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# RMOW Lakes Management Options



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## **Land Acknowledgement**

We would like to acknowledge that the land on which the Resort Municipality of Whistler was built is within the traditional, ancestral, and unceded territory of the Skwxwú7mesh (Squamish) and Lílwat7úl (Lil'wat) First Nations.

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## Executive Summary

The RMOW is facing numerous calls for a regulatory framework that seeks to harmonize and balance competing values—such as environmental protection, recreation, and aesthetic values—as they relate to usage of lakes within its boundaries. The purpose of this report is to undertake a comprehensive comparative review of approaches undertaken by other municipalities within British Columbia faced with similar pressures and tailor a recommended approach for the RMOW. Upon consultation with RMOW staff, this report is guided by the following objectives:

- Lakes within the RMOW should benefit all users.
- Any use and development proposed in and around lakes within the RMOW shall consider environmental impacts.
- Any approach should be developed with a focus on successful implementation and be mindful of existing RMOW resources and staff capacity.
- Regulations should allow RMOW to undertake compliance and enforcement – as opposed to solely relying on senior levels of government for assistance.

Some key themes emerged from a review of comparable communities. Most municipalities use their zoning bylaw to regulate uses on their lakes and are mindful that zoning regulations cannot fetter federal rights of navigation and shipping. Some municipalities have applied to the province for their own tenure, such as a head lease, as a means to increase their authority on the lake. Though many jurisdictions surveyed have used an array of different tools to manage impacts on their lake systems, almost all reviewed have cited that there is continued reliance on senior levels of government (such as the RCMP) for enforcement, as local governments simply do not have the resources (vessels, staff training, etc) or capacity to enforce their regulations as they apply to lakes.

The culmination of this review of comparator community yields an overarching recommendation that the RMOW consider the development of a mix of regulatory tools, summarized, and prioritized as follows:

### 1) Controlling existing points of Lake Access

Given that existing public boat launches are located on existing RMOW lands, adding additional controls at these existing boat launches at Alta Lake and Green Lake could be considered – such as the installation of gates that are locked in the evening, and formalized pay parking to prevent long-term parking that may limit the opportunity for others to recreate on the lakes.

### 2) Development of Water Zones

The development of a range of Water Zones, each with a different intent, would be an appropriate tool for the RMOW, given that all lakes within the RMOW are utilized and experienced differently. Any water zone development must not infringe on Federal jurisdiction relating to navigation and shipping.

### 3) Establish a Lake-focussed Development Permit Area (DPA)

The development of a lake-specific Development Permit Area would allow the RMOW to evaluate proposed development on lakes to ensure zoning compliance. This new DPA would require the submission of an Environmental Assessment, prepared by a qualified environmental professional, and would enable the RMOW to establish Development Permit conditions to ensure that development on the lake surface is carried-out in an environmentally sound manner, by requiring the submission of a performance security.

### 4) Pursue applications to Transport Canada under the Vessel Operation Restriction Regulation (VORR).

All lakes within the RMOW already have some restrictions placed on them under the VORR. This approach could be considered as a means to restrict certain vessels from operating on a lake (such as limiting the horsepower of an outboard motor or prohibiting gas-powered motors altogether).

### 5) Applying for a Crown Head Lease

Application for a Crown Head Lease could be considered in areas where the RMOW wishes to exercise complete and exclusive authority – i.e., in areas where there is continual enforcement challenges or areas of significant environmental importance where the RMOW wishes to prohibit any and all types of development and access.

# 1. Introduction

## 1.1. BACKGROUND

Everyone knows Whistler for its mountainous terrain for skiing, mountain biking and hiking, but what people are starting to realize is how amazing the local lakes are. From personal watercrafts and motorboats on Green Lake, to party barges on Alta Lake, docks being attached to upland parcels without permits, the lakes within Whistler (Alta, Green, Alpha, Nita and Lost Lakes) are experiencing a significant increase in use. With an increase in recreational use on Whistler's lakes, residents are calling on the Resort Municipality of Whistler (RMOW) to initiate a regulatory framework that balances recreational, aesthetic and environmental values.

## 1.2. PURPOSE

The purpose of this report is to provide the RMOW with an overview of "Lake Management Options" that can be used as a baseline to guide the development of policy aimed at ensuring lakes within the RMOW (specifically, Alta, Green, Alpha, Nita and Lost Lakes) can be used by all in a safe and environmentally sound manner. It is important to the RMOW to understand approaches taken by other municipalities in order to review options for consideration in the Whistler context.

The development of these options is based on a comprehensive review of the different levels of government involved in the regulation of uses and users on lakes, an overview of other BC municipalities that have developed regulations on their respective lakes, and the results of interview questions from select municipalities experiencing similar challenges as the RMOW.

## 1.3. METHODOLOGY

This study incorporated several different research methods aimed at collecting information to best inform the development of Lake Management Options for the RMOW, including:

- Review of supporting planning policy documents such as Official Community Plans, and zoning bylaws and general information websites.
- Review of jurisdictional differences and spheres of authority relating to the regulation of uses and users on lakes.
- A literature review of difficulties and best practices associated with regulating lake uses.
- Focussed survey of participating municipalities.



## 1.4. REPORT STRUCTURE

The Summary of Research Report is organized into five (5) sections. The five sections included are:

- **Section 1, Introduction** – Background, purpose, and existing context of the project.
- **Section 2, Cross Jurisdictional Review** – Review of all orders of government (local, provincial, federal, and indigenous) in Canada that play a role in managing water regulation and have jurisdiction over navigable waters.
- **Section 3, Local Government Examples** – Review of British Columbia municipalities that are managing local water bodies under municipal bylaws and/or plans and key findings.
- **Section 4, Administration and Enforcement** – Responses from local governments regarding administration and enforcement for managing lakes and key findings.
- **Section 5, Recommended System for the RMOW** – Recommended system, approaches and tools for the RMOW to use.

## 1.5. BROAD DEFINITIONS

The terms below are meant to be defined broadly to help the reader understand the concepts within the report.

**Aquatic Crown Land:** means that land below the visible high-water mark of a body of water, extending offshore to the recognized limit of provincial jurisdiction, including the foreshore.<sup>1</sup>

**Crown:** means Her Majesty the Queen in Right of the Province of British Columbia.<sup>2</sup>

**Crown Land Tenures:** Crown land tenure is an agreement between an individual or company and the provincial government which provides the individual or company with an interest in the land. Tenures are granted for specific purposes and periods of time.<sup>3</sup>

**Dock:** means a structure used for the purpose of mooring boats and for providing pedestrian access to and from the moored boats, and can consist of a single dock, wharf, or pier (including walkway ramp).<sup>4</sup>

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<sup>1</sup> Ministry of Forests, Lands and Natural Resource Operations, "Glossary of Private Moorage Program Terms," retrieved from: [private.moorage.glossary.gov.bc.ca](http://private.moorage.glossary.gov.bc.ca)

<sup>2</sup> Ministry of Forests, Lands and Natural Resource Operations, "Glossary of Private Moorage Program Terms," retrieved from: [private.moorage.glossary.gov.bc.ca](http://private.moorage.glossary.gov.bc.ca)

<sup>3</sup> BC Assessment Authority, "About Crown Land Leases, Licenses and Permits" Retrieved from: [About.Crown.Land.Leases.Licenses.and.Permits\(bcassessment.ca\)](http://About.Crown.Land.Leases.Licenses.and.Permits.bcassessment.ca)

<sup>4</sup> BC Assessment Authority, "About Crown Land Leases, Licenses and Permits" Retrieved from: [About.Crown.Land.Leases.Licenses.and.Permits\(bcassessment.ca\)](http://About.Crown.Land.Leases.Licenses.and.Permits.bcassessment.ca)



**Foreshore:** means that land in tidal areas lying between the high tide and the mean low tide and that land in non-tidal areas that is alternatively covered by water and exposed with the normal rise and fall of the level of the body of water, i.e., that land between the ordinary high and low water mark.<sup>5</sup>

**Head Lease:** is a Crown land lease with a local government, Band corporation, Crown corporation or other public entity (including a port authority) which permits the tenure holder to sub-tenure to third parties.<sup>6</sup> Head leases are typically used in situations where a local authority wishes exercise exclusive authority over an area, rather than relying on the province for enforcement.

