

**Navigable Waters Protection Act Amendments
Comparison Document
Prepared by Lake Ontario Waterkeeper. February 11, 2009**

Commentary	Existing NWPA, N-22	Amended NWPA, C-10 or "New Act"
A: Changes to the definitions, Section 2 of the NWPA		
		317. Section 2 of the Navigable Waters Protection Act is amended by adding the following in alphabetical order:
There are currently only two definitions listed in Section 2 of the NWPA.	"Minister" means the Minister of Transport; "navigable water" includes a canal and any other body of water created or altered as a result of the construction of any work.	
"Ferry cable" is currently defined in Section 29 of of N-22. The old and new definitions appear to be identical.	29. "ferry cable" includes any ferry cable, rod, chain or other device put across, over, in or under any navigable water for working a ferry;	"ferry cable" includes any ferry cable, rod, chain or other device put across, over, in or under any navigable water for working a ferry;
"Vessel" is currently defined in Section 14 of N-22. There is a slight difference between the two definitions; this is highlighted in yellow.	14. "vessel" includes every description of ship, boat or craft of any kind, whether propelled by steam or otherwise and whether used as a sea-going vessel or on inland waters only, including everything forming part of its machinery, tackle, equipment, cargo, stores or ballast.	"vessel" includes every description of ship, boat or craft of any kind, without regard to method or lack of propulsion and to whether it is used as a sea-going vessel or on inland waters only, including everything forming part of its machinery, tackle, equipment, cargo, stores or ballast;
		"work" includes (a) any man-made structure, device or thing, whether temporary or permanent, that may interfere with navigation; and

**Navigable Waters Protection Act Amendments
Comparison Document
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		(b) any dumping of fill in any navigable water, or any excavation of materials from the bed of any navigable water, that may interfere with navigation.
B: Changes to the definition of "work", Section 3 of the Old Act		
"Work" is currently defined in Section 3 of N-22. The two definitions vary significantly.	3. "work" includes (a) any bridge, boom, dam, wharf, dock, pier, tunnel or pipe and the approaches or other works necessary or appurtenant thereto,	"work" includes (a) any man-made structure, device or thing, whether temporary or permanent, that may interfere with navigation; and
In the New Act, things are only defined as works if they "may interfere with navigation". In the old Act, the things listed in 3(a) qualify as works by definition.	(b) any dumping of fill or excavation of materials from the bed of a navigable water,	(b) any dumping of fill in any navigable water, or any excavation of materials from the bed of any navigable water, that may interfere with navigation.
	(c) any telegraph or power cable or wire, or	
	(d) any structure, device or thing, whether similar in character to anything referred to in this definition or not, that may interfere with navigation.	[Note: Further down, the New Act states 320. (1) The definition "work" in section 3 of the Act is repealed.]
C: Addition states Act is binding on ...		
Addition in the New Act	N/A	318. The Act is amended by adding the following after section 2: 2.1 This Act is binding on Her Majesty in right of Canada or a province.
D: Change to approvals heading		

**Navigable Waters Protection Act Amendments
Comparison Document
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The heading is changed in the New Act	WORKS SUBJECT TO APPROVAL	319. The heading of Part I of the Act is replaced by the following: APPROVAL OF WORKS
E: Two or more works can be considered one project		
Addition to the New Act. It is not clear what effect this will have on projects or who would be responsible in the case of multiple proponents.	N/A	(2) Section 3 of the Act is renumbered as subsection 3(1) and is amended by adding the following: (2) If the Minister considers that two or more works are related, the Minister may, for the purposes of this Part, deem them to be a single work.
F: Exemption for government projects		
		321. Sections 4 and 5 of the Act are replaced by the following:
This refers to Part I, the "Works Subject to Approval" Part.	4. Except the provisions of this Part that relate to rebuilding, repairing or altering any lawful work, nothing in this Part applies to any work constructed under the authority of	4. (1) Except for this section and the provisions of this Part that relate to rebuilding, repairing or altering any lawful work, nothing in this Part applies to any work constructed under the authority of
In the New Act, Part I (i.e., Ministerial approval) no longer applies to orders of Cabinet if the work was constructed before this section comes into force	an Act of Parliament or of the legislature of the former Province of Canada,	(a) an Act of Parliament or an order of the Governor in Council, if the work was constructed before the coming into force of this subsection;
In the New Act, Part I (i.e., Ministerial approval) no longer applies to orders of a provincial Cabinet if the work was constructed before this section comes into force	or of the legislature of any province now forming part of Canada passed before that province became a part thereof.	(b) an Act of the legislature of a province or an order of the lieutenant governor in council of a province, if the work was constructed before the coming into force of this subsection;

**Navigable Waters Protection Act Amendments
Comparison Document
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	N/A	(c) an Act of the legislature of a colony of Great Britain of which at least some portion now forms part of Canada; or
	N/A	(d) Her Majesty in respect of such a colony.
This refers to Part I, the "Works Subject to Approval" Part.	N/A	(2) Except for this section and the provisions of this Part that relate to rebuilding, repairing or altering any lawful work, nothing in this Part applies to
In the New Act, Part I (i.e., Ministerial approval) no longer applies to works that are owned by the federal or provincial governments on the day this section comes into force	N/A	(a) works that are owned by Her Majesty in right of Canada or a province on the day on which this subsection comes into force; or
In the New Act, Part I (i.e., Ministerial approval) no longer applies to works that are were once owned by government but transferred to another person before the day this section comes into force	N/A	(b) works whose ownership was transferred before the day on which this subsection comes into force to another person by Her Majesty in right of Canada or a province or in respect of a colony of Great Britain of which at least some portion now forms part of Canada.

