



## Ecojustice Memorandum

**Re:** The erosion of the public right to navigate on Canadian waterways by the proposed amendments to the *Navigable Waters Protection Act*

**Date:** February 19, 2009

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### EXECUTIVE SUMMARY:

The proposed amendments to the *Navigable Waters Protection Act* (NWPA) threaten the longstanding public right to navigation, including the right to recreational navigation. If the *Budget Implementation Act* is passed by the Government of Canada, these changes will grant the Transport Minister an unprecedented discretion to define “classes” of projects on waterways that do not require government approval or environmental assessment (EA). Furthermore, this discretion would not be checked or balanced by any public consultation, transparent disclosure or Parliamentary review.

Although the Government invokes the language of “red tape” and “duplication” with provincial processes, the simple fact is that navigation is a purely federal responsibility under the Constitution. Even when projects trigger provincial EA processes, these do not specifically require that the public right to navigation be considered. In short, both navigation and environmental rights are being sacrificed for short-term economic gain. The result will be less federal protection for the rivers, creeks, lakes and seas where Canadians paddle, raft, fish and play.

The effects will be felt by recreational and outdoors communities, from participants to ecotourism businesses. Examples of potential effects include:

- **Sea kayaking:** Aquaculture farms may be established without providing a safe and effective navigation channel, which could effectively sever sea kayak routes.
- **Fishing:** Rivers with the potential of being restored for the purpose of reintegrating fish and aquatic life may not receive protection under the proposed amendments.

- **River Paddling:** Canoeists and kayakers may face increasing obstacles in their riverways such as culverts and small-scale hydroelectric dams. Seasonal and remote wilderness waterways may no longer be protected.
- **Whitewater kayaking:** Important sites may be considered to be not navigable and thus not protected due to the high number of “obstacles” along the waterway.

Ecojustice recommends that the proposed amendments be withdrawn from the *Budget Implementation Act*. At the very least, it would only be appropriate for the proposed changes to be considered more fully by all relevant constituencies in the spring of 2009, when the federal government has announced that it will be presenting a bill to reform the *Canadian Environmental Assessment Act*.

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## **ANALYSIS AND DISCUSSION:**

This memorandum opens with a description and critique of the proposed amendments to the *Navigable Waters Protection Act*<sup>1</sup> (NWPB). This is followed by a discussion about whether other federal EA regimes or provincial regimes, specifically in Ontario and B.C., are sufficient to “fill the gaps” left by the NWPB amendments. The next section provides real on-the-ground examples of the anticipated impacts to the public right to navigation that would affect the outdoor recreation community. The memorandum closes with a remark on the lack of consultation to date about these amendments with the paddling and outdoors communities.

### **A) The proposed NWPB amendments significantly weaken the only Canadian legislation that protects the long-standing public right to navigation**

The NWPB is the only Canadian legislation that specifically protects the long-standing public right to navigation.<sup>2</sup> The purpose of the NWPB includes the protection of recreational uses on

<sup>1</sup> *Navigable Waters Protection Act*, R.S.C. 1985, c. N-22.

<sup>2</sup> See “Navigable Waters Protection Program”, Transport Canada, online: <<http://www.tc.gc.ca/marinesafety/oep/nwpp/menu.htm>>. The right to navigation is long-standing right rooted in the Roman and Anglo-Saxon legal doctrine of the “public trust”. Broadly speaking, the public trust doctrine articulates the government’s responsibility to preserve the collective interest of the people of Canada in the quality/availability of the environment for the benefit of present and future generations. The amendments to the NWPB compromise this public trust by allowing the Minister to approve works that would damage waterways and diminish free

navigable waterways and the marine environment.<sup>3</sup> Currently, any work that may interfere with navigation requires approval from the Minister of Transport.<sup>4</sup> This approval requires the Minister to consider the impact of the work on navigable waters, and triggers an environmental assessment (“EA”) under the *Canadian Environmental Assessment Act*.<sup>5</sup>

The *Budget Implementation Act, 2009*<sup>6</sup>, an omnibus bill tabled by the Conservative Government on Friday, February 6, 2009, proposes a radical transformation of the *NWPA*, allegedly in the interest of economic stimulus, reduction of “red tape” and legislative “modernization”. The main features proposed amendments are summarized below.

