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Privy Council Office
Major Projects Office
Government of Canada

Email: engagement@pco-bcp.gc.ca

Engagement: Supporting timely-decision-making for major projects

Dear Sir/Madam:

WaterPower Canada is pleased to provide input on behalf of the Canadian hydroelectricity industry regarding the Government of Canada's proposals to support timely decision-making for major projects¹.

As the national trade association representing Canada's hydropower industry—including 70 public and private power producers, equipment manufacturers, and engineering firms—WaterPower Canada's members represent over 95% of Canada's installed waterpower capacity and operate more than 600 facilities nationwide.

Hydropower alone provides more than half of Canada's electricity, forming the backbone of one of the cleanest and most reliable electricity grids in the world and enabling the integration of variable renewable energy sources.

We believe the proposed changes to federal laws, regulations, and policies, operating in concert with applicable provincial laws and regulations, will help to expedite decision making for major projects while respecting the rights of Indigenous Peoples and maintaining environmental protections.

This is an appreciable step forward for the hydropower industry, whose members will be delivering major projects across Canada over the coming decades. **Our industry is planning to invest approximately \$100 billion dollars in projects in the next 10 to 15 years alone, adding 10 gigawatts of capacity to the grid. About half of those investments will be directed to new projects, which stand to benefit from the proposed streamlining of environmental impact assessment and Crown consultation processes.** Given the urgency in meeting Canadian demand for electricity, which is set to double by 2050, the ability to build faster is crucial.

The other half of our sector's planned investments will be directed to refurbishments and expansions. Because hydro assets last over 100 years, maintenance, refurbishments and expansions are an integral part of their life cycle. This comes with its own set of permitting requirements and decision-making processes that often take well over a year to process despite projects being smaller. While the changes proposed in this consultation's discussion paper will help accelerate new, major projects, **alleviating the red tape burden for our sector requires urgently addressing bottlenecks in permitting for all projects, including smaller ones and routine activities.** Our answers to the questions below thus address both types of projects.

¹ [Getting Major Projects Built in Canada - Discussion Paper on Proposed Legislative, Regulatory, and Policy Reforms - Canada.ca](#)

Our recommendations are intended to streamline decision making and improve efficiency for all projects. They include:

- 1) Ensure an opt-in process is available for proponents to engage the Federal Review Coordinator and Crown Consultation Hub on request to manage a project's federal permits for projects that do not otherwise trigger federal assessment through the *Physical Activities Regulations*
- 2) Amend the *Fisheries Act* to restore its focus on fisheries and fish populations and end the undue attention to *de minimis* impacts on fish and fish habitat (see Appendix 1)
- 3) Issue regulations to specify which hydro projects, works, undertakings, or activities require a *Fisheries Act authorization* (see Appendix 1)
- 4) Ensure that methodologies underpinning regulatory impact analyses to ensure they take into account the full regulatory impact imposed on project proponents and operators
- 5) Ensure that regulators provide alternate means, such as engagement outside an application process, to address public/stakeholder concerns
- 6) Remove hydroelectric projects from the *Physical Activities Regulations* and place such projects under provincial impact assessment processes.
- 7) Implement suggested changes to streamline the application of the *Canadian Navigable Waters Act* and the *Navigable Waters Regulations* (see Appendix 2)
- 8) Implement suggested changes to streamline the application of the *Migratory Birds Regulations* and remove the Pileated Woodpecker from Schedule 1 (see Appendix 3).

These changes would eliminate red tape while still maintaining environmental protections. They, along with answers to the questions posed in the discussion paper, are addressed in further detail within this submission, and detailed in appendices.

Question 1: What opportunities do you see emerging from these proposals to improve the assessments and permitting processes related to building major projects?

Opportunity 1 – Ensure the expedited federal permitting process applies to all major projects, and ultimately all projects with federal permits.

Impact assessment and permitting have been significant sources of delay for the hydro industry, taking up to 8-10 years to complete for new projects. Bringing those timelines down to no more than one year will certainly accelerate project completion timelines. We believe that conducting environmental assessment, consultations and permitting concurrently instead of sequentially will also yield efficiencies.