**Navigable Waters Protection Act Amendments
Comparison Document
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<p>This section in the New Act sets out the circumstances in which the Minister may order an owner of one of the exempt works mentioned above (i.e, government owned) to alter or remove the work.</p>	<p>N/A</p>	<p>(3) The Minister may order an owner of a work referred to in subsection (1) or (2) to alter or remove the work or to comply with any terms and conditions that the Minister, as he or she considers appropriate, may impose if the Minister is satisfied that</p> <p>(a) the work has become a danger to or an interference with navigation by reason of the passage of time and changing conditions in navigation of the navigable waters concerned; or</p> <p>(b) the alteration or removal or the terms and conditions are in the public interest.</p>
<p>This section in the New Act describes the Minister's powers in the event that the owner of the work fails to comply with the Ministers order to alter or remove it.</p>	<p>N/A</p>	<p>(4) If the owner of the work fails to comply with an order given under subsection (3), the Minister may remove and destroy the work and sell, give away or otherwise dispose of the materials contained in the work.</p>

**Navigable Waters Protection Act Amendments
Comparison Document
Prepared by Lake Ontario Waterkeeper. February 11, 2009**

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Same as above.	N/A	(5) If the Minister removes, destroys or disposes of a work under subsection (4), the costs of and incidental to the removal, destruction or disposal, after deducting any sum that may be realized by sale or otherwise, are recoverable with costs in the name of Her Majesty in right of Canada from the owner.
G: Changes to the existing prohibition against creating works without authorization		
	5. (1) No work shall be built or placed in, on, over, under, through or across any navigable water unless	General 5. (1) No work shall be built or placed in, on, over, under, through or across any navigable water without ...
Note that the Minister's power to impose terms and conditions has been removed from the New Act.	(a) the work and the site and plans thereof have been approved by the Minister, on such terms and conditions as the Minister deems fit, prior to commencement of construction;	... the Minister's prior approval of the work, its site and the plans for it. See also (3) below.
The requirement to construct the work within a set timeframe in 5b has been removed in the New Act. This would be subject to the Minister's discretion, and only where (s)he feels there will be substantial interference with navigation.	(b) the construction of the work is commenced within six months and completed within three years after the approval referred to in paragraph (a) or within such further period as the Minister may fix; and	(2) If the Minister considers that the work would substantially interfere with navigation, the Minister may impose any terms and conditions on the approval that the Minister considers appropriate, including requiring that construction of the work be started within six months and finished within three years of the day on which approval is granted or within any other period that the Minister may fix.

**Navigable Waters Protection Act Amendments
Comparison Document
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<p>The requirement in the Old Act to build the work in accordance with the Minister's conditions has been moved to subsection (5) of the New Act. See below.</p>	<p>(c) the work is built, placed and maintained in accordance with the plans, the regulations and the terms and conditions set out in the approval referred to in paragraph (a).</p>	<p>(5) The work shall be built, placed, maintained, operated, used and removed in accordance with the plans and the regulations and with the terms and conditions in the approval.</p>
<p>This section is revised substantially. In the Old Act, the Minister has the authority to exempt any project from requiring approval - except a bridge, boom, dam or causeway - if it does not interfere substantially with navigation. This discretion to exempt has been removed, but it appears as though the mandatory review required for bridges, booms, dams and causeways has been eliminated as well.</p>	<p>(2) Except in the case of a bridge, boom, dam or causeway, this section does not apply to any work that, in the opinion of the Minister, does not interfere substantially with navigation.</p>	<p>N/A</p>
<p>This grants the Minister the discretion to impose terms and conditions on projects that (s)he considers would interfere with navigation. It does not appear to give the Minister this discretion if there is uncertainty or if there is substantial interference with navigation.</p>	<p>See (a), above.</p>	<p>(3) If the Minister considers that the work would interfere, other than substantially, with navigation, the Minister may impose any terms and conditions on the approval that the Minister considers appropriate, including requiring that construction of the work be started and finished within the period fixed by the Minister.</p>

**Navigable Waters Protection Act Amendments
Comparison Document
Prepared by Lake Ontario Waterkeeper. February 11, 2009**

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Construction dates are very important in water-based projects. There is no requirement that the Minister consider specific factors such as environmental effects or public notice when changing construction dates.	N/A	(4) The Minister may, at any time, extend the period by changing the day on which construction of the work shall be started or finished.
The New Act says that despite the fact that Section 5 says, while you usually cannot construct a work without Ministerial approval, you can do this if the work is part of a class of works or if the water is part of a class of waters. These classes will be created by regulation or under Section 13.	N/A	5.1 (1) Despite section 5, a work may be built or placed in, on, over, under, through or across any navigable water without meeting the requirements of that section if the work falls within a class of works, or the navigable water falls within a class of navigable waters, established by regulation or under section 13.
This section in the New Act states that projects built without approval because the work or waterway is part of a class must comply with terms and conditions.	N/A	(2) The work shall be built, placed, maintained, operated, used and removed in accordance with the regulations or with the terms and conditions imposed under section 13.
This exempts works that do not require Ministerial approval because they are part of a "class" from complying with the other rules of the Act, including filing plans with the government and paying fees. The exception is if the work is not in compliance with the terms and conditions imposed on its class.	N/A	(3) Sections 6 to 11.1 do not apply to works referred to in subsection (1) unless there is a contravention of subsection (2).
H: Construction of works, other than those exempted by class		

