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October 15, 2018

File No.: 5020-20

Via email submission: TC.OPPLegis-LegisPPO.TC@tc.gc.ca; Julie.mah@tc.gc.ca

Transport Canada
Let's talk Ocean Protection Plan
Proposed Legislative Changes

Re: Submission re: Transport Canada's Strengthening Marine Environmental Protection and Response Potential Legislative Amendments Discussion Paper

Please find attached the Islands Trust's submission regarding Transport Canada's Strengthening Marine Environmental Protection and Response Potential Legislative Amendments Discussion Paper.

We hope that our comments and discussion paper will inform best practices, regulation and policy, as well as legislative amendments. We are pleased to see a focus on preventing oil spills. Healthy ocean habitat is vital to the economic viability of the Salish Sea region, the health of salmon, and the survival of species at risk such as the Southern Resident Killer Whale. Protecting and preserving the lands and waters of the Salish Sea must be a priority for all Canadians from coast to coast, now and into the future.

There are many First Nations who have asserted Aboriginal interests in the Salish Sea region and many who have established harvesting rights; although we have copied First Nations on this letter, we have not directly heard their positions on some of the topics in the discussion paper. Given our commitment to establishing and maintaining a mutually respectful relationship with First Nations, we offer this position while being ready to respectfully consider their positions.

Thank you for the opportunity to comment.

Yours sincerely,

Peter Luckham
Chair, Islands Trust Council
pluckham@islandstrust.bc.ca

Attach: Islands Trust Submission regarding Transport Canada's Strengthening Marine Environmental Protection and Response Potential Legislative Amendments Discussion Paper

cc: Islands Trust Area MPs
Cowichan Tribes
Esquimalt First Nation
Halalt First Nation
Homalco First Nation
Hul'qumi'num Treaty Group
K'omoks First Nation
Klahoose First Nation
Laich-kwil-tach Treaty Society
Lake Cowichan First Nation
Lyackson First Nation
Malahat Nation
Musqueam First Nation
Nanwakolas Council
Pauquachin First Nation
Penelakut Tribe
Qualicum First Nation
Scia'new (Beecher Bay) First Nation
Semiahmoo First Nation
Shíshálh (Sechelt) First Nation
Snaw-naw-as (Nanoose) First Nation
Snuneymuxw (Nanaimo) First Nation
Songhees First Nation
Squamish First Nation
Stz'uminus (Chemainus) First Nation
Te'mexw Treaty Association
Tla'amin (Sliammon) First Nation
T'Sou-ke (Sooke) First Nation
Tsartlip First Nation
Tsawout First Nation
Tsawwassen First Nation
Tseil-Waututh (Burrard Inlet) First Nation
Tseycum First Nation
We Wai Kai (Cape Mudge First Nation)
Wei Wai Kum (Campbell River First Nation)
San Juan County Council
Bowen Island Municipal Council
Islands Trust Council
Islands Trust website



Islands Trust

Islands Trust Submission
Regarding:

Transport Canada's Strengthening Marine
Environmental Protection and Response Potential
Legislative Amendments Discussion Paper

October 12, 2018

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Background

The Government of Canada is considering legislative changes to better protect marine ecosystems, modernize Canada's ship-source oil pollution fund, strengthen environmental response to oil spills in water, and support research and innovation. We understand the objectives of the proposed legislative changes to be:

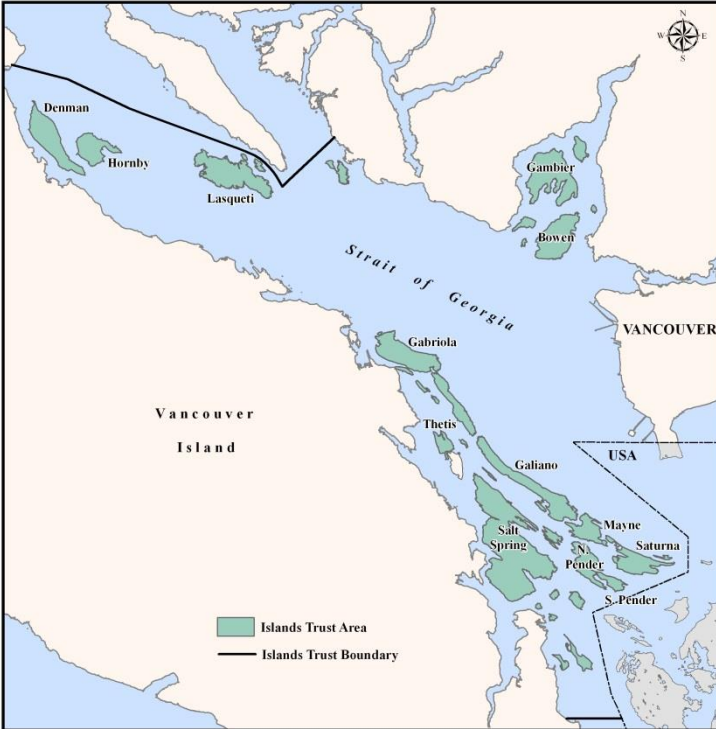
- Better protect marine environments from the impacts of shipping;
- Strengthen environmental response in the event of a pollution incident;
- Modernize Canada's Ship-Source Oil Pollution Fund to ensure adequate compensation for responders and victims of oil spills from ships; and
- Support research and innovation to enhance marine safety and environmental protection.

