
**REVIEW OF LOCAL
GOVERNMENT
IMPLEMENTATION OF THE
RIPARIAN AREAS
REGULATION**

SEPTEMBER 2015



**BRITISH
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INTRODUCTION / OBJECTIVES

The Riparian Areas Regulation (RAR) was enacted under Section 12 of the *Fish Protection Act* in July 2004. It calls on local governments to use their powers under the *Local Government Act* to implement measures to protect riparian areas during residential, commercial, and industrial development. The RAR is supported by a professional reliance model where Qualified Environmental Professionals (QEPs) conduct science-based assessments of proposed development activities and recommend protective measures. The Ministry of Forests, Lands and Natural Resources Operations (FLNR) is responsible for the administration of the RAR.

The RAR applies to 94 incorporated BC municipalities and the 15 Regional Districts that encompass them, as well as the Islands Trust Area. The structure of the RAR allows local governments to adopt the regulation through the tools available to them in the *Local Government Act* and implement bylaws and policies as appropriate to their jurisdiction, provided this structure meets the standard laid out in the RAR. As this leads to a number of possibilities for implementation approaches, it becomes challenging to develop a straightforward way to assess levels of compliance.

In response to the BC Ombudsperson's 2014 report; *Striking a Balance: The Challenges of Using a Professional Reliance Model in Environmental Protection - British Columbia's Riparian Areas Regulation*, FLNR commenced a comprehensive review of Local Government implementation of the RAR. The impetus for this review was outlined in the Ombudsperson's report recommendation #1, specifically to "*Review local government implementation of and compliance with the Riparian Areas Regulation, and report publicly on the results of that review*". The Ombudsperson's office found in their report that in their view the Ministry's lack of up to date information on local government delivery of the RAR detracted from the ministry's ability to identify gaps in implementation, and consequently hindered the development of strategies to improve compliance.

The objective of this review was to address the Ombudsperson's recommendation #1, to assess the level of compliance in local governments subject to the RAR and also to identify where issues of implementation arose. The results of this review will be used to inform the ministry's response to the Ombudsperson's recommendation #2; to *work with local governments to bring them into compliance with the RAR*. This report supports this recommendation by describing successful implementation strategies and tools that can be shared between jurisdictions, as well as common issues of misinterpretation. The results of the review also serve to inform and support the implementation of the Ombudsperson's other recommendations. The ministry will support local governments by providing clarification on the application of the RAR.

METHODS – LG REVIEW

Due to the breadth of area and flexibility in application inherent in the RAR, assessing compliance required the collection of a range of information on a local government's specific methods of implementation. As local governments deliver the RAR through the application of their bylaws, often supported by a range of staff policies, the ministry requested details of these tools and how they apply in practice.

DETERMINING INFORMATION REQUIREMENTS

Determining Local Government approach to Fish Protection Act requirements

To assess a local government's application of the RAR, the ministry needed first to identify if the local government was participating in the RAR process as enacted in the Fish Protection Act, or implementing a process that in their opinion is comparable to or exceeds that of the RAR. This option is outlined in section 12(4) of the Fish Protection Act, requiring that a local government must either;

- 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 Municipal 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.*

In application, this means that a local government may elect not to use the prescriptive procedural components provided in the RAR directive. Should the local government exercise this option, it then takes on responsibility for ensuring and demonstrating that its process and standards for riparian protection is comparable to or exceeds that of the RAR. This is generally referred to as a “*meet or beat*” approach as described in the RAR implementation guidebook. Through experience in administering the RAR, the ministry was aware that some local governments are using a hybrid approach that incorporates some but not all of the RAR standards, and do not specifically identify their process as taking a “*meet or beat*” approach.

Where it was determined that a local government was employing elements of a “*meet or beat*” strategy, their approach to meeting the standards laid out in the RAR was reviewed using the same criteria as used for local governments that were following the prescribed assessment methods. In these cases the local government's approach, to be compliant must at minimum meet this standard.

Where it was determined that a local government was implementing RAR using the directives found in the regulation, the approach used was reviewed against certain essential tools for riparian protection that are expected in the RAR.

ESSENTIAL TOOLS FOR RIPARIAN PROTECTION UNDER THE RAR

Regardless of the tools a local government chooses to implement the RAR, their regulatory process must provide three basic components:

- definitions of streams and riparian areas that are consistent with the RAR;
- a means of triggering a regulatory action if a development activity is proposed to occur in a riparian assessment area; and
- a means of requiring a QEP Assessment Report that complies with the Regulation and its assessment methods.

To evaluate the above, the ministry then used the following metrics:

- Does the local government's process define terms associated with riparian areas in a fashion consistent with the RAR?

- Does the local government have a regulatory tool in place that is triggered when development is proposed in a Riparian Assessment Area?
- Is a RAR assessment report by a Qualified Environmental Professional required?
- Does the local government require use of the online RAR Notification System?

INFORMATION COLLECTION FROM LOCAL GOVERNMENT

To gather the information necessary three request letters were sent by electronic mail to the Chief Administrative Officers of each affected local government, on August 27, 2014, October 23, 2014 and April 7, 2015. Copies of the request for information letters can be found in Appendix 1. The second request for information reiterated the content found in the first but was directed to local governments who had not yet responded, to ensure that any that wished to contribute information had the opportunity to do so. The second call for information was deemed necessary as the level of response to that point was judged insufficient for drawing conclusions on compliance. In addition, after the second request for information was issued, FLNR staff contacted by phone each local government that had not yet responded to ensure they were aware of the request. As the summary report was being finalized in June 2015, all outstanding local governments that had not responded were contacted again by phone to afford a final opportunity for input.

The letters sent to local government requested the following information. The rationale for each request follows each item.

A description of planning policies (e.g., Official Community Plans, development permit areas), regulatory tools (e.g., zoning bylaws), policy and procedure documents for staff evaluating development proposals in riparian areas, and other tools used to implement riparian protection for industrial, commercial and residential development (and their ancillary activities) in riparian areas.

Rationale: As riparian protection provisions to meet the RAR can be implemented through a number of different local government bylaws, this request was intended to establish which tools are used by the respondent. These tools and policies can be used alone or in combination. Review of these policies and tools determined if an appropriate triggering mechanism was in place and also helped detail a local government's approach to permit exemptions and variances.

If not included in riparian protection bylaws, provide specific bylaws addressing soil removal and deposit, tree protection and management, and landscaping, as well as any mitigation tools that might apply to riparian areas.

Rationale: As the ministry is aware that many local governments use ancillary and related bylaws to support riparian protection, this question was intended to capture information on these additional tools.

Description of the status of riparian protection tools (i.e., draft or adopted); if draft, provide the expected implementation timeframe.

Rationale: As local government tools are often under review or update, this question was intended to establish which local governments were implementing new or amended bylaws for riparian protection.

Descriptions of riparian area policies and procedures to:
a) evaluate development proposals once notification of an assessment report has been received;

- b) incorporate recommendations and measures provided by qualified environmental professionals into development permits;
- c) ensure submission of a post-development report; and
- d) follow up on non-compliance issues identified in post-development reports

Rationale: This series of questions is intended to develop an understanding of standards applied by a local government to review proposed development. Under the RAR, it is the QEPs responsibility to develop protective measures for the riparian area defined in their assessment report. This question was intended to establish which local governments have policies or procedures in place to incorporate the QEP's recommendations into their permit process. Responses to these questions determined the critical elements of a local government requiring assessment reports from QEPs and using the online RAR Notification System.

