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In Search of #BetterRules: An Overview of Federal Environmental Bills C-68 and C-69

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Legislation Commented On: *An Act to amend the Fisheries Act and other Acts in consequence (Bill C-68)* and *An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts (Bill C-69)*

Last week, the federal government tabled its much-anticipated package of federal environmental law reforms. Regular ABlawg readers will know that the Faculty of Law's [Natural Resources, Energy, and Environmental Law group](#) has been actively participating in this process from the beginning, with several members submitting briefs and testifying before both parliamentary committees and expert panels (a full list of relevant ABlawg posts is included at the end of this post). In this post, I provide an initial overview and analysis of Bill C-68 (*Fisheries Act*) and the proposed *Impact Assessment Act* under Bill C-69. Subsequent posts will examine specific issues in more detail, as well as the proposed *Canadian Energy Regulator Act*.

Briefly, the proposed amendments to the *Fisheries Act*, [RSC 1985, c F-14](#), are the clearest “good news” story. Although there is still room for improvement, these amendments do appear to “[restore lost protections, and incorporate modern safeguards.](#)” As a starting point, the government proposes to reinstate the previous broad – and [broadly understood](#) – section 35 prohibition against projects and activities that result in the “harmful alteration, disruption, or destruction of fish habitat” (HADD). Of course, this prohibition has never been absolute but rather a gateway to one of the federal government’s most important regulatory regimes insofar as Canada’s watersheds are concerned. Notable improvements on the regulatory front, then, are the proposed establishment – for the first time – of a public registry that would include section 35 authorizations, as well as provisions for the creation of habitat banks. These and other features are further discussed below.

The proposed *Impact Assessment Act (IAA)* is more of a mixed bag. In its current form, the proposed regime can be characterized as a bulked-up version of the current *Canadian Environmental Assessment Act, 2012*, [SC 2012 c 19 s 52](#), or *CEAA, 2012+*. It is certainly less of a departure from *CEAA, 2012* than that legislation was from the original *Canadian Environmental Assessment Act*, [SC 1992 c 37](#) (*CEAA*). Like *CEAA, 2012*, the *IAA* is built primarily around a designated project list rather than being triggered by federal decision-making as the original *CEAA* was. However, where *CEAA, 2012* sought to limit public participation as much as possible – including through the introduction of a “directly affected” standing test, the proposed *IAA* contains no such test and even provides for (some form of) public participation in a (somewhat) new “planning phase” (my reasons for all of these parentheses will become

apparent further below). The *IAA* also expands the factors that the federal government must consider when assessing projects, including not just environmental effects but also social, economic, and health effects that fall within Parliament’s legislative jurisdiction. The federal government will also have to consider a project’s contribution to sustainability (as defined in the Act), and whether it contributes to or hinders Canada’s ability to meet its climate change commitments. The key word in the preceding sentences, however, is “consider”: like all of its predecessors, the *IAA* refuses to draw an environmental (or other) bottom line. Instead, the *IAA* offers increased transparency in decision-making and mandatory reasons in many instances.

What follows is essentially a front to back overview of the proposed legislation, reflecting what I consider some of the more noteworthy aspects. A few caveats are in order. First, this is an initial assessment; it is neither complete nor necessarily accurate. Second, this assessment inevitably requires some speculation on my part. As with most environmental legislation, both the proposed amendments to the *Fisheries Act* and the *IAA* rely to a large extent on yet-to-be developed regulations to fill out the details. Third, my approach to this legislation – and the basis for one of my main criticisms of it – is to consider what *it actually says and requires*, not what the current government says it will do with it as a matter of policy. In my view, environmental laws should be written with a view towards potential future governments that may be hostile to environmental concerns. [Better rules](#), in this context, means legislation that would constrain such governments, forcing them to either conform or to – yet again – try to amend the legislation, with all of the potential for democratic accountability that comes with that. On this score, much of the legislation introduced last week is wholly inadequate.

