

Fish Protection Act and Water Act

**SENSITIVE STREAMS DESIGNATION
AND LICENSING REGULATION**

Contents

- 1 Definition
- 2 Application of regulation
- 3 Designated streams
- 4 Qualifications of expert providing report
- 5 Powers to require additional information for purposes of application
- 6 Onus on applicant to comply with all other relevant enactments
- 7 Mitigation strategies
- 8 Compensation proposals

Schedule of Designated Streams

Definition

1 In this regulation, "**Act**" means the *Fish Protection Act*.

Application of regulation

2 This regulation applies to an application for a licence, an approval or an amendment to a licence or an approval, in respect of a sensitive stream.

Designated streams

3 The streams listed in the Schedule are designated as sensitive streams under section 6 (2) of the Act.

Qualifications of expert providing report

4 If an applicant relies on a report of an expert or other form of evidence prepared by an expert and submitted with or in support of the application, the comptroller or regional water manager must be satisfied that the expert is qualified to provide that evidence.

Powers to require additional information for purposes of application

5 For the purposes of considering an application, the comptroller or regional water manager may, at any time, require the applicant to provide further relevant information including, but not limited to, any of the following:

- (a) fish inventory;
- (b) flow or runoff analysis, including additional flow measurements for correlation of data;
- (c) seasonal distribution of water demand, including irrigation;

- (d) habitat assessment at the point of diversion and in the area of potential impact;
- (e) design of proposed works including diversion structure, balancing and storage reservoirs;
- (f) where appropriate, any specific water conservation measures that the applicant will utilize to minimize use of water;
- (g) the removal of material from the stream or stream channel in connection with the works;
- (h) the protection of natural materials and vegetation that contribute to habitat or stream channel stability;
- (i) the addition of substance, sediment, debris or other material to the stream or stream channel in connection with the works;
- (j) the restoration of the work site after the works have been completed.

Onus on applicant to comply with all other relevant enactments

6 In respect of an application for a water licence, approval or amendment to a licence or an approval, it is the responsibility of the applicant to ensure compliance with all other relevant federal, provincial or municipal enactments.

Mitigation strategies

7 (1) In regard to an application for a water licence, approval or amendment to a licence or an approval, an applicant must provide information to the comptroller or regional water manager on mitigation strategies during project planning, design, construction and operation, which may include but are not limited to the following:

- (a) the timing of any proposed work;
- (b) practices to be undertaken to ensure stream bank and channel stability;
- (c) practices that provide for satisfactory fish migration;
- (d) practices that provide that fish are not injured or their migration hindered by structures, pumping devices or construction activities;
- (e) practices and procedures to maintain water quality;
- (f) measures to restore the stream channel and banks to their natural state;
- (g) metering of water use;
- (h) water conservation measures.

(2) For subsection (1) (f), "**natural state**" means as close as possible to the state that exists before the work is to begin as proposed by the application.

(3) The comptroller or regional water manager may make it a condition of a licence, approval or amendment to a licence or an approval that the licensee provide on site monitoring of

- (a) the construction of the works authorized under the licence, approval or amendment to the licence or approval, and
- (b) mitigation measures to ensure that they are performed as required under the licence, approval or amendment to the licence or approval.

(4) Any on site monitoring required under this regulation must be carried out by a person whose qualifications

are acceptable to the comptroller or regional water manager.

(5) Post construction monitoring may be discontinued only if

(a) the on site monitor certifies in writing that all works have been completed and are functioning as required in the mitigation plan, or

(b) the applicant is relieved of the monitoring requirement by the comptroller or regional water manager.

Compensation proposals

8 (1) In this section, "**in kind compensation**" means fish habitat that is provided in place of or instead of fish habitat that would suffer a significant adverse impact under the proposal.

(2) If an applicant proposes to provide in kind compensation for fish habitat that would suffer a significant adverse impact under the proposed use, the compensation proposal

(a) must be for the fish population whose sustainability is at risk,

(b) must provide for the same habitat type as that of the fish population being displaced, and

(c) must be in equal proportion to or greater than the fish habitat that will be lost.

(3) A proposal for in kind compensation for fish habitat must make full compensation for the significant adverse impact on the fish habitat by providing for in kind compensation in the following locations and in the following order of priority:

(a) at the same location where the projected habitat impact will occur;

(b) within the same stream system;

(c) within the same watershed;

(d) within another area immediately adjacent to the same watershed having similar physiography and macroclimate.