POLICY AND LEGISLATION REVIEW

Each local government's submission was individually reviewed by FLNR staff and follow-up questions were posed to the local government as necessary. Ministry staff reviewed all documents submitted by local governments and accessed additional information on the local government's website if required. All information collected was assessed for conformity with the critical components outlined above as well as supporting information.

DEVELOPMENT OF COMPLIANCE CATEGORIES

As information was received from local governments, an adaptive approach was taken to developing compliance categories which was based on ministry staff's experience with delivering the regulation and its commonly encountered issues. In the majority of instances, it was possible to assess the local government's approach and clearly identify it as *Fully Compliant* or *Not Compliant*. In other cases, issues in implementation precluded the process from being deemed fully compliant, but did not summarily preclude compliance with the RAR. This category was defined as *Approaching Compliance*.

In some cases, a local government's process was developed that was dependent on continued support from Fisheries and Oceans Canada (DFO) and/or informed by the former Streamside Protection Regulation. In many of these cases, compliance with the RAR was historically supported by direct DFO involvement in project review and might not employ standard RAR methodology. These local governments were assigned a specific category to reflect this method of delivery.

APPROACH TAKEN TO PRESENTATION OF RESULTS

In keeping with the uniqueness of local application of the RAR, this report does not incorporate any individual local government's responses or the ministry's assessment of compliance of specific local governments. This approach was taken both to summarize a large volume of collected information and to present the results in a holistic format that reflected overall compliance across the RAR service area.

RESULTS – MUNICIPALITIES

RESPONSE RATE

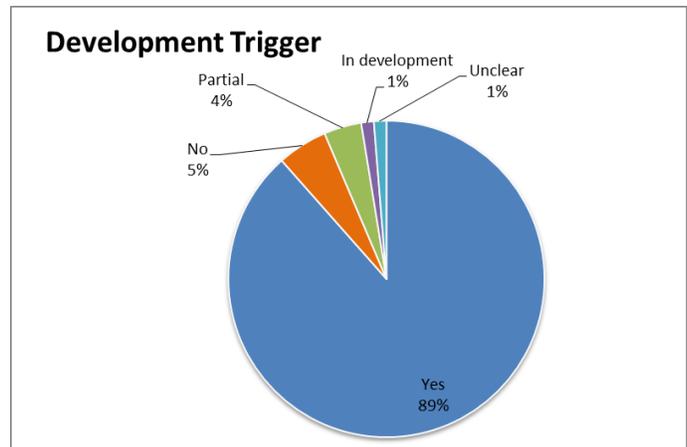
After the final call for submissions had been completed, 81 of the 91 Municipalities subject to the RAR responded to the request for information (89% of subject municipalities). The ministry also received responses from the three municipalities in the RAR jurisdictional area that have practical exemptions from the regulation; namely the City of Vancouver, the City of Victoria and the Township of Esquimalt. Although these municipalities no longer have *streams* subject to the RAR, they are implementing programs to restore and interpret lost watercourses. All but four municipalities that responded to the review have some mechanism to implement the RAR.

Inability to respond

In addition to the 81 municipalities described above, four municipalities responded to the ministry's request indicating that they did not have adequate resources to provide the information required.

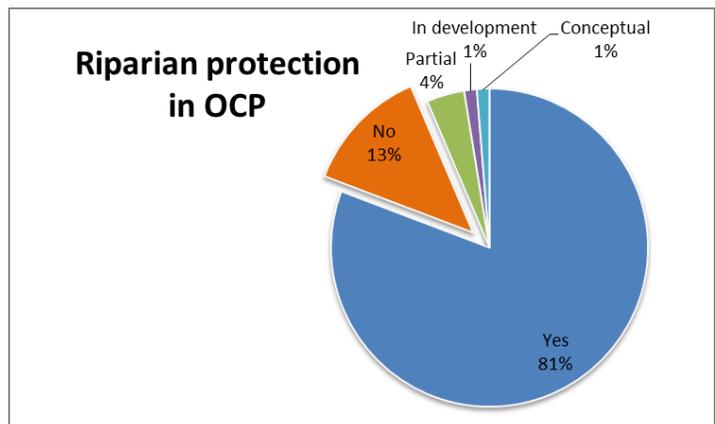
DEVELOPMENT TRIGGER

A significant majority of local governments have implemented a mechanism by which development proposed in riparian assessment areas triggers a review. Fully 89% have such a trigger, while a further 5% are classified as partial (the trigger applies to only certain activities) or in development (where a local government Official Community Plan (OCP) was in the process of being finalized). The only local governments without a trigger were the four that did not yet have any process in place to implement the RAR.



RIPARIAN PROTECTION PROVISIONS IN OCP

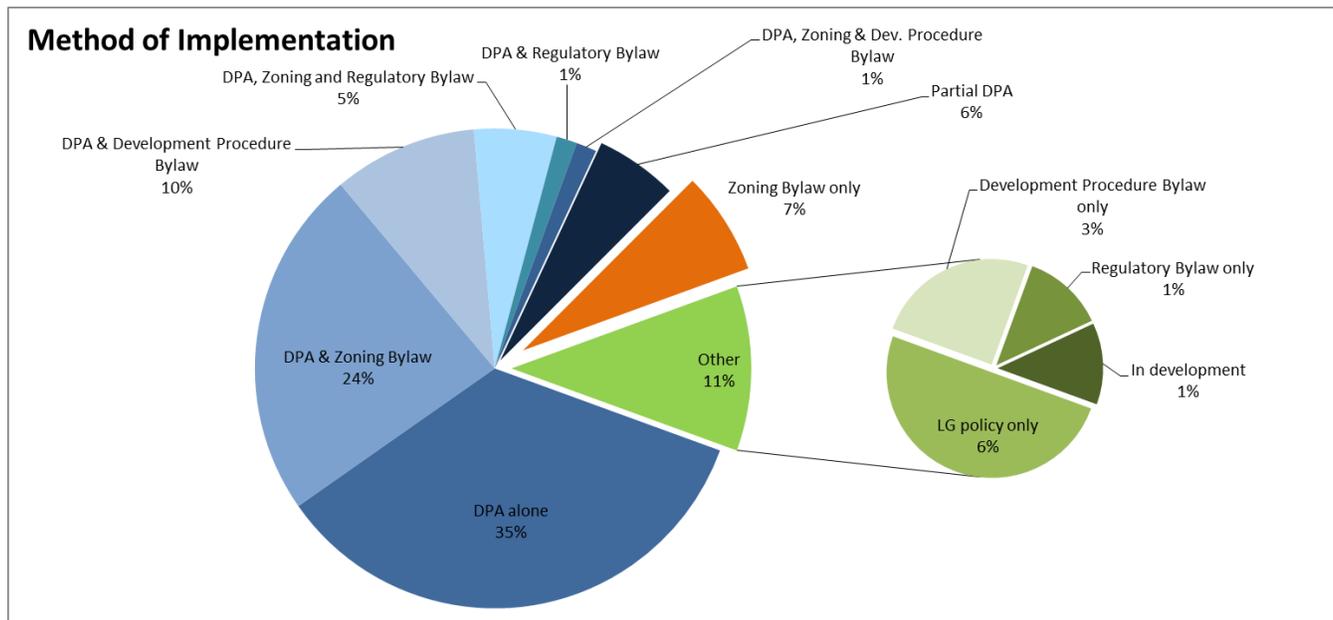
A significant majority (81%) of responding local governments have integrated riparian protection into their OCPs. This is important for riparian management as it generally parallels the local government's implementation of riparian development permit areas and associated development standards. Where OCP content was in place, the majority of municipalities also included broader policy statements and objectives for riparian protection. Of the nine (13%) responding municipalities that do not have



language in their OCPs, four are those that have no RAR process in place. Of the remaining five municipalities, implementation of the RAR is accomplished by the local government’s zoning bylaw (two municipalities), internal policy (two municipalities) or development procedures bylaw (one municipality).

