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Chair

Mr. Larry Miller

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•(0845)

[English]

The Chair (Mr. Larry Miller (Bruce—Grey—Owen Sound, CPC)): I will call this meeting to order.

We have Mr. Sumaila with us in person. Thanks for being here.

Joining us by video conference are Mr. Wright, Mr. O'Connor, and Ms. Forté.

Mr. Watson.

Mr. Jeff Watson (Essex, CPC): Mr. Chair, I would like to interject for a second.

The main estimates were tabled in the House yesterday, I believe. From some discussion last night, I understand that Minister Raitt is able to appear—

A voice: They are being tabled today.

Mr. Jeff Watson: Okay, they're being tabled today.

I do know that Minister Raitt is able to appear for an hour on March 6 in relation to the main estimates.

The Chair: That's next Thursday.

Mr. Jeff Watson: That is.

We would still have an extra hour for clause-by-clause study, should we still need it, in relation to this bill. Rather than serve a notice of motion, I wonder if the committee is okay, by consensus, with her appearing that day for the second hour.

The Chair: Would members like her to appear that day?

Some hon. members: Agreed.

The Chair: Very good. The first hour will be the minister—

Mr. Jeff Watson: That's correct.

The Chair: —and if we haven't finish up clause-by-clause study on the bill, we'll go right to that immediately afterwards.

Mr. Jeff Watson: Mr. Chair, I thank the committee.

Also, I thank our witnesses for their patience as I interjected that business detail at the front end.

The Chair: Very good.

Go ahead, Mr. Mai.

Mr. Hoang Mai (Brossard—La Prairie, NDP): If we were to finish clause-by-clause study before that, would it be possible to have Minister Raitt for longer than one hour?

Mr. Jeff Watson: She's able to appear for an hour.

Mr. Hoang Mai: Well, it's good to have her here.

The Chair: I believe there's a cabinet meeting afterwards. That's why she prefers the first hour.

Mr. Jeff Watson: Thank you, Mr. Chair.

The Chair: You're very welcome.

With that, we'll go to Ms. Forté or Mr. O'Connor, one or both of you, for 10 minutes, please.

Mr. John O'Connor (President, Canadian Maritime Law Association): Mr. Chairman, thank you for the invitation.

My name is John O'Connor and I'm the president of the Canadian Maritime Law Association, and I'm here to speak on behalf of the association. I'm accompanied by Dr. Sarah Forté, who is an environmental specialist, and who from time to time advises the association on the technical aspects of some of these issues that we don't necessarily understand as clearly as we should.

The Canadian Maritime Law Association, by the way, is part of a much wider network of maritime associations. The head outfit is called the CMI, or the Comité Maritime International, which was founded in the 1800s. Each country that is a participant has a national maritime law association. In Canada we have the Canadian Maritime Law Association, of which I'm the president this year. We have a committee that looks at environmental issues. The environmental issues include oil and HNS, hazardous and noxious substances.

Our committee has looked at Bill C-3, and we don't have a lot of comments. We would first like to say that we are only speaking to the marine aspects of the bill. There is an aviation aspect which the Canadian Maritime Law Association does not deal with, so we have no comments on that part.

We would also like to say that the convention that we call the 2010 HNS convention, the hazardous and noxious substances convention, is something our association has worked hard to promote. We were involved in different stages of the convention first adopted in 1996, and then amended by a protocol in 2010 to become the convention which is in the bill. Our association strongly supports the adoption of this convention by Canada. We hope the convention will be in force in the near future, and we hope Canada will be a party thereto.

We support the convention. We're certainly available to answer any questions anyone may have about any aspect of the HNS convention, but we basically recommend it be adopted, so we're happy to see it in the bill.

The bill, on the marine side other than the convention, amends the Marine Liability Act and the Canada Shipping Act for certain adjustments in both of these pieces of legislation. We have looked through the bill, and although we're willing to answer questions, we have no comments on the Canada Shipping Act portion of it. But we do have our main comment on the Marine Liability Act side.

That comment concerns liability, of course. As you will have appreciated, this bill is a bill about liability for mishaps with hazardous and noxious substances. It is not a bill about preparedness. In other words, it's not a bill that addresses how we are going to get ready to respond to a spill of some of these products. It's really a bill about liability; who is liable to pay for the cleanup or the removal, or any damages caused by a spill of these products.

We believe the sections of the Marine Liability Act this committee should look at very carefully are those sections of which there are six concerning the ship-source oil pollution fund, SOPF.

In Canada, unlike every other country in the world almost, we have a fund called the ship-source oil pollution fund which is an additional layer of protection for Canadians if ever there is a spill by oil. What the bill does is it expands the SOPF's role into the HNS convention, but only as it concerns oil. It does not expand the SOPF into the HNS world beyond oil. We certainly support the fact the SOPF would be available for oil spills under the HNS convention as it is right now, under the CLC, civil liability convention, but we have a suggestion to make.

The suggestion is we believe the ship-source oil pollution fund should be involved in HNS at large and not be limited just to oil. Why do we believe that? The SOPF is an additional layer of protection. It's not unlimited liability, but it's an additional amount of funding that is available should there be a mishap. It's already available for oil, and it will be available for the oil portion of the HNS convention, but in the act they have used terminology such as "as regards oil" or "concerning oil".

● (0850)

In other words, they're limiting the SOPF's role to just oil under the HNS convention. We believe that those words should be removed. We believe that the SOPF should become Canada's additional protection, not only when oil is involved, but when any HNS cargo is involved. We believe that six sections of the act should be tweaked to that effect.

In case anyone is taking notes, those sections are 102(1), 103(1), 109(1), 117(1.1), 117(2.1), 117(2.2). These are actual section numbers, not clauses. I'm not going to read these sections to you, but I will say that in each of these sections there is wording such as "in relation to oil", or "in respect of oil". We would be willing to submit in writing a list of the exact wording, if you so desire.

All of those statements are made to allow the SOPF to get into HNS, but only with relation to oil. Our recommended change would be to remove that wording and to make the SOPF available for any HNS event, just as it's available for oil events already.

I had the pleasure last week of appearing before the expert panel on tanker safety. It's the second time I've appeared before them. They're doing a study with regard to oil, first, and now they're doing HNS. After the oil presentation, we had a good discussion with the committee. They brought out their first report. They recommend unlimited liability for oil on the SOPF, instead of limited, as it is now.

Frankly, in our association we're not big believers in unlimited liability. Although it looks attractive, it's virtually impossible to guarantee unlimited liability, for reasons which I can explain if anyone has questions. We feel that unlimited liability for the SOPF is probably not workable. To increase the limit of the SOPF, if that's the desire of Parliament, would be fine, but not unlimited.

At the second phase of the tanker safety expert panel, we made the same presentation as we're making now, that is, that we believe the SOPF should move into HNS at large. We had a debate about it. Mostly the debate was on how that will fit in with the preparedness that we're going to set up for HNS cargoes.

I believe we have a representative today from Western Canada Marine Response Corporation who may be able to give us some advice on this. Our view is simply that the SOPF should not be limited to oil. It should go across the board on all HNS cargoes.

With regard to preparedness, we believe that Canada has already adopted the oil preparedness and response convention. It will probably adopt the 2000 HNS protocol thereto and eventually come back to Parliament with another bill, this time about preparedness, about response organizations, such as that of the Western Canada Marine Response Corporation and what they can do to prepare for an HNS spill.

