

October 31, 2025

Arun Thangaraj
Deputy Minister
Transport Canada
Sent via email: arun.thangaraj@tc.gc.ca

Annette Gibbons
Deputy Minister
Fisheries and Oceans Canada
Sent via email: annette.gibbons@dfo-mpo.gc.ca

Dear Mr. Thangaraj and Ms. Gibbons:

Waterpower Canada (WPC) welcomes the opportunity to provide input as part of Transport Canada's initiative to modernize the Navigable Water Works Regulations and the Navigable Waters Bridges Regulations under the Canadian Navigable Waters Act.

As the national trade association representing Canada's hydropower industry—including 70 public and private power producers, equipment manufacturers, and engineering firms—WaterPower Canada and its members are pleased that your department is taking action to streamline regulations, reduce red tape, and to focus attention on activities that warrant greater scrutiny.

We have reviewed the discussion paper¹ published as part of this consultation, and we support the approaches documented in it.

Alignment with CNWA

Each of the examples provided in the discussion paper (replacing references to previous iterations of the Act, removing provisions from regulations that duplicate provisions in the Act, and updating the regulations to provide for current technologies) are improvements.

Clarity on Applicability of CNWA Requirements

1. Activities Subject to CNWA

While the CNWA does not define regulated activities (e.g. construct, place, alter, rebuild, remove, repair, decommission), we recommend that regulations consider whether the activity affects navigation as the trigger for applying the regulations rather than trying to define the nature of an activity from the structure owner's perspective.

¹ [Modernizing the Navigable Waters Works Regulations and the Navigable Waters Bridges Regulations under the Canadian Navigable Waters Act](#)

Efforts to parse maintenance and repairs, alterations, reconstruction, and their significance are likely to result in unnecessary confusion and complication. Considering effects on navigation would provide greater clarity and would be consistent with the intent of the regulations.

2. Criteria for “No Interference”

WPC supports this initiative to provide clarity on what no interference means. We do not believe that trivial or *de minimis* effects should be captured by the regulations.

3. Excluding Smaller Waters from the Definition of “navigable water”

WPC supports this effort to focus regulatory effort on works on significant waterways. From a practical perspective, smaller waterways used by canoes, kayaks, and rowboats often have natural features impeding navigation, so structures on those waterways are not likely to create a further impediment to use of those waterways.

Similarly, artificial bodies of water, such as pumped storage reservoirs, should be identified as non-navigable.

Focusing Navigation Protection on Works with Greater Potential Impacts

1. Low Head Dams

Hydroelectric operators agree with efforts to ensure public safety around their facilities, and while larger dams command respect from the public, this may not be as true for low structures.

The Canadian Dam Association (CDA) publishes *Guidelines for Public Safety Around Dams*, and these guidelines also address low-head structures. We recommend Transport Canada collaborate with the CDA in this important matter.

2. Contiguous Areas

The above-mentioned CDA guidelines also address the placement of booms, buoys, and signals in areas contiguous to dams.

3. Bridge Repair and Maintenance

Reports of bridge repair and maintenance activities affecting navigation highlight the importance of establishing impacts on navigation as the trigger for application of the regulations rather than the activity itself, as noted in our comments regarding application of the regulations above.

4. Timeframes for Opening a Movable Span Bridge

WPC has no comments regarding this matter.

Other Comments

1. Indigenous Consultation

WaterPower Canada members have observed that Indigenous consultation by federal authorities is not always coordinated, so a work that requires two federal permits (eg. CNWA and *Fisheries Act*) may be the subject of two consultations. This is both time consuming and a duplication of effort. We recommend that Transport Canada and Fisheries and Oceans Canada explore approaches to coordinate consultation activities when a single work triggers permit requirements in both departments.

2. Review of Activities Address by the *Minor Works Order*

In the spirit of reducing red tape, we recommend the scope of work covered by the *Minor Works Order* be reviewed to identify additional low-risk activities that could be included in the order.

In our comments submitted to the review of the CNWA², we noted the consideration of temporary work, repairs and maintenance, and geotechnical surveys and engineering surveys were candidates for review and inclusion under the *Minor Works Order*.

This is still a priority for WPC and its members. Further details are available in our red tape reduction submission³ to Natural Resources Canada (NRCAN) on July 23, 2025, the relevant section of which is presented in Appendix 1.

Thank you for your consideration of these comments. We are available to discuss them and related matters at your convenience.