METHODS OF IMPLEMENTATION

The structure and wording of the RAR provides local governments with flexibility as to how they choose to implement the regulation. Implementation can be through a single bylaw or a combination, supported by municipal policies and other tools. The review found that municipalities have instituted a broad range of implementation methods, reflecting the need for locally specific delivery.



The review determined the method of implementation in the 72 municipalities that have a full or partial trigger for development review. The majority of responding municipalities implement the RAR through some form of watercourse Development Permit Area (DPA), alone or in combination with other bylaws. Some 53 municipalities (76%) use this approach with a further four municipalities (6%) having a partial DPA, where the DPA does not apply to all RAR defined watercourses in the municipality’s jurisdiction.

A DPA provides a straightforward method to implement the RAR, as it allows a municipality to preclude development in riparian areas unless certain conditions are met. In the majority of cases, municipalities define their DPA using some or all of the definitions contained in the RAR, and specify a RAR assessment report as a condition of DP issuance. The review found that DPAs were generally designed for the specific goals of the municipality and in some cases incorporated standards above and beyond RAR requirements.

Where a DPA was used for RAR implementation (alone or with other tools) the compliance level of the local government process was high. Only three of 57 municipalities (5%) that employ a DPA were found to have a non-compliant RAR process.

Other methods of implementation identified by the review included:

Zoning Bylaws: Zoning Bylaws allow for a municipality to specify the standards applied to new development. These are used to apply the RAR primarily by establishing building setbacks from watercourses and defining/limiting the development activities permitted in these areas. Five municipalities implement the RAR exclusively through their zoning bylaws, where a further 22 municipalities employ their zoning bylaw in conjunction with other tools. Where municipalities employed a Zoning Bylaw, the review found 12 of 27 (44%) were compliant with the RAR; all save one in this category employ a zoning bylaw in conjunction with a DPA. Five municipalities in this category were non-compliant (19%), though it should be noted that non-compliance was due to a range of factors that did not specifically relate to the use of a Zoning Bylaw for implementation. For the five municipalities that use a Zoning Bylaw exclusively to apply the RAR, compliance was mixed.

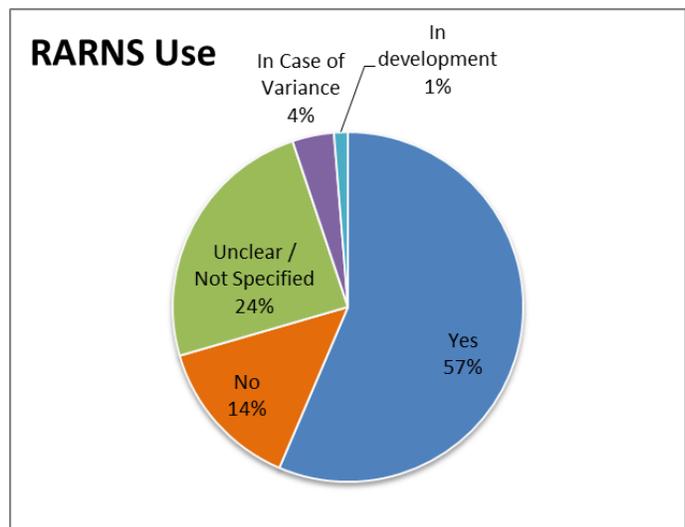
Development Application Procedures Bylaws: Similar to Zoning Bylaws, a municipality may implement Development Application Procedures Bylaws to establish review procedures for new development applications. These bylaws generally specify standards for supporting information for applications, for example RAR assessment reports. Eight municipalities use Development Procedures bylaws in combination with other bylaws to implement the RAR, while a further two use this bylaw exclusively. Municipalities employing Development Procedures bylaws achieved mixed compliance. One of ten (10%) was found to be non-compliant, primarily due to a lack of other supporting bylaws or language in their OCP.

Regulatory Bylaws: Under section 909 (1) (b) of the local government act, a local government may create bylaws for *preserving, protecting, restoring and enhancing the natural environment*. This provides the opportunity for a municipality to create a dedicated watercourse or environmental protection bylaw. The review found that in practice a comparatively small number of municipalities have elected to pursue this option, and the majority of these use this bylaw in combination with other tools. Three of the responding municipalities have some type of dedicated bylaw specifically for the purpose of protection of natural features which incorporates RAR standards. An additional three municipalities utilize associated stand-alone regulatory bylaws to support the implementation of RAR, but these are not specifically for environmental protection (i.e.: works & services, development servicing, etc.). Only one of the responding municipalities uses a dedicated Riparian Areas Protection bylaw exclusively to apply RAR standards. This municipality's bylaw mirrors RAR requirements closely and their process was compliant with the RAR.

USE OF RAR NOTIFICATION SYSTEM

If a municipality has elected to follow RAR standards rather than implement its own regime as per section 12 (4)(b) of the Fish Protection Act, use of the online RAR Notification System (RARNS) provides the local government with the ability to easily comply with section 4(2)(a) of the regulation. This section requires that the local government must be in receipt of a notification confirming that an assessment report has been submitted to the ministry by a QEP.

Over half (57%) of the responding municipalities require the use of the RARNS in their policies and procedures. A quarter of responding municipalities (25%) require compliance with RAR standards but



lack clear and specific language in their bylaws to require the use of RARNS.

Where a municipality is identified as having unclear or undefined language surrounding the use of the RAR notification system, this relates specifically to the lack of clear direction requiring the submission of a report to the system. All municipalities identified in this category are in fact registered with RARNS and many have reports submitted for their jurisdictions.

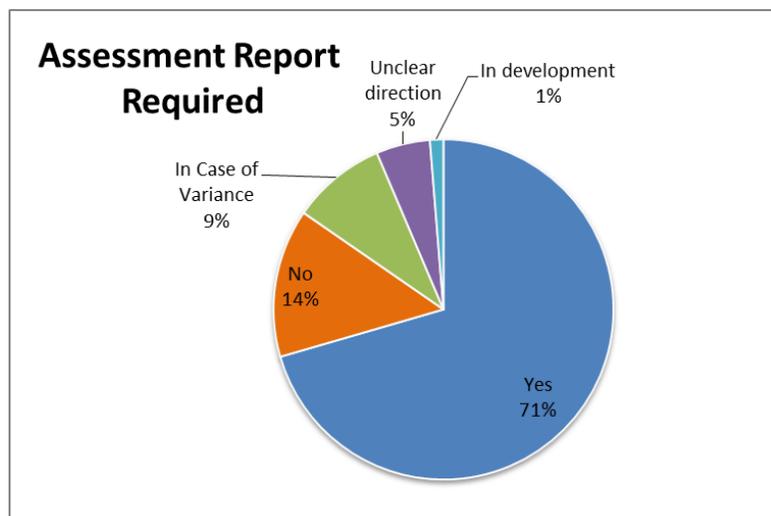
With the exception of the four responding municipalities who have no RAR process in place, the municipalities which do not require the use of RARNS have this policy primarily due to historical arrangements with DFO. In these areas, DFO staff often had a direct role in reviewing projects with fish habitat impacts and provided guidance on meeting *Fisheries Act* and RAR standards. As this consultative structure has been discontinued, the RAR procedures of the affected local governments are all in the process of being updated.

