

Submission to the Navigation Protection Act Review.

Introduction

Since 1968, the Yukon Conservation Society (YCS) has been advocating, educating, and conducting research on Yukon environmental issues. Through a broad program of conservation education and input into public policy, we strive to ensure wise management of the Yukon's natural resources, wilderness protection and that development is informed by land use planning.

YCS believes that strong Yukon communities are based on healthy land, water and wildlife. We envision a transition from imported fossil fuels to renewable energy and a sustainable way of life for all in the Yukon.

We work with Yukon First Nations, other governments, land claims bodies, stakeholders and communities on issues of mutual interest.

Background

YCS was taken aback in 2012-2013 when the Navigable Waters Protection Act (NWPA) was unilaterally replaced with the much weaker Navigation Protection Act (NPA). YCS was shocked when at the same time the Fisheries Act underwent major revisions that similarly led to a weaker act.

The NPA ignores the ancient rights to free passage, the concept of common ownership of waters, and the importance of ecological integrity to navigation. Therefore, the Navigation Protection Act fails to adequately protect navigation and also fails to protect waters. YCS is pleased that Canada is considering how to restore protection of water to the act.

In theory, robust general environmental protection laws should adequately protect Canadian waters, alongside other ecological features. In this ideal world, waters would not have needed the protection they received under the previous NWPA. Had this been the case, the replacement of the NWPA by the NPA would have been less important. Unfortunately, Canada does not have an Environment Protection Act. Worse, it does not have a national system of Environmental and Socio-Economic Assessment Acts (ESEAs) that adequately protect Canada's waters and Canadians' ability to enjoy our environment, in addition to assessing environmental effects of projects and activities.

This failure could be addressed if something similar to the approach taken in the Yukon were to be adopted across Canada. YCS submitted a brief to the CEAA review on how this would work.¹

As a conservation society, we of course view the waters upon which we navigate as intrinsic to navigation; one cannot protect the ability to navigate without also protecting navigable waters. This perspective is reflected in the original wording of the NWPA, and it was this aspect of the act that in large part led to the original CEAA.

As YCS worked its way through the consultations on the Fisheries Act, CEAA and this consultation, it became apparent that these acts must be considered together. The NWPA and the Fisheries Act pre-exist CEAA by almost a century; together they provided the legal underpinnings that led to the creation of CEAA. Canada now has a unique opportunity to strengthen all of these aspects of environmental protection, while at the same time providing a clear and straightforward method for industry and other commercial interests to ascertain their impacts and to assess the most suitable mitigations of their effects.

Upon review of the previous Act and the intentions for the current act, and given the absence of a pan-Canadian ESEA, it becomes clear that it is not navigation, rather it is water that needs protection; commerce is well protected by other acts and treaties, and intact waters would allow for enjoyment by Canadians and others as well as protection of the ecosystem services of intact waters.

Canada has a national Wetlands Policy to address the lack of adequate protection for wetlands in the above listed environmental statutes.

Therefore YCS is respectfully suggesting that Canada, instead of revamping the NWPA, should present a **Waters Protection Act** to Parliament for consideration.

The following is a list of features YCS sees as necessary for an effective Waters Protection Act (Note: these features would also enhance a rejuvenated NWPA).

Submission

- The Act must specifically address how aboriginal rights such as the right to enjoyment of unimpaired use will be protected.
- The Act must start from the premise that all waters should be protected, i.e. the quantity and quality of the water shall not be altered without a permit to do so.

¹ Link to the YCS webpage that includes our submission to the CEAA review

- Anyone applying for a permit to alter the quantity or quality of waters under the Act must undergo a review under either a provincial/territorial ESEA or the revamped CEAA.
- The Act must specifically include mandatory adherence to the Precautionary Principle.
- The Act must incorporate the principle of sustainability as defined by the Brundtland Commission: “Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”
- The Act must specifically include climate change adaptation and mitigation provisions, e.g. taking into account projected changes in water quantity and quality as a result of climate change.
- The Act must be compatible with the UNDRIP declaration.
- The Act must support and be consistent with the Fisheries Act.
- The Act must include navigation as an intended use, and as a metric for impairment of any water.

Thank you for the opportunity to comment on this important matter.

Sincerely,



Sebastian Jones
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Yukon Conservation Society