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# **Standing Committee on Transport, Infrastructure and Communities**

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**Chair**

**The Honourable Judy A. Sgro**



## Standing Committee on Transport, Infrastructure and Communities

Tuesday, November 15, 2016

•(0845)

[English]

**The Chair (Hon. Judy A. Sgro (Humber River—Black Creek, Lib.)):** I'm calling meeting number 32 to order. Pursuant to Standing Order 108(2), we are studying the Navigation Protection Act.

We have several witnesses, and we very much appreciate them taking the time to join us today.

I'll allow you to introduce yourselves, starting with Mr. Vermette.

**Mr. Kyle Vermette (Métis National Council):** Good morning.

My name is Kyle Vermette. I'm an adviser to the Métis National Council.

**Ms. Andrea Hoyt (Environmental Assessment Manager, Department of Lands and Natural Resources, Nunatsiavut Government):** My name is Andrea Hoyt. I'm the Environmental Assessment Manager with the Nunatsiavut Government.

**Mr. Kim Beaudin (National Vice-Chief, Congress of Aboriginal Peoples):** I am Kim Beaudin, National Vice-Chief of the Congress of Aboriginal Peoples.

**The Chair:** Welcome to all of you.

We very much appreciate your taking the time to join us today.

We'll open the floor with Ms. Hoyt.

**Ms. Andrea Hoyt:** Thank you, Madam Chair.

The Nunatsiavut Government is an Inuit regional self-government established under the Labrador Inuit land claims agreement signed by Canada, Newfoundland and Labrador, and the Labrador Inuit Association in 2005.

Although Nunatsiavut remains part of Newfoundland and Labrador, the government has authority over many central governance areas, including health, education, culture and language, justice, and community matters. The Nunatsiavut Government is driven by a set of fundamental principles that arise from the Labrador Inuit constitution. These fundamental principles express our core beliefs in democracy and equality, the preservation of our culture and language, the pursuit of a healthy society, the pursuit of a sustainable economy, and the preservation of the land, waters, animals, and plants of our ancestral territory.

The Nunatsiavut Government operates at two distinct, but connected, levels: regional and community. Under the previous act, all waters navigable by canoe were protected by default. The changes brought in under the Budget Act, 2012 changed the approach to protecting waterways by only listing them on a schedule

to the Navigation Protection Act. In Nunatsiavut, the Inuit homeland in northern Labrador, the act currently protects two water bodies: the Atlantic Ocean and Lake Melville. This was done without consultation with the Nunatsiavut Government, and it removed from protection approximately 15,000 lakes and 2,600 rivers. These waters are used by Nunatsiavummiut for transportation in both summer and winter, and they have been since time immemorial.

The protection under the previous act was a default protection, which is also an approach that closely aligns with traditional Inuit practices that say to protect all land and resources, take only what you need, and use all that you take. To determine that the only waterways worthy of protection by the Government of Canada are the Atlantic Ocean and Lake Melville is to fail to protect our land and waters.

The Labrador Inuit land claims agreement states that the precautionary principle will be used to make resource management decisions. Removing protection from 99.99% of our waters does not reflect the precautionary principle or responsible environmental management.

The Nunatsiavut Government asks that the Government of Canada restore all lost protections to waters in Canada, including navigable waters in Nunatsiavut, and that if any changes are proposed to that regime—the regime of 2005 under which our land claims agreement was signed—that the Government of Canada then consult with Inuit on those changes and accommodate the rights of Inuit.

•(0850)

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

Mr. Vermette.

**Mr. Kyle Vermette:** I'd like to begin by thanking the chair and honourable members for inviting the Métis National Council to appear before you today.

The Métis National Council represents between 350,000 and 400,000 Métis people from Ontario westward. The Métis are one of Canada's aboriginal peoples. Métis are not just a mixed-blood product of the union between Europeans and first nations; we constitute a unique people, distinct from both Europeans and first nations: the Métis nation. The territory of the old northwest is a region we call the Métis nation homeland today.

The Métis National Council was formed to represent the Métis nation at nationally and internationally. It is composed of five provincial Métis governing members: Métis Nation British Columbia, Métis Nation of Alberta, Métis Nation-Saskatchewan, Manitoba Métis Federation, and the Métis Nation of Ontario.

We seek to address water issues on a regional basis, as well as nationally on all policy matters. Again, we're very appreciative of this committee and of the opportunity to address the important work being done here today. The Métis National Council has a number of recommendations for this committee.

First, there is a need for Canada to embrace and implement the post-colonial thinking that the United Nations Declaration on the Rights of Indigenous Peoples codifies: that the Métis nation has an interest in the lands, resources, and waterways that flow through its traditional territory.

The Métis have many unsettled land claims and issues arising from historic dispossession of their traditional territories. One of our goals is to attempt to negotiate a resolution to these issues. In the meantime, there are effects on our traditional lands, which are not always recognized by Canada as traditional lands, where consultation and impacts are not studied, nor are they known. The legal and cultural interests in waterways and the impacts of development on those interests are matters of substantial concern.

Addressing these outstanding claims is part of the reconciliation process demanded by section 35 and class 24 of section 91 of the Constitution Acts, 1867 to 1982, a process that we hope will be undertaken with the nation-to-nation, government-to-government approach that this government has so strongly advocated and which we fully support.

We must ensure that the traditional and cultural ways of life of aboriginal peoples are accounted for, and that includes the way of life of the Métis people. We also must build processes for engaging aboriginal peoples in identifying the sensitive areas where navigation is central, and for engaging the traditional, scientific, and cultural knowledge of the Métis people in assessing what constitutes substantial interference. The duty to consult, in our view, requires this.

I share my colleague Ms. Hoyt's view that a restoration to the protection of all waterways in Canada is necessary. Where potential changes or modification to that approach are being considered, the Métis nation should be consulted on how that would be implemented and how that would be set out in the schedule.

We view this legislation as an important element in the protection of the environment. There are, in our view, parallel processes in reviewing environmental protection legislation happening at the federal level. This is an important aspect of that review.

