

MEMORANDUM OF UNDERSTANDING

Between

Transport Canada Marine Safety and Security

And

National Marine Manufacturers Association

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1 Interpretation

- 1.1 For the purposes of this Memorandum of Understanding (MOU):
- 1.1.1 “Addendum” means the Canadian Addendum to the NMMA Inspection Report.
 - 1.1.2 “Manufacturer” means the person or organization that builds, manufactures, rebuilds, or imports a vessel, in order to be sold or operated in Canada.
 - 1.1.3 “Minister” means the Canadian Minister of Transport.
 - 1.1.4 “NMMA” means the National Marine Manufacturers Association.
 - 1.1.5 “NMMA Certification program” refers to the inspection service performed by the National Marine Manufacturers Association under the Boat and Yacht Certification Agreement between the manufacturer and the NMMA.
 - 1.1.6 “NMMA Certificate” refers to the certificate the NMMA issues to the manufacturer once inspection and all annual requirements have been completed under the NMMA Certification program.
 - 1.1.7 “TCMSS” means Transport Canada Marine Safety and Security.

2 Preamble

- 2.1 This agreement builds on the foundation for collaboration outlined in the mandate of the Regulatory Cooperation Council (RCC) Marine Transport Working Group, which focused on the alignment of the regulatory environment between Canada and the United States (US), by enhancing technical collaboration, the mutual recognition of standards and joint work sharing.
- 2.2 The RCC Marine Transport Working Group: Construction/Safety Standards for Small Craft included four Action Items:
- 1. Align the regulations and standards for construction of pleasure craft/recreational boats;
 - 2. Align the compliance monitoring program;
 - 3. Develop a joint harmonized safety defects and recall program;
 - 4. Establish an ongoing alignment mechanism for standards, compliance monitoring, and safety recall programs.
- 2.3 This MOU is consistent with the objectives of Action Item 2 of the 2011 RCC Work Plan.
- 2.4 Currently, manufacturers of pleasure craft of less than 24 metres and of non-pleasure craft not more than 15 gross tonnage must submit to TCMSS a Small Vessel Declaration of Conformity (DoC) for all vessel models built, manufactured, rebuilt, or imported to be sold or used in Canada, pursuant to Part 8 of the *Small Vessel Regulations* (SVR). The DoC includes a description of the vessel model, information about the vessel compliance with the construction requirements of the SVR and a signed declaration.

- 2.5 TCMSS reviews the DoC and conducts random and targeted monitoring to verify compliance with the Canadian construction requirements. The SVR also requires the manufacturer to keep all records relating to technical information used to ensure compliance with construction requirements for a period of seven years and to provide these records to any person or organization authorized to carry out inspections under the *Canada Shipping Act, 2001* (CSA, 2001).
- 2.6 The NMMA is a trade organization which applies American Boat & Yacht Council (ABYC) Standards to the NMMA Certification program. The NMMA also incorporates additional items from the US Code of Federal Regulations into its Certification program.
- 2.7 The NMMA Certification program requires the NMMA to certify that boats and yachts produced by the manufacturer, with standard equipment, are designed to comply with the applicable standards as published in the NMMA Certification Standards Basis for the respective model year. Each model or a representative sample must be physically inspected by a NMMA inspector annually. To achieve Certification, a manufacturer must demonstrate that all variances found during the inspection have been corrected.
- 2.8 Acceptance of the NMMA Certificate as an alternative to Transport Canada's Small Vessel DoC will:
- reduce the administrative burden on the marine industry, as more than 80% of the vessels constructed, or imported in order to be sold or operated in Canada already submit to the NMMA Certifications process; and
 - support the enhancement of TCMSS small vessel oversight monitoring programs by providing an additional tool for manufacturers to demonstrate compliance.

3 Purpose

- 3.1 The purpose of this MOU is to provide a framework for cooperation between TCMSS and the NMMA, referred to as *the Participants*, as it relates to the acceptance of the NMMA Certificate as an alternative to Transport Canada's Small Vessel Declaration of Conformity.