We appreciate the opportunity to comment and note that in discussions with community and with First Nations we have learned about concerns related to ecosystem degradation, habitat loss, impacts to wildlife and human health. From our discussions, we've concluded that, at no time, have First Nations (that have asserted treaty and rights), or our coastal community members, felt that there has been adequate consultation and engagement on the management of anchorage areas, ship traffic, or marine practices within the Islands Trust Area and the Salish Sea. Marine habitat is a critical part of culture, economy, and traditional practices in the Salish Sea region. Inadequate management of the marine areas has direct impacts on sustainable practices, resource management, and the richness of the cultural and social values of the Salish Sea.

Who Is the Islands Trust?

The Islands Trust is a federation of local government bodies representing 26,000 people living within the Islands Trust Area and approximately 10,000 non-resident property owners. The Islands Trust is responsible for preserving and protecting the unique environment and amenities of the Islands Trust Area through planning and regulating land use, development management, education, cooperation with other agencies, and land conservation. The area covers the islands and waters between the British Columbia mainland and southern Vancouver Island. It includes 13 major and more than 450 smaller islands covering 5200 square kilometres.

Since 1979, in support of its mandate to 'preserve and protect' the Islands Trust Area, the Islands Trust Council have been advocating regulatory changes that will improve the health of marine ecosystems in the Islands Trust Area. Trust Council's current advocacy on marine issues is supported by the [Islands Trust Policy Statement](#).



The Islands Trust Area is home to an extraordinary diversity of marine life and is among the most productive marine ecosystems in the world. Life is busy and colourful above and beneath the waves.

Our marine waters support diverse species such as bald eagles, oystercatchers, loons, cormorants, grebes, gulls and ducks, anemones, sea urchins, sand dollars, crabs, sea stars, octopus, seals, river otters, whales, porpoises and sea lions - to name but a few. Marine resources support local economies and diets and are an ongoing source of wonder. The area is critical to the survival of southern resident killer whales, humpback and gray whales, and is salmon, rockfish, and herring critical habitat.

As the most intensively used marine area in British Columbia, there are many activities that have negative, cumulative effects on the Salish Sea and the creatures that call it home. In 2016, the Islands Trust Council advanced a resolution to the Union of British Columbia Municipalities calling for assessment and mitigation of marine shipping risks and impacts in the Salish Sea. The resolution was endorsed by UBCM:

WHEREAS numerous projects are proposed that would increase marine traffic and anchorage use in the confined waterways of the Salish Sea;

AND WHEREAS the Salish Sea is among the most productive marine ecosystems in the world, and presents challenging conditions for oil spill response;

THEREFORE BE IT RESOLVED THAT Transport Canada assess the cumulative risks and impacts associated with projected vessel traffic increases in the Salish Sea and develop an innovative 20-year mitigation plan.

Topic 1: Enhance Marine Ecosystem Protection

It is Trust Council's policy that marine areas be protected and coastal zone management principles be defined in consultation with agents of the government of British Columbia, the government of Canada, Crown corporations, municipalities, regional districts, non-government organizations, property owners and occupiers.

(Islands Trust Policy Statement policy 3.4.2)

(Note: Islands Trust Council is reviewing the Policy Statement to better reflect First Nations' roles.)

Topic 1.1 Enable Increased Regulatory Safeguards to Better Protect Marine Ecosystems

Transport Canada summary: Under the *Canada Shipping Act, 2001*, Transport Canada can regulate shipping, navigation, and vessel operations to protect marine environments. However, Transport Canada's authorities to do so are focused on pollution prevention and response, and are limited in their ability to prevent or mitigate other environmental impacts of shipping and navigation such as negative impacts on marine life. Therefore, the Government is considering strengthening the Minister of Transport's authorities to put in place regulatory safeguards to better protect marine ecosystems from the potential impacts of shipping and navigation.

Questions posed by Transport Canada:

- If the government were to regulate shipping and navigation to mitigate broader environmental risks, what would you consider to be the top priorities for regulation and why?
- What are the potential impacts and implications if the government puts in place regulations to better protect marine ecosystems?
- What non-regulatory approaches could be taken to better protect marine ecosystems?

DISCUSSION:

Top priorities for regulation:

As stated in the discussion paper, vessels of all sizes can have impacts on the environment, such as vessel strikes on marine mammals, shoreline erosion, vessel wake, light, underwater noise, and emissions, as well as, introduction of invasive species, pollution from ballast water, vessel cleaning, and maintenance.

