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Chair

Mr. Mervin Tweed

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• (1105)

[English]

The Chair (Mr. Mervin Tweed (Brandon—Souris, CPC)): Good morning, everyone. Welcome to the Standing Committee on Transport, Infrastructure and Communities, meeting 16.

The order of the day is to study the current status of navigation protection of the Canadian waterways, including their governance and use, and the operation of the current Navigable Waters Protection Act.

Just before we get into that, as advice or a heads-up for our committee, Mr. Lewis will be here on Thursday with regard to railway safety, and I'm going to ask that we set aside about 10 minutes at the end of that meeting to have a little further discussion as to where we want to go after we get his report, in regard to meetings. You'll also have received your summary of our rail safety discussions from the committee. They should have been electronically transferred to you this morning.

I had the opportunity to meet with some of the directors of the Federation of Canadian Municipalities this weekend in Brandon, and they're thrilled that we're doing this study. In fact, I think the participation that we're going to see from that level will be very positive. "Long overdue" was the comment I heard many times. So I share that. I'm talking about the navigable waters.

With that, joining us today, from Infrastructure Canada, we have Shirley Anne Scharf, director general, and Keith Grady, senior adviser on environment review; from the Canadian Environmental Assessment Agency, John Smith and Steve Burgess; and from the Department of Fisheries and Oceans, Ginny Flood and Gilles Belzile.

Welcome. I presume we have some sort of presentation. I don't know if you've had any agreement as to who would like to start, but please begin.

Ms. Scharf.

Ms. Shirley Anne Scharf (Director General, Issues Management Directorate, Program Operations Branch, Infrastructure Canada): I believe we'll begin.

Good morning, Mr. Chair and honourable members. I would like to thank the committee for inviting Infrastructure Canada to present its views on the proposals that have been tabled to modernize the Navigable Waters Protection Act, the NWPA.

With me today, as mentioned, is Keith Grady, our senior adviser on environmental review and approvals at Infrastructure Canada.

We are here today to talk specifically about the implications of this initiative for infrastructure funding programs administered by Infrastructure Canada. I want to emphasize that modernization of the NWPA is an important initiative for us. Infrastructure Canada is in full support of the proposed changes to the Navigable Waters Protection Act as these changes will help the department to provide Canadians with modern, sustainable, and efficient public infrastructure in a timely way.

[Translation]

In my opening remarks, I will talk briefly to programs for which my department is responsible and how the NWPA can affect the delivery of these programs—in particular, how the NWPA can sometimes delay the approval and implementation of both community and major infrastructure projects.

I will also speak to the specific amendments that Transport Canada has tabled for consideration by the committee that will, in our view, improve the efficiency and timeliness of federal funding for public infrastructure projects under these programs. Our two departments work together closely in response to provincial and municipal requests for funding for major transportation infrastructure.

[English]

Through Building Canada, the Government of Canada has committed \$33 billion in funding over seven years—2007-08 to 2013-14—for public infrastructure projects that promote a growing economy, a cleaner environment, and stronger and safer communities. Building Canada includes base funding for municipalities and provinces, as well as program funding initiatives, including the Building Canada Fund.

A broad range of projects and activities that are eligible for support under Building Canada have implications for navigable waters and thus would require consideration under the Navigable Waters Protection Act. To illustrate, under the Building Canada Fund, projects in the following categories are especially likely to be subject to the NWPA: water and waste water infrastructure, such as water intake pipes and waste water effluent pipes; public transit, the national highway system, local roads, short rail line, and short sea shipping; green energy, such as hydro-electric dams; and disaster mitigation, such as flood control.

● (1110)

[Translation]

The Building Canada Fund is in the process of being implemented across the country. It will generate a large number of community and major infrastructure projects across the country in a broader range of project categories than have been supported under previous federal infrastructure funding programs. Consequently, we anticipate an overall increase in the number of funded projects with NWPA implications in future. It is therefore important to amend the NWPA to reduce and avoid issues that have been encountered in respect of Infrastructure Canada's existing programs.

[English]

For example, under the Municipal Rural Infrastructure Fund for 2004-11, approximately 20% of the 1,760 projects approved to date have involved implications for navigation. Similarly, the NWPA has been a consideration for about 25% of non-transport-related projects approved to date under the Canada Strategic Infrastructure Fund. As you can imagine, given Canada's geography, a large percentage of major highway projects in Canada also require NWPA approval due to minor water crossings.

I will now describe some of the challenges the NWPA poses for the approval and implementation of these types of infrastructure projects.

Our experience today indicates that NWPA-related considerations can result in both regulatory uncertainty and delays in the approval and implementation of public infrastructure projects. It is important that amendments to the NWPA proceed expeditiously so that these same issues do not adversely affect the efficient and timely provision of funding to projects under Building Canada.

A number of specific problems have been encountered to date. The first is that proponents cannot determine whether their projects are subject to the Navigable Waters Protection Act until NWPA officials visit the site and confirm that the impacted water body is navigable. Depending on the season, site access, and availability of NWPA staff, this can take considerable time.

Detailed project and site plans necessary to confirm application of the act are often unavailable in the early stages of project planning, so the status of Transport Canada, as a responsible authority in the review of the project under the Canadian Environmental Assessment Act, can be unclear until late in the assessment.

There are also delays in getting input from NWPA officials during the Canadian Environmental Assessment Act review and in issuing an NWPA authorization following the Canadian Environmental Assessment Act review and approval.

[Translation]

In turn, this regulatory uncertainty and process delays can add to project costs if construction cannot proceed as scheduled. As well, there can be added pressure for Infrastructure Canada to work with the parties to resolve issues and ensure that project approvals are timely.

[English]

Transport Canada has identified seven key concepts relating to potential changes to the NWPA. Of the seven, three will be particularly important in addressing the above-noted problems: amending the definition of "navigable waters" to allow for the exclusion of minor waters from application of the NWPA; amending the definition of "work" to allow for the exclusion of minor works from application of the NWPA; and removing the reference to the four named works—bridge, dam, causeway, and boom—in the act to allow for exemption of those works from the requirement to obtain approval pursuant to the NWPA.

● (1115)

[Translation]

Specifically, the proposal to exempt minor waterways and minor works will benefit infrastructure projects such as pipelines (water and sewers) and overhead power lines as they will no longer be required to apply for approval if they meet specified criteria. This will speed up the project approval process.

[English]

In addition, the proposal to remove the named works from the NWPA would also allow for quicker approval of those named works that are not a significant interference to navigation, such as small bridges, causeways, and micro-hydroelectric projects. The approval process would be quicker, because the projects would not be subject to the requirements of the full approval process as defined in the act.

The time required to complete federal environmental assessments of these projects would also be shortened in some circumstances. This would be especially beneficial for infrastructure projects that are subject to the Canadian Environmental Assessment Act only as a result of the Navigable Waters Protection Act.

Infrastructure Canada would also suggest that the committee consider another amendment to the NWPA that would benefit the timely review and approval of public infrastructure projects. This additional amendment would be to remove the current requirements in the NWPA to deposit plans in a land titles office and to advertise in the *Canada Gazette*. We are in agreement with Transport Canada that these are antiquated provisions that no longer serve to provide adequate notification of a proposed project. A more flexible notification scheme is required.

To conclude, modernization of the NWPA is long overdue, and Infrastructure Canada fully supports the proposed amendments in the legislation. It is our department's belief that these changes will allow Infrastructure Canada and our public and private funding partners to implement both the small-scale community projects and the major infrastructure projects in a timelier manner without negatively affecting navigation in Canada or significantly impacting the environment.

[Translation]

Finally, it is our hope that these legislative changes will be accomplished expeditiously so that Building Canada can realize the benefits of a modernized NWPA as soon as possible.

[English]

We look forward to your questions and comments.

Merci.

The Chair: Thank you.

Mr. Smith.

Mr. John Smith (Director, Legislative and Regulatory Affairs, Policy Development, Canadian Environmental Assessment Agency): Thank you, Mr. Chairman, and thank you for the opportunity to be present. I am the director of legislative and regulatory affairs at the Canadian Environmental Assessment Agency. I am joined by Steve Burgess, acting vice-president, program delivery. Mr. Yves Leboeuf, who is the vice-president, policy development, was originally scheduled to be here today but is unfortunately sick, so he couldn't be here.

We'd like to provide a brief overview of environmental assessment and the Canadian Environmental Assessment Act before concluding with some remarks on how it links to the Navigable Waters Protection Act and the proposed changes to the act. I'll be following a short deck, which I understand has been distributed.

