

Fisheries & Oceans Canada

The Fisheries Act



Federal / Provincial Co-ordination East and West Kootenay

- Fisheries & Oceans Canada (DFO) – Fisheries Act
 - Enforcement of Fisheries Act, Habitat Protection Provisions
 - Protection and enhancement of Fish Habitat
 - Investigations of Fisheries Act violations
- Ministry of Environment (MOE) Water Act
- Integrated Land Management Bureau (ILMB) Land Act
 - Work in and about water
 - Water licenses
 - Land titles, foreshore leases etc.
- Ministry of Environment (MOE)
 - Habitat issues of Water and Land Act referrals
 - Management of local fisheries, i.e stocks, quotas, fishing licenses
 - Environmental Protection, pollution prevention
 - Inventory
- Co-ordination on Files and Investigations

The Fisheries Act

- Manages and protects Canada's fisheries resources
- Applies to all fishing zones, territorial seas and inland waters
- Binding on federal, provincial, and territorial governments

Fish is defined as:

- “parts of fish, shellfish, crustaceans, marine animals and any parts of fish, shellfish, crustaceans or marine animals, and the eggs, sperm, spawn, larvae, spat and juvenile stages of fish, shellfish, crustaceans and marine animals”



Fish Habitat is defined as:

“spawning grounds and nursery, rearing, food supply migration and any other areas on which fish depend directly or indirectly in order to carry out their life processes”



Fish Habitat Includes:

- Water frequented by fish:
 - waters where fish live or travel through, even if only once a year
 - migration or spawning habitat
- Waters where there are no fish (due to elevation, fish barrier for example) but provides nutrients, large woody debris etc. to downstream fish habitat
- Fish habitat includes natural and created habitat; decision *R. v. Forde*:



Basic Life Requisites



FOOD



REPRODUCTION

Corridors



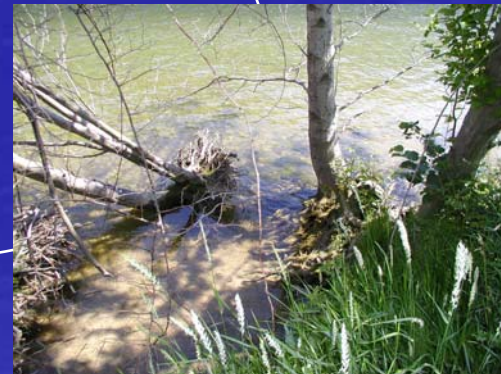
Corridors



Corridors



COVER



Fisheries Act

Habitat Protection Provisions

- Section 35(1)
 - prohibits the harmful alteration, disruption or destruction of fish habitat (HADD)
- Section 35(2)
 - permits Minister of Fisheries and Oceans Canada to authorize HADD

What is a HADD?

Harmful alteration:

any change in habitat that reduces its capacity to support one or more life processes of fish but does not permanently eliminate habitat

Disruption:

any temporary change in habitat that reduces its capacity to support one or more life processes of fish

OR

Destruction:

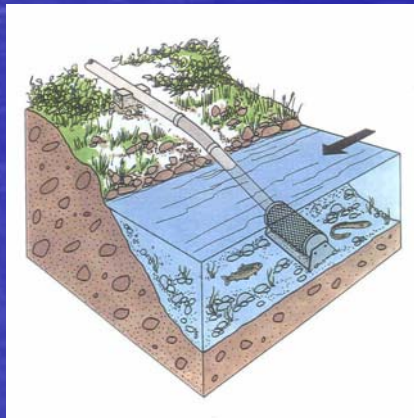
a permanent change that renders the habitat unsuitable for the production of fish

Fisheries Act

Habitat Protection Provisions

- Section 30

- installation of fish guards/screens on water diversions or intakes



- Section 32

- prohibits the destruction of fish by means other than fishing



Fisheries Act

Habitat Protection Provisions

- Sections 20, 21 & 29
 - requires safe passage of fish
- Section 22
 - requires minimum flows over obstructions



Fisheries Act

Pollution Prevention Provisions

- Section 36(3)

- prohibits entry of deleterious substances into waters frequented by fish
- Administered by Environment Canada in cooperation with DFO and provinces



Fisheries Act-Penalties

- Maximum penalty generally not greater than \$300,000 or imprisonment up to 6 months or both (Summary Conviction).
- Fines can be up to \$1,000,000, imprisonment for up to 1 year or both (Indictment).
- Court orders for restoration

DFO Policy for the Management of Fish Habitat, 1986

Purpose:

- Provides direction for interpreting the broad powers in the Fisheries Act habitat protection and pollution prevention provisions (*Sections 20-35*)

Objective:

- to achieve a net gain of productive capacity of fish habitats, for fisheries resources

