

Senate



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**Report Addressing Bill C-10,  
*Navigable Waters Protection Act***

**Ninth Report of the  
Standing Senate Committee on  
Energy, the Environment and Natural Resources  
June 2009**

Members of the committee:

Senator W. David Angus, Chair

Senator Willie Adams

Senator Tommy Banks

Senator Daniel Lang

Senator Pana Merchant

Senator Lorna Milne

Senator Grant Mitchell, Deputy Chair

Senator Richard Neufeld

Senator Robert W. Peterson

Senator Nick G. Sibbeston

Senator Mira Spivak

Senator Gerry St. Germain

Ce rapport est aussi disponible en français

Des renseignements sur le comité sont donnés sur le site :

<http://www.senate-senat.ca/EENR-EERN.asp>

Information regarding the committee can be obtained through its website:

<http://www.senate-senat.ca/EENR-EERN.asp>

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# **Members of the Standing Senate Committee on Energy, the Environment and Natural Resources**

Honourable W. David Angus – Chair

Honourable Grant Mitchell – Deputy-Chair

Honourable Willie Adams

Honourable Richard Neufeld

Honourable Tommy Banks

Honourable Robert W. Peterson

Honourable Daniel Lang

Honourable Nick G. Sibbeston

Honourable Pana Merchant

Honourable Mira Spivak

Honourable Lorna Milne

Honourable Gerry St. Germain, P.C.

## **Ex-officio members of the committee:**

The Honourable Senators Cowan (or Tardif) and LeBreton, P.C., (or Comeau).

In addition, the Honourable Senators Brown, Dickson, Fraser, McCoy and Raine were members of the committee or participated from time to time during this study.

## **Staff of the committee:**

Ms. Sam Banks and Mr. Marc LeBlanc, Analysts, Parliamentary Information and Research Services, Library of Parliament;

Mr. Jacques Bélanger, Acting Communications Officer, Communications Directorate;

Ms. Lynn Gordon, Clerk of the committee, Committees Directorate; and

Ms. Chelsea Saville, Administrative Assistant, Committees Directorate.

# Order of Reference

Extract from the Journals of the Senate, Thursday, March 12, 2009:

The Honourable Senator Cowan moved, seconded by the Honourable Senator Hubley:

That, notwithstanding any rules or usual practices, and without affecting any consideration or progress made by the Senate with respect to Bill C-10, the Budget Implementation Act, 2009, the following committees be separately authorized to examine and report on the following elements contained in that bill:

(a) The Standing Senate Committee on Energy, the Environment, and Natural Resources: those elements dealing with the Navigable Waters Protection Act (Part 7);

(b) The Standing Senate Committee on Banking, Trade, and Commerce: those elements dealing with the Competition Act (Part 12);

(c) The Standing Senate Committee on Human Rights: those elements dealing with equitable compensation (Part 11); and

(d) The Standing Senate Committee on National Finance: all other elements of the bill, in particular those dealing with employment insurance; and

That each committee present its final report no later than June 11, 2009.

After debate,

The question being put on the motion, it was adopted.

Paul C. Bélisle

Clerk of the Senate

# Executive Summary

Enacted in 1882, the Navigable Waters Protection Act (NWPA) is one of Canada's oldest and most fundamental pieces of legislation. The Act protects the public right of navigation by regulating works over waterways such as bridges, dams and docks in order to minimize the overall impact on navigation.

Amendments to the NWPA were introduced in the 2009 federal Budget to help reduce the backlog of applications and streamline the approval process for infrastructure and natural resource projects to address the current economic downturn.

The Act had not been substantially amended since 1886 and many users of waterways recognized the need to modernize the Act. However, some believed that the changes went too far in eroding the public's right to navigation and they were concerned that the amendments diminished the public consultation process, transparency and environmental protection, while others believed the changes were long overdue and would help expedite works while maintaining environmental protection.

As part of the streamlining features of the amendments, classes of minor works and minor navigable waters introduced through Ministerial Order were excluded from the application process under the Act. The committee recognizes that the Ministerial Order was used to speed up the rule making process in order to meet short term economic goals. However, now that the minor works and waters criteria have been created, the committee recommends that the federal government develop regulations with the purpose of replacing the Order. The committee also recommends amending sections relating to the incorporation of reference materials.

The committee is also concerned that the users of waterways were not sufficiently consulted or communicated with in a timely manner during the process that led to the amendments which contributed to the apprehension many of these groups felt when the amendments were announced in the 2009 Budget.

The Act plays a wider role beyond protecting the right of navigation because the navigational approval process can trigger environmental assessments. The committee feels that the primary purpose of NWPA should be navigation not environmental policy but it also believes that changes to the NWPA should not occur for the sole purpose of diminishing environmental assessments.

The amendments contain features that received near unanimous support from witnesses such as the increase in maximum fines from \$5,000 to \$50,000 per infraction per day, additional inspection and investigative powers and the five year review of the Act. However, the committee believes that additional work is needed to improve application processing times. To this end, the committee recommends that the federal government ensure adequate resources are made available to the Navigable Waters Protection Program so that it can better meet its economic targets and its responsibility to protect and regulate the public right of navigation.

# List of Recommendations

1. The committee recommends that Transport Canada develop and implement an effective communication strategy and consultation process to seek the views of waterway stakeholders on any future amendments to the Act, including any changes to regulations, and during the five year review of the Act.
2. That the Navigable Waters Protection Program develop regulations to replace the Ministerial Order of May 9, 2009.
3. That Transport Canada amend relevant sections of the NWPA using a process outlined in section 32 of the *Canada Shipping Act, 2001* for incorporating reference materials.
4. That the federal government ensure adequate resources are made available to the Navigable Waters Protection Program so that it can better meet its economic targets for infrastructure development and reduce the delays for larger projects while maintaining its responsibility to protect the public right of navigation.

# Introduction

The *Navigable Waters Protection Act* (NWPA), “the Act”, is one of Canada’s oldest and most fundamental pieces of legislation. It was enacted in 1882 when there were fewer options, other than waterways to readily transport people and goods.<sup>1</sup> The Act was introduced to protect the public right of navigation,<sup>2</sup> an inheritance given to all Canadians and deeply rooted in our identity as a nation with special significance to Aboriginal peoples.

However, every Canadian’s right of navigation is balanced with the need to construct works such as bridges, dams or docks on or over navigable waters. Therefore, the Act not only protects but allows for a process that restricts the right of navigation in search of this balance.<sup>3</sup>

The Act has not been substantially amended since 1886.<sup>4</sup> Since that time, the use of rivers and other waterways has shifted considerably towards recreational and sport activities. There are over 6 million recreational users of waterways in Canada. However, the demands for works over these waterways have also grown in step to meet the needs of all Canadians.

In later years, the Act not only protected the public’s right to navigate on waterways, but also became one of the triggers for federal environmental assessments through the *Canadian Environmental Assessment Act*.

The federal government introduced amendments to the NWPA in the 2009 Budget Implementation Bill C-10 which came into force on March 12, 2009. According to the federal government, the amendments modernize the Act and provide a better balance of the shared use of waterways. The amendments are designed to help reduce the backlog of applications and streamline the approval process for infrastructure and natural resource projects to address the current economic downturn, while maintaining the “commitment to protect the environment and the public’s right to navigate.”<sup>5</sup>

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<sup>1</sup> This period was also marked by more commercial uses of waterways for fishing.

<sup>2</sup> The Act does not create, but protects, the public right of navigation. The public right of navigation is a common law right.