The Chair: Just for your information, it hasn't been distributed. It has to be in both official languages.

Oh, it's in both languages? All right, go ahead. I apologize.

Mr. John Smith: Thank you.

To start with slide three of the deck, at its simplest, environmental assessment, or EA for short, is a process that's used to predict and evaluate possible environmental effects of proposed projects and to propose measures to mitigate any adverse effects that are identified. By considering environmental effects early in the planning process and developing mitigation measures, EA can contribute to reduced risk and reduced liability for both government decision-makers and proponents of those projects.

The EA process also provides a meaningful opportunity for the public to become aware of projects in their communities, to provide their views and provide information, and to influence decisions about those projects. In factoring environmental considerations into the planning and decision-making process at an early stage, EA is an important tool for promoting sustainable development.

We'll move on to a couple of slides about the Canadian Environmental Assessment Act. The EA process for the federal government is set out in this piece of legislation, which has been in force since 1995, although federal EA processes date back to the 1970s through various other instruments.

Basically, what the act requires is an examination of environmental effects of proposed projects before a federal authority makes a decision that enables that project to proceed. The decisions they make are often referred to as the triggers of the federal EA process.

Specifically, there are four types of triggers. They are decisions by a federal authority to either proceed with a project as a proponent; to provide financial assistance to the proponent of a project; to sell, lease, or transfer control of federal land for the project; or to issue certain licences, permits, or other regulatory approvals. For example,

as we'll see later, certain approvals under the Navigable Waters Protection Act trigger the requirement for an environmental assessment.

Federal EA is what we call a self-assessment process. What this means is that the federal authority that has a decision to make about the project is also responsible for ensuring that the environmental assessment is conducted. Under this system there are approximately 8,000 environmental assessments conducted each year by over 30 federal departments, boards, agencies, and 41 parent crown corporations. There is a wide range of projects, from hiking trail construction in national parks to large natural resource developments, such as mines and hydroelectric dams.

Under the act there are three different types of assessment, which correspond to the risk of significant adverse environmental effects. The vast majority, over 99%, of those assessments are conducted as screening assessments.

Another level of assessment is a comprehensive study; they are conducted for a smaller number of projects. They consider some additional factors in the assessment, they have more opportunity for public participation, and the process involves decisions at some key stages by the Minister of the Environment.

Finally, review panels provide an independent review and public hearings for those projects that are likely to have significant adverse environmental effects or for projects with significant public concern.

On slide six we talk a little bit about federal, provincial, and territorial cooperation. There are provincial and territorial requirements for environmental assessments as well. We have bilateral agreements and project-specific arrangements in place to coordinate those processes. The aim is, when both provincial and federal environmental assessments are triggered, to have a coordinated process so that we can have a single environmental assessment that meets the needs of both governments. These types of arrangements affect about 150 to 300 projects per year. Some examples of recently completed cooperative review are shown on the slide, but there are others.

These coordination processes generally work well, but we are participating in work under the Canadian Council of Ministers of the Environment to develop both short- and long-term initiatives to further improve timeliness and coordination of our cooperative processes.

I'd like to turn now to a few brief words about our organization, the Canadian Environmental Assessment Agency.

We are part of the environment portfolio, but we are a distinct and separate agency from Environment Canada. Among our roles, we provide advice and support to the Minister of the Environment on his responsibilities under the act; for example, on the adequacy of comprehensive study reports prepared by responsible authorities.

• (1120)

We have some key administrative functions under the act, such as managing and providing administrative support to the independent review panels and administering a participant funding program.

We have an important role as the federal environmental assessment coordinator for comprehensive studies and those assessments that involve provincial jurisdictions. It's not infrequent that a number of departments have a decision whereby they're involved with the environmental assessment of a specific project, and the coordination role is very important.

Until recently we did not have responsibility for actually managing or conducting the environmental assessments. There is a new initiative called the major natural resource projects initiative, which is aimed at improving the overall regulatory process for major natural resource projects. Under this effort, our agency is actually taking on a role of managing the EAs of those major natural resource projects, amounting to about 200 environmental assessments per year.

Now I'd like to turn to the links of this process to the Navigable Waters Protection Act.

Potential decisions under the NWPA for approval of physical work trigger the requirement for doing an environmental assessment. Our act, the Canadian Environmental Assessment Act, links to the NWPA in a few ways.

First, the environmental assessment legislation establishes the duty to consider environmental effects before decisions are made on projects. Second, it links by allowing conditions to be attached to NWPA approvals to ensure mitigation of environmental effects where necessary. Finally, it links Transport Canada's approval to the results of the environmental assessment. Specifically, as a result of the Canadian Environmental Assessment Act, Transport Canada can issue an approval where the project is not likely to cause significant adverse environmental effects. Or alternatively, if it is likely to cause significant adverse effects but those effects can be justified in the circumstances, they can issue the approval. That latter circumstance requires approval by the Governor in Council.

Slide nine lists the approvals that can be granted under the NWPA that trigger the requirement for an environmental assessment. They include sections 5 and 6, relating to work to be built on, over, or near a navigable waterway, and sections 16 and 20, relating to removing vessels from a navigable water body.

It should be noted—I mentioned that very often there's more than one department involved—that often the NWPA applies to project components that are associated with a larger development proposal. For example, a bridge leading to a mine, highway construction, or marine terminal can have a navigable waters component as well as much larger issues around the project.

Finally, in terms of the proposed changes, I mentioned near the beginning of my presentation that some 8,000 federal EAs are triggered every year. In 2003 there were amendments to the Canadian Environmental Assessment Act as well as the implementation of other initiatives that were designed with the goal of better focusing our efforts on those projects with a greater potential for environmental effects. The proposed changes to the NWPA would mean that minor works and projects in minor waters would not require NWPA approval; consequently, they would not trigger an environmental assessment.

Based on past experience, it's reasonable to expect that those types of projects would not result in significant environmental effects. So the proposed initiative with respect to the NWPA would be consistent with our efforts to focus environmental assessments on those projects that have greater potential to result in significant effects and to reducing the number of environmental assessments for smaller projects.

I would note that some consideration could be given to whether the proposed changes could lead to a situation where a larger project would not become subject to environmental assessment because it's considered a minor work with respect to its effect on navigation. Having some mechanism in place to allow for discretion in dealing with such projects could eliminate this eventuality. However, we think this would occur in exceptional cases. It's not something that we anticipate happening often. Generally where there's a larger project, the environmental assessment process is triggered by something other than the NWPA. But as the initiative moves forward, this is one issue we'd suggest giving some attention to.

• (1125)

Finally, I also note that the proposed modern enforcement provisions of the NWPA would benefit environmental assessment, because the Environmental Assessment Act relies on instruments in other laws to ensure that mitigation measures are implemented.

Mr. Chairman, this concludes my remarks.

Thank you.

The Chair: Thank you.

Ms. Flood.

Mrs. Ginny Flood (National Director, Environmental Assessments and Major Projects, Oceans and Habitat Sector, Department of Fisheries and Oceans): Fisheries and Oceans does not have opening remarks, but we would like to thank you for inviting us to participate in this panel.

I'm Ginny Flood. I'm the national director for environmental assessments and major projects for DFO. I am joined by my colleague Gilles Belzile, director general, legislation and intergovernmental affairs, DFO.

DFO is another key federal regulator that works closely with Transport Canada. Most of the projects we deal with in and around water implicate both the Navigable Waters Protection Act and the Fisheries Act in terms of the authorizations required. We work closely together with respect to conducting environmental assessments. This act is almost as old as the Fisheries Act.

We would welcome any questions that you may care to pose to us.

Thank you.

• (1130)

The Chair: Thank you.

Mr. Volpe.

Hon. Joseph Volpe (Eglinton—Lawrence, Lib.): Thank you, panellists, for coming to give us an insight into what we're wrestling with—whether to overhaul the act or amend it.

I gathered from Ms. Scharf's and Mr. Smith's presentations—I hope I'm not misreading you—that you prefer something quick and dirty. You'd like to make some necessary adjustments right now, and you've given us an indication of some. But your preferred approach is to go with something immediate rather than something comprehensive. I hope I'm not wrong, but I'll let you explain in a second.

Ms. Flood, I wonder whether that perception would apply to you as well. You're here with the other two. Does your being here and not making a presentation mean that you want the committee to move ahead with amendments to the legislation as opposed to overhauling it?