**Lease:** A lease is where substantial improvements to the land are to be made, or where boundaries are necessary to avoid conflict with neighbouring operators. A lease is issued for up to 30 years.<sup>7</sup>

**License of Occupation:** Used in remote areas or where the lands are needed for uses that are not permanent or where there are specific restrictions or management objectives.<sup>8</sup>

**Marine Navigation:** means to actively travel in, on, through or immediately above water.

**Navigable water:** means a body of water, including a canal or any other body of water created or altered as a result of the construction of any work, that is used or where there is a reasonable likelihood that it will be used by vessels, in full or in part, for any part of the year as a means of transport or travel for commercial or recreational purposes, or as a means of transport or travel for Indigenous peoples of Canada exercising rights recognized and affirmed by section 35 of the Constitution Act, 1982, and

- (a) there is public access, by land or by water.
- (b) there is no such public access but there are two or more riparian owners; or
- (c) Her Majesty in right of Canada or a province is the only riparian owner.

**Present Natural Boundary** – is the visible high-water mark of any lake, river, stream or other body of water where the presence and action of the water are so common and usual, and so long continued in all ordinary years, as to mark on the soil of the bed of the body of water a character distinct from that of its banks, in vegetation, as well as the nature of the soil itself.<sup>9</sup>

**Private Moorage:** means the non-commercial mooring of a boat or similar watercraft within the foreshore zone accessory to a residential use on the upland parcel.

**Recreational Water Activities:** means leisure activities that could not take place in areas other than the water. Examples include but are not limited to jet skiing, fishing, water skiing, boating with or without

<sup>5</sup> BC Assessment Authority, "About Crown Land Leases, Licenses and Permits" Retrieved from: [About Crown Land Leases, Licenses, and Permits \(bcassessment.ca\)](https://www.bcasessment.ca/licenses-and-permits)

<sup>6</sup> Province of British Columbia (2012) "Land Procedure – Head Lease" Retrieved from: [head\\_leases.pdf \(gov.bc.ca\)](https://www2.gov.bc.ca/gov/content/land/land_use/land_use_general_commercial_uses/Land_use_-_general_commercial_uses_-_Province_of_British_Columbia.pdf)

<sup>7</sup> Province of British Columbia, "Land use – general commercial uses", Retrieved from: [Land use - general commercial uses - Province of British Columbia \(gov.bc.ca\)](https://www2.gov.bc.ca/gov/content/land/land_use/land_use_general_commercial_uses/Land_use_-_general_commercial_uses_-_Province_of_British_Columbia.pdf)

<sup>8</sup> Province of British Columbia, "Land use – general commercial uses", Retrieved from: [Land use - general commercial uses - Province of British Columbia \(gov.bc.ca\)](https://www2.gov.bc.ca/gov/content/land/land_use/land_use_general_commercial_uses/Land_use_-_general_commercial_uses_-_Province_of_British_Columbia.pdf)

<sup>9</sup> BC Assessment Authority, "About Crown Land Leases, Licenses and Permits" Retrieved from: [About Crown Land Leases, Licenses, and Permits \(bcassessment.ca\)](https://www.bcasessment.ca/licenses-and-permits)

personal watercraft, swimming, water play and diving. Recreational water activities do not include residential or commercial facilities.

**Riparian:** refers to all rights pertaining to the shore or bank of a body of water.<sup>10</sup>

**Uplands:** The area of land above and adjacent to the high tide zone, foreshore, beach areas and estuaries.

**Vessel:** vessel means a boat, ship or craft designed, used or capable of being used solely or partly for navigation in, on, through or immediately above water, without regard to method or lack of propulsion, and includes such a vessel that is under construction.<sup>11</sup>

## 1.6. EXISTING CONTEXT

### 1.6.1. Official Community Plan

An Official Community Plan (OCP) is a local government's principal policy tool in providing direction for growth and change in a community. Regulations aimed at balancing recreational and environmental values is supported by the RMOW OCP, as follows:

- 7.3.1.1. Policy Continue to monitor Whistler streams and lakes, compare results to local lake water quality objectives and take action to improve trends when necessary.
- 7.3.2.5. Policy Manage access to watersheds used for municipal water supply and seek cooperation from relevant agencies and stakeholders to comply with access restrictions.

The lakes within the RMOW (Alta, Green, Alpha, Nita and Lost Lakes) do not have an OCP Development Permit Area designation. The RMOW OCP does acknowledge that the lands and water within the RMOW lie within the unceded territories of the Lil'wat Nation and Squamish Nation, holding historic and cultural traditions.

### 1.6.1. Existing Zoning

Municipal zoning applies to lands and waters within the RMOW's boundaries. Currently, under the RMOW Zoning and Parking Bylaw No. 303, 2015, the lakes within the RMOW (Alta, Green, Alpha, Nita and Lost Lakes) have a zoning designation of Rural Resource which is not a water-specific zone.

### 1.6.2. Development Permit Areas

An OCP can designate Development Permit Areas (DPA) that have special land use and development conditions. The land within a DPA cannot be subdivided, altered, or built on without first obtaining a development permit that contains requirements established for that DPA. The RMOW has ten (10) DPA, two (2) of which are associated with the lakes within the municipal boundary.

<sup>10</sup> BC Assessment Authority, "About Crown Land Leases, Licenses and Permits" Retrieved from: [About Crown Land Leases, Licenses, and Permits \(bcassessment.ca\)](https://www.bcasessment.ca/licenses-and-permits)

<sup>11</sup> Government of Canada, "Canada Shipping Act, 2001" Retrieved from: [Canada Shipping Act, 2001 \(justice.gc.ca\)](https://laws.justice.gc.ca/eng/acts/C-34.1/)

- (1) Protection of Riparian Ecosystems – designated for protection of the natural environment, its ecosystems and biological diversity (Schedule J of the RMOW OCP)
- (2) Protection of Sensitive Ecosystems – designated for protection of the natural environment, its ecosystems and biological diversity (Schedule K of the RMOW OCP)

Although the two DPAs mentioned above relate to the protection of ecosystems, the lakes within the RMOW are not designated on the Schedule J or K of the RMOW OCP.

## 2. Cross Jurisdictional Review

All orders of government (local, provincial, federal, and Indigenous) in Canada play a role in managing water regulation and have jurisdiction over navigable waters. Provincial and local government restrictions, however, are somewhat constrained over navigation and shipping, which are Federal government authorities.

Navigable waters and the land below the water in British Columbia are mostly owned by the Crown in the right of the province or in Canada. Under the navigable water definition, the RMOW has many applicable bodies of water within their municipal boundary that have various regulations associated with their management.

### 2.1. LOCAL JURISDICTION

In British Columbia, the regulation of land use has mostly been delegated by the province to the local level of government. Under the definitions of the *Local Government Act* and *Community Charter*, “land” includes the surface of water, and most local governments have boundaries that extend into and include navigable waters. As such, local governments are empowered to exercise their zoning regulation powers on waters within their boundaries. The Local Government’s exercise of zoning water is permissible only to the extent that it does not directly conflict with provincial or federal regulation, or conflict with the “core” area of federal jurisdiction over navigation. As an example, a zoning restriction that prohibits the use of navigation or regulating a maximum size of a vessel would likely infringe on federal jurisdiction and would therefore not be enforceable.<sup>12</sup>

Local governments can regulate the use of lands and waters, and development along the shoreline, as well as adjacent upland areas. The *B.C. Community Charter* and the *Local Government Act* enable local governments to zone land and water surface in backshore, foreshore and nearshore areas within their boundaries.

Types of regulations or legal tools that are available for local governments include establishing Official Community Plans, Neighbourhood Plans, policies, Development Permit Areas, and municipal bylaws such as:

- Environmental Protection Bylaw
- Noise Regulation
- Parks Bylaw
- Zoning Bylaw

#### 2.1.1. Enforcement

The local government regulations are usually enforced by the bylaw enforcement officers. However, different types of enforcement do vary across municipalities. In surveying other B.C. municipalities, Bylaw Enforcement was found to be only one of the options for inspection in relation to water specific zoning.

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<sup>12</sup> Marzari, F. (2008) “Everything you ever wanted to know about navigable waters but were too afraid to ask” Young Anderson. Retrieved: Navigable\_Waters.pdf (p. 2)

Other forms of enforcement may be done by the Chief Administrative Officer, or the Manager of Development Services.