Of all responding municipalities subject to the RAR, two have not registered with the RARNS and therefore have no avenue to receive ministry notification of the receipt of assessment reports as required by the RAR. The four municipalities with no RAR process have registered with the RARNS, despite their lack of any procedure to receive a report.

REQUIREMENT FOR ASSESSMENT REPORT PREPARED BY QUALIFIED ENVIRONMENTAL PROFESSIONAL (QEP)

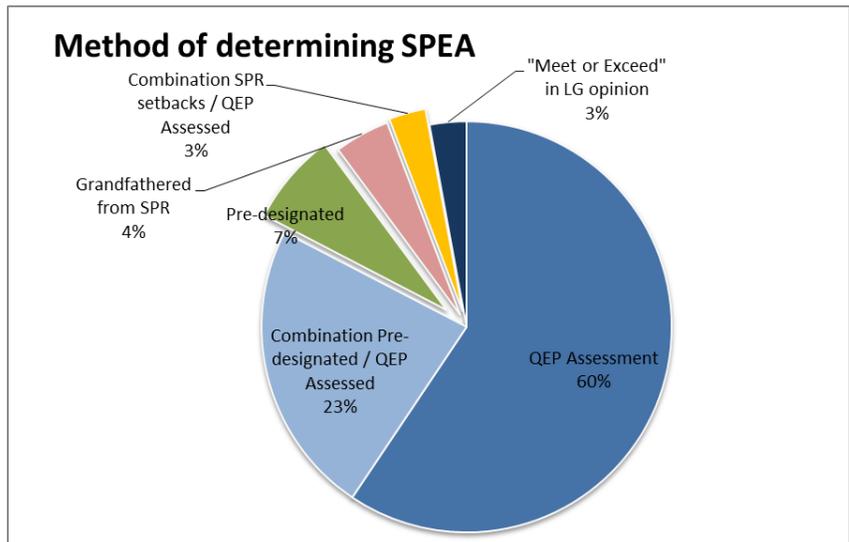
If a municipality has elected to implement RAR through the standards of the regulation, to approve development the local government must be in receipt of either notification of the submission of a RAR assessment report prepared by a Qualified Environmental Professional (QEP) or an authorization from Fisheries and Oceans Canada (DFO). The majority (71%) of municipalities require this assessment report as part of their bylaws and policies. A further 9% require an assessment where a proponent proposes to vary the municipality's pre-defined watercourse setbacks.

Where no requirement for an assessment report was established, this was often a contributing factor to non-compliant municipal processes. Of the 11 municipalities that do not require an assessment, eight are not compliant with RAR standards, with the remaining three adopting "*meet or beat*" strategies based on the local government's opinion. In the case of the four municipalities where the requirement for an assessment report is unclear, this constitutes a language issue that either reduces or precludes compliance, depending on the situation. In any case, if the requirement for an assessment report was absent or unclear, a municipality's process was not deemed fully compliant.



METHOD OF DETERMINING STREAMSIDE PROTECTION AND ENHANCEMENT AREA (SPEA)

Considering those municipalities where a trigger for development in streamside areas exists, several approaches are used for the establishment of the Streamside Protection and Enhancement Area (SPEA) as defined in the RAR. The most commonly used approach (60% of municipalities) was to apply the SPEA determined by a QEP as part of their assessment report to a development. In some cases, municipalities have access to biophysical and mapping data that allows them to pre-establish SPEAs on watercourses in their jurisdiction. Where pre-established



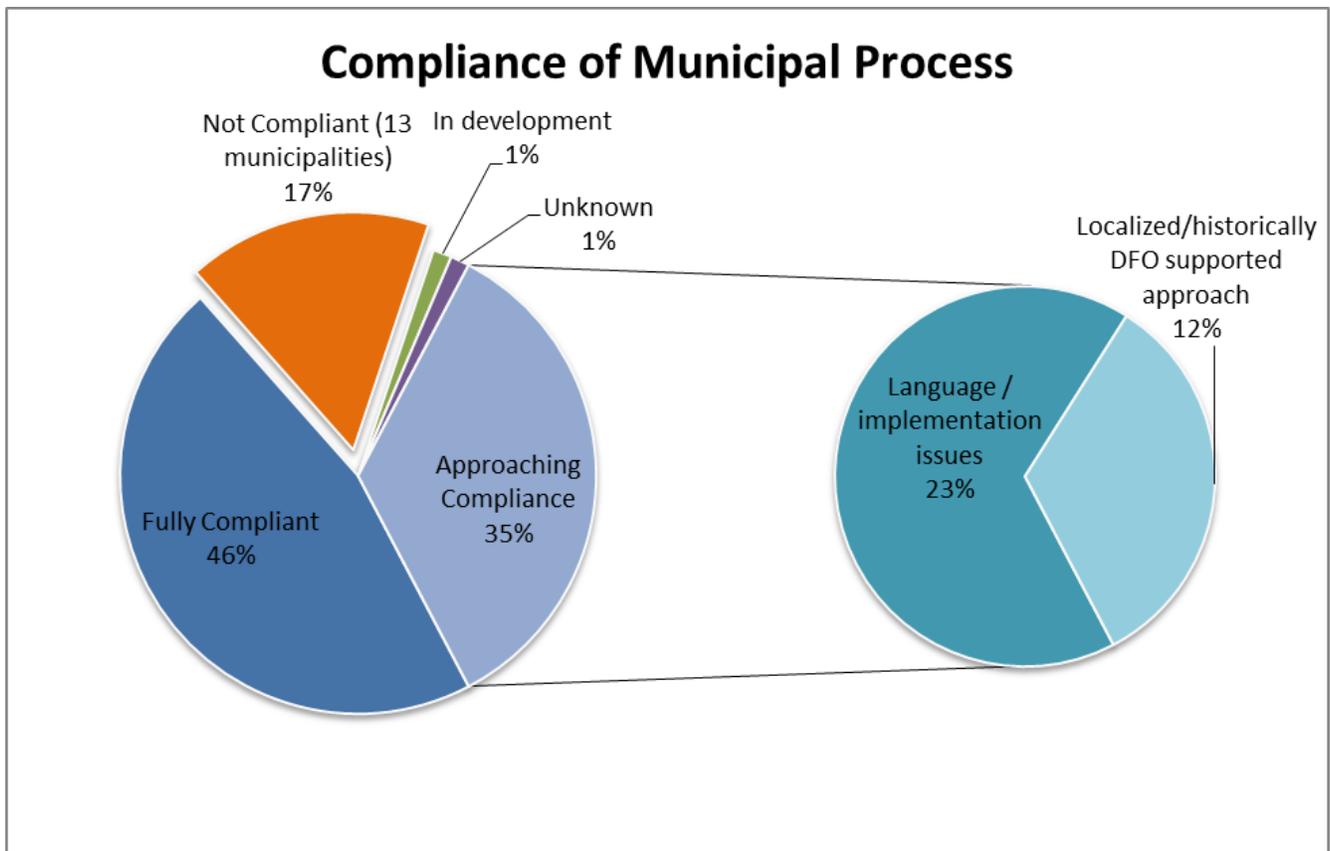
SPEAs are used they are generally employed in combination with a QEP assessment process, to address situations where watercourse data is insufficient or lacking or where a proponent elects to seek a variance from the pre-established setback. This combination approach represented 23% of municipalities. A further 7% of municipalities used pre-designated setbacks exclusively.

Some municipalities developed their processes very early in the RAR's implementation, at the time of the repeal of the former Streamside Protection Regulation. As per section 8(2) of the RAR, a local government that had established SPEAs in accordance with the former regulation is deemed to have met the requirements of the RAR. The review found five municipalities fit this category (7%); three of these using existing SPR setbacks and two using a combination of SPR setbacks and QEP assessed SPEAs.

