



**District of
North Saanich**

STAFF REPORT

To: Tim Tanton
Chief Administrative Officer

Date: January 27, 2020

From: Carly Rimell
Planner

File: 6630-50 Waterfront
Development

Re: Introductory Report: Possible Roles for the District in the Shoal Harbour Migratory Bird Sanctuary Integrated Management Plan (Tsehum Harbour)

RECOMMENDATION:

That Council direct staff to:

- i. Include consideration of a designation specifically for Tsehum Harbour, the inclusion of a special Development Permit Area, and stricter policies on permissions and placement of structures as part of the OCP review (Possible Role #3); **AND**
- ii. Explore the possibility of joining the CRD Harbour Program Service (Possible Role #5).

STRATEGIC PLAN IMPLICATIONS:

This matter relates to the following Council strategic priorities:

Maintain a Strong Sense of Community

Protect and Enhance Rural, Agricultural, Heritage, Marine and Environmental Resources

Maintain a Safe and Healthy Community

OFFICIAL COMMUNITY PLAN:

This matter relates to the following sections of the District's Official Community Plan:

- 4.0 Marine Areas
- 14.3 Development Permit Area No. 1 Marine Uplands and Foreshore
- 14.2 Development Permit Area No. 2 Creeks, Wetlands, Riparian Areas, and Significant Water Resources

INTRODUCTION:

The District of North Saanich Council at their March 5, 2018 meeting resolved:

- 155 That the correspondence dated February 15, 2018 from F. Boyce on behalf of Friends of Shoal Harbour regarding inter-municipal cooperation in managing moored boats in Tsehum Harbour be received and that Council support in principle the renewal of the joint integrated management plan, communicate with Sidney as to their interest, and consider in more detail as part of the 2019 strategic plan discussion.

The correspondence dated February 15, 2018 is attached as Appendix A to this report. This report serves as a follow up to this resolution as well as the District's 2019 Strategic Plan item "Staff to prepare a report regarding possible roles for the District in the Shoal Harbour Migratory Bird Sanctuary Integrated Management Plan (boats, birds & sea level rise)."

BACKGROUND:

The area is known as Shoal Harbour and Tsehum Harbour, this report will refer to both names in reference to this place.

The Marine Task Force¹ final report (2008) recommended that “North Saanich should join with Sidney to either expand the scope of the existing Tsehum Harbour Commission [Tsehum Harbour Authority] or form a new one, which could, at a later date, be expanded to include all of the District’s shoreline. The mandate and role need to be further developed and discussed to monitor and trigger enforcement by the responsible bodies for issues such as inappropriate buoy placement, transient moorage, derelict boats, fire protection and waste discharges”. The subsequent action item from the staff report titled Marine Task Force Final Report – Recommendation on Implementation (2008) identified to “Enter into preliminary discussions with Town of Sidney and the Tsehum Harbour Commission and report back to Council.”

There was an effort to form a stakeholder working group in 2008 in order to study this recommendation however it did not succeed. The District’s Strategic Plan has subsequently noted the Shoal Harbour Bird Sanctuary as an initiative since 2009. In 2011 the Friends of Shoal Harbour (FOSH) was formed and they have been advocating for an integrated management plan since this time.



Figure 1. 2019 Aerial Photo Tsehum Harbour

¹ The Marine Task Force was created as an initiative of a planning committee to report on the marine industry in North Saanich.

DISCUSSION:

Boats

Mooring Buoys and Associated Vessels

Vessel owners have been installing mooring buoys with a concrete block or other suitably heavy anchor. Once installed, there is currently no additional cost on the applicant. At present it is estimated that there are ±100 mooring buoys within Tsehum Harbour.

Transport Canada has the authority and mandate to remove vessels, moorings or other objects that are an impediment to navigation within a designated navigation channel (Appendix B: Tsehum Harbour Navigation Area). Moored vessels that are not impeding navigation do not fall within this mandate.

The Province has the authority to remove structures that occupy Crown land (including aquatic lands) unless those structures have some form of legal authority, such as a Land Act tenure. This general authority does not extend to moored vessels.

Due to Federal and Provincial legislation there have been a growing number of unregulated buoys along B.C.'s coastlines. The District's bylaws with respect to buoys are discussed in greater detail under the section heading Local Government Considerations.

Abandoned Boats

At present it is estimated that there are more than 30 sunken boats within Tsehum Harbour. There are an estimated 1,400 abandoned boats along BC's coast.²

Transport Canada has been removing 2-5 boats per year from Tsehum Harbour under their regulatory tools and criteria. However where boats exist that do not fit the criteria of their legislation they have created the Abandoned Boats Program (ABP) to assist local governments in removal.

In early 2017, the federal government announced a 5-year Abandoned Boats Program to support local initiatives to clean up coastal waters. As such the Capital Regional District (CRD) Board requested staff initiate and coordinate a consistent, regional approach to deal with abandoned vessels. CRD staff worked with municipalities to coordinate efforts for a regional application to the federal ABP initiative. Funds were allocated from reserves at the CRD and leveraged to secure greater federal funding support.

The CRD contracted the Dead Boats Disposal Society (DBDS) to manage the process of inventory and removal. At present the CRD has stepped back as the majority of applications are being done directly through the DBDS. The initial funding that was set aside for abandoned boat removals has been spent. The CRD Board sent a letter to the Minister of Transport requesting that the federal government fund 100% of vessel removal cost as opposed to 75%.

The *Wrecked, Abandoned or Hazardous Vessels Act* (WAHVA) was adopted in 2019 by the Federal government and it aims to protect coastal and shoreline communities, the environment and infrastructure. The legislation governs wrecked, abandoned and hazardous vessels (problem vessels) and establishes a compliance and enforcement regime. The WAHVA will improve vessel owner responsibility and liability; address irresponsible vessel management, including a ban on vessel abandonment; and enhance federal powers to take proactive action on hazardous vessels (Appendix C: Wrecked, Abandoned or Hazardous Vessels Act Brochure). Additional measures currently being undertaken include improving vessel ownership identification, creating an inventory of problem vessels and assessing their risks, and establishing a polluter pay approach for vessel clean up. The associated regulation to the WAHVA is currently being developed.

² Retrieved from <https://bc.ctvnews.ca/there-are-around-1-400-boats-abandoned-on-b-c-s-coast-boat-removal-society-says-1.4565867>

Raw sewage and high e-coli concentrations

Transport Canada regulates the discharge of sewage from vessels under Canadian jurisdiction. The Vessel Pollution and Dangerous Chemical Regulations (VPDCR), made under the *Canadian Shipping Act* requires that there must be a holding tank and that boats cannot discharge raw sewage directly from the toilet (Appendix D: Preventing Marine Sewage Pollution).

Permanent live-aboards

The federal or provincial governments do not directly regulate live-aboards moored on buoys; however in some instances where additional structures are added to mooring buoys such as platforms for residential use, this is considered under federal mandate and can be removed by Transport Canada.