4 Regulations, Standards and Policy

- 4.1 Nothing in this MOU alters in any way the authority of the Minister under any federal act or regulation.
- 4.2 This MOU applies to pleasure craft less than 24 metres in length and to non-pleasure craft of not more than 15 gross tonnage, constructed, manufactured or rebuilt in, or imported into, Canada in order to be sold or operated in Canada, in accordance with the CSA 2001, the SVR, the *Construction Standards for Small Vessels 2010* - TP 1332, and the TCMSS policy "Acceptance of Alternative Construction Standards for Small Vessels" RDIMS# 14823074.

5 General Conditions

- 5.1 This MOU will not affect the NMMA Certification program, other than the measures outlined hereafter.

- 5.2 TCMSS and the NMMA shall each appoint a coordinator who will be responsible for the overall co-ordination of delegation within the organization and to act as a common point of contact regarding the application of this MOU.

6 Declaration of Conformity and NMMA Certificate

- 6.1 TCMSS will accept the certification under the NMMA program, together with a Canadian DoC Addendum to the NMMA Certificate, as an alternative to the normal Declaration of Conformity process under part 8 of the SVR.

The NMMA Certificate shall identify the model name, model year and its unique model identification number

- 6.2 The DoC addendum to the NMMA Certificate will include:
- a) The identification of the manufacturer;
 - b) The name and characteristics of the vessel model;
 - c) A statement of compliance with the applicable additional Canadian requirements; and
 - d) The signature of the Canadian Responsible Officer.
- 6.3 Manufacturers using the alternative process under this MOU will only be required to submit the DoC Addendum to the TCMSS before the first sale of the vessel model. A copy of the DoC Addendum will be provided to the reseller or end user at the time of the initial transfer of ownership of the vessel.
- 6.4 TCMSS will record the DoC in the manufacturer files. No additional systematic verification of compliance will be made for vessel models certification using the NMMA certification process.

7 TCMSS Compliance Monitoring of Vessels

- 7.1 TCMSS may select vessel models on a risk or ad-hoc basis for compliance verification.
- 7.2 When a vessel model is selected, TCMSS will monitor compliance with the requirements to the standards and regulations either by:
- a) Requesting that the Manufacturer provides to TCMSS the NMMA Certificate, together with all technical documents, inspection reports, variance responses and test reports relating to the certification of the model; or
 - b) Performing field inspections of the vessel by TCMSS inspectors, at the manufacturer site, dealer site or any other suitable location, as permitted under sections 198 or 211 of the CSA, 2001.

8 TCMSS Auditing of NMMA

- 8.1 TCMSS shall monitor the NMMA work covered by this MOU on a periodic basis and may undertake ad-hoc audits for reasons that TCMSS deems appropriate. Such reasons may include, but are not limited to, the following:

- a) To follow up on findings from internal or external audits if necessary;
 - b) In reaction to industry related incidents or adverse reports;
 - c) If irregularities are noted in complying with Canadian requirements;
 - d) If the NMMA's own internal or external audits reveal significant adverse findings.
- 8.2 TCMSS monitoring of the NMMA records shall be limited to inspection reports for vessels on the Canadian market and all technical documents and tests related to the certification of participating manufacturers.
- 8.3 The NMMA shall provide TCMSS with access to its operations and facilities necessary to undertake monitoring as indicated in 8.1 and 8.2.

9 Vessel Non-conformity

- 9.1 The NMMA will inform TCMSS in the case where the NMMA is made aware that a vessel model is alleged or found to be non-compliant with respect to a construction requirement, including the requirements for the Canadian Compliance Notice outlined in Part 8 of the SVR.
- 9.2 TCMSS does not require the NMMA to report issues of non-conformity if a vessel is not on the Canadian market, or if the deficiency or issue has been resolved for that vessel and corresponding vessel models before the vessel model is sold on the Canadian market.
- 9.3 Where TCMSS becomes aware of deficiencies on a vessel model, which has been certified by the NMMA, and TCMSS notifies the NMMA, the NMMA shall take action within 30 days to ensure that the deficiencies are rectified.