### **i) Fewer Waterways Protected**

**The Minister and Cabinet are empowered to define classes of “works” and “waterways” that are exempt from the NWPA approval process; specific works with inevitable impacts (bridges, booms, dams or causeways) may not necessarily require approval, as is the currently the case.**

The most significant amendment would authorize the Minister of Transport or the federal Cabinet to exempt certain classes of “works” (e.g. small culverts or dams) and “navigable waters” (e.g. seasonal waters or creeks) from the *NWPA* approval requirement.<sup>7</sup> The Minister and Cabinet are given broad discretionary authority, not limited by objective criteria, to establish these classes of exemptions. Depending on the class exemptions created, works such as bridges, booms, dams or causeways may no longer automatically go through an *NWPA* approval process, even though these works will always have a significant impact on navigation.<sup>8</sup> The prohibition against any bridge over the St. Lawrence River has also been removed.<sup>9</sup> These changes amount to a significant narrowing of the waterways protected under the *NWPA*.

### **ii) Lack of Accountability**

**A ministerial order to exempt classes of “works” and “waterways” may be issued by the Minister of Transport without objective criteria, public consultation or Parliamentary review.**

The current *NWPA* allows the use of interim (temporary) ministerial orders only in situations where “immediate action is required to deal with a significant risk, direct or indirect” to safety or security.”<sup>10</sup> The proposed amendments greatly expand the use of ministerial orders, allowing the Minister to define permanent exemptions for classes of “works” and “navigable waterways”.<sup>11</sup> These orders would occur without prior public consultation and without transparent disclosure. Further, they would be shielded from Parliamentary review<sup>12</sup>, because of

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access to our natural environment without consulting the very public it is entrusted to protect.

<sup>3</sup> See “The public right to navigation”, Transport Canada – Quebec Region, online at <<http://www.tc.gc.ca/quebec/eng/NWP/navigation.htm>> where “navigable waters” is defined as “any body of water capable, in its natural state, of being navigated by floating vessels for the purpose of transportation, recreation or commerce; it also includes a canal and any other body of water created or altered for public use. [emphasis added]. Also “to protect the marine environment in Canadian waters” is listed as one of three mandates of the Navigable Waters Protection Program.

<sup>4</sup> *NWPA*, s. 5(1) pursuant to Order-in-Council 2004-0322 dated March 29, 2004.

<sup>5</sup> Any work requiring approval under the *NWPA* triggers a federal environmental assessment pursuant to s. 5(1)(d) of the *Canadian Environmental Assessment Act* (CEAA) and Schedule 1, Part 1, Item 11 of the *CEAA Law List Regulations*.

<sup>6</sup> *Budget Implementation Act, 2009*, ss. 317-341.

<sup>7</sup> *Budget Implementation Act, 2009*, ss. 5.1(1), 12(1)(e).

<sup>8</sup> *BIA*, s. 321. This automatic approval requirement is established by the *NWPA*, s. 5(2).

<sup>9</sup> The *NWPA*, s. 13 establishes this general prohibition. The *BIA*, s. 328 would remove it altogether.

<sup>10</sup> *NWPA*, s. 13.1(1).

<sup>11</sup> *BIA*, s. 328 [proposed *NWPA* s. 13(2)]

<sup>12</sup> *BIA*, s. 328 [proposed *NWPA* s. 13(2)]

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the proposed exemption from the *Statutory Instruments Act*. This is a protection normally reserved for interim orders or orders affecting single private interests, not long-term orders affecting a public right. Thus it is likely that exemptions will be achieved by ministerial order, without public or Parliamentary oversight. Democratic process as regards Canada's navigable waterways will be compromised.

### **iii) Lack of Public Consultation**

**Public participation eliminated for all but works that “substantially” interfere with navigation.**

The existing NWPAs require public notification for all works that interfere with navigation and which, therefore, require approval under the NWPAs. The proposed amendments would eliminate the need for public notification for all works except those that the Minister considers would substantially interfere with navigation.<sup>13</sup> This higher threshold would allow projects that interfere with navigation to be “rushed through” the NWPAs approval process without any public notification or consultation.

### **iv) Reactive, not Proactive Protection**

**The Minister has new powers to monitor and enforce compliance, but these reflect an “after-the-fact” approach to the protection of the public navigation rights.**

Several new monitoring and enforcement powers have been included in the proposed amendments.<sup>14</sup> The Minister may require plans for the *management* and *operation* of a narrow class of works that the Minister considers would substantially interfere with navigation. The Minister and Cabinet may amend, suspend or cancel an approval of a work for various reasons including if such action is in the public interest. The Minister may create a monitoring unit with broad investigational powers to verify compliance with the NWPAs. The amendments introduce the ability for the Minister to obtain an injunction to prevent a commission of an offence under the NWPAs and increases of the maximum fine amount from \$500 to \$50,000 and allow fines to be repeated for each day the offence is continued. Finally, a review of the NWPAs is called for 5 years after enactment of the proposed amendments. These new powers may be useful, but they amount to a “repair the harm after it is done” attitude towards the public right to navigation.