Two municipalities (3%) base their setbacks on watercourse classification maps that do not detail associated SPEAs. The municipalities in these cases review proponent submissions on a case by case basis and generally adhere to DFO habitat standards. This approach is indicative of municipalities who developed "meet or exceed" processes early in RAR implementation, often with DFO guidance.

COMPLIANCE OF MUNICIPAL GOVERNMENT PROCESS

Included in the compliance categories discussed below are the 78 municipalities that both provided information on their process and are subject to the RAR. As described above, as information was reviewed on local government processes an adaptive method was used in determining categories for compliance. It became clear during the review process that where issues were found with a local government's process, these could range from structural issues that clearly affected compliance to minor language omissions or lack of clarity that would likely have little effect. The review found that given the complexity of application, it was not suitable to classify local governments as either *Compliant* or *Not Compliant*. Developing categories for the compliance review was also deemed important when considering its future application in working with local governments to increase compliance, as detailing this information allows for the prioritization of future outreach. Presenting results as either strictly *Compliant* or *Not Compliant* would not allow, for example a distinction between a local government requiring significant transitional support to achieve a fully compliant process and one that requires only minor edits to bylaw language.



The review established the following categories for determining compliance:

Fully Compliant: 36 of 78 Subject municipalities (46%)

Municipalities in this category have clear, well defined processes that incorporate all the critical elements of the RAR model. All municipalities in this category have:

- A trigger for project review when development is proposed in an assessment area,
- require a QEP report and the use of RARNS, and;
- clear definitions that are consistent with the RAR

All but three of these municipalities implement the RAR through the use of a DPA, either alone or in combination with other tools. Over half (22 of 36) of the municipalities in this category have specific language to incorporate QEP recommendations into development permits.

Approaching Compliance (*Incompletely Compliant*): 17 of 78 Subject municipalities (23%)

Municipalities in this category have issues identified during the review that preclude them from being identified as fully compliant. The impact of these issues varied but was assessed to be of a nature that did not summarily preclude compliance, but would require action in order to achieve full compliance. Although each municipality's situation is unique, the issues identified fell within a number of broad categories:

- Language issues: Bylaws and policies lack definitions and/or provide unclear guidance that may cause confusion re: requirements
- Permitted variances: Bylaws and policies permit encroachments that may contravene the intent of the RAR
- Bylaws and policies establish pre-designated SPEAs that may not meet RAR standards
- RAR application area based on DPA or Zoning maps that omit areas of potential habitat

Themes that were identified in this category and proposed actions are found in the Discussion.

Locally Specific / DFO approved Processes: 9 of 78 Subject municipalities (12%)

An important finding of this review was the significant number of municipalities whose RAR process was based in part on DFO habitat standards and/or the former SPR. The municipalities in this category have highly localized processes and generally base their riparian standards on pre-defined SPEAs, which in many cases were developed in consultation with DFO. In these municipalities, DFO has historically played a more active role in variance approvals, often through an Environmental Review Committee (ERC) process. This provided for a streamlined process for development activity but now requires updating given the changes to DFO's operating procedure. This is of particular significance as the municipalities in this category are all located in areas of major population growth and development. Only one of the municipalities in this category requires a RAR assessment for all development, and use of RARNS is limited to variance situations. All municipalities in this category have dedicated staff managing the application of the RAR and so have a mechanism to evaluate development for compliance. The extent to which an individual development meets RAR standards is difficult to assess given these processes can differ significantly from standard RAR methods. Many of the processes in this category could be considered as "*comparable to or exceeding*" RAR directives as per section 12(4)(b) of the Fish Protection Act, although it should be noted that most municipalities in this category do not specifically indicate they are exercising this option.

Municipalities in this category are not strictly considered non-compliant, as each has a process in place to review development in light of the RAR and proceed in accordance with federal and provincial standards. Further detail is provided in the Discussion section.

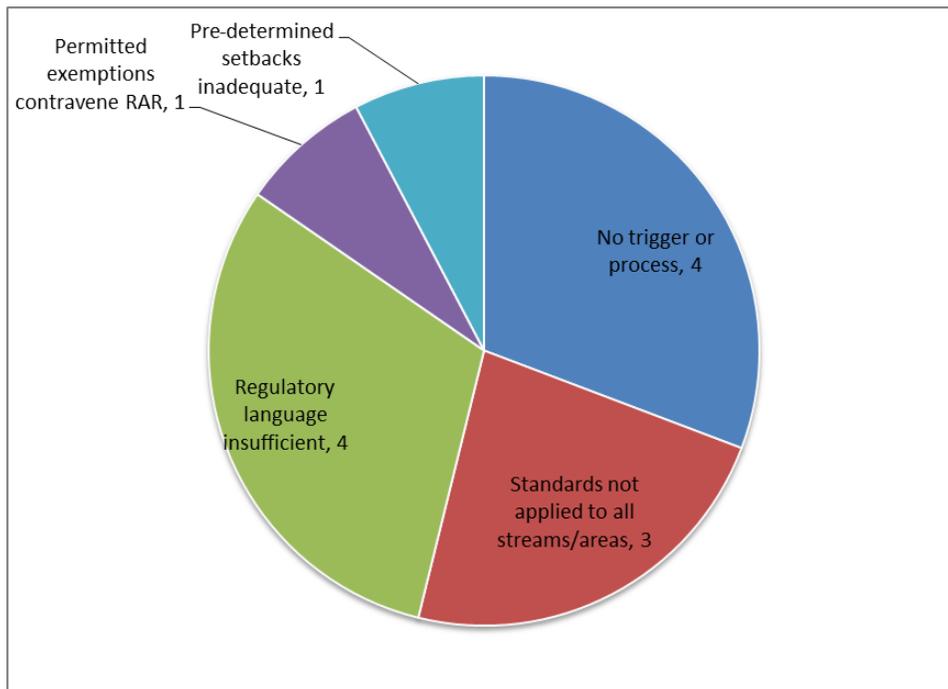
In Development: (one municipality) One municipality is currently awaiting the approval of its OCP by the Province, and so has not yet brought its riparian protection provisions into force.

Unknown process: (one municipality) One municipality specifically indicated that it implements the RAR as per the conditions of 12(4)(b) of the Fish Protection Act, and in its opinion has “*opted out*” of the RAR directive. The ministry is aware this municipality applies a watercourse DPA, but as the municipality declined to further detail their process or procedures the ministry could not assess the compliance of its process.

Not compliant: 13 of 78 subject municipalities (17%)

Upon review of their process, 13 municipalities were found to have processes that were not compliant with the RAR. The source of non-compliance varied, but in all cases was deemed significant enough that proper RAR application was compromised.

Categories of Non-Compliance for municipalities (total = 13)



Under this category, the following sources of non-compliance were identified:

No Process: Four of the responding municipalities indicated they had no process or bylaws in place to implement the RAR. This constitutes 4% of all municipalities where the RAR applies and 5% of responding municipalities. Two of the responding municipalities in this category cited the small size, population and capacity of their communities as factors in their lack of RAR process; the remaining two did not provide comments. These four municipalities are all rural communities with a combined population of less than 5000 residents; therefore development pressure could be classified as low.

Insufficient Regulatory Language: Four municipalities in this category have established some degree of RAR process but do not have adequate language in their bylaws or policies to define their approvals procedure. This is most commonly seen where compliance with the RAR is defined exclusively in the policy section of an OCP, and not supported by procedural guidelines or bylaw provisions. Municipalities in this category may have some RAR related language in their bylaws/policies but lack critical elements which significantly compromises their process.

