

“A Study of the Navigation Protection Act” Report Tabled By the House of Commons Standing Committee on Transport, Infrastructure and Communities

On March 23, the House of Commons Standing Committee on Transport, Infrastructure and Communities tabled its report entitled: A Study of the Navigation Protection Act. The Committee examined the current iteration of the Navigation Protection Act (formerly Navigable Waters Protection Act) and how the changes to the Act over the past five years have affected stakeholders. In 2012, there was legislation introduced which included amendments to the Navigation Protection Act. These amendments came into force in 2014 and concentrated the application of the Act on 162 of Canada’s busiest commercial and recreational navigable waterways by introducing a list of Scheduled waters (i.e. oceans, lakes and rivers). It is important to note that navigable water includes a canal and any other body of water created or altered as a result of the construction of any work.

In its report, 11 recommendations were made to the Government of Canada by the Committee to treat a broad range of issues:

- 1) That the government maintain the Schedule but rapidly improve the process of adding waterways to the Schedule by making it easily accessible, easy to use and transparent and that a public awareness campaign be put in place to inform stakeholders of the process.
- 2) That the government include Transport Canada in the decision-making process for environmental assessments of pipelines and electrical transmission lines that cross navigable waters.
- 3) That the government examine ways of preserving, protecting and respecting navigation on waterways on traditional aboriginal lands and recognize the special relationship that Indigenous communities have with waterways and impose a requirement that project proponents adequately inform stakeholders of a work before it commences so as to provide opportunities for appropriate consultations to be undertaken.
- 4) That the government, in consultation with Indigenous communities, provinces, territories and other relevant stakeholders such as landowners, user groups and municipalities, more clearly articulate the criteria for the aqueous highway test.
- 5) That the government update the Schedule in consultation with Indigenous communities, provinces, territories and other relevant stakeholders to determine which waterways should be included in the Schedule and that the addition of waterways be accompanied by increased resources to deal with applications.
- 6) That the government provide Indigenous communities, provinces, territories and other relevant stakeholders with clarification about who can ask for a waterway to be added to the List of Scheduled Navigable Waters and on what grounds.

- 7) That the government require Transport Canada to provide reasons why a waterway is or is not added to the Schedule.
- 8) That the government impose a requirement that project proponents adequately inform stakeholders of a work before it commences so as to provide opportunities for appropriate consultations to be undertaken.
- 9) That the government create an efficient administrative complaint mechanism, within Transport Canada, to assist the public with the resolution of possible impediments to navigation on all of the country's inland waterways, including those not listed in the Schedule, so that clear provisions are in place for communities and other relevant stakeholder to be able to oppose projects they consider threatening the waterways.
- 10) That the government consider the restoration of the ability of officers of Transport Canada's Navigation Protection Program to accept and address public complaints regarding the right to navigation as part of a larger and more comprehensive complaint resolution process.
- 11) That the government ensure that the interests and concerns of stakeholders such as farmers and municipalities are considered when any changes to the Navigations Protection Act are enacted.

The recommendations seek to:

- formally recognize Indigenous peoples' relationship to navigation;
- increase transparency in government decision-making and public consultation on navigation issues;
- promote an alternative dispute resolution process for navigation disputes; and,
- provide clear and concise guidance on how to request additions to the list of waters that is included as a Schedule to the Navigation Protection Act.