## **B) Other Federal and Provincial EA regimes will not “fill the holes”**

### **i) The Federal EA Regime**

The main triggers for a federal EA, other than the NWPAs, are the *Fisheries Act*<sup>15</sup> (FA) and the *Canadian Environmental Assessment Act* (CEAA). The FA requires approval for all works that would result in the “harmful alteration, disruption or destruction of fish habitat”<sup>16</sup>, and this approval triggers a federal EA. Therefore, works on waterways may require approvals from both the FA and NWPAs, a “redundancy” that is cited by the Government as a reason for the

<sup>13</sup> BIA, s. 324 [proposed NWPAs s. 9(3)]. The current NWPAs, s. 9 has a (discretionary) requirement for all works that affect navigable waters that the project plan and site description be deposited at the land titles office (or similar place) and advertised in the *Canada Gazette* and two newspapers. The BIA, s. 324 requires public notification only for works that “substantially interfere with navigation” and reduces the advertisement requirement from publication in two newspapers to one newspaper.

<sup>14</sup> BIA, ss. 324, 326, 340.

<sup>15</sup> *Fisheries Act*, R.S.C. 1985, c. F-14

<sup>16</sup> FA, s. 35(1).

proposed NWPA amendments. However, the FA is not sufficient to fill the gaps left by the proposed amendments for two main reasons. First, a project that harms fish habitat may still be allowed if the habitat loss can be compensated. Second, FA approvals focus on the effect on fisheries, not on the effects related to navigation rights. Projects that impede navigation (such as bridges or culverts) but compensate for fish habitat may be approved under the FA.

## **ii) The Ontario EA Regime**

The Ontario *Environmental Assessment Act* (OEAA) does not fill important gaps created by the proposed amendments to NWPA. Private sector undertakings are not caught by Ontario's environmental assessment requirements unless designated by the Minister of the Environment. The majority of the designations under the OEAA involve waste management and more recently, energy sector projects.<sup>17</sup> Private-sector water based projects therefore, remain largely unaddressed by the Act.

The OEAA does overlap with the NWPA in the area of municipal roads, sewage and water infrastructure. Within this class of works, there is a wide range of related projects<sup>18</sup> including bridge construction, dams and weirs, boat docks and ramps, utility water crossings and culvert installation. However, these works are subject to a much weaker EA regime than the required by the NWPA. This is because municipal roads, sewage and water infrastructure have been approved as one of the ten classes subject to the streamlined "Class Environmental Assessment"<sup>19</sup> (class EA) process rather than the more comprehensive Individual Environmental Assessment (individual EA) process.<sup>20</sup>

Ontario's class EA process is intended expedite certain classes of projects that are carried out routinely and are determined to have predictable and mitigable environmental effects.<sup>21</sup> This process explicitly avoids consideration of the specificities of each individual project, as the requirements of the OEAA are met through the fulfillment of the class EA requirements. Individual EAs may occasionally be triggered for such works but the process for doing so is onerous. The OEAA provisions<sup>22</sup> essentially place a reverse onus on interested parties to request that the Minister prepare an individual EA for a project that would normally be carried out under the class EA process. The Minister retains the sole discretion to grant the request or deny it with conditions.<sup>23</sup> Such requests are very rarely granted.

Under the current NWPA, it is likely that works subject to the Ontario's class EA process such as those mentioned above would also require a Transport Minister approval, which triggers an EA under CEAA. However, under the proposed amendments to the NWPA, such projects would likely be exempted as a class of "works", and would therefore not benefit from the additional CEAA assessment.

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<sup>17</sup> Jamie Benidickson, *Environmental Law*, 2<sup>nd</sup> ed., 2008 at 223.

<sup>18</sup> Fisheries and Oceans Canada, "Information Requirements for Municipal Class Environmental Assessment Projects", at 30, online: <[http://www.dfo-mpo.gc.ca/regions/central/pub/municipal-class-niveaux-minicipaux-on/pdf/muni-clas\\_e.pdf](http://www.dfo-mpo.gc.ca/regions/central/pub/municipal-class-niveaux-minicipaux-on/pdf/muni-clas_e.pdf)>.