Mrs. Ginny Flood: We haven't had time to review this thoroughly. Based on our preliminary analysis, we're looking at our role with respect to Transport Canada. We would be looking forward to working with them on whatever they are looking to propose. At the moment the proposal is seven amendments. However, if it were broader, we would certainly be willing to work with them. There are opportunities to streamline and provide benefits for economic development and more timely decision-making.

I'm not sure whether I answered your question.

Hon. Joseph Volpe: I don't know. I'm waiting to hear from Mr. Smith and Ms. Scharf.

Ms. Shirley Anne Scharf: We support the immediate modernization of the act. We feel that, from our mandate, the minor waterways and minor works are particularly important. That's not to say we may not need a full-scale review in five years. The advantage of doing it now is that the Building Canada Fund and the plan will be rolling out. There will be a lot of pressure to move those projects. By having these immediate changes, we'll be able to implement those projects more quickly and successfully. We see this as an immediate benefit. We may want to monitor the impacts, however, and this could feed into a larger legislative review at a later time.

The Chair: Mr. Smith.

Mr. John Smith: Thank you.

I am somewhat neutral on the question. I'm not sure we have strong feelings about one approach versus the other. We haven't had time to consider the implications of a more major change. However, the immediate impact that would benefit environmental assessment would be the focusing of our efforts on more significant projects. The more targeted amendments would seem to contribute to this. Since they could be dealt with more quickly, there is probably some advantage in going that way.

Hon. Joseph Volpe: I was pleased to hear that we're talking about streamlining the process, because I think that's one of the causes of some of the observations that have been passed on to the committee and to the department.

With all due deference to Transport Canada officials, some of whom are here, I thought I heard, two weeks ago, Transport Canada prefer a much more comprehensive approach.

You're kind of tentative there, Ms. Flood, but Mr. Smith seems to be telling me more or less the same thing, that the agenda that your two organizations have might be a bit more consistent with the impression I had of Transport Canada's position, which is, let's move in a comprehensive fashion so that we make sure we dot all the *i*'s and cross all the *t*'s. That might not necessarily be confluent with Infrastructure Canada's decision to roll out moneys for projects in a much more timely fashion.

Am I misrepresenting what you're saying, Ms. Flood?

• (1135)

Mrs. Ginny Flood: No, I don't necessarily think so. I think we are open to whatever approach, if it's a comprehensive approach. Certainly I think we could look at some further streamlining opportunities that probably wouldn't avail themselves if we take a very narrow approach.

Hon. Joseph Volpe: Mr. Smith.

Mr. John Smith: As I indicated before—and I hope this doesn't sound too much like sitting on the fence—I don't think we have strong views on one approach versus the other. Certainly there are some immediate benefits in terms of streamlining that could be achieved.

In terms of looking at an overall review of the act, the kinds of benefits we'd get in terms of focusing our efforts on the more significant projects, that we'd get from the proposed focused amendment, I'm not sure what more we'd get from an overall review of the act. I haven't had time to consider that.

Hon. Joseph Volpe: Just a second, Mr. Burgess. Maybe you can follow up on this.

You don't see too many difficulties, then, with making some of those changes that flow from redefining things like “minor works”.

Mr. John Smith: That's right. That I can be clear on. We think it's a good idea, and we don't see any problems with that.

Hon. Joseph Volpe: But Ms. Flood might, though, because I think that might have some implications for the kind of work that DFO does in assessments in certain parts of the country. I'm not familiar with what they do in all parts of the country, but in my province they have some overlapping responsibilities or shared responsibilities with the province, and so on. They're very much involved in infrastructure-type programs.

So I wonder, Mr. Burgess, when you answer in terms of where you want to go, whether we wouldn't be—I don't know how to put it delicately—putting the cat amongst the pigeons by making some of these decisions on a quick, short-term basis.

Mr. Steve Burgess (Acting Vice-President, Program Delivery Sector, Canadian Environmental Assessment Agency): Perhaps I can respond to that by prefacing my remarks a little bit.

From our perspective, from an environmental assessment perspective, there are two aspects of the process that we see as being important. One is that the quality of the assessments are there, that an appropriate quality of assessment is done, and to ensure that projects that could have adverse environment effects are assessed. From the other perspective, we look for an efficient and effective environmental assessment process.

I guess what we see with respect to this proposed approach is the opportunity to address that in some way. Concerns we've seen with respect to how the NWPA acts as a trigger for environmental assessment have to do with, in part, defining which waterways are navigable. There are a great number of waterways in Canada, as we all know. Many of them—very small ones, in fact—have been seen as navigable at times.

The other aspect is that it's difficult to know, starting out, before you do an assessment, whether or not there might be interference with navigation as a result of a particular project.

So to the extent that this initiative, these legislative amendments, can address those concerns, I think we'd be quite satisfied.

The Chair: We'll go to Mr. Laframboise.

[Translation]

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

My first question is for Ms. Scharf.

If my information is correct, there has been no agreement signed between Quebec and the federal government under Building Canada. Is that right?

• (1140)

Ms. Shirley Anne Scharf: I am not sure I understood the question.

Mr. Mario Laframboise: No agreement has been signed between Quebec and the federal government under the Building Canada program. Is that correct?

Ms. Shirley Anne Scharf: Unfortunately, I am not here this morning to discuss the issue...

Mr. Mario Laframboise: No agreement has been signed under Building Canada to this point. I simply want to have you confirm that.

Ms. Shirley Anne Scharf: I am not absolutely sure, given that I have not received a briefing on that issue recently, but my understanding is that no agreement has been signed.

Mr. Mario Laframboise: I understand that, but things are always a bit complicated in Quebec. Moreover, Economic Development Canada plays a role in your work. Who oversees the application of the criteria in Quebec? Is it Economic Development Canada or your department?

Ms. Shirley Anne Scharf: That is a very good question. Both organizations are involved. With Infrastructure Canada, we have accountability with respect to the Building Canada program. In the past, the service delivery partners also had some responsibility. I must say, however, that this issue is outside my area of expertise, and it would probably be better for you to address your question to the department in order to obtain an official answer.

Mr. Mario Laframboise: The fact remains that Quebec is the only province where Economic Development Canada is involved in this way, is it not?

Ms. Shirley Anne Scharf: I am concerned that I might mislead you. You would be better advised to address your question to the department.

Mr. Mario Laframboise: I will do that.

Mr. Smith, when the federal government invests in some aspect of infrastructure, you get involved. That is one criterion. Environmental assessments are carried out where required. Is that right?

[English]

Mr. John Smith: The funding is, as I mentioned, one of the triggers for an environmental assessment. So in general, yes, you're correct. Now, within our legislation, there are mechanisms for excluding assessments of small projects. We have a regulation, called the Exclusion List Regulations, 2007, that lists a lot of projects that are considered to have insignificant effects and therefore don't have environmental assessments. But in general, yes, when there is a proposed provision of federal funds, it triggers an environmental assessment.

[Translation]

Mr. Mario Laframboise: People at the municipal level are saying that when the federal government invests in infrastructure, both the Navigable Waters Protection Act and the need for an environmental assessment apply. It is as if an additional layer of complexity is added.

If the Navigable Waters Protection Act is amended, you can still be involved in infrastructure projects. Is that correct?

[English]

Mr. John Smith: For a specific project, if you amend the NWPA and the minor works are removed from the need for a permit under the NWPA, that removes one of the triggers for an environmental assessment. But on that same project, if there is federal funding or a decision by another body, the environmental assessment is still needed.

[Translation]

Mr. Mario Laframboise: That is what I mean. Every time we talk about a Building Canada project, we are talking about federal funding. And therefore you need to be involved on the environmental side. So in addition to the Navigable Waters Protection Act, there is another layer of complexity added. On the other hand, if you are telling me that you will no longer be involved when there is federal funding once the act is amended, that may raise a red flag for me.

● (1145)

[English]

Mr. John Smith: The proposed amendments to the Navigable Waters Protection Act would mean that for certain minor projects that don't need an approval, you'd remove one of the triggers. So if there's a case of a project for which, before, the only trigger for a federal environmental assessment was that approval, it wouldn't require an assessment. If there were another indication, like funding, it still would. However, as my colleague mentioned, I think, in her opening remarks, one of the things that happen with approvals under the NWPA is that because of the requirement to determine whether water is navigable, for example, sometimes it takes a while before there's some certainty about whether they need to initiate that approval.

Even for those projects that would still trigger environmental assessments because of funding, removing that one requirement sometimes pushes decisions back. So while there would still be an environmental assessment, there could potentially be some streamlining.

