

February 27, 2026

Horizontal Red Tape Reviews Comments from WaterPower Canada on behalf of the Hydropower Industry

Sent by email to: regulation-reglementation@tbs-sct.gc.ca

WaterPower Canada is pleased to participate in the Red Tape Reduction Office's horizontal red tape review.

Along with provincial legislation, the Canadian hydropower industry is regulated by four main federal laws, together with consultations with Indigenous groups stemming from the Crown's duty to consult:

- *The Impact Assessment Act*
- *The Fisheries Act*
- *The Canadian Navigable Waters Act*
- *The Migratory Birds Convention Act*

These four laws each span into a web of regulations, policies and administrative processes which could greatly benefit from streamlining and greater harmonization across departments. Our experience allows us to offer recommendations on themes 1, 3 and 5 of this consultation, as posted on the office's web site, and on the best models used within the federal ecosystem to favour red tape reduction in project reviews, business productivity and regulatory service delivery.

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 targeted changes could be made to the current regulatory framework, our members could bring new facilities into service sooner, refurbish existing ones and 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, at a time when energy sovereignty is of critical importance.

Theme 1 - Supporting regulatory efficiency for project reviews: centralize consultations and permitting and end duplication of provincial processes for physical activities.



Indigenous Consultations

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

To minimize duplication, we also propose greater coordination among federal departments and with their provincial counterparts.

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. Indigenous consultation guidance should also be made available to project proponents in advance, so that the consultation roadmap is known to all participants ahead of project submission for EA or permitting. By coordinating consultation with all involved stakeholders, the Crown can help ensure both clarity and efficiency in the process.

Recommendation #1: Bring all federal consultations under a single window that would coordinate multiple permits associated with a project.

Recommendation #2: Coordinate consultation expectations with provinces (eg. by jointly developing lists of groups to be consulted with all involved stakeholders).

Impact Assessment Act

Delays in environmental assessment and permitting approval create significant regulatory uncertainty and costs for all Canadian industries, and streamlining this process continues to be of paramount importance for hydropower.

We are pleased with the progress made by the Impact Assessment Agency of Canada (IAAC) to harmonize federal and provincial environmental assessment processes with the signature of memoranda of understanding with several provinces, and we encourage the IAAC to continue to sign agreements with all provinces.

Specifically,

- a) We encourage the federal government to implement processes to establish the terms and conditions of federal permits concurrently with the environmental assessment (EA) process for new projects. The level of project detail available during EA should be sufficient to meet the information requirements of any required *Fisheries Act* authorizations and *Canadian Navigable Waters Act* permits. This would enable them to be issued immediately after EA release.

- b) We are encouraged by the effort to centralize permitting for Projects of National Interest. If this is successful, we would advocate to extend this concept for smaller projects that require multiple federal permits.
- c) We also reiterate our recommendation to avoid duplication of federal and provincial environmental assessment processes by amending the Physical Works Regulations (project list) to focus on projects primarily under federal jurisdiction, and referring projects primarily under provincial jurisdiction, such as hydropower, to provincial processes.

Recommendation #3: Work toward centralizing permit management for other project categories beyond those managed by the Major Project Office.

Recommendation #4: Remove the designation of hydropower projects from the Physical Activities Regulations by repealing sections 42(a) and 43(a) of the Physical Activities Regulations Schedule.

Similarly, to reduce overlap between federal departments, we recommend repealing sections 51 and 58 through 61 of the Physical Activities Regulations. 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.

Recommendation #5: Repeal section 51 and sections 58 through 61 of the Physical Activities Regulations.

Theme 3 – Reducing Barriers to Business Productivity: Keep Clean Electricity ITCs free of unnecessary red tape and remove red tape from the Migratory Bird Regulations and the Fisheries Act and associated regulations

There are numerous examples of duplicate or unnecessary administrative processes within federal jurisdiction that undermine business productivity. Some specific examples affecting hydro include:

The Clean Electricity Investment Tax Credit¹

The CEITC aimed to incent the development of clean electricity projects, but is being burdened with administrative requirements and the duplication of policy levers that detract from its original intent.

The incorporation of domestic content requirements in the CEITC, a possibility the Government is currently consulting on, would duplicate an existing policy lever for import control in the form of tariffs. Applying multiple policy levers requires businesses to then develop multiple compliance processes and reporting approaches, when one should suffice. In the present case, tariffs are simpler for the government to impose, remove and administer than a domestic content requirement that would be enshrined in the Income Tax Act and its regulations.

¹ Full recommendations in [Pre-budget consultations recommendations on Clean Electricity Tax Credits by the hydropower sector](#).

Recommendation #6: Do not impose a domestic content requirement for Clean Electricity ITCs.

The CEITC also incorporates controls on worker wages and apprentice recruiting. These add-ons unnecessarily increase the complexity of the ITC program and require both the federal government and businesses to incorporate cumbersome processes that impact productivity and go far beyond tax accounting and reporting.

Recommendation #7: Remove the labour requirement from the Clean Economy Investment Tax Credits including the Clean Electricity Tax Credit.

