



# FACT SHEET #1:

## NAVIGATION PROTECTION

October 2016

The common law protects the **public right of navigation**, which gives people free and unobstructed passage through navigable waters. Only federal legislation can authorize interferences to navigation. The primary purpose of the *Navigation Protection Act* is to balance the public right to navigate with the need to construct works (e.g., bridges and dams).

The *Navigable Waters Protection Act* (NWPA) was amended in 2009, and again in 2012, at which time it was renamed the *Navigation Protection Act* (NPA).

### 2009 Amendments

Before 2009, the government applied the Act to almost all works and waters, including ditches, brooks and streams.

To address concerns related to the backlog of applications, amendments made in 2009 focused on streamlining the approval process. For example, they:

- simplified the definition of “work;”
- allowed the Minister of Transport to consider multiple works as a single work;
- created a tiered approval process;
- created a *Minor Works and Waters Order*, which allowed works to be built if they met:
  - the criteria for that class of works (e.g., docks, boathouses, aerial cables); and
  - specific terms and conditions for construction;

### The Schedule

- The [List of Scheduled Navigable Waters](#) includes Canada’s busiest waterways. They are accessible by ports and marinas, and are often close to heavily populated areas.
- Transport Canada selected the scheduled navigable waters using nautical charts compiled by the Canadian Hydrographic Service, departmental historical data, and information received from Statistics Canada related to freight movement.
- Navigable waters can be added to the Schedule by regulatory amendment, where Governor in Council is satisfied that the addition:
  - a) is in the national or regional economic interest;
  - b) is in the public interest; or
  - c) was requested by a local authority.

- gave the Minister of Transport the authority to amend, suspend and cancel an approval in specified circumstances; and
- expanded the enforcement regime.

### 2012 Amendments

Amendments to the NWPA were introduced in Parliament on October 18, 2012, as part of Bill C-45, and received Royal Assent on December 14, 2012. These amendments came into force on April 1, 2014.

The 2012 amendments focused the NPA on Canada’s waterways that support busy commercial or recreation-related navigation.



The amendments:

- changed the name to the *Navigation Protection Act* to better reflect the government's intent to protect navigation;
- added a Schedule to the Act (see text box) that lists navigable waters where people must apply for federal authorization for works that interfere with navigation;
- offered owners of works in non-scheduled navigable waters the opportunity to request to *opt-in* to the NPA regime, making these works subject to the Act;
- made it a requirement to notify the Minister of Transport and take corrective measures if a work causes, or is likely to cause, serious and imminent danger to navigation;
- gave the Minister powers to authorize whatever work is needed as a result of an emergency;
- prohibit dewatering any navigable water (not only those listed on the Schedule);
- gave owners of works on un-scheduled waters the opportunity to *opt-out* of the NPA regime within five years after the coming into force of the amendments;
- focused the Minister's powers to address obstructions in navigable waterways to those on a Scheduled waterway;
- removed the statutory requirement to renew authorizations issued under the NPA;
- introduced authority to issue administrative monetary penalties to address non-compliance; and
- expanded enforcement provisions.

The NPA continues to regulate:

- constructing or placing works in, on, over, under, through or across a Scheduled navigable water in Canada that may interfere with navigation (**see Fact Sheet #2**);

- removing certain obstructions and other things in Scheduled navigable waters (**see Fact Sheet #3**); and
- depositing or throwing material such as gravel, mine tailings, etc., into any navigable water (**see Fact Sheet #4**).