Incomplete application of RAR standards: Three municipalities have established RAR processes but do not apply their standards to all watercourses as defined by the RAR within their jurisdiction. In these situations, certain streams may be identified as being subject to a RAR assessment, where others are omitted.

Inadequate pre-determined setbacks: In the case of one municipality, pre-determined setbacks (SPEAs) have been established which do not adequately consider habitat *Features, Functions and Conditions* as defined in the RAR. In addition, this municipality allows for a number of encroaching activities that are not subject to RAR assessment.

Encroachment permitted: One municipality allows proponents to encroach into designated SPEA areas for a range of activities that are defined as development under the RAR. In this particular case the permitted exclusions detract sufficiently from the RAR to create non-compliance.

When excluding the four municipalities that are non-compliant due to having no RAR process in place, there are nine municipalities that have established a RAR process that is inadequate to properly apply the regulation.

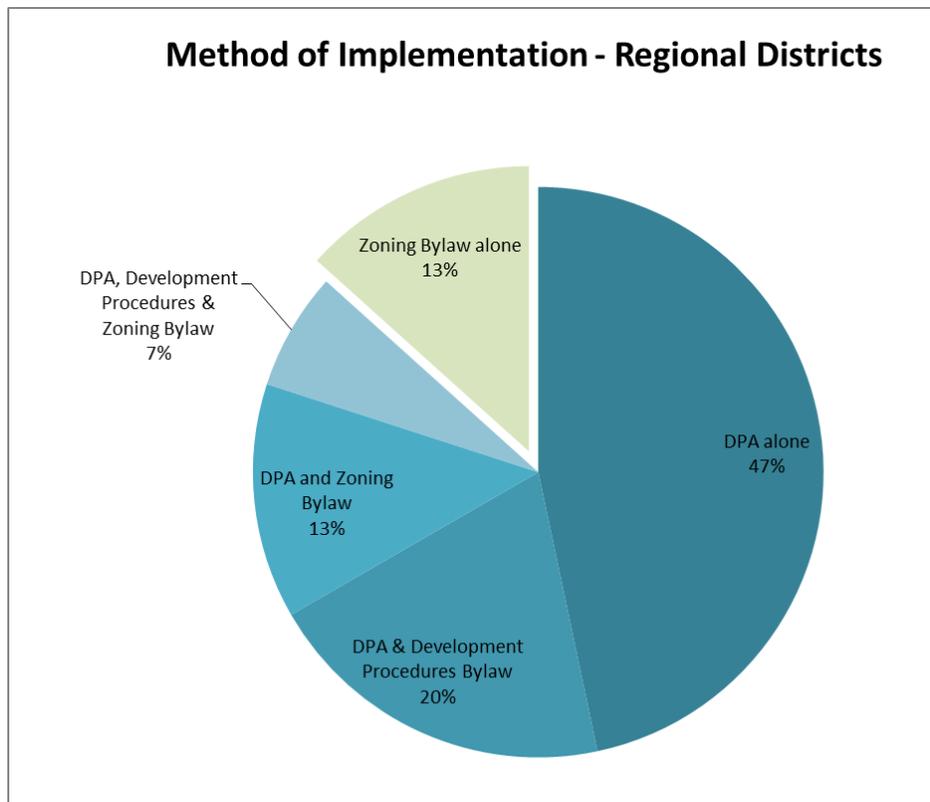
RESULTS – REGIONAL DISTRICTS

RESPONSE RATE

Of the 15 Regional Districts subject to the RAR, 14 responded formally. The remaining Regional District's information was derived from discussions with staff and reviewing online materials, achieving a 100% accounting of Regional Districts.

METHOD OF IMPLEMENTATION

Regional Districts were found to have significantly less variation in their methods of implementation as compared to municipalities.



Of the 15 Regional Districts reviewed, 13 employ a DPA alone or in combination with Zoning / Development Procedures bylaws to apply the RAR. Two regional districts use a Zoning Bylaw exclusively. In general, bylaw provisions at the regional district level closely followed RAR standards and relied on QEP assessment to determine SPEAs and associated requirements.

Provision for riparian protection was included in the OCPs of 13 of 15 regional districts. It should be noted that although most regional districts are composed of several electoral areas, not all electoral areas within a district have OCPs. The review identified that in most cases, where an OCP was present for an electoral area RAR provisions were included. For those electoral areas that did not yet have an OCP, development pressure was generally low.

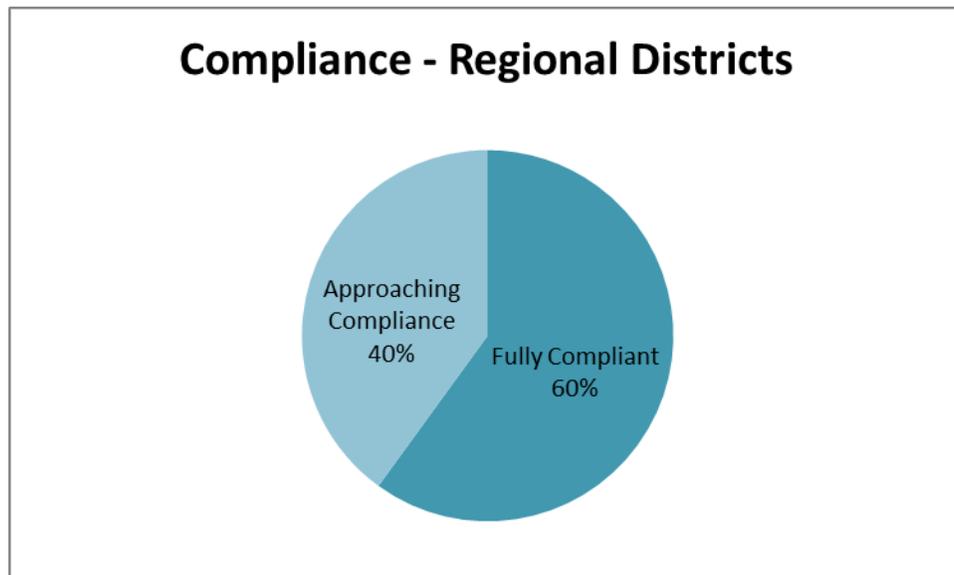
REVIEW OF REGIONAL DISTRICT PROCESS COMPONENTS

As described above, the same metrics and components were evaluated for regional districts as for municipalities.

All 15 regional districts reviewed have a mechanism to trigger a RAR assessment when development is proposed and all require RAR assessments, including submission to RARNS. All regional districts establish SPEAs for development through QEP assessment. This is reflective of the large geographic scope of regional district jurisdiction and the difficulty of compiling in-house biophysical information for all watercourses within these areas.

COMPLIANCE OF REGIONAL DISTRICT PROCESSES

All regional districts were found to be either Fully Compliant (nine of 15 regional districts, 60%) or Approaching Compliance (six of 15 regional districts, 40%)



Fully Compliant

Of the nine fully compliant regional districts, seven use a DPA alone or in combination with other tools. In addition to the critical process components, all of the regional districts in this category have a mechanism to ensure QEP recommendations form part of DP requirements. In general, bylaw provisions for these regional districts were highly congruent with RAR standards and language.

Approaching Compliance

For the six regional districts approaching compliance, the issues identified with their processes varied, but were broadly classified as minor. These included:

- Bylaws permitting exemptions or encroachments that may impact SPEAs, depending on application.

