

Navigable Waters in BC

Amendments to the Federal *Navigable Waters Protection Act* introduced October 18, 2012 through the *Jobs and Growth Act* (also known as Bill C-45) include a change in the approach to defining which navigable waters are covered by the amended *Navigation Protection Act*. Navigable waters covered by the *Act* are now restricted to those that are scheduled. Scheduled navigable waters are limited to 3 oceans, 97 lakes, and 62 rivers across Canada. In BC, this includes the Pacific Ocean, 14 lakes, and 8 rivers.

Criteria for waters selected for the schedule are described in more detail on Transport Canada's website (<http://www.tc.gc.ca/eng/mediaroom/backgrounders-npa-scheduled-waters-6909.htm>). The waterways listed were chosen utilizing data from the Canadian Hydrographic Service, Canada's nautical charts, Statistics Canada data on freight movement, and historical data from the Navigable Waters Protection Program's database that tracks all approved works to determine which waterways are most actively used. In addition:

- At least part of the waterway must be supporting heavy commercial and/or recreational navigation activity;
- Only the portions that are actively being used are listed as a waterway; and
- Waters are accessible by ports and marinas in proximity to heavily populated areas.

Table 1 lists the scheduled lakes and rivers, their approximate location and a brief description as found in Schedule 2 of Bill C-45.

Figure 1 is a map showing the locations of the 14 scheduled lakes in BC at a provincial scale.

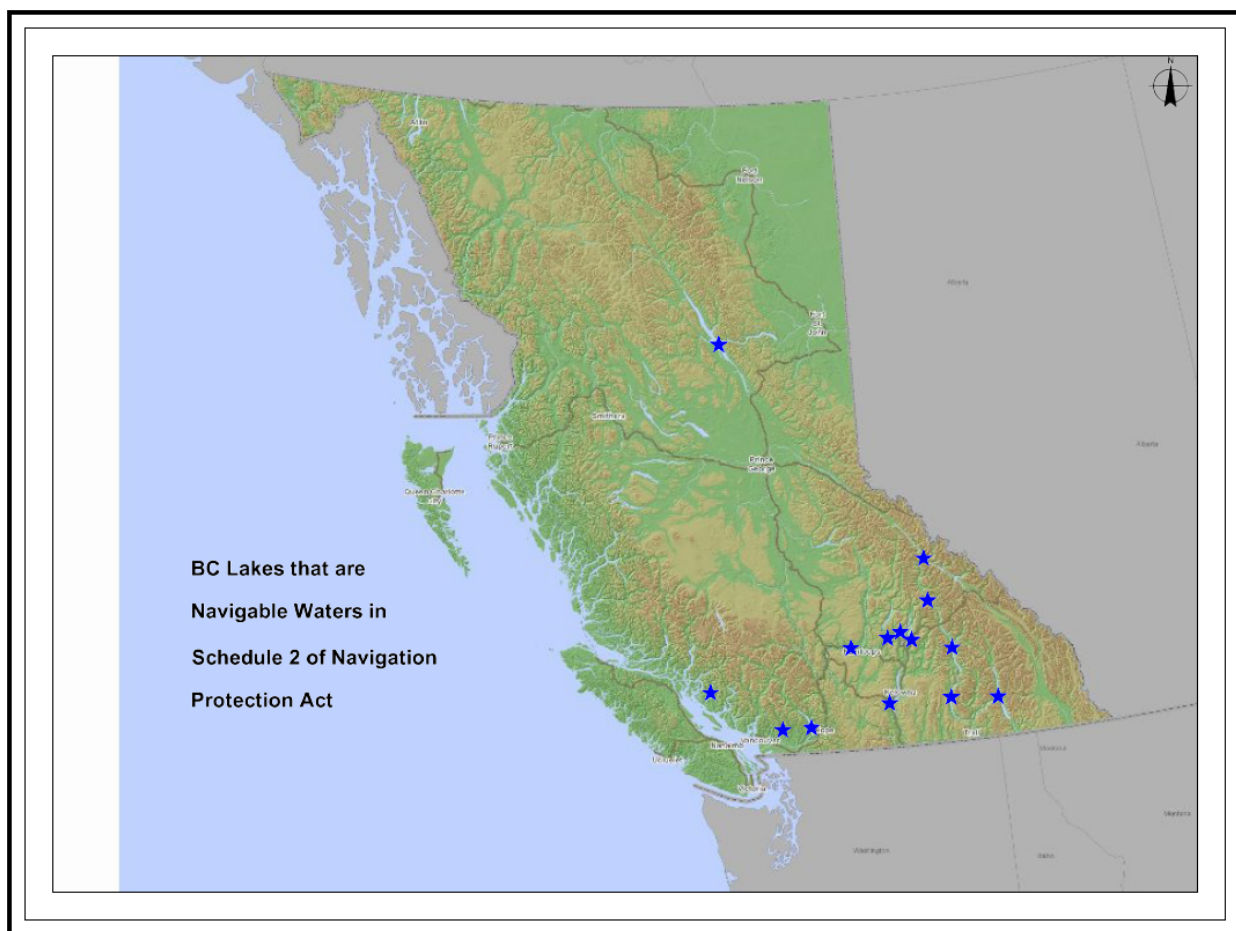
Table 1. BC Navigable Waters as listed in Schedule 2 of Bill C-45 *Navigation Protection Act*.

