



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Fisheries and Oceans

FOPO • NUMBER 038 • 1st SESSION • 42nd PARLIAMENT

EVIDENCE

Wednesday, November 30, 2016

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Chair

Mr. Scott Simms

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• (1615)

[English]

The Chair (Mr. Scott Simms (Coast of Bays—Central—Notre Dame, Lib.)): Hello, everyone, and welcome to the Standing Committee on Fisheries and Oceans.

Today, pursuant to Standing Order 108(2) and the motion adopted by the committee on September 19, the committee commences its study to review changes made to the Fisheries Act. This is what we would have to call an abbreviated version, simply because of the votes in the House. We just took one vote in the House of Commons. We expect to take another vote closer to 5:45 p.m., with bells preceding at 5:15 p.m.

I've had some discussions with our colleagues and with the table officers here. We've decided that we're certainly going to allow all five groups here to have their 10 minutes or less to make a presentation, to put it into the record, and have it considered in this study. Following that, we hope to have a question from each party represented by MPs, including the government side, the opposition, and the third party, the NDP.

That being said, I'll introduce the guests and you can proceed right away.

In group number one, from Manitoba Hydro we have Gary Swanson, the senior environmental specialist. He has a power point for us to look at as well.

Mr. Swanson, you have 10 minutes or less. Please proceed.

Mr. Gary Swanson (Senior Environmental Specialist, Manitoba Hydro): Good afternoon, members of the standing committee. Thank you for the opportunity to present on the Fisheries Act on behalf of Manitoba Hydro.

To give you brief background about myself, I've been a fisheries biologist for the last 31 years, starting in 1985 with the Manitoba fisheries branch, performing environmental impact assessment work for Manitoba Hydro projects on the Lower Nelson River. This was one year before the Department of Fisheries and Oceans released the fish habitat management policy and the "no net loss" principle in 1986. For the last 13 years at Manitoba fisheries branch, I managed Manitoba's recreational, commercial and aboriginal fishing files, including interactions with DFO on the overlapping provincial and federal fisheries management and protection mandates. Since 2007 I've managed Manitoba Hydro's aquatic ecosystem approvals section. My experience with the fisheries branch and the Fisheries Act and Manitoba Hydro has been fairly extensive.

Manitoba Hydro is appreciative of the opportunity to make a submission. Manitoba Hydro is committed to co-operative and collaborative assessment of works, undertakings, and activities with all parties toward the protection of Manitoba's fisheries.

Foundational to our perspective and our submission is our understanding that the purpose of the Fisheries Act is to provide for sustainability of fisheries, and not simply the preservation of all fish and fish habitat. We understand that this has been clarified in various instances. One example, probably not that visible out there, is by the court. I'll just read a couple of sentences:

Measures that in pith and substance go to the maintenance and preservation of fisheries fall under federal power. By contrast, measures that in pith and substance relate to trade and industry within the province have been held to be outside the federal fisheries power and within the provincial power over property and civil rights.

We have that understanding, and we also understand that this was in fact consistent with the 1986 fish habitat policy. To that end, Manitoba Hydro views that section 6 and subsection 6.1 of the amended Fisheries Act, 2012, appear to have been crafted purposefully to reflect what Manitoba understands to be the DFO's proper focus on fisheries sustainability. In fact, Manitoba Hydro submits that subsection 6.1, the purpose statement, merits increased prominence within the Fisheries Act and should guide all considerations in the determination of serious harm.

Based on that foundational understanding, Manitoba Hydro does not understand that the revised wording of the Fisheries Act resulted in lost protections. By way of explanation, our consideration of three fisheries management and protection areas follows.

First, as to the killing of fish and protection of fish habitat, prohibitions against killing fish and harmfully altering fish habitat are still present in the new prohibitions against serious harm. Notwithstanding the assertions from various sources that the focus on fisheries and the modifications to the habitat provisions have reduced fish habitat protections, Manitoba Hydro understands that the inclusion of fish that support and contribute to fisheries, and the interpretation that all water bodies that are or could be fished are fisheries, leaves a very broad geographical and fish species scope of application.

Manitoba Hydro does not consider that protections for fish habitat have been reduced, nor has our duty or liability as a proponent or operator of facilities. In fact, the addition of the word “activities” in the prohibition against serious harm to fish arguably represents greater protection for fisheries, as do the addition of requirements for reporting all incidents of serious harm, the duty to intervene to address impacts, the extension in the time limitation for laying of charges from two to five years, and the establishment of contravening conditions of licence as an offence.

If the Fisheries Act is properly focused on fisheries sustainability, then the addition of a requirement to consider the management objectives of the fisheries seems logical and necessary as an early step in the review process to determine what impacts, if any, occur to a fishery.

• (1620)

The inclusion of section 6 factors, and a stated need to consider fisheries management objectives and the broader public interest along with fisheries sustainability in the authorization process, brings focus to the logical need to define the fishery in order to determine if a fishery has been negatively affected and the need to integrate fisheries considerations with other uses and users, given the complexities associated with overlapping jurisdiction.

As previously stated, the integration of multiple water use interests in jurisdictions is not new, and was included specifically in the 1986 policy.

Third, making scientifically defensible decisions within the current level of ecosystem science is very difficult. Fish species that are targeted in a fishery are the product of a complicated series of ecosystem and food web interactions. Predicting habitat effects up through the food web is fraught with uncertainty, and ecosystem and fisheries science is often most useful to explain changes that have occurred rather than to predict future outcomes.

This lack of certainty in the charged environment of growing third-party scrutiny appears to have resulted in high levels of risk aversion amongst DFO's fish habitat biologists. They defaulted to considering, in Manitoba anyway, that regardless of habitat quality, every metre squared of habitat that was modified must be offset with up to four times that amount in like-for-like compensation. Developers like Manitoba Hydro were then tasked to monitor those offsets, to document success with unknown measures of success from a fishery productivity perspective, and to maintain the offsets permanently, regardless of the ever-changing nature of aquatic environments.

Yet even with this onerous application of the precautionary principle, the program did not yield measurable benefits, as reflected in the Auditor General's 2009 report on the fish habitat management program. In hindsight, had there been less risk aversion and a more systematic learn-by-doing authorization process since 1986, we would have had 30 years of better lessons learned to refine the state of fish habitat science. As well, had DFO's 2005 ecosystem science framework been fully implemented for the last 11 years, we would be much closer to scientifically standardized habitat management approaches.

