



## EXECUTIVE SUMMARY

# UNDERSTANDING PORT JURISDICTION IN CANADIAN LAW

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## BACKGROUND

Ports are an essential part of Canada's maritime industry and the global supply chain. They provide the space and facilities needed for the import and export of cargo, provide an entry point for local tourism and provide vessel services such as refuelling and waste removal. Of the more than 550 port facilities in Canada, 17 are designated Canadian Port Authorities (CPA) under the *Canada Marine Act* (CMA) and handle around 60 per cent of Canada's commercial cargo tonnage. In 2020 alone, CPAs moved 340 million tonnes of cargo in and out of Canada.

## LEGAL FRAMEWORK

CPAs are governed by a complex legal regime, and many of their activities are subject to multiple jurisdictional layers, including international, federal, provincial, municipal and aspects of Aboriginal and Indigenous law. To help make sense of this legal environment, WWF-Canada commissioned a legal review, *Understanding Port Jurisdiction in Canadian Law*. This report compiles and explains these interfacing jurisdictions and discusses governance structures, processes, functions and regulatory powers with a focus on climate change mitigation and the protection and preservation of the marine environment.

## KEY FINDINGS

CPAs operate at arm's length from the federal government, functioning as Crown agents in performing traditional activities related to shipping, navigation, carriage and handling of goods, and passenger transportation. However, when undertaking other necessary commercial duties, such as those that generate revenue for the port, they function as commercial entities on their own behalf. A port's incorporating document, called Letters Patent, outlines which federal lands under the port's jurisdiction are to be allocated for its Crown agent duties, and which other property, such as provincial or private land, is to be used to support port operations.

CPAs are awarded certain powers under the CMA to promote safe and efficient navigation and environmental protection within their jurisdictional waters. These powers include monitoring ships in or entering port waters, establishing vessel practices and procedures, requiring ships to use specified radio frequencies, and establishing traffic control zones, which must be consistent with national standards and practices established under the *Canada Shipping Act, 2001*.

## ENVIRONMENTAL PROTECTION

CPAs have the discretion to use these powers granted by the CMA to help prevent or mitigate the impacts of vessels on both marine species and the marine environment in general within their respective jurisdictions. Ports can, for example, through their practices and procedures documents, place restrictions on activities such as the use of exhaust gas cleaning systems (also known as scrubbers) in port waters. It is well understood that the discharge of scrubber washwater and bleed-off degrades the marine environment and poses a risk to marine species and the integrity of the marine food web.

To reduce the likelihood of vessel strikes with marine species, CPAs can also establish traffic control zones that restrict vessel speed or even request vessels to move away from critical habitat and travel at safer distances.

To further encourage the uptake of more sustainable operations, CPAs can also create incentive programs, offering discounts on harbour fees to vessels that voluntarily implement and report on certain environmental initiatives. Incentives may apply to vessels that connect to shore power while at berth (so that they can run on electricity instead of their fuel-burning engines); install technology or retrofits to reduce underwater noise outputs; and provide evidence of participation in or designations from recognized environmental programs (such as Green Marine or RightShip).

The above initiatives are just some of the ways ports can incentivize and push for environmental change in the maritime industry and help signal to governments and regulatory bodies that a sustainable shipping sector is possible.

## RECOMMENDATIONS

The findings of this legal review will help strengthen WWF-Canada's advocacy efforts as we continue to call on industry and governments to prioritize environmental sustainability in all business endeavours. We applaud the ports that are already making use of their powers to implement practices and procedures, incentive programs, and traffic control zones with the aim of protecting the marine environment within their jurisdictions, and we encourage them to continue expanding these efforts.

We encourage all CPAs to voluntarily make similar strides to protect and enhance the environment within their jurisdiction. While we wait for a federally mandated complete ban on scrubbers in Canadian waters, for example, all CPAs can and should implement or strengthen prohibitions on the use of scrubbers in their jurisdictional waters. And prohibiting scrubbers is just one possibility within a CPA's power: implementing traffic control zones to reduce speed, expanding shore power availability and further expanding incentive programs to encourage the uptake of sustainable initiatives are a few other initiatives ports can undertake.

By understanding the powers afforded to ports, as highlighted in this report, CPAs can go above and beyond current minimum legal requirements to prioritize environmental sustainability.

Read the full report [here](#).

\*Disclaimer: While every reasonable effort has been made to ensure the accuracy of the information above, this executive summary does not replace the analysis, evidence, context and nuance of the full legal review, *Understanding Port Jurisdiction in Canadian Law*. This summary is not a substitute for legal advice; readers should consult qualified legal professionals for specific legal matters.



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