Our final point is that we believe a list of products that are shipped in or out of Canada in bulk should be made, and that list should be looked at with the response organizations. We're not talking about hundreds of products here; we're talking about a relatively short list of common products shipped in or out of Canada in bulk. We believe that the response organizations should tell us which ones they would be able to respond to.

Those are our comments, and thank you for the opportunity to present them.

•(0855)

The Acting Chair (Mr. Ed Komarnicki (Souris—Moose Mountain, CPC)): Thank you very much, Mr. O'Connor.

We'll now move to Mr. Wright.

Mr. Scott Wright (Operations Manager, Operational Response Readiness, Western Canada Marine Response Corporation): Good morning. I am Scott Wright, the response readiness manager with the Western Canada Marine Response Corporation. We're the certified response organization on the west coast. Thank you for the opportunity to talk to you about responder immunity.

By way of background, we'll talk a little bit about two significant incidents that happened both in Canada and in the U.S. in the late 1980s. Certainly the *Exxon Valdez* in Valdez, Alaska was a significant event that involved cross-border resources, people and equipment responding to that spill. As well, there was the *Nestucca*, which happened on the west coast of British Columbia. That also involved cross-border resources, people and equipment working on that spill.

In 1993, there were amendments to the Canada Shipping Act that gave us limited responder immunity, so it gave the response organizations that immunity.

In early 2000, there was a rewrite of the Canada Shipping Act. In error, there were some words left out that sort of took us back in time and the responder immunity was not available to our potential U.S. mutual aiders and responders.

Part of our annual preparedness activities involve exercising with our U.S. counterparts, both in Alaska and in Washington state.

During those exercises, a significant amount of time is used up looking at how to resolve the responder immunity issue, rather than working on the incident itself and moving on and working on what we would do during those incidents together.

So it certainly does detract from the purpose of the exercise to work together on what the response would look like.

The fix, as has been discussed, is the amendments to Bill C-3. It's currently before the commons committee and this should correct the issues. However, Bill C-3 also needs to be taken a bit further. We believe it should also take into account umbrella legislation where we have responder immunity when there's a ship not present.

We have the resources to respond to marine incidents, whether it comes from a pipeline, rail, or a truck, and we believe we should be granted responder immunity if those events occur. We also support recommendation 22 of the tanker safety expert panel. We also support the recommendation from the Standing Senate Committee on Energy, the Environment and Natural Resources, which calls for the umbrella legislation for responder immunity.

That's my opening statement. I can take questions at your convenience.

•(0900)

The Acting Chair (Mr. Ed Komarnicki): Thank you for that presentation. We have one more presentation, from Mr. Sumaila.

Dr. Rashid Sumaila (Professor, University of British Columbia, Fisheries Economics Research Unit, As an Individual): Thank you very much for inviting me to come here. It's always a pleasure for us in the universities to come and share some of the ideas and the research outcomes with high-level leaders like you. Thank you for that.

I am a professor of ocean and fisheries economics at the University of British Columbia, so a lot of what I will say will be to give you some information about this area of research, not only from me and my group, but from colleagues around the world.

What I thought I should start with is why it is important that we keep Canada's seas safe. I don't think I have to belabour this. You guys know this, and that's why this whole effort is put in place. I thought I would talk about the Salish Sea on our west coast just to emphasize how important the seas are to Canadians in terms of economics, ecology, culture, and even spiritual values. These are really central to Canadians, so protecting the seas is crucial, both for us and for future generations.

The Salish Sea is a valuable body of water made up of the Strait of Georgia in B.C., Puget Sound in Washington state, and even some cross-border waters straddling the U.S. and Canada. Hundreds of rivers flow into this sea creating biologically and ecologically rich areas. It includes several estuaries, islands, inlets, and several kilometres of valuable shoreline. This sea is home to many marine mammals, including the southern resident killer whales, at least 200 species of fish, including our famous sockeye salmon, 1,500 species of invertebrates, 100 species of marine birds, and hundreds of species of marine plants. This is just one sea. You can expand this all over the country. It's very valuable stuff.

Importantly, the region is home to about seven million people whose livelihoods are supported in various ways by this sea through fishing, recreation, tourism, and all sorts of things. In fact, it's estimated that in 2011, \$7 billion was contributed to the GDP just from tourism alone connected to this sea, supporting 130,000 jobs. These are very important parts of Canadian property, if you like.

Now on the risk of an oil spill, this is always a question: how risky is it? Generally, a formal definition of risk is the chances of something happening and the consequences of that happening. Those two are the elements of risk. If you look at the data, surprisingly the chances are quite high. Between 1996 and 2006, there were 205 tanker-related oil spills of over 51 barrels in size totalling 2.7 million barrels of oil spilled into the world's oceans in that decade alone. These are considered large spills.

Closer to home, we already heard about the *Exxon Valdez*, where 275,000 barrels were pumped out of there. There are reports that some of the consequences are still being faced there, even though a lot of effort has been done to clean it up. This is huge when it happens.

According to the research we have, the coast of southern British Columbia and the Gulf of St. Lawrence are the most vulnerable in Canada in terms of large oil spills. These two parts of the country need to be watched very closely.

The cost of response can be very high. ExxonMobil paid about \$3.8 billion, in 1990 U.S. dollars. Today, that's about \$6.5 billion just to try to clean things up and make things like they were before. The cost can be very high.

The question of who pays for this was touched on by previous speakers. There are a number of layers. There are four tiers of ways to have coverage in case of an oil spill. When I look at the numbers, roughly the total amount available from all these four tiers is about \$1.35 billion Canadian. There's a conversion to be made because usually quite a number of them are through special drawing rights. You have to do the conversion, but roughly about \$1.35 billion to \$1.5 billion is the total available after we have problems.

• (0905)

Who pays for this? We have mechanisms to cover up to \$1.35 billion, but as I gave you in the example from the ExxonMobil incident, about \$6.5 billion was needed to do the cleanup. We're not even talking about what happened in the Gulf of Mexico. In fact, I and my colleagues estimated that if there were to be a large spill in B.C. from the northern gateway pipeline, the cost of the cleanup and the losses could be up to \$9.6 billion. We're talking about large numbers. If you look at what we have available, it's quite low compared to the potential costs that will come. If these coverages are not able to cover it, who will bear the cost? It's usually the taxpayers and also citizens who are directly impacted. We need to check that in terms of the new bill.

To conclude, after all the reading I have done, it seems to me that currently our response capacity is limited and insufficient, and most of the time they are not tested. We don't even know what'll happen, really, if something happens, so some simulations need to be done to try to understand. I know that in B.C. the City of Vancouver is trying to do this, to simulate this kind of thing to see what is likely to happen.

There is the big example from the Kalamazoo River tar sands spill of 2010. They thought they could clean it up in two months, but it took them two years to actually do something significant. Their cost estimates were overrun, straight through. We need to watch that. In high-risk, high-value areas, I don't think it is acceptable to simply meet the minimum levels of compliance with the international agreements, and I think that's why we have this effort here, because Canada needs to look at this from the Canadian perspective and try to protect our oceans.