(4) If the in kind compensation at the first applicable location listed in subsection (3) is insufficient to fully compensate for the significant adverse impact on the fish habitat, the proposal must provide for the remainder of the compensation to be satisfied at the next applicable location in the list.

(5) The applicant will be responsible for monitoring and maintenance of the in kind compensation for fish habitat until one of the following occurs:

(a) the comptroller or regional water manager is satisfied that the objectives of the compensation plan are met;

(b) the comptroller or regional water manager directs that the applicant is no longer responsible for monitoring and maintenance of the in kind compensation for fish habitat.

(6) Subject to subsections (9), (10) and (11), if in kind compensation cannot be achieved as provided in subsections (2) to (4), the comptroller or regional water manager may approve financial compensation for the habitat that will suffer a significant adverse impact.

(7) If financial compensation is approved by the comptroller or regional water manager, the applicant must employ a person whose qualifications are acceptable to the comptroller or regional water manager to determine the cost of recreating the habitat that will suffer a significant adverse impact, including the cost of developing and monitoring any plan.

(8) In considering whether to accept financial or in kind compensation, the comptroller or the regional water

manager must consider whether the approval of the federal Department of Fisheries and Oceans has been obtained in respect of that compensation.

(9) The comptroller or regional manager must not accept compensation under section 6 of the Act in relation to a fish population if the fish population whose sustainability is at risk is a species of fish designated under the *Wildlife Act* as a threatened or endangered species.

(10) The comptroller or regional manager may refuse to accept compensation under section 6 of the Act in relation to a fish population if the fish population whose sustainability is at risk is

- (a) of regional significance, or
- (b) genetically or geographically distinct.

(11) The comptroller or regional manager must not accept compensation under section 6 of the Act if the impact on fish habitat of implementing the proposal would critically reduce the sustainability of the fish population.

Schedule of Designated Streams

Black Creek — being a creek that flows northeast into Elma Bay on the Strait of Georgia, the mouth of the creek being at latitude 49°51'00", longitude 125°06'00";

Chapman Creek — being a creek that flows southwest into the Strait of Georgia just South of Sechelt, the mouth of the creek being at latitude 49°26'00", longitude 123°43'00";

Englishman River — being a river that flows North into the Strait of Georgia, East of Parksville, the mouth of the river being at latitude 49°20'00", longitude 124°17'00";

French Creek — being a creek on the East side of Vancouver Island between Qualicum Beach and Parksville, the mouth of the creek being at latitude 49°21'00", longitude 124°21'00";

Fulford Creek — being a creek that flows southeast into the head of Fulford Harbour on Saltspring Island, the mouth of the creek being at latitude 48°46'00", longitude 123°28'00";

Goldstream River — being a river that flows southeast and North into the head of Finlayson Arm, the mouth of the river being at latitude 48°29'00", longitude 123°33'00";

Kanaka Creek — being a creek that flows West into the Fraser River, northwest of McMillan Island, the mouth of the creek being at latitude 49°12'00", longitude 122°35'00";

Lang Creek — being a creek that flows South into Lang Bay of Malaspina Strait, the mouth of the creek being at latitude 49°47'00", longitude 124°22'00";

Little Qualicum River — being a river that flows northeast and northwest into the Strait of Georgia West of Qualicum Beach, the mouth of the river being at latitude 49°22'00", longitude 124°30'00";

Little River — being a river that flows East into the Strait of Georgia, northwest of Kye Bay, the mouth of the river being at latitude 49°44'00", longitude 124°55'00";

Nathan Creek — being a creek that flows North into the Fraser River, South of the West end of Crescent Island, the mouth of the creek being at latitude 49°10'00", longitude 122°29'00";

Salmon River — being a river that flows southeast into the Fraser River, West of Eaglet Lake, the mouth of the river being at latitude 54°04'00", longitude 122°33'00";

Silverdale Creek — being a creek that flows South into the Fraser River, East of the Stave River, the mouth of the creek being at latitude 49°08'00", longitude 122°21'00";

West Creek — being a creek that flows North into the Fraser River in New Westminster Land District, the mouth of

the creek being at latitude 49°10'00", longitude 122°32'00";

Whonnock Creek — being a creek that flows South into the Fraser River, West of the Stave River, the mouth of the creek being at latitude 49°10'00", longitude 122°28'00".

[Provisions relevant to the enactment of this regulation: *Fish Protection Act*, S.B.C. 1997, c. 21, section 6 (2) and *Water Act*, R.S.B.C. 1996, c. 483, section 46 (2) (b)]