We have been contributing to the modification of the Canadian Environmental Assessment Act. Our recommendations with respect to that legislation, while important, would in many ways be of no effect if it is not working in concert with this piece of legislation.

● (0855)

The duty to consult would be triggered only if works were happening with respect to a protected waterway. If that waterway in our traditional territory is not considered protected or subject to this legislation, we are not able to be consulted or to provide our input to protect our aboriginal rights with respect to water.

Both the federal government and the provinces have responsibility for the environment, as do the municipalities. The Métis nation

should also have the authority in this regard. In our view, this legislation should provide for this authority and jurisdiction in a way that's consistent with the principles of the United Nations Declaration on the Rights of Indigenous Peoples. The federal government must remain committed to full engagement of the aboriginal peoples, and in particular the Métis nation, on matters that affect them. Federal leadership remains key.

Many of the challenges could be addressed through the CEEA process. Certainly, we want to be efficient and avoid duplication. Aboriginal peoples make their living from waterways, fishing for food and for commercial purposes. That remains a central feature for the Métis nation and Métis communities. As a result, there is a need to be considered in the assessment of legislative change to ensure the Métis way of life is protected and valued under this legislation.

Again, I thank this committee for the opportunity to speak. I'd be happy to answer any questions you may have.

● (0900)

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

Mr. Beaudin, the floor is yours.

**Mr. Kim Beaudin:** Dear chair and vice-chairs, committee members, and guests, good morning. I'm Kim Beaudin, the Congress of Aboriginal Peoples' national vice-chair, and I'm pleased to be speaking to you from the city of Saskatoon.

I would first like to acknowledge the traditional Algonquin territory on which this committee hearing is taking place in Ottawa, and the traditional territory of Treaty 6, where I am speaking from today.

I would also like to thank the Standing Committee on Transport, Infrastructure and Communities and the Government of Canada for providing CAP with the opportunity to have a voice heard on this important piece of legislation. Our national chief, Robert Bertrand, has asked me to attend the committee hearing addressing the proposed changes to the Navigation Protection Act.

Since 1971, CAP, formerly known as the Native Council of Canada, has committed itself to advocate for the needs of off-reserve status and non-status Indians, Métis, and southern Inuit peoples. We also serve as a national voice for provincial and territorial affiliate organizations. The congress represents a significantly large constituency of indigenous people in Canada. It's presently estimated that over 70% of indigenous people live off reserve.

For over 45 years CAP has committed itself to address issues on the environment and find solutions. Our people are spread out all over countless urban, rural, and remote areas. We all collectively share the connection to the land and our waterways. This connection has been deeply rooted in the history of our people and that of the country for hundreds of years. It is vitally important for our indigenous people, and for that matter all Canadians, not to lose the connection.

The Navigation Protection Act changes are important to indigenous people because they leave millions of water bodies essentially unregulated. With the majority of navigational waters removed from the purview of the act, there is no government involvement in most development projects, and therefore nothing to trigger a duty to consult.

Mikisew Cree First Nation from northern Alberta had brought a challenge with respect to changes to environmental legislation such as the Navigation Protection Act. The decision arising from Mikisew Cree First Nation v. Canada was notable because it recognized a much broader scope of duty to consult than had ever been explicitly recognized by Canadian courts, not only when physical works were proposed, but also when Parliament or provincial legislation proposed to change legislation in a way that affects aboriginal rights.

Regarding the proposed changes to the Navigation Protection Act, CAP would like to emphasize that the federal government must take into account its responsibility to engage and consult with all indigenous people. It is forums like today's committee hearings that afford indigenous organizations, including the congress, a much-needed opportunity to give a national voice to its constituents.

The congress sees three current avenues where the federal government can use a mechanism to implement reconciliation through open engagement and consultation: the 94 calls to action as proposed by the Truth and Reconciliation Commission; the United Nations Declaration on the Rights of Indigenous Peoples; and CAP's historic win in the Supreme Court of Canada Daniels v. Canada case in April of this year, declaring that Métis and non-status Indians are Indians under section 91.24 of the Constitution Act, and the federal government has a fiduciary responsibility.

Regarding the Daniels case, Supreme Court Justice Rosalie Abella stated, "As the curtain opens wider and wider on the history of Canada's relationship with its Indigenous peoples, inequities are increasingly revealed and remedies urgently sought."

An opportunity to remedy lies in the distinct possibilities for the federal government and the congress to come together under progressive reconciliation, in the form of engagement and consultation. A positive example of a successful consultation may be found in the 2002 Species at Risk Act, SARA. It is a piece of federal legislation that relied heavily upon, and had partnership with, indigenous peoples in its design and presentation to Parliament. CAP was actively involved in the process, and as a result indigenous traditional knowledge, ITK, can be incorporated with specific assessments to come to decisions. The SARA process identifies ITK holders and creates processes for indigenous peoples and communities to be active as decision-makers. With these processes, Canada, in partnership with indigenous peoples, is making its commitment under the United Nations Convention on Biological Diversity a reality.

In this respect, CAP asks that, in order to ensure that the proper measures are taken to protect our waterways, a process of reconciliation between the government and indigenous peoples must continue to take root and grow until it's inclusive of all our people, including those who live off reserve.

● (0905)

Our people, the generations before them, and those who will follow tomorrow, have lived on and off the land for hundreds of years. They know what is and what is not working in terms of policy and action, and what can work to serve the best interests of all Canadians. The land and waterways are sacred to them. For thousands and thousands of them, it is their way of life, whether it's through farming, harvesting, hunting, or fishing.

The off-reserve indigenous peoples of Canada are a living wealth of knowledge and wisdom when it comes to the environment. They are ready and able to assist the government to achieve these kinds of effective solutions on climate action that will benefit all of us.