10 Reporting

- 10.1 NMMA will report the non-compliance upon being made aware of the situation, and shall send notification to the representative from TCMSS assigned to correspond with the NMMA on such matters.
- 10.2 TCMSS will notify the NMMA of any major deficiency found or alleged on any vessel model that has been certified by the NMMA under this MOU. TCMSS will notify the NMMA of any legal enforcement actions taken against a manufacturer certified by the NMMA under this MOU.
- 10.3 The notifications above shall contain the name of the manufacturer or vessel, the hull identification number(s), if applicable, and a description of the major non-conformity, deficiency or issue.
- 10.4 The NMMA will notify TCMSS in the case where a manufacturer is no longer certified by the NMMA certification program.

11 Exemptions

- 11.1 This MOU does not give the NMMA authority to allow any exemptions from or equivalency to the construction requirements to any manufacturers who complete the NMMA Certificate as an alternative to Transport Canada's Declaration of Conformity.

- 11.2 TCMSS may consider, on request of the manufacturer, standards that provide a level of safety at least equivalent to that provided by the construction requirements for vessels of particular design pursuant to section 709 of the SVR.

12 Responsibility

- 12.1 Manufacturers participating in the program provided for in this MOU are responsible for:
- a) Completing the Canadian Addendum to the NMMA Certificate;
 - b) Transmitting a copy of the Canadian Addendum before the first vessel is sold on the Canadian market;
 - c) Attaching a Canadian Compliance Notice, as described in the Small Vessel Regulations and the TP 1332, to each vessel sold on the Canadian Market;
 - d) Submitting the Annual Production Report, as described in the Small Vessel Regulations and the TP 1332, for each model of vessel sold on the Canadian market;
 - e) Establishing and maintaining the technical documentation or information used to ensure compliance, as described in the Small Vessel Regulations and the TP 1332, as well as a copy of the Canadian Addendum.
- 12.2 The NMMA is not responsible for monitoring compliance of the manufacturer beyond what is outlined in the NMMA Certification process or what has been outlined in this MOU.
- 12.3 The NMMA shall ensure that all persons assigned to undertake work covered by this MOU possess the qualifications, training, and experience the NMMA considers appropriate to carry out the work.
- 12.4 TCMSS will provide the NMMA with access to all Canadian laws, regulations, standards, Transport Canada policies, and interpretations issued by the Minister relevant to work covered by this MOU. TCMSS shall make every effort to notify the NMMA of amendments to these documents prior to their entry into force.
- 12.5 TCMSS is responsible for complying with the conditions of this MOU and for performing all necessary compliance monitoring in accordance with the requirements of the standards and regulations listed at 4.2 of this MOU.

13 Other Conditions

13.1 Financial Arrangements

- 13.1.1 This MOU will not impose any financial responsibilities on its Participants, except that each Participant will be responsible for the funding costs it incurs in its own interest, related to the support of the MOU.

13.2 Settlement of Disputes

- 13.2.1 Any dispute regarding the interpretation or implementation of this MOU shall be resolved by consultation between the Participants. For greater certainty, disputes may not be referred to a national tribunal or any other third party for settlement.

13.3 Amendment

- 13.3.1 Amendments to this MOU will come into effect only after consultation and written agreement between TCMSS and the NMMA.

14 Withdrawal and Termination

- 14.1 This MOU may be terminated, in whole or in part, by either Participant by giving the other Participant 12 months' written notice.
- 14.2 In the event of a failure to maintain the standards as required by this MOU or upon a breach of any term or condition of this MOU by one of the Participants, the other Participant may notify the violating Participant of its breach in writing. The violating Participant has 90 days from the date of the notice to remedy the breach, failing which the notifying Participant has the right to immediately terminate the MOU in whole or in part.
- 14.3 Upon termination of the MOU, the NMMA shall, within 30 days, provide TCMSS with all documentation and information that the Minister considers relevant to performing the activities under this MOU.

15 Entry into Force

- 15.1 This MOU enters into force on the date it is signed by both Participants.
- 15.2 The MOU between TCMSS and the NMMA, respecting the acceptance of the NMMA certification documents as an alternative to Transport Canada's Small Vessel Declaration of Conformity, dated November 29, 2019, is hereby accepted.
- 15.3 IN WITNESS WHEREOF the undersigned, duly authorized by the Participants, have on the date indicated below signed this MOU.

Nathalie Bossé
Director General
Marine Safety and Security
Transport Canada

Frank Hugelmeyer
President
National Marine Manufacturers Association

Date

Date