**Navigable Waters Protection Act Amendments
Comparison Document
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		322. (1) The portion of subsection 6(1) of the Act before paragraph (a) is replaced by the following:
The shift from "by the Minister" in the Old Act to "under this Act" in the New Act is consistent with the additions above, which will exempt classes of works and classes of waterways from requiring Ministerial approval.	6. (1) Where any work to which this Part applies is built or placed without having been approved by the Minister, is built or placed on a site not approved by the Minister, is not built or placed in accordance with plans so approved or, having been so built or placed, is not maintained in accordance with those plans and the regulations, the Minister may	6. (1) If any work to which this Part applies is built or placed without having been approved under this Act, is built or placed on a site not approved under this Act, is not built or placed in accordance with the approved plans and terms and conditions and with the regulations or, having been built or placed as approved, is not maintained, operated, used or removed in accordance with those plans, those terms and conditions and the regulations, the Minister may
This was the section in the Old Act that made it quasi-criminal to not comply with a Minister's order. Those sanctions have been moved to the Offences and Punishment section below.	(2) Any owner or person who fails to comply with an order given to that owner or person pursuant to paragraph (1)(a) or (c) is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars.	(2) Subsection 6(2) of the Act is repealed.
		(3) Subsection 6(4) of the Act is replaced by the following:

**Navigable Waters Protection Act Amendments
Comparison Document
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<p>in both Acts, this section allows the Minister to approve a work after construction begins. The wording has been changed in the New Act and adds the option of the Minister imposing terms and conditions on the project after commencement of construction.</p>	<p>(4) The Minister may, subject to deposit and advertisement as in the case of a proposed work, approve a work and the plans and site of the work after the commencement of its construction and the approval has the same effect as if given prior to commencement of the construction of the work.</p>	<p>(4) The Minister may, subject to deposit and notice as in the case of a proposed work, approve a work, its site and the plans for it and impose any terms and conditions on the approval that the Minister considers appropriate after the start of its construction. The approval has the same effect as if it was given before the start of construction.</p>
		<p>323. Section 7 of the Act is replaced by the following:</p>
<p>The change from 5(1) to 5(2) between the Old Act and the New Act is confusing. It suggests there are only fees when the Minister imposes terms and conditions, under the New Act.</p>	<p>7. (1) Where a person applies for an approval referred to in paragraph 5(1)(a) or subsection 6(4), the person shall pay a fee therefor prescribed by the regulations.</p>	<p>7. (1) A person who applies for approval of a work referred to in subsection 5(2) or 6(4) shall pay the fee prescribed by the regulations.</p>
<p>Change of wording.</p>	<p>(2) Where the Minister has approved a work, the approval is valid for a period of time prescribed by the regulations.</p>	<p>(2) The approval of a work under section 5 is valid for the period prescribed by the regulations.</p>
I: Approvals process		
		<p>324. Section 9 of the Act is replaced by the following:</p>

**Navigable Waters Protection Act Amendments
Comparison Document
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The New Act eliminates the opportunity to deposit plans with the local land office(s).	9. (1) A local authority, company or person proposing to construct, in navigable waters, any work for which no sufficient sanction otherwise exists may deposit the plans thereof and a description of the proposed site with the Minister, and a duplicate of each in the office of the registrar of deeds or the land titles office for the district, county or province in which the work is proposed to be constructed, and may apply to the Minister for approval thereof.	9. (1) A local authority, company or individual proposing to construct any work in navigable waters may apply to the Minister for approval by depositing the plans for its design and construction and a description of the proposed site with the Minister.
	N/A	(2) If the Minister considers that the work would substantially interfere with navigation, the Minister may also require that the local authority, company or individual deposit the plans for the management and operation related to the work.
The local authority is, in the New Act, only required to provide notice if the Minister considers the work will interfere "substantially" with navigation.	(3) The local authority, company or person referred to in subsection (1) ...	(3) If the Minister considers that the work would substantially interfere with navigation, the Minister shall direct the local authority, company or individual to
		(a) deposit all plans in the local land registry or land titles office or any other place specified by the Minister; and

**Navigable Waters Protection Act Amendments
Comparison Document
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<p>The local authority must now only advertise in one newspaper, and only if the Minister considers the work will interfere "substantially" with navigation.</p>	<p>shall give one month's notice of the deposit of plans and application by advertisement in the Canada Gazette, and in two newspapers published in or near the locality where the work is to be constructed.</p>	<p>(b) provide notice of the proposed construction and the deposit of the plans by advertising in the Canada Gazette and in one or more newspapers that are published in or near the place where the work is to be constructed.</p>
		<p>The plans shall be deposited and notice shall be provided in the form and manner specified by the Minister.</p>
	<p>N/A</p>	<p>(4) If the Minister considers that the work would interfere, other than substantially, with navigation, the Minister may direct the local authority, company or individual to deposit the plans in the local land registry or land titles office or any other place specified by the Minister, and to provide notice of the proposed construction and the deposit of the plans as the Minister considers appropriate.</p>
<p>This section of the New Act allows for a public comment period of 30 days if the Minister believes a work would interfere, other than substantially, with navigation. The opportunity to comment is now restricted to the instances when the Minister triggers it, and only for 30 days.</p>	<p>N/A</p>	<p>(5) Interested persons may provide written comments to the Minister within 30 days after the publication of the last notice referred to in subsection (3) or (4).</p>
		<p>325. Subsection 11(1) of the Act is replaced by the following:</p>

