cover. We thought it would be clearer to say that it was anything in a land claim, and more broad with respect to what we were trying to protect.

● (0920)

**Mr. Randy Kamp:** Can you give us any examples of a fishery, perhaps, that would have been unprotected using the word "subsistence" that will be protected using this other phrase?

Related to that, can you tell us what the definition of land claims agreement...and how it relates to the term "treaty", or to treaty arrangements included in land claims agreements?

**Mr. Kevin Stringer:** Treaty arrangements are included in land claims agreements.

Again, it does speak to a greater legal clarity and greater legal certainty that we're covering things. But there were some issues. I would use the example of the Nisga'a fishery. The Nisga'a fishery is unique. It's pursuant to the treaty arrangement that we have with the Nisga'a. The definition of commercial, with respect to a fishery, in the newly adopted Fisheries Act, says that it is a fishery that is harvested pursuant to a licence.

In the Nisga'a agreement, it's not absolutely clear that it's pursuant to a licence. But what is absolutely clear is that it is pursuant to a land claims agreement pursuant to a treaty. That's the sort of thing that we wanted to ensure that we're picking up and protecting in the new regime.

**Mr. Randy Kamp:** Okay.

Now to the changes to sections 20 and 29, I still find it a little bit confusing about what we did in Bill C-38 and what we're doing here now. I just wondered if you can give us a bit more help on that.

**Mr. Kevin Stringer:** First of all, sections 20 and 29 deal with fish passage. One of the threats to fisheries is ensuring that there is sufficient water flow, and sufficient ability for fish to get through obstacles. Sections 20 and 29 deal with fish passage.

In Bill C-38, there weren't substantive changes to the provisions that are currently in 20. There were a few. There was modernization. We took a number of sections that were in place before, 20, 22, 26, 27, and a couple of others, and combined them into section 20. Basically, though, it was a modernization of the fish passage provisions. There were a few provisions that hadn't been used since the twenties that were removed, but it was basically left intact.

It was pointed out by some stakeholders that the section 20 that was adopted by Parliament in June included a prohibition that basically said you can't put any obstacle in the water such that two-thirds or more of the watercourse is blocked. But there was no authorization scheme to be able to authorize that. We were saying, and have always said with respect to that provision, that it's the section 35 prohibition that applies in that regard.

Section 35 says that you can't have any undertaking, activity, or work that would cause serious harm to fish that are part of a commercial, recreational, or aboriginal fishery. Certainly if you're putting an obstacle in place, that is where that is triggered.

The concern that we heard from some stakeholders is that when you have that in section 35, you still have something that says you can't put any kind of obstacle that takes up at least two-thirds of the watercourse, and they were saying, "You know, you don't really have an authorization scheme". We wanted to make it clear there's only one authorization scheme, so we removed that particular section.

We then put it into section 29 and made it a fish management piece, and in 29, basically, that's the section that our fish managers require to ensure that somebody doesn't put a net or a weir across an entire river and block. So we do have the ability to address the issues, and it's clear that our one prohibition is section 35.

**Mr. Randy Kamp:** Thank you.

● (0925)

**The Chair:** Thank you very much.

Mr. Chisholm.

**Mr. Robert Chisholm (Dartmouth—Cole Harbour, NDP):** Thank you.

Mr. Stringer, Mr. Balfour, and Ms. Pégeot, it is a pleasure to have you here before our committee to discuss these amendments, but as your presentation discussed a great deal about Bill C-38, I would just say that in light of the enormous changes that were made to the Fisheries Act last spring, it's troubling beyond belief that this is the first time we see officials from DFO.

One of the constant refrains we have heard from witnesses, stakeholders—the few we did hear from—was their complaint that they hadn't been consulted. Had there been proper consulting and vetting of the various provisions and changes to provisions that came through, maybe you wouldn't be here again trying to make these changes.

While I appreciate the fact that you're trying to correct some of the problems that came up because of the way Bill C-38 was...and the Fisheries Act was changed, I know that a lot of other concerns raised by stakeholders haven't yet been addressed.

As you indicated, there were fairly significant amendments to, for example, section 35 of the Fisheries Act that have yet to come into force. The commitment made by the minister was that, before those changes came into effect, the regulations would be developed, and they would be developed through extensive consultation with stakeholders. Now, my understanding, from speaking with people across the country who are directly affected by these changes, is that there has not been that consultation.

I guess that would be my first question to you: when will this consultation commence, and is the January 1, 2013, deadline for those regulations to take effect still in place?

**Mr. Kevin Stringer:** Thank you for the question.

There have been discussions with different groups since the legislation was passed, but let me start with the January 1, 2013, question.

What Bill C-38 says, or what the act says now, is that it will come into effect when Governor in Council decides that it comes into effect. What we've been saying in the department is that we will aim to be ready for January 1. It doesn't need to be January 1, it's not necessarily January 1, but that's the earliest date we thought we could be ready.

So there's a lot of activity within the department to try to prepare guidelines for our staff, clear direction for our staff, and guidelines for proponents, should it come into effect on January 1, 2013.

There is a set of regulations. One of the things that Bill C-38 did was provide a lot of regulatory tools so you can provide regulatory clarity. You can have minor works regulations that say you don't need a site-specific review in certain types of waters or with certain types of works. You can establish ecologically significant areas. You can identify certain fisheries, such as bait fisheries, that you may wish to exclude. We don't need those regulations to be operational. We need sufficient direction and guidance for our staff and proponents. That's what we've been working on, and we have been working with some of the key stakeholders on that.

With respect to the regulations, there are three that we're currently working on. One is information requirements, information that is required by the department from a proponent if they wish to have an authorization. The second one is the timelines we will take as a department to make a decision on that authorization. The third regulation we're working on is the aquatic invasive species regulations. Those are all subject to public engagement. The regulatory process requires public engagement and those would be things we would be talking to stakeholders about.

With respect to the other regulations, there is a set that we would anticipate going forward with. They are not required, but they would probably come later and would also be subject to public engagement.

• (0930)

**Mr. Robert Chisholm:** Would those specifically refer to subsection 35(2)?

**Mr. Kevin Stringer:** Yes. A number of them—

**Mr. Robert Chisholm:** Sorry to interrupt, but I think you know we don't have much time here. I certainly don't mean to be rude, Mr. Stringer.