## 2.2. PROVINCIAL JURISDICTION

### 2.2.1. Land Act

Crown land is land, including land covered by water, such as a lake, owned by the Province of British Columbia and is available for activities such as industry, research and recreation.<sup>13</sup> Any development activities, such as private moorage, require authorization from the Ministry of Forests, Lands and Natural Resource Operations and Rural Development, and can take the form of a general permission (for docks used for residential purposes, and the owner owns the upland property) or an application for tenure. All private moorages must ensure the adherence to the following prohibitions as per the Government of British Columbia *Land Use Operational Policy – Private Moorage*:

- Only one private moorage facility is permitted per property (e.g., only one dock or one boat way, not both).
- Development is limited to a single dock which consists of an elevated pier leading to a ramp and one moorage float.
- All structures (i.e., dock, boat way, boat lifts) must be at least 5 metres from the projected side property line (6 metres if adjacent to a dedicated public beach access or park), and at least 10 metres from any existing dock or structure.
- All docks should be oriented at right angles to the general trend of the shoreline.
- Dock structures must not be grounded at low water/low tide. All docks must be on pilings/suspended or floating at all times.
- Work in the water must occur outside of spawning and nursery periods.
- Construction of a dock, where feasible, should well back from the water.
- The dock and the Crown land beneath the dock should be kept in a safe, clean and sanitary condition.

Owners are also prohibited from obstructing public foreshore access.<sup>14</sup>

### 2.2.2. Water Sustainability Act

The *Water Sustainability Act* regulates development activities that may pose a risk to aquatic habitat or generate water pollution.

The *Act* requires a license for any proposed “changes in and about a stream”, which include bodies of water such a lake.<sup>15</sup> Obtaining a water license allows the holder to make the necessary changes in and about a stream necessary for construction or operation of the works under license or approval.<sup>16</sup>

<sup>13</sup> Government of British Columbia, retrieved from: <http://www2.gov.bc.ca/gov/content/industry/natural-resource-use/land-use/crown-land>.

<sup>14</sup> Government of British Columbia, retrieved from: [Land use - private moorage - Province of British Columbia \(gov.bc.ca\)](http://www2.gov.bc.ca/gov/content/industry/natural-resource-use/land-use/crown-land)

<sup>15</sup> Government of British Columbia. Retrieved from: [Working Around Water - Province of British Columbia \(gov.bc.ca\)](http://www2.gov.bc.ca/gov/content/industry/natural-resource-use/land-use/crown-land)

<sup>16</sup> Government of British Columbia. Retrieved from: [Working Around Water - Province of British Columbia \(gov.bc.ca\)](http://www2.gov.bc.ca/gov/content/industry/natural-resource-use/land-use/crown-land)

### 2.2.3. Enforcement of Derelict Docks and Structures

It is understood that the RMOW is seeing an increase of derelict docks and vessels, resulting in unsightliness and deleterious environmental impacts. According to the province, the issue of removing derelict structures and vessels on Provincial Crown Land has been increasing in recent years, along with calls for local government to take action.<sup>17</sup> Dealing with problem vessels is often a difficult challenge and highly complex given the interplay between federal, provincial and local government jurisdictions.



*Derelict structure on Alta Lake. Photo credit: Arthur De Jong. This structure has since been removed.*

Under the Provincial *Land Act*, the province requires authorization (i.e., a lease or general permission) to build or place a structure on provincial land, therefore, if a person neglects to obtain this permission, the province has the authority to remove these structures as they are in trespass.<sup>18</sup>

It is important to note, however, that if a vessel operator is operating their public right of navigation – such as repairs to a vessel – provincial and local governments would not have the authority to order the removal of these structures as it would infringe on federal jurisdiction. Rights of navigation notwithstanding, vessels moored for long periods of time on Provincial Crown Land may be able to destroy or removed, or a fine imposed.<sup>19</sup> Provincial and local governments are much better equipped to regulate structures that are neither vessel or wreck, which are moored on a lake owned by the province – the province has clear authority to remove and destroy these structures (i.e., a dock in trespass). Local government regulations such as zoning and / or nuisance bylaws can also apply to floating structures (i.e., docks) in similar manner to upland structures.<sup>20</sup>

In addition to the ability of the province to address vessels or structures that are in trespass, senior levels of government can also take action with structures that pose an environmental threat or interfere with public rights of navigation.

<sup>17</sup> “Dealing with Problem Vessels and Structures” Province of British Columbia. Retrieved from: [dealing\\_with\\_problem\\_vessels\\_and\\_structures.pdf \(gov.bc.ca\)](https://www2.gov.bc.ca/gov/content/soc/comm/transportation/vessels/structures.pdf)

<sup>18</sup> “Dealing with Problem Vessels and Structures” p. 3

<sup>19</sup> “Dealing with Problem Vessels and Structures” p. 3

<sup>20</sup> “Dealing with Problem Vessels and Structures” p. 4

For vessels that are the source of spills, the federal Canadian Coast Guard is typically the lead enforcement agency, whereas the Provincial Ministry of Environment is the lead agency when there is a noxious spill from a structure.<sup>21</sup>

## 2.3. FEDERAL JURISDICTION

Traditionally, the federal government's role with managing water is to manage fisheries, protect fish habitat and oversee transportation safety. There are a variety of federal regulations that relate to water.

### 2.3.1. Legislation

**Navigable Waters Protection Act** – Purpose is to protect the public right of navigation. Responsible for controlling navigation routes and the location of moorings, dams, and bridges. The Canadian Coast Guard (division of DFO) is responsible for administering its application.

**Pleasure Craft License** – responsible for boat identification and safety requirements.

**Canadian Environmental Assessment Act** – Establishes several environmental assessment tracks, depending on the nature of the project and the likely environmental effects. All projects are screened initially but larger projects that may have a significant environmental impact may require a more detailed environmental assessment.

**Small Vessel Regulation** – responsible for licensing, safety requirements.

**Vessel Operation Restriction Regulation** – The Vessel Operation Restriction Regulation (VORR) is the principal federal regulation that can be used to regulate the operation of a vessel, recognizing the fact that the Federal Government retains jurisdiction of navigation and shipping. There are eight (8) different restrictions that can be imposed on vessels as part of the VORR, including:

- Prohibiting vessels.
- Prohibiting the use power-driven vessels.
- Setting limits on engine size.
- Imposing a speed limit.
- Prohibiting recreational or sporting events.

With over 460 restrictions in place across BC, it is important to note that the VORR only permits local authorities to apply for a restriction, including local governments and provincial ministries. A number of lakes within the RMOW are already subject to some restrictions under the VORR:

- Power-driven vessels on Nita, Alpha and Lost Lake are prohibited.
- Power-driven vessels operating on Alta Lake are limited to a maximum speed of 12 km/h.
- Parts of Green Lake are limited to a maximum speed of 10 km/h.

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<sup>21</sup> "Dealing with Problem Vessels and Structures" p. 5.



### 2.3.2. Enforcement

Federal regulations are enforced by agencies such as the Royal Canadian Mounted Police (RCMP), Conservation Officer Service, Fisheries and Oceans Canada (DFO), the Ministry of Forests, Lands, Natural Resource Operations and Rural Development (FLNRO). It should be noted a license, or a lease granted by the province does not override or affect any powers, privileges or immunities to which the RMOW is entitled to under any enactment of the Province of BC. The RMOW exercises its bylaw making powers under such enactments, being both the *Resort Municipality of Whistler Act* and the *Community Charter*.

## 2.4. INDIGENOUS JURISDICTION

Section 35 of *The Constitution Act* affirms Aboriginal rights. Lands, territories, and resources are subject to Aboriginal rights and title which also include the right to land and water. Although Section 35 does not define Aboriginal rights they have been defined within many Supreme Court Cases such as *R. v. Sparrow*<sup>22</sup>. Aboriginal rights have been interpreted to include a range of cultural, social, political, and economic rights including the right to land, as well as to fish, to hunt, to practice one's own culture, and to establish treaties<sup>23</sup>.

Lands, territories, and resources are subject to Aboriginal rights and title, affirmed by Canada's Constitution, which include a range of cultural, social, political, and economic rights including the right to land and water, as well as to fish, to hunt, to practice one's own culture.