[Translation]

Mr. Mario Laframboise: Suppose a municipality wanted to build a lookout beside a small stream that was considered non navigable under the new definitions. From what I understand, if there is funding provided under Building Canada, and therefore the federal government, there would have to be an environmental assessment of the project because a waterway is involved. Is that right?

[English]

Mr. John Smith: Yes. *Oui*.

[Translation]

Mr. Mario Laframboise: If I understand correctly, Ms. Scharf, you are saying that the Navigable Waters Protection Act adds a process that may delay the project. Is that what you are saying? I gave the example of a municipality wanting to build a lookout over a waterway. As soon as something can float on a waterway, we are now talking about navigable waters. So the approval process will take more time. Is that correct?

Ms. Shirley Anne Scharf: Yes. Where the project description states that a community is undertaking a major project, we carry out an environmental assessment. However, the changes to the Navigable Waters Protection Act have done a lot to make the process less complex.

Mr. Mario Laframboise: Thank you.

[English]

The Chair: We'll go to Mr. Julian.

Mr. Peter Julian (Burnaby—New Westminster, , NDP): Thank you, Mr. Chair.

Thanks for coming today.

I'd like to start with you, Mr. Smith. How many staff members do you have right across the country conducting environmental assessments?

Mr. Steve Burgess: I'll answer that one, if you don't mind.

I should probably clarify that the Canadian Environmental Assessment Agency doesn't actually conduct the environmental assessments. The assessments, as Mr. Smith mentioned in his presentation, are actually conducted by the individual departments that are responsible for making decisions with respect to projects. So in the case of the Navigable Waters Protection Act and the decisions there that trigger CEAA, it's staff of Transport Canada who actually conduct the environmental assessments. In the case of infrastructure, it's staff of Infrastructure Canada or the regional delivery agencies who do the assessments.

Our role at the agency with respect to the vast majority of assessments is to, where appropriate, help in the coordination of those assessments. There can be a number of triggers federally for EA, which means that several departments might be involved in environmental assessments. There may be provincial assessments required as well. So our job is to coordinate those.

Mr. Peter Julian: I'll come back to the question about your agency. How many staff members do you have?

Mr. Steve Burgess: Currently we have a total of just over 150 staff. Of those, probably 50 or so are in regional offices across the country.

Mr. Peter Julian: Okay, going back to the departments then, how many staff members in the federal government are involved in environmental assessments?

● (1150)

Mr. Steve Burgess: I'm not sure. I could take a guess at that. Of course every department has EA responsibilities, and there are crown corporations and so on. I don't think I have those numbers for you, I'm sorry.

Mr. Peter Julian: You're not aware of the actual numbers. Would you say it's adequate, not knowing the numbers?

Mr. Steve Burgess: If you spoke to other departments, I'm sure they would say they could use more staff.

Mr. Peter Julian: The problem here is that we're trying to resolve an issue, but part of the issue is the question of staffing and resources. We've had a lot of corporate tax cuts from the Conservative government. It appears to me that what we're actually looking at is much more of an investment in staffing, so that we have a sufficient number of people on the ground to conduct environmental assessments.

I'd like to go to you, Ms. Flood.

For Fisheries and Oceans, as part of your environmental assessment team, how many staff members do you have?

Mrs. Ginny Flood: In Fisheries and Oceans I can't give you a specific number because I don't have that off the top of my head, but I can certainly provide that to you.

The way we're structured right now, we have a centre of expertise for environmental assessments for major projects, which are natural resource major projects, infrastructure projects, or projects that have significant economic development impacts, aboriginal issues, federal-provincial considerations, and those types of aspects.

Also, we just received an additional 41 FTEs from the regulatory improvement initiative, better known as the major projects management office. That will help us deal with the major projects.

Over the last few years we've also been taking on a modernization of our whole program, which included putting in some processes to look at risk: what the risk is and the significance of environmental impacts. We try to work very closely with proponents to mitigate impacts and therefore not have proponents seek environmental assessment, because we do not have to issue authorization.

My understanding is that Transport Canada is looking to move more into that risk management approach also. It is, at the same time, respecting and not lowering the bar on environmental concerns or issues, but just looking more at the significance of those impacts and whether they can be mitigated.

To answer your question, we have staff in all regions, but I don't have the numbers. I can certainly provide you with those numbers.

Mr. Peter Julian: It would be interesting as well to have today's numbers compared to those of 10 years ago, because that's certainly an issue we've seen in other government departments. There has been a slow erosion of staffing to do the job. It's like anything else. If you're in a hospital and you don't hire nurses or doctors, then the problem isn't about closing more beds; the issue is actually staffing up, so the hospital is running effectively and efficiently.

I'd like to come to you, Ms. Scharf.

The proposal is to exclude minor waters and minor works. I'd like you to give us an example, if you could, of a river system in British Columbia that would be considered minor waters.

Ms. Shirley Anne Scharf: Mr. Chair, I don't know if we can provide that, off the top of our heads. We would be pleased to get back to our colleagues at Navigable Waters Protection Act and provide that information to the committee. We can certainly give generic examples, but I did not come prepared with a specific minor water in B.C. My apologies.

Mr. Peter Julian: When you talk about minor waters, what is the definition you're looking at? You say minor waters could well be a tiny stream with a very low volume of discharge, or it could be a fairly significant body of water. I think it would help the committee to know exactly where you're trying to place the bar.

Ms. Shirley Anne Scharf: Mr. Chair, I'll make an introductory comment and then I'll turn it over to Keith Grady, our senior adviser in this area.

I will make the same comments that I believe Transport Canada officials gave when they appeared before the committee on February 28. The way it is constructed right now—and I believe David Osbaldeston made this point—minor waters are such that I believe if you float a canoe in a body of water it is considered a navigable water. From that point of view, streamlining the act and excluding things of that nature would be very advantageous.

If it's possible, Mr. Chair, I'll turn it over to Keith Grady, who is more expert in this.

Mr. Peter Julian: Just so I understand, you're saying a minor water body would be a water body where we can navigate a canoe?

• (1155)

The Chair: The definition of navigable waters right now is that if it will float a canoe, it's considered a navigable water.

Mr. Peter Julian: I understand, Mr. Chair. My concern is the definition of minor waters.

Ms. Shirley Anne Scharf: I'll let Keith respond to that, Mr. Chair.

Mr. Keith Grady (Senior Advisor, Environment Review and Approvals, Issues Management Directorate, Program Operations Branch, Infrastructure Canada): Thank you. Perhaps I could elaborate.

Transport Canada and the navigable waters protection group are going to have to sort this out. For example, where there are numerous natural existing obstructions in the waterways, where seasonal flows can essentially preclude that water body from being navigable for periods of time, I would certainly consider, from an Infrastructure Canada point of view, the types of minor waterways that might be taken into account in the proposals Transport Canada's putting forward.

The Chair: Mr. Fast.

Mr. Ed Fast (Abbotsford, CPC): Thank you, Mr. Chair.

Before I ask a question, I want to clarify something that arose when Mr. Volpe was questioning the witnesses. I don't believe we are working at cross purposes, but he did suggest that ministry staff had indicated a preference for a complete revamping of the bill as opposed to perhaps picking the low-hanging fruit.

At that meeting, Mr. Chair, I did specifically address that. Please note Marc Grégoire is the assistant deputy minister for safety and security, and I don't believe his responsibilities touch directly on the infrastructure program Mr. Grady and Ms. Scharf administer. In a question I posed to him—and I'd like to quote that question—I asked, “Would you agree with me that moving forward with these amendments will significantly speed up the process of getting the needed legislation in place to address some of the infrastructure needs in our country?” And Mr. Grégoire simply said, “Yes.” I think it's unfair to place his testimony against what we're hearing today.

I am a little concerned about Mr. Julian's comments. Of course, whenever he deals with issues like this, the solution is always adding more jobs as opposed to becoming more efficient and streamlined. As I understand it, the purpose of moving forward with some amendments is to ensure that our infrastructure moneys are rolled out in a timely manner and that this infrastructure gets built within the seven years this program requires.

I'd like to move toward a discussion about the environmental assessment process, because I think that's where most of the concerns will be raised: are we somehow gutting the environmental assessment process? If we move forward with the amendments the government is proposing, is there any suggestion that the environmental assessment process will be watered down or weakened?

Perhaps I could address that to Mr. Smith, first of all.