The reason I raise this is that the question was asked of the minister. And repeatedly here in this committee, witnesses were told by government members that before those changes to subsection 35 (2) were implemented, before those regulations were drafted, there would be full consultation with stakeholders.

I understand the legislation says that it can and will take effect on January 1, but there were commitments made that full consultation will happen. Whether it's the Atlantic Salmon Federation, or the Canadian Council of Professional Fish Harvesters, or the Assembly of First Nations, organizations were told that, and they have not been consulted on those specific provisions.

Are you telling me now that regardless of the commitments that were made, those changes will come into effect on January 1 regardless?

**Mr. Kevin Stringer:** No, the changes will come into effect when the Governor in Council decides they come into effect. It requires an order in council. We are working to be prepared for January 1. It doesn't mean that it's necessarily January 1. It's when the Governor in Council decides.

The groups that you addressed—we have spoken to them about these changes. We've spoken to AFN. I've met with AFN on a number of occasions on this. We've spoken to the Canadian Council of Fisheries and Aquaculture Ministers. We've spoken to conservation groups. We've spoken to some of the industry groups.

So we have had engagement since that time, but not a formal—

**Mr. Robert Chisholm:** You may have spoken to them, but they have told me that they do not consider those discussions consultations.

**Mr. Kevin Stringer:** I do hear you. I appreciate that.

**Mr. Robert Chisholm:** Thank you.

**The Chair:** Thank you, Mr. Chisholm.

Mr. Sopuck.

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

In terms of the environmental damages fund, in any given year how much money is collected through fines?

**Mr. Kevin Stringer:** It's awfully difficult to answer this one. The answer is that it depends.

**Mr. Robert Sopuck:** No, I'm sure it does.

**Mr. Kevin Stringer:** It depends on how many charges we laid and how many we successfully laid.

In the last three years, it's been in between \$1 million and \$1.5 million of overall penalties under the Fisheries Act. This would only capture a portion of those. It's the ones effected under section 35 and those types of sections, not licence breaches.

**Mr. Robert Sopuck:** Okay.

**Mr. Kevin Stringer:** The other thing is that under section 35, there were nine penalties given out last year. There were 32 a couple of years ago.

The other thing I would note is the substantially increased penalty provisions under the new regime. Whereas we didn't have a minimum before, we now have a minimum of \$5,000, and maximums that are much higher.

So it's difficult to tell, but that gives you an idea.

**Mr. Robert Sopuck:** Okay. That's fine.

So under the new Fisheries Act and the ability of the department and the minister to create partnerships, you can now earmark those funds via a partnership with a conservation group, for example.

**Mr. Kevin Stringer:** We can. What would happen in the instance of the environmental damages fund is that it would go to the environmental damages fund, which is a special-purpose account, established by law, and section 40 says it is for the purposes of restoration and fisheries protection. So it must be spent on that, and the department can partner with individual groups to be able to assist and align with that.

● (0935)

**Mr. Robert Sopuck:** I know the recreational fishing groups that I have consulted with about this, when they learn about the ability to make partnerships, are very eager to create partnerships. I'm very pleased with that. I'm pleased overall with the new Fisheries Act, but that one in particular I think will go a long, long way.

In terms of the fish passage side of the new Fisheries Act, is the department, via regulation, able to impose standards on natural resource developers—for example, in how they build road crossings?

**Mr. Kevin Stringer:** Yes. We have the ability in the set of regulations I was discussing. One of the authorities for the minister is to establish national standards for anything, for fish passage, for water crossings. We also have the ability to incorporate standards by reference, so if they were established by provinces, by industry groups, by conservation groups, we can incorporate those by reference. It is a regulatory and public process to do so.

**Mr. Robert Sopuck:** Can you also regulate the performance of a certain stream-crossing design? Can you make it species-specific? We know that in inland Canada the northern pike is the weakest-swimming fish. The convention is to build fish passage facilities or road crossings so pike will be able to go through and all other species can pass.

Can you pass a regulation that says all stream crossings in this region of Canada shall be built so that pike will be able to transverse?

**Mr. Kevin Stringer:** There's nothing in that regulation-making authority that says it must be a national standard.

**Mr. Robert Sopuck:** Right. Okay.

**Mr. Kevin Stringer:** It can be a regional standard, or we can adopt a provincial standard—in Manitoba; those types of things.

**Mr. Robert Sopuck:** I strongly support that, and I would urge the department to get on with that kind of design. Under the new Fisheries Act, there's actually a strengthening of fish population

protection because of things like this. It's a misconception that the act weakens the protection of fish. It actually strengthens it via the imposition of standards.

I was interested in your comments about dams. I don't think we want to leave the impression that all dams are bad for fish. Take prairie reservoirs. There's a massive disruption to the fish habitat that was there, but as you well know, the reservoir effect kicks in very quickly, and we get a significant increase in fish production. The Lake of the Prairies reservoir, where I'm from; Tobin Lake in Saskatchewan; Lake Diefenbaker—they all, because of the dams, are supporting very significant fisheries now.

Do you take those kinds of things into account when you look at the regulatory process?

**Mr. Kevin Stringer:** We do under the new regime. The idea of moving away from just a “You can't block the river by two-thirds” to making it clear that the authorization in section 35....

Section 35 basically says that you can't have any undertaking, work, or activity that causes serious harm to fish that are part of a commercial, recreational, or aboriginal fishery, or to fish that support such a fishery. That is applied based on the impact on the ongoing productivity of the fishery.

You have the authority now...in fact you have the direct responsibility under section 6. Section 6 says that we must take into account the contribution of those fish to the ongoing productivity of the fishery.

So as opposed to just saying you can't put two-thirds blockage, you're actually focused on the productivity of the fishery: how will this activity, in this case, or this work affect that?

**Mr. Robert Sopuck:** As you know, I've been a strong advocate of the use of productivity as opposed to habitat alone. In the impoundment examples that I gave—they occur right across the country—we see these impoundments that result in massive increases in fish production. So I applaud the department for its emphasis on fish production, because after all, what we're all about is fish.

I wouldn't recommend that every river be dammed, by any means, in order to create more fish. Nevertheless, in certain circumstances we can have our fish and eat it too. We can have a dam that provides all kinds of benefits for communities and our country, and at the same time create new fisheries where none existed before. So I think the department's on the right track here.