### 2.4.1. Squamish and Lil'wat Nations

The land on which the Resort Municipality of Whistler was built is within the traditional, ancestral, and unceded territory of the Skwxwú7mesh (Squamish) and Lil'wat7úl (Lil'wat) First Nations. This is also stated within the RMOW OCP.

It is also stated within the RMOW OCP that "the municipality (RMOW), Lil'wat Nation and Squamish Nation recognize and acknowledge they can best serve their communities by working together in the spirit of reconciliation and cooperation to achieve mutual benefits anchored by common values and interests."

<sup>22</sup> *R. v. Sparrow*, [1990] 1 S.C.R. 1075. Accessed online: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/609/index.do>

<sup>23</sup> Asch, Michael. *Home and Native Land: Aboriginal Rights and the Canadian Constitution*. Agincourt: Methuen, 1984. 30.

### 3. Local Government Examples

A key objective of this report is to review lake management approaches implemented by similar local governments in British Columbia in order to identify some options that could be further explored by the RMOW. Detailed below, a number of municipalities were reviewed, and effort was made to identify municipalities experiencing similar pressures on their lake systems.

#### 3.1. DISTRICT OF SQUAMISH

The District of Squamish is currently developing a new Marine Zoning Bylaw which is presently in draft form. The main purpose is to formalize regulations over the district's waters and provide for and enhance the coordination, shared use, and protection of marine coastal areas within the district. The proposed marine zones are applied to waters that are below the natural boundary and each zone regulates uses and the density of uses within them.

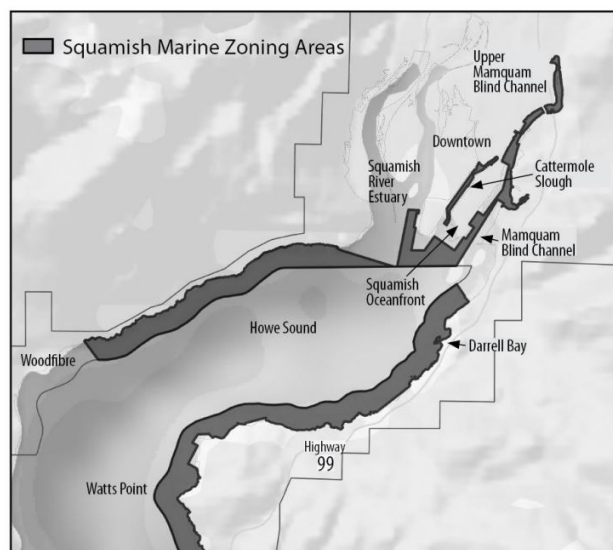
M1 Marine General - The intent of this zone is to provide regulation for the use of the marine coastal area within the District of Squamish pertaining to general marine navigation, public access and recreation as well as aquaculture activities.

M2 Marine Mixed Use - The intent of this zone is to provide for a variety of marine commercial uses and the orderly development of marina infrastructure, associated moorage and related marine retail and recreation activities.

M3 Marine Recreation - The intent of this zone is to provide public marine recreation areas and regulate activities, access and moorage for community use.

M4 Marine Log Storage - The intent of this zone is to provide regulation for the use of the marine coastal area for water-based log handling adjacent to immediate upland log sort facilities, as well as water-based log storage.

M5 Marine Transportation Facilities - The intent of this zone is to provide for and regulate major marine transportation infrastructure at the Darrell Bay Ferry Terminal.



*Squamish Marine Zoning Areas Map (Draft)*

### 3.2. COLUMBIA SHUSWAP LAKE ZONING

The Lakes Zoning Bylaw No. 900 applies to the extensive Electoral Areas, South and North Shuswap, and Rural Sicamous, and includes seven lakes. It regulates docks, private mooring buoys, and swimming platforms. In addition, there are Official Community Plan Foreshore and Water Development Permit Areas. Enforcement is by the Chief Administrative Officer, the Manager of Development Services, a Bylaw Enforcement Officer, those persons retained by the Regional District for inspection purposes, and Agents of the Regional District.

General Regulations provide permitted and prohibited uses and structures in each zone. This includes berths and swimming platforms.

### 3.3. TOWN OF OSOYOOS

The Town of Osoyoos implements the *Foreshore and Lake Zoning Bylaw No. 1294, 2012*, which regulates the foreshore and the portions of Osoyoos Lake that lie within the Town. The purpose of the bylaw is to promote environmental sustainability of the lake, protect safety of users, avoid overloading and congestion, ensure access, reclaim public lands and water for community benefit, promote the aesthetic appeal, and strengthen the Town's regulatory and enforcement powers.

The bylaw notes under General Compliance that the Federal and Provincial regulations and best management practices apply to zones, and that the BC Water Sustainability Act applies. The penalty for offence is up to \$10,000 and the legal costs associated. The bylaw prohibits the private use of public areas and the following uses and structures:

- a) Houseboats used for residential use
- b) Swimming platforms used for boat moorage
- c) Beach houses, storage sheds, patios, sun decks, and hot tubs
- d) Unauthorized placement of fill, or dredging of aquatic land; and
- e) Covered structures over moorage facilities
- f) No fences are permitted within the foreshore

There are four zones:

W1, Public Water Use. This zone permits the following uses, with some additional Site-Specific uses:

- 1. Boating
- 2. Recreational water activities
- 3. Public buoy lease area
- 4. Public swimming area

W2, Private Moorage. This zone restricts the number of berths, size of dock and walkway, has setback requirements, and permits the following uses:

- 1. Boating
- 2. Recreational water activities

3. Fixed or removable dock
4. Fixed or removable walkway
5. Private moorage buoy
6. Boat lift

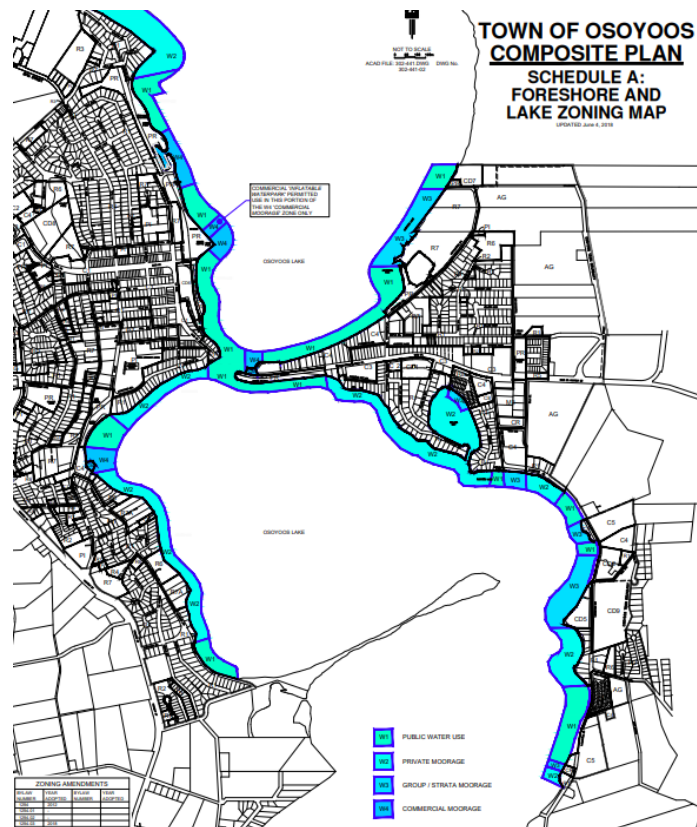
**W3, Group/Strata Moorage.** This zone restricts the number of berths based on number of residents and units, the size of dock and walkway, requires setbacks, and permits the following uses:

1. Boating
2. Recreational water activities
3. Group moorage facility
4. Strata moorage facility
5. Boat lift

**W4, Commercial Moorage.** This zone restricts the density and size of piers and marinas in compliance with the applicable Best Management Practices of the Province, requires setbacks, and permits the following uses:

1. Boating
2. Boat launch
3. Marina
4. Pier
5. Yacht club

The location and extent of the zones is as shown in the figure below, which extend approximately 30m from the high-water line of Osoyoos Lake. The Town of Osoyoos does not have jurisdiction over the parts of the lake that are not zoned.