Mr. John Smith: I think you're referring to gutting it. I would say it's not gutting it. I would say it would result in fewer environmental assessments, but the projects for which environmental assessments would not be required are those that are small, not likely to involve significant adverse effects.

I would say in general, no, it wouldn't result in an overall weakening of the system. I believe the direction is consistent with some of the efforts we have undertaken in other areas to help make sure we focus on those projects that are more likely to have significant adverse environmental effects.

Mr. Ed Fast: Let's talk about the small projects, the minor works. Of the applications you now receive to do environmental assessments for minor projects, on a percentage basis how many of them are rejected, when you can't go ahead with this project because it presents a significant environmental risk?

Mr. Steve Burgess: If I understand your question correctly, it would be a very small percentage. The way our process works is that before a federal authority, such as Infrastructure Canada or Fisheries, or Transport in the case of NWPA, makes a decision with respect to the project that would allow it to proceed, it is required to undertake an environmental assessment.

The only circumstance in which it would be prevented from making these kinds of decisions, funding decisions or issuing regulatory approvals, is when the environmental effects are significant and not justified. That decision can only be made by an independent panel of experts. So for minor projects, relatively small projects with relatively minor environmental effects, the likelihood of the project not proceeding on the basis of the environmental assessment would be quite small.

● (1200)

Mr. Ed Fast: What I hear you saying is that what you'd like to do is focus the resources that you have in those areas and on those projects where you're actually going to make some environmental gains or make the types of progress and do the kinds of reviews that are going to show some environmental dividends. Is that a correct characterization of what you're saying?

Mr. Steve Burgess: Getting back to the point that was made earlier, I think what we're looking for is exactly that. It's to make sure we focus our EA resources and our regulatory resources on those projects that we feel have the most likelihood of adverse environmental effects. In the case of relatively minor projects there may be, and very often are, other means of addressing potential effects. For example, we've talked about minor works and what constitutes a minor waterway, for example. Those small streams can have important environmental factors associated with them, spawning habitat for fish and so forth, but the Fisheries Act is there to ensure that fish habitat is protected without necessarily the need for an environmental assessment process to apply.

So I think at the end of the day what's being suggested or proposed here is quite reasonable.

Mr. Ed Fast: Ms. Flood, you refer to the proposed amendments as perhaps moving towards a risk management process. Could you explain that a little more?

Mrs. Ginny Flood: Basically what we've done at DFO is we've actually looked at the projects and determined a risk management type of framework whereby we actually start allocating our resources to where there are significant impacts. Our projects range from a cottager putting in a wharf to a major mine development. In most years we receive over 6,000 referrals. Not all of those end up being environmental assessments, because what we do is look at the proposal and the project, and we work with the proponent and reduce the mitigations where we do not need a Fisheries Act authorization. A Fisheries Act authorization means that we have to do an environmental assessment.

So by looking at the definition of minor works, there may be something you can actually mitigate. I won't pretend I'm an expert in Navigable Waters Protection Act legislation, but if you have a small bridge or something, to that effect there may be ways of mitigating the environmental impacts so that you will not have to issue an authorization for that. For instance, with DFO, if there's a bridge and it's a free-span, it doesn't have an impact on fish and fish habitat. We would let that go.

We work very closely with proponents, so I think it's the same type of philosophy as they're looking at—how to move more towards that approach, so that you're actually looking at things that are very significant and being able to allocate resources and putting them where those significant impacts are.

The Chair: Mr. Bell.

Mr. Don Bell (North Vancouver, Lib.): Thank you, Mr. Chair. Some of my questions have been answered, but I've got a few specific-detail ones.

First of all, Ms. Scharf, in your reference on page 3 to waste and wastewater infrastructure, you are talking about piping. That's the aspect, if you were building a plant—and I'm thinking of Lions Gate Wastewater Treatment Plant—that has to be replaced. So it's not the plant itself but the connection to the water and what comes out that is your concern.

• (1205)

Ms. Shirley Anne Scharf: Yes, it would be.

But I might also turn it over to Keith Grady, who deals with these on a regular basis, Mr. Chair.

Mr. Keith Grady: You're correct. It's the water intake for water treatment plants, and it's the discharge pipes into water bodies for wastewater treatment.

Mr. Don Bell: On page 5 in the second paragraph, you indicate that detailed projects and site plans necessary to confirm application of the NWPA are often unavailable in the early stages of project planning, so the status can be unclear until late in the assessment. When do you get the detailed site plans? Do you not get them right from the beginning?

Mr. Keith Grady: Not necessarily; it really depends on the application. In many cases that's not available early in the planning process, which is when environmental assessments are usually undertaken, at least under the federal process. So it may be some time after the assessment is actually started that the NWP has enough information to determine how the act would apply in that particular circumstance.

Mr. Don Bell: On page 6, in the fourth or fifth paragraph, you make reference to the proposal to exempt minor waterways, etc., and say that overhead power lines will no longer be required to apply for approval if they meet specified criteria. Have those criteria been drawn up, or is that something that would come as a result of these changes?

Mr. Keith Grady: I guess, in fact, to some extent they are reflected in the criteria and the types of works that Transport Canada has already looked at in its brochures for excluding minor works. I think you're familiar with, for example, pipeline crossings. Water intakes are another example.

Mr. Don Bell: Thank you.

On page 7, in the first paragraph at the bottom, you say that currently the NWPA approval triggers the requirement for an assessment first, which can delay the regulatory approval. What does "first" mean? Before proceeding any further? Is that in effect what it means?

Mr. Keith Grady: I didn't have time to catch your reference.

Mr. Don Bell: In the first paragraph on page 7, the last sentence says it requires an assessment first. It's just the wording, and I was trying to follow that. You already have the NWPA assessment, do you not, at that point?

Mr. Keith Grady: I think what we were referring to there is that for projects funded federally through the Building Canada Fund or any of our existing programs, there will still be an environmental

assessment required irrespective of the NWPA requirements. That will continue. But the same types of projects without federal funding would not necessarily require an NWPA approval, and that would shorten the time for the regulatory approvals prior to project implementation.

Mr. Don Bell: Thank you.

Mr. Smith, on page 6 of your deck, you gave examples of recently completed projects. You talked about the marine terminal and the copper mine. I'm particularly interested in marine terminals. I'm thinking again of the Vancouver port and some of things they're going through.

When you say "recently completed", just how long do you mean? One of the criticisms we've had—and I'm not suggesting we follow their track entirely—is that China is able to go from concept to completion in about three years, and it would appear that after six or seven years we're still thinking about it and different issues. I've heard this criticism in my responsibility as critic for the Pacific gateway, that for a lot of the projects necessary to make our ports competitive, the approval process or review is so long as to be a deterrent.

I'm wondering if you could comment on that.

• (1210)

Mr. Steve Burgess: I can speak to that.

We're certainly aware of those concerns as well. For some years now we've been looking at ways to improve the efficiency of the federal EA process. The most recent initiative was the major projects management office, which was established to enhance the efficiency of EAs and the regulatory process with respect to resource development projects. That included quite substantial resources for our agency as well as other departments to improve the efficiency of the process.

I'm not aware of a similar program that's aimed at infrastructure projects like the port authority projects and so forth. But certainly we're aware of the concern related to timing, and we are looking at ways to improve that.

The Chair: Thank you.

Monsieur Carrier.

[Translation]

Mr. Robert Carrier (Alfred-Pellan, BQ): Thank you, Mr. Chairman.

Welcome, ladies and gentlemen.

Ms. Scharf, you give examples on page 6 of your presentation of changes that might reduce the study required for approval. You state:

[...] the proposal to exempt minor waterways and minor works will benefit infrastructure projects such as pipelines (water and sewers) and overhead power lines [...]

You talk about overhead power lines. In fact, it seems to me that those projects have a particular impact on navigation. I was surprised to see that they would be excluded from study.

Ms. Shirley Anne Scharf: I would answer that the issue for us is the impact of the protection of navigable waters. When a project description indicates that there is federal funding, we carry out an environmental assessment in any case.

Perhaps I did not fully understand your question. Maybe Keith can add something.

Mr. Robert Carrier: I would first like to finish my question.

In Quebec, transmission lines are built by Hydro-Québec, and that is generally how things are done in the other provinces as well. These are not federal projects. So you are recommending that no assessment be carried out. That is what I understand from this.

Ms. Shirley Anne Scharf: The legislation and issues surrounding environmental assessment vary from province to province. It depends on the project, the legislation and the regulations involved. We generally try to harmonize our efforts with those of the provinces and to work in a coordinated way. Perhaps Keith could add something on this.