I would like to say to the Government of Canada that CAP is ready to engage and work with the Canadian federal government, in addition to provincial and territorial governments, to develop concrete, sensible, and mutually beneficial solutions to ensure that the Navigation Protection Act remains inclusive of all, and beneficial to all indigenous people of Canada, whether they live in urban, rural, or remote areas.

The management and protection of our country's waterways is and will remain vital to everyone—us, our families, and our children of tomorrow.

I would like to thank you for giving me the chance to speak with you today. *Meegwetch.*

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

We will now commence the questioning. We'll go to Ms. Block, for six minutes.

**Mrs. Kelly Block (Carlton Trail—Eagle Creek, CPC):** I want to welcome all of our witnesses here today. I've appreciated hearing from each one of you.

Before I ask questions of the witnesses, I do have a question for the chair.

I note that we received an amended notice of meeting this morning, and one of the witnesses has dropped off the list. I think it was the Assembly of First Nations. Given that we have fewer witnesses, and that there could be bells shortly after 10 o'clock, will we be ending our time with the witnesses earlier than expected and dealing with committee business, or will we continue on with our witnesses and deal with whatever comes?

**The Chair:** I'm in the hands of the committee, but we have these very important witnesses here today, so I think it's important that we ensure they have sufficient time to answer all of the questions. We'll play it by ear. Let's make sure that our witnesses have full opportunity and we don't cut them off.

I suggest we continue on with the schedule the way we have it in front of us.

**Mrs. Kelly Block:** Thank you for that clarification.

My first question would be for Mr. Beaudin with the Congress of Aboriginal Peoples.

In your opening remarks, you mentioned that your chief had asked you to attend today to speak to the proposed changes to the Navigation Protection Act. I'm wondering if you could tell us what those proposed changes are. As a committee, we haven't seen any, so I'm wondering what you're referring to.

**Mr. Kim Beaudin:** On the proposed changes, I'd have to get back to you on that one. Some of the information that was provided to me is quite extensive. Because I'm new on the job here, it's actually been quite a learning curve. I'd have to get back to you on that one.

**Mrs. Kelly Block:** Okay, thank you for that.

I think all of the witnesses have spoken to the duty to consult. The next question I have is whether you believe that by attending this committee meeting and sharing your thoughts with us on the Navigation Protection Act your organizations, your members, will have been consulted.

Anyone of you can answer that question.

**Mr. Kyle Vermette:** Madam Chair, I can say from the perspective of the Métis National Council that we certainly wouldn't view this meeting as consultation, in the same way that we haven't viewed our participation in review under CEAA as consultation. That process has been a very in-depth process. I'm a member of the multi-interest advisory committee under that process, as is my colleague, Ms. Hoyt. We've explicitly shared that same view.

I think that one of the challenges today is that very point. There are no proposed changes in front of us. It makes it particularly challenging to be able to respond and say from the Métis National Council's view, we're not sure what you're considering doing, but here's how we would respond to those potential changes.

I think that one of the important aspects of this process would be to ensure that any changes would include consultation with the Métis National Council and the Métis nation, and in particular through our governing members.

Thank you.

● (0910)

**Mrs. Kelly Block:** Thank you.

On June 16, 2016, ministers Garneau, LeBlanc, Duncan, McKenna, and Bennett announced that they would begin consultations on the Navigation Protection Act. Have any of you met with any of these ministers since then?

**Ms. Andrea Hoyt:** From my knowledge, the Nunatsiavut Government has not been consulted on any proposed changes to the acts, although we are participating in the various environmental reviews. Our understanding is that, from these four reviews of environmental legislation, the ministers will be moving forward with legislative changes—or not moving forward with legislative changes—and that the ministers will consult on those changes once they have the advice from the various reviews.

**Mrs. Kelly Block:** Has anyone else met with any of the ministers?

**Mr. Kim Beaudin:** Our organization has not met with any of the ministers at this point.

You went back a little with respect to consultation. I want to touch on that as well. I believe that this is certainly a start, but our

organization, when it comes to consultation, has a number of provincial and territorial organizations across Canada. They would have to be consulted with as well. What I am referring to is that, since we have a governance structure within the congress, we reach out to the PTOs to address this. This announcement coming from the minister would certainly benefit our organizations in ensuring that the grassroots voices are heard.

**Mrs. Kelly Block:** Mr. Beaudin, you observed that your organization was actively involved in the process of developing SARA back in 2002, and you also stated that you were willing to work with the current government in addressing any changes that might be made to the Navigation Protection Act. You touched a little on it, Mr. Vermette, in terms of what a process would look like. I would quickly ask you to reflect on what being actively involved in the process looks like for each of you.

**The Chair:** That would have to be a short answer.

**Mr. Kim Beaudin:** The grassroots people.... We address a number of people who really work from the ground up. When we have meetings, for example, we invite the public out, particularly in our focus on indigenous people in urban areas, and we ensure that their voice is heard. That's important. Back in 2012 when the changes were made, it sent a really negative ripple through our communities. Indigenous people particularly were quite concerned because of the protection with respect to water that was being removed. The environment is very important for indigenous people. It's very important that we talk to our people, and this is certainly a good start.

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

Mr. Hardie, you have the floor for six minutes.

**Mr. Ken Hardie (Fleetwood—Port Kells, Lib.):** Thank you, everybody, for being here.

One thing I'll mention off the top is that things will occur to you that you may not have a chance to say in an answer or subsequently. I would invite you to submit ideas, thoughts, or recommendations in writing to us. That's the way we get it on the record, and that's the way we can consider it when it's time for us to do our recommendations on this study.

One of the key things we've been considering here and on another committee is the fact that the changes were made for a reason. They were made primarily to assist in public works proceeding in a more reliable and less time-consuming and costly way. With many of the things we've heard so far, the concerns seem to be framed more around what could happen as a result of the changes.

Do any of you have any specific examples where as a result of the changes something has happened that you would rather have not seen happen or you felt powerless to deal with? Have you had any specific examples of impediments to navigation on a waterway as a result of its no longer being protected?

