



NAVIGABLE WATERS PROTECTION ACT

Transport Canada





BACKGROUND

- The public right of navigation has always been protected under Common Law
- The public right of navigation can only be modified or extinguished by an authorizing statute
- The *Navigable Waters Protection Act* dates back to 1886 to allow for the construction and placement of bridges and other works in navigable waters
- Over time, the Act was applied to almost all waters, including drainage ditches, brooks and streams



NAVIGABLE WATERS PROTECTION ACT (NWPA)

- The Act was designed to protect the public right of navigation by regulating:
 - construction, placement, etc. of works in, on, over, under, through or across navigable waters in Canada that risk interfering with navigation;
 - removal of certain obstructions and other things in navigable waters; and
 - depositing or throwing of material such as gravel, mine tailings, etc., that risked impacting navigation in navigable waters



CHANGES TO THE ACT

- Amendments to the *Navigable Waters Protection Act* came into force on **April 1, 2014**
- Name of Act changed to: ***Navigation Protection Act***
- **Schedule to the Act** lists the waterways where approval will be required prior to the building of works that substantially interfere with navigation. The only 6 Schedule Waterways in Alberta.
- Works in waterways not listed in the schedule will be subject to the **common law** public right of navigation (unless opted-in)
- Approvals are no longer subject to a specific duration



TYPE OF APPROVALS

- **Approved works:** Works that are likely to substantially interfere with navigation. (S. 6)
- **Permitted works:** Works that may proceed without approval is assessed as not likely to substantially interfere with navigation. (S. 9)
 - Permitted works are subject to all regulatory requirements and the Minister may impose conditions
- Transport Canada will determine whether works are “**approved**” or “**permitted**” based on the likelihood to substantially interfere with navigation
- **Designated Works:** Minor works are permitted so long as they comply with regulatory requirements (see the *Minor Works Order*)



MINOR WORKS ORDER

- Establishes a class of works that does not require an Application or Approval through the NPA because they are "minor" in nature
- Specific design and placement criteria for each defined Minor Work is outlined in the Ministerial Order
- Failure to construct the work in accordance with the criteria outlined in the Order may result in enforcement action
- Revised Order has been published in the *Canada Gazette*, Part I, on April 19, 2014





MINOR REPAIRS ORDER

- Proposing new class of minor works
- Could address concerns from builders that are responsible for all types of repairs and maintenance to existing lawful infrastructure
- Could provide allowance for repairs and maintenance that have a minimum impact on the navigation envelope and/or the navigation channel, such as top side repairs of a bridge





OPT- IN

- The NPA includes an “opt-in” provision that allows the owners of works in non-scheduled navigable waters to ask for assessment and review of their work under the NPA.
- The Minister may accept or refuse an opt-in request.
- The **WORK** and not the **WATERWAY** becomes subject to the regime.



OPTING OUT

- Owners of works in non-scheduled navigable waters, that where approved under the NWPA, may opt out of the NPA regime within five years of the NPA coming into force.
- The decision to opt out of the NPA regime belongs to the owner of the work.
- The opt-out option expires on the five-year anniversary of the coming into force of the NPA (April 1, 2019). After that time a transitioned work can no longer opt out and will continue to be subject to the Act.



EXEMPTIONS TO PROHIBITIONS

- Throwing or depositing of material liable to interfere with navigation continues to be a prohibited activity under the Act for all navigable waters (s. 21 & 22)
- A new prohibition is introduced against dewatering a navigable water (s. 23)
- The Governor in Council has the authority to declare waters exempt from the application of the prohibitions but it requires an Order In Council (s. 24)



ADMINISTRATION AND ENFORCEMENT UNDER THE NPA

- New authority (s.39.1) to introduce administrative monetary penalties for “violations” of the Act.
- Directors and officers of a corporate owner who directed, authorized, assented to, etc., in the commission of an offence or a violation of the Act may be pursued directly as a separate party



ADMINISTRATIVE MONETARY PENALTIES

- Proposing to introduce new Administrative Monetary Penalties Regulations
- Where prosecuting a case is not considered necessary, the violation may be dealt with by the assessment of a monetary penalty to the individual or corporation that has committed the offence (\$5K max for individuals - \$40K max for corporations)
- Subsection 39.1 of the *Navigation Protection Act* requires the designation in regulations of those provisions of the legislation that will be subject to the new AMPs scheme. Contraventions of the designated provisions are called “violations” under the NPA.
- Anticipated schedule for these regulations:
 - Canada Gazette, Part I – Fall 2014
 - Canada Gazette, Part II – Winter 2015



QUESTIONS?

NPPPNR-PPNRPN@tc.gc.ca
WWW.TC.GC.CA/ENG/PROGRAMS-621.HTML