

Note: *Transport Canada consults with you.* The Minister of Transport regulates navigation on Canada's lakes, rivers and waterways. **Make your voice heard before December 11, 2023.**

See below NMMA Canada, CMRA and Nautisme Québec's position on the modernization of the Vessel Operation Restriction Regulations (VORR): giving provinces and municipalities an expanded role in managing their waterways.

You can copy or adapt this position and e-mail it directly to : MSSRegulations-ReglementsSSM@tc.gc.ca

To find out more about this consultation and how you can have your say, consult: [Boater participation guide](#).

Let's Talk Transport: Consultation on updating the Vessel Operation Restriction Regulations

Submission by:

NMMA CANADA

National Marine Manufacturers Association

CMRA

CANADIAN MARINE
RETAILERS ASSOCIATION
ASSOCIATION CANADIENNE
DE L'INDUSTRIE NAUTIQUE



Alliance de
l'industrie nautique
du Québec

December 2023

Summary of Recommendations

We urge the Government of Canada to take the following actions in respect to changes to the Vessel Operation Restriction Regulation process:

1. Temporarily pause the process and facilitate comprehensive consultation meetings with all stakeholder groups.
2. We urge Transport Canada to incorporate the following measures into the Vessel Operation Restriction Regulations (VORR) modernization project:

2.1 Ensure there is an obligation to consult boat owners, boating and tourism industry associations.

Local authorities must retain their current obligation to collaborate with relevant stakeholders to seek expedient, cost-effective, and practical solutions before proposing regulatory restrictions on building usage. As such, boat owners, boating and tourism industry associations need to be consulted. This requirement should be preserved and reinforced through additional resources to facilitate standardized local consultations.

2.2 Respect the rules governing Ministerial Orders.

The adoption of a ministerial order should be an exceptional measure, necessitating rigorous analysis and objective criteria that align with the intent of the Cabinet Directive on Regulation and its four fundamental principles.

2.3 Review the duration of Ministerial Orders.

The two-year validity period granted to Ministerial Orders should be restricted to one year, with the option for a single one-year renewal for a specific area affected by one or a series of restrictions.

2.4 Set free and equitable access to waterways targets.

Transport Canada should establish concrete, measurable objectives concerning the promotion of free and equitable access to waterways.

Who We Are

NMMA Canada is the leading trade association for recreational boating, representing manufacturers of boats, engines, and accessories in Canada.

NMMA Canada works closely with our industry partners and with federal, provincial, and municipal governments to ensure that the millions of Canadians who enjoy recreational boating with their families can continue to do so, safely and with ease.

The recreational boating sector is a significant contributor to the Canadian economy:

- We support over 80,000 good-paying jobs in Canada, especially in rural communities.
- We add \$9.2 billion to Canada's GDP.
- And we generate \$4.6 billion in tax revenues to municipal, provincial, and federal governments in 2022.

As an industry, we have made significant progress in improving the energy efficiency of boats, reducing engine emissions by 75% to 95% and contributing to environmental protection for well over 25 years. Our industry has done this on our own without any imposed government regulations and started long before it was fashionable because, without healthy waterbodies, our industry cannot survive.

Context

Our perspective on the circumstances surrounding the changes to the Vessel Operation Restriction Regulations (VORR) process differs significantly from the position articulated by Transport Canada in their intentions paper. While we have also observed a rise in requests for navigation restrictions from local authorities within local regions, it's crucial to recognize that these requests are made within a broader context where equal access to water bodies is under imminent threat. In our view, Transport Canada should give greater weight to the historical navigation norms in our country and vigorously uphold the right of Canadians to access and navigate waterways.

Moreover, it is crucial to consider the municipal fiscal landscape in Canada during the ongoing process. Municipal revenues are primarily linked to property values, inadvertently favoring the interests of waterfront property owners over other waterway users. The disparities in access to water bodies in Canada have become a growing concern for a diverse group of waterway users.

It's a well-established fact that many municipalities throughout the country limit access to water bodies within their jurisdictions through various means outside of any collaborative or regulatory process. These measures include restrictions such as barring access to non-residents, imposing exorbitant fees for public access to water, or implementing navigation restrictions that lack evidence. These actions effectively privatize access to water bodies, which are a shared resource for all Canadians. Canadians should retain the right to access waterways for safe navigation with their families, a right that is enshrined in the Minister's mandate letter. Transport Canada's current inclination to facilitate the imposition of navigation restrictions comes at a time when this right is already in jeopardy.

All the various stakeholders and users of the common resource, which is water, should be treated equitably when restrictions are imposed on one of the fundamental uses of water, namely navigation. The Navigable Waters Protection Act (NWPA), dating back to 1882, stands as one of Canada's oldest pieces of legislation. The public's right to navigate on water bodies has existed for more than a hundred years and has been integrated into Canadian common law. Access to waterways and recreational boating are an integral part of the Canadian identity. Every year, over 12.4 million Canadians partake in boating activities.

