



SUPPORTING PAPER #2:

RESTORING LOST PROTECTIONS - THE PUBLIC RIGHT OF NAVIGATION

July 2017

The Government of Canada is reviewing the changes to the [Navigation Protection Act](#) (NPA) to fulfill its commitment to restore lost protections and incorporate modern safeguards. This is part of a broader [review of environmental and regulatory processes](#) that aims to strengthen and restore trust in Canada's environmental assessment and regulatory review processes.

This paper provides an outline of the views we heard from Canadians on restoring lost protections for the public right of navigation, as well as a summary of proposed changes to the NPA that are being considered by Transport Canada.

What We Heard

The **Schedule** to the NPA enables the Act to focus regulatory reviews on Canada's busiest commercial and recreational navigable waters, and includes a process to add waters. It lists 164 navigable waters, including the three oceans, which are defined to include navigable waters impacted by the tides up to the extent of the tidal influence. This definition brings into the NPA regime a number of coastal waters not specifically named. If a proponent proposes to build a work (e.g., a bridge, dam) on a Scheduled water, an authorization is required from Transport Canada to mitigate the navigational impacts of the proposed work.

We heard a range of views regarding this approach. While some expressed a view that the

Act should apply to all navigable waters in Canada, some supported the existing Schedule, and others favoured an expanded and more flexible Schedule.

The **Minor Works Order** allows for certain types of works with minimal or no impact on navigation to be built without notifying Transport Canada. This includes works such as floating docks installed by cottage owners. While some shared views that the Order was a modern risk based approach, others suggested that authorizations should be required for all works.

We also heard that Court processes to **resolve disputes** about works on unscheduled waters are seen as inaccessible and too expensive. It was suggested by many that there needed to be a mechanism for individuals and proponents to resolve disputes pertaining to works on unscheduled waters without having to resort to an expensive trial before a court of law.

Proposed Actions

In order to restore lost protections for the public right of navigation, **Transport Canada is seeking feedback on proposals that would:**

- Improve the process for adding navigable waters to the Schedule, including developing clear criteria and a more accessible and transparent process.
- Manage obstructions and regulate certain classes of major works (such as dams and ferry cables) on all navigable waters in Canada.
- Develop a complaint mechanism for works on unscheduled navigable waters to provide a means to address concerns about the public right of navigation.



The Schedule

Transport Canada is proposing to continue to rely on a Schedule for administering the Act, with a recognition that there are significant opportunities to improve the use and structure of this approach, while expanding the scope of the Act's application.

We want the process and criteria for adding waters to be clear and accessible. This could include, for example, a tailored process for Indigenous groups to seek the addition of a navigable water on the Schedule.

We also want to ensure that the NPA appropriately protects the right to navigate in waters that are most significant to Canadians, including Indigenous peoples, which is why Transport Canada will also be considering adding priority navigable waters to the Schedule now, in advance of a new process taking effect.

Some Canadians have highlighted a need for increased protections in navigable waters that are not listed in the Schedule. Transport Canada has heard these concerns, and is considering changes in the following areas.

Major Works and Obstructions

We heard from Canadians, and especially Indigenous peoples, that the scope of the Act needs to be broadened. We agree that there is benefit to protecting all waters from certain works with a higher potential to impact navigation in a fundamental way. Even on waters with little or no commercial traffic, this can be an issue, such as on traditional Indigenous routes.

Therefore, in addition to expanding the Schedule, we are proposing to expand the scope of the NPA to deal with obstructions and regulate certain classes of major works, such as dams and ferry cables, on all navigable waters in Canada.

Complaints/Dispute Resolution

We recognize that there are sometimes disputes between owners of works and users on unscheduled navigable waters, and that there is a role for the government to help with unresolved disputes. We are therefore proposing to develop a complaint mechanism for works on unscheduled waters to complement the regulatory regime. This would provide a more practical alternative to the Courts for addressing concerns and protecting the public right of navigation on unscheduled waters. The proposed complaint mechanism could include:

- A requirement for owners of works to notify and consult with potentially affected users and communities in advance of a proposed work (e.g., construction, alteration) on all navigable waters;
- An opportunity for persons to notify the Minister (and the owner) if navigation-related issues are not resolved to their satisfaction through owner-driven consultations;
- A process for the Minister to determine, after hearing both the notifying party and the owner, whether the navigation issues raised should be subject to the NPA regime; and
- A new authority in the NPA that would allow the Minister to regulate a work on an unscheduled navigable water, where the complaint process finds that the work raises navigational issues of sufficient concern.

Share Your Views!

Transport Canada is seeking feedback on these proposals to restore protections on unscheduled navigable waters.

Please share your views at www.discussionpaper.ca or by contacting us at NPPHQ-PPNAC@tc.gc.ca by **August 28, 2017**.