Birds

Under the *Migratory Birds Convention Act* the Federal Minister of the Environment can establish sanctuaries for migratory birds and enact regulations to control and administer such sanctuaries. The Shoal Harbour Migratory Bird Sanctuary (SHMBS) is one of the oldest migratory bird sanctuaries in Canada, established in 1931. The SHMBS covers 144 hectares of sheltered bays and extensive intertidal mudflats and is part of the Gulf Islands Biotic Area (Appendix E: Shoal Harbour Migratory Bird Sanctuary Map). The SHMBS is located within the boundaries of both the Town of Sidney and District of North Saanich. The federal government website notes marinas and long-term anchored boats (associated contamination) ongoing development pressure, urban runoff, land clearing and tree removal on upland properties has raised concerns on the impact of the SHMBS³. Despite these challenges the ecosystem still supports a rich diversity of seabirds, shorebirds and waterfowl during migration and through winter - many of these birds are not found elsewhere in Canada. Pacific Great Blue Herons, a British Columbia listed species at risk are frequently seen in large numbers feeding in shallow mudflats.

Migratory Bird Sanctuaries, such as Shoal Harbour, have been established across the country to protect migratory birds during critical periods of their life cycle. Whether these areas are used for feeding, resting or nesting, they play an important role in the survival of many species. The regulations outline specific prohibited and permitted activities within the sanctuary boundaries when migratory birds are present but do not provide habitat protection. The Migratory Bird Sanctuary Regulations prohibit all disturbances, hunting and collection of migratory birds and their eggs within the sanctuary and visitors must not carry firearms or allow their pets to run at large. Where Migratory Bird Sanctuaries are established on provincial land or private property such as the SHMBS, the prohibited activities under the Regulations have force of law.

Tsehum Harbour is also within the Sidney Channel Important Bird Area⁴ (IBA), see Appendix E. The IBA program is an international conservation initiative coordinated by Birdlife International. The Canadian co-partners for the IBA Program are Birds Canada and Nature Canada. IBAs support threatened birds, large groups of birds or birds restricted by range or by habitat. IBA are identified using internationally accepted and scientifically defensible criteria which helps provide conservation of birds and biodiversity. A conservation plan was completed for the Sidney Channel IBA in 2001⁵.

Sea Level Rise

According to the report prepared by SNC Lavalin Tsehum Harbour is located within one of the more vulnerable areas exposed to coastal flooding hazard in the District of North Saanich. Enhancing the beaches and tidal marshes in these areas can contribute to the absorption of wave

³ Environment and Climate Change Canada. <https://www.canada.ca/en/environment-climate-change/services/migratory-bird-sanctuaries/selection-criteria/management.html>

⁴ IBA Canada Important Bird Areas <https://www.ibacanada.com/site.jsp?siteID=BC047>

⁵ Southern Vancouver Island Marine Waters and Seabird Islands Important Bird Areas Conservation Plan, retrieved from IBA Canada <https://www.ibacanada.ca/documents/conservationplans/bcsouthernvancouverisland.pdf>

energy during coastal flood events, while still providing valuable marine habitat. These types of works could make the adjacent areas less exposed to the risks of flooding during coastal flood events. An update on the sea level rise and marine policy planning was provided to Council on December 16, 2019. Staff are to report back once the CRD has completed its current Flood Inundation Mapping Project. Work undertaken by Great Pacific Engineering, a consultant retained by the District for a flood related adaptation concept development in Tsehum Harbour area will be included as part of the report back to Council.

Additional Considerations

Environment

The Saanich Inlet and Peninsula Atlas of Shorelines (SIPAS) ⁶ was a shoreline inventory from 2007-2009 which was completed by SeaChange Marine Conservation Society, in collaboration with the Saanich Inlet Protection Society and Peninsula Streams Society. Tsehum Harbour was identified as having areas with subtidal eelgrass beds present. Eelgrass is rich with biodiversity and provides shelter and nutrients for many marine species.

Archaeology and First Nations

Portions of Tsehum Harbour have been identified as archaeological sites within the Provincial Remote Access to Archaeological Data (RAAD) mapping. The *Heritage Conservation Act* recognizes the historical, cultural, scientific, spiritual, and educational value of archaeological sites to First Nations, local communities and the public. Further information on the history, practice and use of this area would need to be provided by First Nations to acknowledge a full social history and cultural meaning of this place.

Local Government Considerations

District of North Saanich – Land Use Bylaws Overview

The Community Charter gives municipalities authority over zoning including the power to regulate land covered by water up to 300 metres from the high water mark of municipal boundaries. The District's incorporation patent indicates that it includes the land covered by water out to 300 metres from the high water mark.

Notwithstanding, the regulation of navigation and shipping falls exclusively within federal jurisdiction. Court decisions (*West Kelowna District v. Newcomb*; *City of Victoria v. Zimmerman*) have confirmed that municipalities may regulate, through zoning, use of land covered by navigable waters and recognized some incidental interference with navigation and shipping must be allowed.

The District's OCP currently has 2 designations for the surface area of Tsehum Harbour. The majority of Tsehum Harbour is designated as Marine (blue), whereas some portions, mostly

⁶ Available at <https://seachangesociety.com/wp-content/uploads/2015/10/SIPAS-Technical-Report.pdf>

fronting the marinas are designated as Commercial (pink), see Figure 2. Schedule G (Foreshore, Major Creeks, Watercourses and Shoreline Components) indicates Pocket Beaches Class 2 and 3, mudflats, rock platform with beach veneer (boulders, rubble or gravel), broad silty or sandy beach and major man-made structures; therefore all of Section 4.0 (Marine Areas) of the OCP are applicable to Tsehum Harbour. The OCP designates some areas as commercial within Tsehum Harbour, mostly those areas front the marinas. The legend clearly defines these areas as commercial however within Section 7.0 the policies have been separated into "land-based" and "marine-based" commercial activities. The application of the guidelines of this section are challenging as the commercial designation extends to the marine areas but these areas not designated as 'marine commercial'. The OCP does not have any objectives or policies that address duration of mooring or live-aboards.

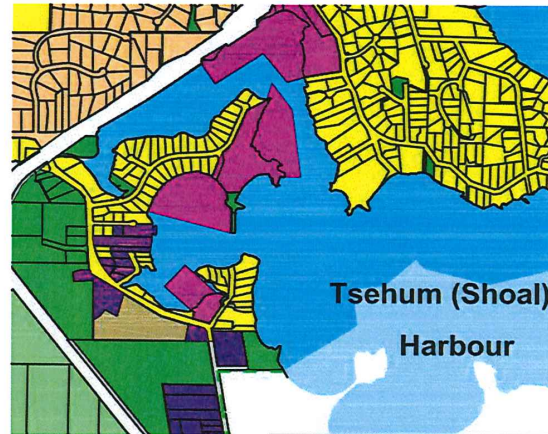


Figure 2. OCP Designations

Tsehum Harbour and the lagoon are within Development Permit Area (DPA) No. 1 Marine Uplands and Foreshore and are shown in Figure 3 shaded in green. The objective of this DPA is to protect the natural environment as Tsehum Harbour is an important wintering habitat to thousands of waterbirds and a unique variety of marine plants and animals. The guidelines within the OCP however are more suited to shoreline, foreshore and uplands which can help mitigate impacts on the marine areas, however there are minimal guidelines which directly address the marine surface areas. A buoy is defined as a structure and therefore requires a DP application to be submitted to place a buoy within Tsehum Harbour.

