



# **Federal Legislation Applicable To Public Safety Around Dams**

**Calgary – Public Safety Around Dams Workshop – March 4, 2010**

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# Disclaimer.....

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- *I do not in any way work for or represent any of the Federal Ministries associated with the legislation discussed in this presentation.*
- *I am not an expert or authority in any way on the legislation discussed in this presentation.*
- *The following represents my experience in working with the associated legislation*

# Presentation Summary

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- **Navigable Waters Protection Act**
  - Navigable Waters Works Regulations
- **Canada Shipping Act**
  - Private Buoy Regulations
  - Vessel Operation Restriction Regulations
- **Fisheries Act**
- **Department of Transport Act**
  - Historic Canals Regulations

# Navigable Waters Protection Act

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- **It protects the public right of navigation in all Canadian waters. It states, “No work shall be built or placed in, on, over, under, through or across any navigable water unless it is approved by the Minister.”**
- **Dams, booms and aerial restraint cables are defined as “works” under the Act.**
- **The Minister may impose any terms and conditions on the approval that the Minister considers appropriate (Sec. 5).....**

# Navigable Waters Protection Act

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- Any rebuilding or repairing of a lawful work must be approved by the Minister (Sec. 10(1))
- Any altering of a lawful work must be approved by the Minister (Sec. 10(2))
- The Minister may amend an approval of a work (Sec. 11.1)
- The Minister may group two or more *works* if deemed related, into a single *work* (Sec. 3(2))

# Navigable Waters Protection Act

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- **Transport Canada for the last few years has focused on the use of safety booms around dams to:**
  - **Warn boaters of the existence of a dam**
  - **Delineate the hazardous area**
  - **Act as a device to capture disabled boats caught in the current and to facilitate their rescue**
- **Utilizing the flexibility of an *approval* Transport Canada has standardized on the colour yellow for safety booms**

# Navigable Waters Protection Act

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- **Common issues and how NWPA may apply:**
  - **Boaters accessing the water between a boom and the dam**
  - **Boaters crossing a boom or getting onto a dam**
  - **Boaters dragging their boats around the end of a boom**
  - **The public swimming in a navigable waterway near a dam**
  - **The public accessing the area around the dam by wading in the water**
  - **Buoys used in conjunction with booms**

# Navigable Waters Works Regulations

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- All lights, buoys and other marks that may be required in the *approval* are to be installed and maintained to the satisfaction of the Minister
- Where a work or a portion of a work causes debris to accumulate on the bed or on the surface of such water, the owner of that work shall cause the debris or other material to be removed.....

# Navigable Waters Works Regulations

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- **Portage Trails - The owner of a work shall, when required by the Minister, provide and maintain roads or foot-ways for the free passage of the public by vehicle or foot around the work between the upper and lower reaches of the river (Sec. 7(2)(b))**
- **Duration of *approvals*:**
  - **Dams – 50 years**
  - **Booms – 25 years\***
  - **Cables – 30 years**

# Private Buoy Regulations

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- **“private buoy” means a buoy that is not owned by the federal government, a provincial government or a government agency.**
- **apply to every private buoy other than private buoys used to mark fishing gear**
- **Applies to size, colour and markings**
- **Requires letters “PRIV” on the buoy**
- **Requires the name, address and telephone number of its owner to be on the buoy**

# Private Buoy Regulations


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- **Three different types of buoys have typically been used to identify dams and or booms.**
  - **Hazard Buoy** – is white with orange markings and marks random hazards such as rocks, shoals or turbulent waters located outside the main channel. Information may be illustrated inside the orange diamond.
  - **Cautionary Buoy** – is yellow and warns of dangers such as firing ranges, underwater pipelines, race courses, seaplane bases, traffic separations and areas where no through channel exists.



# Private Buoy Regulations

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- **Keep Out Buoy** – is white and marks areas your vessel must not enter. Use of it is restricted under the Vessel Operation Restriction Regulations 
- There is no requirement under the NWPA or Canada Shipping Act to have approval to install or register a private buoy
- It is recommended that owners of private buoys contact the Canadian Coast Guard and provide information on the type and location of buoys so that it can be published in marine notices and charted by the Canadian Hydrographic Service

# Vessel Operation Restriction Regulations

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- Can be used to restrict access by boaters to a specific area of a navigable waterway and is enforceable by law.
- Keep Out Buoys and very specific signage must be used for these areas
- Only a government constituted under the laws of a province or territory, e.g., municipality, region or county, or a department of a provincial or territorial government or of the federal government can apply for a restriction

# Vessel Operation Restriction Regulations

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- **Public consultation is required including First Nations, Inuit and Métis governments, communities and people**
- **Enforcement is to be practical and the responsibility is accepted by the local police agency**
- **Applications must be submitted by September 15<sup>th</sup> each year and may take up to 2 years to amend the actual Regulations.**

# Fisheries Act

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- **The Federal Fisheries Act states:**

- **Sec 27(c)** – No one shall fish in any manner within twenty-five yards downstream from the lower entrance to any fish-way, canal, obstacle or leap

- **Sec 2** (Definitions)

“obstruction”  
« *obstacle* »

“obstruction” means any slide, dam or other obstruction impeding the free passage of fish;

# Historic Canals Regulations

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- **Applies to specific canals in Canada**
  - **Sec. 10 Except at times and in areas designated by means of a sign or notice, no person shall**
    - a) in a navigation channel or within 100 m of a structure in a historic canal, water-ski, ride a tube or kneeboard, engage in any activity that involves being towed behind a vessel or operate a vessel towing a water-skier or person riding a tube or kneeboard;**
    - b) dive, jump, scuba-dive, swim or bathe in a navigation channel or within 40 m of a lock gate or a dam in a historic canal**

# Historic Canals Regulations

## SCHEDULE I (Section 2)

### HISTORIC CANALS

Item	Column I Name of Historic Canal	Column II Province
1.	Rideau Canal including the Tay Canal	Ontario
2.	Trent-Severn Waterway including the Murray Canal	Ontario
3.	Sault Ste. Marie Canal	Ontario
4.	Saint-Ours Canal	Quebec
5.	Chambly Canal	Quebec
6.	Sainte-Anne-de-Bellevue Canal	Quebec
7.	Carillon Canal	Quebec
8.	Lachine Canal	Quebec
9.	St. Peters Canal	Nova Scotia

### Sec. 52 – Penalties

Every person who contravenes any provision of these Regulations is guilty of an offence punishable on summary conviction and liable to a fine not exceeding \$400.

# Transport Canada - NWPA

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- **Transport Canada is presently working at developing a guideline for determining where safety booms may be required, distance from the dam, signage, portages, etc.....**
- **Transport Canada presently sits as a member on the CDA Working Group for Public Safety Around Dams**