Migratory Bird Regulations (MBR)²

We are pleased with recently announced plans to amend the Migratory Birds Regulations to streamline the management of emergency and non-emergency situations and to create an incidental take regime. We support the department's mention of a possible *de minimis* threshold, a point below which the administrative burden of authorization outweighs the negligible conservation benefit, as part of Regulatory Package 1. This would indeed free up both utility and regulatory resources from addressing minor and routine activities, to focus on more significant issues.

This matter, which was also raised by the Supreme Court of Canada in *Reference re Impact Assessment Act*³, should be pursued by all departments as a matter of consistency across the federal government. Details are provided in the next section.

Despite this ongoing progress regarding the MBR, some existing provisions that provide minimal environmental benefit for the significant administrative effort required are not included in the proposed amendments' scope. Importantly, Environment and Climate Change Canada (ECCC) has implemented a reporting and management regime for pileated woodpeckers that requires proponents to monitor individual bird nests for three years for subsequent nesting activity before necessary actions, such as removal of a dead tree, can be taken. The large cavities they create in wooden utility poles and trees adjacent to rights-of-way can compromise the structural integrity of the pole, creating a significant and disproportionate public safety risk of pole failure, falling trees, fires, and power outages. Since it is not tenable under real-world circumstances to move the woodpecker nesting cavity; it is imperative that the regulatory framework prioritize public safety and allow for its removal.

Recommendation #8: Remove pileated woodpeckers from Schedule 1 of the MBR or ensure *de minimis* scenarios are captured for all species in the regulation, including nests.

While our industry understands it is necessary to implement a permitting regime for activities resulting in a bird's death, we hope this new framework can avoid creating unnecessary red tape by accepting industry best management practices (BMPs) to govern all instances where bird deaths do

² Full preliminary comments on pre-consultation available [here](#)

³ 2023 SCC 23, <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/20102/index.do>

not occur. We view the endorsement of BMPs by ECCC, as the best model to deal with those activities.

Fisheries Act and Associated Regulations

Progress toward a permitting approach that addresses *de minimis* scenarios has been the slowest at the Department of Fisheries and Oceans (DFO). While the *Canadian Navigable Waters Act* incorporates a Minor Works Order and as discussed above, and ECCC is moving in the same direction with planned amendments to the MBR, limited concrete progress has been made at DFO to create a regulatory framework that addresses hydropower's most typical works and risk levels.

Industry has been waiting for definition of a Prescribed Works in Water Regulation and Fisheries Management Objectives since the *Fisheries Act* was amended in 2019. These regulatory tools were intended to help DFO determine relative risk and remove low risk activities from the permitting regime's scope. Yet, they have not been created, resulting in tremendous regulatory uncertainty, high costs, and lengthy delays for both new projects and refurbishments. Currently, *any* impact on fish or fish habitat must be addressed with a *Fisheries Act* authorization and an associated offset plan: the same regulatory approach applies for any impact – from a trivial issue⁴ to a major project.

As a result, hydropower producers are required to obtain *Fisheries Act* Authorizations even for minor works that have a negligible impact on the surrounding fisheries, or other fish populations and their habitat. Operators are often asked to provide extensive documentation that is not commensurate to the activity's risk level in their applications. The authorization process often takes several years to complete, and costs utilities millions of dollars in staff, offset plans, and project delays⁵. **This source of red tape has the most impact on the hydroelectric sector and is impeding investment and project deployment across Canada. This is contrary to two of the Government's highest priorities, namely doubling the country's electricity production by 2050 and encouraging the growth of clean energy investments.**

As part of its red tape review commitments, DFO is currently consulting stakeholders on proposed amendments to the *Authorizations Concerning Fish and Fish Habitat Protection Regulations*, with the stated aim of tailoring information requirements to a project's risk level. WaterPower Canada welcomes this process and has offered detailed comments⁶. However, we fear this regulatory amendment process could have limited impact on our sector as long as the *Fisheries Act* focuses on individual fish instead of fisheries and fish populations⁷.

⁴ By way of example, WaterPower Canada member was required to prepare a *Fisheries Act* authorization and associated offset plan for an operation that caused the death of minnows comparable to one seagull's annual consumption of fish. Other examples are available in WPC's recent [submission](#) to the FOPO committee.

⁵ Members estimate that the requirement to provide a plan to offset death of fish or alterations to fish habitat costs around \$2 million for an average-size facility. These costs do not include the cost of additional studies or monitoring routinely requested by DFO.

⁶ See full comments on DFO's consultation on Proposed Amendments to the Authorizations Concerning Fish and Fish Habitat Protection Regulations [here](#).

⁷ See [FOPO submission](#) for detail.

While we are hopeful *de minimis* impacts will be accounted for in DFO's upcoming amendments, establishing further risk levels could be challenging absent Fisheries Management Objectives and a framework for Prescribed Works in Water Regulation or a sector-based equivalent for hydro.