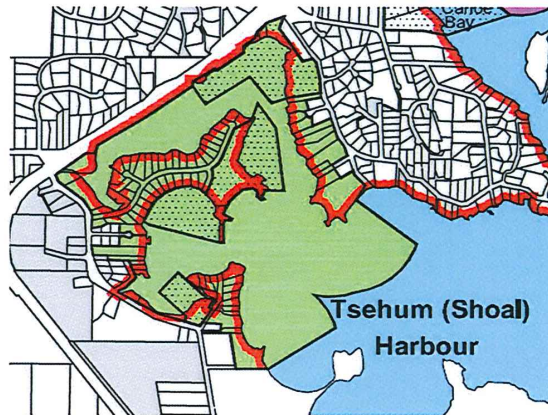


Figure 3. DPA 1

DPA No. 2 Creeks, Wetlands, Riparian Areas and Significant Water Resources applies to only the small portion of wetland shown in green and the riparian area (30m from high watermark) shown in fuchsia, in Figure 4. The objective of this DPA is to regulate development in these areas so that they are conserved and protected and erosion in riparian areas is limited. The guidelines for this area are comprehensive but only apply to two small areas within the Harbour.

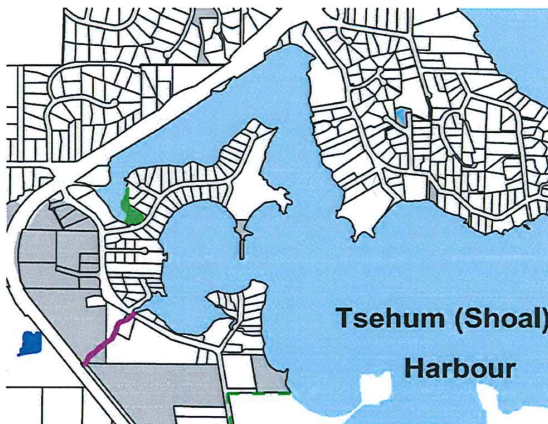


Figure 4. DPA 2

The District's Zoning Bylaw includes several zones within Tsehum Harbour, both on the upland parcels and on the water's surface, see Figure 5. The zones which apply to the water's surface are as follows:

- Commercial Marine 1 (M-2)
- Commercial Waterfront (M-3)
- Commercial Marine 2 (M-4)
- Non-Commercial Marine 1 (M-5)
- Non-Commercial Marine 2 (M-6)

The majority of the marine surface water in Tsehum Harbour is zoned Non-Commercial Marine 2 (M-6). The majority of the boats being moored outside of the marinas within Tsehum Harbour are in the M-6 zone. This zone is intended to provide a building free and structure free environment on land and water (including no pier, wharf, jetty, dock, float, boat ramp, boat launching facility or boathouse) for open marine-recreation purposes⁷. The zone permits boat moorage subject to the following conditions of use as outlined in Table 1.

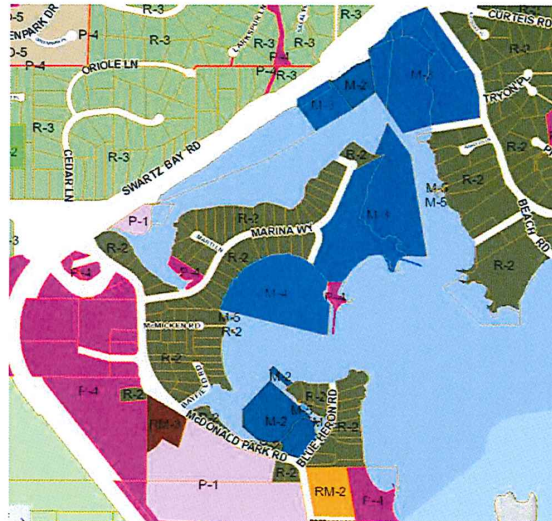


Figure 5. Zoning

Table 1. Zoning Bylaw 1255 Excerpt, Non Commercial Marine 2 (M-6)

504.6.5 Conditions of Use		
	(1)	Buoys sited on or affixed to land covered by water are permitted provided such buoys:
	(a)	must not at any time protrude above the water line more than 1 metre (3.2 ft.);
	(b)	must not be of a volume greater than 1 m ³ (35.3 cubic feet); and
	(c)	must otherwise comply with the "Private Buoys Regulation" under the <i>Canada Shipping Act</i> .
	(2)	For certainty, no commercial activities are permitted from moored boats.

Transport Canada indicated they have conducted enforcement within the harbour and the majority of buoys satisfy these regulations; therefore the majority of the moored vessels are in compliance with the District's Zoning bylaw.

Town of Sidney

District staff reached out to Town of Sidney staff to determine potential opportunities for collaboration. Town of Sidney staff indicated that there may be some interest in developing a management plan considering that a concept design completed in 2019 for Resthaven Park (which abuts Tsehum Harbour) included the following action item:

"Harbour Management: Liveaboards and Harbour Clean-Up – Conduct stakeholder consultation and lobby partners (e.g. Provincial government, Federal government, Harbour authority, First Nations, North Saanich) to develop the necessary framework to permit greater regulation in Tsehum Harbour and to establish an action plan to clean up debris in the harbor"

⁷ Marine recreation means non-commercial leisure activities on or in the water, such as fishing, swimming, boating and water skiing

Currently Sidney's OCP does not include an environmental DPA along the waterfront of Tsehum Harbour, but there is anticipation that there may be discussion of potential inclusion within the comprehensive OCP review slated for this year.

The potential opportunities identified at this point are:

- Comprehensive OCP review processes initiating in 2020 including Tsehum Harbour through policies and DP areas
- Focusing on boats and harbour clean up and taking advantage of the ABP
- Hiring a consultant to outline a path forward to navigate the jurisdictional layers involved in cleaning up and the harbour and potentially undertaking environmental enhancements.

Sidney staff has included a small budget item for Tsehum Harbour Management for upcoming 2020 budget deliberations. Sidney staff intends to provide Council with a report on the background, current state of the Harbour, and the outcomes from a private stakeholder meeting held on January 16, 2020 and possible options or actions for consideration. District staff provided excerpts from sections of this report to Sidney staff to inform them of the possible roles and options being presented to Council.

POSSIBLE ROLES:

Staff have provided a spectrum of possible roles as requested by the strategic plan item.

