



# ecojustice

## **Analysis**

### **What Bill C-38 means for the environment**

The 2012 budget bill (Bill C-38) will weaken Canada's most important environmental laws and silence Canadians who want to defend them. Instead of using the usual process for sweeping changes, which allows for thorough debate, these changes are being shoehorned into a 452-page budget bill.

The changes amount to:

- weakened protection for fish and species at risk;
- an entirely new — and less comprehensive — environmental assessment law;
- broad decision making powers for Cabinet and Ministers; and
- less accountability and fewer opportunities for public participation.

What follows is a list of the **TOP 10** items of environmental concern in the budget bill.

1. **Changes to the *Fisheries Act* mean that the law may no longer protect *all* fish and the waters where they live.**

The new protection framework could exclude many fish and watercourses. Generally, habitat protection will only include permanent alteration or destruction of “commercial, recreational or aboriginal fisher(ies)” habitat and some activities will be exempt from the law regardless of how much damage they cause. The federal government will also be able to hand over the power to authorize destruction of fish habitat to provincial governments or other entities, which is worrisome.

2. **No maximum time limits on permits allowing impacts on species at risk.**

This means that there will no longer be any guaranteed review to evaluate ongoing impacts to endangered species. These potential ‘perpetual’ permits could continue even where there is a drastic decline in the population of a species affected by the permitted activity.

3. **The National Energy Board (NEB) will be exempted from species at risk protections.**

The NEB will no longer have to ensure that measures have been taken to minimize impacts on the critical habitat of at-risk species before the NEB approves a pipeline or other major infrastructure. For example, there is no guarantee that an environmental assessment will consider the impacts of a proposed pipeline project and related oil tanker traffic on the habitat of endangered orca whales before the NEB issues a certificate approving that pipeline.

4. **The *Canadian Environmental Assessment Act* is being replaced with a new Act that will significantly narrow the number of projects that will be assessed for their environmental, social and economic impacts.**  
Assessments, when they happen, will be less rigorous and subject to time limits that will place further constraints on public and First Nations' participation. The new Act will apply only to "designated projects," but we don't yet know what those will be. The new Act gives the Environment Minister and government officials broad decision-making power: The Canadian Environmental Assessment Agency would be able to exempt a designated project from even going through the assessment process.
5. **The federal government is offloading responsibilities to the provinces.**  
This is troubling because the patchwork of environmental laws and policies at the provincial level leave doubt as to whether they can act as a sufficient or legally defensible substitute for federal oversight. Prime examples of this offloading include shifting responsibility for implementation or enforcement of the *Fisheries Act* to provinces and eliminating many federal environmental assessments.
6. **Cabinet is now granted authority to override a "no" decision of the National Energy Board.**  
This may allow politics of the day to trump an independent, objective process and undermine the NEB's expertise.
7. **No more joint review panels.**  
Where a major energy project will be subject to an NEB hearing, a Canadian Environmental Assessment Agency-enabled review panel is prohibited, so there will be no more joint review panels. Thus, the environmental implications of major energy projects will now be evaluated only by the energy regulator.
8. **Broad decision-making powers are being shifted from the public realm and given to Cabinet and individual Ministers.**  
This means decisions related to fish habitat protection and environmental assessments will be allowed to be made behind closed doors with minimal public scrutiny.
9. **Significant narrowing of public engagement in resource review panel hearings, particularly for major oil projects, pipelines and mines.**  
In order to participate, people will have to prove they will be directly affected or have relevant information or expertise. In some cases, their contributions may still be ignored.
10. **Repeal of two important environmental laws.**  
The repeal of the *Kyoto Protocol Implementation Act*, means no more domestic accountability measures on climate change and the repeal of the *National Round Table on Environment and Economy Act* will phase out this valuable advisory body completely.