I. Bill C-68: *Fisheries Act* Amendments

A. Definitions

The first bit of good news in Bill C-68 comes early – straight away in the interpretive section in fact:

1(1) The definitions *commercial*, *Indigenous* and *recreational* in subsection 2(1) of the *Fisheries Act* are repealed.

To those familiar with the 2012 changes to the Act, subsection 1(1) was a clear signal that the Harper-era “serious harm to fish” regime, which sought to restrict the scope of habitat protection to only those [fish that were part of, or supported, a commercial, recreational or Indigenous fishery](#), is being repealed. Other terms of note include a clarified definition of “fish habitat” (subs 1(5): “*water frequented by fish* and any other areas on which fish depend directly or indirectly to carry out their life processes, including spawning grounds and nursery, rearing, food supply and migration areas”) and “fishery” (subs 1(6): “...with respect to any fish, includes,(a) any of its species, populations, assemblages and stocks, *whether the fish is fished or not*”) (emphasis added). These definitions make clear that, under the proposed legislation, all fish (and their habitat) are indeed equal, whether fished or not. Finally, Bill C-68 introduces the term “Indigenous governing body” (subs 1(8): “means a council, government or other entity that is authorized to act on behalf of an Indigenous group, community or people that holds rights recognized and affirmed by section 35 of the *Constitution Act, 1982*”). This term is relevant to

amendments to section 4 of the Act, which currently allows the Minister to enter into agreements with provincial and territorial governments for the purposes of implementing the Act.

B. Purpose and Recognition of Indigenous Rights

Section 3 introduces a purpose clause, which is to “provide a framework for (a) the proper management and control of fisheries; and (b) the conservation and protection of fish and fish habitat, including by preventing pollution.” Lest anyone think that the addition of such a purpose clause will, in and of itself, ensure [sustainable fisheries](#) or restrict the Minister from authorizing the use of fish-bearing lakes as [mine tailings impoundment areas](#), it is worth pointing out that this is essentially a codification of the existing case law. Over twenty years ago, in *Comeau’s Sea Foods Ltd. v. Canada (Minister of Fisheries and Oceans)*, [1997] 1 SCR 12 at pp 25-26, the Supreme Court of Canada held that “Under the *Fisheries Act*, it is the Minister’s duty to manage, conserve and develop the fishery on behalf of Canadians in the public interest.”

The purpose clause is followed closely by a new part titled “Indigenous Peoples of Canada”. A new section 2.3 recognizes that the Act is subservient to the constitutional protection provided for the rights of Indigenous peoples pursuant to section 35 of the *Constitution Act, 1982*, while section 2.4 recognizes that all decision-making under the Act has the potential to adversely affect those rights and that the Minister must consider such effects in his or her decision-making pursuant to the Act. This, too, is essentially a codification of the current state of the law in Canada (see *Haida Nation v. British Columbia (Minister of Forests)*, [2004 SCC 73 \(CanLII\)](#)). More innovative on this front is the incorporation of the term “Indigenous governing body” in section 4 of the Act. As noted above, the current section 4 allows the Minister to enter into agreements with provincial and territorial governments for the purposes of implementing parts of the Act, including provisions for declaring another government’s laws as equivalent. The inclusion of Indigenous governing bodies in this section reflects a growing recognition of Indigenous jurisdiction in the management of natural resources.

C. Considerations and Advisory Panels

Bill C-68 also sets out a new “considerations” section (section 2.5) that will be applicable to the entire Act (there are other such sections that apply to specific powers), as well as a power to establish advisory panels (section 2.6). Like many other provisions in the Act, however, these are wholly discretionary (the term “may” appears over one hundred times in the legislation). Thus, the Minister *may* consider:

- (a) the application of a precautionary approach and an ecosystem approach;
- (b) the sustainability of fisheries;
- (c) scientific information;
- (d) traditional knowledge of the Indigenous peoples of Canada that has been provided to the Minister;
- (e) community knowledge;
- (f) cooperation with any government of a province, any Indigenous governing body and any body—including a co-management body—established under a land claims agreement;

- (g) social, economic and cultural factors in the management of fisheries;
- (h) the preservation or promotion of the independence of licence holders in commercial inshore fisheries; and
- (i) the intersection of sex and gender with other identity factors.

