



# LET'S TALK NAVIGATION MINOR WORKS ORDER (PHASE 2)

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Transport  
Canada

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## Minor Works Order Discussion Paper

### Context

On August 28, 2019, the Government of Canada introduced new rules as part of the *Canadian Navigable Waters Act*. The government made the changes to restore and better protect people's right to move freely on Canada's waterways, to help reconcile with Indigenous peoples, and to make our decision-making process more accessible and transparent.

The *Canadian Navigable Waters Act* regulates the construction, placement, alteration, rebuilding, removal or decommissioning of works that are in, on, over, under, through or across any navigable water in Canada.

In this context, a work can be defined as anything, temporary or permanent, made by people.

This includes dumping, filling, dredging, or removing materials from the bed of a navigable water, or removing water from a navigable water.

### What is a Minor Work?

As part of the Act, the Minister of Transport can designate a work that is likely to slightly interfere with navigation as a "minor work". The [Minor Works Order](#) is used to identify those works that are likely to slightly interfere with navigation.

For example, works that only slightly interfere with navigation do not:

- cause navigators to unreasonably alter their habits related to navigation in the area, such as speed and course
- reduce the safety of navigation or ability to enjoy the use of the body of water for navigation

An owner of a minor work may construct, place, alter, rebuild, remove or decommission the minor work in, on, over, under, through or across any navigable water in accordance with the requirements found in the Minor Works Order. The order protects navigation by requiring minor works to meet certain criteria and requirements.

Owners of works that comply with the requirements of the Minor Works Order do not need to seek an approval from Transport Canada, or follow the [process for works on waterways not listed on the schedule](#).

### Tell us what you think

In May 2019, Transport Canada published an initial discussion paper on our review of the existing Minor Works Order. We wanted feedback on:

- new classes of works to include in the order



- ideas on how we could change the existing classes of the order
- proposed requirements for building these works

Annex 1 summarizes the feedback that we received and considered during our initial review. This discussion paper presents the results of this review and offers more detailed information on our review process and the proposed approach under consideration. We're looking for more feedback about how we plan to restructure and change the order.

## How we reviewed the Minor Works Order

We conducted our initial review in two phases:

### Phase I – Identifying works

We identified types of works that could be included in the Minor Works Order. We used the [decision tree in Figure 1](#) to guide this process.

We also considered feedback from:

- Canadians
- Indigenous peoples
- stakeholders
- provinces and territories

We used the questions below to help us decide whether we should add a type of work to the order:

- Does the type of work **slightly interfere** with navigation?
- Can this interference be **managed by standard requirements**?
- Do our past **navigation impact assessments** confirm that the type of work doesn't substantially affect navigation?
- Is there a **history of people complaining** about the impact to navigation?
- Is there a **history of issues** caused by owners not respecting the requirements for the type of work?

### Phase II – Reviewing the requirements

We reviewed the requirements for the existing types of minor works, and considered which requirements should apply to the proposed new types of minor works. Our goal was to simplify the order, while keeping navigation safe.

#### Simplification

We received comments on how complicated the current order is, as well as comments about how the information is presented. We want to balance our goal of simplifying the order while keeping navigation safeguards in place.