<sup>3</sup> Transport Canada, Navigable Waters Protection Program, “Frequently Asked Questions”, available at <http://www.tc.gc.ca/marinesafety/oep/nwpp/faqs.htm>

<sup>4</sup> An Act respecting the protection of Navigable Waters, 49 V. (1886), Chap. 36 arose from three separate earlier Acts concerning works constructed in or over navigable waters (1882, 1883 and 1886). The Act has been amended approximately 20 times since 1886. However, it has not been substantially amended for numerous decades.

<sup>5</sup> Transport Canada, “Federal government moves toward modernizing Navigable Waters Protection Act” May 8, 2009 Press Release, available at <http://news.gc.ca/web/article-eng.do?m=/index&nid=449019>



However, many Canadians, including recreational users of waterways, Aboriginal Canadians and environmental advocates are worried that the changes diminish the public consultation process, transparency and environmental protection. While many of these groups recognize the need to modernize the Act, they express concerns that the amendments go too far in eroding the public right of navigation. At the same time, other Canadians and organizations believe the changes were long overdue and would help expedite works while maintaining environmental protection.

This report examines major issues raised during the hearings held by the Standing Senate Committee on Energy, the Environment and Natural Resources pursuant to the above noted Order of Reference on the amendments to the NWPA contained in Bill C-10. It also provides four recommendations to the federal government.

# Background

## Navigable Waters Protection Program

The federal government has sole jurisdiction to regulate navigation on Canada's waterways. This is done through the NWPA which is administered by Transport Canada via the Navigable Waters Protection Program (NWPP). It is through this program that the federal government approves works<sup>6</sup> "built or placed in, on, over, under, through or across navigable water"<sup>7</sup> to minimize the overall impact on navigation.<sup>8</sup>

## Application and Approval Process under Previous Legislation

Before a work over water can begin, details of the work plans and waterway are submitted to the NWPP to determine whether the waterway is navigable and to assess the work's degree of interference with navigation. If a waterway was not navigable then the Act did not apply.

If a proposed work was deemed to interfere with navigation or if it was one of the four 'named works' – that is, a bridge, boom, dam or causeway over navigable waters – it underwent an approval process which triggered an environmental assessment in accordance with the *Canadian Environment Assessment Act* (see Figure 1). An environmental assessment is a separate report with recommendations.

The approval process required work plans and supporting documentation be publicly accessible and advertised in at least two local newspapers and reported in the *Canada Gazette* during which time the "public [would] have an opportunity to comment on the project's potential impact on navigation."<sup>9</sup> Final approval could include conditions such as time limits and environmental mitigation measures under the advice of an environment assessment which could include a Fisheries Act Authorization as per the *Fisheries Act*, which was required for works in or around water where fish habitat might be negatively affected.<sup>10</sup> Upon completion, a final inspection was made by NWPP officers.

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<sup>6</sup> A 'work' can be the repair or construction of a bridge, boom, dam, wharf, dock, pier, tunnel or pipe; any dumping of fill or excavation of materials from the bed of a navigable water; any telegraph or power cable or wire, or any structure, device or thing that may interfere with navigation. This definition is from Transport Canada's NWPP Application Guide available at <http://www.tc.gc.ca/marinesafety/oep/nwpp/guide.htm>

<sup>7</sup> Transport Canada, "Navigable Waters Protection Program" available at <http://www.tc.gc.ca/marinesafety/oep/nwpp/menu.htm>

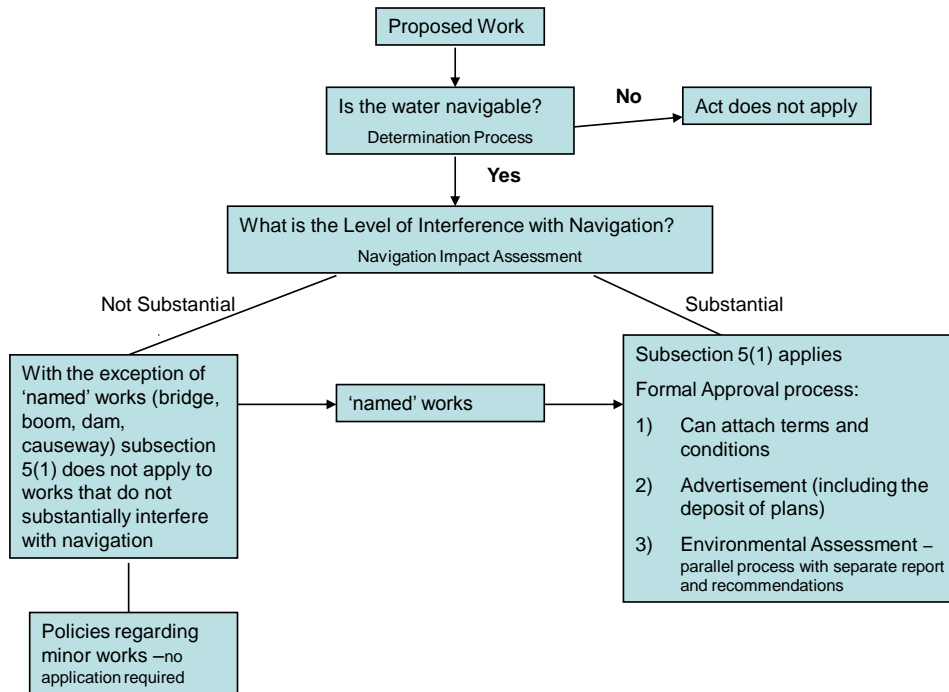
<sup>8</sup> *Ibid.*

<sup>9</sup> Transport Canada, Navigable Waters Protection Program, "Application Guide" available at <http://www.tc.gc.ca/marinesafety/oep/nwpp/guide.htm>

<sup>10</sup> The *Fisheries Act* applies to works where fish habitat might be negatively affected, while this may be more likely for works that substantially interfere with navigation, works that do not substantially interfere could still require a Fisheries Act Authorization. For more information please refer to Fisheries and Oceans Canada, "Working Around Water?", Fact Sheet Series (Ontario Edition), available at <http://www.dfo-mpo.gc.ca/regions/central/pub/factsheets-feuilletinfos-on/11-eng.htm>

If the proposed work was not a ‘named work’ and did not interfere with navigation, it could proceed without advertisement or environmental assessment. Applicants nonetheless submitted plans to their local NWPP office which may have resulted in recommendations by NWPP program officials.

**Figure 1  
General Process Map  
Navigable Waters Protection Act (pre amendments)**



## Minor Works

Over the past year, a ‘minor works’ policy was introduced to streamline the NWPP. If a project was a ‘minor work’ such as a boathouse, dock, aerial cables or involved dredging, erosion protection, pipeline crossings, submarine cables, water intakes or winter crossing and was constructed according to approved standards, then no application was necessary even if it was being built on navigable water.

However, ‘minor works’ must still comply with the Act, meaning if the work was not constructed in accordance with prescribed standards then Transport Canada may resort to enforcement action and have the work altered or removed.

