Should the Port of Vancouver Receive Jurisdiction in the Gulf Islands?

Consultation by Transport Canada, open for Public Input until May 14

EXECUTIVE SUMMARY:

Transport Canada is inviting public opinion via email (tc.anchorages-ancrages.tc@tc.gc.ca) by May 14th regarding the question of whether the Port of Vancouver (formally called Vancouver Fraser Port Authority, VFPA) should be given management of Southern Gulf Islands industrial anchorages. There are compelling reasons why this should not be allowed.

The overflow parking here of ships from Vancouver (some 500 ships in 2022) has caused massive air pollution with greenhouse gas emissions, noise and light pollution, and damage to sensitive marine ecosystems. If the port authority had employed a vessel arrival system as used in ports elsewhere, the anchorages would be unnecessary.

Rather than turn jurisdiction of sensitive Gulf Islands waters over to an industrial port authority, governments should honour their environmental mandates and work cooperatively toward elimination of the anchorages. This includes the province (which owns the seabed), Environment Canada, Fisheries and Oceans Canada, and Indigenous Services. A management plan for the National Marine Conservation Area Reserve for the Southern Gulf Islands, on which the federal government has been working on for twenty years, is long overdue and would be a better alternative.

Until this process is completed, Transport Canada should realize its proposed enforcement and management benefits within temporary Interim Protocols, which are more flexible and have the necessary regulatory powers and unencumbered approach that the port authority is lacking.

Introduction

About a decade ago, bulk freighters started a massive traffic incursion to use the Southern Gulf Islands (SGI) as anchorage space.[1,2] The problem is caused by ships arriving before terminals are ready for loading at the Port of Vancouver.[3,4] Consequences of this inefficiency are massive air pollution with unnecessary greenhouse gas emissions, noise and light pollution, and risks to the sensitive marine ecosystems.[5,6] This traffic is still increasing in volume.[7] The majority of the problem is currently caused by coal ships.[8]

In 2018, Transport Canada established an Interim Protocol to improve the situation, but did not manage to halt or reverse the growing traffic problem.[9,10] This measure gave the Vancouver Fraser Port

Authority (VFPA) temporary and limited powers to send waiting ships to assigned anchorages in the Gulf Islands, which are outside the Port of Vancouver jurisdictional waters.

Transport Canada now proposes to give the port authority jurisdiction over anchorages in the Southern Gulf Islands (SGI), and the mandate of managing traffic and anchorages in the entire Salish Sea. Benefits are suggested to include the collection of fees and enforceable rules for ships at anchor. Opponents to making this industrial use of the Gulf Islands permanent are pointing out that this proposed change fails to address the problem, establishes a new player in an already complex multi-jurisdictional area, and creates a status quo that undermines public interest and ongoing protection efforts.

Public response is possible until May 14, 2023 at tinyurl.com/TC-Anchorage-Input[11]

The following considerations are intended to discuss information about context and alternative solutions to the approach proposed by Transport Canada.

Questionable Legal Approach

What are some of the jurisdictional issues, and how straightforward is Transport Canada's proposed approach?

In a nutshell, these ships anchor in an area of multiple layers of complex jurisdictions and public interests involved.

The Gulf Islands anchorages are in shallow waters in a group of islands that include highly productive and sensitive marine ecosystems, and industrial use of these anchorage has expanded dramatically in recent years. Treaty negotiations about First Nations' traditional hunting and fishing rights are still ongoing.[12,13,14,15] Transportation is not the only federal department with jurisdiction, there are also national priorities involving Environment Canada working on the creation of a National Marine Conservation Area Reserve (NMCAR)[16,17], Fisheries and Oceans Canada having identified an Ecologically and Biologically Significant Area (EBSA)[18], and numerous rockfish conservation areas. The Province of BC owns the seabed and established a protected area in 1974[19], and there is an overlap with coastal protection zones of official community plans and bylaws.

Transport Canada appeared to recognize the complex issue of anchorages outside of ports in natural areas and near residential areas, the need for finding solutions, and launched a National Anchorages Initiative[20] within the Ocean Protection Plan (OPP)[21], a federal multi-agency approach including Environment Canada and Fisheries and Oceans (DFO). This initiative seems to have dried up without results.