**Navigable Waters Protection Act Amendments
Comparison Document
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Change of wording.	11. (1) Where an approval of a work granted pursuant to paragraph 5(1)(a) or subsection 6(4) lapses, the Minister may grant a new approval of that work for such period of time as, having regard to changing conditions in navigation and the condition of the work, the Minister deems fit.	11. (1) When an approval of a work lapses, the Minister may grant a new approval of that work for any period that the Minister considers appropriate, having regard to changing conditions in navigation and the condition of the work.
J: Minister's ability to change orders		
		326. The Act is amended by adding the following after section 11:
Addition in the New Act	N/A	11.1 (1) Subject to subsection (3), the Minister may amend an approval of a work if he or she is satisfied that
Addition in the New Act	N/A	(a) the work has become a danger to or an interference with navigation by reason of the passage of time and changing conditions in navigation of the navigable waters concerned; or
The term "in the public interest" here is vague. It does not mean that the Minister will act to improve navigability in the public interest; it could just as easily be used to justify amending an approval that decreases navigability.	N/A	(b) the amendment is in the public interest.
Addition in the New Act	N/A	(2) Subject to subsection (3), the Minister may suspend or cancel an approval if he or she is satisfied that

**Navigable Waters Protection Act Amendments
Comparison Document
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Addition in the New Act	N/A	(a) the work is not being or has not been built, placed, maintained, operated, used or removed in accordance with the plans, the regulations or with any terms and conditions in the approval;
Addition in the New Act	N/A	(b) the approval was obtained by a fraudulent or improper means or a misrepresentation of a material fact;
Addition in the New Act	N/A	(c) the owner of the work has not paid a fine imposed under this Act;
Addition in the New Act	N/A	(d) the owner of the work has contravened a provision of this Act or the regulations; or
Addition in the New Act	N/A	(e) the suspension or cancellation is in the public interest, including that it is warranted by the record of compliance of the owner or of a principal of the owner under this Act.
Addition in the New Act	N/A	(3) Before amending, suspending or cancelling an approval of a work, the Minister shall give the owner 30 days' notice setting out the grounds on which the Minister relies for the amendment, suspension or cancellation.

**Navigable Waters Protection Act Amendments
Comparison Document
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<p>This statement in the New Act means that the Minister's orders are not regulations and therefore publication and comment via the Canada Gazette is not required.</p>	<p>N/A</p>	<p>11.2 For greater certainty, an order given under subsection 4(3) or paragraph 6(1)(a) or (c) is not a statutory instrument within the meaning of the Statutory Instruments Act.</p>
K: Orders made by Cabinet		
		<p>327. Subsections 12(1) and (2) of the Act are replaced by the following:</p>
<p>The New Act allows the Cabinet (Governor in Council) to make orders approving works. It maintains the previous ability of the Governor in Council to make orders or regulations it deems expedient for navigation, but the amendment would allow this to be done where the work was initially approved by the Governor in Council as well. This gives more discretion to the Governor in Council, since it could both approve a work via an order, then make additional orders or regulations it deems expedient to navigation. This is an important change, since Cabinet decisions are not always subject to Access to Information laws or judicial review.</p>	<p>12. (1) The Governor in Council may make such orders or regulations as the Governor in Council deems expedient for navigation purposes respecting any work to which this Part applies or that is approved or the plans and site of which are approved under any Act of Parliament and, without restricting the generality of the foregoing, may make regulations</p>	<p>12. (1) The Governor in Council may make any orders or regulations that the Governor in Council deems expedient for navigation purposes respecting any work to which this Part applies or that is approved or the plans and site of which are approved under any Act of Parliament or order of the Governor in Council, and may make regulations</p>

**Navigable Waters Protection Act Amendments
Comparison Document
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	(a) prescribing the fees payable to the Minister on an application for an approval; and	(a) prescribing the fees payable to the Minister on an application for an approval under this Part;
	(b) prescribing, for the purpose of subsection 7(2), the period of time for which an approval of a work is valid	(b) respecting the grant, amendment, renewal, suspension and cancellation of approvals under this Part;
	N/A	(c) prescribing the period for which an approval under this Part is valid;
		(d) respecting notification requirements for a change in ownership in a work;
This section in the New Act allows Cabinet to establish classes of works or waters that are exempt from requiring Ministerial approval		(e) establishing classes of works or navigable waters for the purposes of subsection 5.1(1);
		(f) respecting the placement, construction, maintenance, operation, safety, use and removal of works; and
		(g) for carrying out the purposes and provisions of this Part.
These sections are very different. The Old Act made it an offence to violate an order under the section. The New Act grants powers to the Cabinet to consider two related projects as one.	(2) Any order or regulation made under this section may prescribe therein the punishment to be imposed on summary conviction for any contravention thereof but that punishment shall not exceed a fine of five hundred dollars or imprisonment for a term of six months or both.	(2) If the Governor in Council considers that two or more works are related, the Governor in Council may, for the purposes of subsection (1), deem them to be a single work.

**Navigable Waters Protection Act Amendments
Comparison Document
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Addition in the New Act	N/A	(2.1) The regulations may incorporate any material by reference, regardless of its source, either as it exists on a particular date or as amended from time to time
Addition in the New Act	N/A	(2.2) Material does not become a regulation for the purposes of the Statutory Instruments Act because it is incorporated by reference.
L: Ministerial Orders		
		328. Section 13 of the Act is replaced by the following:
		Ministerial Orders
Old Act dealt with the St. Lawrence River. New Act deals with Minister's powers.	13. No approval of the site or plans of any bridge over the St. Lawrence River shall be given under this Part.	13. (1) For the purposes of section 5.1, the Minister may, by order,
		(a) establish classes of works or navigable waters; and
		(b) impose any terms and conditions with respect to the placement, construction, maintenance, operation, safety, use and removal of those classes of works or works that are built or placed in, on, over, under, through or across those classes of navigable waters.
		(2) An order under subsection (1)

**Navigable Waters Protection Act Amendments
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This section in the New Act means that, when a Minister creates a class of works or waterways, (s)he is not required to consult the way government would for a regulation.		(a) is not a statutory instrument within the meaning of the Statutory Instruments Act; and
There is no guarantee of public consultation, only notice after-the-fact.		shall be published in the Canada Gazette within 23 days after the day on which it is made.
	N/A	(3) An order may incorporate any material by reference, regardless of its source, either as it exists on a particular date or as amended from time to time.
M: Wrecks		
	14. In this Part,	330. Section 14 of the Act is replaced by the following:
	"owner" means the registered or other owner at the time any wreck, obstruction or obstacle referred to in this Part was occasioned, and includes a subsequent purchaser;	14. (1) In this Part, "owner" means the registered or other owner at the time any wreck, obstruction or obstacle referred to in this Part was occasioned, and includes a subsequent purchaser.