# Amendments to the NWPA contained in Bill C-10

Major changes to the Act are summarized below:

- **Establishes classes of works and navigable waters by Ministerial Order:**<sup>11</sup>  
The purpose is to exclude from application for approval, works over ‘minor water’ identified as not reasonably navigable by the public. The exclusion also applies to ‘minor works’ over navigable waters.
- **Reference to the four named works under subsection 5(2) of the Act is deleted:**  
Eliminates the formal approval process for ‘named works’ (bridges, booms, dams and causeways).
- **Adds inspection and investigative powers and increases fine limits:** Introduces inspection powers to the Act and increases the maximum fine from \$5,000 per infraction to \$50,000 per infraction per day.
- **Includes a five year review clause in the Act:** The provisions and operations of the Act are to be reviewed by the Minister within five years from the day in which the Act comes into force. The review shall be reported by the Minister to each House of Parliament.
- **Creates new regulation-making powers in the Act:** The amendments give the Minister greater flexibility over conditions for approvals, the consultation process and other administrative items. Also, it provides flexibility to establish classes of works and waters.
- **Clarifies that the Act is binding on Her Majesty in right of Canada, Provinces and the Territories and Permit the Grandfathering of Crown Works:** A 1992 Supreme Court decision found that the Crown was subject to the NWPA. The decision made all Crown works retroactively subject to the Act. The legislation is amended to clarify the application of the Supreme Court ruling and grandfathers existing work currently owned by the Crown or originally owned by the Crown. It gives existing Crown works the status of having received approval under the Act. This measure will expedite the application process for the refurbishment of many large projects.
- **Removes Section 13 –Approval of bridges over the St. Lawrence River:** Section 13 of the Act required that all bridges over the St. Lawrence River except for international bridges under the *International Bridges and Tunnels Act* receive formal Parliamentary

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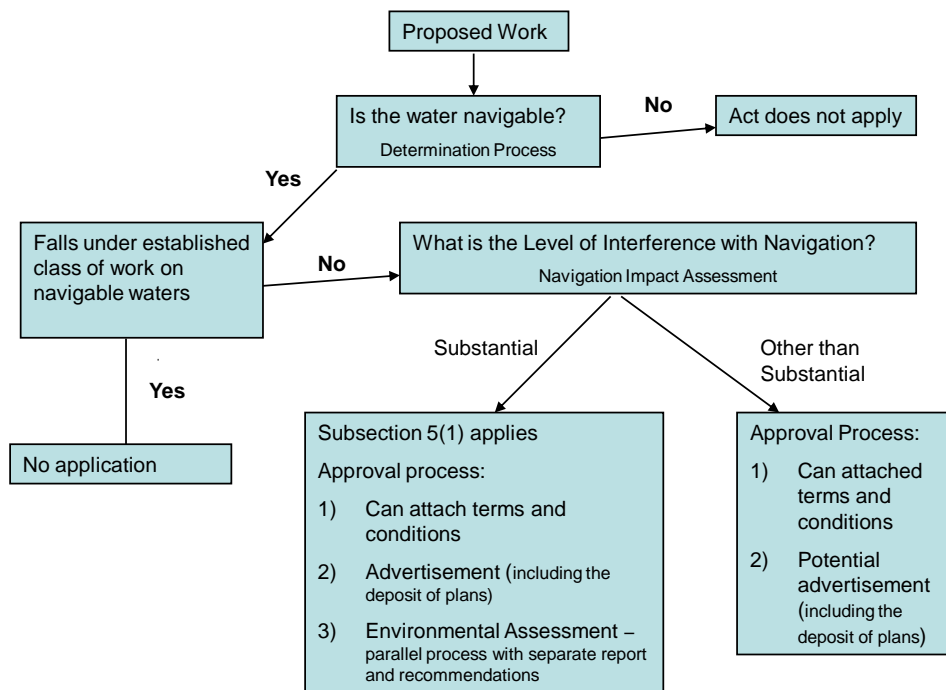
<sup>11</sup> The classes were not specifically prescribed in the Act but were described in the Ministerial Order which was later released in the *Canada Gazette*, Part 1, 9 May 2009, Vol. 143, No. 19.

approval. By removing this section, bridges over the St. Lawrence River are now approved by the NWPA.

- **Provides for increased ministerial discretion to alter or remove works if deemed as interference to navigation or a danger to the public or in the public interest.** Work may be altered, removed or made to comply with any terms and conditions by Ministerial Order.

## Application and Approval Process

**Figure 2  
General Process Map  
Navigable Waters Protection Act (post amendments)**



## Review Based on Degree of Navigational Interference

The four named works: bridges, booms, dams and causeways are removed from the Act. Such works no longer automatically trigger an approval process that requires public notification or triggers an environment assessment in accordance with the *Canadian Environment Assessment Act*. Instead, works are reviewed commensurate to their potential impact upon navigation.

If a project is not a class of work or water excluded by Ministerial Order and it *substantially* interferes with navigation then the project requires a NWPP approval, an environmental assessment in accordance with the *Canadian Environment Assessment Act* which could include a Fisheries Act Authorization under the *Fisheries Act*. Work plans require public disclosure and the work is advertised in one or more local newspapers and in the *Canada Gazette*.

In cases where the work does not substantially interfere with navigation, the Minister may impose any terms or conditions on the approval the Minister feels appropriate. This could include terms for public notice.

## **Minor Works and Minor Waters**

If a work is a ‘minor work’ or is to be built on ‘minor water’ outlined by Ministerial Order<sup>12</sup> then there is no need to apply for approval under the Act (see figure 2). Mr. David Osbaldeston, Manager of the Navigable Waters Protection Program, Transport Canada explained the aim of this measure:

The intention of defining classes of minor waters is to better focus efforts on truly navigable waters as opposed to farmers' drainage ditches or watercourses too small, shallow, obstructed or steep to reasonably be used for navigation.<sup>13</sup>

The Ministerial Order excludes nine classes of ‘minor works’ and three classes of waters. The nine classes of ‘minor works’ parallel the category of minor works which were excluded under the existing NWPA. However, a class for temporary works has been added.

The three classes of water are 1) ‘minor navigable waters’; 2) artificial irrigation channels & drainage ditches and 3) private lakes (five hectares or less). ‘Minor navigable waters’ are described as waterways with an average width of less than 1.2 meters<sup>14</sup> and average depth of less than 0.3 meters outlined in 200 meter sections.

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<sup>12</sup> The Ministerial Order outlining the excluded classes of works and waterways were published in the *Canada Gazette* on, 9 May 2009 and came into force 9 June 2009.

<sup>13</sup> Mr. David Osbaldeston, Manager, Navigable Waters Protection Program, Proceedings (Evidence), Standing Senate Committee on Energy, Environment and Natural Resources, Issue No. 4, Ottawa, April 23, 2009.

<sup>14</sup> The average width measured at the high-water level.

# Observations and Recommendations

The following section outlines the major issues discussed during committee hearings or submitted to the committee by interested stakeholders during the course of its review of the NWPA amendments. The report makes recommendations as a starting point in moving forward with Transport Canada's statutory review of the Act. While the committee focused on areas that require improvement, several features of the amendments have received near unanimous approval from witnesses such as the increase in maximum fines from \$5,000 to \$50,000 per infraction per day, additional inspection and investigative powers and the five year review of the Act.

## a) Consultation Process

Transport Canada officials told the committee repeatedly that the amendments reflected years of input from key stakeholders. The 2009 federal Budget cited the Standing Committee on Transport, Infrastructure and Communities (TRAN) hearings on the NWPA that took place between February and June 2008 as a key feature of the Act's consultation process.<sup>15</sup>

However, several groups including those representing Aboriginals, recreational water users and environmental organizations felt overlooked by the consultation process and they cited the witnesses and submissions listed in TRAN's June 2008 report as evidence to support their criticisms.

TRAN invited users of waterways to the hearings but many were unable to participate because the invitation was given with short notice. However, TRAN did receive some submissions from recreational users. In any case, TRAN's report was considered a starting point and further consultation was expected once TRAN received the proposed amendments to the Act.<sup>16</sup>

This did not occur because of the 2008 federal election and worsening economic situation. Instead, the amendments were included in the 2009 federal Budget as part of a package of initiatives aimed at cutting red tape and addressing the downturn in the economy in the short term. According to Transport Canada's own briefing material, the consultation process was aimed at provincial, territorial and local governments who had vested interests in infrastructure development.<sup>17</sup>

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<sup>15</sup> Federal Budget 2009 p144.