Species at risk: The Islands Trust supports regulatory measures that protect species at risk, including the Southern Resident Killer Whale, especially as they relate to underwater noise, and impacts to foraging and prey availability. This summer, our trustees heard increasing concerns from residents about the lack of enforcement for vessels that approach too close to whales.

Anchorage: We are also concerned with the environmental effects of the use of anchorages in the Islands Trust Area. There has not, to our knowledge, ever been an environmental assessment of 33 commercial anchorages in the Southern Gulf Islands which includes Southern Resident Killer Whale

critical habitat. Increases in light and sound from anchored vessels may impact terrestrial and marine species (including species at risk) through potential changes to foraging, migration, and transitory patterns. The significant light and sounds from anchored vessels may also impact human health and there is potential environmental damage due to anchor dragging on the seabed and the species that depend on a healthy seabed, such as sponge reefs that may not have been adequately mapped. There are also concerns associated with the risk of contamination from discharge of sewage and foreign bilge water from anchored vessels.

Air emissions:

It is Trust Council policy to encourage the Provincial government to enforce standards for control of emissions polluting the air of the Trust Area.

(Islands Trust Policy Statement policy 3.1.10)

The Islands Trust is concerned about air emissions in the Islands Trust Area from vessel traffic in general. Of particular concern, in the Gulf Islands vessels anchor very close to rural residential neighbourhoods and there are concerns about the emissions from these vessels on local air quality. The vessels run large diesel generators 24/7 providing ship power and light.

Vessel sewage:

It is Trust Council policy to encourage the federal and provincial governments develop and adopt legislation that regulates sewage discharge from shores and boats and addresses its detrimental impact on marine or coastal ecosystems.

(Islands Trust Policy Statement policy 3.4.8)

Since 1982, the Islands Trust Council has been concerned about the impacts of pleasure craft sewage, pharmaceuticals and on-board chemicals discharged into our sensitive waters. When pleasure craft vessels dump raw sewage in sensitive areas, it can contribute to contaminated shellfish, low oxygen levels in the water and increased chemical pollution. Each vessel has a small impact, but the cumulative impact of the many vessels in the sensitive Salish Sea must be considered.

Process to develop no sewage discharge areas:

The Islands Trust supports development of a new process for designating no sewage dumping areas. The current Regulations allow raw sewage dumping in waters that are six nautical miles shore-to-shore. The geography of the Salish Sea, characterized by small islands and islets with narrow channels between islands, results in legal raw sewage dumping in sensitive marine habitats near shellfish beds and swimming beaches.

We've heard that there is a pressing need for Transport Canada to address the naming and creation of no-discharge zones (Designated Sewage Areas). Renaming Designated Sewage Areas to No-Discharge Zones would benefit public education initiatives. The current term is confusing as it implies the area is designated to permit sewage dumping. Local community groups have also expressed interest in requesting new Designated Sewage Areas but have found existing Transport Canada processes unclear and unduly onerous. By improving and streamlining the process for communities to request new Designated Sewage Areas, communities could make better use of their volunteer time and Transport

Canada could benefit from community knowledge about where raw sewage dumping needs to be further restricted. To our knowledge, only two sites have ever been designated in our region despite the fact that in the 1990s the Islands Trust Council and Islands Trust local trust committees requested a combined total of more than 50 Designated Sewage Areas in the Islands Trust Area, and the Province of British Columbia requested twelve areas in the Islands Trust Area.

There could also be improvements to the Regulations to make Designated Sewage Area violations easier to enforce. We've heard that in some jurisdictions it is mandatory for vessel operators in no-discharge zones to secure their marine sanitation devices or holding tanks in a manner which prevents discharge of treated or untreated sewage. It has been suggested that it is much easier for an enforcement officer to determine compliance with this type of requirement than whether a vessel has discharged sewage into the water.

Vessel sewage dumping:

As we suggested to the Minister of Transport in 2014, the Regulations could be amended to create a three nautical mile no-discharge zone around available pump-outs. On the attached map, you can see how our proposed approach of a three nautical mile no-discharge zone around pump-outs would apply in our region. As more pump-outs are installed, fewer areas would become available for dumping. This approach would be most successful if Transport Canada were to work with partners to develop an infrastructure funding program for vessel sewage pump-out facilities that would support sufficient pump-out stations to create contiguous large no-discharge zones in the Trust Area. The ecological sensitivity of this region, combined with the many boats in our region, creates a strong justification for priority pump-out infrastructure investment in the Salish Sea. The availability of pump out stations in Puget Sound is one reason the State of Washington adopted regulations earlier this year creating a Puget Sound No Discharge Zone that prohibits the release of sewage (black water) from vessels, whether treated or not into the approximately 2,300 square miles of marine waters of Washington State inward from the line between New Dungeness Lighthouse and the Discovery Island Lighthouse to the Canadian border, and fresh waters of Lake Washington, Lake Union, and connecting waters between and to Puget Sound. It is concerning that there is such a discrepancy of regulation on this topic within our transboundary region.