1. Work further with the Town of Sidney regarding the feasibility of the development of an integrated management plan.	
An integrated management plan could provide greater detail with respect to boats, birds and sea level rise. A comprehensive plan would likely include consultation with stakeholders, and provide the ability to gather more detailed information on environmental and social impacts of the existing uses and future uses of the Harbour. The plan could develop actions or recommendations which could better inform the local governments on how to proceed, whether through bylaw amendment, license of occupation application, or other alternatives.	
Staff from Sidney and the DNS have determined that outside consultant services would be necessary for the development of an IMP.	
Estimated timeline	1 year (plan development)
Estimated cost	±\$30,000 for plan subject to scope, unknown implementation and monitoring costs. If the Town of Sidney was interested these costs could be shared.
Potential next steps	Meet with the Town of Sidney to discuss the feasibility of an integrated management plan.

2. Consider applying to the Province for a Licence of Occupation for Tsehum Harbour.
A licence of occupation can be issued by the Province for crown land where there are specific management objectives. A management plan ⁸ is required to be submitted as part of a licence of occupation application. An integrated management plan (as noted in Possible Role #1) could be designed to satisfy the criteria required for the licence of occupation application. A management plan in conjunction with a license of occupation could provide additional regulatory control to manage the Harbour, specifically with respect to mooring buoys (number and location). Other municipalities such as Bowen Island and Central Saanich have taken a similar approach.
A licence of occupation would also provide the local government(s) the ability to charge rental fees for mooring buoys within the tenure area. Rental fees could offset or potentially cover the management and monitoring costs of the licence area within Tsehum Harbour. The application fee and tenure fees

⁸ Management Plans must include the following sections: background, location, infrastructure, environmental, socio-community and reclamation.

associated with a licence of occupation are minimal. The greatest expense would likely be in the preparation of a management plan and any associated reports required for submission to the Province, as well as the ongoing management of the area.	
Estimated timeline	2 years (application processing time) following management plan preparation
Estimated costs	\$262.50 (Application fee) The District could likely qualify for nominal rent tenure which is \$1.00 annually. The fees collected from the mooring buoys would ideally offset or potentially cover the management of Tsehum Harbour. The estimated costs of the management of Tsehum Harbour could vary greatly depending on the scope of the management plan and the management contract. For example if it included restoration of natural areas it would be more expensive as opposed to only collecting and monitoring of mooring buoys.
Potential next steps	Meet with the Town of Sidney and have further discussions with staff at the Ministry of Forests, Lands and Natural Resources and Rural Development regarding application requirements.

3. Proceed with the scheduled comprehensive OCP review which could consider the introduction of a designation specifically for Tsehum Harbour and the inclusion of a special DPA, stricter policies on permissions and placement of structures.

Sidney is concurrently conducting a comprehensive OCP review. This presents an opportunity for collaboration in the coordinated development of a consistent review process of development proposals and land use bylaws. The *Local Government Act* s488(1)(a) provides for OCPs to include development permit areas to protect the natural environment, its ecosystems and biological diversity. The OCP also offers the opportunity to review the policies on the permissions and placement of structures within the marine designated areas. This would inform the subsequent comprehensive review of the zoning bylaw.

The current OCP does not have any objectives or policies that address duration of mooring or live-aboards. The current Zoning Bylaw informed by the OCP permits the placement of mooring buoys as long as they're compliant with the Private Buoys Regulation under the Canada Shipping Act. Staff would not advise Council to proceed to amending bylaws without consideration of a comprehensive review of marine policies. The comprehensive OCP review process will offer this opportunity.

The comprehensive OCP review has been incorporated as a budget item.

Estimated timeline	2 years (for OCP development)
Estimated costs	Minimal additional costs are anticipated as this could be included within OCP budget
Potential next steps	Proceed as scheduled with the comprehensive OCP review and ensure coordination with the Town of Sidney review with respect to Tsehum Harbour

4. Explore the potential for supporting the development of a stewardship initiative similar to the Esquimalt Lagoon Stewardship Initiative (ELSI) or Gorge Waterway Initiative (GWI) structure.

ELSI and GWI are a broad coalition of community and environmental groups, institutions, the business community, recreational user groups and government (federal, First Nations, provincial and municipal) working together to protect, enhance and restore Esquimalt Lagoon and Gorge Waterway.

These groups formed and developed a stewardship plan which provides a framework for a coordinated approach to managing these areas. A consensus based steering committee is responsible for guiding the implementation of the management plans. These stewardship initiatives goals include stewardship and education, prevention of destruction of habitat and wildlife, reduction of contamination, and promotion of environmentally protective land use. ELSI reviews and provides comments on

development proposals within the lagoon, promotes activities to engage the community in stewardship of the lagoon, provides input on habitat inventory, bird and fish surveys.

A part time coordinator, (funded through the CRD as part of the CRD Harbour Service Program) initiates and manages projects, seeks funding and coordinates these initiatives. These groups meet quarterly.

Budget implications would be associated with requiring a part time or contract position to coordinate the initiative if managed by DNS and/or Town of Sidney. Consideration to the possibility of inclusion of the DNS and Town of Sidney within the CRD Harbour Program is outlined within possible role 5. If the DNS and Town of Sidney were interested and were able to join the service a stewardship initiative group could be formed and managed through this service.

Estimated timeline	2 years (time to determine if there is interest, formulate group and governance structure, hire coordinator, develop management plan)
Estimated costs	CRD staff indicated that the coordinator is paid \$45.00/hour. If this was to be a full time position at the District of North Saanich it would cost approximately \$114,660 for a full time position and \$57,330 for a part time position. If the Town of Sidney was interested this cost could be shared.
Potential next steps	Meet with the Town of Sidney to discuss the feasibility of supporting the development of a stewardship initiative group.

5. Explore the possibility of joining CRD Harbour program service.

The service was established for the purpose of coordinating and implementing environmental protection and improvement initiatives within Portage Inlet, Gorge Waterway, Victoria Harbour, Equimalt Harbour and Esquimalt Lagoon. These include monitoring, mapping, reporting and public education on issues relating to the marine and shore area environments; coordination and collaboration with public authorities and other persons on issues relating to the marine and shore area environments; and implementing programs related to rehabilitation and improvement of the marine and shore area environment. This service would also include a stewardship initiative as outlined in possible role #4.

The general process would be for the District of North Saanich and potentially Sidney to make a request to join the service covered by CRD Bylaw No. 3743 (Harbours Environmental Action Service Establishment Bylaw). The request would be sent for consideration by a CRD standing committee, (likely the Environmental Services Committee) which would recommend to the CRD Board whether or not to direct CRD staff to pursue drafting a bylaw amendment. The CRD staff would report on implications and would either accompany the request or the bylaw. The bylaw amendments would be drafted and sent to the CRD Board for three readings. The service bylaw amendments generally require participant councils (2/3rds). The bylaw amendments would require approval from the Inspector of Municipalities. The amendment bylaw would then return to the CRD Board for adoption.