The problem was that port traffic expanded the use of anchorages in the SGI despite these anchorages being in a legal grey zone. Transport Canada had testified at a hearing that 'These anchorages were established under a former system of public ports that no longer exists.'[22] Indeed, Transport Canada released all assets and obligations in the form of local ports and anchorages in the Gulf Islands with the new Marine Act of 1998.

A new approach by federal officials was to call these ‘historical anchorages’ that have always been there, established by experienced ship masters, and thus established by regular use under common law. It is interesting that in reality the federal government actually prescribes mandatory pilots for commercial ships in the Salish Sea, because limited experience of masters could lead to accidents by visiting ships.

Also, government communications obtained under the Access to Information Act, clearly demonstrate that for example the two anchorages southeast of Ganges were designated in 1995 by the Pacific Pilotage Authority, which does not appear to have regulatory powers to do so, and these anchorages were basically unused until Transport Canada opened them up for port traffic with their Interim Protocol in 2018.

Furthermore, it is interesting that transport officials wishes to recognize short-term common law rights for mariners, but apparently not for other islands users, foremost not for First Nations who have used these fishing grounds for thousands of years and are opposed to this recent explosion of industrial anchorage traffic.

While the Shipping Act clearly gives Transport Canada the authority to manage marine traffic and anchorages, this has to be done with due process and in consideration of other national priorities. It is not surprising that many feel that simply transferring jurisdiction to the port authority is a legal shortcut or backdoor access to basically hand over areas in the Gulf Islands to the port for industrial and for-profit use at their discretion.

Conflict of Interest and Lack of Regulatory Powers

Is the Vancouver Fraser Port Authority (VFPA) the best suited structure to manage anchorages in the entire Salish Sea?

VFPA is a crown corporation owned by government but is not a level of government. The role of this corporation is to manage a port commercially for industry, not to manage or regulate activities causing environmental problems in a complex situation of multiple national interests and multiple jurisdictions. Attempting to put anchorage management under port control appears to create a conflict of interest given VFPA's commercial interests and objectives.

For example, in a joint statement the Minister of Transport and VFPA's CEO announced in August 2021 that VFPA will implement a "new marine vessel traffic management system that will not only improve and optimize the efficient movement of goods through our port system, but also reduce the environmental and community impacts of trade activity".[23]

In return, VFPA simply took an existing 'Code of Conduct' from the federal 2018 Interim Protocol without substantial improvements, and their own existing plan for a traffic management plan (AVTM, directed at congestion areas inside the port[24]) without adding anything substantially new for reducing anchorage use, then mixed the two together, and presented them to the public in brochures as a new solution to anchorage management.[25,26]

In addition, VFPA's approach raised concerns because of their gross underestimates of the quantitative dimension of their anchorage problem.[27]

The implementation by VFPA was accompanied by a public engagement, which can hardly be called a meaningful consultation. First Nations, the provincial government, local governments, and the public had all called for reduction in anchorage use with the long-term objective of elimination. In their survey, 64% of public respondents considered the proposed Code of Conduct as insufficient. Of 34 suggestions identified by VFPA, none were implemented into VFPA's actual plans.[28]

Furthermore, insufficient regulatory authority by VFPA will hinder improvements in anchorage management. The current Code of Conduct has basically remained unchanged since 2018, despite being insufficient and not effective as expressed by First Nations, local governments, and the public. Almost identical codes of conduct have existed for vessels in industrial port areas, and improvements necessary for sensitive areas have not been implemented effectively. Such improvements require regulatory powers beyond VFPA's jurisdiction.

For example, ships anchored in SGI need to improve avoidance of anchor dragging. Best practice[29] should be mandated to take up ballast water before anchorage, and dispose of ballast water outside of SGI to prevent contamination. Such practices are prescribed by the *Ballast Water Regulations*[30] under the Shipping Act, and the locations where ships need to comply are outside port jurisdiction. It is unlikely that VFPA could mandate such changes. Another example concerns the reduction of ship lighting, which may require local exceptions from the *Collision Regulations*[31] under the Shipping Act, none of which are not under port jurisdiction.

