WATERPOWER CANADA
HYDROÉLECTRICITÉ CANADA

waterpowercanada.ca
hydroelectricitecanada.ca

275 rue Bank Street #300
Ottawa, Ontario K2P 2L6

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To: Rachele Levin, Deputy Director, Regulatory Affairs, Electricity Regulation and Markets, NRCAN
Bradley Little, Deputy Director, Electricity Policy, NRCAN
Jean-Philippe Bernier, Deputy Director, Renewable Policy, NRCAN

Cc: André Bernier, Director General, Electricity Markets, NRCAN

By email

Subject: Red Tape Review Recommendations from WaterPower Canada

Dear colleagues:

On behalf of WaterPower Canada, I am pleased to provide you with some of our most urgent recommendations for your consideration in the context of the Red Tape Review launched by the Government to increase the efficiency of Canada's regulatory framework.

Hydropower is one of the cleanest forms of dispatchable power available. Our members have enabled Canada to develop one of the lowest carbon emitting grids in the world. If some very precise changes could be made to the current regulatory framework, our members could not only bring new facilities to fruition sooner, but could also improve the operations of their current fleets. As a result, Canadian households and businesses would benefit from a greater supply of clean, affordable electricity and from its positive impact on our country's economy.

As you know, our sector is regulated by laws and regulations spanning several federal government departments in addition to those at provincial and municipal levels. This complex regulatory burden creates unnecessary delays and uncertainty that are impeding growth and investment in Canada. We therefore welcome the Government's effort to remove red tape, overlap, and duplication to enable economic prosperity and energy sovereignty.

One area of significant importance to our members is the requirement within several government departments and agencies to consult with impacted Indigenous peoples, Metis, and First Nation communities for multiple permits regarding the same project. This requirement would be much simpler if the "one project, one review" concept were applied to this aspect of the regulatory process. By coordinating this process, perhaps through a

single window, the Crown would ensure that it is managed respectfully and in accordance with Section 35 of the Constitution Act, 1982.

Our other recommendations are specific to language in existing acts and regulations and, in the case of the Clean Electricity Investment Tax Credits (ITCs), in the latest proposed framework for these ITCs. In general terms however, we would encourage the development of a principled, unbiased approach to permitting that rewards sustainability and does not unduly burden regulated entities with requirements that provide little benefit to the environment. We hope this can serve as a guiding principle as you perform the review in collaboration with the Red Tape Reduction Bureau.

Of course, legislative and regulatory changes are only one side of the equation. We hope that a more balanced approach can also be implemented via ministerial directives and department-level tools. We will certainly continue working with the different government teams in that regard.

As always, we would be pleased to discuss these recommendations with you at your convenience, and are grateful for the opportunity to provide you with the attached recommendations.

Sincerely,

Lorena Patterson
President and CEO
WaterPower Canada

Removing Red Tape for Hydropower Producers

1. Impact Assessment Act – Physical Activities Regulations

https://laws.justice.gc.ca/eng/regulations/SOR-2019-285/page-1.html

Environmental assessments is an area where duplication between provincial and federal processes results in unnecessary delays for proponents of hydropower projects. Streamlining the federal assessment process will increase regulatory certainty and accelerate the delivery of clean energy projects for Canadians.

Provincial governments maintain jurisdiction over electricity generation projects in Canada under Section 92A (1) (c) of the Constitution Act, where provinces have authority over "… development, conservation and management of sites and facilities in the province for the generation and production of electrical energy."

Every province includes hydroelectric projects in their environmental assessment (EA) triggers, and the triggers for EA registration are all less than or equal to the current 200 MW federal threshold.

In the absence of a federal environmental assessment (EA), all impacts of a hydropower project in any province, including those that fall under federal jurisdiction, will still be managed and its environmental impacts will be minimized through federal responsible agency participation in the provincial EA process and through federal permitting processes.

In all cases, certain permits from federal authorities may be required before it can proceed:

- A Fisheries Act Authorization would be required from Fisheries and Oceans Canada, and that authorization would include a fisheries or habitat offset plan as a condition of approval, if the project adversely affects fisheries and/or fish habitat.
- A permit from Transport Canada under the Canadian Navigable Waters Act would be required if the project impacts access to navigation.