In conclusion, Manitoba Hydro does not consider that the current legislation represents the biggest problem for the protection of fisheries, nor that any protections were lost in the amending of the Fisheries Act. In fact, the pre-2012 fish habitat management program was documented to have not measurably protected fish habitat. The combination of a lack of integration of fisheries management inputs and the imprecision of fisheries and ecosystem science, combined with concerns for third-party interventions, resulted in stalled projects. Decisions that were then made at more senior levels without clear science, or a less transparent process to provide critical scientific review, eroded public trust and social licence for both developers and environmental regulators.

To this end, Manitoba Hydro feels that if the fisheries protection program review process were modified, it would improve assessments of works, undertakings, and activities. We think that process could be as simple as the following. The proponent provides a project description sufficient to describe likely ecosystem effects. The fisheries management agency, which is not always DFO—in the Prairies it's the provincial governments—defines the fishery via the provision of fisheries management objectives. The proponent then integrates those fisheries management objectives and the project description in order to avoid and mitigate impacts as best they can. The fisheries protection program and fisheries management agency then assess whether there are residual effects on the fishery. At that point, if there are residual effects, determining whatever compensation or offsetting is required would be a logical thing to do, as would monitoring, assessment of monitoring, and reporting as a condition of licence.

• (1625)

Manitoba Hydro considers that the key to providing meaningful protection for fisheries lies in the clear description of the purpose of the Fisheries Act, which leads to a fuller integration of fisheries management objectives. Meaningful monitoring that is coordinated with ecosystem research will over time clarify thresholds and allow for evidence-based standards to be established.

In order to achieve that, Manitoba Hydro recommends that section 6 of the 2012 Fisheries Act be left as stated, as confirmation that the Fisheries Act is a resource management act to protect fisheries; and that the application of section 6.1, the purpose, be made clear that it applies to all assessments of serious harm.

Two, we recommend that the standing committee encourage the development of supporting integrated fishery planning and management processes, be they provincial or regional, to reflect the provinces' role in fisheries management and to ensure that the federal authority over fisheries conservation is guided by provincial management of property.

Three, we recommend that DFO revitalize its ecosystem science program to support planning processes, project reviews, and the public interest in fishery management and conservation.

Thank you.

The Chair: Thank you, Mr. Swanson.

From the Watershed Watch Salmon Society, we have Lina Azeez and Randy Christensen, project manager and legal counsel respectively.

Ms. Azeez, you'll be speaking for the 10 minutes?

Ms. Lina Azeez (Project Manager, Watershed Watch Salmon Society): I'll be sharing my time with Randy.

The Chair: Please proceed.

Ms. Lina Azeez: Thank you, honourable chair and committee, for inviting Watershed Watch as a witness to this important review. We are honoured to be part of the process.

I am here today with Mr. Randy Christensen, who is our legal counsel. I manage our connected waters campaign, which focuses on a specific fish habitat issue that I want to ensure the committee is aware of. I have the benefit of working on the ground with community members passionate to restore their local waterways.

When my family migrated to Vancouver 14 years ago, I learned the incredible life story of salmon. I was completely inspired, and before I knew it, I had dedicated myself to conservation and protection of these incredible species and their habitats. I've been doing this work for eight years in B.C.'s Lower Mainland.

My organization, Watershed Watch Salmon Society, advocates for B.C.'s wild salmon and the waters they swim in. Wild salmon are powerful cultural icons in B.C., and there is strong public support from across the political spectrum for the conservation of salmon and their habitat.

Today's presentation highlights a large amount of salmon habitat in the Lower Fraser that is affected by over 250 kilometres of diking and related flood control infrastructures. The Lower Fraser River was once one of the world's richest mosaics of Pacific salmon habitat. While still valuable, it is heavily degraded through urbanization, agriculture, gravel mining, and continued industrialization of the river. Dikes play a major role in flood control and irrigation in the Lower Fraser River, with about 500 flood-boxes and gates on tributaries and sloughs, as highlighted on the maps we've shared with you.

Waterways that once flowed naturally into the Fraser are now severely restricted, creating dead zones with low oxygen levels, poor water quality, limited flow, and disconnected salmon habitat. Few floodgates ever open, and fewer still have fish-friendly pumps or appropriate gates to allow for salmon passage.

We estimate that 1,125 kilometres of current or potential fish habitat are affected within more than 100 waterways. These waterways provide important nursery habitat for young salmon before they head out to sea. Many of the salmon populations being impacted are important to the people of greater Vancouver, but many are very depleted and in need of rebuilding.

Flood control infrastructure is having a dramatic cumulative impact on the quantity and quality of salmon habitat in the Lower Fraser. This is partly because flood control structures are so numerous, and partly because they are usually found on the lower reaches of streams, affecting all upstream habitat.

Unfortunately, this fish habitat is not being treated as such under the law. Much of this infrastructure was installed before the habitat provisions of the Fisheries Act were enacted. But despite the 1977 changes to the Fisheries Act, ongoing operations, maintenance, and upgrades are often treated as exempt from the law. For the most part, federal, provincial, regional, and municipal authorities have all avoided addressing fish habitat in these areas. Current flood control standards do not consider fish passage or overall ecosystem health, and DFO provides very little oversight of the impacts resulting from flood protection.

So what's the solution? A large percentage of the flood and water control infrastructure that we are concerned about needs refurbishment in the upcoming decades. Much of this work will be supported by federal infrastructure grants. We believe the federal government should require that any future flood control projects be made fish-friendly.

Additionally, a moderate investment to establish a Fraser Valley salmon and dike fund, to allow for cost-sharing of fish-friendly upgrades, would assist municipalities and farmers and create major improvements for the fisheries. We suggest, as an interim solution, establishment of a 10-year fund, with expenditures of \$5 million per year. This fund would help with incremental costs of restoring fish passage while improving flood control in the highest-priority areas.

I'll now turn it over to Randy Christensen to discuss how the Fisheries Act can and should play a role in addressing the issues I've described.

● (1630)

Mr. Randy Christensen (Legal counsel, Watershed Watch Salmon Society): Thank you to the committee for the opportunity to present.

In addition to the work I do with Watershed Watch, I'm a lawyer with Ecojustice Canada, which did a presentation earlier this week. I'm also an associate with the Polis water project at the University of Victoria.