- Unclear language in DPA standards where the regional district specifies the components of a habitat assessment. These may include portions of RAR standards only and/or add unique requirements that may lead to confusion.
- Lack of bylaw tools for RAR application where only a portion of electoral areas within a regional district have OCPs.

Overall, the review found that the large geographic areas of their jurisdiction combined with highly unique site conditions and features create challenges for regional districts in the application of the RAR. All regional districts categorized as incompletely compliant have developed processes that are robust and capable of attaining full compliance with support from the ministry.

RESULTS – ISLANDS TRUST

CONTEXT

The Islands Trust represents a unique local government structure in British Columbia, established by the *Islands Trust Act*. Under the Islands Trust structure, 13 Local Trust Committees administer land use planning for 12 major islands and associated smaller islands in the southern Salish Sea and Howe Sound. In addition, the Trust Area includes one Island Municipality which has authority for its own land use planning and bylaws. Each Local Trust Committee develops its own OCP and land use bylaws to fit the nature of the individual islands, in a structure analogous to Electoral Areas under a Regional District. In assessing the compliance of the Islands Trust's process, it was then necessary to review information for each individual Local Trust Committee and also develop an overall picture of implementation. It was clear from the review that the structure of the Trust combined with the diversity of physical environments, development pressures and local approaches presented a challenge to implementation of the RAR. It was also clear that the Islands Trust is applying significant efforts to achieve compliance.

RESPONSE RATE

The Islands Trust provided current implementation information for the 13 Local Trust Committees and information for the additional island municipality was submitted separately, resulting in a 100% response from the Islands Trust Area.

DEVELOPMENT TRIGGER

Of the 13 Local Trust Committees and one island municipality in the Islands Trust Area, 11 have an implemented or proposed trigger for development review in a RAR assessment area. A further Local Trust Committee does not have streams subject to the RAR in its jurisdictional area and therefore does not require this function. Two Local Trust Committees have not yet implemented a mechanism to review development, and do not at this time have such a provision in development.

REQUIREMENT FOR QEP ASSESSMENT

All Local Trust Committees that have RAR provisions in place require assessment reports prepared by a QEP as a condition of development permit issuance. Several Local Trust Committees have standards under development and will have similar requirements upon implementation of their bylaw updates.

As streams as defined in the RAR are comparatively limited in much of the Islands Trust Area, several Local Trust Committees have taken the step of engaging QEPs to map RAR subject watercourses on the islands within their jurisdiction. This has been incorporated into OCP/DPAs in some Local Trust Committee areas and informs bylaw updates under development in others. Mapping of watercourses has been an asset to planning processes as it provides for a greater degree of precision for DPAs and associated bylaws, but can also lead to issues of clarity as not all watercourses subject to the RAR are necessarily captured in the mapping.

USE OF RAR NOTIFICATION SYSTEM

The Islands Trust is registered in the RARNS as a single entity; there are no individual subcategories for Local Trust Committees under the Online Notification System’s Local Government heading. The Island Municipality in the Islands Trust area has its own separate registration. For the Local Trust Committees that have implemented RAR standards, submission to RARNS is required. Several assessment reports have also been submitted from Local Trust Committees that have not yet implemented RAR standards, but likely do not include all applicable developments from these areas.

STATUS OF IMPLEMENTATION / COMPLIANCE

In nine of ten Local Trust Committees that have instituted RAR processes or have them under development, implementation of the RAR is by Development Permit Areas in combination with a Land Use Bylaw (LUB). One Local Trust Committee utilizes a DPA alone; in this case RAR requirements are not contained in the LUB. A Development Application Information (DAI) checklist is used in two Local Trust Committee areas with a further Committee planning for this tool as part of bylaw updates.

The compliance review found that the majority of Local Trust Committees fell into two categories; *Compliant* and *Under Development*.



Compliant: includes the five Local Trust Committees and one Island Municipality that have incorporated RAR language into their OCP and implemented through a DPA and Development Application Information (DAI) procedures.

Under Development: This category includes five Local Trust Committees that are currently updating their OCPs and bylaws to incorporate RAR standards as per the above. Two of the five Local Trust Committees that have OCP / bylaw amendments underway are at an advanced stage, with implementation scheduled before the end of 2015.

Overall, 11 of 14 (79%) jurisdictions in the Islands Trust area are compliant with the RAR or have directed processes underway to become compliant. The remaining four Local Trust Committees fall into the following categories:

No RAR streams: One Local Trust Committee has completed an assessment of its watercourses by a QEP and determined that none meet the definition of *stream* under the RAR. As a result this jurisdiction has not developed RAR standards.

Approaching Compliance: One Local Trust Committee has implemented OCP and DPA provisions to apply the RAR, but has a discrepancy between the DPA areas outlined in OCP maps and the Islands Trust's watercourse mapping. This requires clarification.

Non-compliant: Two Local Trust Committees have confirmed RAR streams within their jurisdictions but have not yet implemented bylaws or policies to apply the RAR. In both cases ministry staff have already been involved in ongoing discussions to establish the applicability of the RAR to watercourses on the islands and supporting mapping initiatives sponsored by the Local Trust Committees. The lack of RAR implementation centres primarily on the perceived applicability of the regulation to the watercourses found in these Local Trust Committee areas.

DISCUSSION

The intent of the compliance review was both to gather information on the current status of local government application of the RAR and to inform the steps the ministry will take to respond to the BC Ombudsperson's recommendations pertaining to compliance. During the review several themes emerged which will be significant for addressing the Ombudsperson's recommendation #2: to work with local governments to bring them into compliance with the RAR. As discussed at several points in the review results, the breadth of RAR application methods at the local government level makes strict evaluations of compliance challenging. While many local governments have issues identified that must be addressed to achieve full compliance, the review determined that the number of local governments that have not implemented any type of RAR process is quite low (less than 5% of applicable local governments).

The review uncovered numerous opportunities to improve RAR process that will prove critical in the next phase of local government outreach.

EMERGENT THEMES IN THE LOCAL GOVERNMENT REVIEW

Bylaw and policy language

The single greatest issue with compliance identified in the review was not an absence of bylaw and policy provisions to implement the RAR, but rather unclear, conflicting or incomplete language within these bylaws and policies that detracts from the effective implementation of the regulation. As described above the extent to which this issue impacts the delivery of the RAR at the local government level varies, but is responsible for a significant portion of local government processes in the *Approaching Compliance* and *Not compliant* categories.

The nature of the language issues identified is diverse but is often related to unclear connections between RAR standards in an OCP and the procedural components required at the permit issuance level. This is compounded by the wide range of local government capacity to interpret and apply the RAR. Some local governments have in-house technical staff that support project review and ensure RAR standards are met, whereas many lack this capacity due to limited resources. The greatest incidence of local governments classified as "*Approaching Compliance*" was seen in the intersection of those that process a comparatively high number of developments subject to RAR, have limited resources for project review and have unclear language in their bylaws and procedures.

There is a significant opportunity in this area for the ministry to support local governments in working towards more consistent application of the RAR. The context afforded by having completed a comprehensive review of local government implementation allows the ministry to identify the source and nature of language issues quickly. In many cases significant process improvements are possible through bylaw amendments or simply policy changes, avoiding the allocation of resources to creating entirely new bylaws and procedures. The ministry can play a role in supporting the development of this language.