Going forward, the question will be whether some of these provisions could be made mandatory. Some of them, such as the precautionary approach and ecosystem approach, reflect the recommendations of the [Standing Committee on Fisheries and Oceans' 2017 Report](#), while others, such as scientific information, seem like a basic requirement for any decision-making under the Act.

D. Fish Stocks and Fisheries Management Orders

Other fisheries legislation has long included provisions for the rebuilding of fish stocks and this became a key ask of [several groups](#) during the *Fisheries Act* consultations. Under Bill C-68, where the Minister is of the opinion “that a fish stock that has declined to its limit reference point or that is below that point would be impacted,” she or he must consider whether there are measures aimed at rebuilding the stock, including measures aimed at restoring fish habitat (new section 6.1.).

As with so many other provisions, my sense is that fisheries management experts would prefer this power to be constrained by some objective criteria. A new section 9.1 also grants the Minister new powers to issue Fish Management Orders, which can include prohibiting the fishing of one or more species, but these appear to be temporary measures aimed at responding to urgent threats (pursuant to section 9.3(1), such orders are not to exceed 45 days, and can only be renewed up to 45 days).

E. Habitat Protection Provisions: Return of the HADD, Habitat Banks, Public Registry

As noted above, the cornerstone of Bill C-68 is the return of the HADD. As was the case before 2012, there will once again be two standalone prohibitions, the first against the death of fish by means other than fishing; and the second against impacts to fish habitat:

Death of fish

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

Harmful alteration, disruption or destruction of fish habitat

35(1) No person shall carry on any work, undertaking or activity that results in the harmful alteration, disruption or destruction of fish habitat.

Both prohibitions continue to be subject to Ministerial and regulatory authorization. These provisions will require further scrutiny but the following scheme seems to emerge. Under Bill C-68, there will be three kinds of projects that may be subject to some kind of oversight: (i) projects with the *potential* to impact fish and fish habitat but which impacts may be avoided or

minimized to a level of insignificance; (ii) projects with moderate impacts, and (iii) projects with potentially significant impacts.

Bearing in mind the Standing Committee's concerns that the Act provide certainty for specific sectors (*e.g.* municipalities and rural communities), the first group of projects will likely be dealt with by way of standards and codes of practice under a new section 34.2:

Standards and codes of practice

34.2(1) The Minister may establish standards and codes of practice for

- (a) the avoidance of death to fish and harmful alteration, disruption or destruction of fish habitat;
- (b) the conservation and protection of fish or fish habitat; and
- (c) the prevention of pollution.

Although such provisions are not going to be popular with everyone, they do seem necessary. My own [research](#) has shown that the Department of Fisheries and Oceans (DFO) has at times received over 12,000 referrals/year from individuals and proponents inquiring as to whether they require authorization. The trick is to design this regime in a way that minimizes regulatory burden while ensuring that DFO gets the information it requires to be able to manage fish and fish habitat, which includes an ability to assess the cumulative effects of all projects – large and small – on the watershed. The easiest way to do this is to attach a simple notification requirement as part of any standards and codes, the jurisdiction for which can be traced back to several Supreme Court of Canada decisions. In *Interprovincial Co-operatives Ltd. et al. v. R.*, [1975 CanLII 212 \(SCC\)](#), for example, Chief Justice Laskin explained that: “Federal power in relation to fisheries...is concerned with the protection and preservation of fisheries as a public resource, *concerned to monitor or regulate* undue or injurious exploitation” (at p 495; italics mine).