Watershed Watch will be making a submission that contains a number of recommendations. I'd like to highlight three today.

The first recommendation we have is the restoration and modernization of section 35. Similar to many other witnesses, we recommend restoration of the pre-2012 prohibition against carrying on any work or undertaking that results in the harmful alteration, disruption, or destruction of fish habitat. The definition of “fish habitat”, strictly speaking, is sufficient to cover the areas of concern in the Fraser Valley. The small streams, side channels, and sloughs behind flood structures that once provided nursery habitat for millions of juvenile salmon still support smaller populations of salmon, and should be protected under this definition. However, DFO often fails to exercise oversight for these areas. We would ask the committee, in their consultations, to discuss with local DFO personnel to identify whether the definition of fish habitat is a limitation to their enforcement activities.

In the longer term, fish-friendly flood control practices must become the norm through legislation and/or policy. As such, section 35 authorizations for flood control works are a critical tool to protect fish habitat. These authorizations should be required for works such as flood control infrastructure, and the minister's discretion to grant authorizations should be guided by criteria that consider not only the need for flood control infrastructure but alternative designs and the value and extent of fish habitat that will be affected.

That leads to our second recommendation, which is ensuring that federal government funding doesn't harm habitat. As mentioned by Ms. Azeez, many of the maintenance and upgrade projects that will happen in the coming years will be supported by federal government funding through infrastructure grants. This process has already begun with the development of a multi-jurisdictional Lower Mainland flood management strategy. Federal government funding should not be going to projects that damage fish habitat when other alternatives and mitigation measures are available.

Part of the approval process for federal government grants for infrastructure should include screening for the impacts to fish habitat and consideration of alternative measures. One way to ensure this is done is to include flood and water control projects that receive federal funding on the list of projects that are subject to the Canadian Environmental Assessment Act. Other approaches may suffice, but it is essential that federal government spending doesn't damage the very resource it has an obligation to protect and is committed to protecting through instruments such as the wild salmon policy.

Our third recommendation is to protect flows as part of fish habitat. Earlier the committee heard from West Coast Environmental Law, who recommended including flows as part of that habitat definition. We would adopt that submission. In the interest of time I will skip over that, but we're happy to answer questions.

Since the 1970s, the understanding of the importance of flows to the overall health of fish and fish habitat has improved dramatically. Flows are now considered a master variable of streams and rivers, a condition that affects all other conditions for fish.

Currently section 20 of the Fisheries Act contains important powers to ensure the passage of fish and, importantly, to prevent harm to fish. In particular, we would recommend that paragraph 20(2)(f) add an explicit reference to preventing harm to fish so it would allow the minister to direct water flows in emergency situations. Section 20 contains a wide range of other powers that are available

to the minister that seem to be rarely used. While the provisions of section 20 are generally sufficient, and could be used to great effect, changes to law or policy may be required to ensure that those provisions are actually used when needed.

I'll turn it back to Ms. Azeez for closing.

•(1635)

Ms. Lina Azeez: When Watershed Watch conducted a survey of British Columbians to understand how people valued salmon, 89% of respondents told us that laws meant to protect salmon habitat should be more strictly enforced, and 86% of those surveyed agreed that economic growth and development should not come at the expense of wild salmon habitat.

Over and over again, at community events, clean-ups, and canoe tours, I've heard concerned citizens express their frustrations that their leaders are not acting with the urgency that climate change and other threats require.

The federal government has jurisdiction over fisheries. Its responsibilities go beyond just the provisions of the Fisheries Act. There are other important roles the federal government plays, including, importantly, funding. The work done under the Fisheries Act can be impaired or undone through other government decision-making or simply inaction. That means that to truly regulate and protect the fisheries of Canada, work needs to be done to link infrastructure funding to prepare for a changing climate, protect habitat, and ensure fish-friendly waterways that give salmon a chance to survive.

It is imperative that waterways behind dikes are treated as fish habitat. To attain this goal, we strongly recommend establishing a salmon and dike fund as an interim measure until fish-friendly flood control practices become the norm through legislation and policy.

It's important that we take steps to restore what was lost, not just protect what's left. It's equally important to recognize the ecosystem as a natural asset that needs to be nurtured, maintained, and invested in just like any other infrastructure.

Thank you for giving us this opportunity to present to the committee. We'll be happy to address any questions later.

• (1640)

The Chair: Thank you, Ms. Azeez.

We're going to move to the Canadian Cattlemen's Association. Joining us here in the committee room is Fawn Jackson, manager of environmental sustainability.

For 10 minutes or less, Ms. Jackson, please.

Ms. Fawn Jackson (Manager of Environmental Sustainability, Environment and Sustainability, Canadian Cattlemen's Association): Thank you for the opportunity to present.

My name is Fawn Jackson. I am the manager of environment and sustainability, and I work on behalf of Canada's 68,500 beef operators.

I would first like to say that clean drinking water is imperative to livestock health and performance, as well as to the values of Canadian cattle producers, who pride themselves on being responsible stewards of the land. Cattle producers have an incentive to keep water clean and healthy.

In regard to the Fisheries Act, it is important to note that the previous and current acts have challenged beef producers at times. As this government reviews the Fisheries Act, the Canadian Cattlemen's Association requests consideration of the realities of beef production as well as examination of the most effective ways to engage with the beef community regarding fisheries protection.

There are seven different considerations we request in regard to the following.

First of all, beef operators are small family operations. The Canadian beef industry is dominated by family owned and operated operations: 98% of farms and ranches are family owned and operated and are small to medium-sized businesses. It is thus important to engage appropriately with this demographic in regard to a number of different facets such as regulatory burden, reporting burden, cost of implementation, and penalties.

Second, we have to make sure it is outcome-based. Canadian cattle producers operate all the way across Canada. An approach that works in the mountains of B.C. might not be appropriate for the prairies of Saskatchewan. Flexibility and outcome-based approaches are imperative to working proactively with cattle producers regarding the protection and stewardship of fisheries and water sources.

Third, stewardship and research are important pillars to assisting beef producers in fisheries protection. The CCA advocates for a continued focus on stewardship rather than enforcement for the agricultural sector. Due to the uptake of best management practices, provincial laws, and regulations, the risk of cattle production to fisheries is not large, and as such should not be treated as a major risk. Instead of investment on the regulatory front, investment in stewardship programs—i.e., environmental farm plans, and provincial water-focused programs, such as the “cows and fish” program—should be invested in with positive outcomes for the conservation of our fisheries and water sources.