*Foreshore and Lake Zoning Map – Town of Osoyoos*

### 3.4. DISTRICT OF SUMMERLAND

The District of Summerland has specific *Water Zones*. Enforcement is by the Manager of Development Services, Building Inspector, Bylaw Enforcement Officers, or any other employee authorized by Council to enter a property or building to confirm compliance. Individual Water Zones are outlined as follows:

#### WZ1, Recreational Water Use Zone 1

The purpose is for recreational enjoyment and public access. The following principal uses are permitted

1. Boating
2. Foreshore public access (incl boat launches)
3. Recreational water activities
4. Uses permitted by provincial Crown Lands
5. Public utilities

When the principal use is occurring, the following accessory uses are permitted:

1. Docks
2. Boat Lifts if part of a dock
3. Temporary moorage

WZ2, Recreational Water Use Zone 2. The purpose of the zone is to provide for the recreational enjoyment of the lake but prohibit moorage or docks beyond 100m. The following uses are permitted:

1. Boating
2. Recreational water activities
3. Uses permitted by provincial Crown Lands
4. Public utilities

### 3.5. CITY OF VERNON

The City of Vernon Zoning Bylaw includes waterfront uses in the R6, Lakeshore Residential zone which provides residential housing on the lakefront, in sub-zones allow for care centres and home-based businesses. The following primary uses are permitted:

1. Care centre, major
2. Duplexes
3. Semi-detached housing
4. Single detached housing
5. The zone permits the following secondary uses:
6. Bed and breakfast homes
7. Boarding rooms
8. Care centre, minor
9. Docks, private
10. Home based businesses

There is a 7.5m horizontal minimum setback of any building from the natural boundary. An overview of Vernon's Water Zones is outlined below:

RTR, Resort Residential provides a zone for a variety of housing forms that permits private docks as a secondary use.

RTC, Resort Commercial is designated for destination commercial visitor accommodation in a pedestrian oriented environment and permits a secondary use of private and community docks, marinas, and marina fuel facilities.

RTC, Resort Commercial and Residential is for the development of destination commercial visitor accommodation in a pedestrian oriented environment providing a mixture of recreational, cultural, retail, and entertainment services, and to allow for permanent residences. The zone permits a secondary use of private and community docks, marinas, and marina fuel facilities.

C10, Tourist Commercial zoning is for the development of destination commercial visitor accommodation and allows boat storage as a primary use and private and community docks, marina equipment rentals, marina fuel facilities, marina sani-dump facilities as secondary uses.

C10A, Tourist Commercial and Residential is for the development of destination commercial visitor accommodation and allows for permanent residences. Primary uses include marinas, and secondary uses include private and community docks, marina equipment rentals, marina fuel facilities, and marina sani-dump facilities.

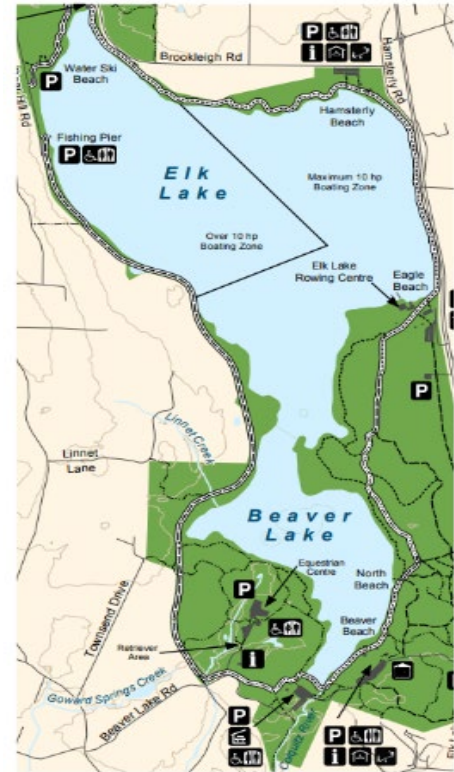


### 3.6. CAPITAL REGIONAL DISTRICT / DISTRICT OF SAANICH

Elk Lake and Beaver Lake are located within a Regional Park operated by the Capital Regional District with the District of Saanich. These lakes function as a single lake, connected by a shallow channel. The lake has continuously been heralded as a highly visited recreational lake for Victoria area residents. With the extension of the Pat Bay Highway in the 1950's, focus on the lake turned to environmental remediation and protection, and in 1996, Elk / Beaver Lake became a regional park.

Use of the lake is primarily regulated under Transport Canada's *Vessel Operation Restriction Regulations*. Vessels are limited to a 10-horsepower maximum on Beaver Lake and the west half of Elk Lake (Elk Lake Mal). Power vessels towing water-skiers or equipment are prohibited between sunrise and 11am, and watercrafts may not operate on the east half of Elk Lake during swimming events.

There has been recent public pressure expressed to the Capital Regional District and District of Saanich to restrict and/or prohibit the use of gas-powered watercraft on the lake, and only permit electric motors only, due to concerns about noise and pollution.<sup>24</sup>



*Elk Lake and Beaver Lake Map*

### 3.7. CITY OF WEST KELOWNA

In 2009, the City of West Kelowna initiated the development of a new Water Use Recreational Zone (W1) aimed at defining appropriate uses of the lake fronting upland properties within the City. The catalyst for the development of this zone was the assembly of several residential houseboats located within the "Gellatly Bay" area of the city – a waterfront area of the city highly frequented by area residents and tourists. The W1 Zone permitted the moorage of vessels as a use accessory the residential use of the immediately adjacent upland parcel, therefore preventing the lake being used as a permanent marina.



*Houseboats in Gellatly Bay (2009) Source: Penticton Herald*

<sup>24</sup> Cleverly, Bill. (2017). "CRD powerless on power boats at Elk / Beaver Lake" *Times Colonist*. CRD powerless on power boats at Elk/Beaver Lake | *Times Colonist*



Concurrently with the development and adoption of the W1 Zone, the city also applied for a Head Lease from the Provincial Government in Gellatly Bay, and promptly demanded that houseboats leave the lease area.

Shortly after introducing the W1 Zone, an area houseboat owner challenged the zoning bylaw in Court, under the assertion that the zoning interfered with the exclusive federal jurisdiction over navigation and shipping.

The Court found that some anchorage and/or overnight or emergency moorage may be vital to the houseboat owner's rights of navigation, although long-term moorage utilized at times when the owner is not on board the houseboat is not a core right of the public right of navigation. Therefore, while a zoning bylaw can restrict moorage over an extended period, a zone must not restrict a non-resident boater who moors in the area during the course of navigation, including the time needed to carry-out repairs to a vessel. As a result, the City's W1 zone was also amended to permit temporary moorage for periods less than 24 hours.

### 3.8. CITY OF KELOWNA

The City of Kelowna implements Lake Okanagan Shore Zone Plan which makes recommendations for the City with regards to the Shore Zone as an Environmentally Sensitive Hazardous Conditions Area subject to Development Permit, addresses waterfront property owner/foreshore user conflicts, park acquisition, dock regulations, access, amenities, development, levels of government control, City boundary to centreline of Lake Okanagan and zoning. It also makes recommended actions for management, summarizing the current system and alternatives to the current system.

There are recommendations for dock regulations and licensing requirements from Crown Lands with Provincial guidelines for size and siting of shore zone structures, the Provincial Private Moorage Guidelines, and illegal docks that are subject to provincial initiation of trespass action.

The Plan provides recommendations for management options and implementation.

### 3.9. DISTRICT OF INVERMERE

The District of Invermere adopted a bylaw in February 2013 to amend the Zoning Bylaw No 1145 to include water zoning. The Water Zones added include:

W-1: Residential permits a dock, swimming platform, mooring buoy, launch ramp, overnight moorage, as well as accessory uses including a boat lift. The number and maximum size and siting of docks and swimming platforms is restricted. Mooring buoys are placed in accordance with the Private Buoy Regulation under the Canada Shipping Act and reviewed by Navigable Waters Protection Act. Placement and use of docks, ramps, and swimming platforms must be in accordance with a licence of occupation or lease issued by the province under the Land Act or the applicable Crown Land Use Operational Policy.

W-2 Group Moorage which permits the same as W-1 with the addition of a Groyne, breakwater.

W-3 Institutional which permits the same as W-1 with the exception of overnight moorage.

W-4 Commercial which permits a marina, moorage, including overnight, other commercial uses, and an accessory use of a boat lift.