**Navigable Waters Protection Act Amendments
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The definition of 'vessel' was moved up to the definitions section 2.	"vessel" includes every description of ship, boat or craft of any kind, whether propelled by steam or otherwise and whether used as a sea-going vessel or on inland waters only, including everything forming part of its machinery, tackle, equipment, cargo, stores or ballast.	See Section 2.
		(2) A reference to a "thing" in sections 15 to 18 and 20, with respect to a thing that is or is likely to become an obstruction or obstacle to navigation, does not include a reference to a thing of natural origin unless the obstruction or obstacle, or likely obstruction or obstacle, is caused by a person.
		Application 14.1 This Part, other than sections 21 to 25, does not apply to navigable waters falling within a class of navigable waters established by regulation or under section 13.
		331. The portion of subsection 15(1) of the Act before paragraph (a) is replaced by the following:

**Navigable Waters Protection Act Amendments
Comparison Document
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Change of wording.	15. (1) Where the navigation of any navigable water over which Parliament has jurisdiction is obstructed, impeded or rendered more difficult or dangerous by reason of the wreck, sinking, partial sinking, lying ashore or grounding of any vessel or part thereof or other thing, the owner, master or person in charge of the vessel or other thing by which any such obstruction or obstacle is caused shall	15. (1) If the navigation of any navigable water over which Parliament has jurisdiction is obstructed, impeded or rendered more difficult or dangerous by the wrecking, sinking, partial sinking, lying ashore or grounding of any vessel or part of one or by any other thing, the owner, master or person in charge of the vessel or thing by which any obstruction or obstacle is caused shall
a) the navigation of any navigable water over which Parliament has jurisdiction is obstructed, impeded or rendered more difficult or dangerous by reason of the wreck, sinking, partial sinking, lying ashore or grounding of any vessel or part thereof or other thing,		332. Section 16 of the Act is replaced by the following:
Change of wording.	16. If, in the opinion of the Minister,	16. The Minister may cause any wreck, vessel or part of a vessel resulting from the wrecking, sinking, partial sinking, lying ashore or grounding of a vessel, or may cause any other thing, to be secured, removed or destroyed in the manner that the Minister considers appropriate if, in the Minister's opinion,

**Navigable Waters Protection Act Amendments
Comparison Document
Prepared by Lake Ontario Waterkeeper. February 11, 2009**

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Change of wording.	(a) the navigation of any navigable water over which Parliament has jurisdiction is obstructed, impeded or rendered more difficult or dangerous by reason of the wreck, sinking, partial sinking, lying ashore or grounding of any vessel or part thereof or other thing,	(a) the navigation of any navigable water over which Parliament has jurisdiction is obstructed, impeded or rendered more difficult or dangerous for more than 24 hours by the wreck, vessel, part of a vessel or thing;
	(b) by reason of the situation of any wreck, vessel or part thereof or other thing so lying, sunk, partially sunk, ashore or grounded, the navigation of any such navigable water is likely to be obstructed, impeded or rendered more difficult or dangerous, or	(b) the wreck, vessel, part of a vessel or thing has been in a position for more than 24 hours that is likely to obstruct, impede or render more difficult or dangerous the navigation of any such navigable water; or
	(c) any vessel or part thereof, wreck or other thing cast ashore, stranded or left on any property belonging to Her Majesty in right of Canada is an obstacle or obstruction to such use of that property as may be required for the public purposes of Canada,	(c) the wreck, vessel, part of a vessel or thing is cast ashore, stranded or left on any property belonging to Her Majesty in right of Canada and has been an obstruction or obstacle, for more than 24 hours, to the use of that property as may be required for the public purposes of Canada.
		333. Subsection 17(1) of the Act is replaced by the following:

**Navigable Waters Protection Act Amendments
Comparison Document
Prepared by Lake Ontario Waterkeeper. February 11, 2009**

Commentary	Existing NWSA, N-22	Amended NWSA, C-10 or "New Act"
Change of wording.	17. (1) The Minister may cause the vessel referred to in section 16 or its cargo, or anything causing or forming part of the obstruction or obstacle, to be conveyed to such place as the Minister thinks proper and to be there sold by auction or otherwise as he deems advisable, and the Minister may apply the proceeds of the sale to make good the expenses incurred by the Minister in placing and maintaining any signal or light to indicate the position of the obstruction or obstacle, or in the removal, destruction or sale of the vessel, cargo or thing.	17. (1) The Minister may cause the vessel referred to in section 16 or its cargo, or any other thing causing or forming part of the obstruction or obstacle to be conveyed to the place that the Minister considers appropriate and to be sold by auction or otherwise as the Minister considers appropriate. The Minister may apply the proceeds of the sale to make good the expenses incurred by the Minister in placing and maintaining any signal or light to indicate the position of the obstruction or obstacle, or in securing, removing, destroying or selling the vessel, cargo or thing.
		334. Subsection 18(1) of the Act is replaced by the following:
Change of wording.	18. (1) When, pursuant to this Part, the Minister has	18. (1) The amount of the costs incurred by the Minister while acting under subsection 15(2) or section 16 — whether or not a sale has been held under section 17 — constitutes a debt to which subsection (2) applies if the costs have been defrayed out of the public moneys of Canada.