In 2014, the Islands Trust Chair advised the Minister of Transport that we had heard the suggestion regarding the advisability of allowing enforcement agencies to issue tickets to operators that don't comply with sewage dumping provisions of the Regulations (e.g. installation of black water holding tank; discharge in a Designated Sewage Area).

When the government puts in place regulations to better protect marine ecosystems there is the need to enforce. We hear that there are insufficient enforcement resources to adequately respond to vessels that are too close to whales and other infractions. We encourage more resources for enforcement in the Salish Sea.

We do not have specific non-regulatory approaches to suggest but can convey that the [Puget Sound Harbor Safety Committee](#) process of developing voluntary vessel Standards of Care seems like a good one. The Puget Sound Harbor Safety Plan is intended to complement existing regulations by advising the mariner of unique conditions and requirements that may be encountered in Puget Sound and adjacent waters and the standards and protocols developed by local experts for ensuring greater safety in light of those conditions and requirements. A similarly transparent committee with broad membership on the

Canadian side of the Salish Sea to examine measures that could be undertaken in our region would be our recommendation.

Topic 1.2 Enable Rapid Intervention by Transport Canada to Address Marine Safety and Environmental Risks

Transport Canada summary: To strengthen its authority to act quickly, the Government is considering giving the Minister of Transport the authority to issue time-limited orders to mitigate risks to marine safety and/or the marine environment. The intention would be for these orders to provide immediate short-term protection and provide the Government the time needed to determine the appropriate longer-term solution.

Question posed by Transport Canada:

- From your perspective, what are the potential impacts and implications if the government proceeds with this potential amendment?

DISCUSSION:

Trust Council encourages actions and programs of other government agencies which:

- place priority on the side of protection for Trust Area ecosystems when judgment must be exercised,
- protect the diversity of native species and habitats in the Trust Area, and
- prevent pollution of the air, land and fresh and marine waters of the Trust Area.

(Islands Trust Policy Statement policy 3.4.8)

The Islands Trust supports stronger oil spill prevention measures such as the issuing of time-limited orders to mitigate risks to marine safety and/or the marine environment. Time-limited orders could be an important measure to preventing vessel strikes to whales and to reducing vessel-generated underwater noise on the Southern Resident Killer Whale. It is not clear how these orders would work in practice but ideally they would enable Transport Canada to actively direct sea-going (conventional) vessel traffic to change course and/or speed to mitigate impacts to whale individuals or populations. This expanded marine traffic management authority could also be applied to situations where coastal vessels and coastal activities converge and negatively interact such as on-water fishing, shore-based harvesting (wave control), eco-tourism and recreation.

There may also be technology and information improvements that would support improvements to vessel traffic management. If Transport Canada had real-time awareness on where whales and other coastal activities (e.g. kayaking event, on-shore harvesting, fishing derby, commercial fishing) are congregated in relation to a ship and shipping traffic, there would be more opportunity to prevent problems. We also suggest that Transport Canada work with First Nations and coastal communities to access local knowledge to inform consideration of whether there are regulations needed to require that major vessels permanently avoid areas in the Salish Sea where there are known and frequent coastal-use interactions and risks.

Topic 1.3 Enhance Deterrence and Enforcement

Transport Canada summary: To enhance compliance and encourage safe and environmentally responsible shipping, the Government of Canada is considering increasing the maximum potential administrative monetary penalty for infractions against marine safety and environmental requirements. The current graduated enforcement approach for administrative monetary penalties would be maintained.

For the increased administrative monetary penalties to be effective there is a need for more enforcement officers in the Salish Sea region.

Question posed by Transport Canada:

- From your perspective, what are the potential implications and impacts of raising the maximum amount of administrative monetary penalties for violations of shipping regulations and standards?

DISCUSSION:

Trust Council holds that economic opportunities should be compatible with the conservation of resources and protection of community character.

(Islands Trust Policy Statement policy 5.7.1)

We support actions that promote compliance with marine safety and environmental requirements such as an increase in administrative monetary penalty for infractions and suggest they should be high enough to act effectively as a deterrent. Any administrative monetary penalties should be consistent with US penalties where possible or higher. For example, we would like to see penalties for cruise ship sewage dumping in the Salish Sea that are common on both sides of the border.

Topic 2: Strengthen Environmental Response

Transport Canada summary: The Government is considering changes to legislation to strengthen and clarify the Canadian Coast Guard's ability to intervene earlier when there may be a spill from a ship. This may include issuing mandatory directions, on a precautionary basis, to a vessel or oil handling facility to avoid escalation of a potential pollution incident, while working closely with all response partners.

Question posed by Transport Canada:

- From your perspective, what would be the potential impacts and implications of the Canadian Coast Guard being able to intervene earlier during a marine pollution incident to prevent or minimize a potential spill?