<sup>19</sup> See Part II.1 of the OEAA; see also "Green Facts: Environmental Assessment in Ontario", Province of Ontario, online: <[http://www.ontario.ca/en/information\\_bundle/mineral/STEL02\\_038009](http://www.ontario.ca/en/information_bundle/mineral/STEL02_038009)>.

<sup>20</sup> See Part II of the OEAA.

<sup>21</sup> Supra note 19, s. 14(2).

<sup>22</sup> OEAA, ss. 16.

<sup>23</sup> Supra note 19, ss. 16 (5)(6)(7).

### **iii) The B.C. EA Regime**

The B.C. government performs few EAs on projects that affect navigable waters. Under the B.C. *Environmental Assessment Act* the provincial government will only carry out an EA on projects that are designated by the B.C. EA executive director.<sup>24</sup> The executive director has complete discretion to decide which types of projects will be required to undergo an EA. In general, the executive director has only required large projects to undergo an EA. As a result, many projects that interfere with recreational navigation are not subject to an EA under the B.C. regime.

For example, the following projects would not be subject to a provincial EA: “run-of-the-river” hydroelectric projects under 50MW generating capacity,<sup>25</sup> the filling or dredging of less than 1km of marine coastline,<sup>26</sup> and the construction of less than 20km of new roads and bridges.<sup>27</sup> For these examples, the NWPA would typically require the effects on navigation to be mitigated; however, under the proposed amendments, such mitigation may not take place. This lack of mitigation could significantly devalue many of the best remaining recreational waterways in B.C.

### **C) The amendments will result in a loss of important recreational and outdoors opportunities**

The proposed NWPA amendments are vague in regard to the classes of “works” and “waterways” to be exempted from the approval process. Some indication of the expected impacts can be drawn from Transport Canada documents and evidence presented before the Standing Committee on Transport, Infrastructure and Communities in Spring 2008.

A wide range of “works” to be exempted was discussed in the Committee meetings. These included small bridges in golf courses, culverts in farms, temporary bridges in remote locations (forestry and mining sites), above-water bridge repairs, pipeline crossings, overhead power lines and water intakes for waste and water treatment plants.<sup>28</sup>

Several definitions have been proposed for the class of “waterways” to be exempted. A 2007 Transport Canada document proposed the following criteria for “minor waterways”: less than 60 cm depth at high water mark, less than 3 m wide at high water mark, channel slope greater than 2%, a sinuosity ratio<sup>29</sup> (bends in the river) greater than 2, and natural obstacle factor<sup>30</sup> greater than 3 (3 natural obstacles within a 500 m distance). The Federation of Canadian Municipalities (FCM) suggested to the Committee that a “navigable water” must be capable of supporting a floating vessel with a draft of at least one metre for at least three consecutive months a year and be at least two kilometers in length with no fixed or permanent restrictions to such vessels.<sup>31</sup> Further, FCM proposed a reverse onus system such that a water body would be nominated for

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<sup>24</sup> See *Environmental Assessment Act*, S.B.C. 2002, c. 43, s. 5.

<sup>25</sup> See B.C. Reg. 14/2006, s. 10.

<sup>26</sup> See *Ibid.*, s. 11.

<sup>27</sup> See *Ibid.*, s. 16.

<sup>28</sup> Canada, House of Commons, Standing Committee on Transport, Infrastructure and Communities, *Evidence*, 39<sup>th</sup> Parl. 2d sess., (12, 28 February and 11 March 2008).

<sup>29</sup> Sinuosity Ratio: Ratio of the lengths of the centerline of the stream to a straight line connecting the same points along the channel.

<sup>30</sup> Natural Obstacle Frequency: number of natural obstructions along a stream length of 500 m (250 m upstream & downstream).

<sup>31</sup> Canada, House of Commons, Standing Committee on Transport, Infrastructure and Communities, *Evidence*, 39<sup>th</sup> Parl. 2d sess., (29 April 2008).

designation as a “navigable water” rather than being presumed so. These definitions are a significant departure from the current “float a canoe” test (about 4 inches of water) established under Canadian case law.

The following section illustrates how the activities of the outdoors recreational community will be affected by this proposed expansion of the exempted works and waterways.