**Navigable Waters Protection Act Amendments
Comparison Document
Prepared by Lake Ontario Waterkeeper. February 11, 2009**

Commentary	Existing NWPA, N-22	Amended NWPA, C-10 or "New Act"
	(a) caused to be placed and maintained any signal or light to indicate the position of any vessel or part thereof or other thing that, by reason of its wreck, sinking, partial sinking, lying ashore or grounding, caused or was likely to cause the navigation of any navigable water over which Parliament has jurisdiction to become obstructed, impeded or rendered more difficult or dangerous	N/A
	(b) caused to be removed or destroyed any wreck, vessel or part thereof or other thing that, by reason of its wreck, sinking, partial sinking, lying ashore or grounding, caused or was likely to cause the navigation of any such navigable water to become obstructed, impeded or rendered more difficult or dangerous, or	N/A
	(c) caused to be removed or destroyed any vessel or part thereof, wreck or any other thing cast ashore, stranded or left on any public property belonging to Her Majesty in right of Canada,	N/A

**Navigable Waters Protection Act Amendments
Comparison Document
Prepared by Lake Ontario Waterkeeper. February 11, 2009**

Commentary	Existing NWPA, N-22	Amended NWPA, C-10 or "New Act"
	and the cost thereof has been defrayed out of public moneys of Canada, the amount of the cost, whether or not a sale has been held under section 17, constitutes a debt to which subsection (2) applies.	N/A
		335. Sections 19 and 20 of the Act are replaced by the following:
Clarifies language. Also, gives the MInister the option to order the owner to secure the vessel, rather than just to remove it.	19. (1) Where a vessel has been left anchored, moored or adrift in any navigable waters in such a manner that, in the opinion of the Minister, it obstructs or is likely to obstruct navigation in those waters, the Minister may order the owner, managing owner, master or person in charge of the vessel to remove it to such place as the Minister deems fit.	19. (1) If a vessel has been left anchored, moored or adrift in any navigable water so that, in the Minister's opinion, it obstructs or is likely to obstruct navigation, the Minister may order the owner, managing owner, master or person in charge of the vessel to secure it or remove it to a place that the Minister considers appropriate.

**Navigable Waters Protection Act Amendments
Comparison Document
Prepared by Lake Ontario Waterkeeper. February 11, 2009**

Commentary	Existing NWPA, N-22	Amended NWPA, C-10 or "New Act"
<p>It appears as though the New Act removes the provisions that make noncompliance an offence. Noncompliance appears to be instead a "debt".</p>	<p>(2) Where a person to whom an order is given pursuant to subsection (1) fails forthwith to comply with the order, (a) the person is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars; and (b) the Minister may order the vessel to be removed to such place as the Minister deems fit, and the costs of removal of the vessel shall be recoverable against the person as a debt due to Her Majesty.</p>	<p>(2) If a person to whom an order is given under subsection (1) fails to comply without delay with the order, the Minister may order the vessel to be secured or removed to the place that the Minister considers appropriate, and the costs of securing or removing the vessel are recoverable against the person as a debt due to Her Majesty.</p>
		<p>(3) For greater certainty, an order given under this section is not a statutory instrument within the meaning of the Statutory Instruments Act.</p>

**Navigable Waters Protection Act Amendments
Comparison Document
Prepared by Lake Ontario Waterkeeper. February 11, 2009**

Commentary	Existing NWSA, N-22	Amended NWSA, C-10 or "New Act"
<p>Change of wording.</p>	<p>20. When any vessel or other thing is wrecked, sunk, partially sunk, lying ashore or grounded in any navigable water in Canada, the vessel and its cargo and every part thereof or other thing shall be deemed to be abandoned at the expiration of two years after the date of the casualty and, thereupon, the Minister may, under such restrictions as seem fit to the Minister, authorize any person to take possession of and remove the vessel or other thing for that person's own benefit, on giving to the owner, if known, one month's notice and, if the owner is unknown, public notice for a similar period in a local paper published nearest to the place of the vessel or other thing.</p>	<p>20. If any vessel or other thing is wrecked, sunk, partially sunk, lying ashore or grounded in any navigable water in Canada, the vessel, part of the vessel, its cargo or thing is deemed to be abandoned on the day that is two years from the day of the casualty. On or after that later day the Minister may, under the restrictions that the Minister considers appropriate, authorize any person to take possession of and remove the vessel, part of the vessel or thing for that person's own benefit, on giving to the owner, if known, one month's notice, or if the owner is unknown, public notice for the same period in a local newspaper published in or near to the location of the vessel or thing.</p>

**Navigable Waters Protection Act Amendments
Comparison Document
Prepared by Lake Ontario Waterkeeper. February 11, 2009**

Commentary	Existing NWSA, N-22	Amended NWSA, C-10 or "New Act"
	<p>26. Every person required by this Part to give notice to the Minister or to the chief officer of customs at any port of any obstruction or obstacle to navigation, or to place and maintain a sufficient signal or light to indicate the position of the obstruction or obstacle, who fails to give that notice or to place or maintain that signal or light is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars for each offence.</p>	<p>336. Sections 26 to 28 of the Act are repealed.</p>
	<p>Offences and Punishment</p>	
<p>Moved to the Offences and Punishment section of the New Act, below.</p>	<p>27. Any person who contravenes section 21 is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars for each offence.</p>	

