



Canada's
Track Record on
Environmental Laws
2011-2015





Introduction

Canada is rich in nature. From coast to coast to coast, we depend on the environment for our water, air, livelihoods and ways of life. But without a strong suite of environmental laws, we leave ourselves vulnerable to the escalating impacts of climate change, irresponsible resource development and the erosion of democracy

Our analysis of relevant Canadian federal legislative changes over the past four years reveals a systemic dismantling of Canada's environmental laws. In particular, since 2012 the federal government has weakened or repealed many of Canada's oldest and most important environmental laws at industry's request, putting Canada's environment, communities and democracy at risk.

This report summarizes some of the key changes to federal environmental laws from 2012-2015 and explains how the impacts of those changes are being felt on the ground. Further background may be found at envirolawsmatter.ca.

For decades, Canadians have depended on the federal government to safeguard their families and environment from environmental harms.

Front cover: An increased risk of oil spills is one effect of the weakening of Canada's environmental laws since 2011.



Background: A gift to industry

The record suggests that industry lobbied hard for removing environmental protections that it believed were impeding business. Many industry associations called for a weakening of fish habitat protections and the removal of protections of non-fisheries fish.¹ Not satisfied with a law-by-law examination of what was and wasn't working, a letter obtained through Access to Information requests² indicates that petroleum and mining groups then asked for a complete regulatory "overhaul," complaining that environmental "red tape" was getting in the way of profits.

In response, in 2012 the government rapidly passed hundreds of pages of legal changes through the so-called "budget" Bills C-38 and C-45, repealing or amending most of Canada's federal environmental laws in two critical blows. From 2012-2015 it continued altering laws governing environmental assessments and the protection of wild fish species at risk and Canada's waterways, in order to streamline approval processes for risky or controversial industrial activities.

Fewer and weaker environmental reviews puts aquatic species at risk of oil spills and other environmental harms.



Summary of Key Environmental Law Changes

Since 2011 the federal government:

- Replaced the *Canadian Environmental Assessment Act* with the weaker CEAA 2012, which scrapped over 3,000 environmental reviews, limits what gets considered in assessments and restricts the public's right to participate.
- Guttled the *Fisheries Act* by weakening fish habitat protection, removing protection over some fish species and broadening government's powers to allow harm to fish and fish habitat.
- Handed environmental oversight of major energy and pipeline projects to the National Energy Board.
- Changed the *Navigable Waters Protection Act* to the *Navigation Protection Act*, lifting legal protection of over 99% of Canada's lakes and rivers.
- Repealed the *Kyoto Protocol Implementation Act*, Canada's only law requiring mandatory greenhouse gas emissions reductions targets.
- Amended the *Species at Risk Act* by removing mandatory time limits on permits allowing impacts to threatened and endangered species.
- Tabled regulations to allow fish farms to dump aquatic drugs and pesticides into wild fish habitat without needing permits.
- Weakened environmental protection and public oversight of projects on federal port lands under the *Canada Marine Act*.

Climate change is a major threat to polar bears, highlighting the need for strong laws to reduce Canada's greenhouse gas emissions.



Impacts

The rollbacks put Canadians' health, their environment, their livelihoods and their communities at risk. Here's how.

Open and fair decision-making

Democracy, transparency and accountability in environmental decision-making have been rapidly eroded. In an effort to "streamline" regulatory approvals for companies, the federal government has removed many environmental assessment and permitting requirements. Now, the public has significantly fewer opportunities to have a say in whether, how and where activities take place in their communities, and decision-makers have less information about environmental impacts.

With the 2012 omnibus bill C-38, the federal government replaced the *Canadian Environmental Assessment Act* with the much weaker CEAA 2012, undoing years of work to ensure decisions that might impact the environment were made responsibly, based on the best available information, and with public input. As a result:

- **Approximately 90% of projects that used to undergo a federal environmental assessment no longer need one.** It used to be the case that any project that involved the federal government—whether it required a federal permit, occurred on federal lands, received federal funding or was proposed by the federal government—triggered an environmental review. Now, only projects listed in regulations are designated for review. When the new law passed, over 3,000 environmental assessments across the country were scrapped.

Among other things, environmental assessments help assess the cumulative impacts of multiple projects over time on species and their habitat.