Given these existing provisions and mechanisms, we recommend certain changes to the Impact Assessment Act via the Physical Activities Regulations.

The Physical Activities Regulations and its Schedule define and list the designated projects referred to in Section 2 of the Impact Assessment Act. WaterPower Canada participated in the 5-year review of the Physical Activities Regulations in the fall of 2024[1] and believes the

[1] https://waterpowercanada.ca/wp-content/uploads/2024/09/IAAC_Physical_Activity_Reg_Submission_Sept27-2024.pdf

recommendations made then are still relevant today as no changes have been made to the Regulations since then.

We recommend the following changes to the Physical Activities Regulations:

1.1. That the federal government remove the designation of hydropower projects from the Physical Activities Regulations and participate in provincial environmental assessments.

As such, we recommend repealing sections 42(a) and 43(a) of the Physical Activities Regulations Schedule:

42 *The construction, operation, decommissioning and abandonment of one of the following:*

(a) *a new hydroelectric generating facility with a production capacity of 200 MW or more;*

43 *The expansion of one of the following:*

(a) *an existing hydroelectric generating facility if the expansion would result in an increase in production capacity of 50% or more and a total production capacity of 200 MW or more;*

1.2. Repealing sections 51 and 58 through 61 of the Physical Activities Regulations in the interest of regulatory efficiency.

Provincial EA triggers exist for water projects and highway infrastructure, and these works would also trigger permitting under the Fisheries Act and the Canadian Navigable Waters Act if impacts on these federal jurisdictions are identified.

51 *The construction, operation, decommissioning and abandonment of a new all-season public highway that requires a total of 75 km or more of new right of way.*

Water Projects

58 *The construction, operation, decommissioning and abandonment of a new dam or dyke on a natural water body, if the new dam or dyke would result in the creation of a reservoir with a surface area that would exceed the annual mean surface area of the natural water body by 1 500 ha or more.*

59 *The expansion of an existing dam or dyke on a natural water body, if the expansion would result in an increase in the surface area of the existing reservoir of 50% or more and an increase of 1 500 ha or more in the annual mean surface area of that reservoir.*

60 *The construction, operation, decommissioning and abandonment of a new structure for the diversion of 10 000 000 m^3/year or more of water from a natural water body into another natural water body.*

61 *The expansion of an existing structure for the diversion of water from a natural water body into another natural water body, if the expansion would result in an increase in diversion capacity of 50% or more and a total diversion capacity of 10 000 000 m^3/year or more.*

These two amendments would, in accordance with Section 6 (3)(a) of the amended Act, ensure that powers under the Act are exercised in a manner that ensures that "…processes are […] fair, predictable and efficient."

2. Fisheries Act

https://laws-lois.justice.gc.ca/eng/acts/f-14/

Since the latest revision in 2019, red tape in the application of the Fisheries Act by the Department of Fisheries and Oceans significantly impedes not only new projects but also the continued operation of existing hydropower facilities. Since then, facilities that have been in operation for decades were rendered non-compliant overnight and have been facing years-long delays in obtaining authorizations to conduct even routine maintenance and minor works.

Once authorized, the excessive mitigation and offset conditions imposed on operators to compensate for the death of small numbers of fish[2] require costly studies and measures that contribute to higher electricity rates for consumers and impede investments in new projects that can help meet Canada's energy needs and achieve its emissions reduction ambitions. The list of egregious examples of the unreasonable application of the Act to hydropower facilities is long and the situation is simply untenable.

WaterPower Canada and partner associations have engaged continuously with the Department of Fisheries (DFO), the Minister's office and, last fall, with the House Standing Committee on Fisheries and Oceans (FOPO) on proposed solutions to these issues[3][4]. While some partial solutions are administrative and regulatory[5], the issues experienced by operators ultimately stem from the Act itself. Consequently, many of the proposed administrative and regulatory solutions, some of which seemingly minor tweaks, appear to

[2] By way of example, offset and mitigation measures have been requested by DFO for the planned death of 1,000 minnows (a species with no significant impact on fisheries), a number that is equivalent to one seagull's intake over 4-6 months.
[3] https://waterpowercanada.ca/wp-content/uploads/2025/07/Annette-Gibbons.pdf
[4] https://waterpowercanada.ca/wp-content/uploads/2025/07/Multi-Association-DFO-Mandate-Letter-2025-07-10.pdf
[5] See letters referenced in notes 3 and 4.