Thank you.

● (0940)

**The Chair:** Thank you, Mr. Sopuck.

Mr. MacAulay.

**Hon. Lawrence MacAulay:** Thank you, Mr. Chair.

Welcome.

Regarding Bill C-38, would you agree that it was done a bit too quickly? You had to come back and change the aboriginal fishery and the obstruction of the fisheries path.

And if you do agree, or do not agree, how much time was put in? Was it recommended by the department? How much time did the minister give you?

**Mr. Kevin Stringer:** You know, generally there's never enough time for all these things. That said, as you will know, and other members will know, we've had a number of attempts to change the Fisheries Act in the past. We had Bill C-32, and we had a previous Bill C-45, which had a number of these changes—not all of these changes, by any means.

I would also say that we've had a number of reports—internal reports, Auditor General reports—that have said we needed to look at what was called “habitat regime”. We would now call it “fisheries protection regime”.

We've done that. We had engagement and consultation with conservation groups, with industry groups, and with provinces to look at that regime. We thought we were going to change the policy, and then the advice was that we should be changing the legislation.

We've been in a constant state of readiness to adjust these things. Those previous bills did not recommend changing the habitat provisions and the fisheries protection provisions exactly as this was. But that said, it's always better to have more time rather than less.

**Hon. Lawrence MacAulay:** Thank you very much. Of course, generally there's not enough time.

The change is obstruction to the passage of fish: could this cause serious harm? If it does cause serious harm to the fish, who authorizes it? What is involved in order to obtain an authorization to do this?

**Mr. Kevin Stringer:** Thanks for the question. The main prohibition is section 35. Section 35 says you can't have a work, undertaking, or activity that causes serious harm to fish that is part of a commercial, recreational, or aboriginal fishery or to fish that supports such a fishery.

**Hon. Lawrence MacAulay:** Sir, but previously you could not kill a fish. Am I right or wrong?

**Mr. Kevin Stringer:** Yes, that's correct. That's still the case under section 35, because if you look at the definition of serious harm, which is in section 2, serious harm to fish is defined as the death of the fish or the permanent alteration or destruction of habitat. So you can't kill a fish without the minister's authorization.

However, this is applied based on some principles or some factors that are outlined in section 6. Section 6 says you will apply the prohibition, the section 35 prohibition, based on the ongoing productivity of the fishery, the contribution of these fish to the ongoing productivity of the fishery.

So what you would say in this instance, or in an instance such as I believe you are raising, is, look, this is killing a few fish, but it's not affecting the fishery, so it's okay to go ahead—or, it's killing a few fish, that's actually a very significant species at risk, not many of those fish are around, and therefore you're not authorized to do it.

So there's now clear direction in section 6 about how to apply that prohibition with respect to killing of fish. There are other directions in addition to productivity. One is the fisheries management

objectives; another is asking if there are ways to offset, mitigate, or avoid that harm; and the other is the public interest.

**Hon. Lawrence MacAulay:** With this new legislation, you're telling me that the minister can authorize, in a limited form, the killing of fish.

**Mr. Kevin Stringer:** As he could under the previous regime; he could authorize it under section 32. Section 32 says you can't kill fish by means other than fishing unless the minister authorizes it.

The new section 35 says basically the same thing, but it's broader. You can't do these things unless the minister authorizes it.

**Hon. Lawrence MacAulay:** Regarding the definition of “aboriginal” fishery, how many groups have you met? Can you inform the committee on what groups you have met?

●(0945)

**Mr. Kevin Stringer:** During the discussions on Bill C-38 and since that time, we've had a number of calls with a large number of aboriginal groups. The national aboriginal groups we've spoken to. The land claims agreements groups we've spoken to. Some of the regional groups we've spoken to.

We have not met with 638 first nations in the country, but we have spoken as much as we can to some of those groups.

**Hon. Lawrence MacAulay:** But can you say that they had input, or were they were spoken to? Just for a matter of clarification, were they informed that this was going to take place? Were they involved in putting this in place? Were the recommendations looked at, or were they called and told?

You indicated that you contacted: does contact mean that they were called and told that this would take place?

**Mr. Kevin Stringer:** We were talking about the new Fisheries Act and how it's going to work. That's really what it was. We did not have consultations about “What do you think of the amendments, and do you want us to change it?”

**Hon. Lawrence MacAulay:** That's unfortunate.

Can you tell me what the environmental damages fund covered previously? Can you give me examples of something that it did? Of course, it would involve whatever money the government puts in plus the fines that are put in place. Just give me a little view.

**Mr. Kevin Stringer:** It acts like CEPA, the Canadian Environmental Protection Act. Penalties under CEPA go to the environmental damages fund and then get applied to projects that are related to environmental protection. There are also funds, I believe, from the Canadian Wildlife Act that go to it. Most of the environmental legislation has the funds from the penalties go to the environmental damages fund.

The Fisheries Act was not included. The Environmental Enforcement Act, which was passed in 2009, required that funds for most of the different environmental pieces of legislation go to the environmental damages fund. The Fisheries Act was not included in that because the Fisheries Act was proceeding at the same time in the House but it never got passed. Now we're picking that up so that it's now consistent with other legislation under the Environmental Enforcement Act.

**The Chair:** Mr. MacAulay, your time is up.



**Hon. Lawrence MacAulay:** Thank you, Mr. Chair.

**The Chair:** We'll now move to our next round. This will be a two-minute round. I'm going to ask that you try to adhere very closely to the timeframe so that we can get in as many questions as possible.

We can go less, if you want....

**Voices:** Oh, oh!

**A voice:** What a chairman.

**The Chair:** Anyhow, it will be a two-minute round, so please try to keep your questions as brief as possible to ensure that you can get answers to your questions.

Mr. Toone, you'll lead off.

**Mr. Philip Toone:** Thank you.

Very quickly, then, thank you for your presentations.

I want to investigate further the idea of consultation with first nations, consultation in general. I'm interested that you've heard from stakeholders from Bill C-38 onwards, but we've never actually had a formal consultation process. I think we had a total of 16 hours of debate.

