

Driving on the Beach – Finding the Right Road to Regulation

One thing about driving on a beach – the geography will ensure you move in a linear fashion, with no byways and side roads. This has emphatically *not* been the case with the Denman Island Local Trust Committee’s (DILTC) initiative to regulate driving on the beach, which has encountered numerous twists and turns, occasional roadblocks, and several very complicated jurisdictional intersections on its journey.

The DILTC, however, has not been willing to simply drop the subject (see below, **Why is Driving on the Beach a Problem?**). Over the years, it has sought out expert opinions from lawyers, planners, and senior Islands Trust staff. It has hired a consultant, met with federal and Provincial government staff, and studied approaches from other locales.

New Bylaw Proposed

The result of all this is Draft Bylaw 225, which prohibits driving on all Denman beaches (except for the ferry and community docks, and the boat launches). The bylaw includes an information note affirming that “Aquaculture operations in the W3 zone that are licensed under the Fisheries Act (Canada) may be entitled to operate vehicles or ground-based machinery in accordance with the terms of the license.”

History of the Issue

This bylaw amendment dates back to January 24, 2012, when the LTC introduced it as part of several other marine-related initiatives. The biggest challenge – the reason for the starts and stops and twists and turns – has come from the fact that local governments such as the DILTC do not have jurisdiction over fisheries. As far as we know, most of the driving on Denman beaches is related to shellfish aquaculture operations, which is considered a fishery. Anything to do with fisheries is a federal responsibility, and federal powers trump local powers. Passing a bylaw to prohibit driving on the foreshore would be, if applied to anyone carrying out a lawful fishery activity, *ultra vires* (outside our power) and thus not legally defensible.

Furthermore, bylaws are not permitted to be discriminatory; in other words, we can’t create a regulation that targets one specific group, such as a particular industry. The new bylaw does not seek to do this, but rather recognizes that driving on the beach is harmful to the marine environment, regardless of who is doing it.

Why is Driving on the Beach a Problem?

Our marine environment has been recognized as unique and important by scientists, First Nations, governments, NGOs and more. The herring, the seabirds, salmon, whales, kelp forests, bald eagles, and many other iconic and/or environmentally valuable species all thrive in the Salish Sea, thanks to clean waters and complex ecosystems.

Denman's foreshore plays a key role in all this. Our beaches are full of life, and that life is an important part of a web that includes everything from insects to orcas.

Walk along the foreshore, and you are likely to see and hear the many sea birds, some of them endangered, that rely on our foreshore habitat for foraging and nesting – so much so that this area has been designated an Important Bird and Biodiversity Area, an international designation which recognizes an area as globally important for the conservation of bird populations

There are other, equally important species, that you wouldn't notice as you walk. Much of Denman's shoreline (60%, according to an Islands Trust sponsored study), provide suitable spawning habitat for two small but important fish species: Pacific Sand Lance and Surf Smelt, which are key element in the diet of salmon and herring, which in turn feed orcas and sea lions and bald eagles and more, on and on up the food chain.

Also, not far out in the ocean there are eelgrass meadows which provide food, shelter and nursery habitat for many fish and invertebrates. We also rely on eelgrass for ecosystem services such as carbon sequestration, nutrient recycling, shoreline stabilization and erosion protection.

Driving on beaches has multiple negative environmental impacts on this delicate foreshore system:

- Noise, lights and human activity disturb nesting seabirds and marine life resting or foraging in the shallow waters;
- Vehicles compact the substrate, destroying potential forage-fish spawning areas
- Oil and other chemical pollutants potentially result in the long-term loss of important habitat

Next Steps

On June 6, the DILTC gave the proposed bylaw amendment first reading, which starts the process towards possible adoption. Also, it sent the draft bylaw to other agencies, including First Nations, for comment. Once those comments come in, the DILTC will consider second reading, and if that goes forward, the next stage is public consultation, which at minimum will include a public hearing where people can speak to the proposal. The proposal could then continue to third reading, and then adoption. At any time the LTC can decline to move forward or can amend the proposal.

More info: <http://www.islandstrust.bc.ca/islands/local-trust-areas/denman/projects-initiatives/marine-issues/>

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