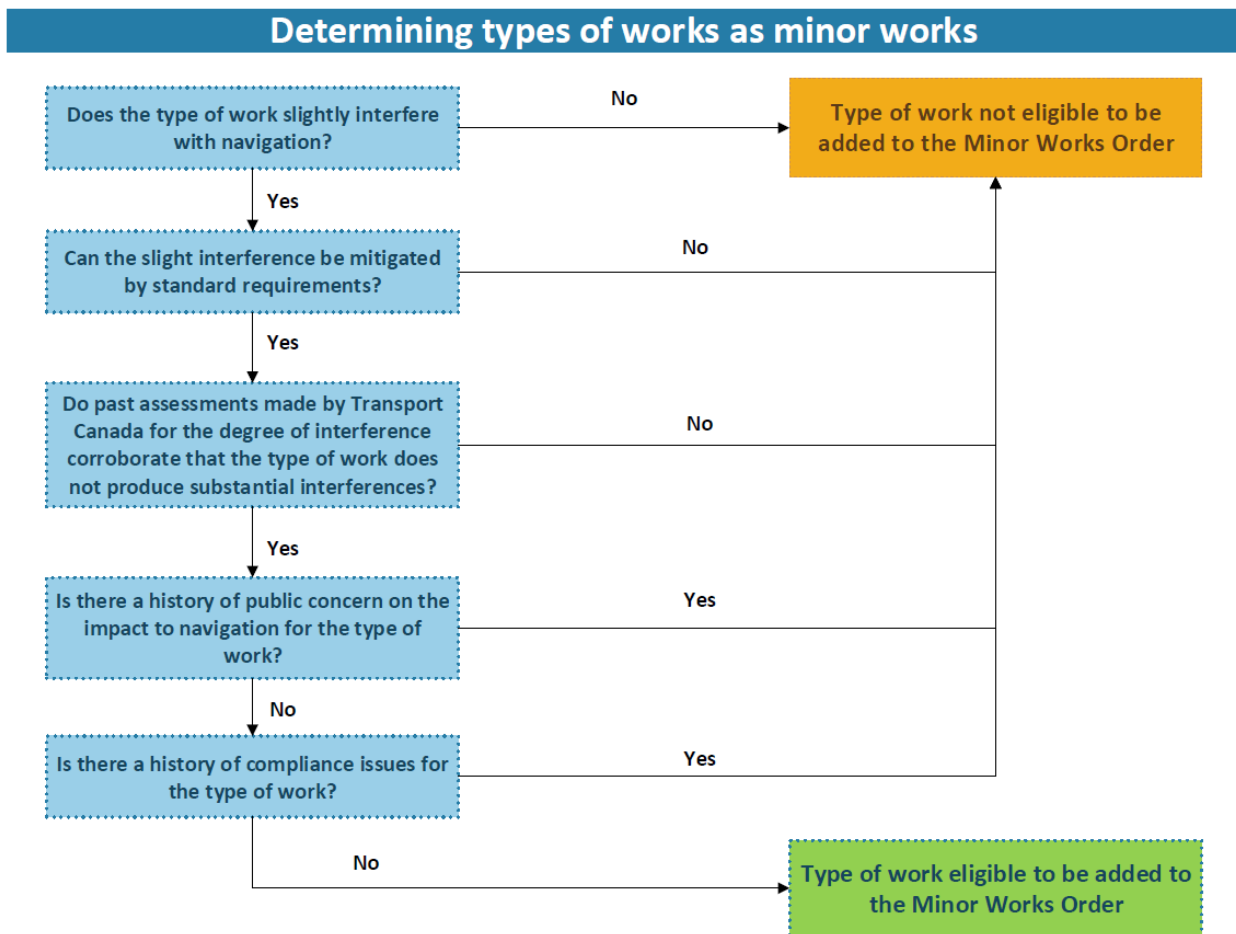


### Desired results

To help people follow the rules, we’re thinking of focusing on requirements that state the result desired by Transport Canada where it’s appropriate and possible.

This approach focuses on the outcome we want, which is to protect navigation, rather than identifying a specific way to get the desired result.

Figure 1: Decision tree for deciding whether to add a Type of Work to the Minor Works Order



### Changes that we may make to the order

Note: The information contained within this discussion paper is intended for consultation and to generate discussion on the concepts under consideration. Consequently, the specific wording included in this discussion paper may not be reflective of, and may be different than, the final Order itself.

As part of the review, we looked at four main parts:



- **General requirements:** In this section, we're thinking of centralizing the requirements that apply to each type of minor work to one location
- **Temporary works:** We would also centralize these requirements from each section to one location, as a way to streamline the order
- **Existing types:** We're reviewing the order's 11 types of minor works to simplify and clarify their requirements
- **Potential new types:** We're looking at adding new types of minor works, based on feedback received

We've outlined the proposed approach for the main parts of the Minor Works Order below.

## 1. General requirements

As part of the Act, owners of minor works can go ahead with any **activity** related to a work (**constructing, placing, altering, rebuilding, removing or decommissioning**) as long as the work continues to meet the requirements of the order. This applies during and after the owner finishes the activity.