<sup>16</sup> Report of the Standing Committee on Transport, Infrastructure and Communities, "Consideration of Proposed Amendments to the *Navigable Waters Protection Act*" June 2008 2<sup>nd</sup> Session, 39<sup>th</sup> Parliament, page 1.

<sup>17</sup> Transport Canada, briefing book to the Senate Standing Committee on Energy, the Environment and Natural Resources on Bill C-10 Amendments to the *Navigable Waters Protection Act*

Most witnesses who appeared before the committee conceded that the Act needed amending but emphasized that they would have preferred a larger role in the process. Aboriginal groups felt that the federal government failed its duty to consult as per section 35 of the *Constitution Act, 1982*. In practice, Crown consultation occurs on a project by project basis when there is a possibility of infringement of Aboriginal or treaty rights, but Aboriginal groups argued that section 35 applies whenever the federal government proposes to amend an act that might affect their interest. To this point, the establishment of classes of minor waters may result in fewer Aboriginal consultations because works over minor waters no longer require application for approval to the federal government.

Mr. Richard Alexander, President, Paddle Canada summed up the apprehension of many witnesses:

From my own personal perspective, how consultation is carried out can either alleviate or generate fears. From my constituency I think it is safe to say that it generated fear.<sup>18</sup>

Mr. Osbaldeston told the committee that there was a great deal of misinformation in the public about the effects of the NWPA amendments. If this is so, it follows that Transport Canada failed to adequately publicize and explain the proposed amendments to the users of waterways.

#### **RECOMMENDATION:**

**The committee recommends that Transport Canada develop and implement an effective communication strategy and consultation process to seek the views of waterway stakeholders on any future amendments to the Act, including any changes to regulations, and during the five year review of the Act.**

### **b) Minor Navigable Waters**

According to Transport Canada, the new classes of works and waters will have no significant impact on navigation and will allow inspectors to spend more time on waterways that pose a greater concern to navigation. Mr. Brian Jean, Parliamentary Secretary to the Minister of Transport, Infrastructure and Communities told the committee:

In fact, some projects are so minor that before our governmental changes, it was basically the regulatory equivalent of hitting a tack with a sledgehammer. A ditch with water for three days a year, we heard evidence in our committee, would require the same regulatory approval as a large bridge. This government wants to

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<sup>18</sup> Mr. Richard Alexander, President, Paddle Canada, Proceedings (Evidence), Standing Senate Committee on Energy, the Environment and Natural Resources, Issue No. 4, Ottawa, May 7, 2009.



use the people of Canada's tax money and resources on projects that could actually pose real issues to Canadians for boating and for navigation.<sup>19</sup>

This view was echoed by Dr. Brenda Kenny, President of the Canadian Energy Pipeline Association, who explains:

The pipeline industry believes that the authority of the Minister to designate classes of works of navigable waters reflects a very modern risk-based approach to regulation that is both effective and efficient...As a result, the expertise and attention can be focused on protection of the public's rights to navigate Canadian waterways where and when it is really needed.<sup>20</sup>

The committee received many formal submissions and heard from several witnesses that expressed considerable apprehension with the establishment of a class of water named 'minor navigable waters'. There was less concern with 'minor works', perhaps because Transport Canada had already begun a 'minor works' program, but it is more likely because defining navigable waters strikes a chord with many paddlers. They and other water user groups feel it gets to the core of the issue that the NWPP is effectively defining which waters are navigable and eroding the public's right to navigate without public consultation.

The Act, as amended, does not define 'navigable waters'. Instead, it has been defined through court rulings.<sup>21</sup> In practice, the definition of navigable water is any water that can float a canoe. Many feel that the definition of 'minor navigable waters' (an average width of less than 1.2 meters and average depth of less than 0.3 meters) includes many waterways that are very clearly navigable by canoe which can be as little as a few inches of water. As Mr. Jay Morrison, Chair of the Right to Paddle Campaign for the Canadian Parks and Wilderness Society expressed to the committee:

Is there a material difference between a foot of water and four inches? I think so. The less optimistic definition of navigable water would allow the Minister of Transport to deem most of thousands of smaller rivers and parts of larger ones as

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<sup>19</sup> Mr. Brian Jean, M.P., Parliamentary Secretary to the Minister of Transport, Infrastructure and Communities, Proceedings (Evidence), Standing Senate Committee on Energy, the Environment and Natural Resources, Issue No. 4, Ottawa, May 5, 2009.

<sup>20</sup> Dr. Brenda Kenny, President, Canadian Energy Pipeline Association, Proceedings (Evidence), Standing Senate Committee on Energy, the Environment and Natural Resources, Issue No. 4, Ottawa, May 14, 2009.

<sup>21</sup> Specifically, *Coleman v. Ontario (Attorney General)* (1983), 143 D.L.R. (3d) 608 which set out principals with respect to navigation and navigable waters which were used as a basis for Transport Canada's Navigable Waters Protection Program definition of navigable water which is "any body of water capable of being navigated by floating vessels of any description for the purpose of transportation, commerce or recreation. This includes both inland and coastal waters." available at <http://www.tc.gc.ca/marinesafety/oep/nwpp/guide.htm>

unnavigable and subject to obstruction by human works without due assessment of their impact on the right of public navigation and the environment.<sup>22</sup>

Transport Canada officials have pointed out that ‘minor navigable waters’ are not excluded from the Act. While works on or over these waters do not require notice or approval and can be constructed in any manner, the Minister can order the owner to remove or alter works if the waterway does not fit the criteria of ‘minor navigable waters’ outlined in the Act. Many recreational users have argued against this policy and have asked Transport Canada, for the sake of clarity to develop and define ‘navigable water’ in the Act.

While the committee understands the concerns of users of waterways, the committee supports the government’s efforts to reduce uncertainty, delay and cost in building works over waters that attract little navigational use and are built to common standards.

### **c) Ministerial Orders**

The amended Act includes provisions that significantly expand the discretionary powers of the Minister through Ministerial Orders. It is through Ministerial Orders that the Minister (or a designate of the Minister) can now establish classes of works and waters and provide for the expansion of ministerial power to alter or remove works at any time.

Section 13(2) of the Act, as amended states that such Ministerial Orders are not statutory instruments within the meaning of the *Statutory Instruments Act*. In other words, there is no requirement for parliamentary review and oversight through examination, publication and scrutiny of regulations, with the exception that the orders must be published in the *Canada Gazette* within 23 days of being made. Unlike the enactment of regulations, there is no prepublication process where the public can comment before the regulations are made. Ministerial Orders are not required to be submitted to the Parliamentary Standing Joint Committee on Scrutiny of Regulations for review.

The benefit of Ministerial Orders is that the federal government can create rules quickly to address pressing problems. Mr. Osbaldeston explained that Ministerial Orders were used to streamline the timing for approval of works in order to address the current economic crisis through infrastructure development over two years:

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<sup>22</sup> Mr. Jay Morrison, Chair, Right to Paddle Campaign, Canadian Parks and Wilderness Society, Proceedings (Evidence), Standing Senate Committee on Energy, the Environment and Natural Resources, Issue No. 4, Ottawa, April 28, 2009.

Regulatory process takes a number of years for full public consultation. It was determined that, to provide the benefit over the two-year period of the economic stimulus package, orders would be the more efficient and effective way to move quickly and follow up at a later date with a full regulatory review process.<sup>23</sup>

### ***Establishing classes of works and waters***

A number of witnesses were concerned that the Minister may now delegate his or her ministerial discretion to establish classes of works and waters to unelected departmental officials. Also, they were concerned that the lack of criteria governing the exercise of this discretionary power make it possible to exclude major waterways from the approval process. However unlikely this may be, the committee is concerned that there is nothing in the Act that prevents it from happening.

