



HOUSE OF COMMONS
CANADA

**CONSIDERATION OF PROPOSED AMENDMENTS
TO THE *NAVIGABLE WATERS PROTECTION ACT***

**Report of the Standing Committee on
Transport, Infrastructure and Communities**

**Mervin Tweed, MP
Chair**

June 2008

39th PARLIAMENT, 2nd SESSION



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THE STANDING COMMITTEE ON TRANSPORT, INFRASTRUCTURE AND COMMUNITIES

has the honour to present its

FOURTH REPORT

Pursuant to its mandate under Standing Order 108(2), the Committee has studied the proposed amendments to the *Navigable Waters Protection Act* and has agreed to report the following:

CONSIDERATION OF PROPOSED AMENDMENTS TO THE *NAVIGABLE WATERS PROTECTION ACT*

REPORT OF THE STANDING COMMITTEE ON TRANSPORT, INFRASTRUCTURE AND COMMUNITIES

BACKGROUND

On February 12, 2008, officials from Transport Canada appeared before the House of Commons Standing Committee on Transport, Infrastructure and Communities to solicit its support for undertaking consultations towards developing new navigation protection legislation to replace the current *Navigable Waters Protection Act* (NWPA). This Act, which was written in 1882, is one of the oldest pieces of legislation in Canada.

Officials told the Committee that industry, provincial, territorial and municipal governments have, over many years, been requesting changes to the NWPA to reflect current economic needs and respond to the increased volume and variety of uses of Canada's waterways. The Committee was also told that there is a backlog of projects waiting for approval and that by developing new legislation this backlog could be greatly reduced.

While the Committee appreciates the necessity for developing new legislation it believes that rather than dealing with the entire piece of legislation it would better serve the needs of the stakeholders if we were to first deal with those sections of the Act that could be resolved quickly. To this end, the Committee again heard from Transport Canada officials on 28 February to ascertain which sections of NWPA could be dealt with in an expeditious manner.

In its appearance before the Committee, the officials set forth a series of seven items that could be addressed in the short term to improve the current legislation. These include:

- Amending the definition of “navigable waters” to exclude “minor waters”;
- Amending the definition of “work” to explicitly exclude “minor works”;
- Deleting the reference to the four “named” works in the Act;
- Adjusting the amount of the current fines in the Act;
- The removal of wrecks and derelict vessels;
- The definition of inspection powers; and
- A five year review of the amended *Navigable Waters Protection Act*.

In addition, the committee has also set forth a recommendation dealing with inter-departmental environmental assessments and fisheries habitat assessments.

Since hearing from Transport Canada, the Committee has heard from witnesses from the various government departments that have an interest in changes to the *Navigable Waters Protection Act* (NWPA). In addition, we have also heard from representatives of provincial governments, municipalities and an environmental group.

The objective of this report is to offer the government our recommendations for dealing with the seven items put forward by the department for upgrading the NWPA in the short term. We believe that this would best serve the stakeholders and ease the backlog of projects waiting for approval.

PROPOSED AMENDMENTS TO THE NWPA

A. Definition of Navigable Waters

Stakeholders have told the Committee that they want “minor waters” excluded from the NWPA and replaced with a clear definition of what constitutes a “navigable water.” Witnesses told us that navigable waters could be defined by reference to the purpose of the navigation, type of vessel, physical characteristics of the channel, actual use for navigation or a combination of these. The extent to which such factors are included in the definition we would leave to the government to decide. However, we believe that the new definition should leave no ambiguity as to what is defined as a navigable water.

Therefore, the Committee recommends that:

The government amend the definition of navigable waters to exclude minor waters and that the new definition should clearly state what constitutes a “navigable water.”

B. Definition of Work

Witnesses stated that they would like to see the definition of “work” amended to explicitly exclude “minor works” and works that have little or no impact on navigation. Stakeholders believe that many works that currently require applications for approval do not affect navigation. We believe that amending the NWPA to exclude “minor works” would aid those constructing projects that have no impact on navigation and allow Transport Canada to deploy their resources in assessing projects that do fall under the ambit of what constitutes a “work.”