The first nations tell us that they haven't been consulted. Consultation actually has a definition, right? It's been defined in court decisions: in 2004, Haida versus British Columbia; in 2005, the Mikisew Cree; the Marshall decision on non-status Indians. It's been clearly defined. It's not just picking up the phone and saying "Hi, we're changing the laws."

What is the quality of this consultation, and if it doesn't meet the criteria of the Supreme Court, what are you doing to make sure that you meet those criteria?

**Mr. Kevin Stringer:** I don't think I can comment on whether what we've done would constitute consultation. There's a view that virtually everything you do can contribute to consultation.

We have talked to aboriginal groups. We have not had an extensive engagement process with the 638 first nations—or 641, whatever the number is. We have talked to the national groups. What we've talked to them about is the implementation of Bill C-38: here's what the bill says, here's what the act says, here's how we're preparing for implementation.

They understand, I believe, that there's a regulatory process that will come that requires formal consultation. That's how we have proceeded. But it has not been at a detailed level.

**Mr. Philip Toone:** The duty to consult is in fact, if I continue the phrase, the duty to consult and accommodate. The reason for that is to ensure that especially, as you yourself pointed out, future treaty negotiations, and ongoing treaty negotiations right now, will not be unduly affected.

In order to ensure that there's fair dealing in this country, the duty to consult and accommodate has been brought forward to the Supreme Court on many occasions. What I'm hearing from you is that I think DFO is not actually meeting its obligations under the court decisions of the Supreme Court. So how is it that DFO is actually going to meet the legal requirement, as set out by the

Supreme Court of Canada, to properly consult and accommodate first nations and to make sure that our treaty negotiations will not be brought forward again to the courts of Canada?

• (0950)

**Mr. Kevin Stringer:** The legislation actually states that land claims agreements and things within the land claims agreements must be protected and respected. On a project-by-project basis, on an issue-by-issue basis, our department will always seek to meet its consultation requirements. That will be the case going forward.

The other thing I would say is that aboriginal groups are an absolutely key partner with respect to the implementation of this act. The act says that we will be protecting commercial, recreational, and aboriginal fisheries. Where exactly there's an aboriginal fishery, we'll be needing to work with aboriginal groups on that, on a case-by-case basis.

The department has extensive relations with aboriginal groups. We have over 300 agreements across the country that define where fisheries are. It's more of a challenge in inland areas where we don't have those relationships, but we will continue to seek to ensure that our consultation requirements are met.

**The Chair:** Thank you, Mr. Toone.

Mr. Allen.

**Mr. Mike Allen (Tobique—Mactaquac, CPC):** Thank you very much, Mr. Chair.

Thank you to our witnesses for being here today.

Mr. Stringer, I want to thank you very much for your very clear explanation with regard to the clarity of section 35 and the interplay of the new sections. That was very helpful.

It's also interesting to note that some of the provisions in the Fisheries Act haven't been used since 1920, so I guess these acts cannot be said to be evergreen, can they?

I wanted to ask a couple of quick questions. On the section where you're contemplating the administration of the fines regime, does DFO have an existing process in place to actually administrate and administer these funds, or will it take some new process within DFO to actually do that, whether it be distribution of dollars or actually applications by conservation organizations?

**Mr. Kevin Stringer:** The environmental damages fund was established by statute in, I think, 1985. It's administered by Environment Canada.

We are going to be working with it. What we will do that's new, given these changes in the Fisheries Act, is we will work with Environment Canada to identify where those funds should go. Right now it's administered as a special purposes account in the Department of the Environment.

**Mr. Mike Allen:** We don't expect any new costs associated with trying to administer this?

**Mr. Kevin Stringer:** No.

**Mr. Mike Allen:** Okay. Thank you very much.

My next question's on the transitional provisions. With respect to people who already have permits and that type of thing out there, do you have an anticipated level of permits out there that could come under these transitional provisions, where people might come back to the minister and ask for a review of their existing permit or authorization?

**Mr. Kevin Stringer:** We've done a quick review of how many are out there that are still current. What usually happens is you're given authorization that says, go ahead, you can build a structure, but there are conditions on that. The condition is you must provide compensation or offsetting. You must monitor that the compensation is working. You must report to us.

We do about 450 authorizations a year. We've looked back, and since 2008 there are about 275 that are still active in terms of requirements for a company or a proponent to monitor, or report, or something. So it's not a huge number out there, but it's really just those ones that are still active. It's about 275 since 2008.

**The Chair:** Thank you, Mr. Allen.

Mr. Donnelly.

**Mr. Fin Donnelly (New Westminster—Coquitlam, NDP):** Thank you, Mr. Chair.

Could you tell the committee which lakes, rivers, and water-courses are now protected or will be protected under these changes to the Fisheries Act?

**Mr. Kevin Stringer:** It's going to depend. I know that's not a terrific answer, but it really is going to depend.

What's being done under the new Fisheries Act, or the amended Fisheries Act, is that we are protecting commercial, recreational, and aboriginal fisheries and the fish that contribute to those fisheries. It is a complex thing, and our science people, with our policy and program people, are trying to figure out exactly that.

The other thing is this. In inland areas and in freshwater areas, the fishery is managed by the provinces. So it's the provinces that decide where there's a fishery and what the licensing regime is, what you need a licence for. We're actually sitting down with the provinces now to identify where that is.

There's not a geographical map that shows there's an aboriginal fishery here, there's a commercial fishery over there. It's going to have to be decided on a case-by-case basis. That's the kind of work we're doing now to be able to better define that before this comes into effect.

• (0955)

**Mr. Fin Donnelly:** If a commercial fish eats another fish, the fish that's being eaten is protected.

**Mr. Kevin Stringer:** Yes. In fact it's not just prey species that a fish depends on necessarily. There are key ecological species in certain ecosystems. There are a number of others in terms of which fish support a fishery. Certainly prey species is the main one.

**Mr. Fin Donnelly:** Does that continue, or does it stop at that one?

**Mr. Kevin Stringer:** That's one of the things we're working out: how far you have to go. Basically the idea is we are protecting the ongoing productivity of fisheries. To be able to do that you protect

not just the fish in that fishery but what it depends on, whether that be habitat, or prey, or an ecological system, or aquatic invasive species, etc.