We would like to group the requirements that apply to all types of minor works into one general requirements section at the beginning of the order.

Even if a work is designated as a minor work, the owner must still follow all applicable rules under other federal, provincial, or municipal legislation or regulations. For example, the owner might have to get an approval or permit because of a separate federal or provincial law.

### Notification requirements

Making sure that vessels are aware of obstacles and potential interferences before travelling on a navigable water, is an important part of keeping everyone safe. We also know that being notified of proposed minor works is important to Indigenous peoples, in order to avoid impacts on their rights connected with navigation.

For example, we've heard that works that disturb the bed of the navigable water could impact fish and fish habitat, and that works that limit access to a waterway can impact Indigenous peoples' ability to exercise rights.

Because of this, Transport Canada is considering how best to ensure that communities are aware of proposed minor works that could impact safety and Indigenous peoples' ability to navigate while exercising their rights.

To make communities aware of proposed works that could impact Indigenous peoples' rights, while minimizing the reporting burden to those specific types of minor works that may impact navigators and the rights of the Indigenous peoples, we are thinking of adding a new notification requirement for erosion-protection works, aerial cables, submarine cables, pipelines buried under the bed of the navigable water, outfalls and water intakes, dredging, and watercourse crossings.



We are also looking at the option of updating the public registry to allow owners of the remaining types of minor works to post details about their proposed work, on a voluntary basis.

Finally, we are thinking of updating the existing requirements for works on charted navigable waters.

We would like your feedback on the following potential notification requirements that are under consideration:

Before starting the work, the owner would need to:

- meet a new requirement to deposit information with Transport Canada and publish a notice with basic information on the project and location, if the proposed work is of one of the following types:
  - erosion-protection work
  - aerial cable
  - submarine cable
  - pipeline buried under the bed of the navigable water
  - outfall and water intake
  - dredging
  - watercourse crossings
- continue to meet the existing requirement to give written notice to the Canadian Coast Guard 48 hours before work begins on the work, if the work is on a charted navigable water

When they finish the work in a charted navigable water, the owner would need to give written notice to the Canadian Coast Guard and Canadian Hydrographic Service when they finish:

- building
- placing
- altering
- rebuilding
- removing, or
- decommissioning a work

#### [Requirements for building or changing a minor work](#)

Sometimes activities related to the work, like building, interfere with navigation.

The requirements from the current order reduce problems caused by the building of minor works. We want to keep these requirements, while allowing some flexibility for how the owner can get the desired result.

**The Act requires owners to repair, maintain, operate, and use the minor work according to the requirements of the Act.**

We'd like to make changes so that during an activity related to the work, the owner would need to make sure that:

- vessels can still navigate through or around the work site



- if navigation is interrupted, that they offer a suitable way for navigators to pass through or around the work site
- they warn vessels upstream and downstream about the activity related to their work
  - by either placing signs, placing cautionary buoys, or by a vessel tasked with warning incoming vessels
- if they're maintaining the works in, on, over, through or across the navigable waterway after sunset and before sunrise or when visibility is poor, their work must be visible at all times
  - for example, the owner shall mark the works with yellow flashing lights or cautionary buoys with retro-reflective stripes

### Requirements for the lifecycle of the minor work

Minor works owners must maintain them so that they interfere only slightly to navigation.

Owners would still need to meet the order's existing requirements to:

- keep their minor work in a good state
- not allow the minor work to fall into disrepair, which would endanger navigation
  - if a work becomes a danger to navigation, the owner must repair or remove it

## 2. Temporary works

A temporary work is a work that's needed to build another work (for example, scaffolding or turbidity curtains). Temporary works used to build a minor work are also considered to be minor works. The order includes requirements to manage interference caused by the temporary works.

