

ENVIRONMENTAL LEGISLATION UPDATES

Environmental Legislation

Federal Legislation

Fisheries Act

Navigation Protection Act

Species at Risk Act

Migratory Birds Convention Act

Provincial Legislation

Water Act

Fisheries Act

- ▣ Revised Fisheries Act (FA) received Royal Assent in late June 2012
 - Act focuses on protecting the productivity of Commercial, Recreational and Aboriginal (CRA) fisheries
 - Provide enhanced compliance and protection tools
 - Provide clarity, certainty and consistency of regulatory requirements through use of standards and regulations

Fisheries Act

- ▣ Serious Harm to Fish
 - Main prohibition is against causing serious harm to fish that are part of the CRA fishery, or to fish that support such a fishery (Subsection 35(1)).
 - Emphasis on avoidance and mitigation or serious harm to fish.

Fisheries Act

Sec 35: Serious Harm to Fish

- ▣ FA Definition
 - Death of a fish, or a permanent alteration to, or destruction of fish habitat.
- ▣ DFO'S policy interpretation of serious harm to fish is:
 - Death of fish
 - Permanent alteration to fish habitat
 - Destruction of fish habitat

Fisheries Act

Serious Harm to Fish (cont'd)

- Permanent alteration to fish habitat
 - Duration, intensity and spatial scale that limits or diminishes the ability of fish to use such habitats to carry out one or more of their life processes.
- Destruction of Fish habitat
 - Duration, intensity and spatial scale that fish can no longer use such habitats for one or more of their life process.

Fisheries Act

- Operational Approach
 - DFO project review process involves three main phases:
 - Proponent self assessment (based on avoidance measures, best practices)
 - Project specific regulatory review
 - Application for authorization, including identification of appropriate offsets
 - Emphasis is on avoiding serious harm to fish, and when unavoidable, ensuring appropriate offsets.

Fisheries Act

Site Specific Project Review

- ▣ Project attributes do not fit standard guidance as part of self assessment tool or proponent cannot follow “Measures to avoid harm”
- ▣ Project specific expert advice is required
 - Consultant to develop appropriate mitigation strategies
 - DFO to undertake regulatory review
 - Where harm cannot be fully avoided, completing the DFO request for review form is recommended

Fisheries Act

Application for Authorization

- ▣ Where expert advice indicates need for authorization, a formal application is required
 - Information requirements and time limits defined under regulations
 - Offsetting plan, monitoring plan and letter of credit required
- ▣ DFO decision to authorize based on consideration of Sec. 6 factors
 - Contribution of relevant fish
 - Fisheries Management objectives
 - Avoid, mitigate, offset
 - Public Interest
- ▣ Authorization is required when projects are likely to result in an effect to fish populations or fish habitat in the vicinity of the project.

Fisheries Act

- ▣ Guidelines Development
 - New Emphasis to enable proponent self assessment and provide tools for ensuring compliance with the Act
 - ▣ National in Scope
 - ▣ Transparent
 - ▣ Science based
 - ▣ Collaborative
 - Enable national consistency
 - Advise DFO on technical and economic considerations
 - Support DFO in the identification of opportunities for the development of guidelines

Fisheries Act

- ▣ Self-assessment tools on the DFO Website
 - <http://www.dfo-mpo.gc.ca/pnw-ppe/index-eng.html>
- ▣ Follow “Measure to avoid harm”
 - Where unsure, a qualified environmental professional should be consulted

Navigation Protection Act

- ▣ The Navigation Protection Act (NPA) came into force April 2014
 - Formal name change to better reflect its intent.
 - Adding a schedule to the Act that lists those navigable waters for which regulatory approval is required (scheduled waters).
 - Offering owners of works in non-scheduled navigable waters the opportunity to opt-in, rendering those works subject to the Act.
 - Owners also have the ability to opt-out of the NPA.

Navigation Protection Act

- ▣ Public right-of-navigation is the right to free and unobstructed passage over navigable waters and has always been protected under Common Law
- ▣ Navigable waters are those waterways where the public has a right to navigate the water as a highway
- ▣ Evidence of current use by the public
 - Historical or past use by the public
 - Reasonable likelihood of use by the public
 - Do the physical characteristics of the waterway support carrying a vessel of any size from one point to another

Navigation Protection Act

- ▣ Schedule to the Act lists the waterways where approval will be required to the building of works that substantially interfere with navigation
 - 97 lakes, 62 rivers and 3 oceans
- ▣ Works in waterways not listed in the schedule will be subject to the Common Law public right of navigation
- ▣ NPA applies to anyone-including industry, all levels of gov't, and the public- anyone dealing with interference to navigation or contemplating an activity impacting navigation in navigable waters.

Navigation Protection Act

Notice to the Minister

- ▣ May be required for works on non-scheduled waters if the Owner's *Opt-in Request* has been accepted or if the owner has not informed the NPP of their choice to *opt-out*.
- ▣ Must be provided by anyone who proposes to construct, place, alter, repair, rebuild, remove or decommission a work.

Navigation Protection Act

Type of Approval

- ▣ **Approved works:** Works that are approved by the Minister as being likely to substantially interfere with navigation
- ▣ **Permitted Works:** Work may proceed without the Ministers approval further to being assessed by the Minister as not likely to substantially interfere with navigation
- ▣ **Designated Works:** Minor works are permitted so long as they comply with regulatory requirements. (Minor Works Order)