Finally, the U.S. and other countries are actually watching us to see what we are doing. Recently, President Obama ordered the U.S. Coast Guard to conduct a study to look at the potential risk to the U.S. from oil spills in southern B.C. We do this for ourselves, but also because others are watching us, and we need to put in measures that really will put us on top, so nobody can go after us for whatever reason.

Essentially, these are my comments to give you information, hopefully. You see that I avoided all the loyalist stuff because I'm an economist and I stick with the research.

Thank you very much for giving me this opportunity.

• (0910)

The Chair: Thanks, Mr. Sumaila.

We'll now move to questions.

Mr. Mai, you have seven minutes.

[*Translation*]

Mr. Hoang Mai: Thank you very much, Mr. Chair.

I want to thank all the witnesses who came to meet us today. They have given us very useful information that will help us better understand the situation and ask more relevant questions.

[*English*]

I have a question for Mr. O'Connor.

One of the concerns we have is with respect to liability. We were talking about a limit of \$185 million for the ship owners, and then there would be the HNS fund, the international fund, which would cover the rest. If I'm not mistaken, the maximum was \$500 million, and after that, one of the concerns we had was that taxpayers would have to foot the bill.

You're proposing a solution that for us is very interesting. I would definitely love to have your written wording, if you could table it with the committee. It would be very interesting for us to look at that.

Also, could you tell us more in terms of why it would be unwise to have an unlimited liability?

Mr. John O'Connor: I would be pleased to answer.

First, I would be pleased to submit to the committee a list of the sections. There are six sections. It's very, very simple. It's to remove simple wording in each section, which says, "as respects oil". By removing that wording, we're not just limiting ourselves to oil. That's the proposal, but I'm happy to give it to the committee in writing. I will contact the committee after this meeting to get the coordinates. I'll send you the information; before the end of this week is not a problem, today or tomorrow.

Mr. Hoang Mai: Thank you very much.

Mr. John O'Connor: To get back to liability, as you understand, our recommendation is to extend the use of the ship-source oil pollution fund into HNS. It's precisely to give an additional layer of protection. This can be adjusted by Parliament, but at present, approximately \$160 million Canadian of additional money would be available for each spill of HNS, if we were to do as our association proposes.

The first thing to understand is that if you're trying to look at unlimited or higher liability, you can only look at the SOPF. Why? The way this convention works is that there is a ship involved that is doing the spill; it had an accident. The ship has liability for a first amount of money, which you said is approximately \$185 million. In fact it's 115 million SDRs, which is probably about \$185 million Canadian or \$200 million Canadian. That's what the shipowner and his insurer pay. Beyond that you have the fund for up to 500 million SDRs on the international level. That's how it works.

In the convention, and our association supports the convention, it says the shipowner cannot be asked to pay more, and it says that the fund will not pay more; so it's limited liability for those two. Who else could pay? We recommend that it not be unlimited, but that the SOPF would be used to give an additional layer of protection, at present \$160 million, that can be adjusted by Canada. That's our recommendation.

Why do we not believe in unlimited liability? It's pretty simple. It's because it's an idea that is attractive. In French we call it a *chimère*. It's attractive, but it can never be realized. The reason is as follows. If you have unlimited liability, that obviously means there's no limit. The way the tanker expert panel conceives it, for example, is they say they can't affect the liability of the shipowner; they can't affect the liability of the fund; all they can do is say that SOPF will have unlimited liability for a spill. That way Canadians are guaranteed they will never have to pay anything for a spill. That's the theory.

In reality the way it works is the SOPF would in the *Exxon Valdez* case where, let's say, \$1 billion has come from the international regime and it cost \$6 billion, so then \$5 billion more has to be paid. Their theory was that the SOPF will borrow \$5 billion from the Canadian government and will clean up everything and then will pay back \$5 billion, presumably plus some interest, to the government over a period of time. That's the theory they put forward.

We believe that does not work. Why? If you do that, the SOPF triggers the levy to get enough money to pay back the government. It's built into Canada's legislation that if ever the SOPF needs more funding than they have, they then invoke a levy. The levy means that for each barrel or each cubic metre of oil that comes in or goes out of Canada, a charge is going to be paid. Those charges would mostly have to be absorbed by the oil companies that are importing or exporting oil. The SOPF would get the \$5 billion back by imposing a levy, presumably over a period of years because it's a lot of money. They would impose a levy that's not there now and would tell the oil companies that they have to pay them so much per barrel from now on until they've paid back the \$5 billion, even though they may not have been involved in the spill. That's how it works. They're going to go to the oil companies to get that money back.

What does that mean? This is in no way a criticism of the oil companies, but it means their operating costs have increased, and therefore the price of gas and the products they sell will have to be increased to compensate for that. At the end of the day what happens in that example is that the people who are really paying back the \$5 billion are not the oil companies through the levy as much as it is the consumers in Canada who are buying products from these companies, including gasoline, heating oil, etc. That's how it works.

The other choice would be they won't have unlimited liability, in which case the SOPF will pay out its \$160 million. If it takes \$5 billion more, and let's hope it never happens—the *Exxon Valdez* is the worst oil spill ever in the world—but if it were to happen in Canada, we would have to figure out what we were going to do. The only thing we could do would be to spend taxpayers' money. That way the taxpayers would have to contribute little by little over the years to refund the spill.

● (0915)

To say that we're going to make the liability unlimited on SOPF is not, in our mind, a real solution. It looks good, but at the end of the day it will be shared among Canadians one way or the other. Although not all Canadians buy gas—most do—not all Canadians pay income tax either. Either way you're just sharing it among the people who are paying.

To our mind, we shouldn't get involved in that. Rather, we should figure out how much we need and set a cap on the SOPF.

Mr. Hoang Mai: Thank you very much.

The Chair: Your time has expired, Mr. Mai.

Mr. Simms, you have seven minutes.

Mr. Scott Simms (Bonavista—Gander—Grand Falls—Windsor, Lib.): Mr. O'Connor, I'll start with you on this one and then I'll throw it open to the other guests as well.

On the SOPF, does it have to be an oil tanker to be eligible for funding in case of a mishap?

Mr. John O'Connor: No, it does not.

Mr. Scott Simms: Okay. I'll give you an actual example, and I'll open this up to Mr. Wright as well, because he may know something about this.

Recently there was a major operation called hot tapping. It involved a ship called the *Zalinski*. I'm sure you ladies and gentlemen are familiar with the *Zalinski* and the cleanup effort that was recently done.

Was that eligible for the ship-source oil pollution fund, Mr. O'Connor?

Mr. John O'Connor: I wouldn't like to speak to the *Zalinski* or to any other particular case where I'm not really intimately aware of the facts, but I would say this. The ship-source oil pollution fund as it exists right now only deals with oil, not yet with HNS, but it deals with all aspects of oil coming from a ship. It's a ship-source oil pollution fund, so it's for any oil coming out of a ship, whether it be bunkers, cargo, in barrels, or anything else that comes into the water. The ship-source oil pollution fund is available for that.

Mr. Scott Simms: I apologize, Mr. Wright, because I don't have a lot of time, but allow me to go to the east coast now.

A boat carrying paper left northeastern Newfoundland and sank in 1985. The name of the boat was the *Manolis L*. It contained slightly under 500 tonnes of bunker C, and it contained, we suspect, slightly under 100 tonnes of diesel. The crack in the ship is now—

Mr. Jeff Watson: A point of order, Chair.