With regard to research, significant amounts of research have been completed on impacts to water quality and healthy riparian areas

from livestock grazing in watersheds, both in the U.S. and Canada. Best management practices have been developed and are being implemented across Canada. We need to continue to support them.

We also need to ensure coordination with the provinces. Each of the provinces has legislation dealing with water rights and water pollution. The CCA encourages coordination with the provinces and reduction of duplication. A one-window approach is important for our producers.

Point number five is around man-made agriculture structures. Drainage ditches, man-made reservoirs, and irrigation channels have previously been subject to the same rules and guidelines as rivers, lakes, and oceans. We saw these changes as a positive adjustment, since these man-made agriculture structures clearly do not pose the same level of risk to fisheries or value to habitat. If there were to be further changes to the act, the CCA would encourage the exclusion of man-made agriculture structures as habitat for fish.

Point number six is to streamline the process for small and low-risk projects. Cattle producers may at times undertake small, low-risk projects. It is important that the level of application burden, reporting burden, or need for the act to be triggered at all reflect the size of the risk.

Finally, point number seven is clarity of implementation. Having a clear, transparent, and easily understood act will ease implementation challenges. Consistency of implementation helps support beef producers to achieve compliance with the act.

In closing, we would like to say that the CCA strongly believes that conservation on agricultural landscapes is best achieved through enhancing stewardship and partnership opportunities with the conservation community, government, and the Canadian public. The CCA looks forward to working with all stakeholders to ensure the Fisheries Act improves administration efficiency and reduces unnecessary, ineffective, and burdensome procedures while bringing truly effective protection to Canada's fisheries.

Thank you.

• (1645)

The Chair: Thank you for that, Ms. Jackson.

Now, via video conference, we'll go to the Department of Fisheries and Oceans. Dr. Kristi Miller-Saunders, head of molecular genetics at Pacific Biological Station, is joining us from Vancouver, British Columbia.

Dr. Miller-Saunders, please proceed for 10 minutes or less.

Dr. Kristi Miller-Saunders (Head of Molecular Genetics, Pacific Biological Station, Department of Fisheries and Oceans): Thank you for the opportunity to appear before you today, Mr. Chair and distinguished members of the parliamentary committee.

I am Dr. Kristi Miller-Saunders. I've been a research scientist for Fisheries and Oceans Canada for 23 years. For the last seven years I have headed the molecular genetics section in the Pacific region.

My technical expertise is in the area of molecular genetics and genomics, and my research centres on the adaptive capacity of aquatic species. My early research in the area of population genetics has contributed to the delineation of management and conservation units for many aquatic species and the development of a genetic stock identification program for salmon that is now highly applied for fisheries management in Canada and the U.S. Much of my research on adaptive genetic variation has centred on genes important for disease resistance.

For the past decade, my program has shifted focus to the development of new technological approaches to assess the health and condition of aquatic species that can not only identify the presence of key stressors undermining performance but also predict variations in survival. This technology could prove very useful for future assessments on impacts of habitat destruction on fishes. I have carried out this line of research on salmon and shellfish, but I'm probably most known for my research on salmon.

The molecular physiological research performed on salmon by my lab has been particularly focused on the critical and stressful transition periods when salmon smolts migrate from freshwater natal rearing areas to the ocean to feed and grow, and when they return as adults to the rivers to spawn. This research has shown that fish that are physiologically compromised by stressful conditions in freshwater rearing areas, whether that be from anthropomorphic activities, disease, high water temperatures, low oxygen, or other factors, suffer high levels of mortality during downstream and early marine migration.

The same is also true with returning adults. Physiological compromise at this critical period can lead to an inability to deal adequately with additional stressors as fish adapt to a new salinity environment and a shifting habitat. As such, it has become abundantly clear that for migratory species, we cannot simply focus our policies on preserving adequate conditions in one environment. We need to protect these species across the habitats and ecosystems upon which they depend if we are to optimize their sustainability and that of our fisheries.

During this research, my team was repeatedly resolved signatures in migratory salmon that were highly suggestive of the development of disease states associated with pathogen infection. I published the first critical study on this in one of the top-ranked science journals, *Science*, in 2011, which came out shortly after the evidentiary hearings for the Cohen commission of inquiry had begun.

I was a witness in two of the evidentiary hearings during the Cohen commission of inquiry—the disease hearings and the ISAV hearings—and it was really after this experience that my focus shifted almost entirely to understanding the role that infectious disease might play in declining salmon productivity. The Cohen recommendations were a strong motivation of my research direction, and I worked closely with Dr. Brian Riddell of the Pacific Salmon Foundation and with the chief scientific officer of Genome British Columbia to develop a strategic salmon health initiative, a \$9-million project that is the most comprehensive assessment of pathogens and diseases in wild, hatchery, and farmed salmon ever undertaken.

Recently this research team has diagnosed a disease on a B.C. salmon farm that had eluded previous diagnostic detection and is among the third most economically important emerging diseases to the Norwegian aquaculture industry. We have also demonstrated more directly than before that pathogen infection is associated with migratory losses and that infection can considerably enhance the risk of predation by avian and piscine predators.

It is with this background that I speak to you today. I want to use the remainder of my time to offer some comments on issues of relevance to the review of changes to the Fisheries Act and its regulations.

There are many salmon stocks that are at record lows and that no longer are abundant enough to support fisheries. I am concerned, from the 2012 modifications of section 35 of the Fisheries Act, that these stocks may no longer be provided enough protection to rebound and become viable in the future. Moreover, these changes appear to be in direct contradiction to the wild salmon policy, which recognizes that for long-term sustainability of wild salmon resources, we must manage to conserve genetic diversity of our wild stocks, including those that may not be numerous enough to contribute substantively to fisheries.

Without these measures in place, these stocks will never get a chance to rebuild, and the range of stocks available to support fisheries will likely also continue to decline. As such, these changes do not support sustainability of our wild fisheries resources. My lab provides the tools that enable the implementation of the wild salmon policy by providing in-season genetic stock identification to managers so that they can specifically target fisheries on strong, healthy stocks while limiting impacts on stocks in need of conservation. I fear that if we are only protecting weaker stocks from fishing activities and not from other anthropomorphic activities, we may be pushing these stocks toward extinction, and as such lose a considerable amount of the genetic variation that will be so crucially important if these species are to survive the changes in climate that are already upon us and are expected to worsen in the coming years.

