

Options for Eliminating Anchorages in the Southern Gulf Islands

Anchorage use of the Southern Gulf Islands by bulk carriers destined for the Port of Vancouver started 6-8 years ago in larger numbers and has rapidly expanded in recent years^[1].

Local governments, First Nations, coastal communities, environmental organizations, and more recently the provincial government, have all called for elimination of these anchorages in these sensitive waters of the Salish Sea.^[2,3,4]

Because of its unique values, the Southern Gulf Islands were put under a mandate of 'Preserve and Protect' in the BC Islands Trust Act of 1974^[5]. This archipelago consists of a mosaic of land and water in almost equal portions and close proximity – but jurisdiction on marine waters is complex and falls to a large degree under federal authority.

The question arises what policies or jurisdictional steps can be taken to segregate this sensitive area from industrial use such as anchorage by large seagoing ships that bring a myriad of environmental problems with them^[1].

Bill C-250

Bill C-250 is a private member's bill that was introduced 26-Oct-2020 by MP Alistair McGregor.^[6,7]

“The bill proposes to introduce a new section 23.1 to the [Canada Shipping] Act, which would prohibit the anchoring of large vessels in an area surrounding the southern Gulf Islands and the east coast of Vancouver Island.”^[8]

The main problems of the bill are:

- (a) Amending a specific anchorage prohibition in the Shipping Act is problematic from a legislative perspective. Such a provision may be more appropriate in the regulations of this act.
- (b) The industry transporting and shipping grain was not prepared to adapt to a sudden change in the number of available anchorages. Measures enhancing efficiency at port and a pro-active schedule of eliminating anchorages are necessary to avoid disruptions in grain exports^[9].

It is unclear if Bill C-250 will receive any further readings. Private member's bills are often seen as trailblazers that do not necessarily result in direct legislation but will prepare for government action to resolve a problem in a different format.^[8]

Regulations of the Canada Shipping Act

Anchorage have been banned in several areas in the Anchorage Regulations SOR/88-101 of 1988.^[10]

The Anchorage Regulations were among a number of separate regulations of the Canada Shipping Act that were consolidated in a new umbrella regulation on 05-Oct-2020, but the content was carried over without essential change into Division 1 and Schedule 5.^[11]

Thus, there is a precedent for prohibiting anchorage in certain areas when it is considered to be a national interest.

While these other areas appear to relate to the national interests of navigational safety and national defence, designating a prohibited area because of a national interest in marine protection and a national interest in areas such as parks may be appropriate, and has precedents in other legislation and international commitments signed or expressed by the federal government.

Therefore, the regulations of the Canada Shipping Act may be considered an appropriate legislative tool for preserving national interests by prohibiting anchorage in areas such as the Southern Gulf Islands.

National Marine Conservation Area (NMCA)

The Southern Gulf Islands have been considered for a NMCA for over a decade.^[12,13]

After a feasibility study and agreement on boundaries, the planning is now reaching final stages towards an interim management and zoning plan.^[14]

At the same time, Parks Canada is in process of updating the policy and regulations for NMCAs, and held a public consultation in 2019.^[15]

A major problem is that for all but one of the proposed zones, commercial shipping and anchorage use is “deemed to be consistent with the purpose” of the zones.^[15]

This is particularly problematic for ‘Multiple Use’, which is expected to be the largest zone in a future NMCA. In contrast to the open ocean, a shallow coastal NMCA in an archipelago contains small-scaled bodies of water between islands and is also in close proximity to coastal communities.

There will be interference between multiple users in the same small-scaled NMCA. This means that only users should be allowed that are shown to be sustainable, will not alter ecosystem function and structure, and will not reduce the value and experience of the NMCA for other users. Anchorage by large seagoing vessels clearly do not fall into this category^[1].

Parks Canada recognized the opposition to commercial shipping and anchorages in their report on the public consultation, and that more flexible sub-zones were suggested in some circumstances.^[16]

It is very unclear, however, if this public input will be taken into account for the planned updates of the policies and regulations of NMCAs.