Mr. Scott Simms: Is that part of the SOPF?

Mr. John O'Connor: No, it is not.

The Chair: On a point of order, Mr. Watson.

Mr. Jeff Watson: Chair, while I appreciate the interest in the ship-source oil pollution fund, with respect, I'm failing to see the connection to the HNS protocol. Bill C-3 addresses gaps in the HNS protocol. It's not addressing the oil regime, if you will, at all. Unless he's tying it into the HNS protocol here, I fail to see the relevance of the line of questioning.

Maybe he's getting to it, but—

● (0920)

The Chair: Are you going to tie it into that, Mr. Simms?

Mr. Scott Simms: I don't think I have much of a choice, do I?

Because it is not part of it, would what you're proposing here, expanding using the HNS, cover incidents like that? Specifically, why would that not be covered?

Mr. John O'Connor: Let's talk HNS so that your colleagues don't get all excited.

Mr. Scott Simms: Bless you.

Mr. John O'Connor: The changes we're proposing would include such a ship. Let's assume a ship sinks and it has HNS cargo on board. Nothing is coming out yet, but we think it might come out in a few years' time. Yes, the SOPF, in our proposal, would cover that, as they do now. They would cover it in the sense that it is a risk of pollution that is a realistic risk, and therefore the funding is available to get the cargo out or to pump it out, etc.

The problem you have with the example you gave of something, even if it were HNS, that happened a long time ago and that we didn't do anything about, is that there are other aspects in these bills, such as the time bar. What was the law at the time the ship went down, etc.?

You can't go back in the past. They tried to do it with the *Irving Whale* by suing the SOPF and they failed. They also sued the international fund and failed.

I don't recommend that we do it for things that happened 25 years ago, but rather that we be proactive. When a ship sinks today, if it does happen, even if not a drop of any HNS is coming out, people should get expertise now on what we can do, what we can get in place to get that cargo out of there to avoid something happening in 20 years' time, when the rust gets through the sides.

Mr. Scott Simms: Mr. Wright, do you want to weigh in on this as well?

Mr. Scott Wright: I can't say for certain whether the ship-source oil pollution fund would cover those incidents. I'm sorry, I don't have that knowledge.

Mr. Scott Simms: That's okay.

Time is of the essence as well then, Mr. O'Connor, is what you're saying in this particular—

Mr. John O'Connor: Of course it is. It always is of the essence.

Mr. Scott Simms: In the sense of what the program does, I know the international programs, if I'm not mistaken, they cover oil tankers exclusively. Is that correct?

Mr. John O'Connor: That is correct.

Mr. Scott Simms: For any boat that's carrying paper or anything else, they would not be covered.

Mr. John O'Connor: No.

Mr. Scott Simms: That's the beauty of the ship-source oil pollution fund.

Mr. John O'Connor: That's why we like it so much.

Mr. Scott Simms: That's why you want to expand it to cover all HNS. Is that correct?

Mr. John O'Connor: We want all Canadians to have the benefit of this fund. We're not inventing the wheel here. The fund exists. It's been working since 1973, and it works very well. It's the model that China and other countries came to Canada to copy. So why are we just saying, "Okay, but they're only going to go out there if it happens to be this type of product, and not that type of product"? That's all we're saying.

Mr. Scott Simms: Thank you, sir.

The Chair: Mr. Watson, for seven minutes.

Mr. Jeff Watson: Thank you to our witnesses for appearing not only in person, but by video conference. We appreciate your submissions.

I want to start by clarifying a few things here. First of all, Bill C-3 relates, as I sort of said in my intervention earlier, to establishing our compliance, our ratification if you will, of the HNS protocol of 2010. In other words, it's going to allow us now to move from what we heard Tuesday is a system of simple general liability in the event of an HNS spill to a much more robust regime of up to about \$400 million in combined coverage.

This bill, which originated as Bill C-57 in 2013, actually predates the tanker safety expert panel's work, both on its recommendations on the oil regime, and on its continuing work on HNS. It's meant to plug a gap that currently exists.

Can any of the witnesses tell me what the most expensive HNS spill is on record? Is there one that has exceeded \$200 million? We're not talking about oil such as in *Exxon Valdez*; we're talking about things like vegetable oil, potash, those types of substances. Can anybody name one that's over \$200 million?

● (0925)

Mr. John O'Connor: First, you have to be careful when you ask this question, and I'll tell you why.

HNS is not just esoteric chemical products that we don't identify with; it also includes things like oil. The HNS convention includes oil. Therefore, as soon as you get into a spill that costs more than \$200 million for oil, you could say it was an HNS spill. The HNS convention itself says that it will not pay on top of the other convention. In other words, if you can get any funding out of the other convention, then you can't get funding here. They're not on top of one another. Any oil spill is an HNS spill because oil is HNS.

Mr. Jeff Watson: In fairness, there are separate regimes. In the case of an *Exxon Valdez* situation, it would not be an HNS convention spill, it would be carried under the other regime. Fair enough. We can sit here and talk about the tanker panel's report and whether or not that regime should be enhanced, but I'm asking about spills that are classified under the HNS regime. Are there any that exceed \$200 million?

From what I know we haven't had one yet that exceeds \$200 million.

Mr. John O'Connor: Again, I have to answer that of course there are.

Let me say this first. A second point is the HNS convention is not yet in force, so there have been no spills at all dealt with under the convention. If you think, for example of the main categories of HNS—and let's forget about oil because it is an HNS but it is covered under another convention in certain circumstances. Let's talk about LNG.

LNG is an HNS. What about the explosion and spill they've had in different countries in the world where there have been fires caused by LNG spills? LNG does not need to be shovelled, but it can be burned. I'm not against LNG, but it has happened where there have been fires that have cost more than \$200 million and that would be covered under the HNS convention, if it had been in force.

Mr. Jeff Watson: With this bill's passage, it would be covered up to \$400 million. I'm not aware at this particular point of an HNS incident that has exceeded the cost of \$200 million. If you can provide one for the committee, I'd appreciate that in terms of research.

The Chair: Mr. Sumaila would like to comment, if that's okay with you.

Mr. Jeff Watson: Sure. Fair enough.

Dr. Rashid Sumaila: Yes, I want to comment on this.

It's important to check the data and the history to see if we can find one, but I think we should also think about the future, because that is what this is about, right? Even if we don't find any that have cost up to \$200 million to date, that does not eliminate the chances of something higher than that happening in the future. I just wanted to put in that point.

Mr. Jeff Watson: It's well appreciated. Right now if it were to occur, there would be simple general liability, and what we're trying to establish with respect to amendments to Bill C-3 is that we get that to \$400 million.

We do have a world-class tanker safety panel that has been appointed to look at this. Effectively, what we heard from witnesses on Tuesday was that while they were also looking to the recommendations of the world-class tanker safety panel, both on

HNS and on oil, to have a response, potentially even in this bill, they did not want this bill to simply try to prejudge that particular effort as well.

In fairness, the government hasn't had a chance to fully review the recommendations with respect to the oil regime. A response will be coming at some point, and I suspect we'll see more legislation in that regard.