In the early 1990s, our west coast coho salmon stocks were severely depressed, and there were no fisheries on coho for a number of years. Even today, fisheries are extremely limited. Hence, under the amended legislation, I am concerned that in future, coho salmon may not receive the same level of protection as other more commercially viable species in southern B.C. How can we ever expect to maintain a healthy, sustainable fisheries if we do not in fact maintain healthy, sustainable ecosystems in which our fish thrive, and if protections are only afforded to species and stocks that are currently abundant enough to support fisheries?

DFO has been moving towards a more holistic management concept than the single-species management approach of the past, which was called the ecosystem-based approach to sustainable management of aquatic resources. This amendment is also at odds with this direction by selectively favouring some species over others. Under ecosystem-based management, scientists and managers are concerned with the cumulative impacts of multiple stressors on aquatic resources within an ecosystem.

I'm also concerned with the provision that harmful impacts that are deemed important under the revised Fisheries Act require harm to directly lead to the death of fish. Certainly my own research and that of my colleagues' has shown that fish that are stressed in one environment may become physiologically compromised, but they may not immediately die within the habitat in which the initial stress occurred. Rather, this compromised state may manifest as an inability to adapt and thrive as these fish move to new habitats. In this case, the death of fish and the impact of the stressor is unobservable.

I now briefly shift the focus of my comments on aquaculture. While I don't see a lot of provisions within the Fisheries Act that directly address aquaculture, I did notice that aquaculture certainly came up in questions that this committee has put to other witnesses.

In British Columbia there is considerable public debate on the risks that salmon aquaculture poses to our wild salmon. Given pressures from ENGOs, fishers, first nations, the scientific community, and the public, and the declining productivity of large numbers of our wild salmon stocks, it's imperative that the regulations put in place to assure minimal impacts of aquaculture on wild stocks are strongly evidence-based, and that the research to understand these risks be transparent, objective, and independent of influence from industry. It is also important that as regulators, we are not afraid to ask questions and conduct research that may unearth findings that are not immediately convenient to industry and may require us to rework policies to ensure minimal risk.

When I started down this path of research in 2012, I was told by an upper manager, who's no longer with the department, that it was irresponsible to ask research questions that could potentially result in negative economic ramifications on an industry if we did not already know the answer. At the time, my lab was developing very powerful technology that could simultaneously quantitate 47 different pathogens—viruses, bacteria, and fungal parasites—in 96 fish at once. We had populated this platform with assays to virtually all the infectious agents that were known or suspected to be pathogenic in salmon worldwide, including many that were associated with emerging diseases in other parts of the world but that had never been assessed in Canada. The manager was concerned that by

employing this technology, we would make our salmon in B.C. look dirty, and impact their economic value in the market, and that if we uncovered agents that were not known to be endemic, ENGOs and the public would immediately point to the aquaculture industry as the culprit. As such, the attitude was don't look closely, especially for things that we didn't know already were there. It took almost two years to get approval to go ahead with this technology, which we are now employing on over 26,000 wild, enhanced, and farmed salmon in B.C.

● (1650)

I should say at the outset that I'm neither an industry advocate nor an anti-industry advocate. I feel very strongly that scientific research must not have an agenda and must remain independent from influence, especially if our research findings are to be accepted by the public and used to inform policy. I believe this independence is also crucial for public acceptance of the industry.

To use an analogy, we know that most drug trials are funded by pharmaceutical companies, and it's well evidenced that scientists who work with these companies rarely publish research that is either inconclusive or does not show positive benefits of the drugs under study. As a result, doctors and the consuming public are often unaware of the circumstances under which a drug may not be effective. The CBC reported on this finding just last week.

Since 2015 there have been great inroads undertaken by the department to move to a more science evidence-based approach to policy development. I wholeheartedly applaud these efforts, but it can be difficult when the department continues to carry a dual role as a regulator and an advocate. At a working level, I remain concerned that there is continued reluctance by scientists, veterinarians, most of whom have strong ties to the industry, and managers to ask questions and undertake research that might not turn out favourably for the industry. The level of DFO consultation with industry remains very high. While this can be a good thing, in my view when we are addressing risk assessments, regulators and researchers need to have objective independence from industry.

At present, the department relies heavily on information that the industry provides to determine, for example, what pathogens and diseases to focus risk assessments on. There are not, to date, any provisions to enable scientists to conduct risk assessments to sample fish on farms unless the industry agrees to provide them. With those agreements, the industry generally retains some level of control over how the information is analyzed and interpreted. The exception is the regulatory audit program, whereby the aquaculture management division collects samples of normal daily mortalities from farms that are randomly selected for sampling. When the industry was regulated by the Province of B.C., they had a right of refusal to provide these samples, but that changed when the federal government took the lead. My research program is the first to be allowed access to these audit samples for research purposes, and I'm extremely—

• (1655)

The Chair: Dr. Miller-Saunders, we're well in excess of 10 minutes here. Could you sum up very briefly? We have to move on to our next witness.

Dr. Kristi Miller-Saunders: Okay.

In my view, it's difficult to convince a skeptical public that we are doing everything we can to conduct robust, transparent, evidence-based risk assessments on aquaculture-wild interactions if we do not maintain independence from industry and if scientists and managers must seek permission from industry to utilize their fish. By maintaining this reliance, and the industry's right of refusal, there is a real risk that we won't be able to ask the tough questions—for instance, are there emerging diseases not covered under OIE regulations that the industry may either not know about or are not compelled to reveal? At present, less than 40% of mortalities on farms are diagnosed to specific disease agents. Some may not be infectious, but others may simply not be specifically recognized.

I will leave it at that. Thank you.

The Chair: Thank you, Dr. Miller-Saunders.

We'll go to our final witness, on video conference from Calgary. Patrick McDonald is the manager of oil sands with the Canadian Association of Petroleum Producers.

Thank you, Mr. McDonald, for joining us. You have 10 minutes or less, please.

Mr. Patrick McDonald (Manager, Oil Sands, Canadian Association of Petroleum Producers): Thank you.

Honourable Chair, members of the committee, good afternoon. My name is Patrick McDonald, and I'm the manager of oil sands at CAPP.