The implementation of the Federal Review Coordinator and Crown Consultation Hub are important developments, and we wish to see these tools used as widely as possible for our industry.

WaterPower Canada estimates that \$100 billion will be spent over the next decade on hydroelectric generation facilities in Canada. It is possible that none of these projects will meet the federal definition of a 'major project,' since the discussion paper does not identify which projects are eligible to engage with the

Federal Review Coordinator and the Crown Consultation Hub. While we understand that projects on the *Physical Activities Regulations*² list would apply, the treatment of projects not in the *Physical Activities Regulations* is unclear.

This is important because hydroelectric projects fall into three categories:

- a) Projects that meet federal assessment criteria under the *Physical Activities Regulations* or have another federal trigger under the *Impact Assessment Act*.
- b) Projects that do not meet federal criteria, but trigger a provincial environmental assessment
- c) Projects that do not require either a federal or provincial impact assessment but require a federal permit.

Many ‘major’ projects would not be captured by the thresholds in the *Physical Activities Regulations*, such as multibillion dollar expansion projects that would not be included if they represent less than 50% of the capacity of the original facility. For example, the planned 5 billion-dollar 1,300 MW expansion at Churchill Falls, NL represents a capacity increase of less than 50% to the existing 5,428 MW facility and is therefore below the threshold set out in the *Physical Activities Regulations*.

We are pleased to see co-operation agreements between the federal government and several provinces and recognize that this will see impact assessments for those projects follow provincial processes. We encourage parties to the co-operation agreements to ensure that decisions to substitute provincial processes are taken as quickly as possible, and we recommend the federal permit coordinator still oversee the federal permits for these projects.

Recommendation 1: Proponents should be able to engage the Federal Review Coordinator and Crown Consultation Hub on request to manage a project’s federal permits for projects that do not otherwise trigger federal assessment through the *Physical Activities Regulations*.

Opportunity 2 – Provide a predictable, streamlined and efficient permitting regime for *all* projects, so that investments are properly channeled toward energy security instead of compliance for *de minimis* impacts.

Given the key role of hydro generation in Canada’s energy transition, regulatory certainty for these projects and an appropriately focused, streamlined permitting regime are urgently needed.

The primary federal permitting authorities for hydropower are Transport Canada, through the *Canadian Navigable Waters Act* (CNWA), and Fisheries and Oceans Canada (DFO), through the *Fisheries Act*. Project activities also sometimes trigger requirements in Environment and Climate Change Canada’s *Migratory Birds Regulations*.

Transport Canada has effectively managed its legislation and the associated regulations since the last major amendment to the *Canadian Navigable Waters Act* in 2019. The CNWA, coupled with the *Minor Works Order*,

² [SOR-2019-285.pdf](#)

is generally working well for our industry, and Transport Canada has been able to focus its attention on more significant issues with a streamlined process for minor works.

Similarly, Environment and Climate Change Canada is taking positive steps to streamline the application of the *Migratory Birds Regulations* for our industry.

However, Fisheries and Oceans Canada has not taken equally significant steps and the issues and concerns that were raised by industry seven years ago when the *Fisheries Act* was amended in 2019 remain as fundamental impediments to the operation of existing facilities and the continued growth of hydro as a source of clean, dispatchable electricity.

The 2019 amendment to the *Fisheries Act* shifted the law's focus from the avoidance of 'serious harm to fish and fish habitat' to one where 'No person shall carry on any work, undertaking or activity, other than fishing, that results in the death of fish.' **This and other provisions in the Act have effectively moved the focus on protecting fisheries to protecting every fish, regardless of species or status.**

Even though the death of fish and impacts to fish habitat could be authorized by regulation for relevant classes of works, regulations comparable to the CNWA *Minor Works Order* have not been implemented for the *Fisheries Act* and DFO permitting processes frequently focus on *de minimis* or trivial effects.

