

Hi Bob – as requested.

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From: Ripley, Carl

Sent: Tuesday, October 10, 2017 3:25 PM

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Subject: RE: Bilcon

Hi folks. The document attached is the navigational impact determination of the fish habitat compensation component of the project only. (it was determined that the proposed compensation project would not substantially interfere with navigation and that it did not require an authorization)

It is not an approval pursuant to the Navigable Waters Protection Act. (version in force at that time) – it was considered an *exemption*.

Version of Navigable Waters Protection Act from 2004-05-11 to 2009-03-11:

Construction of works in navigable waters

- *5 (1) No work shall be built or placed in, on, over, under, through or across any navigable water unless*
 - *(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;*
 - *(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*
 - *(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).*
- *Marginal note:Exceptions*

(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.

Furthermore, pursuant to the Law List Regulations of CEAA (version in effect at that time), a decision made under 5(2) of the NWPA was not a listed provision of an act that conferred a power, duty or function on federal authorities. (an environmental assessment was not required prior to making an NWPA 5(2) determination/decision) The only sections of the NWPA that required an EA to be completed in advance of making a decision were: 5(1)(a), 6(4), 16 and 20.

Law List Regulations

SCHEDULE I (Section 2)

Provisions of Acts and Regulations That Confer Powers, Duties or Functions on Federal Authorities

PART I

Provisions of Acts...

Navigable Waters Protection Act

- *(a) paragraph 5(1)(a)*
- *(b) subsection 6(4)*
- *(c) section 16*
- *(d) section 20*

There were two RA's on the EA for the project: DFO – for the Fisheries Act and TC for the potential NWPA 5(1)(a) for the marine terminal component of the project.

Hopefully this clarifies. Do not hesitate to contact me if additional information is required or if you wish to discuss further.

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Carl Ripley

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