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Canadian Navigable Waters Act



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New Protections on all Navigable Waters

- The Minister of Transport has taken key findings from the *Navigation Protection Act* Review to develop a vision for a new navigation protection system -- developed by listening to Canadians, including Indigenous peoples, boaters, industry, the House of Commons Standing Committee (TRAN) and other levels of government.
- The proposed amendments to the *Navigation Protection Act* are transformative and will provide protections for navigation on all navigable waters in Canada, and will focus oversight on waterways where it is needed most, by:
 - Introducing new protections and implementing modern day safeguards for the public right of navigation across Canada
 - Advancing reconciliation and establishing new opportunities for Indigenous peoples to partner with Canada
 - Creating more accessible and transparent processes
 - Providing robust powers to enforce new safeguards to protect the public right of navigation

Canadian Navigable Waters Act: New Protections on all Navigable Waters

Bill C-69 would provide protections for navigation on all navigable waters in Canada, including:

- **An expanded scope** to regulate major works and obstructions
 - Expand the Minister of Transport's powers to address obstructions and potential obstructions so that they apply to all navigable waters
 - Designate works that pose a higher risk of interfering with navigation as "major works" using a ministerial order and require that owners of these works (e.g., dams) apply for an approval when the work occurs on any navigable water
- A new, more comprehensive definition of a **navigable water**
 - To include a body of water that is used (or is likely to be used) as a means of travel or transport, including as a means of travel or transport for Indigenous peoples to exercise their rights - and where there is public access, two or more waterfront owners, or where the Crown is the sole waterfront owner
- A requirement to consider the **cumulative effects** on navigation of multiple projects in a navigable water where information is provided*

*Factors to be considered when issuing an approval for a work would include:

- Characteristics of the navigable water
- Safety of navigation in that navigable water
- Current or anticipated navigation in that navigable water
- Impact of the work on navigation
- Cumulative effects on navigation of multiple projects in a navigable water where information is provided
- Traditional knowledge of the Indigenous peoples of Canada that has been provided
- Comments received during the comment period
- Record of compliance of the owner
- Any other relevant information

Canadian Navigable Waters Act: New Protections on all Navigable Waters

- A new, more inclusive Schedule with a simpler process for **adding navigable waters to the list of waters subject to extra oversight**
 - allow anyone to request additions
 - broaden and clarify the factors* to be considered when determining whether a navigable water should be added
 - provide the Minister with order-making powers to add to the Schedule
- A new **resolution process** to allow navigation concerns to be addressed before construction
 - allow the Minister to review unresolved navigation-related concerns for works in non-scheduled navigable waters and require an approval, where warranted
 - provide option for owners to make a voluntary application for an approval of a proposed work on non-scheduled navigable waters

***Factors to be considered would include:**

- whether the waterway is charted
- waterway's physical characteristics
- the safety of navigation
- past, current and anticipated use
- use by Indigenous peoples to exercise Indigenous or treaty rights
- the cumulative impact of works on navigation in the waterway

Canadian Navigable Waters Act: Advancing Reconciliation with Indigenous Peoples

Bill C-69 would advance reconciliation with Indigenous peoples through:

- **Partnership opportunities** for Indigenous groups
 - Implement provision that allows the Minister to enter into agreements and arrangements with Indigenous groups for the purposes of administering elements of the Act (e.g. monitoring, enforcement, joint decision-making)
- In deciding whether to issue an approval, a new **requirement to consider and protect Indigenous traditional knowledge** that is provided
- Explicitly including in the definition of navigable water, **transport or travel to exercise Indigenous rights**
- A requirement for decision makers to **consider adverse impacts on Indigenous rights** before making decisions under the Act

Canadian Navigable Waters Act: Transparent and Accessible Processes

Bill C-69 would provide new modern safeguards to create greater transparency and give local communities a say in works that could affect the public right of navigation:

- A new **online registry** to provide access to information about projects and regulatory approvals
- A new mandatory requirement for a proponent to provide **advance notification** for works on any navigable water
- A new requirement for proponents to provide **opportunities for early engagement** for works on any navigable water

Canadian Navigable Waters Act: Improved Efficiency and Effectiveness

Bill C-69 includes measures that would enforce new safeguards and protect the public right of navigation:

- Robust **powers to enforce** the Canadian Navigable Waters Act
 - Increase the amounts and extend the prescribed limitation periods for violations and offences
- Allow for the conduct of **studies and collection of information** necessary for the purposes of administering the Act
- Clarity on the related to dewatering
 - Expand the Minister of Transport's powers to order remediation or stop a prohibited activity on all navigable waters and provide greater clarity to proponents
- **Efficiency and effectiveness** of the regulatory process
 - Introduce an alternative to the Courts to resolve disputes by creating a new resolution process for works in non-scheduled navigable waters
 - Expand cost recovery provisions to allow user fees with service standards to be prescribed for more services under the Act
- Requirement for a one-time **review of the legislation after five years**

Canadian Navigable Waters Act: Improved Efficiency and Effectiveness

- Would return “navigable waters” to a **new title of the Act**
- New **transitional provisions** would clarify the status of existing works at the time new legislation comes into force

Coming into Force

It is proposed that the revised legislation come into force on a date to be fixed by Governor in Council (GiC), with three exceptions:

- The section allowing for the addition of navigable waters to the schedule would come into force on Royal Assent to allow the Minister of Transport to develop an order to expand the schedule in a timely way
- The section on abandoned vessels would come into force on Royal Assent to allow the Minister to address abandoned vessels in all navigable waters in Canada, not just scheduled waters
- The section establishing the registry would come into force on a date to be fixed by a separate GiC decision to allow alignment with timelines for the development of an online system

Summary

- The proposed Canadian Navigable Waters Act will restore and better protect the right to travel on all navigable waters in Canada, so that recreational boaters and Indigenous peoples can continue to travel Canada's vast network of rivers, lakes and canals for generations to come.
- It will implement measures to advance reconciliation and new partnerships with Indigenous peoples and establish open, accessible and transparent processes while improving the efficiency and effectiveness of the navigation protection system moving forward.
- The proposed Canadian Navigable Waters Act is an important element of the proposed new impact assessment system that will protect our environment, our fish and our waterways, while rebuilding public trust and respecting Indigenous rights.

Next Steps

- Bill C-69 is subject to the parliamentary process
- Policy and regulatory changes will be needed to operationalize the proposed Canadian Navigable Waters Act, and they will be informed by engagement with provinces, territories, Indigenous peoples and stakeholders
- To support reconciliation with Indigenous peoples, we will continue working collaboratively to inform future regulatory, policy and program development

Discussion