While DFO's constitutional mandate speaks to fisheries, which suggests their attention should focus on impacts that affect fish populations, the modernized Act has led the department's assessors to count every fish specimen and routinely require multi-million-dollar studies and compensation plans for fish mortality cases that are well below what an individual fishing license would allow to harvest, or in some cases the monthly fish consumption of an individual seagull.

The process and its requirements have in fact become so onerous that some of WaterPower Canada members have opted not to go forward with projects that trigger a requirement for a *Fisheries Act* authorization.

DFO's most recent regulatory initiative attempts to address some of these issues through the *Regulations Amending the Authorizations Concerning Fish and Fish Habitat Protections Regulations*³ published in Canada Gazette II on June 30.

Right-sizing requirements for offsetting is a necessary first step and the application of a risk-based approach in determining information requirements for new projects was welcomed by our industry, subject to DFO providing more information about the thresholds it intends to use to distinguish between risk levels, and other aspects of the regulation and associated policies. WaterPower Canada provided recommendations to the Department on this matter in January 2026 but did not receive the requested information prior to the regulation's publication⁹.

This is a concern for our industry, notably because the *Fisheries Act's* prohibition on the death of any individual fish poses challenges in developing a meaningful risk-based framework in which the thresholds can focus on ecosystem-level impacts.

³ [Canada Gazette, Part 2, Volume 160, Number 13: Regulations Amending the Authorizations Concerning Fish and Fish Habitat Protection Regulations](#)

If a risk-based regulatory framework cannot be created to align management priorities to significant issues and broader government objectives to increase clean electricity capacity, then the *Fisheries Act* needs to be amended to restore focus on fisheries and fish populations.

We are also concerned that eliminating offset requirements for FAAs authorizing low-impact activities does not reduce the instances where FAAs are needed in the first place. In this regard, the recently published amended regulations fall short in addressing the permitting regime's undue focus on existing facilities. Requirements remain substantial for existing facilities where red tape could be reduced. Asking operators to file applications for some 600 decades-old facilities that were constructed in accordance with the standards of the day will result in **billions of dollars being diverted away from new projects that would otherwise contribute to meeting the Government's goal of doubling electricity capacity by 2050** as stated in the National Electricity Strategy⁴. One department's permitting regime thus stands directly in the way of the Government of Canada's stated objectives.

Recommendation 2: Amend the *Fisheries Act* to restore its focus on fisheries and fish populations and end the undue attention to *de minimis* impacts on fish and fish habitat.

Recommendation 3: Issue regulations to specify which hydro projects, works, undertakings or activities require a *Fisheries Act* authorization.

Suggested amendments and regulatory language are included in Appendix 1. We urge the Government of Canada to enact these amendments and regulations at the earliest opportunity in the context of the mandated 5-year Fisheries Act review currently underway in the House of Commons.

Opportunity 3 – Review methodologies to better recognize the cost of delay and regulatory compliance.

Our experience has been that many regulatory impact analysis statements dramatically underestimate the cost of delay and regulatory compliance borne by industry. When the first version of the *Authorizations Concerning Fish and Fish Habitat Protection Regulations* were first published in 2019, the regulatory impact analysis completed by DFO predicted that the total present value of additional costs to industry would be \$2,613⁵ per facility. This stands in sharp contrast with the **hundreds of millions of dollars operators have collectively spent on securing *Fisheries Act* authorizations** and the associated studies and offsetting plans.

Because the recently introduced regulations only modify information requirements in cases where FAAs are required, the RIAS does not address the total potential cost of requiring FAAs in the first place, including personnel filing the applications, baseline studies, offset requirements, potential new litigations, or of fulfilling conditions that result in foregone revenue. Based on our members' feedback, **the actual cost of DFO's approach to compliance could be several billion dollars** for Canada's 600 existing facilities and planned new projects.

Recommendation 4: Ensure that methodologies underpinning regulatory impact analyses are reviewed for credibility outside the department preparing it.