Therefore, the Committee recommends that:

The government amend the definition of “work” under the NWPA to exclude “minor works.”

C. Remove Reference to Four “Named” Works

Under Section 5(2) of the Act, there are four “named” works – bridge, boom, dam and causeway. These four were originally “named” in the Act because they completely blocked a waterway and thus were traditionally considered significant obstacles to navigation. Stakeholders told the Committee that this is not the case today and that by naming these works require them to go through an extensive approval process whether the impact on navigation is significant or not.

Transport Canada stated that the result of naming these four works in the Act removed departmental discretion on the review process applied to them. This review process is prescribed in the Act and is considered unnecessary in many cases. The department believes that there would be significant benefit to stakeholders in removing this section of the Act and that the review process could then be tailored to the impact of the work on navigation. While we understand the concerns raised by the department, we also want to ensure that if these “named” works are to be considered for deletion, the review process for works that impede or obstruct navigation is not compromised.

Therefore, the Committee recommends that:

The government consider deleting specific reference to each of the four “named” works under Section 5(2) of the *Navigable Waters Protection Act* without compromising the review of works which impede or obstruct navigation.

D. Inter-Departmental Assessment “Triggers”

Throughout our hearings concerns were raised as to the effects of amending the NWPA on the review processes that are in place in departments such as: Infrastructure Canada, Fisheries and Oceans, and the Canadian Environmental Assessment Agency. Witnesses did not want changes to the NWPA to in any way derogate assessments conducted on the environment or fisheries by the relevant departments.

We agree with this and want the government to ensure that changes to the NWPA are not done away with or impede the various “trigger” mechanisms in other relevant pieces of legislation that allow for environmental and fisheries assessment.

Therefore, the Committee recommends that:

The government, in amending the NWPA, ensure that the “trigger” mechanisms contained in other pieces of relevant legislation for environmental assessments and fisheries habitat assessments are not done away with or impeded.

E. Current Fines in the Act

Current fines in the Act range from \$500 to \$5000. Transport Canada does not believe that these act as a deterrent for non-compliance and require updating. We believe that the fines should be significant and proportional to the costs of the work that is being undertaken to better reflect current fiscal environment.

Therefore, the Committee recommends that:

The government develop a system of significant fines that are proportional to the costs of the work undertaken and better reflect the current fiscal environment.

F. Removal of Wrecks and Derelict Vessels

In May 2007, the International Maritime Organization adopted the *Nairobi International Convention on the Removal of Wrecks, 2007*. The Convention provides additional tools for Transport Canada to undertake the removal of derelict vessels in all regions of the country as Canada chose to opt into the territorial waters provisions of the Convention. The department proposes that only the operational elements of the wreck removal convention be inserted into the Act.

While the Committee heard little testimony on this subject, we believe that the government should take into account international agreements when amending the NWPA in order to meet its international obligations.

Therefore, the Committee recommends that:

The government, in amending the NWPA, take into account any international agreements, treaties or conventions which will enable Canada to meet its international obligations including the Nairobi International Convention on the Removal of Wrecks, 2007.

G. Inspection Powers

The NWPA does not contain explicit inspection powers as is the case in other pieces of legislation such as Part 10 of the *Canadian Environmental Protection Act, 1999* or the enforcement section of the *International Bridges and Tunnels Act*.

The Committee believes that the government should clearly define inspection powers to ensure compliance with all provisions of the NWPA.

Therefore, the Committee recommends that:

The government clearly define inspection powers in the Act to ensure compliance with all provisions of the NWPA.

H. Five Year Review of the Act

The department believes that a five-year review clause should be included in the amended Act in order to correct any deficiencies identified throughout the implementation of the proposed amendments. The Committee agrees.

Therefore, the Committee recommends that:

The government include a five-year review clause in the amended Act to correct any deficiencies throughout the implementation of proposed amendments to the NWPA.

CONCLUSION

The Committee believes that our recommendations can lead to improvements in the current legislation and provide benefits to the stakeholders in terms of easing the backlog of projects and more clearly defining the approval process. We would also note that this is the first stage in our process in dealing with amendments to the NWPA. Once we receive the government's proposed amendments we will be undertaking further consultations on this piece of legislation.