Alternative Solutions

Is giving VFPA jurisdictional powers in the Southern Gulf Islands the best suited solution?

Suggested benefits could arise from VFPA charging fees[32] for use of industrial anchorages in the SGI, assuming that paying a fee will make these anchorages less attractive to users. There are several problems with this approach. Ship owners may not really have a choice to arrive later if the system is not changed to better integrate the flow of goods in the supply chain with just-in-time arrival planning for vessels. Also, exporters already pay a fee called demurrage for loading ships late, and this cost is simply absorbed in consumer pricing while the mantra appears to be doing business as usual.[33,34] Last but not least, paying fees for specific anchorages would fully legalize user's rights for these anchorages, with reduced chances of ever finding better solutions.

A better alternative would be collecting fees for the entire turnaround time in the Salish Sea for each ship visiting the Port.[35] This could easily be determined from the time pilots usually board near Victoria, to the time when a pilot releases a ship again to leave through this portal. This total time spent in the Salish Sea is directly related to the local production of greenhouse gases and the sum of environmental impacts.

Incentives for voluntary industry collaboration are needed. A best case scenario would be for industry representatives to assume positive leadership for voluntary collaboration to bridge these gaps, increase efficiencies, and get anchorage demand under control by minimizing the need for wasteful time at

anchor.[36] Rather than giving the port authority anchorage jurisdiction, the AVTM Advisory Panel[37] is of an ideal composition to facilitate this much needed cross-industry collaboration for a full integration of the maritime component into commodity supply chains.

"Elimination not Mitigation" has been proposed repeatedly[38] as the only effective solution to the anchorage problem in the SGI, by local governments, elected representatives, organizations, as well as First Nations.

The reason is that codes of conduct for anchored ships introduced in 2018 have brought very little relief from risks and impacts, and are called by some more of a 'smoke screen' because of their vagueness. The problem is that they won't address most impacts and risks even if enforced. For example, ships at anchor require running generators to be functional, thus air and noise pollution cannot be cancelled by a code of conduct.

A better solution would be to work in a cooperative way towards the long overdue ***management plan for the National Marine Conservation Area Reserve for the Southern Gulf Islands***, on which the federal government has been working on for twenty years, and still has no results to show. Such efforts will be in coordination with First Nations, and in a respectful manner of federal multi-agency and multi-jurisdictional cooperation. The resulting management plan is subject to parliamentary approval[39] and thus will be fair to multiple national interests.

In the meantime, temporary Interim Protocols by Transport Canada will be a far better tool for effective management towards an acceptable long-term outcome. In contrast to the Port of Vancouver, Transport Canada will have full regulatory powers for allowing the best solutions. There is no reason why enforcement of codes of conduct or prescribing of fees cannot be achieved through such Interim Protocols – if there is a political will to improve the current anchorage problems.

References:

1 Rohner, C., and T. Fullerton. 2020. Ship Congestion at the Port of Vancouver and Southern Gulf Islands: Green Solutions for Better Management of Vessel Arrivals and Anchorage Demand. Centre for Marine Affairs, Southern Gulf Islands. www.marineaffairs.ca/reports/anchorage-ship-congestion-rohner-fullerton-2020.pdf

2 South Coast Ship Watch Alliance (SCSWA), 2022. Anchorages in the Southern Gulf Islands: Position Paper. https://nofreighteranchorages.ca/wp-content/uploads/2022/03/SCSWA-Position-Paper.pdf

3 Heaver, T.D. (2021). Reducing Anchorage in Ports: Changing Technologies, Opportunities and Challenges. Front. Future Transp., 28 July 2021. https://doi.org/10.3389/ffutr.2021.709762

4 Trevor D. Heaver and Christoph Rohner: Is Bill C-250 the solution for tackling too many ships at anchor? Vancouver Sun, 04-Jan-2021. https://vancouversun.com/opinion/trevor-d-heaver-and-christoph-rohner-is-bill-c-250-the-solution-for-tackling-too-many-ships-at-anchor