**Mr. Fin Donnelly:** Justice Cohen was scathing in his comments about the changes to the Fisheries Act in his recent report. I'm wondering if you could provide the committee with a list of, as you mentioned earlier, the individuals, groups, and anyone who was consulted on the changes to the Fisheries Act, and when they were consulted. Perhaps you could provide that list to this committee.

**Mr. Kevin Stringer:** You know, in terms of consultations on this act, in terms of the specific amendments, we did not have specific consultations on the act. We did hear from stakeholders who said we'd like legal clarity in such-and-such an area. We can certainly provide that.

We talked to a number of stakeholders about the implementation of the act. We can provide that as well.

**The Chair:** Thank you, Mr. Donnelly.

Mr. Kamp.

**Mr. Randy Kamp:** Thank you, Mr. Chair.

Just as a brief clarification on the new paragraph 40(3)(a) of the post Bill C-38—basically the section that says you need to comply with the condition of an authorization—how is that going to be affected by the changes that are made here in Bill C-45?

**Mr. Kevin Stringer:** What we've got is in the transitional provisions. That piece says two things. It says that if you have an authorization under the previous regime, it continues as an authorization under the current regime.

It also says that Parliament has decided there is a new standard with respect to how these things are managed, and if you think you shouldn't need to continue with the conditions of your authorization, you can apply to the department or the minister within 90 days, and the department will review this within a further 120 days and decide whether the conditions of the authorization need to continue.

**Mr. Randy Kamp:** Okay.

Thank you.

**The Chair:** Thank you, Mr. Kamp.

Mr. MacAulay.

**Hon. Lawrence MacAulay:** Thank you very much.

Just to clarify, it would be fair to say that you notified the national groups, the aboriginal groups. There was no consultation involved. Would that be correct?

**Mr. Kevin Stringer:** You know, as I said, there are different views about what constitutes consultation, but you're absolutely right in terms of what we have done. We have engaged with some groups in terms of how we're going to implement this legislation. I'm talking to them about how we're going to implement the legislation to ensure that they have a good understanding of it.

**Hon. Lawrence MacAulay:** Also, if I understand it correctly, on the killing of fish, basically you're telling us that has not changed at all. Is that what you're telling us?

**Mr. Kevin Stringer:** What was in place in the old section 32 was that you can't kill fish by means other than fishing, unless the minister authorizes it. There is no direction for the minister. He can authorize whatever he wants under any circumstances.

The new regime says basically the same thing. You can't cause serious harm—serious harm is defined as the death of the fish—unless the minister authorizes it, but there's direction to the minister about how to apply that. A main one is the impact on the productivity of the fishery.

Basically, if it's not going to impact the productivity of the fishery

**Hon. Lawrence MacAulay:** Is it just the productivity of the fishery or is it the productivity of something else that affects the fishery? That's what concerns me.

**Mr. Kevin Stringer:** No, it's the productivity of the fishery.

Now, what it doesn't cover is that if there is an area where there is no fishery whatsoever, we're not interested in the killing of fish by means other than fishing. But if there's a fishery, we're going to protect it. That's basically what the new rule...how it's different.

•(1000)

**Hon. Lawrence MacAulay:** Thank you.

**The Chair:** Thank you, Mr. MacAulay.

I'd like to take this opportunity to thank our witnesses for appearing before this committee today...

Mr. Chisholm.

**Mr. Robert Chisholm:** If I may speak on a point, Mr. Chair, I've been pleased to hear from the witnesses today. I'd like to move a motion, given the significance of their testimony, that we agree, if we could, to extend this hearing for another 30 minutes.

The only thing we had planned for the last half of our meeting was to select witnesses. I think we can probably wrap that up in 15 minutes.

I would move, then, that members agree that we ask our witnesses to stay for another 30 minutes, and we would continue with our hearing.

**The Chair:** Thank you, Mr. Chisholm.

It's been moved by Mr. Chisholm that we ask our witnesses to extend their time appearing before our committee by 30 minutes.

Do you wish to speak to the motion, Mr. Allen?

**Mr. Mike Allen:** Thank you very much, Mr. Chair.

I'd like to ask Mr. Chisholm for a little clarity on his motion; we'd appreciate that. I agree with him that I thought the witnesses were very informative this morning, and will probably help us significantly in terms of where we want to go with our witnesses in subsequent meetings.

Could he provide some clarity around ensuring that we're going to be staying within the scope of the provisions that we've had added? I want to make sure that's where we're intended to go, and we're not going to go on a fishing expedition or anything like that.

**The Chair:** Thank you, Mr. Allen.

Mr. Chisholm.

**Mr. Robert Chisholm:** I think we'll just continue as we have, Mr. Chairman. I certainly trust you, and that if you feel we're in any way out of order with our questioning and our discussion, you'll rule accordingly. We've had a fairly good exchange to this point on issues that have been brought before the presenters, and I'd like to see it continue for the next 30 minutes.

That's my motion.

**The Chair:** Thank you, Mr. Chisholm.

Is there anything further on the motion?

It has been moved by Mr. Chisholm that we ask our witnesses to stay for an additional 30 minutes, from this point.

(Motion agreed to)

**The Chair:** I hope that works with your schedule.

I will point out that I did provide a bit of leniency on the scope of the questions in the first part of our meeting in the sense that I did lay out very clearly at the beginning of the meeting that questions would be around clauses 173 to 178 of Bill C-45. I would ask members to please keep your questions to that subject matter.

I don't like to have to rule anyone's questions out of order. I like to provide as much opportunity for people to get to their point. However, when we do ask witnesses to stay beyond what was originally intended, I don't want to inconvenience anyone either.

The first questioner will be Mr. Kamp, from the Conservatives.

**Mr. Randy Kamp:** I'll defer to one of my colleagues.

**The Chair:** Mr. Sopuck, then.

**Mr. Robert Sopuck:** I'm never short of questions.

In terms of the habitat provisions of the act, there was the policy of no net habitat loss. Can we apply the same productivity lens to that policy and have it be no net loss of fish production?

**Mr. Kevin Stringer:** You can. We do have that 1986 policy. Much of what was in that policy has actually been put in the legislation. It was that policy that said we were going to focus on commercial recreation and aboriginal fisheries.