**Navigable Waters Protection Act Amendments
Comparison Document
Prepared by Lake Ontario Waterkeeper. February 11, 2009**

Commentary	Existing NWPA, N-22	Amended NWPA, C-10 or "New Act"
	<p>28. Any person who contravenes section 22 is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars and, in any case where any materials referred to in that section are thrown from or deposited by a vessel and a conviction is obtained therefor, the vessel is liable for the fine and may be detained by any port warden or the chief officer of customs at any port until the fine is paid.</p>	
<p>The definition of "ferry cable" is moved to Section 2 in the New Act. The definition of "swing or drawbridge" is removed entirely.</p>	<p>Interpretation 29. In this Part, "ferry cable" includes any ferry cable, rod, chain or other device put across, over, in or under any navigable water for working a ferry; "swing or draw bridge" means any swing or draw bridge other than a railway bridge.</p>	<p>337. Section 29 of the Act and the heading "Interpretation" before it are repealed.</p>
		<p>338. Section 30 of the Act is renumbered as subsection 30(1) and is amended by adding the following:</p>
		<p>(2) The regulations may incorporate any material by reference, regardless of its source, either as it exists on a particular date or as amended from time to time.</p>

**Navigable Waters Protection Act Amendments
Comparison Document
Prepared by Lake Ontario Waterkeeper. February 11, 2009**

Commentary	Existing NWSA, N-22	Amended NWSA, C-10 or "New Act"
		(3) Material does not become a regulation for the purposes of the Statutory Instruments Act because it is incorporated by reference.
Moved to the Offences and Punishment section of the New Act, below.	31. Any regulation made under this Part may prescribe the punishment to be imposed on summary conviction for any contravention thereof but that punishment shall not exceed a fine of five hundred dollars or imprisonment for a term of six months or both.	339. Section 31 of the Act is repealed.
N: Administration and Enforcement		
		340. The Act is amended by adding the following after section 32:
This section has been added to replace the criminal sanctions, since without those, it will no longer be the police enforcing this Act. Instead, there will be "navigation compliance officers" or some equivalent position.	N/A	PART IV ADMINISTRATION AND ENFORCEMENT Designation 33. For the purposes of the administration and enforcement of this Act and any regulation or order, the Minister may designate persons or classes of persons to exercise powers in relation to any matter referred to in the designation.

**Navigable Waters Protection Act Amendments
Comparison Document
Prepared by Lake Ontario Waterkeeper. February 11, 2009**

Commentary	Existing NWSA, N-22	Amended NWSA, C-10 or "New Act"
<p>This section sets out the powers that the compliance officers will have to enter, search and seize. This is interesting in light of the Charter's search and seizure provisions, and may have to be tested.</p>		<p>Powers</p> <p>34. (1) A person who is designated to verify compliance or prevent non-compliance with this Act and any regulation or order may, for that purpose, at any reasonable time, enter a work, vessel or swing or draw bridge, or enter any other place in which they have reasonable grounds to believe the following items are located:</p>
		<p>(a) a work or anything related to a work;</p> <p>(b) a wreck, vessel, part of a vessel or other thing that obstructs or impedes navigation or renders it more difficult or dangerous, or that is likely to do so;</p>
		<p>(c) a ferry cable or swing or draw bridge, or anything related to one.</p>
		<p>(2) On entering a place, the designated person shall, on request, produce to the person in charge of the place a certification in the form established by the Minister attesting to the designation.</p>

**Navigable Waters Protection Act Amendments
Comparison Document
Prepared by Lake Ontario Waterkeeper. February 11, 2009**

Commentary	Existing NWSA, N-22	Amended NWSA, C-10 or "New Act"
<p>This is the seizure aspect of the powers conferred on the compliance officer.</p>		<p>(3) The designated person may, for the purposes referred to in subsection (1),</p> <p>(a) examine anything that is found in the place;</p> <p>(b) remove any document or other thing from the place for examination or, in the case of a document, copying;</p>
		<p>(c) direct any person to put into operation or cease operating any work, vessel or other conveyance, machinery or equipment in the place;</p>
		<p>(d) prohibit or limit access to the place for as long as specified;</p>
		<p>(e) take photographs and make video recordings and sketches;</p> <p>(f) use or cause to be used any computer system or data processing system at the place to examine any data contained in, or available to, the system;</p>

**Navigable Waters Protection Act Amendments
Comparison Document
Prepared by Lake Ontario Waterkeeper. February 11, 2009**

Commentary	Existing NWPA, N-22	Amended NWPA, C-10 or "New Act"
<p>These powers seem extensive and may go far beyond what would be needed to determine whether a navigable waterway has been blocked. It is not clear on first reading why compliance officers under the NWPA would need to access computers, copy records and files, etc. See above re: the Charter.</p>		<p>(g) reproduce any record, or cause it to be reproduced from the data, in the form of a printout or other intelligible output and remove the printout or other output for examination or copying; and</p> <p>(h) use or cause to be used any copying equipment at the place to make copies of any books, records, electronic data or other documents.</p>
		<p>(4) The designated person, in carrying out their functions under this section, and a person accompanying them may enter on and pass through or over private property without being liable for doing so.</p>
		<p>35. The owner or person who is in charge of a place that is entered under subsection 34(1) and every person who is in the place shall</p> <p>(a) give a designated person who is carrying out their functions under section 34 all reasonable assistance; and</p> <p>(b) provide them with any information that they may reasonably require.</p>

**Navigable Waters Protection Act Amendments
Comparison Document
Prepared by Lake Ontario Waterkeeper. February 11, 2009**