⁴ [Powering Canada Strong: A National Strategy for an Electrified Canadian Economy - Natural Resources Canada](#)

⁵ [Canada Gazette, Part 2, Volume 153, Number 17: Authorizations Concerning Fish and Fish Habitat Protection Regulations](#)

Opportunity 4 – Ensure the federal government’s regulatory processes do not overlap or duplicate provincial jurisdictions

While electricity generation, transmission, and distribution falls within provincial jurisdiction in Canada, the federal government retains jurisdiction over interprovincial electricity transmission and the export of electricity outside Canada.

It is important that regulators are mindful of the limits of their own jurisdictions, and that proceedings addressing export authorization or interprovincial transmission do not stray into provincial electricity policy, market operation, or electricity sales.

There have been situations where federal regulators, in their desire to ensure that external groups have a means to engage, have established proceedings investigating topics that go beyond their jurisdiction. While this action may be supported as an engagement process, this comes at a price to involved parties in the form of delay and regulatory uncertainty.

Recommendation 5: Ensure that regulators provide alternate means, such as engagement outside an application process, to address these issues rather than delaying a regulatory outcome.

Question 2: What are your views/general impressions on these proposals to improve regulatory efficiency related to building major projects faster in Canada?

As noted above, the proposals are important and worthwhile, but to be effective they need to be implemented in a comprehensive manner that addresses all the roadblocks and impediments in our federal framework.

Major projects are only one source of permitting for our industry, with refurbishments and expansions of perpetual assets accounting for most of our sector’s activities and approximately half of our forecasted \$100 billion expenditures on major projects in the next 10 years. Relicensing and permits for minor works also impose significant regulatory burdens on generators and divert resources away from new builds. These projects, and others like them in other sectors of our economy, must also be a priority for development.

Adding project management resources and processes is a benefit for major projects, but we see a larger benefit to all projects by eliminating decisions and raising regulatory thresholds to focus on more significant issues. As previously noted, the requirement for a *Fisheries Act* authorization for the smallest low-risk projects is a waste of resources, and a better model already exists in the federal government with the *CNWA Minor Works Order*.

Our comments on the discussion paper’s individual proposals are as follows.

1. Federal review and decision making in no more than one year

We support the Government of Canada’s objective to complete federal review and decision-making in no more than one year, and we firmly believe that assessing permitting applications concurrently with environmental assessment is an important step.

Considering permitting requirements in parallel with environmental assessment is logical, as it aligns permitting requirements with the significance of environmental effects, and ensures that the environmental assessment evaluates residual effects remaining after proponent undertakings and obligations associated with applicable permits are taken into consideration. This reinforces the role of environmental assessment as a planning tool.

This also enables Crown-Indigenous consultation to consider assessment and permitting in parallel, ensuring the consultation considers effects, mitigations, undertakings, and residual effects together.

Decision-makers will need to recognize that ‘final’ engineering and construction details will not always be available early in a project’s life cycle and that planning information, combined with flexibility and adaptive management, will be required to achieve this objective.

It is also important to note that permits for smaller, minor projects often take longer than one year to process, so we urge the Government to implement similar reforms within permitting departments to expedite decision making for these projects as well.

2. One crown consultation process

We view the implementation of the Crown Consultation Hub as a positive step, as it will eliminate duplication of consultation efforts, where multiple departments engage with Indigenous groups to discuss a project.

We see this as be beneficial for all parties involved – Indigenous Groups, governments, and proponents. If this is implemented effectively, Indigenous Groups will have an integrated process that deals with all aspects of a project.

3. One project decision

While the negotiation of co-operation agreements with provinces is a positive development, the decision to substitute a harmonized process still requires time and resources. We believe it would be more efficient to amend the *Physical Activities Regulations* to place hydroelectric projects under provincial impact assessment processes, eliminating the decision entirely.

Recommendation 6: Remove hydroelectric projects from the *Physical Activities Regulations* and place such projects under provincial impact assessment processes.

4. Single project authority

We support the federal government’s approach to delegating the reviews of international and designated interprovincial power transmission lines to the CER.

We are also aware that some interprovincial interconnections are built within individual provinces by separate proponents and then interconnected at the provincial border. In such cases, the projects would be assessed through provincial processes, and the federal government would have a permitting role where applicable. This underscores the importance of addressing expedited permitting and Indigenous consultation as part of provincially led impact assessments.