We urgently recommend that DFO follow the same risk management approach as Transport Canada and Environment and Climate Change Canada, where low-risk activities receive an approval process that is commensurate with their impacts. A minor works order should be a feature in every department's regulatory regime, including DFO's.

Recommendation #9: Ensure that DFO implements streamlined approaches for addressing minor works similar to Transport Canada's *Minor Works Order* and those under consideration by ECCC.

The Fisheries Act also needs to be amended to ensure DFO is required to consider public interest in the authorization process. Canada currently faces an electricity shortage and rapidly rising demand, and providing the country with sufficient clean electricity needs to be a priority in decision-making.

Recommendation # 10: Amend the Fisheries Act to restore 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.

Recommendation #11: Include 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.

Theme 5 – Enhancing regulatory service delivery by ending clock-stopping in permit application reviews

The requirement to obtain a Fisheries Act Authorization for almost every activity or project results in a significant volume of authorizations having to be processed by DFO and correspondingly long timelines in delivering those authorizations. As explained previously, the sheer amount of documentation required for an application to be deemed complete slows the process further. This is compounded by the incremental nature of many of these requests for information: DFO often makes several requests for additional information for the same application, which stops the clock every time and results in real timelines extending well beyond the 120-day limit and frequently taking two years or more.

Recommendation # 12: Amend the *Authorizations Concerning Fish and Fish Habitat Protection Regulations* such that review timelines do not restart each time additional information is requested by DFO.

On receipt of a completed application, the *Authorizations Concerning Fish and Fish Habitat Protection Regulations* provide DFO 120 days to complete a review and render a decision. The time

limits that apply to DFO's process should not start over each time additional information is requested. The 60- and 90-day periods of time prescribed should not be restarted simply because outstanding information is received as the prescribed time limits were established with the expectation that they were sufficient to allow for the review of that material.

The ability to stop the clock under Subsection 4(6) will remain and DFO can use this additional time to advance other aspects of its review while the proponent responds to the information request. This will incentivize DFO assessors to meaningfully engage with proponents at the request for review stage; to ensure their tailored information requirements are appropriate and communicated in a timely manner; and to continue reviewing the already submitted materials while the proponent gathers the outstanding items.

Conclusion

We appreciate the opportunity to participate in this process and thank you in advance for your consideration of our recommendations and effort to address them in collaboration with the relevant departments.

Sincerely,



Lorena Patterson
President and CEO
WaterPower Canada

About WaterPower Canada

Founded in 1998, WaterPower Canada is the national association representing the waterpower industry. Its members span the breadth of the sector and include publicly- and privately-owned hydropower producers, manufacturers, developers, engineering firms and other organizations.

Operating over 600 facilities across Canada, WaterPower Canada members represent more than 95% of the country's waterpower installed capacity, advocating for the responsible development and use of waterpower to meet our present and future electricity needs in a sustainable manner.

Waterpower provides more than 60% of Canada's electricity, ensuring our electricity grid is one of the cleanest globally.

Summary of Recommendations from the Hydropower Sector

Theme 1

Recommendation #1: Bring all federal consultations under a single window that would coordinate multiple permits associated with a project.

Recommendation #2: Coordinate consultation expectations with provinces (eg. by jointly developing lists of groups to be consulted with all involved stakeholders).

Recommendation #3: Work toward centralizing permit management for other project categories beyond those managed by the Major Project Office.

Recommendation #4: Remove the designation of hydropower projects from the Physical Activities Regulations by repealing sections 42(a) and 43(a) of the Physical Activities Regulations Schedule.

Recommendation #5: Repeal section 51 and sections 58 through 61 of the Physical Activities Regulations.

Theme 3

Recommendation #6: Do not impose a domestic content requirement for Clean Electricity ITCs.

Recommendation #7: Remove the labour requirement from the Clean Economy Investment Tax Credits including the Clean Electricity Tax Credit.

Recommendation #8: Remove pileated woodpeckers from Schedule 1 of the MBR or ensure *de minimis* scenarios are captured for all species in the regulation, including nests.

Recommendation #9: Ensure that DFO implements streamlined approaches for addressing minor works similar to Transport Canada's *Minor Works Order* and those under consideration by ECCC.

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Theme 5

Recommendation # 12: Amend the *Authorizations Concerning Fish and Fish Habitat Protection Regulations* such that review timelines do not restart each time additional information is requested by DFO.

Past WaterPower Canada Submissions containing details on proposed amendments and suggested language

[Red Tape Review Recommendations from WaterPower Canada](#) (vertical)

[Pre-budget consultations recommendations on Clean Electricity Tax Credits by the hydropower sector](#)

[Electricity sector's challenges with the *Migratory Birds Regulations*](#)

[WaterPower Canada Brief to the House Standing Committee on Fisheries and Oceans \(FOPO\) - Recommendations on the *Fisheries Act* Review from the Hydropower Industry](#)

[Electricity Canada and WaterPower Canada's Joint Submission on the Proposed Amendments to the *Authorizations Concerning Fish and Fish Habitat Protection Regulations*](#)