- **The public has been shut out of environmental decision-making.** Under the old law, any member of the public could participate in an environmental assessment. *CEAA 2012* limits that right to “interested parties,” which it defines as a person who is “directly affected” by the project or has “relevant information or expertise.” It is up to the body responsible for conducting the environmental assessment to decide who is “directly affected,” leading to much inconsistency and uncertainty. To participate in an assessment of a pipeline or other project for which the National Energy Board is the reviewing body, for example, you have to fill out an application that is upwards of ten pages³ and full of technical and daunting information. The new rules effectively silence many interested individuals from government processes.⁴
- **Public confidence in the impartiality and independence of reviews is diminishing.** *CEAA 2012* hands the National Energy Board (NEB) responsibility for assessing energy and infrastructure projects, a job formerly done by the Canadian Environmental Assessment Agency—an independent body with special expertise and experience in conducting environmental assessments. The NEB is an agency with strong ties to the oil and gas industry and a goal of ensuring that “Canadians benefit from efficient energy infrastructure and markets.”⁵ Recent experience with NEB reviews of oil pipeline and tankers projects like Enbridge’s Line 9B Reversal and Line 9 Capacity Expansion Project or the Kinder Morgan Trans Mountain tankers and pipelines expansion project suggests that the NEB may not have the independence, expertise or mandate to ensure that the best interests of Canadians—or the environment—are met. Indeed, Robyn Allan, former President and CEO of the Insurance Corporation of British Columbia and intervenor in two environmental assessments of major oil tankers and pipeline proposals in British Columbia, withdrew as an intervenor in the NEB assessment of Kinder Morgan’s proposed Trans Mountain project, calling the process rigged, the system broken and the playing field uneven. TransCanada’s proposed Energy East project is similarly undergoing an NEB-led assessment.⁶

Traditional and community knowledge help identify and avoid potential harms when reviewing project proposals.



Lives and livelihoods

Many of the federal environmental law rollbacks put Canadians' health and livelihoods at risk. For example, over 80,000 people are employed in Canada's commercial fishing industry,⁷ and in 2010, recreational fishing contributed \$8.3 billion to local economies.⁸ Reduced legal protection of fish and fish habitat under the *Fisheries Act* and the lifting of legal protection from over 99% of Canada's lakes and rivers puts these jobs and economies in peril.

But it's not only fishing industries affected by the changes. One important function of environmental assessments should be to ask the question, "How will this project affect the diversity and number of jobs in the region?" Not all jobs are equal, nor will they all last the same number of years or be suited to everybody. Many projects purport to bring a large number of jobs to a region, only to have it surface in an environmental assessment that many of those jobs would go to those from outside the region and that existing local jobs would be lost due to the project's impacts. Boom and bust cycles can devastate communities, and environmental assessments are one important way a leading means of avoiding them. The new *CEAA 2012* scrapped thousands of environmental assessments and restricts when socio-economic impacts will get considered, meaning true impacts on livelihoods and communities can be ignored.

Diverse and sustainable local economies rely on strong environmental legal protection.



Healthy Waters

The vast majority of Canada's lakes and rivers lost important legal protection in 2012. Reductions in fish and fish habitat protections further puts those waterways at risk, as did the elimination of environmental assessments of a wide range of projects and activities.

With Bill C-45, the federal government changed the *Navigable Waters Protection Act*, which had provided protection for both navigation and Canada's waterways since 1882, to the *Navigation Protection Act*, lifting legal protection from over 99% of Canada's tens of thousands of lakes and rivers.

Amendments to the *Fisheries Act* reduced protection of fish habitat and eliminated protection of fish that do not belong to or support a fishery. As a result, more activities are occurring in riparian areas without the oversight of Fisheries and Oceans Canada, requirements to avoid potential impacts, or monitoring of actual harms that are occurring.

Waters are also made vulnerable by the significant reduction in environmental assessments by the federal government. Since it replaced the *Canadian Environmental Assessment Act* with *CEAA 2012*, the federal government has stopped assessing the potential environmental impacts of approximately 90% of the activities for which it grants permits. Considered the "look before you leap" of environmental permitting, environmental assessments are a crucial means of identifying the potential adverse effects of development and how to mitigate or avoid those impacts. For example, a federal environmental assessment stopped Taseko Mines from using BC's Fish Lake as a tailings pond,⁹ and a subsequent federal review protected the lake a second time,¹⁰ when a BC review gave the proposal a green light.¹¹

In 2012, over 99% of Canada's lakes and rivers lost important legal protection.