Local Government Resources

The issue of resources and capacity to implement the RAR was raised numerous times by local government respondents. Four municipalities indicated that they did not have the capacity to respond to the request for information, and a further two municipalities cited resource issues when accounting for their lack of a RAR implementation process. In discussing the reporting process with local government staff, it was clear that

smaller communities in particular faced challenges in interpreting and applying the RAR. At the same time, several smaller communities have addressed this issue by implementing particularly defined bylaw conditions, and calling upon the expertise of QEPs in the absence of specialist staff. The review found that although many methods were used to implement the RAR, most local governments have elected to integrate the standards into existing planning and development procedures such as the DPA, rather than implement stand-alone bylaws. This is reflective of creating efficient processes to make best use of resources.

Opportunities exist to work with those communities with limited resources, demonstrating “standardized” and simplified bylaw systems that make RAR implementation as straightforward as possible.

Local Government Areas of Responsibility

The overwhelming majority of local governments subject to the RAR are taking substantive steps to apply the standards of the regulation. The review found, however, that a significant number of local governments remain unclear as to their responsibilities with regard to RAR delivery in relation to the responsibilities of the QEP, ministry and associated agencies such as DFO. An example in this regard is the inconsistent use of the RAR Notification System. Where a local government seeks to apply RAR standards but does not establish a clear procedure for the submission of an assessment report, the local government may not be meeting its obligation under section 4(2)(b) of the RAR; to be in receipt of a notification from the ministry that an assessment report has been received. As described previously, local governments have the option under the *Fish Protection Act* to provide a level of protection that in the opinion of the local government is “comparable to or exceeds” the RAR, but when selecting this option have the responsibility to be able to demonstrate specifically how their process meets this standard. In practice, the review found several situations where local governments were implementing components of a “comparable to or exceed” process combined with partial RAR standards, which made compliance unclear. Closer adherence to RAR standards has the potential to simplify and streamline local government process and reduce the responsibility of the local government to demonstrate how their process complies with the *Fish Protection Act*.

Enforcement of RAR Standards

A recurrent topic in local government feedback during the compliance review was that of enforcement of RAR standards. Many local governments communicated that they understood the enforcement of RAR standards to be a ministry responsibility and were of the opinion that the ministry should take on an active role in ensuring RAR guidelines are followed. This illustrates a misunderstanding of the application of the RAR, as the regulation does not provide for enforcement powers on the part of the ministry. As the RAR is implemented through local government bylaws, enforcement of RAR conditions as recommended by the QEP must also be conducted through bylaw. A number of local governments raised concerns about their capacity to evaluate RAR standards and take action on contraventions, which as described above often relates to available resources. At the same time several local governments were identified as having significant measures in place to enforce the conditions of a QEP assessment and to integrate them into their permit conditions. Dialogue with local government representatives revealed that in a number of cases, they were not aware of the bylaw tools available to them to enforce RAR standards. An important opportunity exists to clarify the role of enforcement on the part of local governments and to support them with successful examples from other jurisdictions.

The Role of Fisheries and Oceans Canada in Environmental Review Committees

In the wake of amendments to the federal Fisheries Act that came into effect in November 2013, the role of Fisheries and Oceans Canada (DFO) in the application of the RAR has been significantly reduced. The review

process identified that multiple local government processes had been developed with the assumption of direct DFO staff involvement in RAR variance reviews, often through an Environmental Review Committee (ERC) process. Since these changes, several local government processes are in the process of adapting and updating their approach. The local governments that fall into this category have identified this restructuring as a major issue requiring significant resources and staff time to address.

Discussions are underway between the ministry and DFO to better define the partners' roles moving forward. This dialogue is critically important at this juncture to provide guidance to local governments.

The Role of the Qualified Environmental Professional

For those local governments that follow RAR standards most closely, the compliance review confirmed the critical role of the QEP in the application of the regulation. The *Yanke vs. Salmon Arm* decision reinforced the role of the QEP in determining and certifying SPEAs and the limited role of local government in the establishment of these areas. As a local government does not have the ability to reject or modify the findings of a RAR assessment report, they depend on the professional opinion of the QEP combined with support and direction on interpretation from the ministry. This is particularly pronounced in local governments that do not have resources to support dedicated technical staff, where the QEPs assessment is often the sole supporting information for permit issuance. The review found that this relationship led to misunderstanding on the part of some local governments that they had little to no role in the management of riparian areas. An opportunity exists for the ministry to work with local governments to provide greater clarity on the role and responsibilities of the QEP, particularly with those local governments that have not had extensive experience working with them.

The purpose of creating the prescriptive RAR assessment methodology was to create consistency and reliability in results, which provides a greater degree of certainty to local government. The ministry is aware through the delivery of the regulation that some misinterpretation of the RAR occurs among QEPs; this topic was also identified by the Ombudsperson and forms the basis of separate recommendations. In response to these recommendations, the ministry is working concurrently on supporting improved standards for the professional sector and communicating practice updates. More consistent application of RAR standards benefits local governments by ensuring assessments do not require revisions that delay permit issuance.

PRIORITIES FOR ACTION

Establishing priorities for implementing Ombudsperson's recommendation #2: working with local governments to achieve compliance

As described in the evaluation of compliance, where a local government process was found to be *Approaching Compliance* this was based on a broad range of factors. The impact of these issues also varied significantly. There are also a small but significant portion of local governments that are *Non-compliant* for a range of factors. To implement the Ombudsperson's recommendation #2, the ministry will develop an approach to determine where to apply resources immediately to achieve the best results. For example the ministry may start by working with those municipalities that have no process in place or alternatively working first with those that only require minor changes, to bring more into the Fully Compliant category quickly.

This approach will be determined in conjunction with partners such as the Union of BC Municipalities (UBCM) and the local governments themselves. The first component of this process has been completed with the

issuance of a follow up letter to the responding local governments, thanking them for their contribution and encouraging them to discuss the results with the ministry. This will be the first step in establishing a dialogue to achieve compliance.

Supporting Improvements to Bylaw Language and Policies

In many cases, relatively minor changes to bylaw and policy language could result in a local government achieving full compliance with the RAR. The ministry will prioritize providing accessible tools to the local governments in this category to help identify these issues, and work directly with local government staff to implement amendments as necessary. Supporting the improvement of regulatory language is likely the most significant single action in achieving greater compliance.

Working in partnership with the UBCM

As described, action taken on the results of this review will support the goal of increasing RAR compliance among local governments. To achieve the best results the ministry will continue to work in partnership with the UBCM, who have historically provided significant support to RAR implementation and more recently to the outreach program for this compliance review.

Outreach

The process of contacting all the local governments in the RAR service area provided an excellent opportunity to discuss numerous topics surrounding the regulation with their staff. It was clear from this process that most local governments are supportive of more communication with the ministry, to improve and streamline their RAR processes. The review also revealed that some local governments remain unaware of their obligations to implement the RAR or are have a very limited experience in the application of this type of regulation, leading to a lack of adequate standards. Providing outreach, education and technical support to local governments to create more robust RAR standards is therefore a priority. This includes the provision of technical and guidance documents through QEP professional associations, the UBCM and online.

CONCLUSION

This report represents the ministry's response to the Ombudsperson's recommendation #1 but also forms part of the existing program of ongoing performance evaluation and continual improvement of the RAR. Through the process of RAR delivery, the ministry has noted a substantive effort on the part of local governments to improve their compliance with the RAR and institute improvements. The review has revealed compliance is generally good, with work still required to bring some local governments into full compliance. This review provides critical information on which to base future conversations and engagement with local government to address compliance. The process of conducting the review has confirmed a willingness on the behalf of local governments to participate in RAR improvements; through this partnership we will refine and strengthen implementation of the RAR. The ministry looks forward to working with local governments to improve compliance, which ultimately translates into better protection of fish habitat in British Columbia.

APPENDICES