### 3.10. ALBERNI CLAYQUOT REGIONAL DISTRICT

Sproat Lake is a lake on central Vancouver Island, located within the Alberni Clayoquot Regional District (ACRD). The lake is over 25 km in length and is a popular summer recreational area for the Port Alberni region.

Recently, Sproat Lake residents have expressed concerns to the ACRD about an increase in lake use and development and associated impacts on both water quality, and the enjoyment of the lake by all users.<sup>25</sup> Issues cited include a lack of zoning bylaw enforcement for the construction of docks and boathouses and development within sensitive riparian areas. To this end, the Sproat Lake Quality Committee has requested that the ACRD implement revised zoning restrictions that require adherence to provincial regulations as they relate to development in and around the lake.

As a result, many of these changes have been incorporated into the new ACRD draft Zoning Bylaw, which include a suite of new Water Zones for both upland property owners, environmentally sensitive areas, and commercial and industrial areas. Key zones include:

#### Water 1 Zone:

The intent of this zone provides for water-based recreational use, shipping, open water and foreshore uses accessory to adjoining upland residential uses.

The zone regulates density by allowing one dock and one buoy per adjacent waterfront lot, with the following regulations:

- Maximum extent distance for a dock in marine waters, from the present natural boundary (60m)
- Width of access ramp connecting the dock to the shore in freshwater (1.5m)
- Width of moorage platform, or float, or any other portion of the dock in freshwater (3m).
- Property owners must obtain a tenure from the province (FLNRO).

Permanent or seasonal residential use and temporary commercial overnight moorage or accommodation on a vessel, watercraft, float home or houseboat are not permitted within the zone, however, there are some areas on the lake where temporary overnight moorage and accommodation on a vessel are permitted (areas zoned W1-A).

#### Water Conservation Zone (W3)

This zone applies to both water and sensitive wetland areas and provides for the protection and conservation of those portions of seacoast, lake shore and river or creek banks that are considered to be

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<sup>25</sup> Rardon, Elena (2016) "Sproat Lake residents call for more control overgrowth" Alberni Valley News. Retrieved from: Sproat Lake residents call for more control overgrowth – Port Alberni Valley News

best retained in or close to their natural state. It is intended to protect aquatic lands and foreshore lands covered by water, either tidal or non-tidal.

Permitted uses within the W3 Zone include parks and campgrounds operated by governmental authorities, yards accessory to upland residential uses, and navigation, marine transportation and water recreation uses within intertidal areas only. It would appear that private moorage on freshwater would not be considered a permitted use and is only permitted on intertidal areas within the ACRD.

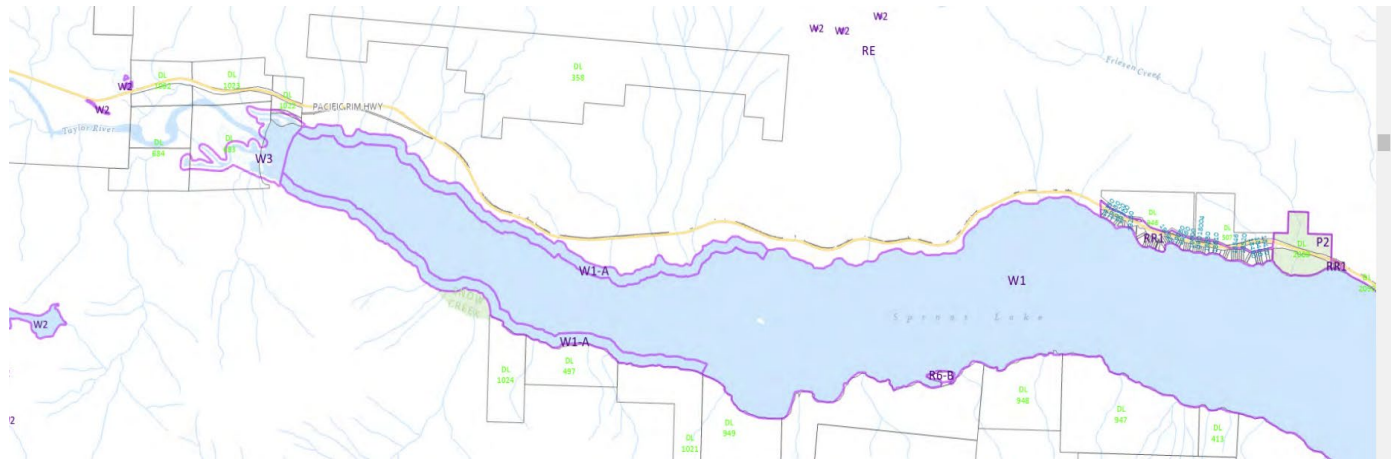
#### Water Commercial Zone (W4)

This zone applies to water areas generally adjacent to upland commercial uses. It provides for the accommodation of a broad range of commercial uses oriented to water uses and water traffic.

Permitted uses generally include activities associated with more intensive upland commercial activities, such as boat rentals, commercial mooring facilities / marinas, marine fuelling, retail sale of fish, etc. Permitted accessory uses include allowing dredging necessary for construction or maintenance of permitted principal uses as well as permitting a permanent residence on one boat or vessel for security purposes.

#### Water Industrial Zone (W5)

This zone applies to industrial water areas and provides for the accommodation of industries that are related to the forest industry, fishing industry, marine transportation, and ship building and maintenance. Permitted uses include heavy industrial uses such as ship building and repair, warehouses and works yards, log booming and sorting, and loading and unloading aggregate.



*Excerpt from ACRD's Draft Zoning Bylaw showing a section of Sproat Lake. W3 (Water Conservation Zoning) is shown adjacent to Taylor River.*

### 3.11. KEY FINDINGS

- Most local governments that were analyzed use zoning powers to manage land uses on their lakes.
- In addition to water specific zoning to regulates docks, private mooring buoys, and swimming platforms, some local governments created Development Permit Areas under their Official Community Plan.
- Many water specific bylaws still make reference to Federal and Provincial regulations and best management practices that apply to the zones, such as BC Water Sustainability Act. Some zoning bylaws, such as the City of West Kelowna, recognize the federal rights for navigation, and allow some form of temporary moorage.
- Many water specific bylaws state a monetary penalty for offence. For example, the penalty for offence is up to \$10,000 (determined by a Judge) in the Town of Osoyoos regarding their Foreshore and Lake Zoning Bylaw.
- Provincial and local government restrictions are somewhat constrained over navigation and shipping, which are Federal government authorities.
- There are recommendations for dock regulations and licensing requirements from Crown Lands with Provincial guidelines for size and siting of shore zone structures, the Provincial Private Moorage Guidelines, and illegal docks that are subject to provincial initiation of trespass action.

## 4. Administration and Enforcement

To gain insight into the administration and enforcement, and effectiveness and shortcomings of current lake management systems, three questions below were sent to the District of Summerland, Alberni-Clayoquot Regional District, and the City of West Kelowna.

- 1) Roughly how much budget allocation is given towards enforcement of your jurisdiction's lake zoning?
- 2) How would you rate the efficacy of your Zoning Bylaw as it relates to regulating uses on the lakes within your municipality?
- 3) What are the greatest challenges/pressures around enforcement?

The responses from each municipality are found below.

### 4.1. DISTRICT OF SUMMERLAND

The response from the District of Summerland (DOS) was provided by one of the Bylaw Enforcement Officers. In their comments, it was noted that there are a few challenges with the implementation of local government regulations on Okanagan Lake. Being a Federal Waterway, the DOS often partners with the Coast Guard, Fisheries and Natural Resources and Minister of Environment, among others, to jointly address challenges on Okanagan Lake

#### Roughly how much budget allocation is given towards enforcement of your jurisdiction's lake zoning?

Most enforcement on the foreshore of Okanagan Lake has been for business licence applications; ensuring companies that are operating have a dock lease in place, which allows them to moor their boats in Summerland. Staff acknowledged that the municipality has little influence in decisions to issue Dock permits, recognizing that this was a Provincial application process. With respect to budgeting for enforcement, it was noted that DOS presently has 1.4 Full Time Equivalent positions dedicated for bylaw enforcement, and only a few hours are spent annually enforcing zoning concerns on Okanagan Lake. These enforcement challenges included complaints about docks, and shallowness of an existing boat launch, which was deemed a parks matter.