● (0915)

**The Chair:** Ms. Hoyt.

**Ms. Andrea Hoyt:** In northern Labrador, where I live and the Nunatsiavut Government is, we have relatively little development going on in our traditional territory right now. However, there is a proposed mine, which is actually on the Quebec side of the Quebec-Labrador border, and it has been registered for environmental review in Nunavik but not in Newfoundland and Labrador or with CEAA. That proposed mine is proposing to put a road across Nunatsiavut, from the Labrador-Quebec border to the Atlantic Ocean, and it's going to cross several hundred waterways. Under the current Navigation Protection Act, none of those waterways have protection or would require review.

**Mr. Ken Hardie:** Thank you for that.

I have a question for you, Mr. Beaudin. Obviously, you didn't have an opportunity to comment on this when the changes were made, but it would appear that we've gone from a regime where everything, as noted, was protected by default, and therefore you had an opportunity to comment before something happened, to now, where it's only after the fact. Is that your understanding as well?

**Mr. Kim Beaudin:** Yes, it is. It is our understanding. Our organization certainly wants to be actively engaged in the process and in terms of ensuring that our voice is heard from coast to coast, and yes, for sure, what you're saying is the case.

**Mr. Ken Hardie:** This is a question for you and Mr. Vermette.

The concept of a nation-to-nation relationship would suggest that it has to happen not only on a day-to-day basis as individual projects come up, but also in the macro sense as to how we put a framework together for consultation off into the future.

As you've noted, this session is not consultation per se, but what would a good consultation system look like to you? You can keep your answer brief, but again, I do encourage you to follow up with a document to us to set that framework in place.

Mr. Vermette.

**Mr. Kyle Vermette:** As we mentioned in our comments, the challenge is just as you mentioned to Mr. Beaudin. The opportunity to comment doesn't occur before something happens, but after the fact. I would go further and say that sometimes it doesn't happen at all. An important part of what consultation would look like would be early notification of and access to information about what's being proposed with respect to a particular waterway, and again, even prior to that, as I mentioned, it would be ensuring that all waterways are subject to the act.

As you said, it's not about dealing with the matter on a project-by-project basis. There's the important aspect of ensuring that there's a broader focus. The CEAA process is considering that concept, as I mentioned, and I think it would make sense to be consistent in this process and to look at both the specific and the broader pictures.

• (0920)

**Mr. Ken Hardie:** Mr. Beaudin, one of the things we've heard from proponents, the people who want to build things and get things done, such as municipalities and others, is that they would like to have some sense of consistency and reliability. How do we mesh that? How do we overlay that requirement or feeling that they have versus your requirement to be acknowledged, engaged, and consulted?

**Mr. Kim Beaudin:** We believe that community engagement is number one. If the federal government shares that information prior to setting any policy issues on the table, that's really important, and at least people will have an opportunity to voice their concerns. Sometimes there will be a lot of positive things that will come out of it as well. These are very important things that need to happen.

A number of other organizations have stated that the consultation process tends to come after the fact, or even just during the process, when the decisions have already been made. Yes, with these kinds of things that happen, it curtails a lot of things that we're trying to do. Even for our organization itself, when we establish policy issues with respect to the environment, those are the kinds of things that we want to ensure the government is hearing in terms of what our constituencies are saying.

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

Mr. Aubin.

[Translation]

**Mr. Robert Aubin (Trois-Rivières, NDP):** Thank you, Madam Chair.

Welcome to all our guests. Thank you for joining us today.

Your expertise is particularly important for us this morning because, despite all the love I may have for nature, I remain a city dweller. Your way of life, which is clearly more in tune with nature, is probably going to provide us with a totally different perspective on this subject.

My first question goes to Mr. Beaudin.

If I understood your opening remarks correctly, you mentioned that the 2002 consultation on threatened species was a success. In what respect was that specific consultation more successful than others that took place later?

[English]

**Mr. Kim Beaudin:** In 2002, the congress was extensively involved with the Species at Risk Act. Actually, we had representatives on the committee itself. Our voice was at the table on a continual basis. I know they've actually made changes to that, as well. I'm not even sure where it is at this point, but I know that the congress is not involved in that process anymore. That sets us back a little bit. That's a big thing for us, in terms of the congress.

[Translation]

**Mr. Robert Aubin:** Thank you.

Am I interpreting you correctly when I say that the fact that you were present at the table means that you were not only heard during the consultation but you were also understood? If so, the conclusions can be more relevant because you are at the decision-making table. That question is open to all the representatives here.

[English]

**Ms. Andrea Hoyt:** I think it's very important that—

**A voice:** Mr. Beaudin is speaking.

**The Chair:** Mr. Beaudin, you have the floor. We weren't able to...

**Mr. Kim Beaudin:** We got thrown off?

**The Chair:** Yes, just give us a second.

Do you want to restate your last comment?

**Mr. Kim Beaudin:** I was just saying that when the congress goes about developing policies and when we engage the community, we structure it in such a way that people—we'll call them community experts—get involved in certain policy issues. Certainly, with respect to this issue, these people are important. These are the experts that we draw upon. You don't necessarily have to have a Ph. D., for example, in the environment to have something important to say. These are the kinds of things that we look at.

As I stated earlier, the congress was left off the table before with respect to changes. We're wondering how we're going to address that now because it is important for us to be heard.

• (0925)

**Ms. Andrea Hoyt:** When aboriginal groups are at the table for the discussions where the decision is being made, and the experts are at the table together, it's a sharing of equals. I think there's much better input than when the experts just send down a pro forma request saying that they're doing this and they want our reaction. I think that might be one of the deficiencies of the previous Navigable Waters Protection Act. There were so many approvals that had to happen, and communities and aboriginal groups were being asked for reactions to so many permit processes.

How can that be fixed? I think the main way to fix it would be for local communities and aboriginal groups to be involved earlier on in the process, in the planning process, so that the input can be given before the permit goes out. The input can be given when you're discussing how to build the road, whether that's a good place to build the road, and whether the road is needed.