As for the other two kinds of projects, the third group (potentially significant impacts) will be placed on a new “designated project” regulation (see amended section 34(1) for the definition of “designated project”), and will always require authorization. The goal here appears to be to provide additional certainty to certain sectors. The middle group will apparently be dealt with on a case-by-case basis. Whenever an authorization is required, as well as before the exercise of several other powers related to fish and fish habitat, the Minister or the Governor in Council will have to consider a revised set of factors (new section 34.1(1); italics below indicate the new factors):

- (a) the contribution to the productivity of relevant fisheries by the fish or fish habitat that is likely to be affected;
- (b) fisheries management objectives;
- (c) whether there are measures and standards
 - (i) to avoid the death of fish or to mitigate the extent of their death or offset their death, or
 - (ii) to avoid, mitigate or offset the harmful alteration, disruption or destruction of fish habitat;

- (d) the cumulative effects of the carrying on of the work, undertaking or activity referred to in a recommendation or an exercise of power, in combination with other works, undertakings or activities that have been or are being carried on, on fish and fish habitat;*
- (e) any fish habitat banks, as defined in section 42.01, that may be affected;*
- (f) whether any measures and standards to offset the harmful alteration, disruption or destruction of fish habitat give priority to the restoration of degraded fish habitat;*
- (g) traditional knowledge of the Indigenous peoples of Canada that has been provided to the Minister; and*
- (h) any other factor that the Minister considers relevant.*

Thus – for the first time – the Minister will have a clear obligation to consider the potential cumulative effects of a project when considered in combination with other existing or planned projects. The Minister will also have to consider any traditional knowledge provided by Indigenous peoples, which knowledge will be protected as confidential when necessary (new section 61.2). Finally, the Minister will have to consider any “fish habitat banks,” defined in new section 42.01 to mean:

an area of a fish habitat that has been created, restored or enhanced by the carrying on of one or more conservation projects within a service area and in respect of which area the Minister has certified any habitat credit under paragraph 42.02(1)(b).

Many stakeholders have long advocated for such banking provisions. Presently (and for most of the habitat protection program’s history), individual proponents are required to offset, or compensate, their impacts to fish habitat by creating habitat elsewhere. Not only is the Department’s record with respect to habitat compensation [spotty](#), however, but also such a scheme is inherently inefficient. A well-designed habitat-banking regime should maximize the value of habitat offsetting efforts.

Finally, Bill C-68 calls for the creation – long overdue insofar as transparency is concerned – of a public registry, with both obligatory (reproduced below) and optional contents:

Public registry

42.2 The Minister shall establish a public registry for the purpose of facilitating access to records relating to matters under any of sections 34 to 42.1.

Contents of registry — obligatory

42.3(1) The Minister shall publish the following records in the registry:

- (a) any agreements referred to in section 4.1 that are entered into by him or her and that establish the circumstances and manner referred to in paragraph 4.1(2)(h);
- (b) any standards and codes of practice established by him or her under section 34.2;
- (c) any orders made by him or her under sections 34.3 and 37;
- (d) any authorizations given under paragraphs 34.4(2)(b) and (c) and 35(2)(b) and (c) and subsection 35.2(7);
- (e) any permits issued by him or her under section 35.1; and
- (f) any fish habitat restoration plan prepared under subsection 35.2(9).

If there is one thing missing from the registry, it is a commitment to report on the state of fish habitat in Canada on a regular basis. As was reiterated during the [Cohen Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River](#), this is something that DFO has failed to do since the inception of its habitat protection program, notwithstanding that the program's [longest guiding policy goal](#) had been a net gain of fish habitat throughout Canada (1986 – 2012). There are other provisions in Bill C-68 that deserve consideration, including expanded provisions with respect to the designation and management of “ecologically significant areas” (new section 35.2), but the foregoing discussion captures the main elements in my view. Overall, the proposed legislation appears to be a step in the right direction. An overarching concern is the continued discretionary nature of the Minister’s various powers. Simply put, Bill C-68’s implementation could look very different depending on which of the current federal parties held government, with little legal recourse available to Canadians seeking a basic level of protection for fish and fish habitat.