There is uncertainty as to how often section 13(2) will be used by the government to introduce additional classes without the benefit of parliamentary or public scrutiny. Mr. Bob Gowe, Manager of the Navigable Waters Protection Program, Transport Canada confirmed that additional classes of works or waters may be introduced from time to time on an interim basis in the future, but provided this reassurance:

We may add to the orders document if we find other classes of works or waters that we feel appropriate to add to that. Certainly, our intent is not to continue using orders. They were an interim measure to meet the government's goal of accelerating infrastructure.<sup>24</sup>

### ***Power to cancel work at anytime***

Unease over the use of Ministerial Orders was shared on both sides of the debate. Witnesses from both Transportation Alberta and the Federation of Canadian Municipalities supported streamlining the approval process and had no difficulty with the establishment of classes of water and works. However, they were concerned with the exceptional ministerial discretion to withdraw or change approvals of projects at any time. Normally, governments seek regulatory approval before they tender their work and if the Minister (or a department official) can withdraw approval after the work has been tendered, it creates uncertainty and potentially increases costs. Mr. Ron Middleton advised the committee:

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<sup>23</sup> Mr. David Osbaldeston, Manager, Navigable Waters Protection Program, Proceedings (Evidence), Standing Senate Committee on Energy, the Environment and Natural Resources, Issue No. 4, Ottawa, April 23, 2009.

<sup>24</sup> Mr. Bob Gowe, Manager, Navigable Waters Protection Program, Proceedings (Evidence), Standing Senate Committee on Energy, the Environment and Natural Resources, Issue No. 4, May 26, 2009.

[W]e could see some fast-tracking of some of our other projects with this amendment. By the same token, they can arbitrarily withdraw approvals or change them once we have gone into the tender process. That is a dangerous thing for us.<sup>25</sup>

Similar concerns were expressed in a brief submitted by the Federation of Canadian Municipalities:

While the changes to the legislation provide mechanisms for streamlining the process, there are also amendments that give the Minister broad and relatively arbitrary powers to amend or cancel approvals for projects at any time. This division shows the need for ongoing consultations with municipalities and other stakeholders as the amendments to the NWPA are implemented and enforced.<sup>26</sup>

### ***Referencing Documents***

The committee was concerned that the Act uses broad language to incorporate material by reference from any source at any time either through Ministerial Order or by regulation. The practice of referencing materials is used to allow a regulatory authority the flexibility to reference technical documents that outline specifications, classifications or standards such as those by the Canadian Standards Association (CSA) without having to actually cite these documents or even specifying the intent of the reference.

The committee is concerned that the provisions are too broadly defined and ambulatory in the sense that any future changes in the referenced documents would automatically be part of the regulations under the Act. In response to committee concerns, Transport Canada officials suggested a framework based on Section 32 of the *Canada Shipping Act, 2001*<sup>27</sup> to better target the intent of provisions that reference documents. Mr. Donald Roussel, Director General, Marine Safety, Transport Canada told the committee:

Within the *Canada Shipping Act, 2001*, there is an entire section regarding incorporations by reference. It talks about "externally produced material" and a regulation made under this act, it says: "may incorporate by reference material produced by a person or body who, other than the minister, recommends to the Governor-in-Council that the relation be made, including by . . ." followed by a series of frameworks that include "an

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<sup>25</sup> Mr. Ron Middleton, Director, Environmental Management Services, Transportation Alberta, Proceedings (Evidence), Standing Senate Committee on Energy, the Environment and Natural Resources, Ottawa, May 12, 2009.

<sup>26</sup> Federation of Canadian Municipalities (FCM) Submission to the Standing Senate Committee on Energy, the Environment and Natural Resources, Improving the Navigable Waters Protection Act, 14 May 2009, at page 4.

<sup>27</sup> *Canada Shipping Act, 2001*, 2001, c.26 Department of Justice, available at <http://laws.justice.gc.ca/en/C-10.15/index.html>

organization established for the purpose of writing standards, including an organization accredited by the Standards Council of Canada. . . "28

The federal government introduced Ministerial Orders to help speed up the approval process in order to ensure that the benefits of infrastructure funding are felt over the next two years. **The committee believes that the Ministerial Orders should be of a temporary nature.** To this end, the committee is requesting that the Minister of Transport Canada write a letter to the Standing Senate Committee on Energy, the Environment and Natural Resources specifying the time period and the intention to change the Ministerial Order into regulations. The committee also feels that the intent of provisions referencing materials should be more clearly outlined.

#### **RECOMMENDATIONS:**

**That the Navigable Waters Protection Program develop regulations to replace the Ministerial Order of May 9, 2009.**

**That Transport Canada amend relevant sections of the NWPA using a process outlined in section 32 of the *Canada Shipping Act, 2001* for incorporating reference materials.**

#### **d) The Environment and NWPA**

The NWPA plays a wider role beyond that of protecting public navigational rights because the navigational approval process under the NWPA can trigger environmental assessments through the *Canadian Environmental Assessment Act* (CEAA). This is because CEAA mandates federal environmental assessments in circumstances where projects involve a federal authority.<sup>29</sup> Therefore, in cases involving works over water, a federal environmental assessment can also be triggered by an authorization under the *Fisheries Act* or in cases where a federal decision or permit is

#### **Types of Environmental Assessments under CEAA**

There are different types of environmental assessments. The most important are the following: 1) the **screening assessment**: this is a flexible assessment process which can accommodate small, routine or large projects and it is done in more than 99% of the cases; 2) the **comprehensive study**: this is a more in depth assessment carried out for large scale projects; 3) **review panel/mediation**: ordered by the Minister of Environment due to certain circumstances such as when transboundary implications occur or when public concern is raised.

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<sup>28</sup> Mr. Donald Roussel, Director General, Marine Safety, Transport Canada Navigable Waters Protection Program, Proceedings (Evidence), Standing Senate Committee on Energy, the Environment and Natural Resources, Ottawa, May 28, 2009

<sup>29</sup> This happens when the federal government funds or grants land for a project. It also happens, in certain circumstances, when the project involves the federal government as a regulator, as is the case with the NWPA. Specific sections of the NWPA trigger assessments under CEAA because they are referred in CEAA's Law List Regulations.

required under the *Indian Act*.

The amended NWPA may reduce the number of environmental assessments in two ways: 1) by excluding classes of work or waters from the application for approval; and 2) by removing the reference to the four ‘named works’.

The purpose of an environmental assessment is to provide information in order to help mitigate a project's potential impact on the environment. Several witnesses were concerned that the federal government's efforts to streamline the Act will result in fewer environmental assessments while other witnesses felt that many of the federal environmental assessments triggered by the NWPA were largely unnecessary and increased project delays and costs.