In the current order, requirements for temporary works are repeated in a subsection for each individual type of work. We'd like to place the temporary works requirements in one central location, instead of having them in different sections. Owners would still need to meet the order's existing requirements for temporary works. Namely, that they must:

- not be in, on, over, under, through or across a navigation channel (a charted channel, or a channel marked by a federal, provincial, municipal government or Canadian Port authority) or a thalweg (the line that connects the sections of a navigable water that provides the greatest depth used for navigation purposes)
- not cross more than one-third of the width of the navigable water
- be removed when the work that they are needed for is completed

If the temporary works disturb the bed of water, then the owner would need to restore the contours of the navigable water's bed so that it doesn't interfere with navigation.



### 3. Existing types under review

Each type in the order includes standard requirements to make sure that navigation is only affected slightly. Following our review, we've explained the approach that we propose for each existing type. These standard requirements need to be met for the work to be considered a minor work.

#### 3.1 Erosion-protection works

Erosion-protection works are built to prevent or control bank erosion. For example: armour stone, embankment, fills, retaining walls, scour protections or shore protection works.

Under the proposed approach, owners of erosion-protection works would need to build the works so that:

- they are parallel and consistent to the banks of the waterway
- the part of the work below the water is consistent and integrated with the slope of the bed of the navigable water if it extends further into the water than the part of the work above the water
- the work doesn't extend horizontally into the waterway more than:
  - 5 metres from the ordinary high-water mark, and
  - one third of the waterway's width

#### 3.2 Docks and boathouses

The order requires dock and boathouse owners to build them so that they:

- are at least 5 metres from any shared property boundaries or property line extensions
- don't extend horizontally more than 30 metres into the navigable water
- don't cross more than one-third of the waterway's width
- are at least 30 metres away from a navigation channel (a charted channel, or a channel marked by a federal, provincial, municipal government or Canadian Port authority)

We're deciding whether to:

- let the owners of docks and boathouses build them so that they can extend horizontally more than 30 metres into the navigable water (if other similar docks or boathouses within 100 metres already extend more than 30 metres)
  - In these cases, the work could extend as far as the existing similar work, but no more than 50 metres
- add a requirement that would require the dock or boathouse to not be in, on, over, under, through or across a thalweg (the line that connects the sections of a navigable water that provides the greatest depth used for navigation purposes)

#### 3.3 Boat launching ramps and slipways

In the order, boat launching ramp or slipway owners would need to build them so that they:

- are at least 5 metres from any shared property boundaries or property line extensions
- lie on the bed of the navigable water





- are not associated with another proposed work other than an existing or proposed work from a type identified in this order

### 3.4 Aerial cables

Under the approach that we're proposing, aerial cables used for power or telecommunication purposes would need to:

- not be over or across a charted navigable water or a navigation channel (a charted channel, or a channel marked by a federal, provincial, municipal government or Canadian Port authority)
- not be over or across a Canadian heritage river, a federally maintained river, harbour or historic canal
- not have any towers or poles from which the aerial cable is suspended be in the area between the ordinary high-water marks on each side of the navigable water; and
- meet the requirements of section 5.3.3 of Overhead Systems, CAN/CSAC22.3 No. 1-15, as amended from time to time.

### 3.5 Submarine cables

The order requires owners of submarine cables used for power or telecommunication purposes to make sure the cables:

- are built on or under the bed of the navigable water
- don't extend vertically above the bed of the navigable water more than:
  - 1 metre, if the total depth is more than 15 metres when measured from the ordinary high-water level
  - 5% of the depth, if the total depth is less than 15 metres when measured from the ordinary high-water level
- not cross the entrance to a port, including any marina
- not be in an area that has a maintained depth (by dredging for example)
- not be built in an anchorage area identified on nautical charts from the Canadian Hydrographic Service or National Oceanic and Atmospheric Administration

Owners would still be responsible for:

- making sure that their cable remains on or under the bed of the navigable water
- re-laying or removing the cable, if it no longer lies on or under the bed of the navigable water

### 3.6 Pipelines buried under the navigable water's bed

The order requires owners of pipelines buried under a navigable water's bed to make sure their pipeline crosses the waterway at a spot that is 50 metres wide or less.

If owners of the pipeline disturbed the contours of the water's bed while placing the pipeline, they would need to restore the contours of the bed so that it doesn't interfere with navigation.