CAPP welcomes the opportunity to provide our perspective on the reviews to the Fisheries Act. We have put in a written submission and look forward to further discussion.

I would like to start with a brief overview of CAPP and of our industry. CAPP represents Canada's upstream oil and gas sector. We have approximately 100 producing members that find and develop about 85% of Canada's petroleum resources. Our members explore for, develop, and produce natural gas, natural gas liquids, crude oil,

and oil sands throughout Canada and offshore. Our offshore projects are located between 200 and 500 kilometres offshore.

Our industry is the largest single private sector investor in Canada, investing \$81 billion in 2014 and employing well over 500,000 Canadians.

Current market conditions have had a large impact on our industry over the past two years, and we are striving, in all possible aspects, to attract investment capital that is required to grow our industry. Regulatory effectiveness and efficiency are both important parts of the competitive equation, and there is little room for our industry to allow for duplication in any areas of our operation currently.

It is imperative that Canada remain competitive with other jurisdictions in the sustainable development of our resource projects, and certainty around regulatory processes can contribute to the competitiveness of jurisdictions, particularly when global opportunities exist for investment.

CAPP has been focused on three main principles related to how policy and regulation are carried out in Canada. These principles will drive to a strong regulatory regime, and as such a strong industry: accountability and transparency, balanced decision-making, and inter- and intra-agency coordination to minimize duplication.

In regard to the Fisheries Act, overall CAPP is supportive of the changes that were introduced in 2012. CAPP supports a regulatory regime, administered under the Fisheries Act, that maintains regulatory certainty, adheres to established and clear review timelines, increases Canada's competitiveness with other jurisdictions, provides clear and consistent and achievable approval conditions, and limits the potential for legal challenges.

CAPP supports maintaining focus on the application of the fisheries protection provisions of the Fisheries Act to a commercial, recreational, and aboriginal fishery, or to fish that support such a fishery, and to works that are at higher risk of resulting in serious harm to fish or their habitat. CAPP supports an application process that is balanced in scale and scope of the proposed works and not a one-size-fits-all approach. CAPP believes the current legislation has comprehensive mitigation measures to safeguard fish and fish habitat from harm, including the fisheries protection program. In summary, it does not result in any lost environmental protections.

CAPP recommends that any changes to the Fisheries Act be focused on enhanced compliance tools and further development of best practices for avoiding, mitigating, and offsetting harm to fish and fish habitat—for example, developing area-specific best practice recommendations for proponents to follow and avoid, where possible, serious harm to fish through provisions related to timing. As well, there might be the opportunity to reinstate activity-specific operational statements and/or develop new operational statements, or best practice guidelines, to guide proponents in how risks associated with routine activities can best be mitigated and managed by proponents.

Given the high degree of interest in this process from industry, academia, environmental groups, indigenous communities, and members of the public, perhaps there is an opportunity with development of these best practice guidelines or operational positions to be developed and reviewed through a transparent and collaborative process.

If changes are made to the Fisheries Act, CAPP asks that it be ensured that appropriate resourcing and planning for the transition and implementation of any of these changes be considered and addressed. This will aid in avoiding any confusion and ensure a timely transition from the current regime.

• (1700)

Resourcing within the department must be equipped to address any amendments, allowing for clear and specific guidance and training to staff to again support the timely transition and implementation of amendments.

As an industry, we will continue to develop responsibly and with the commitment to continuous performance improvement under regulations that will deliver the outcomes Canadians expect from our industry, that compare very favourably with those of other countries with whom we are competing for investment capital.

Thank you very much for this opportunity to present.

The Chair: Thank you, Mr. McDonald.

That concludes the witness testimony. We'll now go to questions.

By way of information, I've been told that the votes may be delayed by up to 20 minutes, given the points of order in the House earlier. That said, the bells may not ring until shortly after 5:30 p.m. Eastern, which gives us close to 30 minutes.

Before I do that, can I get unanimous consent to go past 5:30 p.m., bells or no bells, by a few minutes so that we can get in as many questions as we can? Are there any objections to that?

I'm seeing a lot of thumbs in the air, so we're good to go.

We'll start out with seven minutes each on the first round.

Mr. Hardie, you're up first for seven minutes, please.

• (1705)

Mr. Ken Hardie (Fleetwood—Port Kells, Lib.): Thank you very much.

Dr. Miller-Saunders, I just want to clarify one thing you mentioned. I took from your comments that if a particular species

falls below a point at which it's a commercially viable source of recreational, commercial, or aboriginal fishing, it would no longer be considered to be in that group and would therefore be unprotected?

Dr. Kristi Miller-Saunders: That is my concern. On the west coast of Canada, we have many stocks that are currently at very, very record low abundances, so there are not enough fish to support a fishery. They have supported fisheries in the past, and they may in the future, but my concern is that if they're not afforded the same protection as the larger, healthier stocks, they may never rebound.

Mr. Ken Hardie: But again, the concern is that they would also be unprotected because they're no longer one of those identified fisheries.

Dr. Kristi Miller-Saunders: In the way that the legislation is now worded, that does appear the way it is worded.

Mr. Ken Hardie: Just for clarification, Mr. Christensen and Ms. Azeez, in the map you've given us of the flood plains in metro Vancouver, the square boxes are pumping stations, is that correct?

Ms. Lina Azeez: Correct. Each of those boxes represents either a pump station or a gate.

Mr. Ken Hardie: Right. One of the major issues you pointed out to me when we met yesterday was that the pumping stations themselves, when they're up for renewal...or that in fact it's the pumping stations that are causing a great deal of the difficulty. Can you briefly explain what's going on there?

Ms. Lina Azeez: Yes, you're right, a lot of the pump stations were constructed pre-1977, so they're 30 to 45 years old. These old water pumps are actually fish-unfriendly, which means that when the pumps are turned on, any living creature behind it—amphibians and fish alike—are dragged through the pumps and ground up. That's a big concern in terms of any potential living thing behind the pumps.

Mr. Ken Hardie: So it's then a matter that the new pumps are fish-friendly?

Ms. Lina Azeez: That is the recommendation we are putting forward, that from now on—

Mr. Ken Hardie: Do they exist?

Ms. Lina Azeez: There are fish-friendly pump stations. There's one just off the Coquitlam. I was unable to get any more information on other fish-friendly pump stations in the Lower Mainland, but the technology does exist, yes.

