



Guidance Documents: Key Legislation for Consenting in Canada

The guidance documents are intended to be available for regulators and advisors as they carry out their decision-making and for developers and their consultants as they prepare consenting and licensing applications. This country-specific document presents an overview of key consenting requirements relevant for marine renewable energy development in Canada from pre-application, through to application and post-consent and is intended mainly for developers and consultants.¹ It is not intended to replace any formal guidance or prescribed action, but rather provide a starting point for understanding the key requirements of the regulatory framework.

Canada regulatory context

As is the case in many other countries, marine renewable energy (MRE) projects in Canada are subject to a range of federal, provincial, and local agencies that have at times overlapping jurisdiction (Tables 1 and 2). Given that there are several ocean adjacent provinces and territories with disparate approaches to the regulation of MRE projects, this document focuses on the federal requirements for projects not occurring within federally or provincially protected areas. While the federal government is generally seen as having jurisdiction of the Canadian marine space from the low water line to the extent of the exclusive economic zone (EEZ), this is not actually the case. For example, the province of British Columbia (BC) had its jurisdiction of the marine space from the high water mark to the extent of all inland seas and between the jaws of the land confirmed by the Supreme Court of Canada in 1984.² Therefore, tidal stream energy projects in BC are likely to be exclusively located in provincial waters, ocean current energy projects in the territorial sea or EEZ, and wave energy projects may be located in waters falling under provincial or federal Crown land. In other provinces, such as Nova Scotia and Newfoundland and Labrador, joint management frameworks between the federal and provincial government are being established.³

For all areas of the Canadian marine space, whether falling within federal, provincial, or local jurisdiction, there are Indigenous rights-based uses and title arising from established treaties or claims to the marine space existing since time immemorial, affirmed within the Canada's Constitution Act of 1982.⁴ Engagement with Indigenous communities and governments whose treaty or traditional territory a project falls within is paramount to the development of MRE projects and is a legislated component and requirement of agencies to meaningfully engage with and consult Indigenous communities; regulatory agencies have a 'duty to consult' with Indigenous communities about the MRE projects.

¹ This country-specific document should be read in conjunction with the background guidance document, which can be found on *Tethys*: <https://tethys.pnnl.gov/guidance-documents>.

² Reference re: Ownership of the Bed of the Strait of Georgia and Related Areas, 1984, 1 SCR 388 at 2.

<https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/5267/index.do>

³ Joint federal-provincial management of offshore renewable energy (MRE, offshore wind energy, offshore solar, and marine biomass) is being proposed under Bill C-49, which is currently under review in the Senate. This guidance should be reviewed if/when Bill C-49 receives Royal Assent and is brought into force along with its mirror provincial legislation in Nova Scotia, and Newfoundland and Labrador.

⁴ *Constitution Act*, 1982, s 35, being Schedule B to the Canada Act 1982 (UK), 1982, c 11 at s 35(1).

<https://www.canlii.org/en/ca/laws/stat/schedule-b-to-the-canada-act-1982-uk-1982-c-11/latest/schedule-b-to-the-canada-act-1982-uk-1982-c-11.html>

**Table 1.** Regulatory jurisdictions for the marine space in Canada.

Designation	Location	Agencies with jurisdiction
Foreshore	High water mark to low water mark	Provincial agencies, Indigenous governments, and local governments.
Inland waters	Shoreward of the mean low water line. *Provincial example: Based on the Strait of Georgia Reference Decision, British Columbia has jurisdiction of the Strait of Juan de Fuca, the Strait of Georgia, Johnstone Strait, and Queen Charlotte Strait along with the waters and submerged lands between major headlands (i.e., bays, estuaries, and fjords).	Provincial agencies, Indigenous governments, and local governments (limited). Some federal agencies have jurisdiction over inland waters.
Territorial sea	Low tide mark to 12 nautical miles *Excluding areas considered to be inland waters	Federal agencies.
Exclusive economic zone	12 to 200 nautical miles	Federal agencies.

Table 2. Federal and provincial agencies with jurisdiction over licensing/authorization for marine renewable energy (MRE) projects.