Estimated timeline	6-8 months
Estimated cost	Cost sharing is based on population within the service area for the Harbour service. For reference North Saanich would be ~3.9% of the population of the new service area (not including Sidney) and if the budget remained at ~\$318,000, North Saanich's share would be ~\$12,500. There are several assumptions but providing coordination support similar to ELSI/GWI would likely be ~0.5-1.0 days/week of extra staff time. There for an assumption of an extra \$25,000-30,000 would be needed on top of the existing budget. Those additional funds would be added to the existing budget, and then the participating local governments would have to agree to expanding the service and recalculate the cost sharing formula, based on either or both of North Saanich and Sidney wanting to participate. Staff note that these calculations are based on assumptions and potential big error bars.
Potential next steps	Meet with CRD staff and Town of Sidney staff to determine interest.

6. Develop a policy for a reciprocal referral process (Town of Sidney, Tseycum First Nation, Pauquachin First Nation) for any development proposals within or bordering along Tsehum Harbour

This would allow for collaborative review on a case by case basis of development proposals between local governments and First Nations. Staff suggest the standards for review be taken from the OCP and Zoning Bylaw but could consider the inclusion of additional elements. It should be noted any additional elements outside of the scope of the bylaws would have limited enforcement ability.

Estimated timeline	6 months for policy development in consultation with local government and First Nations
Estimated cost	Minimal direct costs, however there would be costs associated with staff time in policy development.
Potential next steps	Meet with the Town of Sidney, Tseycum First Nation, and Pauquachin First Nation to see if there is interest in developing a reciprocal referral process.

7. Table the consideration of this strategic plan initiative until the policy approach to sea level rise is determined and comprehensive OCP review is complete.

Staff are to report back once the CRD has completed its current Flood Inundation Mapping Project. Work by Great Pacific Engineering, a consultant retained by the District for a flood related adaptation concept development in Tsehum Harbour area will be included as part of this report back.

Estimated timeline	6 months to 1 year
Estimated cost	N/A
Potential next steps	District staff will report back once the CRD has completed its current Flood Inundation Mapping project.

OPTIONS:

Staff have provided a number of options which reflect the possible roles - several of these options include a combination of the possible roles.

- a. Include consideration of a designation specifically for Tsehum Harbour and the inclusion of a special DPA, stricter policies on permissions and placement of structures as part of the OCP review (Possible Role #3); **and** explore the possibility of joining the CRD Harbour Program Service (Possible Role #5).
- b. Include consideration of a designation specifically for Tsehum Harbour and the inclusion of a special DPA, stricter policies on permissions and placement of structures as part of the OCP review (Possible Role #3).
- c. Work further with the Town of Sidney regarding the feasibility of the development of an integrated management plan (Possible Role #1) **and** Consider applying to the Province for a Licence of Occupation for Tsehum Harbour (Possible Role #2) **and** Explore the potential for supporting the development of a stewardship initiative similar to the Esquimalt Lagoon Stewardship Initiative (ESLI) or Gorge Waterway Initiative (GWI) structure (Possible Role # 4).
- d. Develop a policy for a reciprocal referral process (Town of Sidney, Tseycum First Nation, Pauquachin First Nation) for any development proposals within or bordering along Tsehum Harbour (Possible Role #6).
- e. Table the consideration of this strategic plan initiative until the policy approach to sea level rise is determined and comprehensive OCP review is complete (Possible Role #7).
- f. Other.

LEGISLATIVE IMPLICATIONS:

A high level overview of jurisdictional and legislative authority was provided within this report. As outlined depending on the potential approach a more detailed look at legislative implications will be required.

DNS staff would like to note that even with the most 'hands on' approach available to local governments (example: City of Victoria and the Gorge Waterway which is within the harbour service, holds a licence of occupation, and has restrictive bylaws which do not support long term mooring, and has been successful in Supreme Court rulings) there are still challenges faced as different situations warrant the involvement of different agencies.

FINANCIAL IMPLICATIONS:

A high level overview of financial implications are included within each of the possible roles section 1-7.

WORK PLAN IMPLICATIONS:

The Planning and Community Services Department 2020 priorities include the comprehensive OCP review and Tree Bylaw Review. There is very limited capacity to take on another major initiative without reevaluation of project priorities occurring, or increased capacity within the Planning and Community Services Department.

COMMUNICATIONS IMPLICATIONS:

District staff expect a high level of interest in the management of Tsehum Harbour and any discussions surrounding marine policy changes. District staff will report back on the possible role(s) as directed by Council and at that time provide suggestions on communication and consultation opportunities for consideration.

CONSULTATIONS/REFERRALS:

District staff met with representatives from FOSH and the Tsehum Harbour Task Force. Staff consulted with CRD staff from the ABP and the Dead Boat Disposal Society. District staff consulted with staff from the Ministry of Forests, Lands and Natural Resources and Rural Development, Environment and Climate Change Canada, Transport Canada, Birds Canada, CRD (ELSI & Harbour Program), City of Victoria, District of Central Saanich, Islands Trust, IBA Canada, Tsehum Harbour Authority and the Town of Sidney.

Feedback from the Tsehum Harbour Task Force and Friends of Shoal Harbour indicate that moored boats and buoys seem to be the most pressing concern that they would like to see addressed. In this regard amending the bylaws (to restrict or prohibit further placement) and applying for a licence of occupation would be the most direct approach to doing so. This approach would be in opposition of the District's current land use bylaws. Staff's recommendation to proceed with the comprehensive OCP review and to explore the possibility of joining the CRD Harbour Program Service would also allow for the opportunity for bylaw amendments and application for a licence of occupation in the future if that was what was determined best.

INTERDEPARTMENTAL INVOLVEMENT:

Planning staff consulted with the Financial Services staff and the Communications Manager in the development of this report.

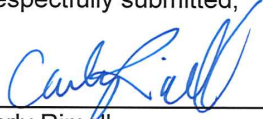
SUMMARY/CONCLUSION:

This report serves as a follow up to the District's 2019 Strategic Plan item "Staff to prepare a report regarding possible roles for the District in the Shoal Harbour Migratory Bird Sanctuary Integrated Management Plan (boats, birds & sea level rise)." Staff recommend proceeding with the comprehensive OCP review which would allow broad community consultation to inform

marine policies with respect to boats, mooring, and environmentally sensitive areas and to further explore the possibility of joining the CRD Harbour Program Service.

