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Halifax Regional Council
August 31, 2004

TO: Mayor Kelly and Members of Halifax Regional Council

A handwritten signature in black ink, appearing to read "Mike Labrecque".

SUBMITTED BY:

Mike Labrecque, Director Real Property & Asset Management

DATE: August 12, 2004

SUBJECT: Speed Restrictions in Sambro Harbour

INFORMATION REPORT

ORIGIN

Regional Council referred a request regarding Sambro Harbour boating restrictions to Legal Services for review at the May 6, 2003, council meeting. The matter was eventually referred to Real Property and Asset Management who were leading a process to apply for boating restrictions on three lakes within HRM.

BACKGROUND

In April 2003, an resident of District 18, Spryfield - Herring Cove informed Councillor Steve Adams he/she had concerns about the speed and noise caused by recreational power boat operators in Sambro Harbour. The power boat operators were allegedly operating their boats inconsiderately and recklessly, sometimes endangering the property and safety of other boaters, especially non-motorized craft such as canoeists and kayakers.

Waterways such as bays, estuaries, inlets, and harbours offer a mode of transportation for motorized and non-motorized watercraft. The jurisdictional authority for such waterways, which are regulated at the federal level, rests with the Coast Guard. More specifically, there exists a

Navigable Waters Protection Program, which ensures the protection of the public right to navigation and the protection of the environment through the administration of the Navigable Waters Protection Act (NWPA).

The Halifax Regional Municipality entered a process with the Federal Government in 2003 to introduce speed restrictions on three HRM lakes (Lake Banook, Lake Mic Mac, and Kearney Lake). Those restrictions were requested as the existing municipal bylaws surrounding these specific lakes were deemed to be un-enforceable owing to the fact that regulation of watercraft is a federal responsibility. The regulations on Banook, Mic Mac and Kearney Lakes were seen as necessary because of potential conflict between power watercraft and paddlers primarily associated with the paddling clubs on these small lakes. In a report to council September 23, 2003, staff recommended that the city refrain from proposing additional waterways for approval under the federal Boating Restriction process, until the first three restrictions had been approved and their effects monitored. Council approved this motion.

DISCUSSION

There are two issues relating to Sambro Harbour speed restrictions. Firstly, there are the existing federal regulations and the federal process for introducing waterway restrictions. Secondly, there is the issue of speed, recklessness and noise, which often go together, and whether they are in fact a concern on Sambro Harbour.

Boating Restrictions - Existing and Requested

Recreational Power Boats fall under the Small Vessel Regulations of the Canada Shipping Act. The Regulations are written to ensure safe and respectful boating by all small vessels. The act extends to all of Canada's waterways, coastal and inland. The speed restrictions on three of HRM's lakes, when/if they are approved, will be additional regulations governing the lakes, since federal safe boating rules already apply.

The existing regulations (not the speed limits) apply to HRM's harbours and coastlines as well as lakes. All boaters are thus legally required to ensure their boat meets specifications, and their behaviour does not endanger themselves or others. These existing laws cover many of the concerns addressed by the resident in Sambro Harbour. Some of the federal regulations will be mentioned here. For more specific information, please refer to Appendix A.

Reckless Boating -

Section 43 of the *Small Vessel Regulations* of the *Canada Shipping Act* prohibits the careless

operation of a small vessel. This means boats who, for instance, jump waves or the wake of another vessel and cause excessive noise, weave through congested boat traffic at more than slow speed, swerve at the last moment to avoid collision, or operate their boat at a higher speed than necessary near swimmers or non powered vessels, are guilty of an offence. They should be reported to the local waterway authority (e.g. RCMP, Halifax Regional Police, or Coast Guard). For instance, the RCMP Tantalion Detachment fields public complaints concerning dangerous boating in Sambro, more specifically threats to people or property. Enforcement is conducted under authority of the Canada Criminal Code and the Small Vessel Regulations of the Canada Shipping Act.

Excessive Noise -

The *Small Vessel Regulations* on the *Canada Shipping Act* also regulates physical specifications of small craft. This includes exhaust requirements and noise reduction. Within five miles from shore, power boats must be equipped with a muffler in good working order, being used at all times. They cannot have muffler cut-outs or by-passes unless the exhaust gases are directed through the water or the muffler, and the muffler cut-out or by-pass cannot be engaged accidentally. Vessels built before 1960 or that are powered by an outboard or an inboard/outboard drive system that is not equipped with a muffler, provided the exhaust gases are directed under water through the propeller hub or below the cavitation plate are exempt from the noise abatement regulations. These regulations can be enforced in the same way as the *Prohibition of Careless Operation*. HRM's noise by-law is also enforced in the Sambro area by the Tantalion RCMP.