Agency	Relevant Statute	Implementation
Canada Energy Regulator	Canadian Energy Regulator Act 2019 ⁵ – Canadian Offshore Renewable Energy Regulations 2024	Ensure offshore renewable energy projects are constructed, operated, and concluded in a manner that is safe, secure, and efficient and that protects people, property, and the environment. Any work or activity related to an MRE project in an offshore area under federal jurisdiction will require authorizations. Approach is centered on a mixture of management-based and outcome-based regulations covering authorizations for Site Assessment, Construction and Operations, and Decommissioning and abandonment.
Transport Canada	Canadian Navigable Waters Act 1985 ⁶ Canada Shipping Act 2001 ⁷ (private buoy regulations)	Management of all obstructions to navigational waters arising from a proposed MRE project within the territorial sea or inland waters such that waters remain open for transport, recreation, and

⁵ *Canadian Energy Regulator Act*, SC 2019, c 28, s 10. <https://laws-lois.justice.gc.ca/eng/acts/C-15.1/>

⁶ *Canadian Navigable Waters Act*, RSC 1985, c N-22. <https://lois-laws.justice.gc.ca/eng/acts/N-22/>

⁷ *Canada Shipping Act*, 2001, S.C. 2001, c. 26. <https://laws-lois.justice.gc.ca/eng/acts/c-10.15/>



		<p>Indigenous uses. Projects require a Navigation Protection Program Approval.⁸</p> <p>Transport Canada also provides the requirements for private marking buoys (i.e., those that may be required to delineate MRE devices or projects).</p>
Department of Fisheries and Oceans Canada	<p>Fisheries Act 1985⁹</p> <p>Species at Risk Act 2002¹⁰</p>	<p>Ensure MRE projects will not destroy fish and other marine species or result in harmful alteration, disruption, or destruction to fish habitat unless authorized.¹¹</p> <p>Ensure MRE projects will not adversely affect, harm, or kill designated Species at Risk or damage or destroy their habitat.¹²</p>
Public Services and Procurement Canada	Federal Real Property and Federal Immoveable Act 1991 ¹³	Administers the process to issue project authorizations to use federal Crown seabed lands in Canada. This process has not yet been used for MRE projects and its implementation for MRE is not entirely clear at this time, both in terms of process and expected timelines.

Species and/or populations at risk

Potential effects to marine species and/or populations at risk within the marine environment are regulated by the Department of Fisheries and Oceans Canada (DFO) (Table 3).

Table 3. Regulations related to species and/or populations at risk.

Agency	Relevant Statute	Implementation
Department of Fisheries and Oceans Canada	Species at Risk Act 2002	Identifies species considered at risk and categorizes them as threatened, endangered, extirpated, or of special concern. The Act prohibits killing or harming these species as well as the destruction of their identified critical habitat on all federal, provincial, public, or private land. The Act has stipulations that allow works to be conducted in cases which species or their habitat would be impacted known as a Species at Risk Act Permit (see ¹¹).
Department of Fisheries and Oceans Canada	Fisheries Act 1985	Ensure MRE projects will not destroy fish by protecting against the death of fish, other than by fishing unless authorized by the DFO. Activities that

⁸ <https://tc.canada.ca/en/programs/navigation-protection-program/apply-npp>

⁹ *Fisheries Act*, R.S.C. 1985, c. F-14. <https://laws-lois.justice.gc.ca/eng/acts/f-14/>

¹⁰ *Species at Risk Act*, S.C. 2002, c. 29. <https://laws.justice.gc.ca/eng/acts/s-15.3/>

¹¹ <https://www.dfo-mpo.gc.ca/pnw-ppe/reviews-revues/applicants-guide-candidats-eng.html>

¹² <https://www.dfo-mpo.gc.ca/species-especes/sara-lep/permits-permis/index-eng.html>

¹³ *Federal Real Property and Federal Immovables Act*, S.C. 1991, c. 50. <https://laws.justice.gc.ca/eng/acts/f-8.4/>



		will result in death to fish must be approved by the DFO before any work commences via a Fisheries Act Authorization and/or Works Near Water permit (see ¹⁰).
Environment and Climate Change Canada	Migratory Birds Convention Act 1994 ¹⁴	Protection for migratory bird species. Consultation with Environment and Climate Change Canada on potential project related requirements under the Act.

Habitat alteration or loss

Potential effects to habitat arising from MRE projects in the marine space are regulated by the DFO (Table 4).

Table 4. Regulations related to habitat alteration or loss.

Agency	Relevant Statute	Implementation
Department of Fisheries and Oceans Canada	Fisheries Act 1985	Ensure MRE projects will not result in harmful alteration, disruption, or destruction to fish habitat unless authorized by the DFO. Activities that will result in the harmful alteration, disruption, or destruction of fish habitat must be approved by the DFO before any work commences via a Fisheries Act Authorization and/or Works Near Water permit (see ¹⁰).

Effects on water quality

Potential effects to water quality are regulated by the DFO (Table 5).

Table 5. Regulations related to effects on water quality.

Agency	Relevant Statute	Implementation
Department of Fisheries and Oceans Canada	Fisheries Act 1985	The Fisheries Act prohibits depositing of any type of deleterious substance in water frequented by fish without a permit or under a regulation. “Deleterious substance” is defined in the Act to include any substance that would degrade, alter, or contribute to the degradation or alteration of the quality of water.