II. Bill C-69: *Impact Assessment Act*

In terms of its basic structure, the proposed *Impact Assessment Act* closely tracks *CEAA, 2012*. Like that legislation, the *IAA* retains two basic process options: a standard assessment or a review panel. One overarching exception is that both the National Energy Board (soon to be Canadian Energy Regulator) and the Canadian Nuclear Safety Commission will no longer have sole responsibility for assessments of projects falling under their regulatory mandates. What follows is an attempt to highlight some of the other ways that the proposed *IAA* is different from the current regime. Readers may also be interested in Dalhousie University Professor Meinhard Doelle’s initial analysis available [here](#), and the Canadian Environmental Law Association’s analysis [here](#).

A. Planning Phase as Bulked-up Screening Decisions?

In what appears to be one of the few recommendations of the [Expert Panel on Environmental Assessment](#) adopted by the federal government, impact assessment in Canada will now have three phases as opposed to the conventional two: a new planning phase, an assessment phase, and a decision-making phase. This new planning phase (sections 10 – 20), however, appears to be primarily a bulked-up version of the initial “screening decision” made under the current regime.

Pursuant to sections 8 – 10 of *CEAA, 2012*, the proponent of a [designated project](#) has an obligation to submit a project description to the Agency, following which the Agency makes a determination as to whether an environmental assessment is required. Under the *IAA*, this determination will now involve some form of public participation (section 11) and an offer to consult with other relevant jurisdictions and Indigenous groups (section 12). Following such consultation, the Agency will provide the proponent with a list of issues that it considers relevant. The list will be posted on the Registry (subsection 14(2)) and the proponent will be required to respond with a detailed description of its project, including any information set out in the relevant regulations.

At this juncture (and as is currently the case under *CEAA, 2012*), the Agency will make a decision, following consideration of specified factors (subsection 16(2)), as to whether an impact assessment is required. If one is required, the entire process is to take 180 days from the time that the proponent posted his or her initial project description (section 18). This stands in contrast to the current screening decision under *CEAA, 2012*, which must be made 45 days after a project description is deemed complete.

It is hard to glean much else from the legislation; the Agency is currently consulting on proposed [Information and Time Management Regulations](#). In some respects, this process appears similar not only to *CEAA, 2012* but also to the process that applied to “comprehensive studies” under the original *CEAA* following amendments in 2003. These amendments added public consultation in the scoping phase of a comprehensive study-type environmental assessment. One outstanding question is what happens in the event that the Agency decides that an impact assessment is not required, ostensibly based on the proponent’s response to its list of issues (section 14). If the Agency’s decision not to require an assessment were based on commitments made by the proponent (*e.g.* with respect to some mitigation measures), the Agency would not appear to have any way of enforcing those commitments.

B. Additional Factors to Consider: Assessment and Decision-Making

As foreshadowed by its title, the proposed regime is no longer focused primarily on adverse environmental effects. Pursuant to section 1, “effects within federal jurisdiction” include not only environmental effects but also “any change to a health, social or economic matter that is within the legislative authority of Parliament that is set out in Schedule 3.” Schedule 3 has yet to be populated.

The mandatory list of factors to be considered in the course of an impact assessment (subsection 22(1)) has also been broadened to twenty factors, including: (f) alternatives to the project (this is in addition to alternative *means* of carrying out the project); (g) relevant traditional knowledge of Indigenous peoples (this used to be discretionary); (h) the extent to which the project contributes to sustainability; and (i) the extent to which the effects of the project hinder or contribute to Canada’s ability to meet its “environmental obligations and its commitments in respect to climate change.” Determining the scope of these factors, however, remains at the discretion of the Agency or the Minister (subsection 22(2)). While such exercises of discretion are technically bound by the “mandate” imposed at subsection 6(2) (“...the Minister, the Agency and federal authorities...must exercise their powers in a manner that fosters sustainability and applies the precautionary principle”), such arguments have historically garnered little judicial support.