#### **i) Sea kayaking sites lost due to aquaculture**

The proposed NWPAs amendments could significantly impact the ability of Canadians to sea kayak along Canada’s coastal marine waters, which form part of the federal jurisdiction over navigation. Aquaculture farms are often established along sea kayak routes and can cover large areas.<sup>32</sup> For example, finfish farms typically cover between 2.8 to 4.6 hectares and mussel farms cover between 20 and 200 hectares.<sup>33</sup>

The proposed amendments would give the Minister discretion to exempt an aquaculture farm from the approval requirements under the NWPAs. If an aquaculture farm is exempted from the NWPAs, Transport Canada would be relieved of the duty “to evaluate the needs of the various users and determine any potential impacts to navigation that will result if the planned aquaculture facility is established at the proposed site.”<sup>34</sup> As a result, an agricultural farm would not be required to comply with the markings and buoy conditions that are typically attached to a NWPAs approval.<sup>35</sup> The buoys mark certain obstructions and direct kayakers through a navigation channel across the aquaculture farm.<sup>36</sup> Without the approval process there is no guarantee that the aquaculture farm will incorporate an effective navigation channel for sea kayakers. Such an occurrence could effectively sever sea kayak routes, violating the right of sea kayakers to navigate the coastline. Furthermore, without the guarantee of markings and buoys, the safety of sea kayakers could be significantly jeopardized.

Through the use of the proposed NWPAs amendments, the Manager of the NWPAs Program appears enthusiastic to exclude aquaculture farms to speed up their development.<sup>37</sup> Such amendments would reduce the ability of sea kayakers to enjoy Canadian coastlines, and would affect the ecotourism businesses as well.

#### **ii) Fishing opportunities lost due to lack of river restorations**

Many Canadian rivers are no longer navigable but could be restored to provide ample recreational and fisheries benefits. Under the proposed NWPAs amendments, such rivers may well be exempted as “minor waterways” not worthy of protection, sentencing them to further degradation. Discounting such rivers would impede community efforts to support the restoration of those waterways, such that they may become navigable in the future.

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<sup>32</sup> See e.g. Canada, Fisheries and Oceans Canada, *Aquaculture Atlas of Canada*, (Ottawa: DFO, 2002) at 3.

<sup>33</sup> See Canada, Fisheries and Oceans Canada, *Canadian Aquaculture Industry 2004-2005: Key Figures*, (Ottawa: DFO, 2006) at 12.

<sup>34</sup> See Canada, Transport Canada: Navigable Waters Protection Program, *Application and Site Marking Requirements for Aquaculture Projects in Canada: An Overview*, (Ottawa: Transport Canada, 2004) at 13.

<sup>35</sup> *Ibid.* at 8.

<sup>36</sup> *Ibid.*

<sup>37</sup> See Canada, House of Commons, Standing Committee on Transport, Infrastructure and Communities, *Evidence*, 39<sup>th</sup> Parl. 2d sess., (12 February 2008).



A good example of such river restoration projects is the Petitcodiac River Causeway, linking Moncton and Riverview, NB. Over the last decade, the community has worked in cooperation with federal and municipal governments to repair the causeway that destroyed the river in the 1960s.<sup>38</sup> Once the causeway is removed, not only will the river be completely restored, but every species of fish, except one, will return to that river. The environmental and economic benefits of restoring the Petitcodiac River are obvious. However, if other Canadian waterways like the Petitcodiac were to be exempted from the NWPA as a “minor waterway”, they would not benefit from the approval and EA process, and would suffer from the effects of further projects.

### **iii) River kayaking blocked by culverts and small-scale hydroelectric dams and sites lost in seasonal and wilderness locations**

The range of river waterways threatened by the proposed amendments is extensive. Under the current NWPA, developers and municipalities are required to ensure continued access for canoeists and kayakers through navigable rivers. These project proponents have regularly opposed such requirements, arguing that so long as federal fisheries responsibilities are met, recreational navigation interests should not be allowed to impede project “progress”. In the past, NWPA approvals have required developers to install multi-place culverts that are high enough to accommodate canoe/kayak travel when regular culverts would have satisfied Fisheries requirements.<sup>39</sup>

Canoeists and kayakers are likely to face increasing obstacles on their rivers and creeks. As old bridges are damaged, cash-strapped municipalities are replacing these structures with cheaper but more intrusive culverts. In addition, there is a push to construct more small-scale hydroelectric dams to meet Canada’s clean energy needs. Currently, the NWPA requires developers to install a culvert large enough for a canoeist to go through it sitting upright. The proposed approval exemptions under an amended NWPA could allow for culverts and dams to obstruct rivers and creeks without consideration of the impacts on canoeists and kayakers.