Also, at some point, the panel will come back with HNS. Effectively, I think all of you are asking this committee to prejudge that particular.... It would almost seem to say, why have a panel doing the expert work. Should this committee move with Bill C-3 and get to the combined \$400 million coverage, allow the panel to do its work, and allow the government to come back with additional changes that have been consulted on? The changes you're asking us to take a look at right now not only prejudge the panel, but haven't been consulted on widely the way the current bill has been.

Is there any problem with that approach we're taking?

● (0930)

Mr. John O'Connor: If the question is addressed to me and—

Mr. Jeff Watson: Mr. O'Connor, you can start.

Mr. John O'Connor: Thank you.

My thought on it is that the government has to decide what it wants to do, of course. You asked us to come here as a witness and to give our view on what we think should happen. We gave the same view to the tanker panel. If the government decides that it will go step by step and do this now, wait for the tanker panel, see what they say, and perhaps tweak it or adjust it later with a second bill, it's certainly not a decision for us, but for you. We have no comment on it, really, except to say that what we're saying here is the same as what we said to the tanker panel, which was I think well received.

It is true that they're going to file a report later in the year about HNS, not just about.... Their report is not going to be about Bill C-3. Their report is not going to be about liability. Their report is going to be about preparedness, about how we get ready for an HNS spill, like we're ready for an oil spill with Mr. Wright's outfit.

The government will have to decide how they wish to proceed, whether it's quickly or slowly, but one day, we suggest that you should come to our amendment.

Mr. Jeff Watson: We appreciate that. That will be for the record, for the government's benefit as well. We appreciate that, Mr. O'Connor.

The Chair: Your time has expired, Mr. Watson.

We'll now move to Mr. Braid for seven minutes.

Mr. Peter Braid (Kitchener—Waterloo, CPC): Thank you to all of our witnesses for being here this morning and for your contributions.

Professor Sumaila, I'd like to start with you, please.

I see from your resumé that you've done a lot of research around the world. You would be in a position to compare our safety regime under Bill C-3 to those of other jurisdictions. Could you do that? How does it compare internationally? Also, in your mind, are Canada's waters better protected as a result of Bill C-3?

Dr. Rashid Sumaila: Usually to make that comparison you have to compare with countries that Canada likes to compare itself with. You wouldn't want to compare Canada to Nigeria, for example, right? That would not work because their system is completely crazy.

If I think of the U.S., which is the closest, I would think that Canada is matching up with the U.S., but the U.S. has been pushing a lot recently. I quoted Obama telling the U.S. Coast Guard to look into this even deeper. In comparing it to the U.S., the closest, they're probably just a little ahead, from what I understand.

Mr. Peter Braid: Bill C-3 helps to close the gap though. Okay.

Earlier, colleagues talked about the tanker safety panel. Do you have any thoughts or contributions with respect to their work from your perspective?

Dr. Rashid Sumaila: I've been reading a lot about all that they are trying to do to make it safer. You have the double hull and all those things, so there's a big effort to improve that. That is good. That will reduce the chances of spills, I think. That is also good.

In our report, the one we did last year about the northern gateway, we considered safety very closely. What we concluded was that usually the problem really arises when something happens. There's a small chance of it happening. So, if it doesn't happen, it's all well and good, but when you have the big one hitting you, this is where the pain is really high. All this work will help reduce a lot, but it will not eliminate it. That is what worries me: when the big one comes. You can see that in the Gulf of Mexico, right? We had lots of promises from BP about how good they are at this. It happened, and for weeks they didn't even know what to do, just sitting and shaking. That's the kind of thing that bothers most of us.

Mr. Peter Braid: Earlier witnesses talked about the importance of responder immunity and the enhancements under Bill C-3 to facilitate international responder immunity. Could you speak to that as well, Professor?

Dr. Rashid Sumaila: All I can say is that when you have international cooperation in things like this, it's always a good thing because then you can move resources very quickly and try to come together to solve the problem. It's a good initiative. That's what I can say.

Mr. Peter Braid: Right. After looking at Bill C-3, are there any areas that you would recommend we further pursue?

• (0935)

Dr. Rashid Sumaila: I talked about the cost of cleanup and the response if something were to happen. That is the piece I'm still struggling with. As I said, the current total coverage is well below some of the potential costs that would come. The question is how we

cover that. This has been discussed a lot. I look at the SOPF, the fourth tier, in which Canada has a lot... When I look at the data, I think at the moment we have \$380 million, roughly, in that fund. I don't think there's new money going in there, except the interest or investment income that goes into it. The question is how we can enlarge that fund to protect us from big events.

Mr. Peter Braid: To your knowledge, has that fund been drawn down at all?

Dr. Rashid Sumaila: No, I think it's about \$380 million at the moment, according to the data I have, so, no.

Mr. Peter Braid: Thank you, Professor.

Mr. Wright, still on the issue of responder immunity, you spoke about the importance of Bill C-3 fixing this important issue. Then you suggested that it be expanded to deal with situations when ships aren't present. What specific situations are you concerned about? Can you perhaps provide any examples of these situations occurring in the past?

Mr. Scott Wright: Sure. The two main members that we have are oil handling facilities and ships. Because it's the Canada Shipping Act, a ship needs to be involved in an incident. I'll give you an example.

If we are responding to an oil handling facility that has had a leak from their shore-based facility or their dock and there's no ship present, we are not covered by responder immunity. Similarly, we have the resources to respond to oil entering the marine environment from a pipeline, from rail, or from a truck and we're not covered under responder immunity. So, our shareholders are putting themselves at risk if we go respond to a marine incident that does not involve a ship. We think that responder immunity should be applied across the spectrum of potential spills to the marine environment.

Mr. Peter Braid: Okay. Still on this topic, could you speak to the benefits of the requirements for oil handling facilities to develop to demonstrate their oil-spill preparedness and response plans? Could you speak to that issue for us?

Mr. Scott Wright: Yes, certainly it is important for the facility to have a response capability. It is in the oil handling facilities standards within the Canada Shipping Act, so they're required to have containment initiated within one hour and recovery of product within six hours. It is important for them to have a capability, because in effect they are the first response while we're mobilizing and getting on site.

Mr. Peter Braid: Do you interact with oil handling facilities with respect to the development of these plans? Do you provide input?

Mr. Scott Wright: We have done it, but it's not essential. There are lots of consultants that can help to do a great job with it.

Once our oil handling facilities do have plans, we encourage them to share them with us. We also will practise with the teams at the oil handling facility to ensure that we understand what their first response would be, and what we can do at that particular facility to help contain and recover oil.

Mr. Peter Braid: Excellent. Thank you very much.

The Chair: Thank you.

We'll now move to Mr. Sullivan for five minutes.

Mr. Mike Sullivan (York South—Weston, NDP): Thank you to the witnesses.

I'm going to come back to the notion of liability and to something Mr. O'Connor said, that no matter how you slice up the liability, Canadians will pay. Is this because the oil companies and the ship owners and the transportation to other countries have no relationship whatsoever to our systems? Or is it simply because we have a big coast and a lot of oil going through it, and it's more likely to happen there than in other places?

● (0940)

Mr. John O'Connor: No, that's not what I was trying to say. Simply stated, at my association we believe Canada would benefit from joining the international convention on HNS, just like we did with oil. Why would we benefit? It would give us access to very important funding and expertise if ever there were to be a spill in Canada, which of course we hope there won't be, but if there were to be, we would have access to the funding.