DFO as being impossible to implement without legislative changes, for fear of contravening the Act.

As such, to truly cut red-tape it is essential to amend the Fisheries Act. We recommend the following changes:

2.1. Restoring the Act's focus on the Department of Fisheries and Oceans' constitutional obligation to fisheries and their sustainability rather than on preventing any impacts on individual fish by amending subsection (b) from the Act's Purpose Statement, as follows:

> *2.1 The purpose of this Act is to provide a framework for*
>
> *(a) the proper management and control of fisheries; and*
>
> *(b) the **[proper management and]** conservation ~~and protection~~ of fish **[populations]** and fish habitat, including by preventing pollution.*

2.2. Including the consideration of **public interest** among the Act's decision-making factors in article **34.1(1)** considering the importance of hydropower facilities to Canada's energy needs and efforts to reduce GHG emissions. This provision existed in the Act until immediately prior to the 2019 version. We recommend amending 34.4(1) as follows - see (h) and (i):

> *Factors*
>
> ***34.1 (1)** Before recommending to the Governor in Council that a regulation be made in respect of section 34.4, 35 or 35.1 or under subsection 35.2(10), 36(5) or (5.1), paragraph 43(1)(b.2) or subsection 43(5) or before exercising any power under subsection 34.3(2), (3) or (7), paragraph 34.4(2)(b) or (c), subsection 34.4(4), paragraph 35(2)(b) or (c) or subsection 35(4), 35.1(3), 35.2(7) or 36(5.2), or under subsection 37(2) with regard to an offence under subsection 40(1), the Minister, prescribed person or prescribed entity, as the case may be, shall consider the following factors:*
>
> ***(a)** the contribution to the productivity of relevant fisheries by the fish or fish habitat that is likely to be affected;*
>
> ***(b)** fisheries management objectives;*
>
> ***(c)** whether there are measures and standards*
>
> > ***(i)** to avoid the death of fish or to mitigate the extent of their death or offset their death, or*
> >
> > ***(ii)** to avoid, mitigate or offset the harmful alteration, disruption or destruction of fish habitat;*
>
> ***(d)** the cumulative effects of the carrying on of the work, undertaking or activity referred to in a recommendation or an exercise of power, in combination with*

other works, undertakings or activities that have been or are being carried on, on fish and fish habitat;

(e) *any fish habitat banks, as defined in section 42.01, that may be affected;*

(f) *whether any measures and standards to offset the harmful alteration, disruption or destruction of fish habitat give priority to the restoration of degraded fish habitat;*

(g) *Indigenous knowledge of the Indigenous peoples of Canada that has been provided to the Minister; and*

INSERT: (h) the public interest

~~(h)~~ (i) *any other factor that the Minister considers relevant.*

These legislative changes are crucial to empower public servants and the Minister in their decision-making and to allow hydropower to continue to provide clean energy to Canadian families and businesses.

Prescribed Works and Waters Regulations

However, for the current Red Tape Review to yield a truly efficient framework, regulations also need to be implemented to designate hydropower as a prescribed work, so that it can qualify as such under section **34.4 (2) (a)** of the Act.

34.4 (1) *No person shall carry on any work, undertaking or activity, other than fishing, that results in the death of fish.*

Exception

(2) *A person may carry on a work, undertaking or activity without contravening subsection (1) if*

(a) *the work, undertaking or activity is a prescribed work, undertaking or activity or belongs to a prescribed class of works, undertakings or activities, as the case may be, or is carried on in or around prescribed Canadian fisheries waters, and the work, undertaking or activity is carried on in accordance with the prescribed conditions;*

We therefore recommend:

2.3. The issuance of the long-awaited Prescribed Works and Waters Regulations (PWWR) or of regulations specifically pertaining to hydropower for facilities to qualify as a prescribed work.