Achieved through three Goals:

- Conservation of fish habitat
- Restoration of fish habitat
- Development of fish habitat

DFO Policy for the Management of Fish Habitat, 1986

- Defines Productive Capacity as:
 - “The maximum natural capability of habitats to produce healthy fish, safe for human consumption, or to support or produce aquatic organisms upon which fish depend”
- Guiding principle:
 - No Net Loss of productive capacity
- Applies to all projects, large or small, that result in HADD
 - small project e.g. (culverts, minor in-filling, creek realignments)
 - large projects e.g. (hydro-electric facilities, mining, marinas)

DFO Policy for the Management of Fish Habitat, 1986

Mitigation is defined as:

“Actions taken during the planning, design, construction and operation of works and undertakings to alleviate potential adverse effects”

Compensation is defined as:

“Replacement of natural habitat, increase in the productivity of existing habitat ... where mitigation techniques and other measures are not adequate to maintain habitats” (i.e. replace lost productive capacity)

Section 35(2) Policy Directive

- Avoid HADD through mitigation
- Authorize HADD when mitigation impractical or not possible
 - no Authorizations without compensation
 - Authorization not issued when habitat losses not acceptable or compensation not possible

Habitat Conservation and Protection Guidelines

Hierarchy of Preferences to Achieve No Net Loss (NNL)

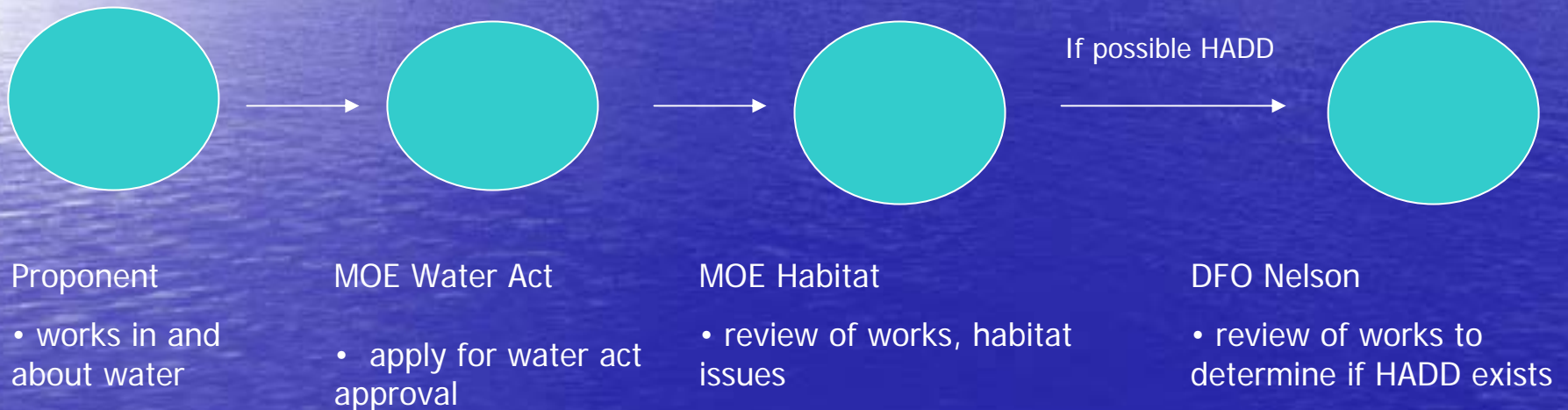
Most
Preferred



Least
Preferred

- Mitigation
 - Project Design
 - Relocation, Redesign
 - Construction and operation measures
- Compensation (not an option for chemicals)
 - Create habitat
 - Enhance habitat

Federal / Provincial Co-ordination East and West Kootenay Referrals



Federal / Provincial Co-ordination East and West Kootenay Referrals

No HADD

- DFO will provide mitigation to MOE,
- DFO will provide mitigation in a Letter of Advice to proponent (cc MOE)
- MOE Habitat will provide mitigation to MOE Water Act
- MOE will issue approval for works under the Water Act

HADD

- DFO will authorize works under Section 35(2) of the Fisheries Act
 - If suitable compensation is possible to achieve 'No Net Loss'
- CEAA review will take place
- DFO will finalize Authorization of works and Compensation Plan
- MOE will issue approval for works under the Water Act

Guidelines

Used to avoid (or determine) HADD:

- The Land Development Guidelines
- The Fish-Stream Crossing Guidebook
- Freshwater Intake End-of-Pipe Fish Screen Guideline
- Regional Operating Statements and Best Management Practices (BMP's)
 - Water Intakes
 - Beach Maintenance
 - etc.
- Others see website