Commentary	Existing NWSA, N-22	Amended NWSA, C-10 or "New Act"
		<p>36. (1) If any place referred to in subsection 34(1) is a dwelling-house, the designated person may not enter it without the consent of the occupant except under the authority of a warrant issued under subsection (2).</p>
		<p>(2) On ex parte application, a justice of the peace may issue a warrant authorizing the person who is named in it to enter a dwelling-house, subject to any conditions that may be specified in the warrant, if the justice is satisfied by information on oath that</p> <p>(a) the dwelling-house is a place referred to in subsection 34(1);</p> <p>(b) entry to the dwelling-house is necessary for the purpose of verifying compliance or preventing non-compliance with the Act and any regulation or order; and</p> <p>(c) entry to the dwelling-house was refused by the occupant or there are reasonable grounds to believe that entry will be refused or consent to entry cannot be obtained from the occupant.</p>

**Navigable Waters Protection Act Amendments
Comparison Document
Prepared by Lake Ontario Waterkeeper. February 11, 2009**

Commentary	Existing NWSA, N-22	Amended NWSA, C-10 or "New Act"
		<p>Prohibitions</p> <p>37. (1) No person shall knowingly, orally or in writing, make a false or misleading statement or provide false or misleading information, in connection with any matter under this Act, to a designated person who is carrying out their functions under section 34.</p> <p>(2) No person shall knowingly obstruct or hinder a designated person who is carrying out their functions under section 34.</p>
<p>The ability to bring an injunction is added in the New Act, limited to the Minister.</p>		<p>Injunction</p> <p>38. (1) If, on the application of the Minister, it appears to a court of competent jurisdiction that a person has done, is about to do or is likely to do any act constituting or directed toward the commission of an offence under this Act, the court may issue an injunction ordering a person named in the application</p> <p>(a) to refrain from doing an act that, in the opinion of the court, may constitute or be directed toward the commission of the offence; or</p>

**Navigable Waters Protection Act Amendments
Comparison Document
Prepared by Lake Ontario Waterkeeper. February 11, 2009**

Commentary	Existing NWPA, N-22	Amended NWPA, C-10 or "New Act"
		<p>(b) to do an act that, in the opinion of the court, may prevent the commission of the offence.</p> <p>(2) No injunction may be issued under subsection (1) unless 48 hours' notice is served on the party or parties named in the application or the urgency of the situation is such that service would not be in the public interest.</p> <p>39. (1) Servants of the Crown, as those terms are defined in section 2 of the Crown Liability and Proceedings Act, are not personally liable for anything they do or omit to do in good faith under this Act.</p>
		<p>(2) Subsection (1) does not, by reason of section 10 of the Crown Liability and Proceedings Act, relieve the Crown of liability for a tort or extracontractual civil liability to which the Crown would otherwise be subject.</p>
O: Offences and Punishment		

**Navigable Waters Protection Act Amendments
Comparison Document
Prepared by Lake Ontario Waterkeeper. February 11, 2009**

Commentary	Existing NWSA, N-22	Amended NWSA, C-10 or "New Act"
<p>New offence provision. Note that jail time and amount of fine are increased.</p> <p>4(3) = order to alter or remove a work 6(1)(a) = order to alter or remove a work 6(1)(c) = order to not proceed 19(1) = order to move a vessel</p> <p>13.1 and 32 = interim order re safety</p>		<p>Offences and Punishment</p> <p>40. (1) Every person is guilty of an offence and is liable on summary conviction to imprisonment for a term of not more than six months or to a fine of not more than \$50,000, or to both, if the person contravenes</p> <p>(a) an order given under subsection 4(3), paragraph 6(1)(a) or (c) or subsection 19(1);</p> <p>(b) an interim order made under section 13.1 or 32;</p>
<p>12 = fees payable, 30 = laying cable, maintaining lights, operating swing bridges</p>		<p>(c) an order or regulation made under section 12 or 30; or</p>
<p>15(1) = vessel wreck, sink etc. 21 = throwing rubbish overboard 35 = carry out functions 37 = making false statements</p>		<p>(d) subsection 15(1) or section 21, 22, 35 or subsection 37(1) or (2).</p>
<p>22: stone, gravel, earth, cinders, ashes or other material or rubbish, where liable to sink and water not deep enough</p>		<p>(2) If any materials referred to in section 22 are thrown from or deposited by a vessel and a conviction is obtained for that activity, the vessel is liable for any fine that is imposed and may be detained by any port warden or the chief officer of customs at any port until the fine is paid.</p>

**Navigable Waters Protection Act Amendments
Comparison Document
Prepared by Lake Ontario Waterkeeper. February 11, 2009**

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		(3) If the offence under subsection (1) is committed or continued on more than one day, the person who commits it is liable to be convicted for a separate offence for each day on which it is committed or continued.
P: Review		
Addition in the New Act		PART V REVIEW 41. (1) A review of the provisions and the operation of this Act must be completed by the Minister before the end of the fifth year after the day on which this section comes into force.
		(2) The Minister shall cause a report of the review to be laid before each House of Parliament on any of the first 15 days on which that House is sitting after the report has been completed.
Q: Amendments to the Int'l Bridges and Tunnels Act		
		Consequential Amendment to the International Bridges and Tunnels Act
		341. Subsections 4(3) and (4) of the International Bridges and Tunnels Act are replaced by the following:

**Navigable Waters Protection Act Amendments
Comparison Document
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Commentary	Existing NWPA, N-22	Amended NWPA, C-10 or "New Act"
		(3) Nothing in this Act or any regulations made under it affects the application of any other Act of Parliament, including any requirement for a person to obtain a licence, permit or other authorization in respect of an international bridge or tunnel.