Mr. Ken Hardie: Mr. Swanson, with respect to the changes that were made, a lot of the impetus came from rural areas in the prairies, especially rural Saskatchewan municipalities, because they were concerned about the holdup of Public Works, etc., due to what they thought were onerous conditions and very low-threshold triggers for complete environmental reviews. We've heard from many people, though, who don't necessarily share your view, that things should just exactly stay the same.

Keeping in mind the interest of those people who are proceeding with Public Works—Manitoba Hydro, I'm sure, being one—what does represent a compromise, a good balance, that meets the concerns of a lot of people we've heard from but also, of course, retains what many would consider to be the best aspects of the changes that were made?

Mr. Gary Swanson: To respond to the comment about keeping it exactly the same, what we're saying is that it's the application, not the wording. To that point, if there were an efficient process that integrated the fisheries management objectives with the provincial fisheries management agency inputs earlier, that would bring a logic to the process that was more efficient.

Foundationally, if it were broadly understood—I believe it is understood, and it has been defined in the court cases—that the purview of the Fisheries Act application is at a fishery or a fish population level, those two pieces together would bring a logic that, in concert with a rededication to freshwater ecosystem research, would provide the process efficiencies that would bring more of a science perspective to it as well. By integrating the provincial fisheries management agency, you bring in years of experience in regional and district offices, whereas fish habitat biologists located in a head office somewhere wouldn't have the same experience, the same local knowledge and information.

• (1710)

Mr. Ken Hardie: I'll go back to you, Dr. Miller-Saunders. A point that has been made and a concern that has been raised is that when we define fisheries protection, some people aren't convinced that it includes habitat. Is that your reflection as well?

Dr. Kristi Miller-Saunders: Not necessarily. I'm not a habitat biologist, so I can't really speak too much to that. I have heard some of the discussion about this.

My concern is more that it's a bit of a slippery slope. If we start to have a value judgment on whatever stocks and species are the most abundant in supporting the greatest fisheries today and more or less ignore or don't provide the same level of protection to stocks and species that may not be supporting fisheries today but may support fisheries tomorrow, we may not have some of those opportunities in the future. I'm not really speaking to habitat, however.

The Chair: Thank you very much, Mr. Hardie.

We now go to the official opposition for questions.

Mr. Sopuck, you have seven minutes.

Mr. Robert Sopuck (Dauphin—Swan River—Neepawa, CPC): Dr. Miller-Saunders, I would beg to differ with you: I think you do have an agenda, and it's an anti-industrial one. I'm quite concerned by civil servants who express policy issues and recommendations. I would remind you that the Auditor General's 2009 report on the fish

habitat management program indicated that fish habitat management program actions over 23 years could not be demonstrated to have adequately protected fish habitat and by extension the fisheries. So the Auditor General took an objective, unbiased look at the enforcement of the Fisheries Act over 23 years and concluded it had no measurable effect on habitat.

My next question is directed to Gary Swanson of Manitoba Hydro.

You made the point in your presentation that the 1986 policy had a lot more in it than fish habitat. You made the point that the new act just adhered to the 1986 policy. Can you elaborate on what the 1986 policy was and how the new act conforms with what was actually policy in 1986?

Mr. Gary Swanson: Sure, I can a little bit. Briefly, the policy contained provisions for the implementation of the fish habitat protection program, including the “no net loss” policy. Some of those provisions were essentially that there was a need for integrated management and that there was a need to recognize the other users. I believe the phrase “common sense” was used in the document itself in terms of the approach to be taken to the integration of other users in fisheries management objectives. It spoke to the important supporting role that the fish habitat management program played in respect of fisheries management objectives. It also talked about the need for supportive ecosystem science and the state of the science and the issues there.

It also referenced very similar wording to the “contributing and supporting fish species” concept. It made that context and it referenced fisheries again. I think the issue is around the application. It's around the policy and a logic to the policy and the process. It's not new ideas, it's....

Mr. Robert Sopuck: To Ms. Jackson from the Canadian Cattlemen's Association, we heard from one of your colleagues, Ron Bonnett, president of the Canadian Federation of Agriculture. Your testimony and his were very congruent. He talked about the experience that many farmers had with the Fisheries Act, which was not positive—bureaucratic delays, inconsistent enforcement, and so on and so forth. I'm paraphrasing here, but it's in the testimony.

Did the cattle industry have the same experience that Mr. Bonnett outlined?

• (1715)

Ms. Fawn Jackson: Yes, I think there have been various experiences across Canada due to differences in implementation or relationships, perhaps. That's why we say it's very important to have the appropriate regulations, the reporting, the cost of implementation, the penalties, and the people who are interacting with them in a consistent manner. Those are all really important considerations when working with farmers and ranchers across Canada.

Mr. Robert Sopuck: Mr. Bonnett also talked about the need for incentive programs and co-operative conservation programs. We discussed the cows and fish program. Would you suggest that if we can do it in a revised Fisheries Act, we include a section on, perhaps, private land conservation being guided largely by the provision of incentives and co-operative programs rather than regulation? Is that an approach you would support?

Ms. Fawn Jackson: Yes, we absolutely see that stewardship is an excellent way to interact with agriculture producers across Canada. Of course, we have various landscapes, so focusing on the outcomes that we would like to achieve rather than on the specific practice that we would like to see is really important.

I do think there is a very large opportunity to utilize ecosystem service programs with agriculture producers across Canada to achieve our shared conservation outcomes.

Mr. Robert Sopuck: Mr. Swanson, you made a point that the Fisheries Act is a resource management act to protect fisheries and is guided by the provincial management of quote-unquote property. There's a very large provincial role that we really haven't had acknowledged in our hearings so far. Can you elaborate on why the provincial role is so important and why that role needs to be front and centre?

Mr. Gary Swanson: I like the analogy that I own my backyard but the city has caveats on how big the fence can be. I think the province and Canada have a similar arrangement in terms of the property being the province's and Canada having that overarching responsibility for fisheries sustainability.

The reality is that whatever Canada wants to happen nationally has to happen on provincial crown land in this regard. I also like the saying that you should get on the horse the way it's facing. Use those provincial crown land processes, integrate, and use their experience and knowledge and their delegated responsibility to administer the Fisheries Act.

Mr. Robert Sopuck: Ms. Azeez, I very much was taken by the first part of your testimony, where you talked about the need for enhancement and rehabilitation of damaged fish habitats. I really appreciate that approach.