5 South Coast Ship Watch Alliance (2022): Fact Sheet - Bulk Freighter Anchorages in the Southern Gulf Islands: Health and Environmental Concerns. https://nofreighteranchorages.ca/news/

6 Appendix 3, in: Rohner, C., and T. Fullerton. 2020. Ship Congestion at the Port of Vancouver and Southern Gulf Islands: Green Solutions for Better Management of Vessel Arrivals and Anchorage Demand. Centre for Marine Affairs, Southern Gulf Islands. www.marineaffairs.ca/reports/anchorage-ship-congestion-rohner-fullerton-2020.pdf

7 Rohner, C., and T. Fullerton. 2022. Ship Congestion at the Port of Vancouver and Southern Gulf Islands: Update March 2022. Centre for Marine Affairs, Southern Gulf Islands. https://marineaffairs.ca/reports/update-anchorage-ship-congestion-rohner-fullerton.pdf

8 Rohner, C., and T. Fullerton. 2020. Ship Congestion at the Port of Vancouver and Southern Gulf Islands: Green Solutions for Better Management of Vessel Arrivals and Anchorage Demand. Centre for Marine Affairs, Southern Gulf Islands. www.marineaffairs.ca/reports/anchorage-ship-congestion-rohner-fullerton-2020.pdf

9 Transport Canada, Interim Protocol for the Use of Southern B.C. Anchorages. https://tc.canada.ca/en/marine-transportation/ports-harbours-anchorages/interim-protocol-use-southern-bc-anchorages

10 Rohner, C., and T. Fullerton. 2022. Ship Congestion at the Port of Vancouver and Southern Gulf Islands: Update March 2022. Centre for Marine Affairs, Southern Gulf Islands. https://marineaffairs.ca/reports/update-anchorage-ship-congestion-rohner-fullerton.pdf

11 Transport Canada, 2023. Share and view ideas: Managing anchorages in the Salish Sea. https://tc.canada.ca/en/corporate-services/consultations/share-view-ideas-managing-anchorages-salish-sea

12 Cowichan Tribes against anchorage of freighter vessels in local waters. Cowichan Valley Citizen, 19-Nov-2020. https://www.bclocalnews.com/news/cowichan-tribes-against-anchorage-of-freighter-vessels-in-local-waters/

13 BC Declaration on the Rights of Indigenous Peoples Act. https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/19044

14 Government of Canada: Implementing the United Nations Declaration on the Rights of Indigenous Peoples in Canada. https://www.justice.gc.ca/eng/declaration/index.html

15 BC Treaty Commission. http://www.bctreaty.ca

16 Islands Trust Council. National Marine Conservation Area Reserve Advocacy. http://www.islandstrust.bc.ca/trust-council/advocacy/marine-environment/national-marine-conservation-area-reserve-advocacy/

References:

17 Parks Canada. What we heard: National marine conservation areas policy and regulations (July 2020). https://www.pc.gc.ca/en/amnc-nmca/consultation/entendu-heard

18 Fisheries and Oceans Canada, Pacific Region (2013). Evaluation of proposed ecologically and biologically significant areas in marine waters of British Columbia. DFO Science Advisory Report 2012/075. https://waves-vagues.dfo-mpo.gc.ca/Library/348081.pdf

19 BC Islands Trust Act. https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/96239_01

20 Transport Canada, Oceans Protection Plan: Anchorages Initiative. https://tc.canada.ca/sites/default/files/migrated/oppfactsheet_anchorages.pdf

21 Transport Canada, Oceans Protection Plan. https://tc.canada.ca/en/initiatives/oceans-protection-plan

22 Transport Canada. Response to the Review Panel's May 10, 2017 Information Requests June 7, 2017, Roberts Bank Terminal 2 Project. https://www.ceaa-acee.gc.ca/050/documents/p80054/119300E.pdf

23 Transport Canada: Government of Canada announces new system to improve marine vessel traffic flow at the Port of Vancouver and in Southern British Columbia. 21-Aug-2021, https://www.canada.ca/en/transport-canada/news/2021/08/government-of-canada-announces-new-system-to-improve-marine-vessel-traffic-flow-at-the-port-of-vancouver-and-in-southern-british-columbia.html