#### How would you rate the efficacy of your Zoning Bylaw as it relates to regulating uses on Okanagan Lake?

Staff noted that rating the effectiveness of the Zoning Bylaw as it relates to regulating uses on Okanagan Lake was challenging, as enforcement often relies on assistance from other agencies to address issues on the Lake. An obvious limitation being that the DOS does not have a boat to allow enforcement officers to speak to offenders.

#### What are the greatest challenges, what pressures are the greatest around enforcement?

Staff noted that dogs on the beaches are always a challenge, and not having a municipally owned power speed boat to chase offenders is another. In Kelowna the noise the party boats generated was always the biggest issue.

## 4.2. ALBERNI-CLAYOQUOT REGIONAL DISTRICT

The response from the Alberni-Clayoquot Regional District (ACRD) was provided by the Planning Manager.

**Roughly how much budget allocation is given towards enforcement of your jurisdiction's lake zoning?**

Currently the ACRD does not have a specific budget allocation for the enforcement of proposed dock regulations. The ACRD has 1.5 FTE Bylaw Enforcement resources for all of the Zoning/OCP bylaws and regulatory bylaws within its jurisdiction.

If new dock regulations are adopted into the Zoning Bylaw and OCPs, the ACRD does expect that it will require additional enforcement resources. The ACRD is also working through implementing a bylaw notice enforcement ticketing process for Zoning Bylaw infractions that could help streamline the enforcement process.

**How would you rate the efficacy of your Zoning Bylaw as it relates to regulating uses on lakes within the ACRD?**

Staff noted that the ACRD is current working through a process to introduce new zoning and development permit regulations for private moorage facilities (i.e., docks) as part of a comprehensive update of the entire ACRD Zoning Bylaw and related OCP amendments.

**What are the greatest challenges, what pressures are the greatest around enforcement?**

The ACRD does not presently have any dock regulations, so the enforcement is limited to dialogue with property owners/complainants and liaison with Province where appropriate.

## 4.3. CITY OF WEST KELOWNA

As noted in Section 4 of this report, the City of West Kelowna was one of the first municipalities in B.C. to develop zoning regulations as a means to prohibit land uses (in this case houseboats) and were ultimately successful in defending these regulations in the Supreme Court of B.C. after a court challenge. To better understand both the efficacy of West Kelowna's zoning approach, as well as some of the enforcement challenges the city typically manages around Okanagan Lake, both the City's Planning Manager (who drafted the initial bylaw amendments and obtained a Crown Head Lease in 2009) as well as the Bylaw Enforcement Manager were interviewed.

**Roughly how much budget allocation is given towards enforcement of your jurisdiction's lake zoning?**

It was noted that there is not a specific budget allocation given towards lake zoning enforcement, and that complaints received are addressed as they come in. In previous years, however, it was noted that City Council has authorized the hiring of a seasonal bylaw enforcement officer who were primarily responsible for monitoring and enforcement along the City's foreshore / tourist areas.

### How would you rate the efficacy of your Zoning Bylaw as it relates to regulating uses on Okanagan Lake?

The City's Bylaw Enforcement Officer noted that the volume of houseboats within the Gellatly Bay area of West Kelowna were quite bad around 2009, and that this was the motivation for initiating both zoning regulations and an application for a Crown head lease over Gellatly Bay, which allowed the City to order the removal of all moored and abandoned vessels. In terms of efficacy, the City's Planning Manager noted the Zoning Bylaw has been generally effective, particularly once the City was successful in defending its water zone in Court – this sent a strong message to the community that permanent moorage of houseboats would not be accepted.

### What are the greatest challenges/pressures around enforcement?

Like the District of Summerland, the Bylaw Enforcement Manager noted that the city does not have its own vessel to respond to nuisance complaints such as unlawful moorage, boaters operating in swimming-only areas, etc. As a result, the city often relies on the RCMP to address many of the complaints received and determine vessel ownership for follow-up action. Given these challenges, however, it was noted since 2017, the City has received a significant reduction in water related bylaw compliance issues (from a high of 43 complaints in 2015, to a low of 4 complaints in 2021) and with a lack of complaints, it was determined that having the department purchase and operate their own vessel was not warranted.

## 4.4. KEY FINDINGS

- Enforcement efforts are often hampered by the fact that smaller communities do not have vessels or the staff resources and capacity to operate these vessels to undertake bylaw enforcement on the water. In two of the municipalities surveyed, there is strong reliance on the RCMP to address infractions on the Lake and assist municipalities in identifying the ownership of illegally moored or derelict vessels.
- Some municipalities have found success in hiring seasonal bylaw enforcement officers during the summer months to monitor and enforce activities along the waterfront.
- Every municipality is unique when it comes to budget allocation and number of bylaw officers. In the municipalities surveyed, it was noted that there is not a specific budget allocation directly given for enforcement efforts on lakes, and these activities form part of their regular enforcement duties.
- The ACRD example demonstrates that implementing new development regulations must be accompanied by an increase in enforcement resources.
- The majority of issues are complaint driven which then drives budget allocation for enforcement.
- Enforcement varied across municipalities. Bylaw Enforcement was only one of the options for inspection. Other forms of enforcement were by the Chief Administrative Officer, the Manager of Development Services, and those persons retained by the Regional District for inspection purposes, and Agents of the Regional District. An example of other enforcement is seen in Columbia Shuswap Lake Zoning



- Usually, once the community understands new legislation the issues tend to go away, and less enforcement is required. This is evident in the City of West Kelowna houseboat issue when new water specific zoning was applied.
- The RCMP are federally mandated and have jurisdiction over all enforcement levels and have a unique power given to them that allows them to enforce all laws and regulations. This level of enforcement was created because the RCMP do police in areas where there are no other resources. Where there are more resources in smaller communities the RCMP try to not enter onto other authorities' jurisdictions. For example, the RCMP would most likely pass a hunting issue onto the Conservation Officer.

## 5. Recommended System for the RMOW

This report has identified a number of different tools that can be used to regulate uses on RMOW lakes. All the approaches, detailed below, have their advantages and limitations, and as such, it is recommended that the RMOW considers a mixed approach that includes the following:

- Controlling existing lake accesses
- Development of water zones
- Establish lake-focussed Development Permit Areas
- Make application for vessel restrictions under the Vessel Operation Restriction Regulation
- Secure a Crown Head Lease

Each proposed recommendation is ranked in order of priority, with preference given to anticipated ease and quickness of implementation. This section concludes with a table (Table #1) that summarizes each proposed regulation and how each tool, when working in concert, addresses lake management issues outlined in this report.

### 5.1. CONTROLLING EXISTING LAKE ACCESSES

The RMOW has a boat launch (via Carleton Way) on Alta Lake, and a boat launch on Green Lake, within an existing road right-of-way. Given the receipt of public complaints about overuse and general nuisance, the RMOW could take steps to further control lake access, such as the installation of gates, setting hours of operation, charging fees for parking, and establishing a bylaw enforcement presence (or subcontracting to an operator such as the commissioners).

Advantages:

- No additional senior government permissions needed, as the RMOW is the owner of the lands.
- Relatively fast and easy to implement given there does not appear to be a need to amend any RMOW bylaws to add these measures.

Limitations:

- Additional resources needed for monitoring and enforcements – or increased costs associated with the retention of a third-party operator.

### 5.2. ESTABLISH A NEW WATER ZONE

This Report shows that zoning approach is the primary tool used by B.C. municipalities to regulate uses on lakes, provided the zoning bylaw does not infringe on federal rights of navigation. Most municipalities reviewed as part of this study have different types of water zones with a range of purposes and this approach is recommended given that lakes within the RMOW are used differently (i.e., Green Lake is frequented by water skiers, whereas recreational uses on Alta Lake are limited). The intent of these new water zones would be to provide for and enhance the regulation and coordination of the shared users and the protection of the lakes within the RMOW. Should the RMOW consider the development of water

zones, consideration should also be given to developing a corresponding Official Community Plan (OCP) Land Use designation for their lakes, given that, at present, lakes within the RMOW do not have a Land Use designation.

A zoning approach could help address a number of concerns raised by the community regarding lake management and regulation, and the following paragraphs discuss these matters further.