By the way, Canada is not a place where there have been a lot of oil spills and chemical spills, luckily. I think we have a good record and we're going to, I'm sure, even improve upon that record.

When I was saying that the unlimited liability aspect doesn't really work and comes down to Canadians, it's because it's simply a fact of life in our view, and that is that you can tap into these funds and benefit from the funds as best you can, because they're contributed to by people from around the world. In other words, if there is a spill in Canada that's HNS, up to the limit of funding that is available, it's going to be partly contributed to by Japan, partly by Spain, etc. All countries contribute, just like Canada would contribute if there's a spill over there; we'd contribute our slice of that funding.

We want access to that fund. But the idea of unlimited, you have to understand that when you join an international convention, you have to respect the convention. The convention says in black and white that the ship owner has a limit and you can't ask him for more. It says in black and white that the fund has a limit and you can't ask them for more. In other words, even though it's a lot of money, it's a limited amount of money. If you have a spill that exceeds that, what do we do? Our recommendation is SOPF for another tier.

If you were to try to make it unlimited, the only way to do it, joining the convention.... You can't go back to the ship owner. You can't go back to his insurer. You can't go back to the fund. You can only go to the SOPF. That's why the expert tanker panel suggested....

They didn't suggest it be done; they said that maybe the government should look at the possibility of making the SOPF's contribution for oil unlimited—unlimited, which means no limit.

We say that you can do that, but if you do it, the taxpayers and/or the consumers are going to have to pick up the tab at the end of the day.

Mr. Mike Sullivan: That's because the SOPF is a uniquely Canadian fund, as opposed to the HNS fund, which is international. I'm getting that now.

On the issue of whether or not there's ever been a spill.... I really appreciate your comments about this. The convention isn't in place, so we can't know if there's ever been a spill. Transport Canada admitted to us that they have not done a risk analysis. They don't know what kind of spill would generate what kind of cost, because they've not done the risk analysis. The preparedness panel has not actually studied HNS yet. They're working on it next.

We are unsure of what the ultimate cost could be, but there is a fear among Canadians based on things like *Exxon Valdez*, *Lac-Mégantic*, etc., that costs will ultimately be borne by the taxpayer and that's not good. The HNS fund topped up by SOPF sounds like a really, really good idea.

If that's the case and there's been no risk analysis, it's kind of an abundance of prudence. Would you not agree?

Mr. John O'Connor: I don't think I would say it's an abundance of prudence; I would say that it's very smart to be prepared, both on the funding side and on the preparedness side.

If you go back to 1989—I'm not sure that any of you were involved, but I was—when we were looking at the CLC convention, the oil convention, we didn't have very many studies about preparedness in Canada for oil either.

The first thing we decided to do was to make sure that we enjoined the convention so that the funding was available. It's like an insurance policy. The second thing was to make sure that the SOPF covered an additional tier, just as we're proposing for HNS. The third thing was to get ready for that spill.

That's what we did with oil, and that's why Mr. Wright is sitting there. His organization was one of the ROs that was created under the legislation that we finally put together with you guys.

What we're saying is that we should do the same steps for HNS. We go liability, SOPF, and we get ready as quickly as we can, because we don't know how much it's going to cost, but I'm assuming that it can be expensive, and we should be ready.

● (0945)

Mr. Mike Sullivan: Professor, are you aware of any risk analysis that anybody has done regarding oil and/or HNS in the Salish Sea?

Dr. Rashid Sumaila: The answer is no, there isn't any. I have been trying to get a study going in that respect, but there is no study of which I am aware, no.

Mr. Mike Sullivan: Thank you.

The Chair: We'll go to Mr. Komarnicki for five minutes.

Mr. Ed Komarnicki: I want to follow up on Mr. Braid's questioning of Mr. Wright, specifically on oil handling facilities and the question of immunity from liability.

First of all, Mr. Wright, I understand that what you are saying is that immunity from liability is important if you want to have people interact on a quick basis without having to be concerned about that issue. Fundamentally, that is very important, but did I hear you say that it doesn't actually apply to becoming involved in an oil handling facility spill?

Mr. Scott Wright: That's correct. When we attend an oil handling facility spill without a ship involved, we will contact Transport Canada, and they will put in place a temporary measure to ensure that we are covered under responder immunity. This needs to be taken care of within the legislation, so that our efforts are completely focused on the response.

Mr. Ed Komarnicki: What specifically were you suggesting needs to be done to the legislation as it now exists to enlarge it and include what you see as necessary?

Mr. Scott Wright: I've submitted some of my notes, which will be translated and later distributed, but in clause 68 of Bill C-3 the term "agent" is being reinserted into subsection 181(2) and the term "oil handling facility" is being added to the definition of "response operation". That is the specific matter in the legislation requiring to be changed or amended.

Mr. Ed Komarnicki: In terms of risk—

Mr. Scott Wright: I'm sorry to interrupt, but I'd also defer to Mr. O'Connor, if he has any input on that comment as well.

Mr. Ed Komarnicki: Okay. We'll probably hear from him in due course, but in terms of numbers or percentage, how would you allocate risk as between an oil handling facility at which no ship is involved and one at which one is? Are you able to make that kind of assessment?

Mr. Scott Wright: No, it would be hard to quantify that.

Mr. Ed Komarnicki: I understand there are about 400 oil handling facilities. Am I correct that there is a fairly significant number of them?

Mr. Scott Wright: That's correct.

Mr. Ed Komarnicki: Mr. Sumaila indicated that one of his concerns with respect to response capacity was that it was limited, insufficient, and not exercised, yet I heard you say that you do indeed have exercises with the United States.

Is there anyone else involved, and how do you respond to that statement?

Mr. Scott Wright: We're required by the Canada Shipping Act to conduct regular exercises. Those involve equipment deployments and tabletop exercises. We also participate in cross-border exercises with Washington state and Alaska. Those exercises are run by Canadian Coast Guard and U.S. Coast Guard.

We are certified to 10,000 tonnes as a response organization. If you look at the equipment we have in our inventories and apply the same planning standard, we in effect have 26,000 tonnes of response equipment. We far exceed our legislated response requirements.

Mr. Ed Komarnicki: With respect to the certification, you have to be federally certified as a first responder. I assume the oil handling facilities would probably have to be certified as well in respect to their response.

How do you deal with such things as expansions in oil handling facilities, changes to equipment, changes to circumstances, all of those kinds of things? How do you deal with them? Given that there are so many of them and that they may all be different in some respect, is there some objective basis that everyone is required to meet?

• (0950)

Mr. Scott Wright: Our job as a response organization is not to oppose or support any particular projects but to be aware of proposed projects and to look at what the impacts would be on our preparedness. We have worked closely with Enbridge on northern gateway to see what their potential risks would be and how we would put in place a preparedness of people and equipment.

We also are working with Kinder Morgan in the south to ensure that we're looking at what their proposal is and how we would need to grow to respond to those changes in business on the coast.

Mr. Ed Komarnicki: All right. Are you satisfied that the efforts you are making are robust enough and that the legislation is sufficient to equip you to do that job?

Mr. Scott Wright: Certainly we are headed in the right direction. We are a full-time staff of around 30. We are adding 16 new people this year, and we'll continue to grow. We are looking at a number of initiatives that will enhance our capabilities, including additional bases and faster response times.