Name	Approximate Location	Description
Pacific Ocean	50°00'00" N, 135°00'00" W	All waters from the outer limit of the territorial sea up to the higher high water mean tide water level and includes all connecting waters up to an elevation intersecting with that level.
Powell Lake	50°04'59" N, 124°25'00" W	The lake's water boundary includes the mouths of all connecting waterways.
Williston Lake	55°57'55" N, 123°53'37" W	The lake's water boundary includes the mouths of all connecting waterways.
Pitt Lake	49°25'00" N, 122°32'59" W	The lake's water boundary includes the mouths of all connecting waterways.
Harrison Lake	49°26'05" N, 121°48'35" W	The lake's water boundary includes the mouths of all connecting waterways.

Kamloops Lake	50°43'59" N, 120°37'59" W	The lake's water boundary includes the mouths of all connecting waterways.
Okanagan Lake	49°45'00" N, 119°43'59" W	The lake's water boundary includes the mouths of all connecting waterways.
Little Shuswap Lake	50°50'59" N, 119°37'59" W	The lake's water boundary includes the mouths of all connecting waterways.
Shuswap Lake	50°55'59" N, 119°16'59" W	The lake's water boundary includes the mouths of all connecting waterways.
Mara Lake	50°46'59" N, 118°59'59" W	The lake's water boundary includes the mouths of all connecting waterways.
Lake Revelstoke	51°25'09" N, 118°27'46" W	The lake's water boundary includes the mouths of all connecting waterways.
Kinbasket Lake	52°07'59" N, 118°27'00" W	The lake's water boundary includes the mouths of all connecting waterways.
Lower Arrow Lake	49°45'00" N, 118°07'00" W	The lake's water boundary includes the mouths of all connecting waterways.
Upper Arrow Lake	50°34'59" N, 117°56'59" W	The lake's water boundary includes the mouths of all connecting waterways.
Kootenay Lake	49°40'00" N, 116°54'00" W	The lake's water boundary includes the mouths of all connecting waterways.
Skeena River	Approximate Downstream Point 54°01'00" N, 130°06'12" W Approximate Upstream Point 55°41'53" N, 127°41'40" W	From the confluence of the Babine River to the Pacific Ocean.
Fraser River	Approximate Downstream Point 49°06'10" N, 123°17'59" W Approximate Upstream Point 53°01'42" N, 119°13'54" W	From the Overland Falls to the Pacific Ocean.
Pitt River	Approximate Downstream Point 49°13'43" N, 122°46'03" W Approximate Upstream Point 49°21'06" N, 122°36'35" W	From Pitt Lake to the Fraser River.
Harrison River	Approximate Downstream Point 49°13'51" N, 121°56'43" W Approximate Upstream Point 49°18'42" N, 121°48'12" W	From Harrison Lake to the Fraser River.
Thompson River	Approximate Downstream Point	From South Thompson River to

