

Southern Gulf Islands and Southeastern Vancouver Island

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Context

The Salish Sea is a complex space with interwoven international, national, provincial, regional, and local authorities each with legal rights, responsibilities, and interests.

Enmeshed jurisdictional governance lacks effective coordination resulting in bureaucratic paralysis, characterized by each institution defending its own authority, territory, and advancing their own initiatives.

There are multiple multi-jurisdictional/stakeholder tables established by the federal/provincial Crowns and other private interests are grinding forward with each confronting a similar issue—Indigenous Nations want shared decision-making and co-management of their territory.

While there are agreements in place that cover how the United States of America and Canada co-govern the border, and how the federal and provincial Crowns co-govern sovereignty over shared territory. The Crowns have no such co-governance agreements with the Indigenous Nations.

Issue(s)

An emergent issue is an Order-in-Council by the provincial Crown placing a moratorium on new “licenses or leases for private moorage” ([M329](#)) from August 24, 2021 to August 23, 2023. The moratorium was extended by Order-in-Council ([M244](#)) until August 22, 2025. The “Private Moorage No Application Zone” is outlined on the map showing the geographic area of the southern gulf islands and the southeastern shore of Vancouver Island, including the Saanich Inlet.

Dozens of applications for a “lease or license for private moorage” had been submitted prior to the moratorium. Those applications languished for years with no government decision, and now they are further delayed by the moratorium.

At issue is the legal requirement for proper consultation, engagement, and consent of multiple Indigenous Nations with Aboriginal title, inherent rights and common interests in the defined region. The consultation process is arduous and expensive for both the Crown and First Nations to administrate. Historically, the Crown has managed its relationships with each of the First Nations governments individually which has made it extremely challenging to effectively address the collective and systemic issues across the complex region.

Reflecting on the recent “dock management plan” issue in the shíshálh territory on the Sunshine Coast that turned into a government-to-government and public relations fiasco, the situation in southern gulf islands cannot be allowed to simmer and boil into another ugly racial and ill-informed property rights debate.

The shíshálh territory is relatively simple politically and legally compared to the area currently under moratorium by OIC M244 where license and lease applicants, and their contractors, are growing frustrated by the lack of decision on their file. There are many applications that predate the 2017 election, and there is an increasing lack of public confidence in the provincial Crown to be able to successfully navigate the complexity of Aboriginal rights and title in the southern gulf islands. There is potential to set back the important legally necessary work of reconciliation.

As experienced on the Sunshine Coast, property owners began organizing around the proposed dock management plan, and new property rights organizations for waterfront owners formed. Many of the members were from the southern gulf islands area and now a new organization with an estimated 700-800 members called the Collaborative Partnerships & Reconciliation: Southern Gulf Islands has emerged.

The provincial Crown has blamed the moratorium on “licenses and leases for private moorage” on the legal requirement to consult with Quw’utsun on dock management in the southern gulf islands. However, to date the provincial Crown has made no progress in consultation with the WSANEC, Stz’uminus, or Snuneymuxw which is also necessary to complete consultation and achieve consent in the region prior to the lifting of the moratorium in 2025.

The public felt left out of the consultation process on the Sunshine Coast. The new group organizing in the Salish Sea are working with retired lawyer Rob Botterell, who has a pending license or lease application. They have approached the dilemma with a request for greater public consultation and engagement at the front end. They have already started to reach out to individual First Nations communities, and advocate directly with the MLA for Saanich North and the Islands who has brought the issue to the Minister/Ministry.

The moratorium on “licenses and leases for private moorage” is one of many marine regulatory and management issues in the southern gulf islands. Increasing industrial and commercial pressure and a lack of coordination on decision-making and enforcement is adding to public frustration, non-Indigenous and Indigenous alike. Mismanaged mooring buoys, shipping anchorages, encroaching powers of Port Metro Vancouver into the southern gulf islands, increased bitumen shipments from Trans Mountain, and expanded Robert’s Bank terminal, all demonstrate an urgent need to approach the problem differently.

Better coordination on the pending dock management issues in the southern gulf islands led by the provincial Crown, will create a more resilient legal, political, and administrative ecosystem for solving these other systemic issues.

Next Steps

It is both legally and politically imperative that the provincial Crown establish a robust government-to-government consultation and engagement with all Indigenous Nations with rights, title, and interests in the moratorium area.

As public confidence in reconciliation is both legally and politically necessary to achieve success through agreement rather than litigation, it is of critical importance that the process meaningfully include the public who are represented by the provincial Crown, and Indigenous people who are also represented by their governing bodies.

There are at least two active tables that have been identified and potentially available to host the consultation from provincial Crowns perspective.

Indigenous Management Board

Created by funding through Parks Canada, consisting of 11 First Nations (Halalt, Lyackson, Malahat, Pauquachin, Penelakut, Quw’utsun, Stz’uminus, Snuneymuxw, Tsartlip, Tsawout, and Tseycum) it was originally mandated to consider issues related to Parks Canada operations and plans, the Gulf Islands National Park Reserve and the Southern Strait of Georgia National Marine Conservation Reserve. There is a leadership board and technical working committee supporting the effort. This body was established through the IELŁILTEL Agreement¹.

¹ This is what WŚÁNEĆ understanding in SENĆOŦEN, it is a commitment to working together. The Quw’utsun have a different name for the Agreement.

Initially there was progress, but in recent months issues about territorial co-governance have emerged.

Coastal Marine Strategy

The provincial Crown initiative led by the Coast Marine Strategy Branch is also holding consultations with First Nations. This initiative includes the communities named and the Pacheedaht, Scia'new, and Tsouke. There was a request from the provincial Crown for Indigenous Nations to turn over the important data they have collected. Indigenous Nations want to maintain data sovereignty and management.

It appears this table has also stalled on co-governance related issues.

Proposal

The frustration simmering in the Salish Sea is the seeming lack of coordination between the federal/provincial Crowns and all other jurisdictional authorities to properly govern, regulate, manage, and enforce in the region. The public are losing confidence and the moratorium on licences and leases for private moorage is problematic because it directly involves citizens who have followed proper administrative process, paid the fees, and the provincial Crown has failed to provide a decision in a timely manner.

Ultimately, it will be First Nations who are blamed as the obstacle, and the reconciliation project will be diminished, and all British Columbians will pay the price.

The federal/provincial Crowns are failing to deliver their jurisdictional responsibilities, Indigenous Nations want to develop a co-governance model in the region. For the past several years the federal Crown has funded the expansion of Indigenous marine stewardship programs. With the funding now running dry the programs are threatened. There is more capacity in the region than ever before. Unfortunately, there is not the coordination and cooperation regarding governance and shared decision making that can move the issue forward in a good way.

The dock management plan provides an excellent opportunity to bring the rights holders and stakeholders together to develop collaborative and fully integrated co-governance model that can become a positive example of reconciliation.

Recommendations

- 1) Appoint/hire a facilitator with a mandate and budget to lead the project.
- 2) Coordinate with the Indigenous Management Board secretariat and the Minister of Land, Water, and Resource Stewardship, Coast Marine Strategy Branch to leverage existing resources to cooperatively address the issue of licenses and leases for private moorage.
- 3) Co-develop a public engagement process that is inclusive and informative with a timeline to be completed before the moratorium expires in August 2025.
- 4) Begin consultation and engagement on creating a co-governing marine authority for the region roughly outlined in the moratorium area map.
- 5) Re-scope project as necessary to include other pressing multi-jurisdictional issues in the region.