

This Act is Current to July 5, 2017

FISH PROTECTION ACT

[SBC 1997] CHAPTER 21

Assented to July 28, 1997

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Definitions

1 (1) In this Act:

"bank to bank dam" means

- (a) a structure that is capable of impounding or storing water and that spans a stream from bank to bank, or
- (b) structures that together are capable of impounding or storing water and that span a stream by spanning
 - (i) from one bank to a natural or other feature or structure in the stream, and
 - (ii) from the feature or structure to the other bank of the stream or, if applicable, between features or structures and to the other bank of the stream;

"construction of a bank to bank dam" includes the alteration of an existing structure such that it becomes a bank to bank dam but does not include the alteration of an existing bank to bank dam;

"fish habitat" means the areas in and about a stream, such as spawning grounds and nursery, rearing, food supply and migration areas, on which fish depend directly or indirectly in order to carry out their life processes;

"local government" means

- (a) the council of a municipality,
- (b) the board of a regional district, and
- (c) a local trust committee of the Islands Trust or the executive committee of the Islands Trust acting as a local trust committee;

"protected river" means a stream that is a protected river under section 4 (1).

(2) [Not in force.]

Relationship with aboriginal and treaty rights

- 2 For greater certainty, the provisions of this Act are intended to respect aboriginal and treaty rights in a manner consistent with section 35 of the *Constitution Act, 1982*.

Relationship with the *Water Act*

- 3 (1) Except as expressly provided, this Act does not limit the authority of the minister, the comptroller, a regional water manager, an engineer or any other public officer under the *Water Act*.
- (2) To the extent of any conflict between this Act or a regulation under this Act and the *Water Act* or a regulation under that Act, this Act or the regulation under it prevails.

No new dams on protected rivers

- 4 (1) The main stem of the following, excluding their tributaries unless expressly included, are protected rivers under this section:
- (a) the Adams River;
 - (b) the Alsek River;
 - (c) the Babine River;
 - (d) the Bell-Irving River;
 - (e) the West Road River, commonly known as the Blackwater River;
 - (f) the Clearwater River;
 - (g) the Fraser River;
 - (h) the Nass River;

- (i) the Skagit River;
- (j) the Skeena River;
- (k) the Stikine River;
- (l) the Stuart River;
- (m) the Taku River;
- (n) the Tatshenshini River;
- (o) the North Thompson River, the South Thompson River and the Thompson River;
- (p) a stream prescribed under section 13 (2) (a).

(2) Despite section 27 (4) of the *Interpretation Act*, a stream prescribed by a regulation under section 13 (2) (a) remains a protected river unless this protection is changed by an Act.

(3) A person must not construct a bank to bank dam anywhere on a protected river.

(4) The comptroller or regional water manager must not issue or amend a licence, approval or permit to authorize the construction of a bank to bank dam anywhere on a protected river.

(5) A licence, approval or permit issued or an amendment made contrary to subsection (4) has no effect.

(6) Despite any other enactment, this section prevails to the extent of any conflict or inconsistency between this section and any other enactment.

(7) This section does not apply to a dam authorized by a licence, permit or approval issued under the *Water Act* before the section comes into force, whether or not construction of the dam has been completed or is under way when this section comes into force.

(8) For certainty, this section does apply to a proposed dam for which, at the time the section comes into force, an application for a licence, permit, approval or amendment to authorize its construction has been made, but for which no licence, approval, permit or amendment has been issued authorizing its construction.

Not in Force

5 [Not in force.]

Designation of sensitive streams for fish sustainability

6 (1) In this section:

"proposal" means any or all of the use, diversion, storage, works or activities proposed by an application for a licence, an approval or an amendment to a licence or an approval;

"protected fish population" means the population of fish in relation to which a designation under this section is made.

(2) The Lieutenant Governor in Council may, by regulation, designate a stream as a sensitive stream under this section if the Lieutenant Governor in Council considers that the designation will contribute to the protection of a population of fish whose sustainability is at risk because of inadequate flow of water within the stream or degradation of fish habitat.

(3) The Lieutenant Governor in Council may repeal a regulation under subsection (2) if the Lieutenant Governor in Council considers that

- (a) the sustainability of the protected fish population is no longer at risk,
- (b) the implementation of a recovery plan under section 7 will reduce that risk such that the designation of the stream is no longer required, or
- (c) removal of the designation is in the public interest.

(4) A licence, an approval or an amendment to a licence or an approval, in relation to a sensitive stream, may only be issued by the comptroller or regional water manager

- (a) in accordance with and subject to the regulations, and
- (b) if the applicant has satisfied the comptroller or regional water manager as provided in subsection (6), (7) or (8).

(5) Subject to the regulations, an applicant must provide the comptroller or regional water manager with the information the comptroller or regional water manager considers necessary to make determinations under subsections (6) to (8).

(6) The comptroller or regional water manager may issue the licence, approval or amendment if satisfied that any adverse impact of the proposal on the sustainability of the protected fish population is likely to be insignificant.

(7) The comptroller or regional water manager may issue the licence, approval or amendment if satisfied that the application includes mitigation measures such that the proposal is not likely to have a significant adverse impact on fish or fish habitat.

(8) If the comptroller or regional water manager considers that the proposal is likely to have a significant adverse impact on fish or fish habitat that

- (a) cannot be addressed by mitigation measures referred to in subsection (7), or
- (b) cannot be fully addressed by mitigation measures referred to in subsection (7),

the comptroller or regional water manager may only issue the licence, approval or amendment if satisfied that compensation measures, in place of or supplemental to the mitigation measures, will enhance or enable the enhancement of fish or fish habitat elsewhere to fully compensate for the significant adverse impact of the proposal.