High Risk of Collision -

The Marine Safety section of Transport Canada as well as Coast Guard's Office of Boating Safety are responsible for the International Collision Regulations, which are enforced jointly by the Coast Guard and whatever police department has jurisdiction for that particular geographic zone. These regulations are the equivalent of "rules of the road," and governs who has the "right of way" when encountering other vessels. The collision regulations apply to all vessels, from small boats up to large freighters, on all navigable waters in Canada. Under the collision regulations, power-driven vessels must keep out of the way of sailing vessels, vessels engaged in fishing, and vessels not under command, as well as rowing boats and other craft with restricted manoeuvrability. Again, any disregard of these rules can and should be reported to the local waterway authority.

Speed -

The *Small Vessel Regulations* do not provide power boats with specific speed restrictions,

however there are many instances where boaters are required to use caution and moderate to slow speed. The Office of Boating Safety has determined that prescribing speed limits as a means by which to control wake is difficult due to the varying relationship between hull design, trim level, boat speed, and water surface conditions. Rather, the preferred approach to mitigate water effects of boating is by way of educating boat operators, which is delivered via a licensing program. The Operator Competency Program is one program that does this. There is a series of licensing implementation phases thereunder. In short, by 2009, everyone who operates a motorized watercraft, regardless of size and power, will have to be licensed.

Halifax Regional Municipality could potentially apply for speed restrictions on Sambro Harbour under the same process as Lake Banook, Lake Mic Mac, and Kearney Lake. However there is currently adequate federal legislation and regulation in place to address the issues of the resident.

Current behaviour of motorised boaters in Sambro Harbour

Regardless of HRM's decision regarding coastal waterway speed limits, it must still be determined whether the alleged problems in Sambro require further action. To-date, there has been one complaint from a Sambro-area inhabitant about noise pollution and unsafe motor boating practices made to the area's councillor. It should be noted that the complainant had no problem with local fishing boats, who apparently tend to limit their speed while in the harbour. It is the recreational water craft operators who are apparently at fault. Staff have heard of instances where recreational motor boats have been seen doing figure eights and jumping over boat wakes in and around Sambro Harbour.

Tantallon RCMP, who enforce motor boat use in Sambro Harbour, say they receive 'a couple' of complaints a year about erratic/noisy boating or motor boat operators speeding around the harbour. Generally, the people causing these disturbances are the same group of people, boating to and from Sambro Island and the Sambro boat launch/wharf. Tantallon RCMP say they suspect more people in the community would lodge complaints about this group of boaters, but they keep silent because they know the offending boaters and the boaters know them.

According to the Sambro resident, the group of reckless boaters have been less active this summer, probably because of this summer's unfavorable weather.

As demonstrated above, improper motor boat use in Sambro Harbour is regulated by existing federal legislation. There is an acknowledged problem with boater misconduct in Sambro Harbour, but it appears to be an enforcement issue, not a lack of the proper regulations.

HRM is dedicated to protecting its residents. This may mean bringing a problem to the attention of the appropriate authority, when the issue is not within HRM's jurisdictional powers. HRM will therefore continue to monitor the situation in Sambro Harbour with the resident and local

RCMP. Real Property staff have forwarded the residents complaints to the RCMP and Coast Guard and have offered to forward any further documentation of the boater misconduct directly to those agencies. Both the RCMP and Coast Guard are committed to dealing with the issue.

BUDGET IMPLICATIONS

There are no budget implications associated with this report.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN


This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

ATTACHMENTS

Appendix A: Relevant portions of Federal Legislation

Additional copies of this report, and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Sarah Osborne, Real Property Planning.

Report Reviewed/Approved by: 
Peter Bigelow, Manager, Real Property Planning (490-6047)

Appendix A

Section 43 of the *Small Vessel Regulations* of the *Canada Shipping Act* **Prohibition Against Careless Operation**

43. No person shall operate a small vessel in a careless manner, without due care and attention or without reasonable consideration for other persons.

Examples of behaviours which could be considered careless under section 43 may include (but are not limited to the following):

- Operating vessel at high engine regime in circular or criss-cross patterns for extended periods of time in the same location;
- Jumping waves or the wake of another vessel unreasonably close to that vessel or so as to cause engine RPM to peak and make unusual or excessive noise;
- Weaving through congested traffic at more than slow speed;
- Swerving at the last possible moment to avoid collision (playing chicken);
- Operating a vessel at a speed higher than is necessary to maintain steerage way when near swimmers, or non powered vessels.

Part VI Section 37 of the *Small Vessel Regulations* of the *Canada Shipping Act* **Noise Abatement**

Prohibitions

Engines

37. (1) Subject to subsection (2), no person shall operate a power-driven vessel, and no person shall permit another person to operate such a vessel,

(a) unless it is equipped with a muffler that is in good working order and that is in operation at all times while the vessel is in use to prevent excessive or unusual noise; or

(b) if it is equipped with a muffler cut-out or by-pass, unless the muffler cut-out or by-pass is visibly disengaged in such a manner as to ensure that, while the vessel is in use, its exhaust gases are directed through the muffler or under water and that the muffler cut-out or by-pass cannot be engaged accidentally.