It was that policy that introduced the notion of productivity. But it ended up saying no net loss of habitat. The question is whether you can apply it at no net loss of productivity. I think it's a very good question.

Certainly, we are aware that we need to be....And we have said this publicly. As we move forward, we now have a new legislative framework. We now need to look at that policy and apply the new legislative framework lens to that policy. We have undertaken to do that and that was another piece that will certainly involve engagement with stakeholders.

•(1005)

**Mr. Robert Sopuck:** I would urge you to do that, because the no net habitat loss policy... As you well know, it is really difficult to recreate nature. If we focus on productivity, then project proponents who have effected a fishery all of a sudden have all kinds of scope to do things—building spawning channels, for example, hatcheries, doing creative fisheries enhancement work—that increase the productivity of fisheries but don't force proponents to recreate nature, something that is almost impossible to do, which the existing policy basically forces them to do.

**Mr. Kevin Stringer:** Certainly, productivity is the focus. In fact, section 6.1 of Bill C-38, of the amended Fisheries Act, says that the purpose of the fisheries protection provisions is to support the “sustainability and ongoing productivity” of Canada's commercial, recreational, and aboriginal fisheries.

Habitat is a crucial element of that, but it is not the only element of that. We now have new tools to address other threats to fisheries, such as aquatic invasive species, and to take other approaches around productivity. But productivity, as you point out, is the focus of the fisheries protection provisions.

**Mr. Robert Sopuck:** How much time do I have? Four minutes. Okay.

I certainly agree. I reiterate that the focus of the Fisheries Act should be on fish. I strongly support the move toward an emphasis on fish productivity. I do think that by having a no net loss of fish production policy you will capture the habitat provisions, of course, but at the same time, you will allow project proponents to do all kinds of creative things under the Fisheries Act.

Going back to the fish passage section of the act, how would you go about designing standards for fish passage across the country? How would you ensure that you have enough flexibility to take into account the local situations?

**Mr. Kevin Stringer:** That is an excellent question, and it's one that is frankly vexing, okay? We've given ourselves the authority to have these standards established. One of those we've been working on wasn't a regulatory standard, but we could turn it into that, and it was on water flow: basically, how much water flow do fish habitat and fisheries production require?

When you get into the weeds of that, you realize that it's enormously different on the Lower Athabasca, which is an interesting case, on the St. Lawrence, and on a creek. It is a constant challenge. Frankly, I don't know—it may be different in different areas—whether we're going to be able to have national standards at quite a high level and then specific standards for specific regions.

It is also the case, to be clear, that these things don't happen overnight. This is going to be a long-term process to establish these standards. You would be familiar, I know, with our operational statements. Our operational statements would be the sort of thing that you could say is a national standard, but to be able to apply that at a local level is a real challenge. That's something that we constantly run into with different types of watersheds.

**Mr. Robert Sopuck:** I'm wondering if an outcomes-based standards regime would be better. What I mean by this is that if

you take the predominant species in a given area... Let's take where I come from, with the weak-swimming pike. The fish passage must be designed in such a way that pike can pass through it. Leave the design up to the developers as opposed to mandating a certain design: make it based on the fish themselves.

**Mr. Kevin Stringer:** The authority that's in the act for the minister to undertake these types of standards doesn't require him to take one approach or the other, so what you've just outlined is a possibility—

**Mr. Robert Sopuck:** Okay.

**Mr. Kevin Stringer:** —as is something very prescriptive, as is something in between.

**Mr. Robert Sopuck:** Right.

In terms of fisheries enhancement, do you see the new Fisheries Act allowing for local groups to really get engaged with fisheries enhancement work? I was very impressed with the department's cooperation with the Ontario Federation of Anglers and Hunters in the Atlantic salmon restoration project. Can you see yourselves doing a lot more of that refocusing of existing resources into those kinds of community-based fisheries enhancement projects?

•(1010)

**Mr. Kevin Stringer:** That is a specific objective of the amendment. Section 4 of the amended Fisheries Act is an agreement-making authority. There is a proposed section that says the minister may make an agreement with provinces and territories for furthering the purposes of this act.

But it also says that the minister may establish “projects and programs” for fisheries protection, and that he or she may enter into agreements with third parties. The idea there is specifically the fact that there are local watershed groups, national groups, provincial groups, and hundreds of thousands of Canadians working on fisheries protection who are passionate about fisheries protection. Our department has good relations with them. We know we can do better, so we've given ourselves the tools to be able to better align our work with their work.

**Mr. Robert Sopuck:** In a previous life, I used to chair one of those fisheries enhancement groups you spoke about, and again, I will certainly concur with what you said regarding the enthusiasm that these fisheries conservation groups—primarily anglers groups—have for fisheries enhancement. I would urge the department to continue along those lines.

Thank you, Mr. Chairman.

**The Chair:** Thank you, Mr. Sopuck.

Mr. Donnelly.

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

Can you tell the committee what legal advice DFO or the minister had or sought before changing the definition of an aboriginal fishery?

**Mr. Kevin Stringer:** I don't recall exactly what legal advice; I know that as we proceeded with the amendments, there were all parts of the department and the government involved, including the Department of Justice, who certainly weighed into it. I think generally, because the answer is that I don't recall, but—

**Mr. Fin Donnelly:** Can you give us a list or let us know?

**Mr. Kevin Stringer:** Sure. Yes.

**Mr. Fin Donnelly:** You will provide that to us.

Can you also let us know who you consulted on the definition of an aboriginal fishery?

**Mr. Kevin Stringer:** Yes, and what I can tell you now is that we didn't have specific consultations on the definition of "aboriginal". We did hear from a number of stakeholders their views about what was in Bill C-38.

**Mr. Fin Donnelly:** Can you let us know who that was and provide that list?

**Mr. Kevin Stringer:** Yes.

**Mr. Fin Donnelly:** That would be great.

In terms of the environmental damages fund, you provided some earlier clarity on that, which was helpful, but if the funds are to be used in conjunction with Environment Canada for general environmental purposes, does this mean that DFO is no longer dedicating efforts to compensate habitat and is basically getting rid of the no net loss policy?

**Mr. Kevin Stringer:** No, the amendment to section 40 actually says that the funds must be used for the purposes of... I should look at the exact wording, but it makes it clear that they can't go into something not related to fisheries protection and fish habitat. That's the purpose...that those moneys must be spent on. It's clear in that regard.