APPENDIX A LIST OF WITNESSES

Organizations and Individuals	Date	Meeting
<p>Department of Transport</p> <p>Marc Grégoire, Assistant Deputy Minister, Safety and Security</p> <p>David Osbaldeston, Manager, Navigable Waters Protection Program</p>	2008/12/02	13
<p>Department of Transport</p> <p>Marc Grégoire, Assistant Deputy Minister, Safety and Security</p> <p>David Osbaldeston, Manager, Navigable Waters Protection Program</p>	2008/02/28	14
<p>Canadian Environmental Assessment Agency</p> <p>Steve Burgess, Acting Vice-President, Program Delivery Sector</p> <p>John Smith, Director, Legislative Regulatory Affairs, Policy Development</p>	2008/11/03	16
<p>Department of Fisheries and Oceans</p> <p>Gilles Belzile, Director General, Legislative and Intergovernmental Affairs, Policy Sector</p> <p>Ginny Flood, National Director, Environmental Assessments and Major Projects, Oceans and Habitat Sector</p>		
<p>Infrastructure Canada</p> <p>Keith Grady, Senior Advisor, Environment Review and Approvals, Issues Management Directorate, Program Operations Branch</p> <p>Shirley Anne Scharf, Director General, Issues Management Directorate, Program Operations Branch</p>		
<p>Federation of Canadian Municipalities</p> <p>Susan Irwin, Senior Policy and Research Analyst</p> <p>Don Johnson, President, Alberta Association of Municipal Districts and Counties</p> <p>David Marit, President, Saskatchewan Association of Rural Municipalities</p>	2008/04/29	23
<p>Government of Alberta</p> <p>Ron Middleton, Director, Environmental Management Services, Ministry of Transportation</p>	2008/06/05	25
<p>Lake Ontario Waterkeeper</p> <p>Krystyn Tully, Vice-President</p>	2008/05/29	29
<p>Canadian Environmental Assessment Agency</p> <p>Yves Leboeuf, Vice-President, Policy Development</p>	2008/03/06	30

Organizations and Individuals	Date	Meeting
<p>Department of Fisheries and Oceans Ginny Flood, National Director, Environmental Assessments and Major Projects, Oceans and Habitat Sector</p>		
<p>Department of Transport William J. Nash, Director General, Marine Safety David Osbaldeston, Manager, Navigable Waters Protection Program</p>		
<p>Infrastructure Canada Keith Grady, Senior Advisor, Environment Review and Approvals, Issues Management Directorate, Program Operations Branch Shirley Anne Scharf, Director General, Issues Management Directorate, Program Operations Branch</p>		

APPENDIX B LIST OF BRIEFS

Organizations and Individuals

Beaver County

Brazeau County

Canadian Construction Association

Canadian Environmental Assessment Agency

Canoe Kayak Nova Scotia

Council of Marine Carriers

County of Minburn No. 27

County of Thorhild No. 7

County of Wetakiwin No. 10

Department of Transport

Federation of Canadian Municipalities

Government of Alberta, Alberta Transportation

Government of British Columbia, Ministry of Transportation

Government of Manitoba, Infrastructure and Transportation

Government of Newfoundland and Labrador, Department of Transport and Works

Government of the Northwest Territories, Department of Transport

Government of Nova Scotia, Transportation and Infrastructure

Government of Ontario, Ministry of Transportation

Government of Saskatchewan, Ministry of Highways and Infrastructure

Government of Yukon, Department of Highways and Public Works

Heather Matthews

Lake Ontario Waterkeeper

Les Amis de la Rivière Kipawa

Mackenzie County

Organizations and Individuals

Municipal District of Wainwright No. 61

Ponoka County

Township of Enniskillen

Western Canada Roadbuilders & Heavy Construction Association

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this Report.

A copy of the relevant Minutes of Proceedings ([Meeting No. 32](#)) is tabled.

Respectfully submitted,

Mervin Tweed, MP
Chair