The amendments were welcomed by Mr. David Marit, President of the Saskatchewan Association of Rural Municipalities:

[T]here can be significant cost to the municipality in association with an environmental assessment including consultant fees, project management and project delays even for comparatively minor projects with limited risks already covered by provincial, territorial or municipal environmental project provisions. The end result is that municipalities are often forced to spend time and money to build infrastructure and respond to requirements to accommodate nonexistent public water travel.<sup>30</sup>

There was some dispute regarding the role the NWPA played as the sole trigger for environmental assessments. Mr. Stephen Hazell told the committee that in examining the Canadian Environment Agency's registry, he found a sizable number of environmental assessments that were only triggered by the NWPA, while other witnesses such as Mr. Ron Middleton of Alberta Transportation told the committee that in practice it was “difficult to imagine a situation where a project involving impacts to an environmentally sensitive waterway would not trigger an authorization under the *Fisheries Act*.”<sup>31</sup>

Some witnesses added that even if a *Fisheries Act* authorization is triggered, it does not guarantee a thorough assessment process. Ms. Krystyn Tully, Vice President, Lake Ontario Waterkeeper explained:

“While *Fisheries Act* authorizations do trigger the environmental assessment process, Fisheries and Oceans is in the business of not doing EAs whenever possible. They have a “no net loss policy.” If you are to destroy one acre of fish

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<sup>30</sup> Mr. David Marit, President of the Saskatchewan Association of Rural Municipalities, Proceedings (Evidence), Standing Senate Committee on Energy, the Environment and Natural Resources, Issue No. 4, Ottawa, May 14, 2009

<sup>31</sup> Mr. Ron Middleton, Director, Environmental Management Services, Transportation Alberta, Proceedings (Evidence), Standing Senate Committee on Energy, the Environment and Natural Resources, Issue No. 4, Ottawa, May 12, 2009.

habitat, as long as you can build one acre of fish habitat somewhere else, no EA is required.”<sup>32</sup>

Mr. Aaron Hill of Watershed Watch Salmon Society pointed out that the push towards more renewable forms of energy such as hydroelectric power will likely increase as the economy looks for options beyond fossil fuels.<sup>33</sup> Mr. Hill warned that hydroelectric energy projects carry environmental consequences that vary by size, location and type of project and that one should not lose sight of the cumulative impacts that densely located projects can have on a region’s water resources and environment.

For many witnesses, the NWPA trigger of environmental assessments under CEAA is a central concern and part of a larger effort to maintain or prevent the overall reduction of federal environmental assessments. However, the committee feels that the main purpose of the NWPA is navigation (safety and access) and not environmental policy. **This also means that Transport Canada should not amend the NWPA or adjust its guidelines for the sole purpose of reducing environmental assessments.**

### **e) Improving the Program**

The amendments to the Act were introduced in order to modernize the NWPA and to streamline the application process and to move quickly in addressing the current economic crisis in the short term (1 to 2 years) through infrastructure projects.

Transport Canada officials provided the committee documents indicating that 38% of the infrastructure projects under the current government’s Building Canada Fund were likely to fall under NWPP scrutiny and a sizable amount of these are subject to the NWPA amendments.

There are some 42 designated officers currently responsible for ensuring the navigational safety and access of Canada’s vast array of rivers and waterways<sup>34</sup>. Transport Canada officials indicated that the NWPA amendments will help remove the backlog and free up resources so that inspectors can work on projects that pose a greater public concern to both navigation and safety.

Mr. Osbaldeston told the committee that the program handles roughly 2,500 applications per year and roughly 2,500 applications are carried over to the next year, totalling to an annual workload of 5,000 active files. There is a sense that in practice the program had a policy of

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<sup>32</sup> Mr. Ron Middleton, Director, Environmental Management Services, Transportation Alberta, Proceedings (Evidence), Standing Senate Committee on Energy, the Environment and Natural Resources, Issue No. 4, Ottawa, May 12, 2009.

<sup>33</sup> Mr. Aaron Hill, Watershed Watch Salmon Society, Proceedings (Evidence), Standing Senate Committee on Energy, the Environment and Natural Resources, Issue No. 4, Ottawa, May 12, 2009.

<sup>34</sup> Mr. David Osbaldeston, Manager, Navigable Waters Protection Program, Proceedings (Evidence), Standing Senate Committee on Energy, the Environment and Natural Resources, Issue No. 4, Ottawa, April 23, 2009.

“don’t ask, don’t tell” with respect to certain works, in order to ease the workload, as described by Mr. Middleton:

For a number of years, we have had this sort of working agreement with the local Transport Canada people. They said “Do not bring us stuff that obviously is not navigable. We do not need the extra paper on our desk.” Therefore, we have been making that decision for them, with very few problems.<sup>35</sup>

Mr. Osbaldeston said that a modest reduction in application for smaller works is expected, “In the first year at least, we are hoping for a drop of about 15 per cent of the small stuff”<sup>36</sup>. Also, a 10% increase in the program’s overall workforce is expected, although this does not mean 10% increase in inspectors, Mr. Roussel indicated that the increase in workforce will help with “databases, policies, procedures or constructions and other work in the regions.”<sup>37</sup>

Several witnesses were frustrated with the long delays at Transport Canada in determining whether or not a waterway was navigable under the Act. Some felt frustrated with the overall uncertainty and unpredictability of the approval process and others said that sometimes an approval took up to two years to complete, only to provide conditions that were either based on accepted standards or were already contained in the initially submitted work plans.

#### **RECOMMENDATION:**

**That the federal government ensure adequate resources are made available to the Navigable Waters Protection Program so that it can better meet its economic targets for infrastructure development and reduce the delays for larger projects while maintaining its responsibility to protect the public right of navigation.**

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<sup>35</sup> Mr. Ron Middleton, Director, Environmental Management Services, Transportation Alberta, Proceedings (Evidence), Standing Senate Committee on Energy, the Environment and Natural Resources, Issue No. 4, Ottawa, May 12, 2009.

<sup>36</sup> Mr. David Osbaldeston, Mr. David Osbaldeston, Manager, Navigable Waters Protection Program, Proceedings (Evidence), Standing Senate Committee on Energy, the Environment and Natural Resources, Issue No. 4, Ottawa, April 23, 2009.

<sup>37</sup> Mr. Donald Roussel, Manager, Navigable Waters Protection Program, Proceedings (Evidence), Standing Senate Committee on Energy, the Environment and Natural Resources,, Ottawa, May 26, 2009.



# Conclusion

The NWPA has not been substantially amended since 1886. There was general agreement from all sides of the issue that the Act required modernization. However, the process by which the amendments were made did not consult the users of waterways in a timely manner, the very group whose rights the Act was designed to protect.

The amendments to the Act were part of an economic stimulus effort to reduce red tape and streamline the approval process for infrastructure and natural resource projects to address current economic circumstances. The committee believes that Transport Canada should have more flexibility in approving works over waterways while at the same time maintain the public right to safe and accessible navigation. However, the committee is concerned that the Act provides too much discretionary power through Ministerial Orders to the Minister of Transportation.

The Minister is required to undertake a review of the Act and its application within five years and table a report on this review before both houses of Parliament. The committee is encouraged by this process and is hopeful that the Senate will refer the review to the Standing Senate Committee on Energy, the Environment and Natural Resources.

While the amendments are not perfect, features like the five year review and the increase in maximum fines from \$5,000 to \$50,000 per infraction per day and the additional inspection and investigative powers should be noted as an improvement to the program.

As the Act undergoes further changes and updates, the federal government must maintain the public right of navigation and be mindful of its duty to safeguard the environment. The federal government has sole responsibility to regulate navigation in Canada. This means that it must consult not only those who build works in, over, on, under, through or across Canada's waterways, but also those who live along side and work and play in them.