I should also mention that in Bill C-38, in the amended Fisheries Act, it enables an agreement between our department and Environment Canada. As we now have this new amendment to section 40, we'll be including it, and they've agreed we need to be involved with them, in terms of administering this, to ensure it is appropriately used for fisheries protection, habitat, etc.

**Mr. Fin Donnelly:** In terms of the definition of "obstruction", why was this changed, and what impact will this have on fish habitat?

**Mr. Kevin Stringer:** My understanding on that one is the definition went back to the twenties. There were a number of changes, as I said, with respect to the fish passage sections. One of them was it actually referred to the types of obstructions that we'd be dealing with: logs were mentioned, and a number of other pieces were mentioned. Since the twenties there are way more obstructions than that. We've just modernized it to cover any obstruction to fish passage. That's basically what the intent was.

I think the definition went back to the twenties. Now I'm going to look to make sure I'm right: yes.

**Mr. Fin Donnelly:** I think this is in keeping with what you've just said in terms of modernization, but do you have any examples of "other device" or a "fishing appliance"?

•(1015)

**Mr. Kevin Stringer:** Yes, I mean, that's basically to.... I don't think there are any right now, as far as I know. However, there may be some, and we wanted to make sure that we're covered.

The Fisheries Act doesn't get amended that often. If somebody comes up with something, we want to make sure we're covering it. So we used that term.

**Mr. Fin Donnelly:** So you don't have any examples? It was...?

Why would you use those terms? Like, what does "fishing appliance" mean?

**Mr. Kevin Stringer:** We wanted to make sure we're covering nets, weirs, and whatever else we've written there, but we also wanted to say that for anything else you or anybody might dream up, in terms of something that will fish and cause obstructions, we wanted to make sure we were covering it.

**Mr. Fin Donnelly:** You're saying what constitutes obstruction hasn't changed; it's still half the river.

**Mr. Kevin Stringer:** No, it has changed since the twenties. You have modern dams and those types of things.

**Mr. Fin Donnelly:** I meant more obstructing the amount of the river, say.

**Mr. Kevin Stringer:** That's correct. We just needed to be able to say that if someone's going to string something across the river, and we'll say two-thirds is sufficiently far, whatever it is, if they're blocking fish passage, they can't do that.

**Mr. Fin Donnelly:** Can you provide the committee with copies of any studies that were conducted or used in the development of this policy or the new changes?

**Mr. Kevin Stringer:** Sure.

**Mr. Fin Donnelly:** Okay.

I think I asked about the list of people consulted as well.

Thank you.

**The Chair:** Two minutes, Mr. Chisholm.

**Mr. Robert Chisholm:** Thank you.

Mr. Stringer, I would like to ask you again about the provisions as they relate to habitat protection, and the concerns that were raised by Justice Cohen about the ability of the Department of Fisheries and Oceans to maintain its mandate to protect fish habitat. Specifically there has been a rewriting, almost, or a refocusing into protecting fish as opposed to fish habitat.

I'd like to ask you for your comment on what Justice Cohen had to say.

**Mr. Kevin Stringer:** I don't think I can comment on what Justice Cohen has said. I don't think we can do that. We're still reviewing the very extensive document. We'll be doing that for a while.

What I can say is that the Fisheries Act amendments do focus on the productivity of fisheries. They also link the productivity of those fisheries to habitat and the protection of habitat, but not just habitat: habitat, aquatic invasive species, pollution, fish passage, other threats to fisheries. That is indeed what the focus is, but habitat is certainly included in that.

**Mr. Robert Chisholm:** Sorry: so your response to that is being reviewed. Okay. Maybe we'll get a sense then, once that's been done.

I have a last question. A number of groups, a number of stakeholders, have written to the minister or written to your department and asked for a delay on the implementation of the new regulations on January 1. I would like to know whether or not you've responded to them. Are you agreeing that there will be an extension because of the fact that there has not been consultation yet? Of course, we're specifically referring to subsection 35(2), but there are other regulations that are affected.

**Mr. Kevin Stringer:** There are other major sections that are not yet in effect.

As far as I know, we have not responded to those questions. As I said, that's a Governor in Council decision. Governor in Council decides when those sections come into effect.

As I said, and I'll say again, what we're doing in the department is to be as prepared as we can for January 1—if it is January 1. But at the end of the day, it's Governor in Council that will let us know when those sections come into effect.

**The Chair:** Thank you very much.

Mr. Kamp.

**Mr. Randy Kamp:** Thank you, Mr. Chair.

Just briefly, and just to clarify, under the new regime, an individual receives an authorization because their projects have the risk of causing serious harm. So they receive the authorization. Attached to it in many cases I guess are conditions of an authorization. The new regime requires by law this person to meet those conditions. So if at some point in this process there is either a person with an authorization that doesn't meet the conditions, or somebody else who causes serious harm, they get charged under the Fisheries Act.

In addition to the judge fining them, and this money now goes into this environmental damages fund, is it true the courts could also require the person to fix the damage they have caused, as well as a fine?

•(1020)

**Mr. Kevin Stringer:** Yes. The answer is yes. A court could say “You have caused this damage, you must take specific action to fix it, and you have a \$5,000 fine”. That fine is the moneys that would go to the environmental damages fund.

**Mr. Randy Kamp:** Okay.

Mr. Allen?

**Mr. Mike Allen:** Okay.

Thank you very much, Mr. Chair.

Just to follow up on that question, if someone does have an existing authorization now, and they choose not to go back to the minister but proceed under the current authorizations, and there's a breach, could they argue that the breach would be under the old fine regime as opposed to the new one?

**Mr. Kevin Stringer:** No. I believe the answer to that question is no, and that's partly why we have made it clear in the legislation that an authorization under the previous regime is an authorization under the new regime, but you have 90 days to apply in this case. Very

much because of that sort of question that was asked, and it wasn't absolutely clear, let's make it clear.

**Mr. Mike Allen:** You said about 275 applications were probably outstanding. Do you have any reason as to why there have been some of these delays carrying forward? Is that just a normal course of permitting or....?