Having PWWR would be akin to the Minor Works Order that is annexed to the Canadian Navigable Waters Act, which generally works well (see comments below). Without similar regulations annexed to the Fisheries Act, however, a risk-based approach or reasonable thresholds will continue to be difficult for DFO to implement. Any fish inadvertently caught in a turbine will continue to be construed as problematic and impede the continued operations of existing facilities as well as the responsible build-out of new ones.

Meanwhile, not having the PWWR to accommodate minor works and other activities that are in the public interest leads to further red tape as a result of the Authorizations Concerning Fish and Fish Habitat Protection Regulations (https://laws-lois.justice.gc.ca/eng/regulations/SOR-2019-286/FullText.html).

These regulations require a high level of detail for every Fisheries Act Authorization application, including a detailed Offsetting Plan for any fish death, even when an effect on a fish population is negligible. DFO personnel thus frequently request additional details when proponents submit documents pursuant to this regulation. Minor undertakings which are important for proper management of hydro facilities have been held up for years as a result of multiple requests for additional detail to support *Fisheries Act* authorizations.

This limits the usefulness of *Fisheries Act* authorizations as a compliance tool by creating a significant administrative and documentation burden for minor and low-risk activities and limits the Minister's ability to tailor authorizations to the scope of work being authorized.

In the absence of Prescribed Works and Waters Regulations, the Authorizations Concerning Fish and Fish Habitat Protection Regulations should require that the level of detail to be provided by proponents be commensurate with the impact of the activity to be authorized, and provide greater flexibility in requiring an Offsetting Plan.

Red tape arising from the Fisheries Act and the related regulations and departmental policies is by far the most significant pain point for the hydropower sector. The changes recommended here are urgent and these recommendations will also be made to the FOPO Committee when the Fisheries Act Review resumes in the fall. WaterPower Canada and partner associations are also working closely with DFO on identifying administrative-level process improvements that could improve efficiencies until new legislation is implemented.

3. Canadian Navigable Waters Act

https://laws-lois.justice.gc.ca/eng/acts/n-22/

Overall, the administration of the Act is efficient, and the online service and communications with Transport Canada officials are good. However, applying the Act is at times demanding for our industry because of the complexity of the classification of water bodies and categories of works. Moreover, there is some degree of overlap between the Act and provincial regulatory processes: provinces also have authority over water resources for everything besides navigation, which results in multiple permitting and consultations requirements.

In this context, we feel the CNWA and its implementation impose too many conditions on works that present no or only a negligible risk to navigation. Simplifying the process for such works and removing federal intervention from these activities would allow a better allocation of resources in our view.

We recommend the following changes to the Canadian Navigable Waters Act:

3.1. Removing artificial bodies of water that have not flooded a natural, existing, navigable lake or river from the definition of navigable waters in Section 2 of the Act.

We recommend amending the definition as follows:

navigable water means a **[natural]** body of water, **[or an artificial body of water created by flooding an existing natural navigable body of water]** including a canal or any other body of water created or altered as a result of the construction of any work, that is used or where there is a reasonable likelihood that it will be used by vessels, in full or in part, for any part of the year as a means of transport or travel for commercial or recreational purposes, or as a means of transport or travel for Indigenous peoples of Canada exercising rights recognized and affirmed by section 35 of the *Constitution Act, 1982*, and

(a) there is public access, by land or by water;
(b) there is no such public access but there are two or more riparian owners; or
(c) Her Majesty in right of Canada or a province is the only riparian owner. (*eaux navigables*)

The inclusion of the term "likely to be used" in the definition without any reference to the potential importance of future navigation for the various categories of users makes the definition too broad. The large number of water bodies that may be considered navigable even in the absence of navigation significantly increases the administrative burden and legal obligations of any owner who constructs or modifies works in areas where, currently, there is no navigation and provides no benefit in return.

We also suggest that a simplified process be established for all maintenance and repair work at existing hydropower facilities that are unlikely to have significant impacts on navigation, in order to facilitate the timely maintenance of this critical part of Canada's electricity infrastructure.

As such, we recommend:

3.2. To include in the Act provisions allowing owners of all legally built existing facilities to proceed to repair and maintenance activities that do not hinder navigation.