24 Port of Vancouver (VFPA). Request for proposals. Active Vessel Traffic Management: Options and Feasibility Analysis. Issued: January 24, 2020. https://www.bcbid.gov.bc.ca/ [obtained from VFPA by correspondence]

25 Port of Vancouver (VFPA): Active Vessel Traffic Management. Project Summary & Information Package. January 18, 2022. https://marineaffairs.ca/policy-reviews/AVTM - Project Summary and Information Package - January 2022.pdf

26 Options for Reducing Anchorage Demand: Vessel Traffic Management. Centre for Marine Affairs, Southern Gulf Islands. https://marineaffairs.ca/policy-reviews/policy-options-3-vessel-traffic-management.pdf

27 Rohner, C., and T. Fullerton. 2022. Ship Congestion at the Port of Vancouver and Southern Gulf Islands: Update March 2022. Centre for Marine Affairs, Southern Gulf Islands. https://marineaffairs.ca/reports/update-anchorage-ship-congestion-rohner-fullerton.pdf

28 Port of Vancouver (VFPA): Active Vessel Traffic Management Program, Phase three engagement summary report, February 15, 2023. https://www.portvancouver.com/wp-content/uploads/2023/02/2023-02-15-AVTM-phase-three-engagement-summary-report-EN.pdf

29 Skuld Marine Insurance (2019): Good Anchoring Practice [Example of widely known best anchoring practices using ballast water] https://www.skuld.com/topics/ship/safety/good-anchoring-practice/

30 Ballast Water Regulations, SOR/2021-120 (Canada Shipping Act 2001, Fisheries Act) https://laws-lois.justice.gc.ca/eng/regulations/SOR-2021-120/FullText.html

31 Collision Regulations, C.R.C., c. 1416 (Canada Shipping Act, 2001) https://laws-lois.justice.gc.ca/eng/regulations/c.r.c.,_c._1416/FullText.html

References:

32 Transport Canada, 2023. Share and view ideas: Managing anchorages in the Salish Sea. https://tc.canada.ca/en/corporate-services/consultations/share-view-ideas-managing-anchorages-salish-sea

33 Heaver, T.D. (2021). Reducing Anchorage in Ports: Changing Technologies, Opportunities and Challenges. Front. Future Transp., 28 July 2021. https://doi.org/10.3389/ffutr.2021.709762

34 Rohner, C., and T. Fullerton. 2020. Ship Congestion at the Port of Vancouver and Southern Gulf Islands: Green Solutions for Better Management of Vessel Arrivals and Anchorage Demand. Centre for Marine Affairs, Southern Gulf Islands. www.marineaffairs.ca/reports/anchorage-ship-congestion-rohner-fullerton-2020.pdf

35 Section (4), Incremental Efficiency Fees Payable by Terminals, in: Options for Reducing Anchorage Demand: Efficiency Targets & Port Rules. Centre for Marine Affairs, Southern Gulf Islands. https://marineaffairs.ca/policy-reviews/policy-options-2-reducing-anchorage-demand.pdf

36 Trevor D. Heaver and Christoph Rohner: Is Bill C-250 the solution for tackling too many ships at anchor? Vancouver Sun, 04-Jan-2021. https://vancouversun.com/opinion/trevor-d-heaver-and-christoph-rohner-is-bill-c-250-the-solution-for-tackling-too-many-ships-at-anchor

37 Port of Vancouver (2021): Port authority forms industry-based advisory panel to advance active vessel traffic management system. https://www.portvancouver.com/about-us/information-updates/port-authority-forms-industry-based-advisory-panel-to-advance-active-vessel-traffic-management-system/

38 South Coast Ship Watch Alliance (SCSWA), 2022. Anchorages in the Southern Gulf Islands: Position Paper. https://nofreighteranchorages.ca/wp-content/uploads/2022/03/SCSWA-Position-Paper.pdf

39 Canada National Marine Conservation Areas Act, Amendment to be tabled in Parliament, 7(1)d: https://laws-lois.justice.gc.ca/eng/acts/c-7.3/FullText.html