Finally, with respect to the decision-making stage, the *IAA* more or less retains *CEAA, 2012*’s political decision-making structure except that, with respect to standard assessments, there is no longer any clear indication as to which determinations will be made by the Minister and which ones will be made by the Governor in Council (*i.e.* Cabinet) (panel review will always go to Cabinet, per sections 61 and 62). Under *CEAA, 2012*, projects that are not likely to result in significant adverse effects are approved by the Minister; it is only where a project is likely to result in such effects that Cabinet will be tasked with determining whether such effects “are justified in the circumstances.” The *IAA* appears to have abandoned the concept of “significance”

as the dividing line here, relying instead on the Minister's discretion to refer to Cabinet or not (although any impact assessment report and subsequent decision still has to specify the *extent* to which effects are adverse per subsection 63(b)).

Whether by the Minister or by Cabinet, under the *IAA* the ultimate determination will be whether a project's effects are "in the public interest," which must include a consideration of the following factors (s 63):

- (a) the extent to which the designated project contributes to sustainability;
- (b) the extent to which the adverse effects within federal jurisdiction and the adverse direct or incidental effects that are indicated in the impact assessment report in respect of the designated project are adverse;
- (c) the implementation of the mitigation measures that the Minister or the Governor in Council, as the case may be, considers appropriate;
- (d) the impact that the designated project may have on any Indigenous group and any adverse impact that the designated project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*; and
- (e) the extent to which the effects of the designated project hinder or contribute to the Government of Canada's ability to meet its environmental obligations and its commitments in respect of climate change.

These factors appear to be a subset of the factors that need to be assessed pursuant to section 22, and their consideration will need to be demonstrated through reasons required in any decision-statement (see subsection 65(2)).

The foregoing is an improvement on *CEAA, 2012* to be sure. However, it also means doubling down on the "[environmental law as decision-making process](#)" paradigm rather than as a set of substantive rules. The environmental-law-as-process paradigm essentially requires continuous vigilance by various groups to try to hold the government accountable for individual project decisions. I've written about the challenges inherent in such a system [here](#). It is for this reason that several submissions to the Expert Panel and to the government called for the establishment of an ombuds office of some kind to monitor the implementation of the regime (essentially what the Commissioner of the Environment and Sustainable Development does from [time](#) to [time](#), but on a full-time basis and with the power to implement recommendations).

C. Projects on Federal Lands and Outside of Canada

Under *CEAA, 2012*, sections 67 – 72 set out a process of informal assessment for projects not on the designated project list but that will be carried out on federal lands or outside of Canada. The proposed *IAA* retains this general scheme (sections 81 – 90) but is bulked up in some respects. Whereas under the current regime there is almost no way of knowing when such determinations are made (except by filing an access to information request), the *IAA* will require relevant federal authorities to post notices when they intend to make such determinations and, in some instances and at their discretion, to accept comments from the public prior to finalizing their determinations. This is an improvement to be sure.

There is also a new power (sections 88 and 89) to designate “a class of projects...the carrying out of [which] will cause only insignificant adverse environmental effects,” which class would then be exempt from the requirement for an informal assessment. Such a power is probably necessary; there are many routine projects carried out on federal lands that do not require additional scrutiny. Consistent with the general thrust of the legislation, moreover, this power is constrained by the fact that any federal authority that proposes such a class must post a notice of their intent, consider public comments and provide reasons when making their final determination.

D. Regional and Strategic Assessments

CEAA, 2012 has provisions for “regional studies” (section 73), but these have never been applied. The *IAA* builds off this concept, referring to both “regional assessments” and “strategic assessments” (sections 92 – 103). Regional assessments are described as “assessments of the effects of existing or future physical activities carried out in a region” (think [Ring of Fire](#)), while strategic assessments are assessments of government policies, plans or programs, or of specific issues (think [Cabinet Directive](#)).

The federal government has [apparently already committed](#) to conducting at least one strategic assessment (with respect to climate change). Whether any more will follow is uncertain, as both regional and strategic assessments are subject to the Minister’s discretion. Perhaps the greatest difference between the *IAA* and *CEAA, 2012*, is an *implied* ability to request such assessments. Pursuant to section 97, the Minister must respond, with reasons and in a prescribed time limit, to any request that such assessments be conducted.