# APPENDIX A

List of witnesses who appeared before the committee:

**April 23, 2009**

***Transport Canada***

David Osbaldeston, Manager, Navigable Waters Protection Program

Donald Roussel, Director General, Marine Safety

**April 28, 2009**

***Sierra Club of Canada***

Stephen Hazell, Executive Director

***Canadian Parks and Wilderness Society***

Jay Morrison, Chair, Right to Paddle Campaign

***Canadian Wildlife Federation***

Terri-Lee Reid, Conservation Researcher

Leigh Edgar, Conservation Researcher

**May 5, 2009**

Brian Jean, M.P., Parliamentary Secretary to the Minister of Transport, Infrastructure and Communities

***Transport Canada***

David Osbaldeston, Manager, Navigable Waters Protection Program

Donald Roussel, Director General, Marine Safety

**May 7, 2009**

***Canadian Rivers Network***

Phil Green, Director

***Paddle Canada***

Richard Alexander, President

***Lake Ontario Waterkeeper***

Krystyn Tully, Vice President

***Ontario Recreational Canoeing and Kayaking Association***

Jim Wood, Vice President, Corporate Development

May 12, 2009

***Watershed Watch Salmon Society***

Aaron Hill, Ecologist

***Transportation Alberta***

Ron Middleton, Director, Environmental Management Services

***Assembly of First Nations***

Bob Watts, Chief Executive Officer

Stuart Wuttke, Acting Director, Environmental Fellowship

***Association of Iroquois and Allied Indians***

Deputy Grand Chief Chris McCormick

***Nishnawbe Aski Nation***

Terry Wilson, Forestry Coordinator

May 14, 2009

***Canadian Energy Pipeline Association***

Brenda Kenny, President

Jeff Angel, Vice President, External Relations

***Canadian Association of Petroleum Producers***

Peter Miller, Counsel, Law Department, Imperial Oil Resources

***Federation of Canadian Municipalities***

David Marit, President of Saskatchewan Association of Rural Municipalities

Susan Irwin, Policy Advisor

*University of Ottawa - Ecojustice Environmental Law Clinic*

William Amos, Staff Counsel

Yolande Saito, Research Assistant

**May 26, 2009**

*Group McLellan Ross LLP*

Ron Kruhlak, Partner

*Transport Canada*

Donald Roussel, Director General, Marine Safety

Bob Gowe, Manager, Navigable Waters Protection

Brigit Proulx, Counsel, Legal Services

**May 28, 2009**

*Transport Canada*

Donald Roussel, Director General, Marine Safety

Ann Gillen, Navigable Waters Protection Officer, Operations and Environmental Programs

Brigit Proulx, Counsel, Legal Services

## APPENDIX B

### List of submissions:

Rivershed Society of BC

Wilderness Canoe Association

Coalition for Equitable Water Flow

Canoe-Kayak Canada White-water

Dave Rolston, as an individual

Dwayne Dosch, as an individual

Sault Fly Anglers

National Council of Women of Canada

Alberta Roadbuilders & Heavy Construction Association

Tusket River Environmental Protection Association

Peter Karwacki, as an individual

Jeremy Arney, as an individual

Alliance Romaine

## APPENDIX C

The Navigable Waters Protection Act amendments:<sup>38</sup>

Act	General description of the amendments
<i>An Act respecting Bridges over navigable waters, constructed under the authority of Provincial Acts, 45 V. (1882), c. 37</i>	Original Act stipulating all bridges must be built and maintained in accordance to plans approved by the Railway Committee of the Privy Council. All bridge plans must be approved by the Governor General in Council.
<i>An Act respecting booms and other works constructed in navigable waters whether under the authority of Provincial Acts or otherwise, 46 V. (1883), c. 43</i>	Certain structures not to be built in navigable waters unless authorized by the Governor General in Council.
<i>An Act respecting certain works constructed in or over Navigable Waters, 49 V. (1886), c. 35</i>	Any work on navigable waters (bridge, boom, aboiteau, dock, pier, etc.) must deposit plans and have them approved by the Governor in Council.

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<sup>38</sup> Source: Célia Jutras, Intern, Legal and Legislative Affairs Division Parliamentary Information and Research Service, Library of Parliament

<p><i>An Act respecting certain works constructed in or over Navigable Waters</i>, R.S.C. (1886), c. 92</p>	<p>Revised statute; consolidated 45 V., c.37, 46 V., c. 43, and 49 V. c.35</p>
<p><i>An Act respecting the protection of Navigable Waters</i>, 49V. (1886), c. 36</p>	<ul style="list-style-type: none"> <li>• Original <i>Act</i> preventing anyone from obstructing, impeding, or rendering more difficult the navigation of any Canadian navigable water.</li> </ul>
<p><i>An Act to Amend the Act respecting the Protection of Navigable Waters</i>, 60-61 V. (1897), c.23</p>	<ul style="list-style-type: none"> <li>• Allows the Minister to remove any thing / property that is left stranded or upon property of the Crown.</li> </ul>
<p><i>An Act further to amend the Act respecting the Protection of Navigable Waters</i>, 61 V. (1898), c. 41</p>	<ul style="list-style-type: none"> <li>• No ballast, ashes, cinders, rubbish, etc. to be thrown into navigable tidal waters where there are not at least 12 fathoms of water (approx. 72 ft) at low tide.</li> </ul>
<p><i>An Act further to amend the Act respecting the Protection of navigable Waters</i>, 62-63 V. (1899), c. 31</p>	<ul style="list-style-type: none"> <li>• Repealed s. 1 of 61 V., c. 41 (see entry above) and replaced with an interdiction to throw or deposit any stone, gravel, earth, cinders, ashes or other material or rubbish in any navigable tidal or non-tidal waters.</li> </ul>
<p><i>An Act to amend the Act respecting certain works constructed in or over Navigable Waters</i>, 62-63 V., c. 32</p>	<ul style="list-style-type: none"> <li>• Repealed s. 6 of R.S.C., c. 92: specifying an authority must obtain approval for work constructed prior to 1 March 1899.</li> </ul>

<p><i>An Act respecting the Protection of Navigable Waters</i>, R.S. (1906), c.115</p>	<ul style="list-style-type: none"> <li>• R.S.C. (1886), c.92 and R.S.(1886), c. 91 were consolidated into this revised statute (<i>an Act respecting certain works constructed in or over Navigable Waters and an Act respecting the Protection of navigable waters</i>)</li> </ul>
<p><i>An Act to amend the Navigable Waters Protection Act</i>, 1909, c. 28</p>	<ul style="list-style-type: none"> <li>• redefined vessel by adding at the end of the paragraph: “and includes also everything forming part of the machinery, tackle, equipment, cargo, stores or ballast of a vessel”;</li> <li>• clarifies that partially sunk vessels qualify as obstructions;</li> <li>• abandoned vessels may be taken possession of and removed two years following its abandonment;</li> <li>• New definitions for “ferry cable” and “swing or draw bridge”;</li> <li>• New regulation-making powers for the Governor in Council to govern; ferry cables and swing and draw bridges.</li> </ul>
<p><i>An Act to amend the Navigable Waters Protection Act</i>, 1910, c. 44.</p>	<ul style="list-style-type: none"> <li>• s. 4 and 5 of the Act are repealed and replaced;</li> <li>• added wharf, dock, pier, or any other structure of any kind to the list of structures that cannot be built without Governor in Council approval.</li> </ul>
<p><i>An Act to amend the navigable Waters Protection Act</i>, 1918, c.33</p>	<ul style="list-style-type: none"> <li>• “work” is redefined to include more construction structures (e.g. tunnel or pipe, or telegraph or power cable or wire);</li> <li>• S. 4 and 5, as enacted in 1910 c. 44, are repealed and replaced: clarification that the Minister of Public Works will judge whether a structure interferes with navigation.</li> </ul>
<p><i>An Act respecting the Department of Transport</i>, 1936, c. 34, s. 4</p>	<ul style="list-style-type: none"> <li>• Wherever Department of Marine and Fisheries is mentioned in an act, it is now substituted by the Department of Transport.</li> </ul>
<p><i>An Act to amend the navigable Waters Protection Act</i>, 1946, c.10</p>	<ul style="list-style-type: none"> <li>• S. 5(2) is repealed and replaced: Governor in council may approve of constructed works, not only works in the process of construction.</li> </ul>