5. Enable economic zones through regional impact assessments

We believe this is an appropriate approach to expedite the development of designated projects within a corridor.

6. Streamlined and efficient regulatory environment

We believe there is considerable opportunity for streamlining and improving the efficiency of permitting processes. As noted above, this is a critical issue for our members. We also reiterate that the impact of inefficient regulation is vastly underestimated in supporting regulatory impact analyses.

Examples of areas for improvements are noted below:

1. Narrowing the types of activities for navigation permits

Expanding the scope of the *Minor Works Order* and considering which watercourses are in fact navigable would reduce permitting overhead where impacts to navigation are minor.

We have previously provided recommendations to further streamline the CNWA and *Navigable Waters Regulations* and reduce red tape⁶, and we are hopeful these recommendations will appear in amendments to the Act and regulations. These recommendations are detailed in Appendix 2 of the present submission.

2. Making permits for fish and fish habitat more flexible for offsetting.

See answer to Question 1, Opportunity 2, and Appendix 1.

3. Transferring certain decision powers from the Governor in Council (Cabinet) to the relevant Minister to speed up decision-making

We support making decisions more quickly as long as the quality of decision-making is not compromised.

4. Ensuring project requirements are technically and economically feasible

We have advocated for the inclusion of public interest as a decision-making factor in the *Fisheries Act*. This would require that the cost of offset or mitigation activities be weighed against the benefits provided.

5. Allowing some early construction activities to start before an impact decision is made, provided necessary permits are approved

While we support steps to expedite project delivery, the benefits of this initiative will need to be weighed against other limitations, such as provisions of provincial environmental legislation that preclude issuance of provincial permits until a project is released from environmental assessment.

⁶ https://waterpowercanada.ca/wp-content/uploads/2025/11/CNWA_Modernizing_Nav_Waters_Works_Regs_Oct31_2025.pdf

6. Authorizing the Minister of Environment, Climate Change, and Nature to adjust impact assessment conditions, in exceptional circumstances.

We support steps such as these, as they provide an opportunity to adjust conditions where the situation warrants.

7. Authorizing the Minister of One Canadian Economy to adjust environmental conditions for projects of national interest, when needed.

We believe it is important for mechanisms such as this to be available for exceptional circumstances.

8. Giving the Governor-in-Council limited power, with a high threshold to be met, to exempt specific projects from provisions of the *Species at Risk Act*.

We support this decision, as it provides an off-ramp to authorize activities, while at the same time, ensuring all reasonable efforts to mitigate impacts are being taken.

Additionally, WaterPower Canada has also provided comments to support Environment and Climate Change Canada's efforts to streamline the application of the *Migratory Birds Regulations*⁷, and we hope these recommendations, which are detailed in Appendix 3 of the present submission, will be incorporated into the regulations.

Question 3: What do businesses and Indigenous Peoples require to advance major projects within a shorter timeframe under these proposals?

All project participants are looking for efficiency and predictability in the review process. This means that:

- a) The regulatory framework is efficient and focused on the right issues.
- b) Roles and responsibilities are clear, and proceedings focus on matters within their available jurisdiction
- c) Lines of communication are open, and the right information is available in a timely manner for decision-making.
- d) The decision-making process is sound and efficient, with well-reasoned decisions made in a timely manner.
- e) The process does not necessarily expect perfection and recognizes that adaptive approaches can be applied in the future.

There are numerous examples where this has not happened in recent years, and the 2019 amendments to the *Impact Assessment Act* and the *Fisheries Act* are examples of how a focus on extraneous issues led to delays and uncertainty for major projects in our industry.

Clarity on the terms of reference for regulators and those who participate in proceedings is also important. Only the matters listed on the terms of reference should be included in a proceeding, otherwise the

⁷ <https://waterpowercanada.ca/wp-content/uploads/2026/01/FINAL-MBR-Regulatory-Package-Response.pdf>

proceeding will be subject to avoidable delay in dealing with an application. Successfully implementing a shorter timeframe will require supporting policy, process, and procedure to operate effectively, and delivering on these will be a critical success factor in achieving the desired outcome.