	50°13'59" N, 121°34'59" W Approximate Upstream Point 50°40'50" N, 120°20'18" W	the Fraser River.
South Thompson River	Approximate Downstream Point 50°40'50" N, 120°20'18" W Approximate Upstream Point 50°49'38" N, 119°42'01" W	From Little Shuswap Lake to the Thompson River.
Kootenay River	Approximate Downstream Point 49°18'56" N, 117°39'08" W Approximate Upstream Point 49°37'32" N, 116°56'36" W	From Kootenay Lake to the Columbia River.
Columbia River	Approximate Downstream Point 49°00'00" N, 117°37'59" W Approximate Upstream Point 52°04'30" N, 118°33'58" W	From Kinbasket Lake to the Canada-US border.

Figure 1. BC Lakes in Schedule 2



Amendments to the Federal *Navigable Waters Protection Act* introduced through the Jobs, Growth and Long Term Prosperity Act (Bill C-38)

National Energy Board Act

Amended to permit the National Energy Board to exercise federal jurisdiction over navigation in respect of pipelines and power lines that cross navigable waters and it establishes an administrative monetary penalty system.

Canada Oil and Gas Operations Act

Amended to authorize the National Energy Board to exercise federal jurisdiction over navigation in respect of pipelines and power lines that cross navigable waters.

Amendments to the Federal *Navigable Waters Protection Act* Introduced October 18, 2012 through the Jobs and Growth Act (also known as Bill C-45)

Summary

The *Navigable Waters Protection Act* is amended to limit that Act's application to works in certain navigable waters that are set out in its schedule. It also amends that Act so that it can be deemed to apply to certain works in other navigable waters, with the approval of the Minister of Transport. In particular, it amends that Act to provide for an assessment process for certain works and to provide that works that are assessed as likely to substantially interfere with navigation require the Minister's approval. It also amends that Act to provide for administrative monetary penalties and additional offences. Finally, it makes consequential and related amendments to other Acts.

Details of Changes

- Name of Act is changed from the *Navigable Waters Protection Act* to the *Navigation Protection Act*
- The definition of 'navigable water' under s. 2 is not changed, however, there is a new approach to defining *which* navigable waters will be covered by the Ministerial approval, notice and removal requirements under the Act. Under the old version of Act, constructing/ decommissioning works on/in any navigable waters required Ministerial approval unless the water belonged to a particular class of navigable waters established by regulation or by Ministerial order (in which case they were not covered by the Ministerial notice, approval and removal requirements). Under amended Act, the only navigable waters which are subject to the Ministerial approval process are those that *are scheduled*. Navigable waters that are not scheduled will not be subject to the Ministerial approval process or other requirements under the Act
 - Scheduled navigable waters under Bill C-45 are limited to 3 oceans, 97 lakes, and 62 rivers.

- This is in contrast to the previous version of the Act, where only specific ‘classes’ of minor navigable waters were exempted from the notice, approval and removal provisions under the Act. These classes of waters, listed in the *Minor Works and Waters (Navigable Waters Protection Act) Order*, were: private lakes; artificial irrigation channels and drainage ditches; and minor navigable waters. Guidance was provided on the features of these classes by Transport Canada
- The Minister may recommend adding a navigable water to the schedule at the request of a local authority (where a ‘local authority’ means the a municipal government or any other government constituted under the laws of a province, or a department of the a provincial government) only if the Minister is satisfied that the local authority meets ‘the criteria specified by the Minister’
- The Governor in Council may add a navigable water to the scheduled if satisfied the addition is: in the national or regional economic interest; is in the public interest; or was requested by a local authority
- The Governor in Council may, by regulation, amend or delete a navigable water from the schedule
- New definitions under Bill C-45 include the addition of, including ‘designated work’, ‘minor water’, ‘minor work’. This enables the particular works or waters to be exempt from aspects of the Act. Specifically, the Minster may designate any works as ‘minor works’ and any navigable waters listed in the schedule as ‘minor waters’:
 - Designated works:
 - means a minor work (designated by the Minister) or a work that is constructed in/on a minor water (designated by the Minister)
 - not subject to assessment and approval by the Minister under s. 5, despite being built in/on scheduled navigable waters (this was also the case under the previous version of the Act)
 - not subject to the emergency provisions under s. 8
 - are subject to other requirements under the Act (s. 10)
 - Minor waters
 - any of the navigable waters listed in the schedule can be designated (in whole or part) by the Minister, by order, as a ‘minor water’
 - not subject to the notice and removal requirements or Ministerial powers under the part of the Act dealing with “Obstructions”
 - can specifically be subject to Ministerial orders respecting the constructions/ decommissioning of works on/in them
 - Governor in Council does not have regulation making authority respecting the construction/ decommissioning of works in/on scheduled navigable waters designated as ‘minor waters’
- An owner of a work built on/in an navigable water that is not scheduled may submit a request to the Minister that the Act be made applicable to it (as if it were scheduled). The Minister may accept the request if he or she considers that ‘it is justified in the circumstances’