#### *Intensive Recreational Water Zones*

It is understood that the RMOW has previously received inquiries for intensive commercial / recreational uses on their lake systems, such as inflatable water parks, automated wake-surfing parks, and similar uses. Given that these uses are not related to transportation or navigation, the RMOW could choose to amend its Zoning Bylaw (Part 4, General Prohibitions) to prohibit these uses outright in all Zones. This means that should a proponent be interested in establishing such a business, an application to amend the Zoning Bylaw would be required, at which point, the RMOW could thoroughly evaluate the impacts and merits of such a proposal.

#### *Docks*

As the RMOW Zoning Bylaw does not presently regulate docks, the RMOW is consulted when License of Occupation applications for docks are being reviewed by the province. Many of the municipalities surveyed have zoning regulations pertaining to private moorage / docks, including requiring docks to have the appropriate tenure / approvals from the province, as well as regulations for length of dock and tying the permission of a dock to an upland property owner. It should be noted that Provincial review also considers non-compliance with local government zoning bylaw requirements in determining whether a proposal is eligible for *Land Act* authorization.

While the RMOW could draft a Water Zone that mirrors Provincial standards for docks, it is recommended that a drafted Zone requires adherence to provincial standards, therefore allowing the province to continue to evaluate proposed licenses of occupation and approvals for dock construction. Including this regulation in a Zoning Bylaw, however, allows the RMOW to enforce any non-compliant docks by requiring owners to regularize their docks in accordance with Provincial requirements.

As there are no regulations with respect to docks in the RMOW Zoning Bylaw, initiating these changes would make many existing docks within the RMOW non-conforming with the Zoning Bylaw, as it is understood that a vast majority of existing docks do not have appropriate Provincial approval / tenure in place. Further, as the Canadian National Railway (CN) bisects several existing lakefront properties on the west side of Alta Lake, permitting one dock per upland owner would not be achievable in these cases, therefore the RMOW could either choose to make these properties conform by not tying dock approval to upland ownership, or requiring these owners to apply for a Development Variance Permit (i.e., varying a condition of use) in order to gain conformance.

It should be noted that for any docks that would be considered non-conforming with the RMOW Zoning Bylaw, would be eligible to be maintained, altered, or repaired provided that these changes do not worsen the non-conformity, in accordance with Section 529 of the *Local Government Act*.

### *Environmental Protection*

As noted in this Report, some jurisdictions have specific Water Zones dedicated to the protection of Environmentally Sensitive Areas, whereby structures and intensive land uses are prohibited. An environment-focussed Water Zone could be applied in specific areas of a lake (the tributary of Fitzsimmons Creek heading into Green Lake) or entire lakes altogether (Alta, Green, Alpha, Nita and Lost Lakes).

#### Advantages:

- The principal approach taken in BC municipalities to regulate uses on lakes.
- Tested in the Supreme Court and found permissible (with limitations).
- Would allow the development of a wide range of Water Zones aimed at environmental protection, upland residential, or limited commercial intensive uses.

#### Limitations:

- Zoning cannot infringe on public rights of navigation (i.e., cannot regulate vessel type, power, etc.,)
- Additional enforcement and resource implications (i.e., increase bylaw services and planning department reviews)
- Would create a number of nonconforming situations as very few existing docks have been authorized by the province.

### 5.3. ESTABLISH NEW LAKE-FOCUSSED DEVELOPMENT PERMIT AREAS

Although the two (2) DPAs mentioned below relate to the protection of ecosystems, the lakes within the RMOW are not designated on the Schedule J or K of the RMOW OCP.

(1) Protection of Riparian Ecosystems – designated for protection of the natural environment, its ecosystems and biological diversity (Schedule J of the RMOW OCP)

(2) Protection of Sensitive Ecosystems – designated for protection of the natural environment, its ecosystems and biological diversity (Schedule K of the RMOW OCP)

The RMOW could establish as new DPA or amend the existing DPA's to include the lakes within the RMOW. Development of lake specific DPAs would help the RMOW manage the lakes as all zoning regulations are used in combination with development guidelines to manage future development and proposed uses and ensuring that any development on the lake (such as construction of a dock) is accompanied by an environmental assessment. A DP process would also enable the RMOW to collect financial securities to ensure environmental monitoring or foreshore improvements are carried out.

Advantages:

- Allows the RMOW to review and regulate the potential environmental impacts associated with development on its lakes.
- Enables the collection of a security to ensure compliance with issued Permit.
- Allows an opportunity to review proposal for zoning compliance.

Limitations:

- Additional planning staff needed to administer DP permitting regime.

#### 5.4. VESSEL OPERATION RESTRICTION REGULATION APPLICATION

The Vessel Operation Restriction Regulation (VORR) is a federal regulation that can be used to regulate the operation of a vessel, recognizing the fact that the Federal Government retains jurisdiction of navigation and shipping. Restrictions under the VORR placed on vessels are generally far-reaching and can range from prohibiting vessels or use of power, to imposing limits on engine size of speed limits. Given that only local jurisdictions can make application to add restrictions on a lake under the VORR, the RMOW could consider such approach, recognizing that many lakes within the RMOW already have restrictions in place.

It should be noted that the RMOW would need to undertake stakeholder and public consultation as part of the application process. Additionally, the RMOW would need to demonstrate that existing enforcement officers (i.e., local bylaw enforcement staff / RCMP) have the capacity and willingness to undertake compliance and enforcement should Transport Canada place restrictions on the lake. Transport Canada, in turn, would determine whether these staff have the sufficient qualification and training to enforce the VORR, and if not, additional training would be necessary.

It is understood that the general preference of Transport Canada is to encourage the RMOW to consider more voluntary compliance measures before pursuing changes under the VORR – resulting in significant staff time and resources. Transport Canada has noted that the VORR should be considered as a “last resort” as a means to restrict the operations of vessels on their lakes. As such, rather than pursue “one-off” applications under the VORR for individual lakes, the RMOW should consider the VORR as a larger lake planning process.

Advantages:

- Addresses the limitations of the implementation of zoning regulations by regulating the operation of vessels on RMOW lakes.
- Allows a wide range of potential restrictions, such as limiting hours of operations (i.e., for party barges), engine size, or prohibiting power vessels altogether.

#### Limitations:

- Requires Transport Canada certification for local enforcement officers and increased RMOW resources dedicated to enforcement. The RMOW has historically relied on the RCMP for enforcement, but resources for boat-based enforcement is limited, and the RMOW does not have much control over the timing of enforcement.
- Transport Canada has noted that the VORR should be used as a last resort and that voluntary compliance is preferred, which is time consuming and strains staff resources.

### 5.5. CROWN HEAD LEASE

A Head Lease is a Crown land lease with a local government, Band corporation, Crown corporation or other public entity (including a port authority) which permits the tenure holder to sub-tenure to third parties.<sup>26</sup> Head leases are typically used in situations where a local authority wishes exercise exclusive authority over an area, rather than relying on the province for enforcement. It should be noted that the RMOW presently has zoning restrictions that prohibit live aboard boats but pursuing a Crown Head Lease could be an appropriate option if the RMOW wishes to maximize its authority over its lake system.

This option could be considered should the RMOW wish to pursue the removal of docks along the north side of Alta Lake, immediately adjacent to the CN rail line.

#### Advantages:

- Crown Head Leases themselves are often unique, with conditions and obligations. In some instances, it may be an alternative to zoning.

#### Limitations:

- Standard term for a head lease is 30 years to a maximum of 60 years.
- Cost to apply for the Head Lease, i.e., staff time, consultant/legal fees, costs of stakeholder engagement, etc.

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<sup>26</sup> Province of British Columbia (2012) "Land Procedure – Head Lease" Retrieved from: [head\\_lease.pdf \(gov.bc.ca\)](https://www2.gov.bc.ca/gov/content/land/land_procedure/head_lease/head_lease.pdf)

Table 1: Regulation Matrix

Regulation	Issue Addressed					
	Regulating Uses	Environmental Protection	Performance Security	Restrictions on Vessels / Operation of a Vessel	Noise / Nuisance	Parking
Controlling Existing Lake Access via Gates on RMOW Lands					X	X
Zoning Bylaw Water Zones	X	X				
Lake Specific Development Permit Areas		X	X			
Application under Federal VORR				X		
Crown Head Lease	X	X		X		



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