**Mr. Kyle Vermette:** Thank you.

I can share my own personal experience in dealing with the four working groups under the development of the pan-Canadian strategy on combatting climate change.

One of the challenges for the Métis National Council in not sitting on those working groups was that we were always behind. We were attending meetings, but we didn't have full information. We received as full information as we could possibly get, but we were always two to four weeks behind. Particularly when some of these processes are foreshortened in order to meet set timelines and to be responsive in meeting the government's commitments, I think that every opportunity to have as much information as possible to make effective and responsible decisions is important, so that when our Métis government is trying to make decisions, they're in the same place as this government.

It wants to be adequately informed and have an appropriate time to follow its own internal processes to ensure that the decisions and input it's providing are both transparent and supportable and appropriate to addressing the issue being discussed.

Thank you.

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

Mr. Badawey.

**Mr. Vance Badawey (Niagara Centre, Lib.):** I'm going to drill down a bit deeper with respect to some of the conversation we have had and questions that are being asked.

The Navigation Protection Act currently requires that the Governor in Council be satisfied that an addition of a waterway is in the national or regional economic interest, in the public interest, or is requested by a local authority. That's what I want to drill down on, a local authority, so I'll get back to that in a second.

Transport Canada relies on the consultations undertaken by proponents to demonstrate that the addition of a waterway is the greater will of potentially affected parties.

I have three questions, some of which have been answered already, but I want to drill down a bit further on them to come out with a proper recommendation based on our discussion today.

First off, what changes, if any, would you like to see made in this process? I'll ask all three of you that question.

**The Chair:** Who would like to go first? I appreciate the deep thought that you're having to those very deep questions.

Please, Ms. Hoyt.

• (0930)

**Ms. Andrea Hoyt:** I think that the Nunatsiavut Government would like to see the schedule removed and have all waterways protected by default. If anything is not going to be protected, then there should be a good reason to not protect it.

**The Chair:** Mr. Vermette.

**Mr. Kyle Vermette:** Madam Chair, I would echo the comments of my colleague, Ms. Hoyt, about making an amendment that removes the schedule. I think reversing the approach to protection being the initial view, and the consideration to opt out of protection, makes good sense.

A greater recognition and understanding about how traditional knowledge is being considered is important as well.

Finally, and this would feed into all of the discussions we've had, ensure that there is appropriate capacity for aboriginal governments to participate in those consultations.

Thank you.

**The Chair:** Mr. Beaudin.

**Mr. Kim Beaudin:** Prior to the changes in the act, 99.9% of the waterways were protected, and we certainly would like to go back to that.

There are a couple of things that we agree with, which Kyle Vermette of the Métis National Council was talking about, in referring to traditional knowledge and capacity. Capacity is important. We want to ensure that community people are engaged in the process, and for us to reach the people, these are the kinds of things we would need to implement to ensure that people are heard.

One thing I particularly want to stress is that when we have 70% of indigenous people living in urban areas now, that's a significant shift in the population. It's important that the people from an urban centre be heard as well. It can happen, if we have the capacity to do so.



**Mr. Vance Badawey:** I have to make a comment on that. I'm sure you're aware that Minister Wilson-Raybould has stated that Canada must adopt the United Nations declaration. With that, it does speak a lot about what we're speaking about today in particular as it relates to local authorities and having the aboriginal community be included in those local authorities. Therefore, this happens before the fact. What I mean by this is that consultation happens before the fact versus after the fact.

With that, would you like a more formal process within the application guide?

**Ms. Andrea Hoyt:** I think that any consultation process needs to be developed with the groups that you want to consult. The consultation process that might work for the Navigation Protection Act, as it may become, might be different from CEAA consultation and different from the Fisheries Act authorization and consultation. I think the process would have to be developed, and there are many groups involved. The Nunatsiavut Government, as I said, represents the Labrador Inuit. There's also the Inuit in Nunavik, and the Inuvialuit in the western Arctic. They're not here to speak for themselves, and I'm not speaking for everybody, but that's just the Inuit, and then there are also the Métis and the first nations.

**The Chair:** Mr. Vermette.

**Mr. Kyle Vermette:** Madam Chair, the Métis National Council is made up of its five governing members. Ultimately, what the mechanism would look like for decision-making would need to be developed through our governing members. I think that's an important aspect from our perspective. I think that I would share your view that the United Nations declaration acknowledges and requires early access information, and one of the easiest ways to do that is to ensure that the Métis nation is a part and a member of the decision-making body.

Thank you.

• (0935)

**The Chair:** Mr. Fraser.

**Mr. Sean Fraser (Central Nova, Lib.):** Thank you very much to each of our witnesses. I found your testimony very helpful today in understanding the indigenous perspective of the changes to the Navigation Protection Act.

I'd like to start out on the list of scheduled waters. As my colleague Mr. Badawey alluded to, there is a process to add waterways to the list. Was that process ever made known to the groups that you each represent?

Mr. Beaudin, I saw you shake your head.

**Mr. Kim Beaudin:** Yes, that's correct. We were never consulted with respect to what you referred to.

**Mr. Sean Fraser:** Ms. Hoyt and Mr. Vermette, was the process to add waterways ever made known to your respective organizations?

**Ms. Andrea Hoyt:** The process is in writing, but we have not been approached to ask whether we want to add any or whether we felt that the list that is currently on the two waters that are protected in the schedule is sufficient. We haven't been consulted.

**Mr. Sean Fraser:** Mr. Vermette.

**Mr. Kyle Vermette:** I'm not aware of any formal communication to indicate that it is a process that's available to the Métis National Council, so in response to your question, I'm not aware of that having happened.

**Mr. Sean Fraser:** Thank you.

One of the reasons I ask is it's unclear to me whether indigenous levels of government have the same access to make requests that municipal governments or provincial governments do, and I was curious to know if it was ever communicated to you for that reason.