As advocates of recreational boaters and representatives of the boating industry, we do not feel we have a sufficient voice through the new expedited process. While this may not constitute a direct delegation of powers, the primary aim of this change appears to be to provide local authorities with a fast track that circumvents the traditional consultative decision-making process.

The powers granted to municipalities by the provinces enable them to meet municipal needs in the interests of their citizens. Local interests should not override national interests. Thus, it is imperative to consider the fiscal pressures municipalities face in this context. Local taxation predominantly hinges on property values, and municipalities aiming to bolster their revenues via property taxes can take actions to stimulate increases in land and property values. Studies unequivocally affirm the positive impact of proximity and access to water on property values¹. When a municipality's financial resources heavily rely on property taxes, the value of waterfront properties can profoundly impact their budget. Regrettably, this phenomenon can have adverse consequences in terms of equitable access to watercourses, as a local authority may be inclined

¹ Özdilek, Ü. and Revéret, J-P. (2015). Mesure de l'impact économique des bas niveaux d'eau sur les valeurs foncières le long du fleuve Saint-Laurent. Rapport présenté à la Division des impacts et de l'adaptation liés aux changements climatiques de Ressources naturelles Canada, au Gouvernement du Québec et à Ouranos. Montréal. 86p.

to attempt to privatize access to rivers and lakes in an effort to stabilize or augment the value of waterfront property².

Issues

While Transport Canada's intentions paper claims that "recreational boaters have repeatedly expressed frustration at how long it takes for requested restrictions to come into effect" and that they "have also raised concerns that the types of restrictions under the Vessel Operation Restriction Regulations are limited and do not cover all of the issues on local waterways," our organization views this issue completely differently.

NMMA Canada believes that navigation restrictions should be considered a last resort measure to address issues. This position is the same as the government's own Local Authorities Guide, which states, *"As a local authority, you should use the Vessel Operation Restriction Regulations only as a last resort for solving problems."* Before applying for a vessel operation restriction: Boaters, who also possess property along Canada's waterways, should have secure access to their properties. We emphasize the importance of consultation, education, and incentives to foster collaborative problem-solving among all waterway users. This is also consistent with the Local Authorities Guide which further states, *"Explore alternatives by looking at alternatives, you can sometimes achieve the same result as a vessel restriction without the need for regulation."*

We acknowledge the need to modernize the process for requesting and implementing restrictions under the VORR. However, we do not see simplifying the application process or reducing implementation timelines as necessary. On the contrary, **we believe promoting consultation, education, and incentives is imperative to facilitate collaborative solutions among all waterway users and build consensus on non-regulatory solutions.** Safety and environmental protection must coexist with fair access to Canada's water bodies.

Objectives

In our view, Transport Canada's modernization of the VORR falls short of its intended objectives and establishes a troubling precedent. It falls short in that its focus primarily lies in facilitating the implementation of restrictive measures, neglecting the importance of stakeholder consultation. This presents a dangerous precedent by affording local authorities privileged access to the federal regulatory process, which contradicts the fundamental right to free and equitable access to

² Brissette, F. and Poulin, A., July 29 2020. Les Québécois ont de moins en moins accès à leurs plans d'eau. Voici quoi faire pour que ça change. The Conversation. Online : <https://theconversation.com/les-quebecois-ont-de-moins-en-moins-acces-a-leurs-plans-deau-voici-quoi-faire-pour-que-ca-change-143494>

waterways. **It opens the door to restrictions being made on arbitrary grounds in favour of individual interests and preferences without any science-based evidence.**

A significant oversight within the current VORR framework is the absence of provisions for ensuring equitable access to water bodies for all Canadians, irrespective of their municipality of residence or ownership of waterfront property. Each year, more than 12.4 million adult Canadians engage in boating activities, and they should be able to continue doing so without worrying about being denied access or subjected to unwarranted restrictions. Canadians should have the right to access waterways, allowing them and their families to navigate safely. Consequently, **Transport Canada should establish concrete, measurable objectives concerning promoting free and equitable access to water bodies.**

Our organization acknowledges that local authorities can play a more direct role in identifying safety and environmental concerns on local waterways. However, it is essential to recognize that when a municipality devises solutions to these issues, it often does so with its own interests at the forefront, which may not align with the broader interests of all Canadians. In terms of implementing solutions for safety and environmental issues, local governments should not have privileged access to the regulatory process to assert their interests and impose navigation restrictions. Instead, Transport Canada should prioritize solutions rooted in the engagement and consultation of all water users.

[Suggested approaches](#)

Upon reviewing the proposal outlined in the Intent Paper, we have observed that Transport Canada is considering a specific, summarized sequence of actions as follows:

- Transport Canada officials would have the authority to initiate amendments to the VORR upon receipt of a simple municipal resolution, while local consultations would be required in accordance with yet-to-be-established rules.
- The Minister of Transport could issue ministerial orders to enforce restrictions requested by local authorities.
- The newly imposed restrictions would take immediate effect and remain in force until the by-law is modified within the comprehensive regulatory process, with the ministerial order having a two-year validity period.