We're also thinking about:

- removing the requirement to use a trenched method so that owners could use other, less-intrusive methods to bury a pipeline



- removing the construction period limit of two weeks, since interference from temporary works is already managed through separate requirements in the temporary works section under consideration

### 3.7 Pipelines and cables attached to existing works

The order requires owners of pipelines or cables for power or communication that are attached to existing works to make sure they:

- are attached to a work that is approved by Transport Canada
- don't increase the interference to navigation more than the interference already caused by the existing work

### 3.8 Works within a boomed-off area upstream or downstream of an existing work for water control

The order requires owners of works located in a boomed-off area upstream or downstream from an existing water control work to make sure they:

- are located between an approved boom and an approved water control structure
- don't affect how efficiently the boom operates
- don't alter the navigable water's level or flow
- won't be used to rebuild or alter the boom or the existing work for water control
- are owned by the same owner of either the boom or water control structure

We're thinking about expanding the criteria to include booms and water control structures that were validly constructed or placed under the current or previous legislation, but that do not currently have an approval in place. For example, where the owner opted out of the former system as part of the *Navigation Protection Act*.

### 3.9 Outfalls and water intakes

The order requires outfall and water intake owners to make sure they:

- are at least 30 metres from a navigation channel (a charted channel, or a channel marked by a federal, provincial, municipal government or Canadian Port authority)
- don't extend vertically above the bed of the navigable water more than:
  - 1 metre, if the total depth is more than 15 metres when measured from the ordinary high-water mark
  - 5% of the depth, if the total depth is less than 15 metres when measured from the ordinary high-water mark
- don't alter the level or flow of the navigable water
- aren't associated to an existing or proposed dam, weir or head pond

We're also thinking about expanding the criteria for outfalls and water intakes to allow diffuser-type outfalls.



### 3.10 Dredging

We're thinking of expanding the criteria for the dredging type of minor works to include suction dredging.

Dredging projects would be considered a minor work when:

- they're done to maintain the navigable water's width or depth
- all dredged materials are disposed of above the ordinary high-water mark or in a location allowed by an Act of Parliament
- in a case where owners of works use suction dredging, they must make sure that:
  - floating or submerged pipes are not in, on, over, under, through or across a navigation channel (a charted channel, or a channel marked by a federal, provincial, municipal government or Canadian Port authority)
  - navigators can see the full length of any floating or submerged pipe that doesn't lie on the bed
  - the submerged pipes lying on the bed of the navigable water don't extend vertically above the navigable water's bed more than:
    - 1 metre, if the total depth is more than 15 metres when measured from the ordinary high-water mark
    - 5% of the depth, if the total depth is less than 15 metres when measured from the ordinary high-water mark
- the works don't have cables that cross on, over or through any portion of the navigable water
- the works don't include blasting

### 3.11 Mooring systems

The order requires mooring systems owners to make sure systems:

- are built in a navigable waterway that is 100 metres or wider
- are at least 20 metres from other structures
- are built at least 50 metres from a navigation channel (a charted channel, or a channel marked by a federal, provincial, municipal government or Canadian Port authority), marina, or public boat launching ramp
- have an anchor that always stays in its position on the bed of the navigable water
- aren't associated with an existing or proposed marina

We're thinking of adding a requirement to not allow the placement of a mooring systems in a navigable water's thalweg (the line that connects the sections of a navigable water that provides the greatest depth used for navigation purposes).

## 4. Possible new types of minor works

During the last consultation, we announced we were analyzing seven types as possible additions. They were:

- clear-span bridges
- culverts



- geothermal installations
- geotechnical testing
- swim areas
- scientific equipment
- water-sports related works

During the last consultation, people told us they were worried about how some of these works would affect the waterway's bed or Indigenous rights. After reviewing these comments, we decided not to proceed with geothermal installations, geotechnical testing, and water-sport related works. We continued our review by looking at three possible new types.

#### 4.1 Watercourse crossings

We're looking into designating watercourse crossings that help move people, animals, or vehicles across small waterways as minor works. For example, clear-span bridges and certain culverts.

