



SUPPORTING PAPER #4:

OPEN, ACCESSIBLE AND TRANSPARENT PROCESSES

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 what we heard with respect to enhancing transparency in the regulatory regime, as well as a summary of proposed changes to the NPA that are aligned with the Government's commitment to open, accessible and transparent processes.

What We Heard

Canadians, including many Indigenous groups, emphasized the importance of transparency in all aspects of regulatory review processes from making data and science accessible, to clearly communicating the basis for decisions. They want better information so they can choose when and how to engage in the process.

With respect to the NPA, we heard that the changes that came into force in 2014 reduced transparency and made it harder to know about works before they are constructed. We heard that there is a lack of **information available in advance of a proposed work** (e.g., construction, alteration), with many pointing to the previous *Navigable Waters Protection Act* (NWPA) when it was mandatory for owners of certain works to provide public notices prior to construction.

We also heard views on the **opt-out provision**, which allows owners of works on unscheduled waters that were approved under the NWPA, to opt-out of the regulatory regime of the NPA by April 1, 2019. Some expressed concerns around the process for opting-out, others expressed concerns around transparency and accountability.

Similarly, we heard that greater transparency is needed around the **opt-in provision**, which allows owners of works proposed in unscheduled navigable waters to request to be regulated under the NPA regime.

Views were also heard about the aqueous highway test used to determine whether a water is navigable. The **aqueous highway test** is based on common law: it considers the physical characteristics of a water; knowledge of its current and past use; and the reasonable likelihood of its future use as an aqueous highway to determine whether a water is navigable. We heard that there needs to be a clearer articulation of the criteria used in determining navigability.

What We Propose

In order to develop a regulatory regime that is open, accessible and transparent and provides opportunities for engagement, **Transport Canada is seeking feedback on proposed changes that would:**

- Require owners to provide notice and opportunities for appropriate consultation in advance of a proposed work (e.g., construction, alteration) on any navigable water.
- Provide easy, online access to information about projects and decisions.
- Clarify the criteria used for the aqueous highway test to determine whether a water is navigable.



Notification and Opportunities for Appropriate Consultations

Canada's commitment to Open Government is part of a broader effort to foster greater openness and accountability, to provide Canadians with more opportunities to learn about and participate in government, to drive innovation and economic opportunities for all Canadians and, at the same time, create a more cost effective, efficient and responsive government.

It is clear that Canadians want to know what is happening in their communities, and Indigenous peoples want to know what is happening in their jurisdictions or traditional territories. We are therefore proposing to require owners to provide notice to affected communities, and allow for appropriate consultations in advance of a proposed work (e.g., construction, alteration) on any navigable water.

We are also proposing to develop a publicly-accessible online tool, which could, among other things: improve the accessibility and transparency of the process for adding navigable waters to the Schedule; make lifecycle information about works subject to the NPA accessible; enable electronic filing of public comments; and publish other Ministerial decisions (e.g., decisions to add or not add a navigable water to the Schedule).

Opt-in and Opt-out

We recognize that the opt-out and opt-in provisions can make it difficult to identify which works are covered by the NPA. Therefore, we are proposing to explore ways to clarify which works have been opted-in or out of the regulatory regime.

We are also proposing to develop a publicly-accessible online registry, which could be an

appropriate platform for accessing this information.

Determining Navigability

Determining whether a water is navigable is often a first step in ensuring that the public right to navigate is protected. We heard during the review that there is a need to better understand how we determine when a water is navigable.

As noted earlier, the aqueous highway test is based on common law. The criteria used to determine navigability include whether the physical characteristics of a water supports navigation; whether the water is currently being used for navigation; whether there is information of past use of the water for navigation; and, whether there is a reasonable likelihood of use as an aqueous highway.

We propose to better clarify the criteria used for the aqueous highway test in determining whether a water is navigable.

Share Your Views!

Transport Canada is seeking feedback on these proposals to ensure the NPA process is open, accessible and transparent.

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