We oppose this expedited process for two important reasons:

1. This process eliminates the responsibility of local authorities to ensure that restrictions on navigation remain the last resort for addressing problems.
2. The adoption of a ministerial order circumvents the process outlined in the Cabinet Directive on Regulation to expedite proceedings. By doing so, it allows for decisions based on arbitrary criteria, which runs contrary to the Directive's intent. The two-year validity

period is deemed excessively lengthy, with no indication that the ministerial order will not be renewed. If a navigation restriction fails to pass the regulatory process, it will have been in effect for a considerable duration, causing undue harm to recreational boaters. Moreover, under the current proposal, a Ministerial Order could be reinstated after the initial two-year period.

Consequently, we urge the Government of Canada to take the following actions:

1. Temporarily pause the process and facilitate comprehensive consultation meetings with all stakeholder groups. This pause is especially crucial, given that the House of Commons Standing Committee on Transport is about to commence a study concerning the regulation of recreational boating on Canada's waterways. This pause will allow the committee to proceed with its work, diligently examine the facts, and formulate evidence-based recommendations.
2. We urge Transport Canada to incorporate the following measures into the Vessel Operation Restriction Regulations (VORR) modernization project:

2.1 Ensure there is an obligation to consult boat owners, boating and tourism industry associations:

Local authorities must retain their current obligation to collaborate with relevant stakeholders to seek expedient, cost-effective, and practical solutions before proposing restrictions on building usage. This requirement should be preserved and reinforced. As such, boat owners, boating and tourism industry associations need to be consulted.

Public participation contributes to better decisions because decision-makers have more complete information – in the form of additional facts, values, and perspectives obtained through public input – to bring to bear on the decision-making process. They can then incorporate the best information and expertise of all stakeholders. Decisions are more enforceable and sustainable because the decision considers the needs and interests of all stakeholders, and stakeholders better understand and are more invested in the outcomes. As a result, decisions that are informed by public participation processes are seen as more legitimate and are less subject to challenge.

A consultation process should be clearly defined, to include mandatory consultation of local boating associations, provincial boating industry associations and regional tourism associations. The criteria for cooperation and consultation should be set out (inclusion, balance of powers, specialist input, participation of impartial consultants, etc.) and rigorously followed. Innovative solutions and commitments may emerge from the process, thereby obviating the need for regulation.

The information and documentation from the consultation process, as well as the studies and arguments supporting the request for restrictions on the water body, should be made available for by all stakeholders. In this way, it will be possible for them to take a well

informed and balanced consultation look at the reasons behind the requests for restrictions. The information provided should be evidence-based and take into account not only safety and environmental issues, but also economic, tourism and social issues.

Transport Canada should support local authorities by providing guidance and access to professional firms specializing in collaboration and conflict resolution within Canada. Some provinces have non-profit organizations dedicated to ensuring cooperative efforts among watershed stakeholders, such as Quebec's watershed organizations designated by the Minister of the Environment. Along the St. Lawrence River, Environment Canada has set up ZIP committees (*Zones d'intervention prioritaires*), which can also facilitate local consultation on access to the St. Lawrence River and its islands.

Transport Canada should increase its financial support for local organizations that bring recreational boaters and other stakeholders together to enhance public discourse and education regarding safety and environmental protection measures. Transport Canada must recognize that it has a responsibility to help communities build their capacity to address safety and environmental issues together.

2.2 Respect the rules governing Ministerial Orders:

The adoption of a ministerial order should be an exceptional measure, necessitating rigorous analysis and objective criteria that align with the spirit of the Cabinet Directive on Regulation. This directive is grounded in four fundamental principles:

1. To protect and promote the public interest and support good governance.
2. To be modern, open and transparent.
3. To be evidence-based.
4. To support a fair and competitive economy.

Ministerial orders should be granted sparingly - respecting the essence of the Cabinet Directive - and their validity period should be as brief as possible to prevent encroachment on Canadians' right to access waterways.

To maintain the spirit of the Directive while expediting the process, we propose that a local authority's request should be accompanied by the following documents:

- A consultation report prepared by an independent organization recognized by a provincial or federal government.
- An evidence-based report identifying the problem, endorsed by a neutral and independent boating safety or environmental professional, contingent upon the nature of the issue.

2.3 Limit the duration of Ministerial Orders:

The two-year validity period granted to Ministerial Orders should be restricted to one year, with the option for a single one-year renewal for a specific area affected by one or a series of restrictions.

2.4 Set targets for free and equitable access to waterways:

Transport Canada should establish concrete, measurable objectives concerning the promotion of free and equitable access to waterways.

Conclusion

We are pleased that Transport Canada has opened consultations on the long-term revisions to the VORR process and we look forward to continued engagement in these consultations to establish evidence-based regulations that promote the safe enjoyment of Canada's waterways for recreational boaters, while also ensuring safe navigation practices and the protection of sensitive environments.

On behalf of our industry and the millions of Canadians who enjoy safe, recreational boating with their families, we thank you for your consideration of our submission and look forward to further collaboration.