Fish and wildlife

Fish may be the biggest losers in federal environmental law rollbacks. Bills C-38 and C-45 gutted the *Fisheries Act*, one of Canada's oldest and—until then—strongest environmental laws.

Scientists agree that the most effective way to protect fish populations is to protect fish habitat. Shredding Canada's environmental safety net put the health and abundance of Canada's fish seriously at risk by:

- **Eliminating protection** of any fish that are not part of or support a commercial, recreational or Aboriginal fishery.
- **Reducing protection** from "harm" to "serious harm." Before 2012, anything that harmfully altered, damaged or destroyed fish habitat was prohibited. Now, something must actually kill fish, or *permanently* alter or destroy its habitat, to be caught by the law.
- **Lessening protection for at-risk fish.** Scientists estimate that the changes have removed protection of approximately 80% of Canada's freshwater fish¹² that are at risk of extinction.
- **Expanding government's power to permit harm** by giving it broad powers to exempt entire fish species or waters from protection, or industries and activities from the prohibitions.
- **Offloading responsibility** onto the provinces and private interests, which may not have the laws or desire to ensure the safety of wild fish.
- **Removing legislative protection** of 99% of Canada's lakes and rivers.
- **Giving blanket-authorization to fish farms to dump aquatic drugs and pesticides into wild salmon habitat.**



Changes to the Fisheries Act removed legal protection over non-fisheries fish.

A climate-safe future

In a year of drought and unprecedented numbers of forest fires, Canadians en masse are being asked to face the reality of climate change. But in 2012, the federal government repealed the *Kyoto Protocol Implementation Act*, the only piece of Canadian legislation which set mandatory targets for reducing greenhouse gasses or required monitoring of progress in achieving those reductions. As a result, Canada has the dubious distinction of being one of very few countries without “flagship climate change legislation.”¹³

One of the top ten carbon emitters in the world,¹⁴ in 2013, Canada’s GHG emissions were 726 megatonnes (Mt) of carbon dioxide equivalent,¹⁵ 18% above its 1990 levels. Growth occurred primarily in the fossil fuel industry (who asked for the environmental law rollbacks of 2012) and transport.

Canadians are already experiencing losses as a result of climate change. For example, BC communities have suffered economic devastation by the Mountain Pine Beetle,¹⁶ whereas flooding has put Albertans on the hook for billions.¹⁷

And while Canada is only responsible for a fraction of global GHG emissions, that fraction is having a real cost worldwide. As West Coast Environmental Law lawyer Andrew Gage writes:¹⁸

Canada’s greenhouse gas emissions from the industrial revolution to present are about 2.2% of global emissions, and mix with the emissions from other countries, causing climate damages in communities around the world. If we focus on climate change impacts (400,000 deaths and US\$700 Billion), Canada’s GHG emissions can be said to be responsible for **8,800 deaths and \$15.4 Billion in damages each year.***

Our children, and our children’s children, deserve a climate-safe future. Now—not in twenty years—is the time to build that future.

Increased uncertainty

While industry asked for the environmental law changes, in many cases they have had unintended consequences. In the legal work of our organizations, we have observed that, in fact, ambiguous terms, weaker protections, restrictions on democratic processes and a flurry of court cases brought by First Nations and citizens asserting their rights¹⁹ have created uncertainty and delay for all.

Visit www.envirolawsmatter.ca to learn more.

Who we are

This report has been released by leading public interest environmental law organizations from across Canada who track and analyze trends in federal environmental law. It was authored by Anna Johnston, Staff Counsel, West Coast Environmental Law Association.



Endorsed by East Coast Environmental Law

1 High Park Group: Industry-Identified Challenges with the Application of the Habitat Provisions of the Fisheries Act (November 2010), online: [https://d3n8a8pro7vhmx.cloudfront.net/envirolawmatter/pages/267/attachments/original/1440804135/Fish_habitats_Gloria_Galloway_\(Part_2_-_Industry\).pdf?1440804135](https://d3n8a8pro7vhmx.cloudfront.net/envirolawmatter/pages/267/attachments/original/1440804135/Fish_habitats_Gloria_Galloway_(Part_2_-_Industry).pdf?1440804135).

2 Energy Framework Initiative, Letter to Minister of Environment Peter Kent and Minister of Natural Resources Joe Oliver (December 2011), online: https://d3n8a8pro7vhmx.cloudfront.net/envirolawmatter/pages/258/attachments/original/1440804576/ATIP_Industry_letter_on_enviro_regs_to_Oliver_and_Kent.pdf?1440804576.