Kind regards,



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² [WaterPower Canada Canadian Navigable Waters Act comments May 10 2024.pdf](#)

³ [Red-Tape-Review-Recommendations-to-NRCAN_July2025_FINAL.pdf](#)

APPENDIX 1

WPC Recommendations on the CNWA as part of its Red Tape Review Submission

Canadian Navigable Waters Act

<https://laws-lois.justice.gc.ca/eng/acts/n-22/>

Overall, the administration of the Act is efficient, and the online service and communications with Transport Canada officials are good. However, applying the Act is at times demanding for our industry because of the complexity of the classification of water bodies and categories of works. Moreover, there is some degree of overlap between the Act and provincial regulatory processes: provinces also have authority over water resources for everything besides navigation, which results in multiple permitting and consultations requirements.

In this context, we feel the CNWA and its implementation impose too many conditions on works that present no or only a negligible risk to navigation. Simplifying the process for such works and removing federal intervention from these activities would allow a better allocation of resources in our view.

We recommend the following changes to the Canadian Navigable Waters Act:

- 1.1. Removing artificial bodies of water that have not flooded a natural, existing, navigable lake or river from the definition of navigable waters in Section 2 of the Act.

The inclusion of the term "likely to be used" in the definition without any reference to the potential importance of future navigation for the various categories of users makes the definition too broad. The large number of water bodies that may be considered navigable even in the absence of navigation significantly increases the administrative burden and legal obligations of any owner who constructs or modifies works in areas where, currently, there is no navigation and provides no benefit in return.

We recommend amending the definition as follows:

navigable water means a [natural] body of water, [or an artificial body of water created by flooding an existing natural navigable body of water] including a canal or any other body of water created or altered as a result of the construction of any work, that is used or where there is a reasonable likelihood that it will be used by vessels, in full or in part, for any part of the year as a means of transport or travel for commercial or recreational purposes, or as a means of transport or travel for Indigenous peoples of Canada exercising rights recognized and affirmed by section 35 of the [Constitution Act, 1982](#), and

- (a) there is public access, by land or by water;
- (b) there is no such public access but there are two or more riparian owners; or
- (c) Her Majesty in right of Canada or a province is the only riparian owner. (*eaux navigables*)

We also suggest that a simplified process be established for all maintenance and repair work at existing hydropower facilities that are unlikely to have significant impacts on navigation, in order to facilitate the timely maintenance of this critical part of Canada's electricity infrastructure.

As such, we recommend:

- 1.2. To include in the Act provisions allowing owners of all legally built existing facilities to proceed to repair and maintenance activities that do not hinder navigation.

Should an amendment to the Act not be feasible, we would alternatively recommend creating an additional category in the Minor Works Order to reduce the burden on owners of existing facilities when they proceed to repair and maintenance activities.

Minor Works Order

<https://laws.justice.gc.ca/eng/regulations/SOR-2021-170/index.html?wbdisable=false>

In our opinion, the numerous conditions that apply to minor works (which, by definition, are works that interfere only slightly with navigation), exceed what is needed to protect navigation.

We therefore recommend:

- 1.3. Removing subsection (a) from section 9 for temporary works. Doing so would make all temporary works that meet conditions (b) and (c) minor works and reduce the excessive paperwork required to proceed with many routine activities unlikely to impede navigation.
- 1.4. The addition of geotechnical drilling and engineering surveys conducted from a barge or from dry ground to the Minor Works Order since those activities only slightly impede navigation and are temporary by nature. We therefore recommend the following changes to section 9 to reflect recommendations 3.3. and 3.4.:

Temporary Works

Designation — temporary works

9 A work that meets the following criteria is designated as a minor work:

(a) the work is installed exclusively for the construction, placement, alteration, rebuilding, removal, decommissioning, repair or maintenance of another minor work;

(b) (a) the work is not situated in, on, over, under, through or across a navigation channel or, if there is no navigation channel, a navigation route; and

(c) (b) the work does not occupy more than one-third of the width of the navigable water.

INSERT (c) geotechnical drilling and engineering surveys conducted from a barge or from dry ground.

- 1.5. Making the addition of a waterbody to the Act's Schedule contingent on an Order in Council, on the recommendation of the Minister of Transport, instead of simply being made through a Ministerial Order. We believe that because the decision to add a waterbody to the schedule requires the weighting of the potential benefits to navigation against the costs to owners of works that may belong to many other sectors of the economy, it would be preferable that the decision be made by order in Council.

Consequently, we recommend replacing "Minister" with "Governor in Council" in sections 29 (1) and 29 (3) of the Act.

Implementing these changes would increase regulatory efficiency for hydropower operators.