A watercourse crossing would be considered a minor work if:

- the width of the navigable water is 30m or less, at the crossing site (measured from the ordinary high-water mark)
- the structure is built entirely above the ordinary high-water mark
- the structure offers at least 1 metre of clearance above the tallest vessel height known to travel the navigable water
- the waterway isn't being infilled

#### 4.2 Swim areas

We're looking into designating swim areas as a minor work.

The rope that identifies a swim area, and any structure in this area, would need to:

- be placed by, or installed for, a local authority (a group that represents a municipality, township, county or regional district, Indigenous governing body, provincial, territorial or federal government)
- not extend more than 30 metres, or a third of the water's width, when measured from the ordinary high-water mark,
- be at least 30 metres away from a navigation channel (a charted channel, or a channel marked by a federal, provincial, municipal government or Canadian Port authority)
- not be in, on, through or across the thalweg (the line that connects the sections of a navigable water that provides the greatest depth used for navigation purposes)
- always be marked by line floats
- have swimming buoys placed outside the marked area to warn navigators
- be installed at least 5 metres from any nearby property boundaries or line extensions

#### 4.3 Scientific equipment

Scientific equipment include monitoring and measuring devices and their buoys, platforms, or other structures. This equipment is installed in, on, through or across a navigable water.



Scientific equipment would be considered a minor work if it:

- is not within 30 metres of a navigation channel (a charted channel, or a channel marked by a federal, provincial, municipal government or Canadian Port authority)
- is not in, on, over, under, through or across the thalweg (the line that connects the sections of a navigable water that provides the greatest depth used for navigation purposes) of the navigable water
- is marked by a cautionary buoy, unless the equipment lies on the water's bed
- lays on the water's bed and doesn't extend vertically above the water's bed more than:
  - 1 metre, if the total depth is more than 15 metres when measured from the ordinary high-water mark
  - 5% of the depth, if the total depth is less than 15 metres when measured from the ordinary high-water mark
- isn't within 20 metres of any structure that isn't owned by the owner of the scientific equipment

## 5. Next steps – Tell us what you think

We want to know what you think about the changes that we are considering for the requirements of existing types of minor works and for the types that we might introduce to the Minor Works Order.

Send us your comments and submissions by emailing [NPP-Secretariat-PPN@tc.gc.ca](mailto:NPP-Secretariat-PPN@tc.gc.ca) before October 5, 2020.



## ANNEX 1 – What we heard in our first consultation

From May to July 2019, we used our website to share a discussion paper on our proposal to review the Minor Works Order. The discussion paper explained the review's scope by describing minor works, requirements under the *Canadian Navigable Waters Act*, and what had already been heard about the Minor Works Order during the review of the *Navigation Protection Act*.

We presented our proposed approach and offered a list of the 11 existing and seven new types of works that we were considering.

This summary outlines the feedback that we received during the consultation. We've grouped this feedback by theme.

It's important to note that these comments come from a variety of people. The comments are their personal views, and they don't represent any consensus or Transport Canada's views.

### Who we've heard from

During our first consultation, we heard from groups across the country including:

- Indigenous communities
- civil society groups
- industry stakeholders and
- members of municipal, provincial/territorial, or federal governments

### What we heard

#### Reduce the regulatory and administrative burden

People had different ideas about how the Minor Works Order could reduce the burden for owners of works.

Some submissions that we received said that the Minor Works Order was needed as another process other than the approval or resolution process of the *Canadian Navigable Waters Act*.

Other submissions said that all works built within navigable waters should go through an approval or consultation process. They said this would let any groups possibly affected by the minor work have the chance to share and discuss their concerns with Transport Canada or the owner.

#### Our response to comments about reducing the regulatory and administrative burden

Minor works only slightly interfere with navigation and can be managed by standard requirements in the order. If these works went through the approval process, the requirements found in their approval document would be the same or similar to the ones required by the order.



We are considering an approach of requiring owners of certain types of minor works to give notice and deposit information, in an effort to balance the ability of owners to start working in a reasonable amount of time, while making sure the community knows about the proposed work.

#### [The process for determining minor works](#)

Several submissions included questions and wanted more information on the process that Transport Canada uses to evaluate which type of works are or will be characterized as minor works.