Also affected will be seasonal and remote wilderness waterways. The Don River in Toronto, which is navigable for once a year when it is flooded for a public paddling event, remains non-navigable for most of the rest of the year and could easily be exempted from NWPA protection as a minor waterway under the amendments.<sup>40</sup> The Committee specifically considered the case of forestry operations in remote locations, hearing arguments that MacMillan Bloedel in New Brunswick should be allowed to put in and pull out temporary bridges necessary for their operations without NWPA approval since the site was “three hours from anybody”. This attitude” represents a threat to the health of Canadian waterways in wilderness locations.

### **iv) Whitewater kayaking sites**

Whitewater kayaking sites could be considered not navigable and exempted due to the high number of many “obstacles” along the waterway. The Committee specifically discussed the

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<sup>38</sup> “Backgrounder: Petitcodiac River Causeway”, Fisheries and Oceans Canada, online: <<http://www.mar.dfo-mpo.gc.ca/communications/maritimes/back01e/B-MAR-01-02.htm>>.

<sup>39</sup> Canada, House of Commons, Standing Committee on Transport, Infrastructure and Communities, *Evidence*, 39<sup>th</sup> Parl. 2d sess., (29 April 2008). Statement by Mr. David Marit (President, Saskatchewan Association of Rural Municipalities, Federation of Canadian Municipalities).

<sup>40</sup> Canada, House of Commons, Standing Committee on Transport, Infrastructure and Communities, *Evidence*, 39<sup>th</sup> Parl. 2d sess., (3 June 2008). Statement by Krystyn Tully, Vice-President of Lake Ontario Waterkeeper.

Deschênes Rapids in Ottawa, and implied that development on this waterway should be allowed without consideration of the effects on navigation. This perspective ignores downstream effects and could threaten this well-established kayaking site at the foot of these Rapids and other similar sites. There are undoubtedly many hundreds, if not thousands of “technical” whitewater rivers in Canada that are popular with canoeists and kayakers.

**D) Lack of Consultation with Outdoor Recreation, Ecotourism and Fishing/Angling Communities**

It is notable that the Standing Committee on Transport and Infrastructure met from February to June 2008 with representatives from federal agencies, provinces and municipalities, industry, and only one environmental group, the Lake Ontario Waterkeeper. There were no representatives from the paddling or ecotourism or fishing/angling communities. The Committee did issue invitations to canoeing and kayaking groups but these were admittedly late, sent out at the end of May 2008 just weeks before the Committee issued its final report. However, the Committee ignored a request from a group called “Les Amis de la Rivière Kipawa” for additional time to consult their members and put together a meaningful submission. The Committee report was tabled on June 12, 2008. In remarking upon the anticipated reaction from the paddling community, Mr. David Osbaldeston, Manager of the Navigable Waters Protection Program at Transport Canada, noted that there had not been “a lot of push-back from the recreational canoe and kayak associations” and “reasonable canoeists or kayakers would see a very limited impact, if any.”<sup>41</sup> In reality, the effect on canoeists and kayakers could be extensive, as outlined by the examples described above.

The amendments to the NWPA risk a long-held public right of navigation that is cherished by many and which generates economic returns in the form of tourism. It is unconscionable that the Committee did not make extensive efforts to ensure that a greater variety of interested parties were informed of their process.

**CONCLUSION:**

The proposed amendments to the NWPA will jeopardize the public’s ability to enjoy recreational navigation. They will give the Transport Minister unfettered and undue discretion to exempt certain navigable water projects from environmental and navigational oversight. Furthermore, exempted projects will not be required to mitigate its effects on the navigational needs of various users. Neither the provincial governments nor other federal departments will “fill the gaps” left by the proposed amendments. Therefore, the proposed amendments will have specific adverse effects on recreational navigation and environmental restoration in Canada. Overall, the proposed amendments pose a great risk Canada’s recreational waterways from coast to coast.

Ecojustice recommends that the proposed amendments be withdrawn from the *Budget Implementation Act*. At the very least, it would only be appropriate for the proposed changes to be considered more fully by all relevant constituencies in the spring of 2009, when the federal government has announced that it will be presenting a bill to reform the *Canadian Environmental Assessment Act*.

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<sup>41</sup> Canada, House of Commons, Standing Committee on Transport, Infrastructure and Communities, *Evidence*, 39<sup>th</sup> Parl. 2d sess., (3 June 2008).