- Factors have been added to guide the Minister in determining whether a work will result in the 'substantial interference with navigation'. These include: the characteristics of the water in question; safety of navigation; current or anticipated navigation in that water; impact of the work on the navigation in that water; the cumulative impact of the work on navigation in that navigable water. The previous Act did not provide the Minister with such guidance.
- A new "emergency" provision has been added at s. 8 to permit the Minister to authorize the construction of a work in a scheduled navigable water despite not having gone through the formal approval process if the Minister deems it necessary as the result of an emergency that has resulted (or will result) in a danger to the life or property, social disruption or breakdown in the flow of essential goods/services/resources and that is caused by a real or immanent natural disaster, disease, accident, pollution incident
- New section 23 added to include a prohibition on 'dewatering' in any navigable water (not just those that are scheduled). The Governor in Council has the power to exempt any river, stream or waters from this provision if deemed to be in the public interest
- New provision (s. 27) added that authorizes the Minister to enter agreements or arrangements for carrying out the purposes of the Act and authorizing any person or organization with how the agreement or arrangement is entered into to exercise the powers or perform the duties under this Act that are specified in the agreement or arrangement
- Governor in Council has new regulation making powers, including: respecting the water level and water flows necessary for navigation; respecting the designation of areas contiguous with works that are necessary for the safety of persons and navigation; excluding anything from the definition of 'obstruction'; and numerous regulation making authorities related to the imposition of penalties
- Amendments impose a new administrative monetary penalty scheme which provide for new fines and penalties
 - Under this scheme the maximum penalty for violation is \$5,000 in the case of an individual, and \$40,000 in any other case
 - Non-compliance with certain provisions may constitute an offence under the Act. Persons found guilty of committing an offence may be subject to imprisonment (up to 6 months) or a fine of up to \$50,000, or both.
 - Appeals of administrative penalties can be made to the *Transportation Appeal Tribunal*
- Transition provisions: deems that previously granted approvals are approved under the amended Act; deems that any terms or conditions previously granted remain in effect; deems that previously designated work is considered validly constructed under the amended Act. 'Classes' of works and waters established under the *Minor Works and Waters (Navigable Waters Protection Act) Order* (under the previous Act) are deemed 'minor works' and 'minor waters' under the new Act until a new order is made. The terms and conditions associated with these works and waters also continue to be in effect until a new order is made
- Several coordinating amendments will come into effect by way of a combination of the coming into force of provisions under Bill C-38 and C-45. These will include amendments to the

National Energy Board Act and the Canada Oil and Gas Operations Act such that pipelines are not considered 'works' to which the *Navigation Protection Act* applies

Major Implications:

- The Act was previously amended in 2009 to leave the description of protected water largely up to the Minister. These amendments streamline the federal review process by establishing classes of waters and works (projects) that do not require an Application or Approval through the Act because they are "minor" in nature. The new Act goes further in enabling the Minister to determine what waters will be covered by the Act through the scheduling of navigable waters, which is currently limited to 3 oceans, 97 lakes and 62 rivers. Any waterway not on the list that could be affected by construction of a 'work' (e.g. dam, mine, bridge) and won't be covered by the Act. Rather, it will be up to provinces or municipalities to consider the projects.
- The listing and de-listing of additional navigable waters to the schedule is largely left to the discretion of the Minister and the Governor in Counsel, with some guidance provided in the Act on factors to consider when contemplating inclusion in the schedule
- The 'designation' of particular works by the Minister under s. 28 will enable them to be excluded from the Ministerial approval processes under the Act
- Under s. 27 of the amended Act, the Minister has a broad power to enter agreements or arrangements for carrying out the purposes of the Act and authorizing any person or organization with how the agreement or arrangement is entered into to exercise the powers or perform the duties under this Act that are specified in the agreement or arrangement
- The amendments will also give the Minister more powers to crack down on abandoned vessels in the water through the changes to the "Obstructions" section of the Act
- Non scheduled navigable waters will continue to be covered by the *Canadian Environmental Assessment Act 2012*, the *Canadian Environmental Protection Act*, the *Species at Risk Act*, and the *Fisheries Act*.
- The amendments impose a new administrative monetary penalty scheme which enhances the ability to impose penalties on violators, with the stated purpose of promoting compliance with the Act, rather than to punish.

Comments:

- Transport Minister Denis Lebel: "Over time, the scope and application of a law that was designed to protect navigation has expanded to the point where it now applies to brooks, streams, ditches," noting that 80 separate assessments were done for docks on a single lake near Edmonton. "So now, even the most basic foot bridges over small streams still require pages of paperwork, even when the stream is clearly not used for any kind of boating."
- Some First Nations have voiced opposition to the proposed changes, suggesting that it gives industry a green light to destroy vital waterways in their community, violating existing treaty rights in Canada.

Links :

Schedule of Navigable Waters:

<https://www.documentcloud.org/documents/472468-navigation-protection-act-lakes-and-rivers.html>

<http://www.tc.gc.ca/eng/mediaroom/backgrounders-npa-scheduled-waters-6909.htm>

Scheduled Waters and Rationale for their Selection

<http://www.tc.gc.ca/eng/mediaroom/backgrounders-npa-scheduled-waters-6909.htm>

Articles and Reviews

<http://www.theglobeandmail.com/news/politics/environmentalists-decry-changes-to-law-governing-navigable-waters/article4622873/>

<http://www.cbc.ca/news/politics/story/2012/10/18/pol-navigable-waters-protection-budget-bill.html>

http://www.vancouversun.com/story_print.html?id=7411964&sponsor=

http://www.blakes.com/english/view_bulletin.asp?ID=5617

Pages 9 through 12 redacted for the following reasons:

Not responsive

Sent from my iPhone

Begin forwarded message:

From: "Standen, Jim ENV:EX" <Jim.Standen@gov.bc.ca>
Date: 7 November, 2012 8:08:43 PM PST
To: "Shoemaker, Wes ENV:EX" <Wes.Shoemaker@gov.bc.ca>, "Hofweber, Jim E ENV:EX" <Jim.Hofweber@gov.bc.ca>
Subject: Proposed bullets on Spill Capacity for MTL call with Lebel

On Marine Spill Capacity

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s.13

On Terrestrial Spill Capacity

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Page 14 redacted for the following reason:

Not responsive

Cc: Shoemaker, Wes ENV:EX; Hofweber, Jim E ENV:EX
Subject: Update on Federal work on Marine Spill Capacity

Wes/Bonnie,

I spoke with Mike Henderon (Director General for Transport Canada Pacific Region) about the work the feds are doing on beefing up spill response capacity on the west coast.

s.13

s.13

Mike did tell me that Yaprak Baltacioglu will retain this file, even though she is in the midst of a transition to the role of DM of Treasury Board.

s.13

s.13

Jim

s.13

Page 16 redacted for the following reason:

Not responsive

Not Responsive

From: Standen, Jim ENV:EX
Sent: Thursday, November 1, 2012 2:16 PM
To: Lee, Bonnie ENV:EX
Cc: Shoemaker, Wes ENV:EX; Hofweber, Jim E ENV:EX
Subject: Update on Federal work on Marine Spill Capacity

Wes/Bonnie,

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s.13

s.13

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Jim

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