Respectfully submitted,

Concurrence,



Carly Rimell
Planner



Tim Tanton
Chief Administrative Officer

Concurrence:



Anne Berry, Director of Planning and
Community Services

Attachments:

- Appendix A: Letter dated February 15, 2018 from Friends of Shoal Harbour (FOSH)
- Appendix B: Tsehum Harbour Navigation Area
- Appendix C: Wrecked, Abandoned or Hazardous Vessels Act Brochure
- Appendix D: Preventing Marine Sewage Pollution – Transport Canada
- Appendix E: Shoal Harbour Migratory Bird Sanctuary Map

Crystal Gotto

From: Farrell Boyce [REDACTED]
Sent: Thursday, February 15, 2018 10:03 AM
To: admin@sidney.ca; admin
Subject: Letter from Friends of Shoal Harbour urging inter-municipal cooperation in managing moored boats in Tsehum Harbour (revised)
Attachments: Abandoned boats letter 2.docx

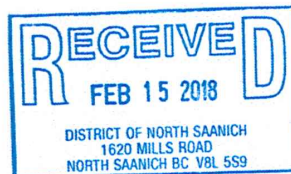
The attached letter to the Mayors and Councils of North Saanich and Sidney, written by Farrell Boyce on behalf of Friends of Shoal Harbour, was prompted by a recent grounding of two derelict boats in Tsehum Harbour following the storm of January 21, 2018.

Friends of Shoal Harbour continue to advocate for a joint, North Saanich/Sidney integrated management plan protective of the great value of the 1931 Migratory Bird Sanctuary.

Following the lead of other municipalities, Sidney and North Saanich could take a significant first step toward an integrated management plan by coordinating their efforts to deal with the problems created by unregulated offshore mooring of boats in Tsehum Harbour.

Support for this letter has been received from the Saanich Inlet Protection Society, Sea Change and Peninsula Streams.

Farrell Boyce on behalf of Friends of Shoal Harbour
 [REDACTED] North Saanich BC, V8L 5L8
 [REDACTED]



CIRCULATION	
Mayor	
CAO	
Corporate Officer	
ACTION	
<input checked="" type="checkbox"/> Council Agenda	
<input type="checkbox"/> Info Pk	
<input type="checkbox"/> Reading File	
<input type="checkbox"/> Staff Recommendation	
[Signature] Dir. PES 2018-02-15	

February 13, 2018

To: Mayor and Council, District of North Saanich
Mayor and Council, Town of Sidney

From: Friends of Shoal Harbour Society

Subject: Derelict Boats Ashore in Tsehum Harbour: Reminder of the Need for a Joint (Sidney/North Saanich) Management Plan for Tsehum Harbour and Roberts Bay 1931 Migratory Bird Sanctuary

In the storm of January 21, 2018, three boats came adrift and fetched up on the beach in front of the Sidney North Saanich Yacht Club ([PNR article](#)). One of these, a relatively new cabin cruiser, was refloated by agents of the owners and towed off for repairs. The two other vessels were in poor condition, unoccupied and presumably abandoned by owners who had failed to maintain their ground tackle.

Responsibility for the removal of a grounded boat lies first with the owner but frequently the owner cannot be identified because neither the boat nor the mooring is registered. Abandoned (unidentified) grounded boats have eventually been removed on an ad hoc basis but not before contaminating beach gravels with particles of anti-fouling paint and other materials inimical to creatures of the intertidal zone. Nominally, the Coast Guard has the authority/responsibility to remove abandoned vessels but until recently, the funds assigned to this responsibility have been inadequate to the need although this may be changing.

Rather than dealing with sporadic groundings of insecurely moored vessels it would be better to prevent groundings by regulating the long-term mooring/anchoring of vessels in Tsehum Harbour (number of moorings, placements thereof, adequacy and maintenance of ground tackle, documentation of boat ownership, etc.). This is the approach contemplated by the Municipality of Central Saanich in dealing with boats moored offshore in the vicinity of Brentwood Bay and Tod Inlet [Brentwood Bay Proposal](#) .

A second concern associated with inhabited vessels moored offshore (live-aboards), a concern common to both Brentwood Bay and Tsehum Harbour, is pollution from raw sewage. Regulations (requirement to possess and use holding tanks, for example) notwithstanding, this is bound to occur when convenience overcomes discipline, even when efforts are made to enforce regulations and to provide pump-out facilities. The main bodies of Brentwood Bay and Tsehum Harbour, stirred by winds and tidal motions would have some (presently unknown) capacity to "absorb" raw sewage and this capacity would relate to the number of occupied anchored boats with less than perfect hygiene that could be tolerated. The City of Vancouver funded a study of the sources and distribution of E-Coli bacteria in False Creek, a popular anchorage at the eastern end of English Bay. The study showed that moored vessels contributed significantly to E-Coli concentrations in mid-channel ([E-Coli in False Creek](#)). The abovementioned study may be of some help in estimating the "live-aboard carrying capacity" of similar anchorages.

An obvious way to reduce sewage pollution from offshore-moored boats would be an outright ban on using moored boats as permanent homes. Vancouver's management plan does not permit "permanent" live-aboards but does allow visiting boats (cruising yachts, for example) to anchor in False Creek for a "short stay" on the understanding that discharge of raw (black water) sewage is punishable by substantial fines ([Vancouver administrative report](#) [Vancouver pump-out plan](#)). The Brentwood Bay/District of North Saanich proposal, on the other hand, recommends live-aboards for first priority for mooring buoys, provided they have insurance, pay the lease fee, have holding tanks and pump them out at shore facilities. A rigid adherence to the holding tank requirement could be restrictive because of installation costs if the vessel did not previously have one, and the need to shift the boat from mooring buoy to a shore-side pump out facility every few days. Some sort of porta-potty, honey-bucket, row-ashore and shore-side toilet facility could be an adequate alternative. Nevertheless, these reasonable requirements could not be met by all the people whose only shelter was a decrepit old boat. This brings up the third issue related to managing moored boats, the difficult human problem of homelessness.