DISCUSSION:

Trust Council encourages actions and programs of other government agencies which:

- place priority on the side of protection for Trust Area ecosystems when judgment must be exercised,
- protect the diversity of native species and habitats in the Trust Area, and
- prevent pollution of the air, land and fresh and marine waters of the Trust Area.

(Islands Trust Policy Statement policy 3.4.8)

In principle, the Islands Trust supports early intervention by the Canadian Coast Guard during a marine pollution incident to prevent or minimize a potential spill. We understand this may include issuing mandatory directions, on a precautionary basis, to a vessel or oil handling facility to avoid escalation of a potential pollution incident, while working closely with all response partners.

However, there are concerns that the new authorities could be used in a heavy-handed manner that might not respect local values and marine plans. All decisions about use of dispersants, shore treatment agents, and in-situ oil burning should be thoroughly considered beforehand with local communities and local decision-makers. There is a need for strong pre-spill planning measures that incorporate local and First Nations input into processes such as Area and Geographic Response Plans. We look forward to being engaged in response planning for the Salish Sea and encourage as much involvement of local communities as possible.

2.2 Enable Rapid Response to Marine Pollution Incidents

2.2.1 Support Rapid Response

Transport Canada summary: To support rapid response to marine emergencies and pollution incidents, the Government is considering changes to legislation to allow the Canadian Coast Guard, and any persons accompanying them such as external experts, to enter, use, or pass through private property when conducting marine pollution prevention and response activities without first getting the property owner's approval. Provisions to fairly compensate property owners for any loss or damage caused by the use of the property during the environmental response are also being considered.

2.2.2 Ensure the open Sharing of Expert Advice During an Environmental Response

Transport Canada summary: During an environmental response, additional scientific, local, and technical expertise and advice may be required from parties that are external to the federal government. However, there is a risk that these parties may be reluctant to provide their expert advice out of concern that they will be held personally liable for any damages that may occur as a result of their advice. The Government is considering legislative amendments to extend immunity from liability to external parties providing advice and expertise to the Canadian Coast Guard and other federal departments in support of a ship-source oil spill response. Immunities would remain the same for industry and industry response representatives. The Government is focusing its consideration on those individuals, such as scientists, local experts, and other external advisors, who would be working with the federal departments in response related decision-making.

Question posed by Transport Canada:

From your perspective, what are the potential implications and impacts of:

- Enabling the Canadian Coast Guard, and any accompanying external experts, to cross over and use private lands to support an environmental response; and
- Extending immunity from liability to external parties providing advice and expertise to the Canadian Coast Guard and other federal departments in support of an environmental response?

DISCUSSION:

Trust Council encourages actions and programs of other government agencies which:

- place priority on the side of protection for Trust Area ecosystems when judgment must be exercised,
- protect the diversity of native species and habitats in the Trust Area, and
- prevent pollution of the air, land and fresh and marine waters of the Trust Area.

(Islands Trust Policy Statement policy 3.4.8).

The Islands Trust supports measures that prevent and minimize the impacts of spills. It is not clear whether the proposal for legislation to allow use of private land would be extended to lands owned and managed by First Nations and local governments. If this is the case, there would be merit in developing agreements and notification procedures in advance.

2.3 Support More Effective Response to Oil Spills in Water: Alternative Response Measures

Transport Canada summary: Alternative Response Measures are products, processes, and techniques that offer an expanded range of options for responding to oil spills and mitigating their effects. They can be used alongside conventional containment and recovery techniques to enhance the effectiveness of the response. Alternative Response Measures include techniques such as burning the spilled oil off the surface of the water, and products such as spill-treating agents that change the behavior of spilled oil to reduce the overall impact of oil spills on the environment.

To increase the effectiveness of oil spill response, the Government of Canada is considering legislative amendments to:

- Allow the use of Alternative Response Measures as an additional tool to clean up oil spills from ships and oil handling facilities, only when the government determines that there is likely to be a net environmental benefit and when authorized by the Minister of Fisheries, Oceans and the Canadian Coast Guard;
- To enable the Minister of Environment and Climate Change to establish, by regulation, a central list of Alternative Response Measures that may be authorized for use; and
- Allow the same range of Alternative Response Measures to be used to respond to oil spills from ships, oil handling facilities, pipelines, and offshore drilling platforms.

Question posed by Transport Canada:

- From your perspective, what are the potential implications and impacts of allowing the federally-regulated use of Alternative Response Measures to clean up oil spills?

DISCUSSION:

Trust Council encourages actions and programs of other government agencies which:

- place priority on the side of protection for Trust Area ecosystems when judgment must be exercised,
- protect the diversity of native species and habitats in the Trust Area, and
- prevent pollution of the air, land and fresh and marine waters of the Trust Area.

(Islands Trust Policy Statement policy 3.1.9)

Trust Council holds that public participation should be part of the decision-making processes of all levels of government.