(9) Even though a licence, approval or amendment could be issued under subsection (6), (7) or (8), the comptroller or regional water manager may refuse to issue the licence, approval or amendment if, in his or her opinion, there is a reasonable alternative source of water reasonably available to the applicant.

(10) For the purposes of transition, subsections (4) to (8) do not apply to applications that have been made but not decided before the time of the applicable designation under subsection (2).

Recovery plans for sensitive streams

7 (1) For the purposes of this section, "**recovery plan**" means a plan in relation to a sensitive stream under section 6, the purpose of which is to protect and, if possible, provide for the recovery of the protected fish population such that the authority under section 6 (3) may be exercised.

(2) The minister may

(a) direct that a recovery plan be prepared, or

(b) in response to a proposal for the development of a recovery plan, approve and provide assistance to the development of the recovery plan.

(3) The development of a recovery plan must include a process for public participation.

(4) Without limiting the content of a recovery plan, it may include any or all of the following:

(a) measures to be undertaken by the government or other persons for providing a sufficient flow of water in the stream or for restoring fish habitat;

(b) recommendations on agreements to promote cooperative efforts for the protection and recovery of the protected fish population and its habitat;

(c) any other measures to be undertaken by the government or other persons for the protection of fish or fish habitat.

(5) If the Lieutenant Governor in Council considers a proposed recovery plan to be in the public interest, the Lieutenant Governor in Council may approve the recovery plan.

(6) For the purposes of implementing an approved recovery plan, the Lieutenant Governor in Council may, by regulation applicable in relation to the sensitive stream, restrict

(a) the issuance or amendment of licences, approvals, permits or other authorizations under an enactment, or

(b) the exercise of a power under an enactment.

(7) As a limit on subsection (6), a regulation under that subsection may not be made in relation to

(a) the *Forest and Range Practices Act*, or

(b) the *Forest Act* or the *Range Act*, respecting an authorization or the exercise of a power under those Acts, if the *Forest and Range Practices Act*, or the standards or regulations under that Act, apply in relation to the activity authorized or the power.

(8) A licence, approval, permit or other authorization issued or an amendment made contrary to a regulation under subsection (6), or the exercise of a power contrary to a regulation under that subsection, has no effect.

(9) and (10) [Repealed 2002-7-5(b) and (c).]

Not in Force

8 [Not in force.]

Temporary reduction may be ordered in cases of drought

9 (1) This section applies if the minister considers that, because of a drought, the flow of water in a stream is or is likely to become so low that the survival of a population of fish in the stream may be or may become threatened.

(2) In the circumstances referred to in subsection (1), for the purposes of protecting the fish population, the minister may make temporary orders regulating the diversion, rate of diversion, time of diversion, storage, time of storage and use of water from the stream by holders of licences or approvals in relation to the stream, regardless of precedence under the *Water Act*.

(3) The minister may only make an order under subsection (2) after giving due consideration to the needs of agricultural users.

Not in Force

10–11 [Not in force.]

Provincial directives on streamside protection

12 (1) Subject to subsection (2), the Lieutenant Governor in Council may, by regulation, establish policy directives regarding the protection and enhancement of riparian areas that the Lieutenant Governor in Council considers may be subject to residential, commercial or industrial development.

(2) Directives under subsection (1) may only be established after consultation by the minister with representatives of the Union of British Columbia Municipalities.

(3) Policy directives under subsection (1) may be different for different parts of British Columbia and in relation to different local government powers and different circumstances as established by the directives.

(4) If a policy directive under subsection (1) applies, a local government must

(a) include in its zoning and rural land use bylaws riparian area protection provisions in accordance with the directive, or

(b) ensure that its bylaws and permits under Part 26 of the *Local Government Act* or Part XXVII of the *Vancouver Charter*, as applicable, provide a level of protection that, in the opinion of the local government, is comparable to or exceeds that established by the directive.

(5) For the purpose of transition, a policy directive under subsection (1) may establish a time period during which a local government to which the directive applies must review and, if necessary, amend its bylaws in order that they meet the requirements of subsection (4) by the end of the period.

(6) On request by a local government, the minister may extend a time period under subsection (5).

Regulation making authority

13 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

- (a) in relation to section 4, prescribing a stream as a protected river under that section;
- (b) [Not in force.]
- (c) in relation to section 6,
 - (i) establishing procedures that must be followed and criteria that must be applied by the comptroller and regional water managers in making decisions referred to in that section,
 - (ii) establishing or restricting the information that may be required by the comptroller or regional water manager in relation to making decisions referred to in that section,
 - (iii) prescribing what forms of compensation may be accepted,
 - (iv) prescribing how the value of acceptable compensation is to be determined, and
 - (v) restricting the authority of the comptroller or regional water manager to accept compensation;
- (d) [Not in force.]

Consequential Amendments

[Note: See Table of Legislative Changes for the status of sections 14 to 35.]

Section(s)	Affected Act
14–16	<i>Waste Management Act</i>
17–24	<i>Water Act</i>
25–35	<i>Wildlife Act</i>

Not in Force

36 [Not in force.]

Commencement

37 (1) Section 4 is deemed to have come into force on May 15, 1997, being the date this Act received First Reading in the Legislative Assembly, and is retroactive to the extent necessary to give it effect on and after that date.

(2) This Act, except section 4, comes into force by regulation of the Lieutenant Governor in Council.