

Restore the Navigable Waters Protection Act

Dating back to 1882, the *Navigable Waters Protection Act* (NWPA) is one of Canada's oldest pieces of legislation. Originally, the NWPA prohibited any "work"—constructed or placed in, on, over, under, through or across any navigable water without the Minister of Transport's approval. If the project would substantially interfere with navigable waters, it automatically triggered an environmental assessment under the *Canadian Environmental Assessment Act* (CEAA).

The former Harper government began clawing back protections under the NWPA in 2009. That year, the federal government weakened the NWPA by creating a tiered system that reduced the number and types of projects into categories of "major" and "minor" works.

In 2012, the Harper government's omni-budget bill C-45 dealt the act its final fatal blow. Aside from removing the word "waters" from the title of the act and renaming the legislation the Navigation Protection Act (NPA), Bill C-45 stripped protections from 99% of lakes and rivers leaving only three oceans, 97 lakes and 62 rivers under the purview of the NPA. 89% of the scant list of protected waterways were in conservative ridings. In Canada and Indigenous territories, it is estimated that there are nearly 32,000 major lakes and more than 2.25 million rivers. The list of oceans, lakes and rivers that are protected under the NPA, set out in the schedule of the act, does not include some of the largest lakes in the country. The NPA also exempts pipelines and powerlines from scrutiny so the impacts of these projects are no longer assessed for any navigable waterway.

Industrial projects are moving forward with little or no scrutiny under the Navigation Protection Act. These projects like the Energy East pipeline (AB to NB), the Kinder Morgan Trans Mountain pipeline (AB to BC), the Keeyask Dam and Bipole Transmission Line (MB), the Ajax Mine (BC) can threaten local waterways, recreation, transportation, fisheries, local tourism and drinking water.

We know that Big Oil and the pipeline industry drove the changes that Harper made and we know they are lobbying the Trudeau government to keep water protections scaled back. An Access to Information request by Greenpeace revealed that the 2012 budget bill changes to the NWPA were guided by the advice of the Energy Framework Initiative, which includes Canadian Association of Petroleum Producers, the Canadian Energy Pipeline Association. According to the Globe and Mail, a number of industry groups are registered to lobby the Trudeau government on the environmental legislation reviews such as Shell Canada, the Canadian Electricity Association and the Canadian Energy Pipeline.

The interrelationship between navigation and the environment is such that the protection of the former consistently promotes the health of the latter. Navigable waters are intimately linked to clean drinking water, recreation and healthy fisheries, and why the Navigable Waters Protection Act must be restored and strengthened.

The *Navigable Waters Protection Act* must be restored and enhanced so that all lakes, rivers and waterways are fully protected.

1. Protections must be put back on all lakes, rivers and waterways, so that every lake and every river is protected.

The former Harper government removed protections for 99% of lakes and rivers by creating a schedule which lists the 97 lakes, 62 rivers and 3 oceans. It also changed the wording in the Navigation Protection Act so that most protections only apply to the waterways listed in the schedule. The schedule must be eliminated and the wording changed back so that protections in the act apply to all lakes, rivers and other navigable waterways.

2. Reinstate and strengthen federal scrutiny of large pipelines and powerlines under the NWPA and assessment of waterways under Canadian Environmental Assessment Act.

The NPA also exempts pipelines and powerlines from scrutiny so the impacts of these projects are no longer assessed for any navigable waterway. Changes were made to the *National Energy Board Act* and the *Canada Oil and Gas Operations Act* so the definition of “project” does not include pipelines or transmission lines, and so environmental assessments are no longer triggered by these kinds of projects.

Because the NPA exempts pipelines, pipelines like Energy East or Kinder Morgan’s Trans Mountain pipeline are going forward without review of the nearly 2,963 and 1,309 respective waterways they cross.

3. Implement strict safeguards for waterways within the framework of the United Nations-recognized human right to water and include a clause in the NWPA so that potential spills or discharge of harmful substances are assessed for their impact on all navigable waters.

In the report “*Our Right to Water: A People’s Guide to Implementing the United Nations’ Recognition of the Right to Water and Sanitation*”, Council of Canadians National Chairperson Maude Barlow outlines the three obligations the recognition of a human right to water imposes on governments: the obligations to respect, protect, and fulfill. This includes government’s obligation to prevent third parties from interfering with the enjoyment of the human right. For example, a government is required to protect a community from pollution by corporations or governments.

The potential impacts of a project such as the Energy East pipeline must be assessment on navigable waterways including the impacts of potential spills. Oil spills or other pollution can seriously hamper navigable waters, drinking water, recreation and fishing.

4. Hold thorough public consultations and independent expert panels and incorporate feedback to strengthen the NWPA

Right now only written comments are being requested by the Standing Committee on Transportation, Infrastructure and Communities. It is unclear how many people will be able to

present to the Standing Committee. Transport Canada has also been reaching out to stakeholders to gather comments for its presentation to the Standing Committee. The Trudeau government has only announced public consultations and independent expert panels for its reviews on the *Canadian Environmental Assessment Act* and the National Energy Board. Protection for navigable waters affects residents and communities from coast to coast. The Trudeau government must also hold public consultations and create an independent expert panel for its review on the *Navigation Protection Act*.

5. Consult with Indigenous communities and incorporate the obligation to obtain free, prior and informed consent into the NWPA so that Indigenous treaty and water rights are respected and a nation-to-nation relationship is truly established.

The Harper government's 2012 budget bills and changes to the NWPA fanned the flames of discontent amongst Indigenous communities. The federal government not only washed its hands of protecting lakes and rivers, it also ignored the constitutional duty to consult with First Nations. Until the Trudeau government restores the NWPA, it is also neglecting this legal responsibility to consult with First Nations.

It is unclear how the Standing Committee will obtain free, prior and informed consent of Indigenous Nations and how many Indigenous nations will be invited to present to the Standing Committee. In order to implement the UN Declaration of the Rights of Indigenous Peoples, free, prior and informed consent must be obtained from Indigenous communities on any changes to the NWPA, relevant regulations and all applications that are submitted under the act in order to fully respect Indigenous treaty and water rights.

6. Ensure that a consultation process is established that fosters true collaboration between communities and government so regulatory agencies implement community recommendations on an ongoing basis. Develop clauses that establishes a community's right to say "no" to projects that threaten waterways and empowers communities to create low-carbon, sustainable jobs that safeguard water.

The Site C dam was recently approved despite it being built on the "protected" Peace River. It will create an 83-kilometre-long reservoir and flood about 5,550 hectares of agricultural land southwest of Fort St. John. It would also submerge 78 First Nations heritage sites, including burial grounds and places of cultural and spiritual significance.

Site C has been vehemently opposed by First Nations and northern communities. UNESCO was recently on a monitoring mission to assess the impact Site C would have on the Peace and Athabasca Rivers which converge in Wood Buffalo National Park, a designated World Heritage Site.

Site C is a clear example of why the *Navigation Protection Act* needs a rigorous review and why the act must be amended to empower local communities to be able to say "no" to projects that threaten waterways.