Conclusion and key recommendations

We support the initiatives outlined in the discussion paper, but we caution that all our key recommendations will need to be addressed for the exercise to be successful.

Our key recommendations are:

- 1) Ensure an opt-in process is available for proponents to engage the Federal Review Coordinator and Crown Consultation Hub on request to manage a project's federal permits for projects that do not otherwise trigger federal assessment through the *Physical Activities Regulations*
- 2) Amend the *Fisheries Act* to restore its focus on fisheries and fish populations and end the undue attention to *de minimis* impacts on fish and fish habitat (see Appendix 1)
- 3) Issue regulations to specify which hydro projects, works, undertakings, or activities require a *Fisheries Act authorization* (see Appendix 1)
- 4) Ensure that methodologies underpinning regulatory impact analyses to ensure they take into account the full regulatory impact imposed on project proponents and operators
- 5) Ensure that regulators provide alternate means, such as engagement outside an application process, to address public/stakeholder concerns
- 6) Remove hydroelectric projects from the *Physical Activities Regulations* and place such projects under provincial impact assessment processes.
- 7) Implement suggested changes to streamline the application of the *Canadian Navigable Waters Act* and the *Navigable Waters Regulations* (see Appendix 2)
- 8) Implement suggested changes to streamline the application of the *Migratory Birds Regulations* and remove the Pileated Woodpecker from Schedule 1 (see Appendix 3).

Please refer to the appendices below for details and suggested language.

We are pleased to address any questions or clarifications you may have.

Sincerely,



Lorena Patterson
President and CEO

Appendix 1 – Key Recommendations by WaterPower Canada for Amendments to the 2019 *Fisheries Act* and the creation of a new regulation regarding hydroelectric works

We recommend to restore the focus of the *Fisheries Act* on fisheries and their sustainability rather than on individual fish through the following amendments:

1. Amend the Act's purpose statement:

- 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. Amend the section of the *Fisheries Act* relating to death of fish be amended as follows:

- 34.4 (1) *No person shall carry on any work, undertaking or activity, other than fishing, **[that results in significant harm to fisheries and fish populations that are part of a commercial, recreational or Aboriginal fishery, or to fish that support such a fishery].***

3. Similarly, the section of the *Fisheries Act* relating to the harmful alteration, disruption or destruction of fish habitat should be amended as follows:

- 35 (1) *No person shall carry on any work, undertaking or activity that results in **[significant harm to fish habitat for fish that are part of a commercial, recreational or Aboriginal fishery, or to fish that support such a fishery].** ~~the harmful alteration, disruption or destruction of fish habitat.~~*

We also recommend including consideration of the public interest among the Act's decision-making factors:

Subsection 34.1(1) of the *Fisheries Act* contains decision-making factors that are meant to help determine whether activities may be carried out that impact fisheries, fish, or fish habitat:

- (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*
 - 1. *to avoid the death of fish or to mitigate the extent of their death or offset their death, or*
 - 2. *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*
- (h) *any other factor that the Minister considers relevant.*

Considering the importance of hydropower facilities to Canada's energy needs and efforts to reduce GHG emissions, we recommend restoring the consideration of public interest among the Act's decision-making factors in article 34.1(1).

INSERT: ***(h) the public interest***

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

To specify which hydro projects, works, undertakings or activities require a *Fisheries Act* authorization, we also recommend adding the following to the Act:

[4.2.1 Existing facilities

The operation of a hydroelectric facility that was in operation on August 28, 2019 is presumed to comply with this Act unless the Minister establishes that the operation of the facility causes serious harm to fish that are part of a commercial, recreational or Aboriginal fishery, or to fish that support such a fishery.]