(2) Subsection (1) does not apply in respect of any small vessel

(a) that was constructed before January 1, 1960;

(b) that is engaged in an official competition or in formal training or final preparation for an official competition;

(c) that is powered by an outboard or an inboard/outboard drive system that is not equipped with a muffler, if the exhaust gases are directed under water through the propeller hub or below the cavitation plate;

(d) that is operated five or more miles from shore;

(e) that derives its propulsion from an aircraft-type propeller operating in an air medium or from gas turbines; or

(f) that is not a pleasure craft and is equipped with a noise abatement mechanism that is in use when the small vessel is within five miles from shore. SOR/78-843, s. 16; SOR/99-54, s. 11; SOR/2003-40, s. 3.

Excerpts from *Collision Regulations, Canada Shipping Act*

Interpretation

- "give-way vessel" : means a vessel that is required by these Regulations to keep out of the way of another vessel;
- "inconspicuous, partly submerged vessel or object": means a raft or any other floating vessel or object that is low in the water and is generally difficult to see;

Rule 3

General Definitions

For the purpose of these Rules, except where the context otherwise requires:

(a) The word "vessel" includes every description of water craft, including non-displacement craft, WIG craft and seaplanes, used or capable of being used as a means of transportation on water.

(b) The term "power-driven vessel" means any vessel propelled by machinery.

(c) The term "sailing vessel" means any vessel under sail provided that propelling machinery, if fitted, is not being used.

(d) The term "vessel engaged in fishing" means any vessel fishing with nets, lines, trawls or other fishing apparatus which restrict manoeuvrability, but does not include a vessel fishing with trolling lines or other fishing apparatus which do not restrict manoeuvrability.

- (e) The word "seaplane" includes any aircraft designed to manoeuvre on the water.
- (f) The term "vessel not under command" means a vessel which through some exceptional circumstance is unable to manoeuvre as required by these Rules and is therefore unable to keep out of the way of another vessel.
- (g) The term "vessel restricted in her ability to manoeuvre" means a vessel which from the nature of her work is restricted in her ability to manoeuvre as required by these Rules and is therefore unable to keep out of the way of another vessel.
- (k) Vessels shall be deemed to be in sight of one another only when one can be observed visually from the other.

Rule 6

Safe Speed--International

Every vessel shall at all times proceed at a safe speed so that she can take proper and effective action to avoid collision and be stopped within a distance appropriate to the prevailing circumstances and conditions.

In determining a safe speed the following factors shall be among those taken into account:

- (a) By all vessels:
 - (i) the state of visibility,
 - (ii) the traffic density including concentrations of fishing vessels or any other vessels,
 - (iii) the manoeuvrability of the vessel with special reference to stopping distance and turning ability in the prevailing conditions,
 - (iv) at night the presence of background light such as from shore lights or from back scatter of her own lights,
 - (v) the state of wind, sea and current, and the proximity of navigational hazards,
 - (vi) the draught in relation to the available depth of water.

Safe Speed--Canadian Modifications

(c) In the Canadian waters of a roadstead, harbour, river, lake or inland waterway, every vessel passing another vessel or work that includes a dredge, tow, grounded vessel or wreck shall proceed with caution at a speed that will not adversely affect the vessel or work being passed, and shall comply with any relevant instruction or direction contained in any Notice to Mariners or Notice to Shipping.

(d) For the purpose of paragraph (c), where it cannot be determined with certainty that a passing vessel will not adversely affect another vessel or work described in that paragraph, the passing vessel shall proceed with caution at the minimum speed at which she can be kept on her course.

(e) In the Canadian waters of a roadstead, harbour, river, lake or inland waterway, every vessel shall navigate with caution and shall comply with any relevant instruction or direction contained in any Notice to Mariners or Notice to Shipping where abnormal water levels, ice conditions or a casualty to a vessel or aid to navigation may

- (i) make navigation difficult or hazardous,
- (ii) cause damage to property, or
- (iii) block the navigational channel.

Rule 13

Overtaking--International

(a) Notwithstanding anything contained in the Rules of Part B, Sections I and II, any vessel overtaking any other vessel shall keep out of the way of the vessel being overtaken.

(c) When a vessel is in any doubt as to whether she is overtaking another, she shall assume that this is the case and act accordingly.

(d) Any subsequent alteration of the bearing between the two vessels shall not make the overtaking vessel a crossing vessel within the meaning of these Rules or relieve her of the duty of keeping clear of the overtaken vessel until she is finally past and clear.

Rule 16

Action by Give-way Vessel

Every vessel which is directed to keep out of the way of another vessel shall, so far as possible, take early and substantial action to keep well clear.

Rule 18

Responsibilities between Vessels

Except where Rules 9, 10 and 13 otherwise require:

- (a) A power-driven vessel underway shall keep out of the way of:
 - (i) a vessel not under command,
 - (ii) a vessel restricted in her ability to manoeuvre,

(iii) a vessel engaged in fishing,

(iv) a sailing vessel.