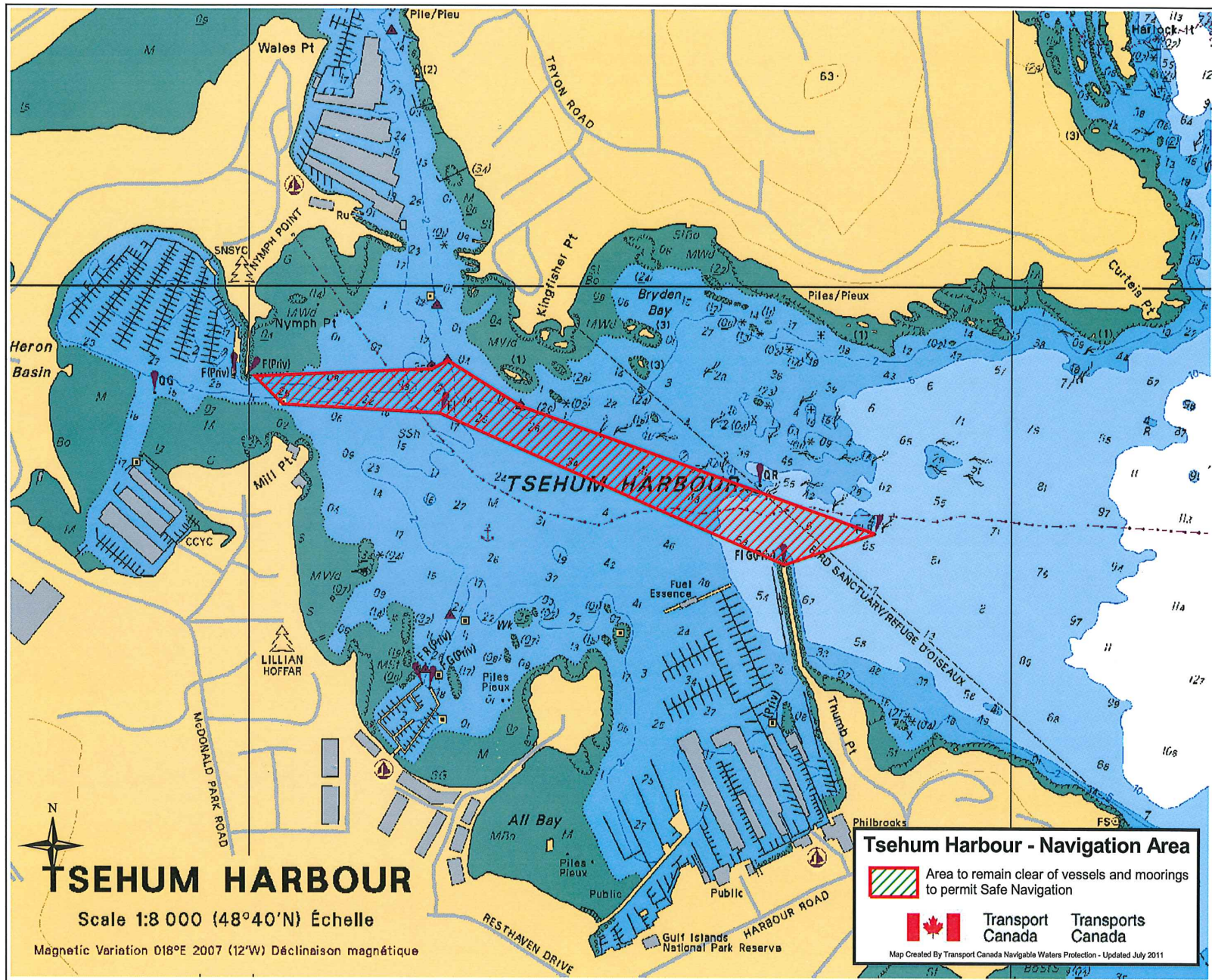
Getting it right in Tsehum Harbour on the moored boat and other foreshore issues that have become the responsibility of local municipalities calls for a deliberate plan (an integrated management plan) agreed to and implemented by both the Town of Sidney and the District of North Saanich. The concluding statements of the 1981 BC Ministry of the Environment study by Abs and Lozowy and those of the 2008 District of North Saanich Marine Task Force both recommend deliberate and integrated management plans as do the Friends of Shoal Harbour. An earlier 2009 initiative to develop such a plan did not succeed. In the interim, the Friends of Shoal Harbour, have continued to advocate for such a plan.

The Friends believe that a joint Sidney/North Saanich plan to deal with moored boats in Tsehum Harbour would be a good start in the direction of a more complete joint plan to manage other foreshore issues. The neighbouring District of Central Saanich is moving actively to deal with the moored boat problem, and there are other jurisdictions grappling with the issues as well; all of these efforts are informative. This brief and incomplete review of the issues and possible solutions needs to be expanded and perhaps a first step that Sidney and North Saanich might undertake together would be to commission a more thorough review of all the issues pertaining to local anchorages.

We look forward to your reply and would be pleased to attend a joint meeting with you or your staff to discuss how best to move forward and how we could assist you in that regard.

Farrell Boyce

on behalf of Friends of Shoal Harbour



OCEANS PROTECTION PLAN

UNDERSTANDING THE

WRECKED, ABANDONED OR HAZARDOUS VESSELS ACT

WHAT VESSEL AND BOAT OWNERS AND OPERATORS
NEED TO KNOW



 Government
of Canada

Gouvernement
du Canada

Canada

WHAT IS THE WRECKED, ABANDONED OR HAZARDOUS VESSELS ACT?

It is a key measure to protect Canada's waterways and marine ecosystem, under the Government of Canada's \$1.5 billion Oceans Protection Plan.

The Act governs wrecked, abandoned and hazardous vessels (including small boats and commercial vessels) and brings the *Nairobi International Convention on the Removal of Wrecks, 2007* into Canadian law. Most importantly, the Act will strengthen vessel owner responsibility and liability; address irresponsible vessel management, including a prohibition on vessel abandonment; and enhance federal powers to take proactive action on hazardous vessels.

DID YOU KNOW?

The *Wrecked, Abandoned or Hazardous Vessels Act* applies to Canadian and foreign vessels (including small boats and commercial vessels) located in Canadian waters. In the Exclusive Economic Zone, the Act only applies to Canadian vessels and vessels from countries that are party to the *Nairobi International Convention on the Removal of Wrecks, 2007*.

ILLEGAL PRACTICES UNDER THE ACT

Under the Act, you may not:

1. Abandon your unwanted vessel.
2. Cause your vessel to become a wreck because you fail to maintain it.
3. Sink, strand or ground your vessel on purpose.
4. Without being authorized, leave your vessel in poor condition in the same area (within a radius of three nautical miles) for more than 60 days.
5. Leave your vessel adrift for more than 48 hours without taking measures to secure it.

HOW TO BE A RESPONSIBLE VESSEL (OR BOAT) OWNER

1. Keep your vessel in good condition.
2. Plan ahead – Think about your vessel's retirement plan.
3. When your vessel reaches the end of its life, recycle or dispose of it legally and responsibly.
4. If you own and operate a vessel over 300 gross tonnage in Canadian waters, you must carry insurance or other financial security to cover potential wreck removal costs.
5. If you own or operate a vessel involved in an incident that resulted in a wreck, you must report, locate, mark and, if necessary, remediate any hazards including, if required, removing the wreck.
6. Ensure that your vessel (or boat) is licensed or registered. If you sell it make sure to transfer the ownership documentation properly.

DID YOU KNOW?

Your vessel's (or boat's) end of life can be when:

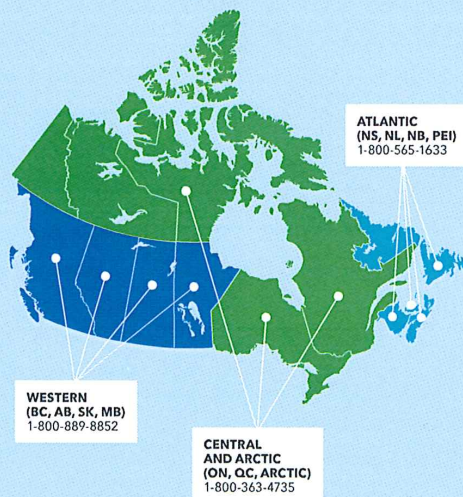
- it is no longer capable of navigating safely on water;
- you no longer want to own or operate it;
- maintenance and mooring costs far exceed your financial means; or
- the costs of repair exceed its value.