3 West Coast Environmental Law, Blog: "NEB should abandon undemocratic limits on public comment" (10 April 2013), online: <http://wcel.org/resources/environmental-law-alert/neb-should-abandon-undemocratic-limits-public-comment>.

4 West Coast Environmental Law, Blog: "Who is silenced under Canada's new environmental assessment act?" (27 April 2012), online: <http://wcel.org/resources/environmental-law-alert/who-silenced-under-canada%E2%80%99s-new-environmental-assessment-act>.

5 National Energy Board, Strategic Plan, online: <https://www.neb-one.gc.ca/bts/whwr/gvmnc/strtgcpnl-eng.pdf>.

6 Robyn Allan, Letter to National Energy Board (19 May 2015), online: https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fe tch/2000/90464/90552/548311/956726/2392873/2449925/2451015/2776410/C9-31-1_-_Withdrawal_Letter_-_A4L356.pdf?nodeid=2776227&vernum=-2.

7 Fisheries and Oceans Canada, "Fisheries and the Canadian Economy," website (accessed 6 September 2015): <http://www.dfo-mpo.gc.ca/stats/cfs-spc/tab/cfs-spc-tab2-eng.htm>.

8 Fisheries and Oceans Canada, Survey of Recreational Fishing in Canada 2010 (2012) at 1, online: http://www.dfo-mpo.gc.ca/stats/rec/can/2010/RECFISH2010_ENG.pdf.

9 West Coast Environmental Law, Blog: "The New Prosperity proposal raises a bottomless pit of questions" (30 September 2011), online: <http://wcel.org/resources/environmental-law-alert/new-prosperity-proposal-raises-bottomless-pit-questions>.

10 West Coast Environmental Law, Blog: "Taseko Mines, what part of "No" don't you understand?" (31 March 2014), online: <http://wcel.org/resources/environmental-law-alert/taseko-mines-what-part-no-dont-you-understand>.

11 West Coast Environmental Law, Blog: "Prosperity Redux: a disappointing decision for the environment, First Nations and the EA process" (7 November 2011), online: <http://wcel.org/resources/environmental-law-alert/prosperity-redux-disappointing-decision-environment-first-nations->

12 Jeffrey A. Hutchings and John R. Post, "Gutting Canada's Fisheries Act: No Fishery, No Fish Habitat Protection," 2013 Fisheries 38:11 497 at 498, online: http://myweb.dal.ca/jhutch/publications_pdfs/2013_hut_post_fish.pdf.

13 West Coast Environmental Law, Blog: "Vast majority of countries moving to address climate change – but not Canada" (23 January 2013), online: <http://wcel.org/resources/environmental-law-alert/vast-majority-countries-moving-address-climate-change-not-canada>.

14 Wikipedia, "List of countries by carbon dioxide emissions," online: https://en.wikipedia.org/wiki/List_of_countries_by_carbon_dioxide_emissions#List_of_countries_by_2013_emissions_estimates.

15 Environment Canada, "National Greenhouse Gas Emissions," website (accessed 6 September 2015): <http://www.ec.gc.ca/indicateurs-indicators/default.asp?lang=en&n=FBF8455E-1>.

16 West Coast Environmental Law, Blog: "Should Chevron pay for the Mountain Pine Beetle Epidemic?" (22 May 2014), online: <http://wcel.org/resources/environmental-law-alert/should-chevron-pay-mountain-pine-beetle-epidemic>.

17 West Coast Environmental Law, Blog: "Albertans, not Exxon Mobil, are paying the price for carbon" (4 July 2013), online: <http://wcel.org/resources/environmental-law-alert/albertans-not-exxon-mobil-are-paying-price-carbon>.

18 West Coast Environmental Law, Blog: "Canada's GHG emissions cost the world 8,800 lives and \$15.4 Billion every year" (1 June 2015), online: <http://wcel.org/resources/environmental-law-alert/canada%E2%80%99s-ghg-emissions-cost-world-8800-lives-and-154-billion-every>.

19 Mark Hume, "Flurry of BC court battles threaten to drive away investment," Globe and Mail (22 November 2014), online: <http://www.theglobeandmail.com/news/british-columbia/flurry-of-bc-court-battles-threatens-to-drive-away-investment/article21717760/>.