Should an amendment to the Act not be feasible, we would alternatively recommend creating an additional category in the Minor Works Order to reduce the burden on owners of existing facilities when they proceed to repair and maintenance activities.

Minor Works Order
https://laws.justice.gc.ca/eng/regulations/SOR-2021-170/index.html?wbdisable=false

In our opinion, the numerous conditions that apply to minor works (which, by definition, are works that interfere only slightly with navigation), exceed what is needed to protect navigation.

We therefore recommend:

3.3. Removing subsection (a) from section 9 for temporary works. Doing so would make all temporary works that meet conditions (b) and (c) minor works and reduce the excessive paperwork required to proceed with many routine activities unlikely to impede navigation.

3.4. The addition of geotechnical drilling and engineering surveys conducted from a barge or from dry ground to the Minor Works Order since those activities only slightly impede navigation and are temporary by nature.

We therefore recommend the following changes to section 9 to reflect recommendations 3.3. and 3.4.:

Temporary Works
Designation — temporary works
9 *A work that meets the following criteria is designated as a minor work:*
~~***(a)*** *the work is installed exclusively for the construction, placement, alteration, rebuilding, removal, decommissioning, repair or maintenance of another minor work;*~~

~~(b)~~ (a) *the work is not situated in, on, over, under, through or across a navigation channel or, if there is no navigation channel, a navigation route; and* ***~~(c)~~ (b)*** *the work does not occupy more than one-third of the width of the navigable water.*
INSERT (c) **geotechnical drilling and engineering surveys conducted from a barge or from dry ground.**

3.5. Making the addition of a waterbody to the Act's Schedule contingent on an Order in Council, on the recommendation of the Minister of Transport, instead of simply being made through a Ministerial Order. We believe that because the decision to add a waterbody to the schedule requires the weighting of the potential benefits to navigation against the costs to owners of works that may belong to many other sectors of the economy, it would be preferable that the decision be made by order in Council.

Consequently, we recommend replacing "Minister" with "Governor in Council" in sections 29 (1) and 29 (3) of the Act.

Implementing these changes would increase regulatory efficiency for hydropower operators.

4. Indigenous Consultation

Many departments and regulators (eg. TC, DFO, MNR, etc.) require engagement with Indigenous Peoples when applying for an approval or permit. In order to minimize duplication, we propose to consider coordination between federal departments and with provincial-level instances. Coordination would reduce the administrative burden, improve timelines, reduce consultation fatigue amongst the Indigenous communities, and foster collaborative and cooperative relationships across federal and provincial departments.

Ways to achieve this could include sharing a list of Indigenous groups to engage at the start of the review process, and providing a timeline to the Indigenous communities in which the consultation activities can take place.

Removing Red Tape in the Making

4. Clean Electricity Investment Tax Credit (ITC)

https://fin.canada.ca/drleg-apl/2024/ita-lir-0824-l-2-eng.html

We are pleased that the Government of Canada is moving forward with the implementation of the ITC for the electricity sector, but complexity remains in several aspects of the

proposed legislative framework. Key outstanding issues and are recommendations regarding the framework to be finalized and legislated are noted below:

4.1. Eligible Province

ITC's should be available to clean electricity projects in all provinces and territories, whether or not they are designated.

The environmental benefits of a clean-energy project accrue from its development, regardless of whether its province commits to a net-zero target on a specific timeline. As previously noted, other legislative tools can address net-zero targets.

4.2. Timing Issues

Given the long planning and construction intervals for large-scale projects, the current planned expiry of the ITC on December 31, 2034 reduces the utility of the ITC since it is unlikely that large hydro projects with the most GHG reduction potential could be completed within this time horizon, as this is under the average time required for permitting only. This is particularly true since ITC's have been delayed as a result of the last election.

To mitigate this, we urge you to consider adjusting the eligibility period for the tax credit in two ways:

4.2.1. By making the beginning of the eligibility period retroactive to July 1st, 2025.

4.4.2. By extending the eligibility period to include projects that start within the eligibility period, rather than setting the expiry date in 2034.