Appendix C

FOUND A WRECKED, ABANDONED OR HAZARDOUS VESSEL?

REPORT IT TO THE CANADIAN COAST GUARD,
AVAILABLE 24/7.



WHAT THE GOVERNMENT OF CANADA IS AUTHORIZED TO DO UNDER THE ACT

1. Order owners of vessels or wrecks to take measures to prevent, reduce or eliminate hazards.
2. Take action to remove a vessel or wreck posing a hazard, if the owner is unknown, or is unable or unwilling to respond.
3. Order the owner to address their dilapidated (worn down) vessel if it remained in the same location for 60 consecutive days without consent.
4. Hold the owner liable for the costs of moving or removing their vessel that is abandoned, dilapidated (worn-down), or that poses or may pose a hazard.

PENALTIES FOR NON-COMPLIANCE UNDER THE ACT

- Maximum violation penalties range between \$5,000 to \$50,000 for individuals, and \$25,000 to \$250,000 for companies or corporations.
- Conviction of a regulatory offence by way of prosecution could result in a maximum fine of up to \$6 million and/or prison terms.

TRANSPORT CANADA'S RECEIVER OF WRECK

DID YOU KNOW?

A Receiver of Wreck (ROW) is a Transport Canada official. The ROW acts as a custodian of a found wreck in the absence of the rightful owner.

If you find a wreck and you can't locate the owner, you must report it to a ROW.

If you are importing or towing a wreck into Canada, you must report it to a ROW.

You can't take possession of a wreck unless:

- The wreck is in danger and you need to take possession to secure or otherwise protect it; or
- The ROW authorizes you to take possession.

If you are the owner of a reported wreck, you'll need to submit a claim to the ROW. You must do this within 30 days of the public notice reporting the wreck.

DO YOU WANT TO CLAIM OR TAKE POSSESSION OF A FOUND WRECK?

CONTACT YOUR RECEIVER OF WRECK

Pacific Region (BC): 604-775-8867

Prairie and Northern Region (AB, SK, MB, Arctic): 780-495-8215

Ontario Region: 519-383-1863

Quebec Region: 877-646-6420

Atlantic Region (NS, NL, NB, PEI): 506-851-3113

National Capital Region: 613-991-3476

For more information on the *Wrecked, Abandoned or Hazardous Vessels Act*: www.tc.gc.ca/abandonedboats



Preventing Marine Sewage Pollution

from Small Vessels of <400 gross tons that carry ≤15 passengers

Sewage can cause harm to human health and the environment. Transport Canada regulates the discharge of sewage to waters under Canadian jurisdiction. The *Vessel Pollution and Dangerous Chemical Regulations (VPDCR)*, made under the *Canada Shipping Act, 2001*, requires you to have the proper sewage management equipment on board of your vessel, and to know where to discharge your vessel's sewage. To comply with the regulations:

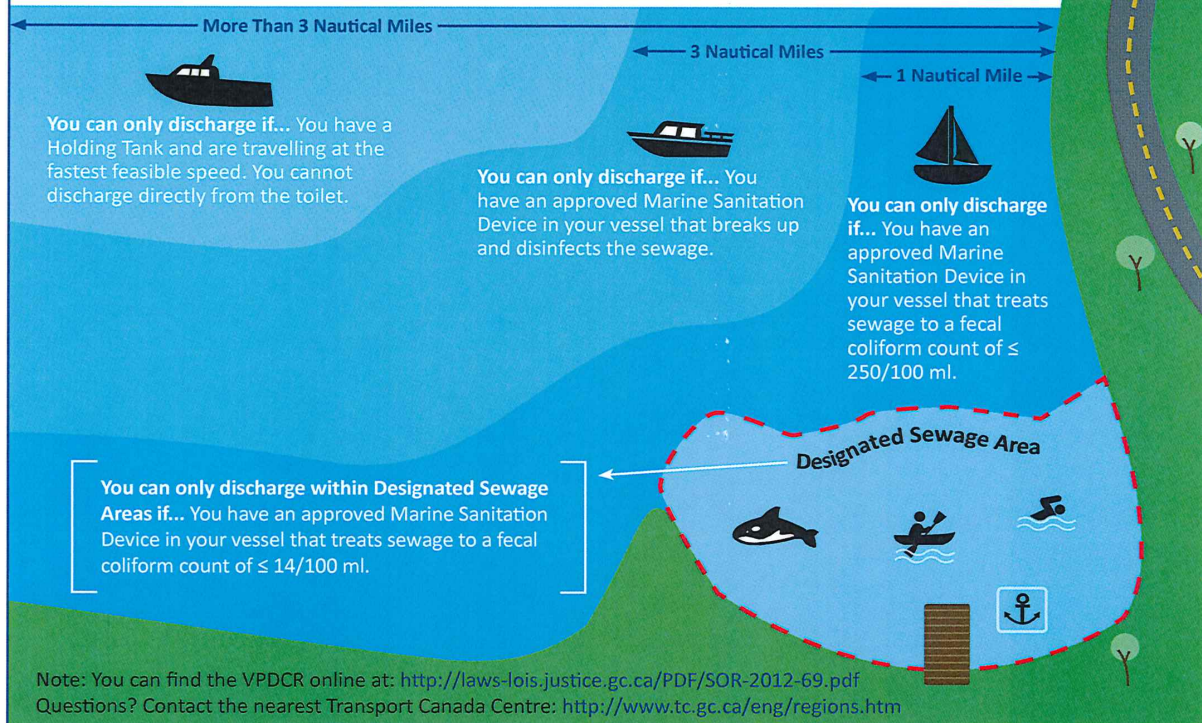
Consider your equipment:

MARINE SANITATION DEVICE	↔or↔	HOLDING TANK	↔or↔	TEMPORARY STORAGE
<ul style="list-style-type: none">Must be a type approved to the standards set out by MARPOL* (Annex IV), or those standards set out by the United States Coast Guard (USCG Type II MSD).		<ul style="list-style-type: none">Large enough to hold the required capacity of sewage for your vessel's trip (Tip: Holding tanks should hold 0.56 litres per person per hour of operation).For discharge at a pump-out station ONLY, or from the vessel when it is at the prescribed distance from shore. Cannot discharge raw sewage directly from the toilet.		<ul style="list-style-type: none">Only permitted for vessels under 15 GT and that carry ≤ 15 passengers.Do not use on inland waters.Must be secured to the vessel (e.g., porta-potty).Check with your municipality about the proper way to empty.

*MARPOL, short for Marine Pollution, is the International Convention for the Prevention of Pollution from Ships.

Consider your distance from shore:

Important Note: You CAN NEVER discharge sewage within inland waters (rivers and lakes)



Shoal Harbour Migratory Bird Sanctuary

CRD
Making a difference...together