In terms of the map you have put in front of us here, you talked about all these works and operations on the Fraser. All of these were done under the old Fisheries Act, I presume.

Ms. Lina Azeez: Yes, mostly before the 1977 act.

Mr. Robert Sopuck: But a number were done after the 1977 provisions, I would assume.

Ms. Lina Azeez: As I said in my presentation, even before or after, a lot of these systems behind dikes have not been considered fish habitat.

Mr. Robert Sopuck: Right. So it's quite obvious that the old Fisheries Act didn't prevent any of this damage that you outlined.

Ms. Lina Azeez: Right.

Mr. Robert Sopuck: So it wasn't adequate.

Just on the positive side again—

The Chair: Your time is up.

Mr. Robert Sopuck: That's fine. Thank you very much.

The Chair: I apologize for two reasons. I apologize for cutting you off, sir, and I apologize that I was mistaken earlier. It looks like the bells are going ahead at the prescribed time, but we're still going to put seven minutes to Mr. Donnelly and then we'll have to adjourn shortly thereafter.

Yes, Mr. Hardie.

Mr. Ken Hardie: On a quick point of order, Mr. Chair, I want to challenge Mr. Sopuck a little bit on his treatment of Dr. Miller-Saunders. We used to not muzzle science.

The Chair: I'm sorry, Mr. Hardie, was there a point of order there, from the Standing Orders?

Mr. Ken Hardie: Probably not—

The Chair: Very quickly summarize.

Mr. Ken Hardie: Basically, we're no longer muzzling science.

We bring people in to hear what they have to say.

The Chair: Okay, never mind. That's not a point of order, sir.

We'll go on to Mr. Donnelly for seven minutes, please.

Mr. Fin Donnelly (Port Moody—Coquitlam, NDP): Thank you, Mr. Chair.

Thank you to all our witnesses. I appreciate all five of you taking the time to provide your input and testimony to this Fisheries Act review.

Dr. Miller-Saunders, I think I heard in your presentation that you did find evidence of disease from a fish farm in terms of impacts on wild salmon. Could you clarify that?

● (1720)

Dr. Kristi Miller-Saunders: We found evidence of a disease that is considered the third most important emerging disease in Norwegian salmon. We have not yet demonstrated whether it impacts wild fish, merely that a disease that had not previously been diagnosed in B.C. actually is present there.

Mr. Fin Donnelly: Thank you.

Earlier Mr. Sopuck asked you a question and didn't allow you an opportunity to answer in terms of his comment about your agenda. Did you want to respond to that?

Dr. Kristi Miller-Saunders: Well, first of all, I was asked to present at this meeting. I actually didn't submit something.

I staunchly stand that I am neither an anti-aquaculture advocate nor an aquaculture advocate. I really do believe that scientists need to be objective. I may be criticized for that viewpoint, but I think it is really important if we're going to be providing balance to policy decisions.

Mr. Fin Donnelly: Thank you.

You ran out of time in your very comprehensive presentation to the committee. Were there any particular specific points you missed that you want to add right now?

Dr. Kristi Miller-Saunders: You know, I want to say that a lot of change has happened in the department in the last year, and I think we really are moving in a really positive direction. I am not trying to be critical of Fisheries and Oceans at all. I love my job there, and I appreciate the kind of science I am allowed to do. I did weigh in a little bit on some of the things that concern me about this policy, and you're right, under the last administration I was not able to weigh in on anything like this.

Mr. Fin Donnelly: Great. Thank you for providing testimony to our committee and for the work you do.

I'd like to turn to Watershed Watch and Ms. Azeez.

Are there any examples of municipalities that have done a good job on fish passage when they've upgraded their flood works? Can you comment on that, and maybe give us examples of farms and fish working together?

Ms. Lina Azeez: Yes, of course. I can give you a couple of examples on that.

Out in Maple Ridge there is Spencer Creek, where a tidal gate was put in. That has actually seen some really positive benefits where chum salmon, which did not previously swim up the tributary, have had a chance to access habitat again. That has been really positive.

The City of Surrey has been doing some pretty amazing work, on their own, I have to add, without very much federal support at all, on improving various infrastructure there. One example is Bon Accord Creek that flows into the Fraser River. There is another creek, which I've forgotten the name of, that flows into Boundary Bay. The City of Surrey has been working on both of those creeks.

As to examples of fish and farms working together—

Mr. Fin Donnelly: Is it Semiahmoo Bay?

Ms. Lina Azeez: No.

Mr. Fin Donnelly: Serpentine River?

Ms. Lina Azeez: It's Chantrell Creek.

Mr. Fin Donnelly: Okay. Thank you.

Ms. Lina Azeez: As to examples of fish and farms, we've already mentioned the cows and fish program out in Alberta. In B.C. there is Farmland Advantage, which is from the Kootenays. They are trying to provide incentives to farmers, again based on ecosystem services, to protect riparian zones. They've just introduced that concept to Langley, so we have a few farms in Langley that buy into that idea, as well as Agassiz.

There are definitely some good examples, but unfortunately it's not across the board. We still have a lot of work to do.

Mr. Fin Donnelly: We've had examples here today talking about the importance of habitat in freshwater systems as well as in the ocean, obviously. We've heard about impacts, all sorts of impacts on fisheries.

Mr. Christensen, to summarize, we've heard comments about wording and how important wording is or may not be in terms of getting it right and representing what we're trying to protect with the Fisheries Act. You've provided a number of recommendations to the committee, so thank you very much.

I would also just ask all our witnesses to provide their recommendations to this committee in writing so we have those.

In your opinion, how important would you say it is that the department, the ministry, get the wording right in the Fisheries Act so that it best represents what it is we're trying to do with protecting our fishery?

•(1725)

Mr. Randy Christensen: I think it's very important to explicitly reference in the Fisheries Act that fisheries habitat is protected. There have been some opinions expressed that habitat is implicitly protected under the provisions right now. I would say that if this is the case, then it would serve the purpose of clarity, in letting people who are regulated know what is expected, to actually explicitly reference fish habitat as being part of the necessary components of protecting the fishery.

Mr. Fin Donnelly: Great. Thanks very much.

The Chair: Thanks, everybody.

I apologize for the abbreviated version.

We thank all the witnesses joining us from Calgary and Vancouver, and our witnesses here today. Thank you very much.

The meeting is adjourned.

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