[English]

Mr. Keith Grady: Thank you, Mr. Carrier.

Just to be clear, we would only be involved if there is federal funding for that project involving the transmission lines. Then in terms of whether it would be appropriate from a public health or public navigation safety point of view to exclude aerial cables or transmission lines from consideration under the NWP or the federal Environmental Assessment Act, I would point out that it's Transport Canada's policy not to do a NWP review of transmission lines in certain instances. That's defined in the brochure that they make available to applicants.

[Translation]

Mr. Robert Carrier: I will make do with that answer, which is not clear to me. I have another question that I would like to ask before I run out of time.

The Canadian Environmental Assessment Agency seems to be very important. In response to a question asked earlier by my NDP colleague, you said that you did not really have enough staff to carry out environmental studies and that you do them in cooperation with other departments. I would like to raise a specific project in my riding. There is a bridge being built over Rivière des Prairies on Highway 25. In answer to my questions, the Minister of Fisheries and Oceans confirmed again recently that the proponent had not provided all the necessary information to complete the environmental study for the project. That is all well and fine in principle, except that construction has begun and the project was announced without anyone knowing, publicly at least, about this environmental study which you are carrying out and which, I suppose, should be important.

• (1215)

Mr. Steve Burgess: I will provide part of the answer to your question, and Ms. Flood will give the rest. To begin with, I should say that the issue is not that the agency does not have the resources it needs to carry out assessments, but that it is not the agency's role to do so. Its role is to coordinate the assessments and the participation of other departments or the provincial authorities to have the assessments carried out. So our role is quite clear and specific.

Responsibility for the assessment falls to the Department of Fisheries and Oceans if approval is being sought under the Fisheries Act, the NWP, etc. I must admit that I do not have specific details on the project you are referring to. That said, before Fisheries and Oceans or Transport Canada can issue a permit, an assessment needs to be done. And they are the ones responsible for carrying out the assessments. If there is no approval required under the Fisheries Act and there are impacts on fish habitat, then there is a clear lack of compliance with the legislation.

[English]

The Chair: We'll go to Mr. Watson.

Mr. Jeff Watson (Essex, CPC): Thank you, Mr. Chair.

[Translation]

Mr. Robert Carrier: The Fisheries and Oceans official was going to answer the question as well.

[English]

The Chair: I'm sorry.

Ms. Flood, do you want to finish?

[Translation]

Mrs. Ginny Flood: Unfortunately, I am not completely familiar with this project, but I can enquire as to the status of our approval. I will provide the community with that information later.

[English]

The Chair: Thank you.

Go ahead, Mr. Watson.

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

Thank you to our witnesses for appearing. I think I'm finally getting a handle on some things here, but I have a few questions.

With respect to minor works, I've been reading some of the brochures you've put out on submarine cables, dredging, aerial cables, and docks and boathouses, for example. Currently for minor works, if I understand correctly, there are two tracks. There are those that are excluded under the Navigable Waters Protection Act, and therefore they do not trigger a federal environmental assessment. By inference, from these brochures, if it doesn't meet certain criteria, it's an excluded work. If it does meet the requirements, it's not excluded from an NWP application, and it therefore triggers a federal environmental assessment.

Do I have that correct? Is that currently how it operates with respect to minor works?

Mrs. Ginny Flood: It may not trigger a Navigable Waters Protection Act permit, but it may trigger a Fisheries Act authorization. Therefore, in that case they would actually still do an environmental assessment. But with respect to navigable waters, they possibly would not.

• (1220)

Mr. Jeff Watson: I thought I understood it, but it's far more complicated than even that.

Mrs. Ginny Flood: There are other regulators.

Mr. Jeff Watson: I guess I'm talking about NWP specifically. I thought that's what we were....

Go ahead, Mr. Burgess.

Mr. Steve Burgess: I'm not sure I can clarify that, but I could add to it, I think.

The way our environmental assessment process works is that if a federal permit is required for a project—as defined in regulations, there are certain permits that trigger the act—then before that permit can be issued, there needs to be an environmental assessment undertaken. What perhaps is a bit confusing is that there can be more than one federal permit or decision related to an individual project. Notwithstanding that there may not be an NWPA permit required, there may be a Fisheries Act authorization or funding that would trigger—

Mr. Jeff Watson: The definition of “minor work”, for example, could vary depending upon the department. Transport Canada may have a different understanding of a minor work than Fisheries or someone else. Is that fair to say?

Ms. Flood, you're nodding your head.

Mrs. Ginny Flood: I think that would be fair to say in that regard, and that's where I think you have some opportunities to start aligning some of the definitions we're using, even with respect to CEAA's wording. That would be a way of helping, maybe, to reduce some of the confusion.

Mr. Jeff Watson: You may be answering my next question. As I read through Transport Canada's pamphlets, I wonder why, if they're already excluding minor works, we need legislative change, if it's already being done.

That may be one way of addressing the concerns of other departments, then, specifically. Maybe there are two approaches. One is to define “minor works”, and the other is to exclude them.

Am I on the right track with that? If Transport Canada is doing it already, the question is, why do you need us to do a legislative change to “minor works”? It may be for other departments.

Who wants to weigh in on that?

Ms. Shirley Anne Scharf: Mr. Chair, this may be something we'd want to specifically bring back to our colleagues at Transport Canada, to have them provide a written response to committee members on this particular question. I think they're most expert in the definitions in the act and how it currently applies and how their current risk management approach applies.

Mr. Jeff Watson: That sounded like a bureaucratic answer, but okay.

I have another question, and it's just one to clarify. I'm looking at the Canadian Environmental Assessment Agency's deck. They say, “Often, the Navigable Waters Protection Act applies to a project component associated with a larger development proposal.” That seems to fly in the face of what we heard: that most of the applications in fact are for small works, and that, therefore, is why we need to exclude them.

Can somebody square the circle for me? It sounds like a contradiction.

Mr. Steve Burgess: I can do that, and hopefully I don't go over time. It's not a simple question, unfortunately.

Essentially, very often what we have is a situation in which we have a major development proposal. Let's take a mine, for example, or a pipeline project. The federal decision with respect to that overall development relates to perhaps just a stream crossing for the pipeline rather than the whole project itself, or water intake with respect to the mine. There are situations where the federal environmental assessment will relate to those subcomponents of the overall project rather than to the entire development proposal.

The Chair: Ms. Flood.

Mrs. Ginny Flood: Yes, Steve's right that there are components. We do not regulate an entire project. Often provincial processes under environmental assessment will regulate an entire project. We may be authorizing one piece or one component or activity related to that project. I think that is a fairly significant differentiation between our roles and the provincial roles, and it does become confusing.

● (1225)

Ms. Shirley Anne Scharf: Might I respond to the earlier question? Our understanding of the minor works provisions and the reasons for this was that there was not a formal exclusion list in the current legislation and the exclusions that were occurring were happening on a risk management basis.

I would defer to my Transport colleagues to confirm that, but that is my understanding on that issue, Mr. Chair.

The Chair: Before I go to Mr. Maloney, would we be better to be looking, as part of this review, to eliminating the automatic environmental assessment if government funding is involved? I have experiences where we're talking about \$1,000 or \$1,500, and because there's federal money involved the assessment has to take place. It does seem to take forever to get that done.

Is that something we should be considering as a committee, putting a value on whether or not it kicks in? Because you're talking small projects; you're not talking big money.

Mr. John Smith: The funding trigger—in other words, a decision that needs a funding that triggers an EA—is something that's in the legislation. In terms of considering whether to suggest changes in that area, it would involve a legislative change.

There are various mechanisms within our current legislative framework that we use as much as we can to try to focus the system on the more significant projects. I mentioned an exclusion list regulation. We have a process of class screenings where you have a project that can't be excluded but can be dealt with through a routine manner, and that streamlines the system as well. So within that overall system, there are some ways that we try to use as much as we can to put the focus on the bigger projects.

The Chair: Thank you.

Mr. Maloney.

Mr. John Maloney (Welland, Lib.): Ms. Scharf and Mr. Grady, in your presentation you referenced the suggestion of removing named works from the Navigable Waters Protection Act for quicker approval because they're now a significant interference to navigation, and then you referred to causeways, dams, and booms. I can think of no greater interference to navigation than a dam, a causeway, or a boom. What am I missing here? If you do that, then we don't have a Navigable Waters Protection Act at all.