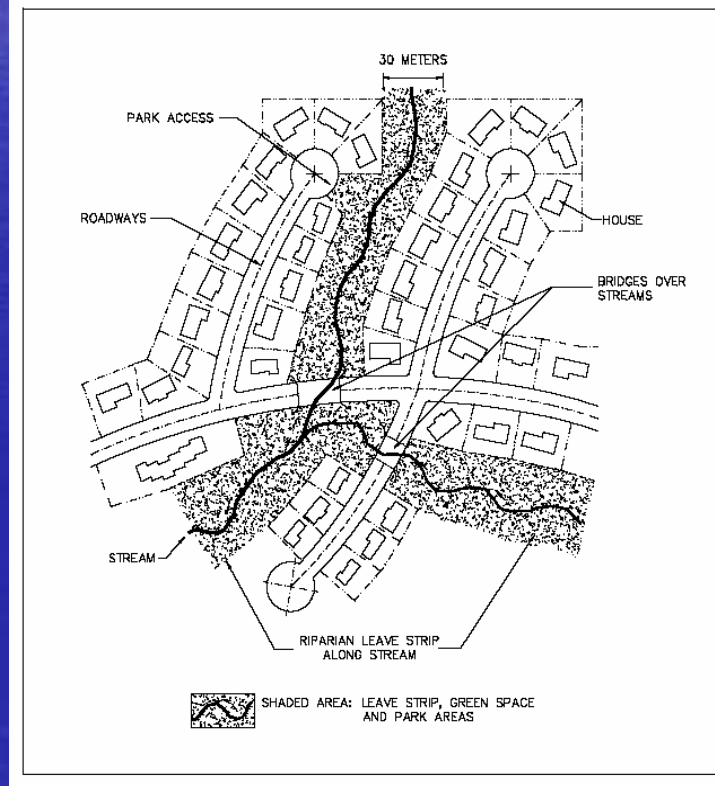


Land Development Guidelines for the Protection of Aquatic Habitat

Developed by Fisheries & Oceans Canada and The Ministry of the Environment, 1992

- Riparian vegetation leave strips
- Erosion and sediment control / Site development
- Stormwater management
- Instream work best management practices
- Fish passage and culverts
- How to implement the Land Development Guidelines
- A land development example using the guidelines
- Information on provincial and federal regulations
- Information on salmonid habitat
- Fish windows for instream works

Figure 2.6 Plan View of Riparian Leave Strips



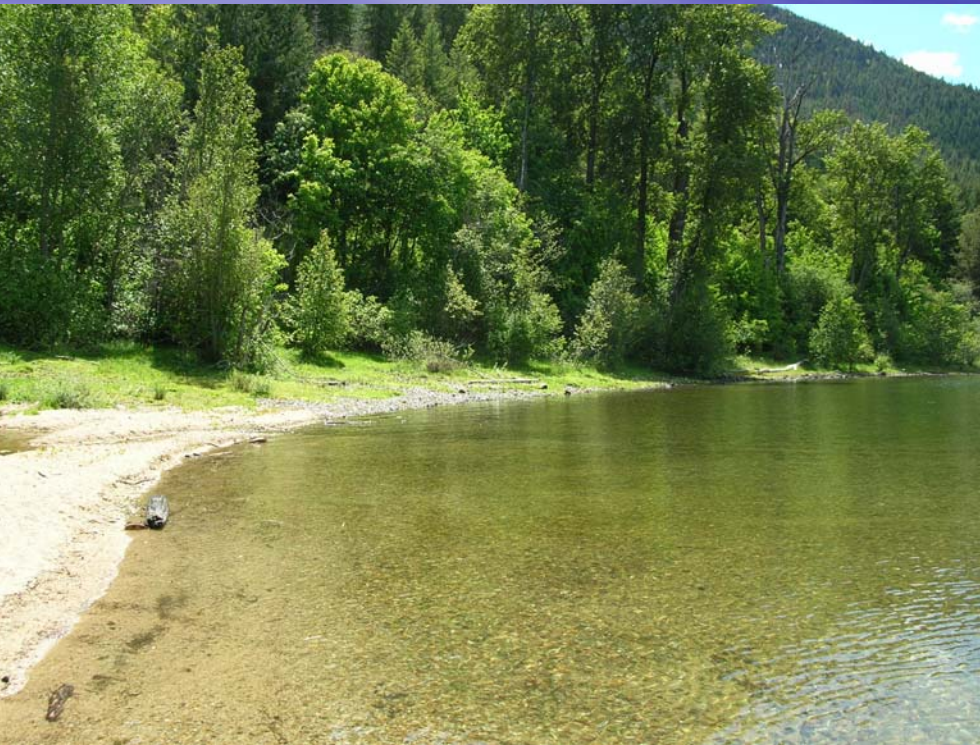
Leave Strips

The primary objective of leave strips is to protect the riparian zone, which is critical to the maintenance of a healthy aquatic environment.