(Islands Trust Policy Statement policy 5.8.1)

There is a lot to consider and uncertainty with this topic. We understand that Alternative Response Measures (ARMs) include dispersants, shore washing agents, surface oil herders, and chemical/biological bioremediation for oiled shores, and controlled in-situ oil burning with fire booms. ARMs benefit the oil industry as their approval may result in fewer costs both in preparedness and response, but their application may transfer a significant cost to government and communities in the way of protracted and expensive long-term ecological assessment programs to determine if a net environmental benefit has been achieved, and to build confidence the environment is safe, healthy and recovering for use and enjoyment by First Nations, community, fishers/harvester, tourism, etc.

Canada's Oceans Strategy is the Government of Canada's policy statement for the management of estuarine coastal and marine ecosystems. It sets out the policy direction for ocean management in Canada. It states that the precautionary approach, defined in the *Oceans Act* as "erring on the side of caution," is a key principle to be applied in the management of ocean activities. Under the Strategy, the Government of Canada re-affirmed its commitment to promoting the wide application of the precautionary approach to the conservation, management and exploitation of marine resources in order to protect these resources and preserve the marine environment. The precautionary approach should be applied to any decisions relating to approval of ARMs.

It is important to state that there has been insufficient consultation with coastal communities on this topic. Prior to any approval being granted for any of these options to be used in the Salish Sea there would need to first be substantial work to determine if there is social licence from local communities and consent from First Nations – the “risk-receivers” and that the benefit to the Salish Sea environment significantly outweighs the risks. It is unclear at this stage what the approval process would be and who would grant approval of ARMs use under Area Response Planning. It is also unclear what consultation will be undertaken with First Nations, local governments, provincial governments, community members and other coastal interests (commercial fisheries), and whether there will be a distinct process for each

ARM. Each First Nation and local government in the region should have an opportunity to express their respective position for each ARM that could be used in their territory/region as either:

- Not acceptable.
- Acceptable on a case-by-case basis.
- Conditional as specified.

Topic 3: Modernize Canada's Ship-Source Oil Pollution Fund

Transport Canada summary: Canada's domestic *Ship-Source Oil Pollution Fund* (the Fund) was established in 1973 as the first domestic fund in the world providing additional coverage for oil spills. The Fund provides compensation for pollution damage of all types of oil from all types of ships in Canada, and also covers marine mystery spills (i.e., spill from an unidentified source). It was originally financed by levies imposed on oil receivers and shippers in Canada.

3.1. Lifting the Ship-Source Oil Pollution Fund's Per-Incident Limit of Liability

Transport Canada summary: The *Marine Liability Act* establishes a per-incident limit of liability for the *Ship-Source Oil Pollution Fund* that specifies the maximum amount of compensation that can be paid out from the Fund for a single oil spill incident. The current per-incident limit of liability of the Fund is \$174,611,294; an amount adjusted annually for inflation.

The Government is considering eliminating the Ship-Source Oil Pollution Fund's per-incident limit of liability so that unlimited compensation would be available for eligible claims from victims and responders of oil spills from ships. Lifting the limit would mean that, in the unlikely event of a catastrophic oil spill, the Fund would fully compensate any eligible costs above the amounts available from ship owner's insurance and the international funds (as these limits are set out in international conventions and will not change), instead of pro-rating compensation based on the total amount of claims and the amount of funding available.

3.2 Modernized Levy Mechanism and Fund Replenishment

The Government of Canada is considering legislative amendments to ensure that the *Ship-Source Oil Pollution Fund* can be replenished through levies:

- First, an annual levy on oil receivers and exporters is proposed that would be used to replenish the *Ship-Source Oil Pollution Fund*. The administrative burden of this new modernized levy for industry would be minimized by aligning it with the existing reporting obligations for contributions to the international funds; and,
 - Second, amendments are proposed to create a supplementary levy. In the event that funds are temporarily provided by the Government of Canada, a supplementary levy could be imposed on industry to ensure the Government of Canada is reimbursed, if the annual levy is insufficient.
- It is important to note that the Government of Canada is not proposing to reinstate the annual levy unless the Fund was depleted.

3.3 Quickly Providing Funds

The Government is considering enabling up-front emergency funding from the *Ship-Source Oil Pollution Fund* to the Canadian Coast Guard, as the lead federal agency responding to ship-sourced spills. Separately, the Government is also considering developing a fast track process for small claims submitted to the *Ship-Source Oil Pollution Fund*. Any person with a small claim would be able to submit to the Fund Administrator under the fast-track claim process. The threshold and basic criteria that would guide this process has yet to be determined. This process would be available to any organization, community, business, or individual who has suffered actual damage or losses due to oil contamination, or has eligible expenses related to the clean-up of oil as well as preventative measures.

Question posed by Transport Canada:

- From your perspective, what are the potential implications and impacts of the above potential changes to modernize the Ship-Source Oil Pollution Fund?