Mr. Keith Grady: I think the point is that in my understanding, the way the act is currently structured, the named works are dealt with in a very specific manner, even though in some cases those very works may not be of concern from a navigation safety point of view. The proposed change, as I understand, involves providing Transport Canada with greater flexibility to decide how the review and approval of particular projects should proceed, and there could be situations where they would not need a review and approval that is as in-depth as they currently receive.

It's not to take them off completely, but it's to provide greater flexibility to the department in order to design the assessment and approval process to match the project circumstances.

Ms. Shirley Anne Scharf: Mr. Chair, if I might add to that—I believe Mr. Osbaldeston certainly made the point with me, but I believe he made it with the committee as well—right now they must go through that full approval process. So if you're redecking a bridge or putting guardrails in on a bridge, which is not interfering with navigable waters and is a very small type of project, it must be considered and go through that approval process. It's not at all to suggest that major causeways and bridges wouldn't be subject to the act and subject to the full approval process, but it's to take the smaller stuff out of that, which currently creates a queue and holds things up.

Mr. John Maloney: But even a small causeway or a dam is significant.

Ms. Shirley Anne Scharf: Absolutely, and that discretion wouldn't be lost. It's more in these things I gave as examples, redecking a bridge or putting guardrails in. There might be—

• (1230)

Mr. John Maloney: I'm not talking about bridges, though. I didn't reference that.

Ms. Shirley Anne Scharf: Understood.

Mr. John Maloney: In trying to draw a definition of what is a minor water, I think Mr. Grady indicated that if there were many obstructions—I assume that would be rapids or a waterfall.... But after a while, would not a causeway or a dam be considered an obstruction such that you could say this is no longer a navigable water, which it once was?

Mr. Keith Grady: I think the point here is that through the consultation the committee will be undertaking, they'll add some clarity to exactly which types of projects or waterways should be covered and which can be managed in a different manner, and perhaps more efficiently as a result of that.

Mr. John Maloney: You also referenced the notice provisions, suggesting that registration about deposit plan, land titles, and publication in the *Gazette* are archaic. What do you suggest for a notification that people would see?

Ms. Shirley Anne Scharf: We didn't want to make specific proposals at this time. It may be something that the committee, when it undergoes its other consultations, may get responses on from folks. I know our officials at Transport Canada have mentioned just using Internet communication or websites, bringing it into this century in a sense, from that perspective, and using those kinds of tools. The act doesn't give that flexibility at this point.

Mr. John Maloney: Mr. Smith, if I can turn to you for a moment, you're suggesting amendments to enforcement provisions. Right now it's \$500 to \$5,000. What would you suggest if we were to change enforcement provisions? Do you have the power to have the works removed if someone proceeded to install something that had no approvals? Are hefty fines enough?

Mr. John Smith: If your question refers to the Canadian Environmental Assessment Act, there aren't any fines or enforcement provisions in that piece of legislation. What that legislation does is impose obligations on federal bodies to conduct an environmental assessment of the project they're considering making a decision on, and to identify mitigation measures and put those in place.

The point I was making is that the mitigation measures that are put in place following an environmental assessment can be put in place for a number of mechanisms. If it's a funding decision that's being made, then the funding agreement can include those mitigation measures. If it's a land transfer that's being considered, then the mitigation measures can be imposed there. There is the possibility, through various regulatory decisions, of having those mitigation measures put in place.

My point in the presentation was that strength and enforcement capabilities under the Navigable Waters Protection Act would be beneficial because of the flow-through nature of mitigation into these various other instruments.

The Chair: Mr. Jean.

Mr. Brian Jean (Fort McMurray—Athabasca, CPC): Thank you so much, Mr. Chair.

Thank you for coming today.

Very quickly, are there any witnesses here today who are not in favour of changes to this act to make it a better act? There are none.

• (1235)

Mr. Jeff Watson: Call the question.

Mr. Brian Jean: Mr. Chair, I hope the intervention by other members doesn't cut into my time.

I want to take off where Mr. Julian left us, because I have some concerns as well. It's good to see you back here, Mr. Julian. We've missed you.

I would like to use an example from my riding. I think I have one of the fastest-developing ridings in the country in northern Alberta, because of the oil sands and other issues.

I'd like to think of myself as a great environmentalist. I've spent a lot of time in the bush. I have a trapline up there that I spend some time on. Indeed, I have some waterways that I think would be considered minor waters, and I'm concerned about that. I don't want to see oil companies, quite frankly...and I don't think anybody in the Conservative government would like to see anything sacrificed to move forward, especially not the environment. I know I wouldn't, and I don't think any members of this committee would.

Although we want to simplify, make things better, and remove duplication, we don't want to sacrifice things. Certainly we don't want to sacrifice our environment or the integrity of our country.

I have this little creek, which is called Gregoire Creek, which runs into the Christina River, which runs into a heritage river called the Clearwater River, and that runs into the Arctic. In the meantime, there are a lot of beaver dams in this. It's navigable, but it's navigable for about five feet at a time because you have to go through a lot of beaver dams. Now, would that be considered a minor water?

I'm not getting very good responses today.

Mr. John Smith: The interpretation of what specifically would constitute a minor work is, I think, a question we would have to put to our Transport Canada colleagues in terms of any specific waterway.

Mr. Brian Jean: I have Nexen, an oil company, on my trapline, and obviously I'm quite concerned. They've put a lot of roads in, and quite frankly I'm concerned about the environmental integrity in that particular area.

Are you trying to tell me that if indeed we define minor waters as something you float a canoe in on a continuous basis, for a hundred yards or whatever the case may be, they would not have to have some sort of environmental process on that creek? They wouldn't have to be called to task for what they'd do as a result of putting a bridge on that creek?

Mr. Steve Burgess: Perhaps I can answer part of that.

With respect to the amendments to NWPAA, I think the changes being proposed to the legislation would identify minor works from a navigation perspective. That doesn't mean there wouldn't be the possibility of an environmental assessment being undertaken should a project be proposed that could damage that waterway—if, for example, it constitutes fish habitat. So if fish are there, the Fisheries Act is another trigger for CEAA, or if there's federal funding going into a project, but I think it's fair to say that the trigger for EA would be lost if that type of waterway were deemed to be a minor waterway.

Mr. Brian Jean: Would any other environmental assessment take over that—for instance, a provincial environmental assessment, or one under DFO? Because I'm not prepared, quite frankly, to see that change.

Mr. Steve Burgess: Depending on the nature of the project, there may be a provincial process that applies. If there is another federal trigger for EA, usually when there are impacts to water, we turn to the folks at DFO and the Fisheries Act to undertake an assessment.

Mr. Brian Jean: I guess my question comes down to whether we can eliminate unnecessary actions and not sacrifice, first, as I've said, environmental integrity; second, navigable waters issues, because I do jet boating and canoeing a lot; and third, safety, such as the docks and other things that come out from the waterway.

Can all of you witnesses at the table today see that we can make some changes that would eliminate what is not necessary, to make sure that we keep those things intact?

Ms. Shirley Anne Scharf: From our perspective, we continue to support the streamlining.

With respect to the issue of infrastructure and environmental assessment, because it's the funding trigger for us, that will automatically happen on any project that has a project description, even if it's smaller. We are looking at long-term ways to streamline that, but that will automatically happen.

Part of the aspect that has to be worked out—it gets to the question of what is a minor work and what is a minor waterway—is the specific definition that will have to be evolved to go into the new act or the new amendments. It will have to be designed in a way that includes those areas that may be small but still extremely significant.

So I guess part of the fact that we haven't been as fast to answer that today as perhaps the committee would like is that we don't have a definition of what those are in front of us. That has to be evolved. We would hope that the committee, in its consultations, would be able to provide us with some direction on that as well.

Mr. Brian Jean: I have 20 seconds left, but I'm going to try to get two more questions in.

First, can these changes not be done by regulation? Do they need to be in legislation?

Second, is it possible to have an environmental assessment that, if they see...? The common complaint I hear in my area is that an environmental assessment costs \$150,000 to put a culvert across a creek that flows for about three days a year. It does happen a lot.

I see you shaking your head in agreement,

Now, could there be a different environmental assessment, or two different ones, or three different ones, depending on the size of the project, to say, okay, at first blush, phase one, phase two, and phase three environmental assessments will be done on contaminated sites? Could there be a system like that in place?

• (1240)

Ms. Shirley Anne Scharf: On the second question, we are working with our colleagues at the assessment agency to look at ways to streamline environmental assessments, particularly for infrastructure, which we haven't touched on today. Those are evolving now, and we're looking at options, absolutely.