#### [Our response to questions about determining the status of minor works](#)

This discussion paper provides additional information on the process that Transport Canada used to determine the type of works.

#### [Impacts on Indigenous rights](#)

Some submissions raised the issue that while an individual work could only slightly affect navigation, it was possible that the work itself, or combined with the presence of others, might create conditions that impact Indigenous rights.

Examples of impacts that minor works could create include:

- soil disturbance
- waterway bed disturbance
- riparian corridor disturbance

The above impacts, and some construction methods for minor works could also impact activities important to Indigenous peoples like:

- hunting
- fishing
- sharing traditional knowledge through land-based education
- harvesting
- spiritual uses

We heard that Indigenous peoples want to know what is being proposed in their communities, so they can share their concerns with the projects before they're carried out. We also heard concerns about how Indigenous peoples would need to review any work that's deemed "minor", since the work wouldn't necessarily be subject to other federal or provincial approvals.

For proposed works in Indigenous territories, some submissions asked that nearby Indigenous communities be involved in reviewing and approval of the proposed work. They also felt that their approval should be required before an owner goes ahead with construction.

#### [Our response to the impacts on Indigenous rights](#)

We understand that being notified of proposed minor works is important to Indigenous peoples, in order to avoid impacts on their rights connected with navigation.



We've heard that works that disturb the bed of the navigable water could impact fish and fish habitat, and that works that limit access to a waterway can impact Indigenous peoples' ability to exercise rights.

Because of this, Transport Canada is considering how best to ensure that communities are aware of proposed minor works that could impact safety and Indigenous peoples' ability to navigate while exercising their rights.

### [Deposit and notification requirements](#)

We heard many different viewpoints when it came to the issue of depositing information for works that could be classified in the order. We received feedback about proposals for:

- sharing project information (deposit)
- notifying the public about the project (notification)

Some strongly supported including deposit and notification requirements for all types of works on the [Common Project Search website](#). Some people said that sharing basic information would give both Transport Canada and the public enough information to monitor the overall impacts of works built on navigable waterways. Sharing information would also make it easier to make sure that owners of works are following the rules.

Some people did not support the proposal about depositing information. They were concerned that these requirements would increase the administrative and regulatory requirements for works that interfere only slightly with navigation.

Some people also said that depositing and giving notice for some works could impact the work's effectiveness and safety, if the project location was publicly shared.

### [Our response to deposit and notification requirements](#)

This discussion paper describes the approach we're proposing to extend deposit and notification requirements in the Minor Works Order for certain types of works.

To make communities aware of proposed works that could impact Indigenous peoples' rights, while minimizing the reporting burden to those specific types of minor works that may impact navigators and the rights of the Indigenous peoples, we are thinking of adding a new notification requirement for erosion-protection works, aerial cables, submarine cables, pipelines buried under the bed of the navigable water, outfalls and water intakes, dredging, and watercourse crossings.

We are also looking at the option of updating the public registry to allow owners of the remaining types of minor works to post details about their proposed work, on a voluntary basis.

### [More details](#)

Many people said they wanted more detailed information on the requirements that we're reviewing and our proposals for new types of works. They said they want to assess, evaluate and provide more comments on each type of work before the revised Minor Works Order goes ahead for approval.





#### [Our response to requests for more details](#)

This discussion paper includes more details about the requirements we're considering as part of our new proposed approach.

#### [Requirements should only be set to prevent further interference](#)

Some people said they wanted to see Transport Canada review the requirements in effect right now. They felt the department should only maintain the requirements that are strictly required, to make sure that the work doesn't interfere with navigation more than slightly.

People were also concerned that there are too many requirements in the Minor Works Order for works that have the potential to only slightly interfere with navigation.

#### [Our response to only setting requirements to prevent further interference](#)

This discussion paper explains the new approach that we'd like to use to simplify the order.

When appropriate, we want to:

- move to more outcome-based requirements
  - In this case, the owner will have the flexibility to get the desired outcome by using the method they think will work best
- simplify the order so that requirements for works are brought together in one section
- balance these changes with the need to maintain navigation safeguards