<p><i>An Act to provide for the Publication of Statutory Regulations, 1950, c. 50, s. 10</i></p>	<ul style="list-style-type: none"> <li>• The enactments of s. 12 and 33 were repealed; in s. 23, the words “published in the Canada Gazette” were repealed.</li> </ul>
<p><i>An Act to amend the navigable Waters Protection Act, 1953-1954, c. 37</i></p>	<ul style="list-style-type: none"> <li>• s. 16(1) repealed and replaced; clarifying how the Crown is entitled to recovery costs for removing wrecks, placing signals, etc.;</li> <li>• New definitions for Canadian Ship, Great Lakes, seaman;</li> <li>• New regulation-making powers allowing the Governor in Council to regulate the employment of seamen on Canadian ships in the Great Lakes.</li> </ul>
<p><i>An Act to amend the navigable Waters Protection Act, 1956, c. 41</i></p>	<ul style="list-style-type: none"> <li>• Interpretation: s. 2 (<i>aa</i>): added definition, “Minister” (Minister of Public Works);</li> <li>• Application: s. 3: added “or altering” to the following phrase, “Except so much of this Part as related to rebuilding, repairing, or altering any lawful work...”;</li> <li>• S. 4 is repealed and replaced: the section on the construction of works in navigable waters continues to be subject to approval of the Minister. Changes reflect the kind of works the section does not apply to (i.e. Work, of a values <i>less than \$5000</i> (originally \$1000) that does not interfere <i>substantially</i> with navigation.</li> <li>• S. 5 is repealed and replaced: clarifies that the Minister grants approval, not the Governor in Council. Any work that hasn’t received approval from the Minister may be removed. Clarification on how the Minister may approve plans and the site after construction has already started.</li> <li>• Ss. 7-9 repealed and replaced: Any mention of Governor in Council is now replaced by “the Minister”; new subsection on deposit of plan at the nearest land titles office; reference to the National Harbours Board.</li> </ul>
<p><i>An Act to amend the navigable Waters Protection Act, 1968, c. 15</i></p>	<ul style="list-style-type: none"> <li>• Interpretation: Minister is now defined as “Minister of Transport”; navigable water includes a canal or any other body of water created or altered as a result of the construction of any work.</li> <li>• Repealed s. 2 (<i>aa</i>) and (<i>b</i>), replaced with new definition of “owner” and “work”.</li> <li>• S. 4(1)(<i>a</i>) and (<i>b</i>) are repealed and replaced: clarification on how work, site, and plans are approved by the Minister upon terms and conditions as he deems fit; Minister sets period of construction.</li> <li>• S. 4(2) repealed and replaced: No more mention of value less than \$5000 construction cost exception.</li> </ul>

- S. 5 is repealed and replaced: The Minister has new discretionary power to order to the owner of work that interferes with navigation the removal or alteration of the work. In the event of non-compliance, Minister may remove or destroy the work and impose a penalty. A new fee is imposed for a person applying for an approval of a work after the construction has started.
- S. 8 is amended; new sub-section clarifies that a work may become a danger or interfere by reason of wear-and-tear over time (changing conditions and passage of time). Alteration, repairs, etc. are treated as new work subject to approval.
- S. 9 repealed; no more mention of National Harbours Board.
- S. 10(1) is repealed and replaced: Governor in Council may set regulations without restrictions, may fix fees payable for an approval and the period of time the approval is valid for, and penalties.
- S. 12(a) is repealed; s. on interpretation of Minister (Minister of Transport).
- S. 16 is amended; new subsections on orders to the owner to remove vessels that are left anchored and associated penalties.
- S. 18 and 19 are repealed and replaced: sections on throwing rubbish in water are amended. No more mention of sawmills. Clarification that although it is not permitted to throw stones, gravel, earth, and other materials into navigable waters where there is not at least *20 fathoms* (no longer 12) of water, the section should not be construed so as to permit garbage dumping in navigable waters.
- S. 20 and 21 are repealed. S. 20 prevents garbage dumping in navigable non-tidal waters where there is not at least 8 feet of water. S. 21 referred to fishery officers examining the water from time to time.
- S. 22 is repealed and replaced: proclamation of exemption of certain rivers from ss. 18 and 19 re: depositing of rubbish in water.
- S. 23 is repealed.
- S. 24 to 29 repealed and replaced (+ fines and penalties).

<p><i>An Act to amend the national Harbours Board Act, the Government harbours and Piers Act, the Harbour Commissions Act, the Canada Shipping Act and the Fishing and Recreational Harbours Act, 1980-81-82-83, c. 121, s. 17</i></p>	<ul style="list-style-type: none"> <li>• S. 17: any mention of the National Harbours Board is substituted by the Canada Ports Corporation.</li> </ul>
<p><i>An Act respecting Customs, 1985, c. 1 (2<sup>nd</sup> suppl.), s. 213(1)</i></p>	<ul style="list-style-type: none"> <li>• S. 15(1)(a) is repealed and replaced: the chief officer of customs or the Minister (no longer the collector of customs) will receive notice and indication of an obstruction.</li> <li>• S. 26 is repealed and replaced: owner is fined if he fails to notify the chief officer of customs or the Minister (no longer the collector of customs) of an obstruction.</li> <li>-</li> </ul>
<p><i>An Act respecting Customs, 1986, c. 1, s. 211</i></p>	<ul style="list-style-type: none"> <li>• S. 13 of the <i>Act</i> is repealed and replaced: the chief officer of customs must now be notified (or the Minister) by the owner of a vessel obstructing navigable bodies of waters.</li> <li>• S. 24 is repealed and replaced: an owner that fails to notify the Minister or the chief officer of customs of his obstructing vessel will be fined.</li> <li>• S. 26 is repealed and replaced: vessel may be detained by any port warden <i>or the chief officer of customs</i>.</li> </ul>
<p><i>An Act to provide for the repeal of the land Titles Act and to amend other Acts in relation thereto, 1993, c. 41, s. 8</i></p>	<ul style="list-style-type: none"> <li>• Ss. 9(1) and (2) are repealed and replaced: a proposition for construction may deposit a duplicate at the office of the registrar of deed <i>or the land titles office for the district</i>.</li> </ul>
<p><i>An Act for making the system of Canadian ports competitive, efficient and commercially oriented, providing for the establishing of port authorities and the divesting</i></p>	<ul style="list-style-type: none"> <li>• S. 24 is replaced: new provision adds “or a port authority established under the Canada Marine Act” to the list of authorities whose powers are not affected by the Act.</li> </ul>

<p><i>of certain harbours and ports, for the commercialization of the St. Lawrence Seaway and ferry services and other matters related to maritime trade and transport and amending the Pilotage Act and amending and repealing other Acts as a consequence, 1998, c. 10, s. 189</i></p>	
<p><i>An Act to amend certain Acts of Canada, and to enact measures for implementing the Biological and Toxin Weapons Convention, in order to enhance public safety, 2004, c.15, s. 94-96</i></p>	<ul style="list-style-type: none"> <li>• S. 2 replaced: Minister means the Minister of Fisheries and Oceans.</li> <li>• S. 13 is amended, adding sections: the Minister may make an interim order where he believes immediate action is required.</li> <li>• S. 31 is amended, adding a new section: minister may make an interim order where he believes immediate action is required to deal with risks specifically associated with ferry cables and swing or draw bridges.</li> </ul>
<p><i>Bill C-10, An Act to implement certain provisions of the budget tabled in Parliament on January 27, 2009 and related fiscal measures</i></p>	