Yes, we are growing ahead of any legislation that may come out, with our continuous model approach.

Mr. Ed Komarnicki: Thank you.

The Chair: Mr. Stewart.

Mr. Kennedy Stewart (Burnaby—Douglas, NDP): Mr. Chair, it's a pleasure to be here today.

Thanks to the witnesses for coming today.

I am the member for Burnaby—Douglas. We have the good fortune of having a number of facilities in my riding, including the Westridge marine terminal, which I think is very relevant here today. Mr. Wright has already alluded to Kinder Morgan.

I've had the good fortune of visiting your facilities, Mr. Wright. Thank you for the tour.

I'm interested in more concrete examples of relevance to this amendment to the Canada Shipping Act as it pertains to oil handling facilities.

Perhaps, Mr. Wright, I could start with you.

In 2007, 250,000 litres of oil were spilled from the Kinder Morgan facilities into Burrard Inlet. From what I've read, 125,000 litres went into Burrard Inlet and your organization was involved in the cleanup. Am I right?

Mr. Scott Wright: That's correct.

Mr. Kennedy Stewart: I'm wondering, just to provide examples to the committee, whether you could tell us what percentage of the crude oil was collected. Of what was spilled, how much did you manage to collect?

Mr. Scott Wright: We were working for a client in that particular incident, and that information is theirs. If they choose to release it, then they can, but I'm sorry, we cannot release that information.

Mr. Kennedy Stewart: You don't have any idea how much you actually cleaned up.

Mr. Scott Wright: Yes, we do.

Mr. Kennedy Stewart: But you're not going to tell us. Okay.

Can you tell us how much it cost to clean up this unknown amount of substance?

Mr. Scott Wright: I'm sorry, I don't have that information immediately available, but it's certainly in the millions of dollars.

Mr. Kennedy Stewart: Can you elaborate on what the substance was that was spilled? Was it conventional crude? Was it bitumen-based crude?

Mr. Scott Wright: It was a synthetic bitumen. It was an albian synbit, I believe. The response techniques we used with that particular product were no different from the response techniques we use on other products that we respond to. The oil behaved very similarly to all the other oils, the bunkers that we've responded to in the past.

Mr. Kennedy Stewart: That leads to my next question. Does bitumen float or sink?

Mr. Scott Wright: Bitumen is not being shipped through the pipeline. It's a diluted bitumen. Certainly bitumen and diluted bitumen do have different properties. There have been many studies on diluted bitumen and the effects in the environment and its floating or sinking abilities.

• (0955)

The Chair: Go ahead, Mr. Wright, unless you were finished.

Mr. Scott Wright: No, I'm fine.

The Chair: Mr. Stewart, continue.

Mr. Kennedy Stewart: The reason I'm asking about whether or not bitumen floats or sinks is that there is a plan to build a new 590,000 barrel per day oil pipeline from Edmonton to Burnaby, which I'm sure you're well aware of, because you—

The Chair: On a point of order, Mr. Watson.

Mr. Jeff Watson: Mr. Chair, while pipelines are interesting, unless we're talking about oil handling facilities or HNS response, I'm waiting for him to get to that point. We're several minutes into questioning now. This is not a study generally about pipelines and other things. This is about the specifics of a bill.

The Chair: I'm quite sure Mr. Stewart is going to get to that.

Mr. Kennedy Stewart: That's right.

Thank you, Mr. Chair.

At the end of this pipeline there is, of course, brand new oil handling facilities that are being built. There will be two additional docks that'll be added to the Burnaby facilities. Those facilities will be handling bitumen-based crude oil exclusively, according to the company. This is why I'm wondering whether or not this bitumen floats or sinks, because I imagine if it sinks, as you said some studies allude to, then you'll have to have different response capacities.

Could you perhaps comment on that?

Mr. Scott Wright: That's correct. We will adjust our capabilities and our equipment based on the products that move through our area.

Mr. Kennedy Stewart: How far along are you in terms of preparing for that?

Mr. Scott Wright: Well, the project is still in the proposal phase. It's still being looked at; it's not a done deal. As I said before, we continue to move and we're adding 16 new full-time people, so that's an increase of 50% in staff. We're adding \$6.5 million in equipment this year, which is probably one of the biggest years in our history. We're continuing to grow our capabilities.

Mr. Kennedy Stewart: Thank you.

I'll turn to Professor Sumaila.

The Chair: You're out of time, but one last comment.

Mr. Kennedy Stewart: I'm just wondering on costs. If we had an Aframax-size spill in the Burrard Inlet, about 750,000 barrels, how much do you estimate that would cost to clean up?

Dr. Rashid Sumaila: It would be huge, I can tell you that. There is a per barrel rate that I don't remember. Right away I could just multiply this for you, but I can find out. I'm trying hard to get a study going to do just that, because it's important to have that information.

Regarding your earlier question about sinking or not sinking, the Kalamazoo spill is diluted bitumen and it was so difficult to clean. This is what some of the officials of the U.S. EPA say. No one expected sunken oil to be so difficult to clean up. This is a quote I took from officials when it happened. It's a big issue.

Mr. Kennedy Stewart: Thank you, Professor.

The Chair: Mr. Toet.

Mr. Lawrence Toet (Elmwood—Transcona, CPC): I'd like to begin with Mr. O'Connor.

I want to get clarification on a couple of points you made in your opening remarks and make sure I understood them correctly. In your opening remarks you talked about the 2010 HNS convention. If I understood correctly, you strongly believe in that convention, that it is a very well put together international convention. In fact, if I understood correctly, you said your organization and you yourself have worked very hard to promote the HNS convention. Did I get that correctly?

Mr. John O'Connor: Yes, you did. In fact, although the committee may not have been made aware of this, Canada, not my association, was the spearhead internationally, I guess you could say, for the creation of the 1996 HNS convention.

I won't waste your time with the details of the 1996 HNS convention, but it was agreed to. There were a few loose ends that had to be tied up. They were tied up with a protocol in 2010 which created the new title of HNS 2010 convention.

Canada was very much involved. Canada was actually very much a leader—not my association, by the way. I'm talking about Canadian civil servants from Transport Canada. It was very much not just a Canadian initiative, but something that Canada supported.

Our association, through our committees on the environment and oil and HNS, was very much in support of the convention as it was going forward. Transport Canada brought out different discussion papers. We attended different meetings that were held with Transport Canada as to the progress on the HNS convention.

No international convention is perfect, obviously, and maybe it could have been better, but we think it's good and we support it.

• (1000)

Mr. Lawrence Toet: Thank you.

I want clarification on the ship-source oil pollution fund. You said that would add an additional \$165 million in liability. Is that it? Is it \$165 million over and above what the HNS convention would have in liability coverage?

Mr. John O'Connor: The amount that the SOPF would inject in any.... Right now, it only applies for oil. The amount they inject is set by Parliament, and you can set the amount where you want it. Right now it's approximately 160 million additional dollars. That may not be billions, but it certainly is better than no additional dollars. We certainly feel it's a step in the right direction.

If the limit of the fund should be increased, for instance, to \$200 million or \$250 million, or more, that could be looked into. We do not believe that saying it would be unlimited is realistic, but we certainly believe the extra funding should be available for HNS cargoes.

Mr. Lawrence Toet: That's great.