Complementary Regulation

To complement the changes to the *Fisheries Act* proposed above, we recommend issuing a regulation outlining the types of works that would trigger the need for a *Fisheries Act* authorization (FAA) for existing facilities, as follows:

1. *As of 2019, the construction or **deviation from existing operating envelope** of a structure located wholly or partially in fish habitat requires an authorization if the undertaking results in significant harm to fisheries and fish populations that are part of a commercial, recreational or Aboriginal fishery, or to fish that support such a fishery, or in significant harm to fish habitat for such fisheries.*
2. *The **continued operation** of hydroelectric facilities existing in 2019 is not subject to an authorization.*

For the purposes of this section, "continued operation" includes:

- (a) operation in accordance with established operating regimes, including seasonal and interannual water level fluctuations;*
- (b) the maintenance of approved upstream and downstream water elevations and downstream flow rates in accordance with applicable operating requirements;*
- (c) routine inspection, maintenance, repair and rehabilitation activities carried out in the ordinary course of operation; and*
- (d) activities undertaken for occupational health and safety purposes in connection with in-water works.*

The Minister may recognize such activities through an administrative arrangement.

Definitions

Deviation from existing operating envelope:

- *a material change to fish passage, fish protection, screening, bypass, attraction flow, exclusion systems, or related mitigation measures;*
- *a material increase in entrainment, impingement, turbine mortality, stranding, passage delay, or other fish mortality risk;*
- *a new or expanded in-water footprint, permanent habitat alteration, change in habitat connectivity, or harmful alteration, disruption or destruction of fish habitat;*
- *a material increase in the likelihood, magnitude, duration, frequency, geographic extent, or uncertainty of adverse effects to fish or fish habitat;*
- *a coordinated redevelopment or rebuild that materially changes the facility's operating envelope or fish/fish habitat risk profile.*

Together, these recommendations can form the basis of a clear and realistic path to compliance, and one that recognizes hydropower's role as the backbone of Canada's electricity system and its place in achieving the Government of Canada's clean electricity objectives as outlined in the National Strategy for an Electrified Canadian Economy.

Appendix 2 – Summary of Recommendations for Amendments to the Navigable Waters Regulations

WaterPower Canada’s key recommendations from its submission⁸ regarding the Navigable Waters Regulations are as follows:

1. Ensure that artificial bodies of water are not included in the definition of navigable waters in the *CNWA* or alternatively exclude these in the regulations.
2. Ensure that owners of all legally built facilities can undertake repair and maintenance activities that do not hinder navigation
3. Capture temporary works as Minor Works under the *Minor Works Order*
4. Include geotechnical drilling and engineering surveys conducted from a barge or from dry ground as Minor Works.
5. Provide additional oversight on decisions to add water bodies to the *CNWA* Schedule by ensuring they are approved through an Order in Council rather than a Ministerial Order.

⁸ https://waterpowercanada.ca/wp-content/uploads/2025/11/CNWA_Modernizing_Nav_Waters_Works_Regs_Oct31_2025.pdf

Appendix 3 – Summary of Recommendations Regarding Amendments to the *Migratory Birds Regulations*

WaterPower Canada’s key recommendations from its submission⁹ regarding the Migratory Birds Regulations are as follows:

1. Provide a compliance pathway for emergency situations where migratory birds or their nests would delay restoring electrical service to customers or delay spilling at a hydro dam, thus jeopardizing public safety.
2. Provide a compliance pathway for non-emergency situations where safety operations, such as vegetation management to avoid outages or wildfires, need to be undertaken.
3. Remove pileated woodpeckers from Schedule 1 of the *Migratory Bird Regulations*, given the disproportionate risk to public safety caused by damage from their nesting cavities to utility poles and adjacent trees.
4. Exclude anthropogenic structures (eg. Wooden pole structures) from application in Schedule 1 to facilitate their replacement without delay.
5. Permit the destruction of eggs and nests when relocation is not a practical alternative.
6. Ensure that regulatory language is principle-based rather than prescriptive and narrow.
7. We support the ECCC’s mention of a possible *de minimis* threshold in the Regulations.
8. We support ECCC’s proposed amendments to include nests in addition to eggs to confirm that nests causing or likely to cause damage or danger could be removed, destroyed, or relocated.

⁹ <https://waterpowercanada.ca/wp-content/uploads/2026/01/FINAL-MBR-Regulatory-Package-Response.pdf>