G. The Public Registry: Whither Improved Science?

As I’ve noted elsewhere, one of the more prominent themes to emerge in the context of this law reform process is that the science of environmental (or impact) assessment needs to be more rigorous. In its various fancy info-graphics (such as this [one](#)), the government appears to suggest that this legislation addresses this issue:

Science and evidence provided by companies would be rigorously reviewed by federal scientists. Independent reviews would be done where there is strong public concern or the results of a study are uncertain. We would increase online access to science and evidence, including data on follow-up, monitoring, compliance and enforcement.

The problem I have is that most of the above is not even discussed in the legislation, and none of it is required. As noted by Professor Doelle in his post, it is not even clear what role Agency or other federal scientists will play in this scheme relative to project proponents. In addition, the Registry provisions (subsections 105(1) – (4)) are more or less the same as they are currently and full of qualifiers, *e.g.* the Registry shall contain “(d) any scientific information that the Agency receives from a proponent or federal authority, *or a summary of the scientific information and an indication of how that information may be obtained.*” This is hardly an example of open science. To deliver on the commitments excerpted above, the Registry files should match the Agency’s

internal project files (section 106), which must contain (b) any reports relating to the impact assessment, as well as (d) any records relating to the design or implementation of any follow-up programs and (e) any records relating to the implementation of any mitigation measures. The Act should also contain provisions imposing a duty of scientific integrity on all those involved in the assessment process. Finally, there is absolutely nothing in the legislation with respect to [adaptive management](#), which is supposed to be a rigorous process for reducing the uncertainty surrounding certain environmental effects but which has instead become a smokescreen for approving major projects that rely on unproven mitigation measures. Bearing in mind that over 90% of projects listed on the current CEAA Registry rely to some extent on adaptive management, this omission requires reconsideration.

As with Bill C-68, there is much more in this legislation that requires further analysis. There are also the amendments to the *Navigation Protection Act* (soon to be the *Canadian Navigable Water Act*) to consider. These are probably the least ambitious of the lot, but here too we at least see the establishment of a new public registry. Look for additional posts on Bills 68 and 69 in the coming weeks.

I am grateful to Nigel Bankes, Dave Wright and Brett Favaro for comments and suggestions on an earlier draft of this post.

Previous ABlawg Posts (starting with the most recent):

- [What Should Require Federal Impact Assessment? Proposed Triggers for a Credible Federal Impact Assessment Regime](#) (Sharon Mascher)
- [Filling the Gaps in the Federal Government Discussion Paper to Regain Public Trust in Federal Assessment](#) (Arlene Kwasniak)
- [The Federal Response to the Report of the Expert Panel on the Modernization of the National Energy Board](#) (Nigel Bankes)
- [An Overview of the Environmental and Regulatory Reviews Discussion Paper – Let the Discussion Begin](#) (Sharon Mascher)
- [Can Federal Legislative Jurisdiction Support a Broad, Sustainability-Based Impact Assessment?](#) (Martin Olszynski)
- [Triggering Federal Impact Assessment: Lessons from Down-Under](#) (Sharon Mascher)
- [The Expert Panel Report on Federal Environmental Assessment: Discretion, Transparency, and Accountability](#) (Shaun Fluker and Drew Yewchuck)
- [Federal Environmental Assessment Re-Envisioned to Regain Public Trust – The Expert Panel Report](#) (Arlene Kwasniak)

- [Recent Analysis Shows Canada was Losing Fish Habitat Before 2012 Budget Bills](#) (Martin Olszynski and Brett Favaro)
 - [CPAWS Presents to the Expert Panel for Environmental Assessment](#) (Shaun Fluker Kristina Roberts, and Drew Yewchuk)
 - [Avoiding the “Tyranny of Small Decisions”: A Canadian Environmental Assessment Regime for the 21st Century](#) (Martin Olszynski)
 - [Fisheries Act Review Should Be Evidence-Based](#) (Martin Olszynski)
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