If the schedule does stay as part of this, I find it cumbersome. I find it difficult to get something added to the list. Is there a method, other than just keeping the list wholesale, that would make it easier for users or indigenous groups to make a simple request to have a waterway tentatively added to the list pending a further investigation? Is there some mechanism you can think of that would, without doing a wholesale reversal, make it easier for your various organizations to make sure the waterways you use for navigation are protected?

Ms. Hoyt.

**Ms. Andrea Hoyt:** No, even in our interactions with the federal government on changing any schedules to any acts that I'm aware of, I don't think there is a simple way, unless we were to reverse it and have a list of what is not protected. I think that makes more sense to us.

**Mr. Sean Fraser:** Mr. Vermette, go ahead.

**Mr. Kyle Vermette:** I would agree. I think the Métis nation's relationship with the federal government, and, I would say, the recognition of the federal government's relationship with the Métis nation, is new, so we don't have a whole lot of experience with efficient ways to make changes to federal legislation.

**Mr. Sean Fraser:** That's a fair comment.

Mr. Beaudin, short of doing a wholesale reversal, is there a way that would make it easier for groups within your organization to add to the schedule waterways that you use for navigation?

**Mr. Kim Beaudin:** There are a number of government officials who work within the departments. A phone call or an email stating that this is what the federal government is looking at would probably go a long way in terms of informing our constituents and the organization. What we do is pass on that information to all the presidents and chiefs among our provincial and territorial organizations across Canada.

**Mr. Sean Fraser:** I will have to plead a bit of my own ignorance here. I am a lawyer by trade but have no expertise in aboriginal law. My basic understanding is that traditional practices that were in place at the time of European contact would be protected under the Constitution.

Mr. Beaudin, is there not already a constitutional duty to consult when there is a project that's going to impact a waterway that was historically or traditionally used for navigation?

● (0940)

**Mr. Kim Beaudin:** There is, but what we are finding is that, over the last number of years, it has been watered down quite significantly. Again, some of the concerns.... I'll give you an example from Saskatchewan. When we attend any kind of meetings with government officials, the constituents are concerned that it will be considered consultation if you ask one or two questions. That's one thing that comes out all the time: they don't believe it is consultation. It has to be deeper with respect to some of the information we are seeking.

That's where we are coming from with respect to the congress.

**Mr. Sean Fraser:** I have only a minute or so left, so I'll ask a very quick question. This is for each of you.

I assume that some kind of mandatory notice to indigenous organizations in the region anytime a project will impact a navigable waterway is an essential component of any changes made to the legislation.

Mr. Beaudin, go ahead.

**Mr. Kim Beaudin:** Yes, for sure, I agree with that.

**Mr. Sean Fraser:** Mr. Vermette, go ahead.

**Mr. Kyle Vermette:** Yes. I think appropriate notice to the aboriginal government in the region would be necessary.

**Mr. Sean Fraser:** Ms. Hoyt, go ahead.

**Ms. Andrea Hoyt:** I think notice is helpful, but there are so many notices that come through. Capacity is a real problem within our organizations. In Labrador, a study was done on traditional use and occupancy before the Labrador Inuit lands claims agreement process started, and the book is called *Our Footprints are Everywhere*, because all water and all land were used.

**Mr. Sean Fraser:** Thank you.

**The Chair:** Mr. Berthold, go ahead.

[Translation]

**Mr. Luc Berthold (Mégantic—L'Érable, CPC):** Thank you very much, Madam Chair.

Thank you all for being here this morning for the committee's study on the possible review of the Navigation Protection Act.

Like you, I was astonished from the outset at the manner in which the committee began its study on the Navigation Protection Act. We are currently studying future amendments, amendments that the government seems to have already decided to make without telling us about them. This is a concern for our party.

In fact, on several occasions, the Minister of Transport and the Minister of Fisheries, Oceans and the Canadian Coast Guard have clearly indicated they would like to make amendments to the act and re-establish protections that were in the previous version of the act, before the most recent amendments.

In parallel, the minister committed, in the letter he sent to the committee, to hold his own consultations with aboriginal communities and with the various groups involved. To our great surprise, during an appearance before the committee, the Minister of Transport dismissed the consultations held by the Department of

Transport itself, which sought to find out the expectations and needs, and rather to hold a more formal consultation with a view to justifying the potential amendments to the Navigation Protection Act.

With my colleagues, I have had a number of occasions to quote different passages from letters the minister has sent us, so I will not go back over them. However, I am a little surprised to see that even Transport Canada has decided to make hearings of this committee into official Transport Canada consultations. My experience in Parliament is short, but I have not often seen that.

In a letter, counsel for the Heiltsuk Nation writes:

I am writing to you because Deputy Minister Michael Keenan has invited Chief Marilyn Slett to state again that the First Nation would like to appear before the Standing Committee on Transportation.

So the deputy minister is asking a chief to repeat her wish to appear before the committee rather than asking the first nation to send its comments directly to Transport Canada officials. I confess that I find that very surprising.

I quote from another letter, this one written by Mr. Keenan:

...we will be in touch with the committee to encourage it to hear what the coastal First Nations and the Heiltsuk First Nation have to say.

So you can somewhat understand our shock at this process. We would have liked to be able to discuss your proposals and propose potential changes to the act. In fact, it has been stated, on a number of occasions, that the minister is going to make changes to the act. We would have liked to hear what you have to say about those amendments.

Ms. Hoyt, I accept what you said just now about the number of requests for opinions about the various changes. It must be very difficult for a small organization like yours to follow the developments, in comparison to the huge machine of the federal government. You also have to deal with local and provincial communities. So I imagine that the fact of coming back before the committee to restate your comments on the matter will add an additional workload to your community.

I was listening to your concerns about the protection of waterways, which seem perfectly legitimate to me. In your opinion, would such a review of protection measures require Transport Canada to hold wider consultations directly with your communities?

Ms. Hoyt, perhaps you can answer first.