On the assessment agency....

Mr. Brian Jean: Ms. Flood, would you like to comment?

Mrs. Ginny Flood: Sure.

As to whether or not there would be an environmental assessment, I think if anything is going to have an impact on fish and fish habitat, obviously the Fisheries Act authorization has to be applied, so we would need to do an environmental assessment.

The other side is that we do have some tools to work on. With regard to the culvert crossing, we have what we call our operational statements—that is, if proponents do it in a certain way, it's not going to have an impact on fish and fish habitat. We would be looking at working with the navigable waters people to make sure this also may be taken into account with some of the work they're doing.

The Chair: Having served provincially and municipally, I can tell you that nothing ever happens with water without DFO being involved in it.

I'm not sure if that's a positive comment or not.

Mrs. Ginny Flood: There are very few waterways without fish.

The Chair: Mr. Jean.

Mr. Brian Jean: I have one further question.

I noticed nobody asked a question in relation to regulations, if it could be done with regulation without legislation. But I wonder if the departments could provide to us a process chart, if they have one available.

I'm more confused today than I was three days ago. I don't know about the other members, but I would like to have more certainty as to the process itself that your departments take, what triggers what and where we go in each particular case.

Finally, if it is possible, Ms. Scharf, could you provide the information in relation to the EA assessments that you're suggesting—you're looking at different types—to help this committee in the future? And I certainly would like to find out why we can't do it through regulation, if we could.

The Chair: Thank you, Mr. Jean.

We do have a little bit of time left, and I know some people want to ask another question.

Monsieur Carrier.

[Translation]

Mr. Robert Carrier: I will ask a short question that follows up on the one I already asked.

When the Canadian Environmental Assessment Agency is involved in a file, whether it comes from Fisheries and Oceans or from Transport, Infrastructure and Communities, who is ultimately responsible for issuing the environmental study permit?

You said that the agency only coordinates the work, but it is still responsible on behalf of the government. Or does some other department, such as Fisheries and Oceans, have that responsibility?

Mr. Steve Burgess: One of the federal authorities is responsible for carrying out the assessment and making the decision. I should perhaps add that there is no approval that results from the environmental assessment process. It is not a process that results in a certificate or an order in council. A decision is made regarding whether or not there are impacts on the environment.

Mr. Robert Carrier: So you work on behalf of the other departments.

Mr. Steve Burgess: That's right.

Mr. Robert Carrier: Very well. Thank you.

[English]

The Chair: Mr. Julian.

Mr. Peter Julian: Mr. Chair, are you allotting a period of time, or do you just want us to ask...?

The Chair: It's just as questions come up.

I have a couple of minutes, so I'll allow you to start.

Mr. Peter Julian: Thank you very much. I have two or three questions. I will say that it will take the opposite point of view of Mr. Jean.

When I see government ministries not having the kind of honest debate that should be held around this, because there are serious consequences as well for what is being proposed, I get apprehensive that there seems to be a lockdown within the ministries to avoid the kind of debate that should be taking place on this.

There's no doubt that there may be some advantages to dumping a portion of the environmental assessment...because that is indeed what we're talking about, not modernization but dumping a significant portion of environmental assessment. There are also serious disadvantages to that. I would like to have seen today more of a debate between the ministries around the consequences of this, but that's perhaps something that we can pursue off-line, away from this table, because I certainly understand the pressures that bureaucrats are receiving now from the current government.

I'd like to come back to the issue around the screenings and follow up on Mr. Maloney's comments around removing the reference to the four named works. On the four named works, why are we not looking for a proposal for minor modifications of those named works, as opposed to excluding them from the act?

Secondly, in the environmental screenings that take place today, what is involved? That's a little bit along the lines of Mr. Jean's process question.

Thirdly, coming back to the issue of the minor waters, which is disturbing to me, in British Columbia we have, I think, a lot of waterways that would fit into the definition of minor waterways, but where there are significant repercussions for modifications. So I would like to hear from each of the ministries as to what their discussions have been around minor waters and how that would be defined.

Those are my three questions. Thank you, Mr. Chair.

● (1245)

The Chair: Before you answer—and I'll ask you to do that—it's important to note in regard to Mr. Julian's opening comments that I think that is something where probably we would want to bring the ministers of the departments in, to have that open dialogue that you talk about, rather than the people within the system. They're here to implement what government asks them to do, as opposed to forming the opinion of government. I'll just clarify that.

Do you have any comments?

Mr. John Smith: On your first question about the named works, my understanding of the current situation of the proposal is that because the named works are in there, minor versions of those types of works can't be excluded. So no matter how small any one of those types of works is, it will always trigger an authorization. So removing them doesn't mean they will no longer be subject to the NWP. Those types of works can now be looked at similar to other types of works, and those that are minor can be excluded. It doesn't remove them from the NWP.

The Chair: Are there any comments?

Ms. Scharf.

Ms. Shirley Anne Scharf: I believe Keith will have some comments on the last question, but on that issue, it is our understanding that the intent is not to miss the major causeways or dams. The way the act is structured now, we must go through the full approval process and have site access, and that can lead to a lot of delays.

Because we don't have the specific amendments in front of us on the details of how they're defined, that makes it a bit more of a challenge. But the larger point is that they had to be designed for flexibility, but in a way that safeguards them. The way it's written now, there's no way to get that flexibility.

We're not suggesting it isn't important or significant, but there's no flexibility.

The Chair: Mr. Grady, do you have another comment?

Mr. Keith Grady: We've done hundreds and hundreds of environmental assessments of infrastructure projects over the past decade. I've personally done hundreds of them. We have a lot of experience now.

We're looking at changes to the definitions of minor works and minor waters in relation to our CEAA responsibilities and our overall approvals. From my perspective in doing an environmental assessment—if I can use Mr. Jean's example—if we're funding that road, whether or not it involves a bridge that is considered a minor work isn't really going to change the practical application of the way Infrastructure Canada addresses its CEAA requirement. We are

going to consult Transport Canada and the NWP if there is a potential issue involving navigation. We will continue to do that. We will take that information from the NWP into account in our EA approvals as well. So if they come forward and say it's a minor project and we can proceed with these design criteria and these good management practices, we will build that into our approvals. That's very similar to what we do now.

The changes that are being proposed by Transport Canada offer us the benefit of being able to not burden our environmental assessment responsibilities with additional regulatory requirements. It simplifies the way we can carry out our environmental assessments in working with our federal partners.

From my perspective, we're going to maintain ecological integrity, and that is important. We are going to maintain navigation safety and do it more efficiently, taking into account the fact that we've done hundreds of these types of projects already and we've learned through that experience.

● (1250)

The Chair: Ms. Flood.

Mrs. Ginny Flood: I think it would be useful to discuss the definition of minor works and have a good debate on that. From a DFO perspective we certainly don't classify waterways as minor works or major works. If there's fish and fish habitat, we're there.

If the real concern is whether an environmental assessment will be done or not, I think the issue is whether there's a federal regulator that will be doing that, and what the value-added is of NWP being another federal regulator on the same project.

The Chair: Mr. Fast.

Mr. Ed Fast: It really boils down to the various triggers in place to trigger an environmental assessment. The more triggers we have, the greater the chance we're going to bog down the process.

You told me just now, Ms. Flood, that even if the NWP wasn't around, anyone doing work in a waterway that involved fish habitat would still trigger an environment assessment. So you're not going to get around that.

By making these amendments, we're expediting and streamlining the process of getting infrastructure money out into the communities, getting things built over the next seven years, and just moving forward, not building bureaucratic empires. We're trying to cut through some of the red tape that's already there. You've just clarified that.

There are numerous triggers along the way. One we haven't mentioned yet, if we're dealing with the pipeline, is that we'll need to deal with the NEB as well, which would trigger its own reviews.

Mrs. Ginny Flood: The other thing is that we're looking at the same activities. When it's in and around water, Transport Canada and DFO are usually looking at those same environmental impacts when we're doing an environmental assessment. So that's also quite important.

The Chair: Thank you very much for attending today and presenting us with the information. I'm sure we'll have further discussions as we move forward. I appreciate your time.

For the committee, just as an advance, we are still looking for lists of people who want to present or who you want to put forward on the issue of navigable waters.

We have the railway safety review book. If any of you or your staff need extra copies, we have them available.

On Thursday, we're with Doug Lewis. So come ready to go.

Thank you. The meeting is adjourned.

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