**Mr. Kevin Stringer:** It is the normal course, because some of these authorizations say you must make this sort of restitution, or compensation, or offsetting, and you must monitor how it's doing to make sure it's meeting its requirements every year, and you must send a report to the government every year that says it's being monitored and in good shape.

So the 275 are those types of things where there's still a requirement for monitoring and reporting. That's an example of the sort of thing.

**Mr. Mike Allen:** Thank you.

On your obstruction sections, who or what groups would have the largest impact under this section? I'm assuming the hydro-power people would be one of the major ones. Are there any other groups you see as being impacted?

**Mr. Kevin Stringer:** Hydro power, electricity-generating facilities, those types, but anybody who is doing any kind of obstruction to fish passage, be it large or small, we're going to look at it if it's impacting the productivity of a fishery. Certainly those are some of the big players. The ones you have named are certainly interested in this.

**Mr. Mike Allen:** To follow on to Mr. Donnelly's question, when you talk about fishing appliance, it's sort of a catch-all. Without having to change the act in the future, could you actually go in under regulations and specify maybe what some of these fishing appliances and that are, as opposed to coming back and having to revisit the act and statute and go through Parliament?

**Mr. Kevin Stringer:** I believe the section 43 regulations, the general regulations, would enable you to do that. I'll make sure that's the case: yes, it is.

**Mr. Mike Allen:** Thank you very much, Mr. Chair.

**The Chair:** Mr. MacAulay.

**Hon. Lawrence MacAulay:** Thank you very much, Mr. Chair.

Just to be clear, Mr. Stringer, what you told me previously was if there's going to be an obstruction, it is the value of the fish that will be considered only, not the value of, let's say, a major industry that wants to do something in a certain area. Could a large amount of dollars overrule the value of the fish? Then, if I understood you correctly, underutilized species would not fall under this act at all. A construction could take place in the waterway. Is that correct?

**Mr. Kevin Stringer:** Let me start with the first one. It is applied so that the difference between the old regime and the new regime.... The prohibition on killing of fish and other things is applied for commercial, recreational, and aboriginal fisheries—not elsewhere; commercial, recreational, and aboriginal fisheries. There's a definition in section 2 of commercial fisheries, etc.

There are still questions about exactly what that means, and that's some of the work we're undertaking. We're working with provinces. We're working with others to be able to determine exactly what that means.

That prohibition is applied based on section 6.1, which gives the factors the minister must take into account in applying section 35 prohibition and regulations and other stuff. That is, number one, that he must consider the importance of the contribution of these fish to the ongoing productivity of the commercial, recreational, and aboriginal fisheries. Number two is fisheries management objectives. If we have said that this is a protected fishery, or that this is a fishery that's recovering, we must take that into account in terms of whether we're going to issue an authorization. The third is whether there's a way for the proponent or whoever's putting this work in place to avoid, mitigate, or offset the potential damage to the habitat or the productivity of the fishery. The fourth is the public interest. The public interest is what you've just identified could come into effect. Is there a broader public interest? It's a term that's used in many pieces of legislation now. What was in place in the previous regime was simply that you can't kill fish by means other than fishing unless authorized by the minister, and there was no direction to the minister, no principles, no factors, no things for the minister to follow.

You now have those things in place, in order: the productivity of the fishery; the fisheries management objectives for that fishery; the ability to offset, mitigate, or avoid impacting the fishery; and the public interest.

• (1025)

**Hon. Lawrence MacAulay:** Thank you very much.

Also, conservation programs, you would agree, are of vital importance. The PEI Fishermen's Association is very concerned about certain conservation programs. In the lobster industry, you have tags on traps. Will the PEI Fishermen's Association be able to oversee this program, or who will oversee it? How does the department plan to handle this?

This is the responsibility of the Government of Canada. One of the most important conservation programs that we have is in the lobster fishery, which is one of the most valuable fisheries on the east coast of North America.

What will take place, in particular with the PEI Fishermen's Association, in administering or overseeing the distribution of tags?

**The Chair:** In this in terms of clauses 173 to 178?

**Hon. Lawrence MacAulay:** In some way, Mr. Chair.

**The Chair:** Okay.

**Mr. Kevin Stringer:** I'll start by saying that, generally, it was one of the purposes of the act and, as I've mentioned before, the amendments, to enable agreements with people who care about fisheries protection, who care about conservation, and who are working towards that. Certainly there are many such groups.

With respect to the specific initiative you're talking about, I'll ask Mr. Balfour to make some further comments.

**Mr. David Balfour (Senior Assistant Deputy Minister, Ecosystems and Fisheries Management Sector, Department of Fisheries and Oceans):** The department has sent out notices to fishers and letters to fish harvesters around gearing up for the new regime for fishing gear tags. We would agree that the use of tags on lobster traps is an important conservation measure, and that will be continuing.

What we're in the midst of doing is providing protocols to fish harvesters and their organizations around how to acquire tags in the future, because the department will not be paying for and providing tags in the future. It's going to be the responsibility of fish harvesters to acquire their own tags. The protocols will provide for people who want to get into being suppliers of tags—they could be fishermen's organizations or others—on what the specifications for those tags will be, and what kind of a tag management regime those suppliers will have to have in place in order for the department to certify them as tag suppliers.

That's a regime that will be in place for all fisheries that require tags, commencing after April 1.

**Hon. Lawrence MacAulay:** Do you believe that tags on traps is one of the best conservation methods in place?

I guess it's difficult to ask you this, but why would the federal government be relieving itself of the duties of handling one of the most important conservation programs that exist in an excellent fishery on the east coast of this country? What was the rationale to change this direction?

**A voice:** [*Inaudible—Editor*]

**Hon. Lawrence MacAulay:** Can I have an answer?

• (1030)

**The Chair:** I appreciate Mr. MacAulay's inquiry; however, this committee is charged with studying clauses 173 to 178.

I think that's way outside the scope, Mr. MacAulay.

**Hon. Lawrence MacAulay:** Mr. Chair, I thank you for your indulgence. I do.

**The Chair:** I appreciate that, Mr. MacAulay.

At this time, I would like to thank our witnesses for being here today and for taking the time to answer our questions with respect to clauses 173 to 178 of Bill C-45. We appreciate the input you've provided us today.

At this time, we will suspend for a brief moment and will move in camera to discuss our next steps with this study.

[*Proceedings continue in camera*]







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