• (0945)

[English]

**Ms. Andrea Hoyt:** The communication we've had from the Minister of Transport said that the minister asked this committee to review the act, and the minister will be consulting with aboriginal groups after this process is complete and before any changes are made. The minister has not told us that there are any changes. No revisions to which we need to react have been written, but this committee is looking at what changes could happen and that's why we're here to say that all lost protection should be restored and all waterways should be protected by default. However, my understanding is that the minister will be fulfilling the duty to consult on a government-to-government basis regarding any changes to legislation.

**The Chair:** Go ahead, Mr. Vermette.

**Mr. Kyle Vermette:** Madam Chair, I would agree. Part of the purpose in appearing today is first, to identify clear matters that we want stated on the record. Second, we want to ensure it's understood that a fuller and deeper consultation, which as the member mentioned, has been a commitment made, needs to actually happen.

Certainly from our perspective, this process is not over yet and we anticipate that those amendments to the legislation will happen as a result of the report of this committee. From our perspective, we're providing input to this committee to feed back to the minister and we would expect that we would have an opportunity to provide input and to be consulted on any of those proposed changes at that time.

Thank you.

**The Chair:** Mr. Beaudin, do you want to add a comment?

**Mr. Kim Beaudin:** Yes and thank you for the question.

Regarding the relationship with the minister's office, we want to go back to see where we are with respect to the letters that were referred to just a couple of minutes ago. I want to go back to our office to find out where we are.

One thing I do want to stress is that the congress certainly wants to be engaged going forward on a nation-to-nation basis. These are important to us.

Yes, that consultation process is going to be on our radar—there is no question about it—straight to the minister's office.

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

The floor is yours, Mr. Sikand.

• (0950)

**Mr. Gagan Sikand (Mississauga—Streetsville, Lib.):** Madam Chair, I am, with all due respect, a little shocked with the comments of my colleague, Luc Berthold. To the best of my knowledge, I know that these witnesses weren't consulted earlier.

Having said that, I do want to switch to the NPA's opt-in, opt-out program. That's what I've been zeroing in on, because I really feel that it demonstrates the uncertainties with the legislation.

The NPA prevents granting owners of works on non-scheduled waters the ability to opt out of the NPA regime after five years of the amendments coming into force. Do you know of any works that

have taken this opportunity, and how in your view, would navigable waters be threatened by opting out?

Andrea, we'll start with you.

**Ms. Andrea Hoyt:** I do not know of any examples in Nunatsiavut.

**Mr. Gagan Sikand:** Okay, that's fair.

**Mr. Kyle Vermette:** I'm also not aware of any examples, in response to your question, but certainly, if we're in a position to make written submissions, that could be something we could address in those submissions.

**Mr. Gagan Sikand:** I'd appreciate that.

Kim.

**Mr. Kim Beaudin:** Yes, it's the same for the congress. We're not aware of any examples, but we are certainly going to take the opportunity as well to draw up any submissions on that. We welcome the opportunity to submit those, so yes, we'll be doing a little bit of an investigation process.

Thank you for that question.

**Mr. Gagan Sikand:** Okay, I'd appreciate it.

Madam Chair, I would like to split my time with my colleague.

**Mr. Angelo Iacono (Alfred-Pellan, Lib.):** Thank you, Madam Chair.

I'd like to begin by thanking our witnesses for coming today and to reassure them that, contrary to what my colleague, Luc Berthold, says, a consultation is not a single item. True consultation is a relationship and that is our hope for this process.

[Translation]

Since you have travelled to be with us this morning, I would like to give you the opportunity to tell us about your vision and expectations for the consultations on the Navigation Protection Act.

This meeting is the beginning of the process. It is the opportunity for you to tell us about your recommendations before changes are suggested. It is the opposite of what my colleague said previously. We want to know about your recommendations before we propose anything. So feel free to tell us what they are.

Thank you once again for coming to meet with us this morning.

[English]

**The Chair:** Ms. Hoyt.

**Ms. Andrea Hoyt:** *Merci beaucoup* for that open offer.

I don't have a clear answer for you on exactly how I think the consultations should happen. I think that in the future, once there is a new act...I assume you're talking about the consultations on the changes, right?

I think that we need to have something to react to, some sort of idea of where the government is going. I've told you what I think—restore all lost protections, and have everything protected by default—but I don't know where the federal government is heading, and if they're heading in a totally different direction, then it would be helpful to know that. As my colleague said, the more information we have and the earlier, the more meaningful our responses are.

**Mr. Kyle Vermette:** Madam Chair, the Métis National Council has made some early recommendations through my earlier comments. I am grateful to this committee, through Madam Chair, for the opportunity to provide further detail.

What consultation would look like is a challenging question to answer at this particular point in time. One of the important aspects for the Métis National Council is that however it goes, the development of what that looks like includes the governing members in developing that process, so that it fits both our national interests but also works on a more regional basis.

Again, we've highlighted some big principles today, but the nuance is important. I think that's something I've heard today from this committee, that there are many details to this current act that are challenging and could potentially use revision. Once we have a sense of what those are, an opportunity to have more of the nuance, I think we'd be in a better position to reply in a fuller way.

Thank you.

● (0955)

**The Chair:** Mr. Beaudin, do you have a short response?

**Mr. Kim Beaudin:** Yes, with respect to vision, we want to ensure that our provincial and territorial organizations in Canada are consulted. Vision can encompass a number of things, and once the information is provided to us in terms of the details, then we're certainly going to submit something to the federal government. I like that question. I think it's very important. It encompasses a number of things, and yes, we're going to take those steps, certainly.

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

Mr. Rayes.

[*Translation*]

**Mr. Alain Rayes (Richmond—Arthabaska, CPC):** Thank you, Madam Chair. My thanks to the witnesses for joining us this morning.

As you know, and as the testimony shows, the federal approval process for the projects proposed and scheduled in the legislative measures for protecting navigation no longer automatically lead to a federal environmental assessment. That has been the case since the act went into effect in 2012, if I am not mistaken.

Clearly, the mandate the minister received is to restore lost protections and incorporate modern safeguards. In your view, what would modern protection safeguards be? I would like to hear what all three of you have to say.