It leads me to my next question. There seems to be a bit of a disconnect between what you just said to me and when Mr. Watson was asking about your awareness of any spills that were over \$200 million. You alluded to the fact that there were spills that were way over that.

I'm trying to wrap my head around why you would be supporting and promoting this convention when you have a sense that it's completely insufficient. I'm having a hard time understanding that.

Mr. John O'Connor: I could perhaps explain that better; I didn't mean to misstate it.

I probably shouldn't have even answered the question of whether there have been HNS spills over \$200 million because we'd all have to look on.... There are ways of finding out, but what I'd like to say—

Mr. Lawrence Toet: To clarify that for a second, we had Transport Canada officials here and they had done their research on it. They had done very extensive research, and there were no incidents over \$200 million.

That's part of the reason we ratified the convention. I think we have to make sure we're staying with the facts here.

Mr. John O'Connor: First off, when you're talking about \$200 million—why you pick that figure, I'm not sure—that's in today's dollars for us. If you had an event some years ago, less than \$200 million would be more than \$200 million today. I'm not sure where we would be going with that.

I'd just like to say that regardless of the *Exxon Valdez*, which by the way was apparently \$5 billion, the oil conventions will not give us \$5 billion in compensation if it ever happens in Canada. However, in our view and the association's view, that's no argument to say we should therefore not join the convention.

The fact is the convention provides for funding. Hopefully, we'll never need more; hopefully, we'll never need that much. But no matter how much we need, we at least are aware and sure that we'll have that much money available.

Regardless of what has happened in the past, we're looking to the future. If ever there were to be a spill, big or small, we would have access to that funding.

Mr. Lawrence Toet: Obviously, we would want to be doing our homework. In looking at ratifying a convention, we're going to be looking at whether it has adequate coverage, and that has been ascertained at this point.

If we're talking about never having a cleanup that is greater than \$200 million, we can talk about how that's in the past and we want to look forward, and we all should look forward. We also have a number that cannot necessarily be pinned down forever. That number can be adjusted over time if need be, just as you said that the ship-source oil pollution fund could be adjusted if need be.

What we're looking at is whether it's adequate at today's levels. I get the sense that if your organization strongly supported and promoted the HNS convention, you must have had a really good sense that it was adequate funding, or why would you have continued to support it?

Mr. John O'Connor: That's right. When I say that was adequate funding, it was funding that we felt was a realistic step forward.

You may have noted that the funding available for HNS is less than it is for oil. You may ask why that would be. Well, HNS are such strange products. The reason for that is that oil is a labour intensive cleanup, but HNS is not always. HNS cleanup may not always entail as much as oil cleanup because of the physical picking up of oil off the beaches, and so on. What we're saying is that it's making this funding available.

I'd like to add one point. If we were to not adopt this convention, not only would we not have access to the funding, but the limitation on the ship owner would be lower than it is in the convention. In other words, we would be getting less money out of the ship and no money out of the fund, and we'd be in a very much worse-off position.

• (1005)

The Chair: Thank you.

Mr. Watson, for five minutes.

Mr. Jeff Watson: Mr. O'Connor, I want to return to your suggested amendments for a moment.

Effectively, if I understand this, you're not asking us to create a mirror fund for the chemical industry that would be the equivalent of the ship-source oil pollution fund, but the thrust of your amendments essentially ask us to enshrine in law that the ship-source oil pollution fund would be shared by the oil industry, the chemical industry, the fertilizer industry, and others. Is that correct?

Mr. John O'Connor: That is correct. It would be shared in the same way as the HNS fund contributions are shared.

Parliament can do what it wishes, but it would probably be the receivers of cargoes in bulk, not in cans of Ajax, but in bulk, who would be contributing, if ever there were to be a contribution requested. If you try to go into packaged HNS, little cans of stuff, it would be just too unwieldy. That's the change we made in 2010, because in the original 1996 convention, the contributions came from any cargo receiver, even cans of Ajax, whereas now we realize that it would be unwieldy to try to collect from those people, to try to follow those containerized cargoes. Rather, we went bulk. I think that's the same that, yes, SOPF would probably decide to do.

Mr. Jeff Watson: All right, and this is not a commercial endorsement of Ajax.

Is there a problem, then, with the concept of the oil industry, which pays into the ship-source oil pollution fund, funding a cleanup of a potash spill, or potash accident, or vice versa for that matter?

Mr. John O'Connor: First, the oil industry does not pay into the SOPF and has not paid a cent since 1976, as you know, so I don't think we should get too worried about what we're cleaning up.

Second, the point is that the oil industry itself is involved in things beyond oil. They are involved in shipping and receiving HNS bulk cargoes which are not oil.

Third, as far as cleaning up other things like fertilizer or whatever, our view is that the SOPF... This is the beauty of limiting the amount. It's not unlimited, and we believe it shouldn't be because it's not realistic, but also, if it were to be unlimited then you could have theoretically a case where some spill of some product would empty

the fund, and that to us is absolutely not what we're looking for. What we're looking for is an additional tier of funding. That's it.

You might have an oil company that would say they would rather have that money spent on products that they produce and ship, certain HNS and oil only, and not on any other product. They might say that, but in our view, it's not only going to be the oil receivers who would be contributing to a spill that the SOPF would cover, but all bulk receivers.

Mr. Jeff Watson: I think there are legitimate reasons why companies paying into the fund wouldn't want to support the cleanup of other industries and vice versa.

Thank you, Mr. Chair. That's all the questions I have.

The Chair: We have a few minutes. Everybody knows that we do have to be over at the House and the buses apparently are running a little slower because of the weather, so I am going to allow just one question from Mr. Mai, and one from Mr. Simms, and one over here. Mr. Simms doesn't want a question. Mr. Mai, go ahead with one question, please.

Mr. Hoang Mai: I'd like to ask Mr. O'Connor a question. I would ask Mr. Wright, but I will go directly to you. In terms of language and in terms of Mr. Wright's recommendation with respect to extending the liability protection to responders and their agents, can you tell us if you agree with the recommendation? If you do, do you have any language for that, or any specific advice on how to amend Bill C-3?

Mr. John O'Connor: First, I would like to say that my association deals with maritime law. With respect to the proposed amendments in the Canada Shipping Act to extend Mr. Wright's company's liability to his agents, mandataries, etc., we support that. The problem with the bill originally was that when Mr. Wright's company was there, they thought they were going to be doing the shovelling themselves. They since have realized it's much cheaper to hire other companies to shovel for them under their direction. At the time, nobody thought about agents, as far as I can recall, but I think it's good that they have it. That's number one.

Number two, his recommendation that we would move inland and when Mr. Wright's company is working at, let's say, Lac-Mégantic, where they worked very hard this summer—not the western, but the eastern branch of his company, they worked hard—and give them the same immunity there, we have no real view on that. But you have to be careful because there are constitutional issues here. When they are cleaning up a spill from a truck that has overturned on a highway in some province, can Bill C-3 give them immunity for what they're doing on that provincial land, under that truck spill? I don't think you can. I would say you should be careful about getting involved in that.

I have no language to propose because we're marine anyway.

• (1010)

The Chair: Thank you very much.

If there are no questions over here, I will thank our guests for being here, both in person and by video conference. Your testimony will go a long way in helping us all understand this. Thanks very much.

Everybody have a good weekend.

The committee is adjourned until our meeting next Tuesday.

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