¹⁴ *Migratory Birds Convention Act*, 1994, S.C. 1994, c. 22. <https://laws.justice.gc.ca/eng/acts/M-7.01/>



Effects on social and economic systems

Potential social and economic effects can be regulated by a variety of federal and provincial agencies (Table 6).

Table 6. Regulations related to effects on social and economic systems.

Agency	Relevant Statute	Implementation
Impact Assessment Agency of Canada	Impact Assessment Act 2019 ¹⁵	The Act provides for a process for assessing the environmental, health, social, and economic effects of designated projects with the goal of preventing certain adverse effects and fostering sustainability. The process includes public and Indigenous engagement. Designated projects required to follow this process as related to MRE are tidal stream projects greater than 15 MW of nameplate capacity and any tidal barrage projects. The Minister of Environment and Climate Change Canada may also designate projects that do not trigger an assessment under the current designation of projects via the Physical Activities Regulations. ¹⁶ There are no project thresholds for wave energy at this time.
Canada Energy Regulator	Canadian Energy Regulator Act 2019 – Canadian Offshore Renewable Energy Regulations 2024	Successful obtainment of the authorizations detailed in Table 2 require the investigation and detailing of any potential impacts to social and economic systems associated with project activities.

Additional Information

Marine Spatial Planning

Federally mandated marine spatial planning (MSP) has been underway for some time under the Oceans Act.¹⁷

- Through the Oceans Act, nationwide MSP for five areas (Southern BC, Pacific North Coast, Newfoundland and Labrador Shelves, Estuary and Gulf of St. Lawrence, and Scotian Shelf and Bay of Fundy) is underway and is overseen by the DFO¹⁸. These plans will describe economic, ecological, cultural, and social objectives including identifying potential areas for development and marine activities. The federal government is working with provincial, territorial, and Indigenous partners to develop and implement these plans.
- The Marine Plan Partnership for the North Pacific Coast (MaPP)¹⁹ was created in response to an earlier retraction in the level of engagement and scope for the Pacific North Coast Integrated

¹⁵ *Impact Assessment Act*, S.C. 2019, c. 28, s. 1. <https://laws.justice.gc.ca/eng/acts/i-2.75/index.html>

¹⁶ <https://laws.justice.gc.ca/eng/regulations/SOR-2019-285/page-2.html#docCont>

¹⁷ *Oceans Act*, S.C. 1996, c. 31. <https://laws-lois.justice.gc.ca/eng/acts/o-2.4/>

¹⁸ <https://www.dfo-mpo.gc.ca/oceans/planning-planification/about-au-sujet-eng.html#msp>

¹⁹ <https://mapocean.org/>



Management Area by the federal government. MaPP covers around two thirds of the BC coast as was jointly developed by coastal First Nations and the provincial government through the former BC Ministry of Forests, Lands, Natural Resource Operations and Rural Development (powers and mandates now fall largely to BC Ministry of Water, Land and Resource Stewardship) and includes delineation of areas in which MRE might be a suitable use, most specifically within Special Management Zones.

- A marine conservation network plan has been developed for the Scotian Shelf-Bay of Fundy Bioregion, which serves as part of MSP in the region.²⁰

Adaptive Management

- Federal MSP takes an ecosystem-based management approach and is described as “MSP is a cyclical and evolving process that should be monitored, evaluated, and adapted over time.”²¹

Consistency Between Jurisdictions

- The regulation of MRE in Canada, has had at times, limited consistency between federal and provincial jurisdictions or what can be viewed as a disparate approach to regulation. The decision-making priority between agencies is not clear in terms of which agency should be leading processes and which agency or legislative instrument ultimately has the final say in project decisions. That is to say, agencies may wait for the decision of other relevant federal and provincial agencies before proceeding with issuing an authorization, approval, license, or permit. This is being addressed through several avenues.²²

²⁰ <https://www.dfo-mpo.gc.ca/oceans/networks-reseaux/scotian-shelf-plateau-neo-ecossais-bay-baie-fundy/sites-eng.html>

²¹ <https://publications.gc.ca/site/eng/9.932258/publication.html>

²² <https://www.canada.ca/en/privy-council/news/2024/02/chair-of-ministerial-working-group-on-regulatory-efficiency-for-clean-growth-projects-issues-statement.html>, <https://www.dfo-mpo.gc.ca/pnw-ppe/ffhpp-ppph/publications/fundy-tidal-final-report-baie-fundy-marees-rapport-final-eng.html>, and https://www.dfo-mpo.gc.ca/about-notre-sujet/blue-economy-economie-bleue/roadmap-feuille-route-eng.html#_06