[*English*]

**Ms. Andrea Hoyt:** I'll start. As my colleague mentioned, the various environmental protection pieces fit together: CEAA, the environmental assessment process, and the various permit approval

processes. Before 2012, a federal permit was a trigger for environmental assessment. Some projects are assessed under CEAA 2012. A good, modern process will step back and be a holistic sustainability planning process. That way, before you get to the permitting of a culvert, you already know what the regional vision is for economic development and environmental sustainability, and you already know how the local aboriginal groups feel about the protection of various waterways. That is all done long before you get to the permitting of a culvert.

If you were to modernize and have a more proactive process, that's what it would look like. It would be a planning process, and it would look at long-term sustainability.

**Mr. Kyle Vermette:** I would agree. I would add that it's important for this process to consider co-management mechanisms. Part of the reason is that, as I've mentioned, I've been working through the CEAA review process. I've heard many proponents, in speaking with the expert panel, say that there don't need to be protections under CEAA because there are other processes, permitting and otherwise, that allow for that protection of the environment, for that sharing of information, and for that assessment on impact.

I would reiterate that the need for these legislative processes to work together is paramount. The ability to have an environmental assessment triggered... Again, I don't think there is a want for a cumbersome or repetitive process, but it's important to have a broader, more sustainable view, including a consideration of cumulative effects. It is critical to not just look at it on a project-by-project basis. Those are all important aspects of what a modern process would look like.

● (1000)

**The Chair:** Mr. Beaudin.

**Mr. Kim Beaudin:** In terms of modern protection and assessment, inclusiveness is very important, as well as a holistic approach, including the voices of our elders. I noticed that when we talk about the environment and any issues around the protection of the environment, sometimes the elders are left out of the equation. Their input is really important.

Mr. Vermette talked about co-management, and that's another issue. When we drill down to each area with respect to provinces, co-management comes into effect and we're all part of that process. I know that it can be somewhat cumbersome for the federal government because it is a huge bureaucracy that stretches from coast to coast. I'm hoping that the federal government will look at ways to make it more user friendly with respect to certain organizations. That way, these organizations, whether they're grassroots or not, will have an opportunity to provide input with respect to changes or even recommendations.

These are important, and I thank the member for the question.

**The Chair:** I'm sorry, Mr. Rayes, but your time is up.

Mr. Aubin.

[*Translation*]

**Mr. Robert Aubin:** Thank you, Madam Chair.

I think we would have to be deaf to not hear that you want to see all waterways once more covered by the act by default. I also think I hear your very clear view that the environmental assessment process should be triggered automatically in the event of an infrastructure project on a waterway. However, it seems that you are open to the idea of the environmental assessment process being linked to the scale of the infrastructure. That is to say that the process would not have to be identical for projects of all kinds. In terms of major projects, we could specifically be talking about pipeline projects that are required to cross a very large number of waterways all over the country.

In your opinion, who should be in charge of the environmental assessments for those major projects? Do you believe that the responsibility should lie with the Department of Transport or do you agree with the National Energy Board having it?

I invite you each to answer in turn. We can go in the same order as this morning and begin with Ms. Hoyt.

[*English*]

**Ms. Andrea Hoyt:** We have, happily, not had to address the issue of pipelines in Nunatsiavut at this point.

I think that the National Energy Board has a lot of expertise within the organization. However, in a modern, improved environmental assessment process in Canada, I believe there should be one organization that does environmental assessment and has the capacity to do good environmental assessments for all the projects it assesses. The National Energy Board has other responsibilities, so I think it should be CEAA.

• (1005)

[*Translation*]

**Mr. Robert Aubin:** I used pipelines as an example, but, in your case, power lines would be more appropriate.

Would your answer be the same in that case?

[*English*]

**Ms. Andrea Hoyt:** Yes, I think that the one organization that does environmental assessment and does environmental assessment well should do environmental assessment for linear projects as well as non-linear projects.

**Mr. Kyle Vermette:** I share my colleague's view that whoever is responsible for conducting environmental assessments needs to be one body. With respect to whether that's the National Energy Board, we're just in the process of considering how the process may be modernized, so I'm not sure we're in a position to formally respond to that.

In principle, I think that avoidance of duplication and ensuring that whoever is responsible for that decision-making is competent, experienced, transparent, and is viewed as capable is an important aspect.

[*Translation*]

**Mr. Robert Aubin:** Your turn, Mr. Beaudin.

[*English*]

**Mr. Kim Beaudin:** Thank you for the question.

The Congress of Aboriginal Peoples is leaning toward one body with respect to any changes or recommendations coming forward. What we're finding overall is that if you have two or three different committees or bodies looking at different changes to legislation, or having to approve a pipeline for example, it's like a big political football. It goes from one thing to the next, and we're not sure who is going to make the decision.

Of course, as you're aware, the pipeline issue has been in the news quite significantly across Canada, and of course now it's touching the United States. It's important that one body speak to that.

Again, we're going to look at this and send a formal response back to the federal government. I think it's a really important question, and I thank you for that.

**The Chair:** Mr. Aubin, your time is up as well.

Everyone has had an opportunity to ask their questions. Witnesses, if you could make some written submissions to the committee when you've had some additional time to think about things, it would be helpful. As you know, we're examining this to see if there's a solution that deals both with your concerns and the concerns of local governments for a streamlined process. Your suggestions as to what kind of a process that might look like could be very helpful to the committee in the recommendations that the committee will make to the minister as a result of our consultations and our review that we are doing here.

Thank you very much to all our witnesses. We will excuse you.

We will go in camera for committee business.

**Mr. Vance Badawey:** Madam Chair, may I just request something from the analyst?

We have identified local authorities as those that are consulted during these processes. Could we have the names of those local authorities? I'm assuming they are municipalities, territories, etc., and added to that, the process they would abide by in these situations when waterways or things of that nature are added.

Thank you.

[*Proceedings continue in camera*]





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