



Guide to Prohibited Activities Exempted by the Governor in Council: Section 24 of the *Canadian Navigable Waters Act*

The *Canadian Navigable Waters Act* (CNWA) prohibits some activities that may interfere with navigation on navigable waters including:

- throwing or depositing of materials, in a navigable water or water that flows into a navigable water; and
- activities that lower the water level of a waterway so that navigation is impossible.

Prohibited activities can only be permitted if the Governor in Council (GiC) exempts the body of water from the application of CNWA's prohibitions. In order to obtain an exemption, the proponent must submit an application to Transport Canada (TC). The process requires that a proponent provide all the necessary information in support of an exemption, including information on all factors (listed below) affecting the public interest.

TC administers the submission process to the GiC for the OiC. However, it is the responsibility of the proponent seeking an exemption to show to the satisfaction of the GiC that exempting the waters in question from the application of sections 21, 22 (1) and 23 (1) of the CNWA would be in the public interest. Undertaking the OiC process does not guarantee that the GiC will approve the Order and issue an Order in Council.

Sections 21, 22 (1), 23 (1) and 24 (1) of the CNWA

Section 21 of the CNWA provides as follows:

No person shall throw or deposit or cause, suffer or permit to be thrown or deposited any sawdust, edgings, slabs, bark or like rubbish of any description whatever that is liable to interfere with navigation in any water, any part of which is navigable or that flows into any navigable water.

Section 22 (1) of the CNWA provides as follows:

No person shall throw or deposit or cause, suffer or permit to be thrown or deposited any stone, gravel, earth, cinders, ashes or other material or rubbish that is liable to sink to the bottom in any water, any part of which is navigable or flows into any navigable water, where there is not a minimum depth of 36 metres of water at all times, but nothing in this section shall be construed so as to permit the throwing or depositing of any substance in any part of a navigable water if it is prohibited under any other federal Act.

Section 23 (1) of the CNWA provides as follows:

No person shall take any action that lowers the water level of a navigable water or any part of a navigable water to a level that extinguishes navigation for vessels of any class that navigate, or are likely to navigate, the navigable water in question.

Pursuant to s.24 (1) of the CNWA, the Governor in Council may by proclamation exempt waters to which sections 21, 22 (1) and 23 (1) apply, or any part of such waters from the application of the prohibitions.

Section 24 (1) of the CNWA provides as follows:

The Governor in Council may, by order, exempt from the application of any of section 21 to 23, any rivers, streams or waters, in whole or in part, if the Minister receives an application for an exemption and the Governor in Council is satisfied that it would be in the public interest.

Determining Next Steps

Proponents seeking to engage in prohibited activities must provide to TC the information listed herein, and any further information TC may require on a case-by-case basis, in order to proceed with the administration of the submission process to the GiC for the issuance of the OiC. Failure to provide an application that contains the requested information will prevent TC from initiating the next steps in the process.

Once the proponent has met TC's information requirements, the issuance of the OiC will follow its course, regardless of each case, and may occur concurrently with any environmental assessment activity.

Note that proponents seeking to engage in prohibited activities that are also proposing to construct or place a work (other than a minor work) within the meaning of section 2 of the CNWA on a scheduled waterway or a work designated as a major work, are required to apply for approval separately. For information on TC's requirements relating to the approval of works, please refer to: <https://www.tc.gc.ca/eng/programs-623.html>.

Information Requirements

The exemption process is a whole of government review considering all relevant facts, not just those specific to navigation. TC has prepared the following list to assist proponents in developing a *Rationale Evidence* to support their application for exemption.

Project Description

Describe the project in detail, ensuring that the prohibited activities are properly described. Consider using the description contained in any environmental assessment (EA) or impact assessment (IA), supplementing this information with any additional information that TC may require. Key maps and drawings should be included.

Impacts to Navigation and Description of Alternatives

Describe the waters and types of vessels that may be impacted by the prohibited activities. Discuss the impacts to navigation that may result from the prohibited activities. This section should cover the impacts to navigation at every phase of the project (staging, construction, operation, etc.), including those which will remain after the closure of the site. Include remediation and restoration plans.

Describe what the alternatives are to engaging in prohibited activities and explore the feasibility of all potential alternatives. The applicant must clearly explain why the potential alternatives are not feasible.

Consultation Information

Identify impacted stakeholders and Indigenous communities, their main views and how these views will be taken into account.

Describe the overall stakeholder and Indigenous consultation strategy relating to the project and the prohibited activities. Consider building on the stakeholder and Indigenous consultations for purposes of any EA or IA.

Report on the results of the consultations, providing an analysis of same. Specifically, provide a summary of stakeholder and Indigenous community feedback for and against the prohibited activities and the project and discuss the proponent's response to same.

Describe the overall consultation strategy with Indigenous groups that may be adversely affected by the prohibited activities and the project. Report on which Indigenous groups were consulted, what concerns were raised and how these concerns have been addressed.

Describe the outcomes of consultations and other engagement with the public and Indigenous communities about environmental impacts of the prohibited activities and the project.

Environmental Assessment

Discuss the findings of potential environmental effects of the prohibited activities and the project as determined by their likely magnitude, geographic extent, frequency and duration over time, and the degree to which the effects may be reversible. Provide the scope and nature of the likely effects on the environment (positive or negative). Elaborate on the need for mitigation to reduce or eliminate the adverse effects or opportunities for enhancement. Discuss the likely importance of any adverse effects, taking mitigation into account.

Rationale in support of exemption

Provide the rationale in support of the issuance of an exemption to the application of the prohibitions under sections 21, 22 (1) or 23 (1) of the CNWA. The rationale should support the proponent's business case and provide an overall argument that allowing prohibited activities in the waters in question would be in the public interest. The rationale should discuss how the following factors apply to the proposed project and how any impact may be mitigated or addressed.

- Public security: any potential impacts on public security.
- Social and cultural: any potential impacts or implications for people's way of life, culture, community, political systems, well-being, personal and property rights.
- Health and public safety: any potential impacts on human, animal or plant health or safety.
- Economy: any potential impact or implications for business, consumers and jobs including impacts on affected sectors of the local and regional economies.
- Other relevant public interest impacts

Applicants may also discuss other relevant public impact areas not previously covered, including costs or savings to government, industry, consumers and Canadians as a result of the project; legal, policy or other related impacts.

What to expect once you have submitted all documents

Once all documentation has been submitted to NPP, you can expect the following steps to occur:

- TC will assess the application to ensure the completeness of the provided documentation, and complete additional consultations as required.
- TC will then complete a navigation impact assessment.
- TC will determine if there is Duty to Consult and Accommodate with Indigenous communities impacted by the prohibited activities.
- TC will then prepare a submission to seek approval of the exemption from Cabinet.
- Once the submission is approved, the Order in Council will be published in the *Canada Gazette, Part II* and the proponent will be notified of the decision.

If you still aren't sure of your specific requirements or application for exemption process, contact the [NPP office](#) in your region.