It is also unclear whether the national framework of policy and regulations will allow variations of zoning definitions for each specific NMCA as required, for example the exclusion of anchorages from the NMCA in the Southern Gulf Islands. The specific interim management plan and zoning plan will have to be approved in the House of Commons.^[17]

In respect to eliminating anchorages, the NMCA may prove a suitable tool because it will be the result of wide-ranging consultations and agreements including many stakeholders. Currently, it appears that anchorages will not be restricted unless changes are made. Several formal obstacles regarding zoning would have to be removed as early as possible in the process.

A concern about the NMCA is that because of a large and inefficient 'Multiple Use Zone' it may offer little in terms of conservation but instead serve as a tool to legitimize industrial activity such as anchorage use.^[18] The legal status of anchorages in the Gulf Islands is unclear. They are temporarily enabled by an Interim Protocol^[19], but Transport Canada stated that "These anchorages were established under a former system of public ports that no longer exists"^[20], and the current repurposing and reactivation of these anchorages for the Port of Vancouver was done without consultations or assessments^[1].

The implementation of NMCAs will take many years. In order to achieve timely results, it will be essential to include industry stakeholders and develop an efficient schedule for elimination of anchorages to avoid economic disruptions and prevent further delays in protecting a marine environment that is already under pressure.

BC Coastal Strategy

The provincial government of BC committed to "develop a new provincial coastal strategy - in partnership with First Nations and federal and local governments - to better protect coastal habitat while growing coastal economies. A priority will be working with the federal government to address freighter traffic management and anchorage around southern Vancouver Island and the Gulf Islands."^[21, 3]

In 1974, the Province of BC established a unique governance of the Gulf Islands with the 'Islands Trust Act', with the mandate to restrict development and 'Preserve and Protect' this group of islands.^[5]

In 1984, the Supreme Court of Canada ruled on the 'Ownership of the Bed of the Strait of Georgia and Related Areas' and concluded that the lands under the waters between mainland British Columbia and Vancouver Island are the property of the province.^[22]

Such confirmed rights may apply to mineral and energy resources, but may also extend to renewable resources (e.g. aquaculture) and use of the seabed for anchoring.

There is also an aspect of food security and ecosystem health. Shallow coastal marine ecosystems are among the most productive habitats because sunlight penetrates only to a depth of about 50 m, and these systems are essential for many larval and juvenile stages of organisms of that are important for fisheries and aquaculture.

Industrial use for commercial anchorages of large seagoing vessels is in direct competition for these habitats, because depths of over 50 m are starting to exceed safe and convenient anchoring depths.^[23]

These marine habitats essential for food production and food security are very rare in BC because of the province's steep topography. Only about 5% of BC's ocean waters are less than 50 m deep^[24], arranged in small ledges along the coast and between islands.

This situation is paralleled by BC's topography above sea level. In 1973, about 5% of BC's terrestrial area was identified to be suitable for farming and set aside for the Agricultural Land Reserve to give a priority to food security, and limit or exclude other uses in these areas.^[25]

Thus, there are a number of reasons for the province of BC to work towards protected marine areas that exclude anchoring by large seagoing vessels (also in relation to First Nations rights).

Depending on the situation, the province has participated in federal legislation such as the NMCA, cooperated in the administration of marine shoreline, or developed its own tools (e.g. Ecological Reserve Act, BC Park Act).^[17]

Ownership of the seabed in the Gulf Islands allows the province to be an effective stakeholder in multi-jurisdictional agreements, or may even allow legal challenges to anchorage use in federal NMCA zoning if necessary.

Aboriginal Title and Rights

First Nations may have a pivotal role in eliminating anchorages from the Southern Gulf Islands.

They participate as stakeholders in various multi-jurisdictional agreements including NMCA, they are negotiating treaties, and case law is currently evolving on a range of decisions.^[17,26]

International Agreements

A number of international designations are available to protect special marine areas. For example through UNESCO, or as 'Area to be Avoided' (ATBA) or 'Particularly Sensitive Sea Area' (PSSA) recognized by the IMO (International Maritime Organization).^[17]

The drawback of these solutions is that usually they need to be initiated by the federal government, which tends to consider its own legislation as a more effective tool.^[17]

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