A riparian zone is the area of the bank located next to streams, rivers, lakes and wetlands not normally inundated during high water conditions.

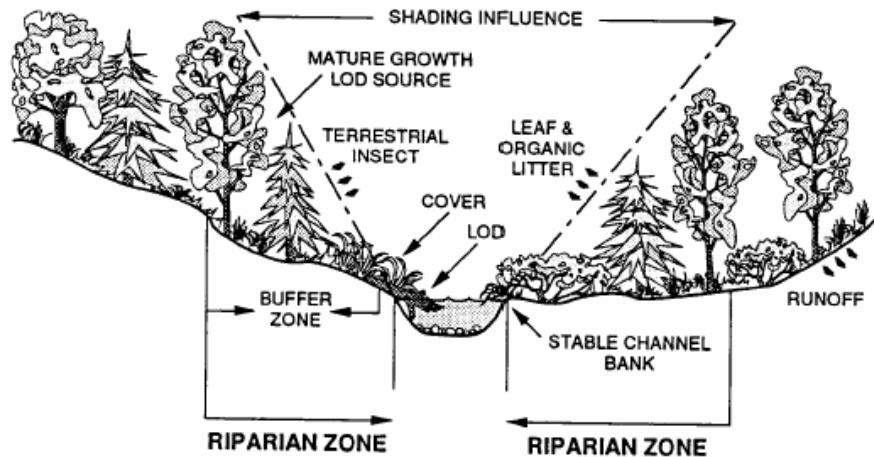
Leave strips are the areas of land and vegetation adjacent to watercourses that are to remain in an undisturbed state, throughout and after the development process.

Leave strips should be provided on all watercourses that flow into or contain fish or fish habitat, including: wetlands, ponds, swampy areas, intermittently wetted areas, small streams, side channels and ditches.



Importance of Riparian Zones

Figure 2.2 Riparian Zone Benefits to Aquatic Habitat

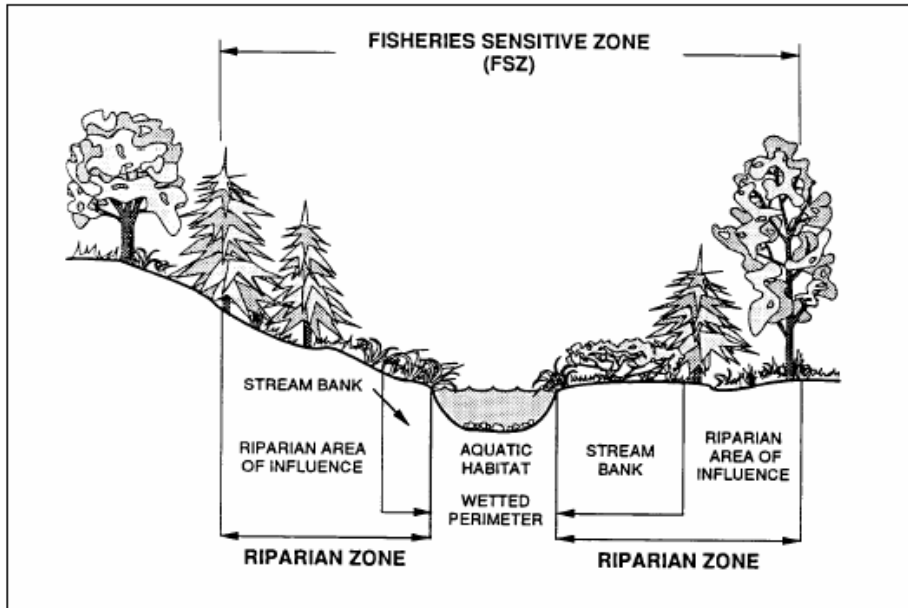


- food source
- large organic debris (LOD)
- water temperature regulation
- buffer zone
- cover
- bank stability

An intact riparian zone also helps protect private property from flooding and potential loss of land due to stream erosion and instability.

Leave Strip Widths

Figure 2.1 Riparian and Fisheries Sensitive Zones



Low Density Area

The minimum leave strip width on each side of the watercourse should be 15m from the high water mark.

High Density Area

The minimum leave strip width on each side of the watercourse should be 30m from the high water mark.

If these guidelines are followed a violation of the *Fisheries Act* will be avoided.

They are guidelines though. They may be widened to protect critical fish habitat or altered depending on site specific conditions assessed by a qualified professional and approved by DFO and MOE.

We Look Forward to Working With You!



DFO publications, policies and legislation is available on our website.

<http://www.dfo-mpo.gc.ca/index.htm>