4.3. Financing Vehicles

In our view, the decision to limit availability of the ITC to the most common forms of business structures, with limitations on limited partnerships and commercial trusts, undermines the utility of the ITC. This is particularly the case for large energy projects, where flexibility is required to address financing and regulatory requirements, or to enable the participation of indigenous groups in a project. While we understand the desire to avoid unintended tax planning consequences through the implementation of the ITC, we do not believe this is a sufficient reason to avoid enabling participation by commercial trusts, project finance for a limited partnership, or leaseback arrangements, all of which are currently used in Canada for large scale projects. Given the diversity of potential financing structures that could be used for clean electricity developments, at a minimum we recommend the Department add an exception to permit approval of bona fide entities as eligible for the ITC on a case-by-case basis if they don't conform to the most common structures contemplated for the ITC.

4.4. Qualifying Corporations

As with the lack of flexibility provided for financing vehicles, a similar issue arises with tax exempt entities. The ITC should be available to all levels of subsidiaries of Crown, municipal, or indigenous corporations. We recommend the Department also provide an exception to permit approval of bona fide entities on a case-by-case basis for unique situations involving qualifying corporations.

4.5. Preliminary Work

As preliminary work, including project planning, feasibility studies, and environmental assessment, are necessary parts of any project, they should be an eligible cost and not be excluded.

4.6. Labour Requirements

We have commented extensively on the unnecessary complexity of the labour requirements, and reiterate that parties not involved with the ITC, notably contractors and unions, are the parties to construction collective agreements. Similarly, hiring of apprentices are also matters for contractors and unions, not project owners. The labour requirements represent an unnecessary distraction from the ITCs objective as an incentive to get clean electricity projects built and detract from the essential goal of establishing a productive and efficient worksite. We recommend having them removed from the ITCs conditions.

4.7. Transmission and Distribution

While large-scale upgrades to intra-provincial transmission and distribution systems will be required to achieve our net-zero aspirations, the current ITC is focused only on interprovincial transmission systems.

4.7.1. The definition of "qualified interprovincial transmission equipment" should be amended to specifically include high-voltage direct current (HVDC) transmission equipment, as this equipment is frequently used between provinces. Current examples already deployed in Canada include connections between:

- Alberta and Saskatchewan
- Québec and Ontario
- Québec and New Brunswick, and
- Newfoundland and Labrador and Nova Scotia.

4.7.2. The availability of the ITC should also be confirmed for *intra*-provincial transmission lines that are required to interconnect a generating facility to the transmission grid. These 'generator leads' may be either high voltage AC or HVDC transmission facilities.

4.8. Refurbishment

While we appreciate the complexity of concisely defining refurbishment compared to sustaining capital investments in an existing facility, we believe this concept should be explained in greater detail in an interpretation bulletin or other policy document that provides additional guidance to project proponents and operators.

4.9. Definition of Hydroelectric Facilities

While the definition of hydroelectric facilities provided in Class 43.1 of Schedule II of the Income Tax Regulations, is suitable for small facilities, it currently does not include essential features that are often found in larger facilities. For example, the current definition does not include gated spillways, diversion works, tunnels, geotechnical improvements, or mandated safety equipment.

The current definition also refers to assets in the singular, when practically all larger plants are multiple unit installations, with multiples of the items current listed in the definition. The definition of pumped hydroelectric energy storage facilities in Class 43.1 is more general, and in our view, more appropriate than the restrictive language in the current definition of small hydroelectric facilities.

We recommend that Class 43.1 be amended to include "a hydroelectric generating facility, including turbines, generators, transmission equipment, powerhouses, dams, spillways, reservoirs, fishways and fish bypasses, and related structures required for the safe and reliable production of electric power and its transmission to the bulk electric system."

4.10. Amount of the Investment Tax Credit

In addition, as the government sets out to table a budget in the fall, we respectfully request that the ITC rate for hydropower be increased to 30% from the currently proposed 15%.

This would ensure equitable treatment across clean technologies, especially given that hydropower—despite being a proven, low-emission resource—is not currently eligible for support through the Canada Growth Fund. It would also match the amount of the equivalent tax credit in the United States, and consequently make Canada competitive for new builds in the North American market.