DISCUSSION:

Trust Council encourages actions and programs of other government agencies which:

- place priority on the side of protection for Trust Area ecosystems when judgment must be exercised,
- protect the diversity of native species and habitats in the Trust Area, and
- prevent pollution of the air, land and fresh and marine waters of the Trust Area.

(Islands Trust Policy Statement policy 3.1.9)

In 2013 the Islands Trust Chair wrote to the Tanker Safety Expert Panel on behalf of the Islands Trust Council. One of the topics raised in the letter was inadequate financial guarantees in the event of a spill. In that letter we stated:

“We also support revisiting the funding arrangement and the purpose of Canada’s domestic Ship-Source Oil Pollution Fund. It seems that this fund cannot be viewed as a “polluter-pay” arrangement, when industry has only contributed \$34.86 million between 1972-1976 and none since then. On the other hand, I am told the taxpayer has contributed more than \$424 million and the fund has paid out more than \$51 million for industry’s annual premiums to the international compensation funds. It makes sense to us that cargo owners and pipeline owners with marine terminals who profit by risking our marine environment and the health of our communities, should contribute to this fund to avoid the burden falling on the Canadian taxpayer.

We have learned that in Washington State those responsible for spilling oil are liable for all ecosystem damage resulting from the oil spill and related response efforts. They have a natural resource damage assessment and restoration process that requires industry to pay the costs of returning natural resources to their pre-spill condition and to compensate the public for natural resources lost during the spill and recovery period. It seems sensible for Canada to adopt similar regulations requiring industry to pay compensation.”

While the numbers may have changed our concerns remain applicable today.

We would also encourage a review of the rationale for no longer requiring an annual levy from industry. In addition, we urge consideration of using the fund for additional purposes such as removal of abandoned vessels that pose a pollution threat, stand-by emergency towing vessels, area risk assessments and geographic response planning processes, and operating costs for regional citizen advisory committees such as the Prince William Sound Regional Citizens Advisory Council.

Topic 4: Support Research and Innovation

Transport Canada summary: To support research, the Government of Canada is considering legislative amendments to enable the Minister of Environment and Climate Change to authorize the research and testing of substances, techniques, equipment and related processes and procedures for the purpose of enhancing scientific knowledge to support environmental emergency policy making and operational decision making.

The Government of Canada is also considering legislative amendments to enable the Minister of Transport to provide time-limited exemptions from regulatory requirements and standards for the purpose of promoting innovation in, for example, vessel design, systems and on-board equipment to enhance marine safety and environmental protection.

Question posed by Transport Canada:

- From your perspective, what are the potential implications and impacts of enabling the Government of Canada to permit research and testing in Canada's waters for the purposes of enhancing marine safety and environmental protection?

DISCUSSION:

Trust Council encourages actions and programs of other government agencies which:

- place priority on the side of protection for Trust Area ecosystems when judgment must be exercised,
- protect the diversity of native species and habitats in the Trust Area, and
- prevent pollution of the air, land and fresh and marine waters of the Trust Area.

(Islands Trust Policy Statement policy 3.1.9)

The Islands Trust cannot comment on this topic without additional information regarding what the impacts might be to the waters and shorelines of the Salish Sea. A general concern is that the authorizations should not be used during a marine incident to override the concerns of a Unified Command member, such as a First Nation or local government. Transport Canada should require the highest possible environmental protection measures during any research and testing, and post-use environmental monitoring.

Thank you for the opportunity to comment on Transport Canada's Strengthening Marine Environmental Protection and Response Potential Legislative Amendments Discussion Paper.



Islands Trust

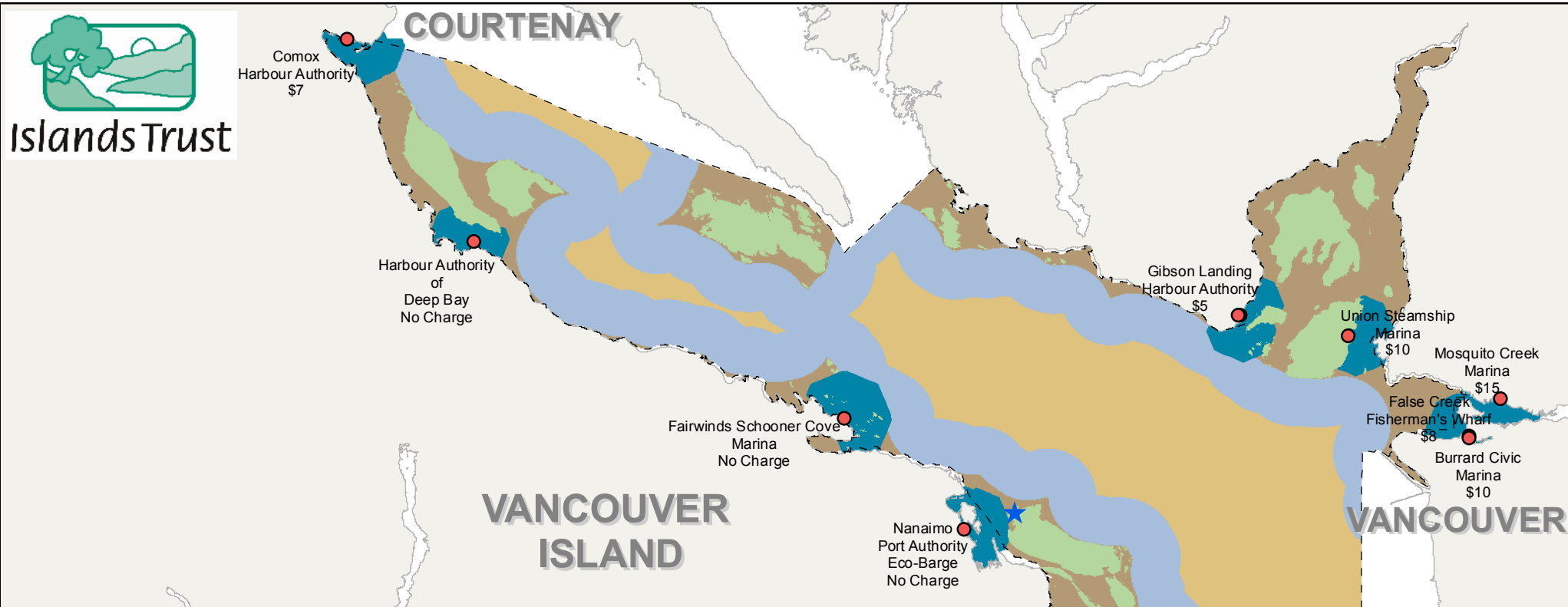
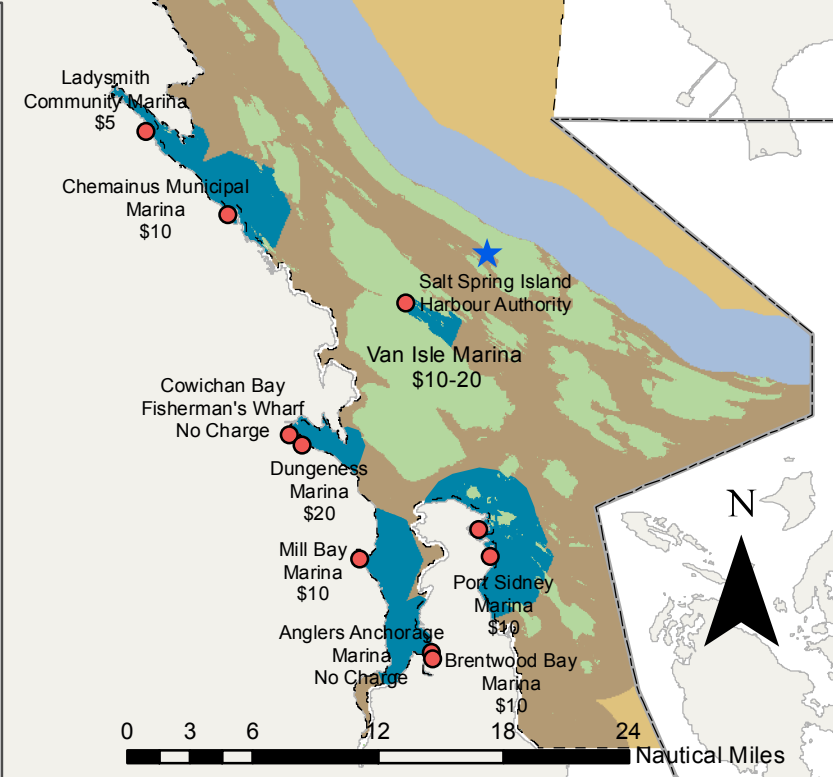


Illustration of Potential Effect of *Islands Trust's* Proposed Amendments to Section 96 of the *Vessel Pollution and Dangerous Chemicals Regulations* in the Islands Trust Area

- Pump Out Stations
- ★ Designated Sewage Area
- International Border
- Islands Trust Boundary
- Dumping permitted because > 3 nautical miles from shoreline (Status quo)
- Dumping prohibited within 3 nautical miles of a pump-out service (Status quo is no required distance from pump-out specified)
- Dumping prohibited < 3 nautical miles from shoreline (status quo)
- Dumping permitted in these waters that are less than 6 nautical miles from shore to shore, when no reception facility available to receive the sewage in an environmentally safe manner. The vessel may discharge raw sewage if en route at a speed of at least 4 knots or, if discharge is not feasible at that speed, the discharge can be made:
 - a) during an ebb tide, while the vessel is en route at the fastest feasible speed and into the deepest water that are located farthest from shore or,
 - b) while the vessel is en route at the fastest feasible speed and into the deepest and fastest moving waters that are located the farthest from shore.



*May not include all pump-out stations in the Islands Trust Area
 * Applies to boats < 400 gross tonnes certified to carry <= 15 people